

Read : 1. Application dated 29th December, 2005 under section 56 of the Maharashtra Value Added Tax Act, 2002 from The NSD Industrial Home for the blind.

2. Letter dated 10-11-2008 from this office calling the applicant on 2nd December 2008 for hearing.

Heard : Shri Shriniwas Pai, Accountant.

PROCEEDINGS

(Under Section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2006/Adm-5/34/B-3

Mumbai,dt.14.12.09

An application is received from The NSD Industrial Home for the blind of B.D.D. Block No.52, Worli, Mumbai-400018, seeking determination of the question as follows:

“Whether the applicant is a dealer within the meaning of Section 2(8) read with Explanation (iv-a) of the Maharashtra Value Added Tax Act, 2002 and whether EXCEPTION II to the definition of dealer wherein educational institutions are exempted from the purview of the definition of ‘dealer’ would be applicable to him.”

02. FACTS OF THE CASE

The NSD school for the Blind was founded by Narsingrao Shivaji Dharmaji on 1st April 1917. In the institute, the blind are provided training in different vocations, under workshop conditions with lodging, boarding, medical care and clothing etc. free of cost. The Worli premises of the Institute was allotted in the year 1939 to the Institute where the rent is paid by the Social Welfare Department, Government of Maharashtra.

It is stated by the applicant that the institute is a vocational training centre and during the training, certain goods are manufactured by the Blind Trainees which are sold to recover the cost of raw materials and other expenses of the training activities. However, it is contended by the applicant that they do not conduct any business but theirs is a vocational and Rehabilitation Centre for the Visually handicapped and therefore they are an ‘educational institution’ covered under Exception II to the definition of ‘dealers’.

DETAILS SUBMITTED ALONGWITH APPLICATION

The following details have been submitted by the applicant:-

1. Copy of Certificate of registration as Charitable Organization under Public Trust Act No. E-730(B).
2. Copy of Certificate by the Government of Maharashtra under the Persons With **Disabilities** (Equal Opportunities, Protection of Rights and Full Participation) **Act**, 1995 to run a vocational training centre for the visually handicapped. The applicant gets grant-in-aid for the above purpose from the Government of Maharashtra.
3. Certificate of award by Federation of Indian Chambers of Commerce and Industry for the work of Training and Rehabilitation of the visually handicapped.
4. A copy of Government Resolution issued by the Government of Maharashtra, Department of Industries, G.R. No. BKS-2006/11/(334)/Industries-4 dt.16th November, 2006 keeping the work of recaning of chairs, supply of brushes, Duster reserved for the institution.
5. Certificate of exemption from Sales Tax under the BST Act.
6. Certificate of exemption from payment of Octroi MCGM.
7. Copy of list showing names and addresses of the blind inmates who are provided placement under the 'Self Employment Scheme' by the institution.
8. The institution is based at two premises in the city of Mumbai, 1) B.D.D. Chwal NO.52, Worli, Mumbai 400 018, which has been leased out by Governor of Bombay in year 1937. 2) K-164, Cotton Depot, Cotton Green, Mumbai 400033, which has been leased by Mumbai Port Trust on nominal rent by Rs.1/-.

It is the submission of the applicant that, looking at the nature of work undertaken by them for the visually handicapped person, the institute may be held as an 'educational institution' and thereby not a 'dealer' under the Maharashtra Value Added Tax Act, 2002 .

03. HEARING

The applicant was heard on 2.12.2008. Shri Shrinivas Pai, Accountant, attended the hearing. Shri Shrinivas Pai, Accountant, contended that the applicant is not a dealer as NSD is an educational institution. He informed that the institute works for the visually handicapped. He stated that when they impart training in weaving, canning, brush making and carpentry, certain goods are manufactured and later sold in the market. He contended that irrespective of the activity of sale effected by NSD , it remains an 'educational institution' as such sales are generated in the course of training.

During the course of hearing, the applicant was directed to produce evidence in support of the claim that they are a training institute. They were informed of the criteria which need to be fulfilled in order that they qualify as an educational institution.

In reply to the above, the applicant submitted the following:

- Information that the institute gives training to blind inmates in the following courses.
 - Cane Work b) Brush Work c) Weaving d) Motor Armature Winding.
- List of Teachers imparting Training in the above courses.
- Names of Teachers and their Designations
 - Shri Ashok Bodake Industrial Supervisor-A
 - Shri Manoj Nemane Instructor-B (Weaving)
 - Shri Santosh Panchal Carpenter Instructor-B (Brush)
 - Shri Vijaykumar Shendge Instructor-A
 - Shri Shailandra Pawar Carpenter Instructor-B (Brush)
- Copy of syllabus of Cane Work, Brush, Weaving, Motor Armature Winding and the qualification certificates of the instructors.
- Specimen copy of certificates which are being issued for all disciplines-tailoring, cardboard, weaving, cane-work and brush-making by the institutes after completion of course.

04. DECISION

In this issue I have to decide whether the NSD- Institute for the Blind which is a training institute working in the field of 'vocational training and rehabilitation of the visually impaired' is a 'dealer' under the MVAT Act. The institute is registered under the Bombay Public Trust Act. The institute has probably raised the issue because all entities which are registered under the Bombay Public Trust Act are deemed dealers under the MVAT Act due to the explanation to the definition of dealer which is reproduced as below:

The term "**Dealer**" is defined in Section 2(8) of the MVAT Act and the same reads as under:-

"**Dealer**" means any person who, for the purpose of or consequential to his engagement in or, in connection with or incidental to or in the course of, his business buys or sells, goods in the State whether for commission, remuneration or otherwise and includes,-

1. a factor, broker, commission agent, *del credere* agent or any other mercantile agent, by whatever name called, who for the purpose of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells any goods on behalf of any principal or principals whether disclosed or not;
2. an auctioneer, who sells or auctions goods whether acting as an agent or otherwise, or who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal whether disclosed or not and whether the offer of the intending

- purchaser is accepted by him or by the principal or a nominee of the principal;
3. a non-resident dealer, or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in the State for the purpose of or consequential to his engagement in or in connection with or incidental to or in the course of, the business;
 4. any society, club or other association of persons which buys goods from or sells goods to, its members.

Explanation,- For the purpose of this clause, each of the following person, bodies and entities who [sells any goods] whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration, **shall, notwithstanding anything contained in clause (4) or any other provision of this Act, be deemed to be a dealer, namely:-**

[(iv-a)] **Public Charitable Trust;**

(v)....(x)

Exception I.- An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause.

Exception II.- An educational institution carrying on the activity of manufacturing, buying or selling goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause.

Exception III.- A transporter holding permit for transport vehicles (including cranes) granted under the Motor vehicles Act, 1988, which are used or adopted to be used for hire or reward shall not be deemed to be a dealer within the meaning of this clause in respect of sale or purchase of such transport vehicles or parts, components or accessories thereof.

It is very clear from the aforesaid definition of 'dealer' that certain entities who sell any goods are considered by legal fiction to be 'deemed dealers' for the purpose of the MVAT Act through the Explanation to the clause. The Explanation contains a *non obstante* clause- an overriding clause which supersedes anything contained in clause (4) of the MVAT Act. The said clause (4) of Section 2 of the MVAT Act defines 'business' and the implication of the overriding clause is that these 'deemed dealers', irrespective of whether they fulfill the requirements contained in the clause of 'business', are considered to be 'deemed dealers'. The Public Charitable Trusts are listed at (iv-a) in list of deemed dealers. Therefore, all Public Charitable Trusts are 'deemed dealers' and leaving no scope for any further interpretation as to they are 'dealers' or not. However, there are three exceptions to this explanation of 'deemed dealers'. The applicant has drawn my notice to the Exception No.2 in which it is stated that, an 'Educational Institution carrying on the activity of manufacturing, buying or selling goods in the performance of its function for achieving its' objects shall not be deemed to be a dealer. The applicant wishes to drive home the point that FPH being an Educational Institute, it comes under the Exception No.2 to the definition of a 'deemed dealer' and therefore, is not a dealer for the purposes of the MVAT Act.

Prima facie, because of the inclusion of Public Charitable Trusts in the definition of 'dealer', FPH definitely is a dealer for the purpose of clause 2(8) of the MVAT Act. However, it is the plea of the applicant that they are an Educational Institution and therefore they are not 'dealers' under the Act as per Exception II to the clause, and more so, they do not come under the purview of a dealer irrespective of the inclusion of Public Charitable Trust under the category of a deemed dealer.

I have gone through the Explanation as well as Exception II to the clause. An analysis of the clause shows that in order to come under the purview of 'Exception II', the applicant has to prove the following:

- That NSD is an educational institution.
- That it carries on the activity of manufacturing, buying or selling goods.

- The activity of manufacturing, buying or selling goods in the performance of its functions for achieving its objects.

Is NSD an educational Institution? is a question that has to be decided by me. In fact, the moot question is what all characteristics define an 'educational institution. In the determination order in the case of North Point Research and Training Institute (DDQ-11-03/Adm-5/18/B-3 dt 14/9/06), the then Commissioner has laid down certain criteria which defines an Educational Institution. As I find the criteria well reasoned, exhaustive and fulfilling the needs of the present case, I shall apply the criteria to the present case and then ascertain the validity of the statement made by the applicant that VRI as an Educational Institution. The criteria are as follows:

"The Educational Institutions that would be excluded from the purview of the definition of dealer are those institutions which satisfy all the following criteria simultaneously namely:

1. Recognised as an Educational Institution by University or the UGC or as the case may be by a Technical or Educational Board.
2. Has a prescribed course or syllabus for the alumni.
3. Has a teaching staff which is on the pay roll of the colleges or institution.
4. Issues certificate to its students.
5. Conducts exam as per prescribed rules.

To the above criteria, I shall also add an important criteria, which is that as to with what **objects in mind is the supposedly educational institution set up?** I shall first start by having a look at the objects with which the Institute was set up.

OBJECTS

- 1. To look after the welfare of the Blind generally. Without prejudice to the generality of the said premises :**
 - a. To promote co-operation among Associations, Institutions, Organisations, Societies, and individuals working for the welfare of the Blind.
 - b. To take such steps as may be necessary for the prevention and cure of preventable and curable blindness and eye troubles.
 - c. To start and maintain Eye Hospitals, Eye Clinics, Mobile Units, Eye Banks, Dispensaries, and similar activities as may be considered expedient or proper.
 - d. To educate the public in the matter of care of the eyes and relief of the blind.
 - e. To establish, conduct, control and manage educational and vocational institutions, homes and centres for the education, re-habilitation, after-care and welfare of the Blind and for helping the Blind in securing employment.**
- II. To promote the welfare of the Blind by all possible means and in particular by :-**
 - a. Providing meeting places with facilities for exchange of views.
 - b. Providing facilities for co-ordination of interests and co-operation with similar or allied associations of societies in other Stats or countries.
 - c. Arranging and providing facilities for conference, exhibitions, demonstrations, lectures and other similar programmes.
 - d. Establishing, equipping and maintaining libraries in inkprint, Braille, talking books and films, and undertaking research and investigating, collecting and circulating information and statistics relating to the blind.
- III. To promote, initiate and advance measures, whether medical, educational, legislative or otherwise for eliminating causes of blindness and for helping the blind.**
- IV. To take all necessary steps to organise and maintain workshops and employment agencies for getting the blind employed in trades, professions and occupations.**
- V. To start or assist educational and vocational institutions for the training of the blind.**
- VI. To look after the welfare of the dependents of the blind.**
- VII. To work in co-operation withany institution, Society or Association having objects altogether or in part similar to those of this Association.**

- VIII. To take such measures as may be necessary or expedient for training welfare workers, volunteers, administrators and educators for doing blind relief work for carrying out the aims and objects of this Association.
- IX. To obtain and accept subscriptions, donations, grants, gifts, bequests and trusts from any person, firm, corporation or institution.
- X. To acquire by gift, purchase, exchange, lease or hire or otherwise howsoever any lands, buildings, easements, playgrounds, parks and any property movable and/or immovable and for any estate or interest for the furtherance of all or any of the objects of the Association.
- xi. To acquire, extend, enlarge, improve and use any land, recreation centres or playgrounds, parks and to build, construct and maintain houses or other buildings and alter extend, improve, repair, enlarge or modify the same and to provide and equip the same suitably.
- XII. To sell, manage, transfer, exchange, borrow, mortgage pledge shares, securities, deposit receipts, demise, dispose of or otherwise deal with any property immovable or movable whatsoever belonging to the Association and/or to the institutions managed by or under the control of the association.
- XIII. To invest and deal with any moneys of the Association not immediately required for any of its objects in such manner as may from time to time be determined by the managing committee.
- XIV. For the purposes aforesaid to sign, execute, and deliver such instruments, assurances, and deeds as may be necessary and
- XV. To do all such other acts, deeds or things as are incidental or conducive to the attainment of any of the above objects.

It is seen from the above that though the main object of the institute is welfare of the Blind and one of the ways of achieving the welfare is training and educating such people. In the Exception-II to the explanation, the institute has to be a first an education institute. Once we have established that it is an educational institute then we come to the objects and determine whether the activity presented before us has any nexus with the object or not. I have stated earlier that the decision whether the institute is an educational institute or not hinges on certain factors determined in the DDQ in the case of M/s. North Point (Cited Supra). I have already listed the material submitted by the applicant from which the following essential facts given gleaned.

1. The applicant did not place any evidence before me with regard to the fact that it is a recognised educational training institute affiliated to any Central Educational/Vocational Training Council. What is placed before me is that it is recognised by the Social Welfare Department of Maharashtra as a Non Resident Training Institute under the provisions of the Persons With **Disabilities** (Equal Opportunities, Protection of Rights and Full Participation) **Act**, 1995. Under the provisions of the Act, any institute working for the welfare of handicapped people has to obtain recognition from the Welfare Department and through the recognition the society becomes eligible for certain grants and aid. I am of the belief that the institute is recognised as a training institute by an authority which is in turn conferred with the powers of authorisation derived from the provisions of a statutory law. This therefore seems adequate and sufficient.
2. The applicant has supplied a copy of the syllabus of the following departments:-
 - a) Cane Work; b) Weaving; c) Carpentry & d) Brush making. They have not produced the syllabus for tailoring and cardboard making. The syllabus of each of the department of carpentry, brush making, weaving and canning is given in detail for eg., the syllabus for the carpentry department comprises training of basic carpentry skills and also gives the examination pattern wherein the marks to be allotted to theory and practicals are given. The basic carpentry skills comprises training on the selection of wood, identification of good timber, types of marking and measuring tools, the various types of saws, chisels and other tools and the making of articles

like name plates, files, cabinets etc. The syllabus for the cane work also gives the examination pattern and comprises information on the types of canes, the various types of weaving of cane etc. The syllabus for weaving also comprises training on the various types of weave like warp winding, weft winding etc.

3. The society has a full-fledged trained staff which helps the students in the training. The applicant has produced the certificates of the teachers to prove that the teachers are trained in the fields of book-binding, handicraft, technical engineering etc.
4. The society also gives certificates to students who successfully undergo a course in it.

Thus, it is seen from the above that it the institute fulfills the criteria of a educational institution for the visually impaired. The education and the training is conducted with a view to make the trainees independent and it aids in their rehabilitation. The institute achieves the welfare of the handicapped through training them. The training is also as per certain syllabus and is given by a trained staff. Therefore, there can be no doubt about it that the society is a vocational educational institute.

Now we come to the activities of NSD which are commercial activities and I have to decide whether conduct of these commercial activities has a link with the objects of NSD. For the year 2000, the income received by the society from the sale are at Rs.91,648/- from canning work, Rs.8,48,434/- from the weaving, Rs.6,45,747/- from brushing work and Rs.3,17,730/- from tailoring. For the year 2004-05, the total income received from cane work, weaving, brush work and tailoring amounts approximately Rs.8 lakhs. Now the question before me is whether such activities of producing cane goods, dusters, brushes, toweling napkins and various sizes of boxes supplying them to various outlets for various companies is in consonance with the objects of the trust. Do these activities which are commercial activities have any relation to or any bearing on the educational objects of the institute?

There should be a strong link between the motive of the educational institute which is to educate the visually handicapped people and the activities of producing dusters, corrugated boxes etc. Thus, the link only exists if it is proved by the applicant that the activities are done and conducted in the course of training of the blind persons. It is seen from the syllabus volume that the syllabus for the different departments like carpentry department, cane work department, tailoring department, weaving department also incorporate training as to how to practically apply knowledge to the making of articles. For example, the syllabus for the 'carpentry department' lays down that the trainees will get training on how to make articles like file cabinet, utility tray, kitchen tray etc. Similarly, the syllabus for the brush making course envisages training in how to make various types of brushes, wood handles etc. The outline of the syllabus gives a fair idea that the making of articles and the training is integrally connected. It is not that the manufacturing of the articles is an independent activity having no link at all with the trainees and consequently with the objects of the institute. The syllabus is an evidence and more to say, and very important evidence to prove that the workshop and the training are a part of the same activity.

It is noted that the manufacturing of the articles is not done as a separate independent activity by able bodied people having no connection whatsoever with training or education. When these articles that are supplied commercially are made by the trainees themselves, it becomes a part of the training. In the course of developing and manufacturing these articles ,the trainees get a first hand experience. It is therefore felt that the commercial activities are done with the object of carrying out the performance of the object of the institute. The applicant therefore fulfills the requirements of the Exception-II to the definition of 'dealer' (a) it is a educational institution (b) the commercial activity is carried out by it are with the intention of fulfilling or for the performance of its objects.

The importance of 'precedents' has always been recognised in the judicial decision and even in making of the determination order, a view established by an earlier determination order merits consideration especially when the facts are similar. Under the MVAT Act, 2002, two determination orders have been passed by my predecessor in the case of NAB Workshop for the Blind (DDQ-10/2005/Adm-5/89/B-2 dt.13.3.2006 and in the case of M/s. M.N. Banaji Industrial

Home for the Blind (DDQ-11/2005/Adm-5/82/B-1, dt.2.6.2006). In the former case, the issue before the Commissioner was whether the applicant which was registered with the Charitable Commissioner, Maharashtra as a Public Charitable Trust and was connected with the activity of conducting workshop and imparted vocational training to visually handicapped people in various trades would be a 'dealer' under the provisions of the MVAT Act. In the case of M. N. Banajee, the Commissioner had to decide whether the institute which runs a full fledged vocational training and rehabilitation centre for the blind comes with the meaning of a educational institute to which Exception-II to Section 2(8) of the MVAT Act is applicable or not. In both the cases, the institute sold the goods and items prepared by the trainees while imbibing the skill. The Commissioner came to the opinion that both the 'institutes' are 'educational institutes' as they have recognition, have a prescribed syllabus and the teaching staff. As the items were made by the trainees while learning the skills and they were mainly purchased by the various companies for their office use, it was held by the Commissioner that carrying on this activity is not an independent commercial activity. The facts in the present case are also similar. The items prepared by the trainees are part of the syllabus and therefore they cannot be termed as 'independent activity' but are an 'inseparable part of the training'.

05. In view of the above, I hold the following:

ORDER

(Under Section 56 of the MVAT Act, 2002.)

No.DDQ.11/2006/Adm-5/34/B- 3

Mumbai, dt. 14.12.09

The society is not a 'dealer' under the provisions of the MVAT Act, 2002 as it comes under Exception-II of the explanation to the definition of 'dealer' under Section 2(8) of the MVAT Act.

**(Sanjay Bhatia)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.**