

Read: Application dt: 31.1.2007 under Section 56 of the MVAT Act, 2002 by Shree Shirdi Sai Baba Sansthan Trust, Shirdi.

Heard: Shri P. C. Joshi, Advocate.

PROCEEDINGS

(Under Section 56(1) (a) of the MVAT Act, 2002.)

No.DDQ/11-2007/Adm.3/11/B-4

Mumbai, dt.18/03/2009

An application has been filed by the Shree Shirdi Sai Baba Sansthan Trust, Shirdi, as applicant having address as Shree Sai Baba Sansthan Trust, Shirdi, Dist. Ahmednagar, seeking determination on whether they are 'dealers' for the purpose of section 2(8) of the Maharashtra Value Added Tax Act, 2002.

02. FACTS OF THE CASE

The applicant Shree Shirdi Sai Baba Sansthan Trust, Shirdi has filed an application under Section 56 of the MVAT Act for the determination of the following questions reproduced hereunder:

- I. Whether the committee appointed under Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004 is a dealer for its various activities mentioned hereinabove or provided in the said Act?
- II. Whether the activities statutorily required to be undertaken by the Committee amount to a transaction of sale when the offerings in kind are liquidated or amenities afforded to the devotees through providing rooms, food and drink at a reasonable rate?
- III. Whether the committee is liable to pay any tax for such transactions under the provisions of the MVAT Act, 2002?

It is stated in the application that the applicant is a body corporate under the provisions of Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004. It is stated that as is clear from the preamble of the said Act, prior to the enactment of the aforesaid Act, the administration of the public trust of Shree Shirdi Sai Baba Sansthan was vested with the trustees. The said public trust was registered under the Bombay Public Trust Act, 1950 under the name of "Shirdi Sansthan of Shree Sai Baba", popularly known as "Shree Shirdi Sai Baba Sansthan Trust". The management then was under a scheme framed by City Civil Court, Bombay, in Charity Suit No.3457 of 1969. Since then, the Board of Management of the said Trust was periodically reconstituted by the Charity Commissioner.

03. CONTENTION

The applicant has stated that the Committee constituted under the overriding provisions of the Special Enactment, namely Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004 is of the opinion that the erstwhile Public Charitable Trust having been converted under an Act of legislature to a body corporate with perpetual succession under section 5(4), are not covered by any of the provisions of the MVAT Act, 2002 as amended from time to time for their activities of:

A. Liquidating the offerings in kind.

B. Providing the amenities in the form of food and prasad as also tea, coffee, etc. by recouping a part of the cost and

Publication of books, photos, diaries, cassettes, calendars and Sai Charitra for propagating the ideas of Shree Sai Baba and making them available to devotees at a subsidised rate.

04. ARGUMENTS

The applicant has referred to the Maharashtra Act. No. XIV of 2004 through which the public trust of Shri Sai Baba Sansthan registered under the Bombay Public Trusts Act, 1950 was reconstituted under the name of 'Shirdi Sansthan of Shri Sai Baba' for better governance and management and control of the Trust. The applicant has referred to the object of the Act referred to above as is stated in the preamble to the Act, as under:

"And whereas the Government of Maharashtra considers it expedient that the development and management of this important and popular Trust should not be hampered or in any way suffer by avoidable litigation, and that there should be a separate law to re-constitute the said Trust and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government to enable the Trust to carry out its charitable activities more effectively and efficiently and to be able to give more facilities for its devotees and to undertake wider welfare activities from its surplus funds for the general public."

He has also referred to the other relevant provisions of the Act which are stated below:

- As per Section 3(2), all the properties, whether movable or immovable (including all assets, rights, liabilities and obligation), of the erstwhile Public Trust stood transferred to and vested with the Committee appointed under the Act. Section 5 of the Act provide for the appointment of Chairman, Vice Chairman etc., so as to constitute the committee envisaged under the Act. Section 5(4) provides that the

committee so appointed shall be a body corporate having perpetual succession and a common seal.

- Such committee has the power of acquiring, holding and disposing off the property, both movable and immovable, belonging to the Applicant.
- Section 10 of the Act confer power on the State Government to appoint a new member upon the death or on happening of any of the contingencies mentioned therein notified, to the existing member.
- The Act was brought to the fore immediately after the enactment. Section 11 of the Act provide that the transactions authorised under the Act will be undertaken by the committee, to be decided at the periodical meeting of the committee, regularly convened for that purpose.
- Under Section 13(1), an Executive Officer is appointed by the State Government for carrying out the purposes of the Act. Section 14(1) makes the Executive Officer to be the Chief Administrator of the Committee, who will be responsible for carrying out the decisions of the committee in accordance with the provisions of the Act. He is also responsible for the custody of all the properties and records. He has also to make proper arrangements for collection and deposit of offerings made in the temple, with the power to dispose off the perishable offerings by auction and credit the proceeds thereof to the Trust fund.
- Section 17 of the said Act specifies the duties and powers of the committee, subject to general or special order of the State Government. The said section inter alia provide for the efficient and proper arrangement by the committee in regard to the conduct and performance of rituals, worship ceremonies and festivals in the temple according to the custom and usages. The committee also is under the obligation to provide for necessary facilities and amenities to the devotees and apply the income of the Trust to the objects and purposes for which the Trust is administered under the Act [Section 17(1)].
- One of the important duties mentioned in Section 17(1) is the dissemination and propagation of useful knowledge about the life, activities, teachings, etc of Shree Sai Baba, as also the maintenance and expansion of the library containing the related literature. Under Section 17(4), the committee with the previous sanction in writing

by the State Government, can liquidate the jewellery, ornaments and other valuable movable property offered by the devotees in kind.

- Section 20(1) provides for a trust fund under the name of "Shree Sai Baba Sansthan Trust Fund". Such fund consist of all the funds vested in the Sansthan Trust under Section 3, as also all sums of money received by way of donation, offerings or gifts. The trust fund also includes amounts from other sources, more specifically mentioned in sub section (2) of Section 20.
- Section 21 provides for the manner in which the trust fund is to be utilised by the Committee. The Section provides for the utilisation of the fund, not only for the performance of rituals, worship ceremonies etc., but also for facilities and amenities to the devotees for darshan of the deity, as well as provide for the meals to the devotees. Amongst others, ways or the manner of utilising the trust fund also include the amount that may be required to be spent for propagating the teachings of Shree Sai Baba. Under Section 21(2), the surplus if any, have to be utilised for all or any of the purposes mentioned therein.
- Section 33 contains a non-obstante clause, overriding any other law for the time being in force. In other words, the provisions of the Act shall prevail over the provisions of any other law that may be in force.
- Section 21 of the Act was amended through an ordinance promulgated by the Governor of Maharashtra on 23rd August 2004, so as to provide for the utilisation of the fund in providing facilities and amenities to the devotees, providing meals to the devotees and running Annakshetra, as also propagation of the teachings of Shree Sai Baba. Annexed hereto and marked Exhibit 'B' is the gazetted copy of Shree Said Baba Sansthan Trust (Shirdi) (Amendment) Act, 2004 that replaced the Ordinance.

It is stated that as per the provisions of the aforesaid special overriding enactment, the Committee constituted, periodically auctioned the offerings in kind, so as to liquidate them into money. Periodically such offerings in kind disposed off are cloth, shawls, gift articles, gold and silver ornaments etc. For propagating the teachings of Shree Sai Baba, books, calendars, VCDs, Diaries, photos etc. are published. Each of them contain the messages of Shree Sai Baba. In order to provide amenities to the devotees of Shree Sai Baba, rooms are provided with normal amenities. A canteen also is maintained wherefrom tea, coffee and biscuits at moderate rates are made available to the devotees. At the

bhojanalay, food and soft drinks are provided to the devotees, as well as to the poor at the instance of the devotees. For such service of food to the poor, the devotees sponsor the cost.

The applicant has further stated that in the State of Maharashtra, the VAT system of taxation on sale of goods was implemented with effect from 1st April 2005 as provided under the amended MVAT Act, 2002. The applicant referred to the relevant provisions for the purpose of the determination of the question posed in this application:

"Section 2(4) "business" includes-

- a. any service.
- b. any trade, commerce or manufacture
- c. any adventure or concern in the nature of service, trade, commerce or manufacture."

"Section 2(8) "dealer" means any person who, for the purposes 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."

"Section 2(24) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge, and the words "sell", "buy" and "purchase" with all their grammatical variation and cognate expressions, shall be construed accordingly."

"Section 2(33) "Turnover of sales" means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deduction of the amount of -"

"Section 3(2) A dealer to whom sub-section (1) does not apply and whose turnover [of all sales] made, during the year commencing on the appointed day or any year subsequent thereto, first exceeds the relevant limit, specified in sub section (4), shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the 1st day of April of the said respective year."

"Section 4 Taxes payable - Subject to the provisions of this Act and rules, these shall be paid by every dealer or, as the case may be, every person, who is liable to pay tax

under this Act, the tax or taxes leviable in accordance with the provisions of this Act and rules."

"Section 6 Levy of sales tax on the goods specified in the Schedules - These shall be levied a sales tax on the turnover of sales of goods specified in column (2) in Schedule B, C, D, or as the case may be, E, at the rates set out against each of them in Column (3) of the respective schedule".

It is contended that from a careful study of the aforesaid relevant provisions of the Act, it is clear that the provisions apply only to a person who undertakes the business of any activity consequential to his engagement in the buying or selling goods. Under Explanation to the definition of the term "dealer", several persons are notified as deemed dealers when they sell any goods through auction or directly, but such sale again should be for cash or for deferred payment or similar other valuable consideration. The said Explanation cover at Sr.No.IV(a) - Public Charitable Trust - as one of the deemed dealers.

The applicant has stated that doubts having been entertained by some of the persons, applicant request that the following questions be determined authoritatively under Section 56:

1. Whether the committee appointed under Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004 is a dealer for its various activities mentioned hereinabove or provided in the said Act?
2. Whether the activities statutorily required to be undertaken by the Committee amount to a transaction of sale when the offerings in kind are liquidated or amenities afforded to the devotees through providing rooms, food and drink at a reasonable rate?
3. Whether the committee is liable to pay any tax for such transactions under the provisions of the MVAT Act, 2002?

04. HEARING

The case was fixed for hearing on 22.10.2008. Shri P.C. Joshi, Advocate, attended on behalf of the applicant. He stated that the applicant is a erstwhile public trust and is at present a body corporate. He informed that a separate Act is passed by the legislature of Maharashtra under which the "Shree Saibaba Sansthan Trust" is now incorporated. He referred to the various sections under the said Act. Section 3 says that the "Shree Saibaba Sansthan Trust" shall be deemed to be reconstituted under this Act. He said that the earlier

name of the trust was "Shree Saibaba Sansthan Trust, Shirdi". He referred to the fact that for the management of the "Shree Saibaba Sansthan Trust" the committee to be called the "Shree Saibaba Sansthan Trust" management committee was constituted by the State Government. All the appointments to the committee are by the Government of Maharashtra. He referred to sub-section (4) of Section 5 of the Act which says that the committee shall be a body corporate having perpetual succession. He referred to Section 13 of the Act which lays down that the State Government shall appoint the executive officer for the purposes of the Act who shall hold the office for a period of three years. Sub-section 17 says that it shall be the duty of the committee to manage the properties and affairs of the "Shree Saibaba Sansthan Trust" and to make the proper arrangement for conduct and performance of rituals ceremonies etc. He then referred to section 18 of the Act which says that they shall be an Advisory Council to advise the committee consisting of the Chairman, Collector of the District etc. Referring to Section 22 of the Act, he informed that provision has been made under the Act for the constitution of a separate fund called the 'Management Fund' which shall be under the control of the committee. By referring to all these provisions the Advocate wants to press the point that the trust is no longer a trust. Therefore, he does not come under the purview of the explanation to the definition of 'dealer'. He further argued that, in order to come under the explanation a person has to be a dealer first. As they are not dealers, they are also not 'deemed dealer'. He also argued that the trust is reconstituted by an Act of the State legislature and not by the State Government. Therefore, the trust does not come under the scope of clause (x) of the Explanation to the definition of dealer. During the course of hearing, the applicant was asked as to whether they had applied for cancellation of the registration under the Bombay Public Trust Act. To this question, the applicant had replied that they had not applied for cancellation of the registration.

The applicant in his written reply dt. 11.2.2009, reiterated the position regarding reconstitution of erstwhile Public Trust, management of the Sansthan by a separate Committee and status of the Committee as a 'body corporate'. It is submitted as follows :

- The provision laid down in section-5 of the said Act, the applicant maintains, overrides all other provisions of the said Act so as to make the Committee a body corporate under the name and style of 'Shree Saibaba Sansthan Management Committee' and therefore, the applicant did not apply for cancellation of registration under the Bombay Public Trust Act, 1950.

- The applicant has invited attention to the amendment to section-21 of the said Act whereby the Trust Fund is required to be utilized for additional two purposes v therein, in addition to the facilities and amenities provided earlier.
- The Sansthan carries on the purposes mentioned in the Act which inter-alia do not cover any commercial transaction of buying and selling goods with a profit motive.
- As regards the exemption under the Income Tax Act, 1961, it was informed that the exemption under the IT Act, 1961 was granted only after proper scrutiny of the documents and the nature of activities conducted by the Sansthan and therefore, the query raised during hearing has no bearing or relevance particularly in the context of the issue put forth for determination.

05. OBSERVATIONS

A) IS THE 'SHREE SAIBABA SANSTHAN TRUST, SHIRDI' A TRUST?

The applicant has advanced the argument that "Shree Saibaba Sansthan Trust, Shirdi" is not a trust any longer but is a body corporate formed by an enactment of the Maharashtra Government which is Maharashtra Act No. XIV of 2004 which was published on 17.8.2008. I have reproduced all his arguments under the heading of 'Hearing'. By referring to the various sections and sub-sections of the Act, the Advocate has endeavored to drive home the point that State Government by appointing a committee and an advisory committee has taken over the management of the "Shree Saibaba Sansthan Trust" because of which the trust is no longer a public charitable trust. He has argued that the "Shree Saibaba Sansthan Trust" is not a trust but a body corporate constituted by an Act of legislature. In making these arguments, the Advocate has sought to bring the applicant out of the purview of clause iv(a) of the Explanation to the definition of dealer. Under the MVAT Act, 2002, public charitable trust are 'deemed dealers'. The advocate by putting-forth the submission that the "Shree Saibaba Sansthan Trust" is not a trust but a body corporate, therefore, has implied that the applicant does not come under the clutches of 'deemed dealer'.

The definition of 'dealer' is provided under clause (8) of section 2 of the MVAT Act, 2002. The section is reproduced as below:

“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:-**

- i. Customs Department of the Government of India administering the Customs Act, 1962 (52 of 1962);
- ii. Departments of Union Government and any Department of any State Government;
- iii. Local Authorities;
- iv. Port Trusts;
- [(iv-a)] **Public Charitable Trust;**
- v. Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Konkan Railway Corporation Limited;
- vi. Incorporated or unincorporated societies, clubs or other associations of persons;

- vii. Insurance and Financial Corporations, institutions or companies and Banks included in the second Schedule to the Reserve Bank of India Act, 1934 (II of 1934);
- viii. Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950 (LXIV of 1950);
- ix. Shipping and construction companies, Air transport companies, Airlines and advertising agencies,
- x. any other corporation, company, body or authority owned or constituted by, or subject to administrative control, of the Central Government, any State Government or any local authority.

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 the contention of the applicant that he is not a 'deemed dealer' as he is not a 'public charitable trust' any more.

The argument of the applicant is examined and considered. I have also gone through the provisions of the Maharashtra Act No. XIV of 2004. Before coming to any conclusion, I giving my finding on the issue, I shall just highlight the Long title and the Preamble of the Act as to have a clear idea of the objects of the Act and the purposes for which it was enacted.

The long title of the Act is as follows:-

MAHARASHTRA ACT NO. XIV OF 2004.

An Act to re-constitute a public trust of Shri Shirdi Sai Baba Sansthan registered under the Bombay Public Trusts Act, 1950 under the name of "Shirdi Sansthan of Shri Sai Baba" at Shirdi, District Ahmednagar, and to provide for better management, administration, governance and control of the Trust to enable it to undertake wider welfare activities for the public.

The Preamble is as follows:

WHEREAS the administration of the public trust of Shri Shirdi Sai Baba Sansthan registered under the Bombay Public Trusts Act, 1950, under the name "Shirdi Sansthan of Shri Sai Baba" at Shirdi, District Ahmednagar, popularly known as "Shri Shirdi Sai Baba Sansthan Trust of Shirdi", vests in the Board of Management,

under a scheme framed by the City Civil Court, Bombay, in Charity Suit No.3457 of 1960 under its order dated the 18th October 1982, confirmed by the High Court of Judicature at Bombay in First Appeal No.320 of 1983, decided on the 23rd July 1984:

AND WHEREAS on expiration of the term of five years of the previous Board of Management of Shirdi Sansthan of Shri Sai Baba Trust, the Charity Commissioner has, under his order dated the 31st August 1999, re-constituted the Board of Management of the said Trust;

AND WHEREAS being aggrieved by the said order dated the 31st August 1999 of the Charity Commissioner in the matter of appointment of trustees, two Writ Petitions No.2866 and 2867 of 1999 were filed in the High Court of Judicature at Bombay, and the appointment of one of the Trustees has been quashed and set aside by the Hon'ble High Court.

AND WHEREAS the said Trust has large properties and is very popular and is highly revered and has very large number of devotees all over India;

AND WHEREAS the Government of Maharashtra considers it expedient that the development and management of this important and popular Trust should not be hampered or in way suffer by avoidable litigation, **and that there should be a separate law to re-constitute the said Trust** and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government to enable the Trust to carry out its charitable activities more effectively and efficiently and be able to give more facilities for its devotees and to undertake wider welfare activities from its surplus funds for the general public; it is hereby enacted in the Fifty-fifth Year of the Republic of India as follows:-

The Act simply aims to reconstitute the public charitable trust and aims to take over the management of "Shree Saibaba Sansthan Trust". The Charitable Commissioner had reconstituted the Board of the Management of the said trust through his order dt.31.8.1999. Being aggrieved by the order in the matter of appointing of the trustees, a writ petition was filed in the High Court and the appointment of one of the trustees was set aside by the Hon'ble High Court. The Government of Maharashtra, therefore, felt that there should be a separate law for the trust which shall provide for the official management of the trust by a committee. The committee would directly be under the supervision and control of the State Government to enable the trust to carry out its activities and functions effectively. What the State Government has done is only to take over the management of the "Shree Saibaba Sansthan Trust" and place it under the care of a committee which shall be appointed by the Government and responsible to it. The wordings of the object are very important here. In the last paragraphs of the preamble the words are " **and that there**

should be a separate law to re-constitute the said Trust and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government to enable the Trust to carry out its charitable activities more effectively and efficiently and be able to give more facilities for its devotees... '. No where is it mentioned in the object that the Government aims to dismantle the trust. If the intention had been so, the fact would have been clearly mentioned in the Act. "Shree Saibaba Sansthan Trust" remains a trust and the only change being that the "Shree Saibaba Sansthan Trust" would be managed by the committee and not by the Charity Commissioner. I therefore do not agree with the Advocate that the "Shree Saibaba Sansthan Trust" has relinquished its identity as a trust. The Government has merely for the avoidance of litigation enacted a separate law for the reconstitution of the trust. The erstwhile trust known as the Shirdi Sansthan of Shri Saibaba has been merely reconstituted. During the course of hearing, the applicant was asked as to whether they had applied for cancellation of the registration under the Bombay Public Trust Act. To this question, the applicant had replied that they had not applied for cancellation of the registration. The fact that the trust has not lost its identity as a trust but is merely reconstituted is borne out by the following provisions:

- **The Long Title of the Act:** An Act to **re-constitute a public trust of Shri Shirdi Sai Baba Sansthan** registered under the Bombay Public Trusts Act, 1950 under the name of "Shirdi Sansthan of Shri Sai Baba" at Shirdi, District Ahmednagar, and to provide for better management, administration, governance and control of the Trust to enable it to undertake wider welfare activities for the public.
- **The Preamble of the Act:** AND WHEREAS the Government of Maharashtra considers it expedient that the development and management of this important and popular Trust should not be hampered or in any way suffer by avoidable litigation, and that there should be a separate law to **re-constitute the said Trust....**
- **Section 3(1):** On the appointed day, in place of the public trust registered under the Bombay Public trusts Act, 1950 by the name of 'Shirdi Sansthan of Sai Baba' at Shirdi, District Ahmadnagar , a trust by the name of 'Shree Sai Baba Sansthan trust (Shirdi) **shall be deemed to be reconstituted under this Act.**

This shows that the trust is merely reconstituted and the reconstitution has placed the trust under the control of the executive committee instead of under the office of the Charity Commissioner. But the trust is very much a trust.

A look at sub-section 3 of the Act also would not be out of place here. The marginal note to sub-section 3 says that the section deals with reconstitution of "Shree Saibaba Sansthan Trust".

- **Sub-section 3:** On the appointed day, in place of the public trust registered under the Bombay Public trusts Act, 1950 by the name of 'Shirdi Sansthan of Sai Baba' at Shirdi, District Ahmadnagar , a trust by the name of 'Shree Sai Baba Sansthan trust (Shirdi) **shall be deemed to be reconstituted under this Act.**

The section clearly says that, in place of the earlier trust called the "Shree Saibaba Sansthan of Shri Sai Baba, **a trust by the name of "Shree Saibaba Sansthan Trust, Shirdi"** shall be deemed to be constituted. This section does not say that in place of the earlier trust a new body with a different constitution has been formed. The earlier trust has been reconstituted to make way for a new trust. It is true that the section says that in place of the public trust **registered under the Bombay Public trusts Act, 1950** by the name of 'Shirdi Sansthan of Sai Baba' at Shirdi, District Ahmednagar a **trust** by the name of 'Shree Sai Baba Sansthan trust (Shirdi) shall be deemed to be reconstituted under this Act. **It does not say that in place of the old trust a new trust registered under the Bombay Public trusts Act, 1950 is constituted.** The requirement of registration under the Bombay Public Trusts Act has been done away with. But this does not affect the final conclusion as the public charitable trusts' included as deemed dealers under the VAT Act is not made referential to the **Bombay Public Trusts Act, 1950.**

As I have said earlier, the law was enacted by the Government of Maharashtra to re-constitute the trust and to provide for the efficient management of the trust through a committee which shall be under the control of the State Government. In accordance with this object, Section 5 says that,

.."For the purpose of management of the Sansthan Trust, on or after the appointed day, a Committee to be called "the Shree Sai Baba Sansthan Management Committee" shall be constituted by the State Government as provided in sub-section (2).

As per the wordings of the Section 5, the management of the Sansthan Trust is placed under the care of the "Shree Saibaba Sansthan Trust" Management Committee. The members of the committee i.e. the Chairman, the Vice Chairman and the members should be appointed by the State Government. It is provided in the said section that the committee shall be a body corporate with perpetual succession.

The Sections 6, 7, 8, 9, & 10 provides for the constitution of the management committee as also for the conditions under which members shall be disqualified or appointed. It also provides for the terms and conditions of appointment, the allowances of the members and the tenure of the committee. Section 16 of the Act is also very important. It says that any person who was serving under the erstwhile trust shall serve under the committee in connection with the affairs of the trust. Thus, it merely means that a person who was directly working in the trust will come under the control of the management committee which shall manage the trust.

Section 16. Any person who, immediately before the appointed day, has been in service and is serving in connection with the affairs of the erstwhile trust shall be deemed to have been allocated and appointed as from the appointed day, for service under the Committee in connection with the affairs of the Sansthan Trust, on the same salary and other terms and conditions of service which were applicable to him immediately before the appointed day; and such conditions of service shall not be varied to his disadvantage or such employee shall not be removed from service by the Committee, except with the previous approval of the State Government:

Provided that, nothing in this section shall affect the powers of the Committee to terminate the services of any such person in accordance with the provisions of this Act or the rules.

The Section 17 of the Act deals with the duties and powers of the Committee. The relevant section is reproduced below:

Section 17. (1) Subject to any general or special orders of the State Government, it shall be the duty of the Committee to manage the properties and affairs of the **Sansthan Trust**, efficiently, to make proper arrangement for the conduct and performance of rituals, worship ceremonies and festivals in the Temple according to the custom and usages, **to provide necessary facilities and amenities to the devotees and to apply the income of the Trust to the objects and purposes for which the Trust is to be administered under this Act.**

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the Committee shall,-

- a. **prepare the annual budget estimating the income and expenditure of the Trust** and send a copy of it to the State Government and the Charity Commissioner;
- b. **maintain proper accounts and records of the properties and the income and expenditure of the Trust;**
- c. **cause the accounts of the Trust** to be audited annually by such person and by such date in the next succeeding year as the State Government may direct;

- d. make regular payment of salaries, honorarium, fees and allowances ad other sums payable to the members, Executive Officer and other officers and employees of the Committee from the Management Fund;
- e. take measures for the recovery of lost property or any sums due to the Trust;
- f. **institute and defend suits, prosecutions and other legal proceedings relating to the Trust** in a Court or before a Tribunal or other authority;
- g. **inspect or cause an inspection to be made of the properties of the Trust**, from time to time, and to take prompt steps to remove any encroachments made on such properties;
- h. **supply such returns, statistics, accounts and other information with respect to the Trust** as the State Government may, from time to time, require;
- i. **generally do all such acts as may be necessary for the purposes of proper management, maintenance and administration of the properties and affairs of the Trust**;
- j. if deemed necessary form sub-committee from amongst its members or outsiders, to advise itself on the matters pertaining to the administration and management of the Sansthan Trust and shall, lay down its composition, procedure for conduct of meetings and for the matters connected therewith including provisions for payment of sitting fees and travelling and daily allowances to the members of such sub-committee who are other than the Committee members;
- k. acquire or purchase lands or buildings required for the purpose of development and carrying out schemes of the Trust and to carry out the objectives or purposes of the Trust;
- l. disseminate and propogate useful knowledge about the life, activities, Leelas and teachings of Shri Sai Baba, and maintain and expand the library of Shri Sai literature.
- m. organise or undertake activities or programmes aimed at promoting the feelings of brotherhood, unity, faith and equality among the devotees of Shri Sai Baba.
- n. promote or help secular education of all types and establish educational institutions at Shirdi, or other places;
- o. promote any other noble cause aimed at achieving human well being or to help human beings in calamities.

(3) **No immovable property vested in the Trust** shall be leased for more than a year, or mortgaged, sold or otherwise alienated, by the Committee, except with the previous sanction in writing of the State Government.

(4) **No jeweleries, ornaments and other valuable movable property vested in the Trust**, the value of which is more than fifty thousand rupees, shall be sold, pledged or otherwise alienated by the Committee, except with the previous sanction in writing of the State Government.

(5)The Committee shall have no power to borrow money from any person or party, except with the previous sanction in writing of the State Government.

(6)Subject to the provisions of this Act, the Committee shall have all the power necessary for performing its duties and functions under this Act.

Section 17 gives an idea about the duties and the powers of the committee which are managing the property and affairs of the sansthan trust, to make proper arrangements for the conduct and performance of rituals ceremonies and festivals in the temple, provides facilities to the devotees and to apply the income of the trust to the objects and purposes for which the trust is to be administered under this Act. Sub-section 2 of Section 17 lays down the duties of the committee. The duties of the committee are with respect to the trust. It becomes very evident from the range of duties of the management committee that the committee is established for the administration of the trust. The trust continues to be in existence and it is only the administration which has changed hands. Now, under the enactment, it will be the management committee which shall prepare the budget of the trust, maintain the records of the trust, cause the accounts of the trust to be audited, institute and defend suits relating to the trust, inspecting the properties of the trust, acquire land/buildings for carrying out the schemes and objectives of the trust etc. Thus, the section simply says that the management takes over its existence to the trust and the management has not in any way substituted the trust. The "Shree Saibaba Sansthan Trust" is very much in existence in the legal entity of a Public Charitable Trusts and whereas earlier a Board of Management were appointed independently by the Charity Commissioner, in the present scenario, the Board of Management is appointed by the State Government. However, in both the scenarios the Board of Management has only one duty- which is the management of the trust. The trust was there earlier and continues to be in existence now. It is only the management of the trust which is changed from being controlled by the Charity Commissioner to now being controlled by the State Government. The fact that the Charity Commissioner has no say in the appointment of the trustees does not in any way affect the existence of the trust. This is very much clear from the Act itself. The plain reading of all the sections has clearly shown that only the Board of Management has been reconstituted under legal entity of the trust has not been altered in any way.

The applicant had submitted that the "Shree Saibaba Sansthan Trust" is now a body corporate with perpetual succession. I disagree with him completely in this regard. Section 5 of the Act which is already been reproduced earlier clearly says that it is the management committee overlooking the trust which is a body corporate. The Shree Saibaba Sansthan trust is not a body corporate. Sub-section 5 of Section 4 says that the committee i.e. management committee which is a custodian of the trust shall be a body

corporate having perpetual succession i.e. the management committee shall be in existence continuously. But the committee will look after the Trust and it is the Trust to which it owes its existence. In a company formed under the Companies Act, the board of directors cannot come into existence without the company. The Board of Directors administers the company and is a nullity without the company. Likewise, the management committee is formed with the specific purpose of administering the Shree Saibaba Sansthan trust." It does not have an identity outside the "Shree Saibaba Sansthan Trust". Section 5 says that the management Committee is for the management of the trust- the management committee is not a trust in the same way that the trustees of the erstwhile trust were not the trust-they owed their existence to the trust.

Section 20 of the Act specifically says that **the "Shree Saibaba Sansthan Trust"** shall have its own fund to be called the **"Shree Saibaba Sansthan Trust Fund"**. This means that the trust shall have its own trust fund and all the income, donation, gifts, contribution, grants shall be put into the trust's fund. The trust's fund shall be utilized under the management and the administration of the temple for the conduct and performance of rituals ceremonies and festivals, providing meals to devotees etc. If the trust was no longer in existence -as is argued by the applicant- why do the words 'trust' and 'trust fund' appear in the Act in connection with the applicant's legal entity?

B) THE OTHER CONTINGENCY

Without prejudice to the above, I would like to place on record to the fact that the extended definition of a dealer includes at clause (x) of the Explanation to clause 2(8) of the MVAT Act,2002.,the following entities.

(x): Any other Corporation Company, body or authority owned or constituted by, or subject to administrative control of the Central Government, any State Government or any local authority.

As per this definition, any authority or body which is owned or constituted or subject to the administrative control of the State Government would come under the definition of a 'deemed dealer'. In the present case, the trust is placed under the administrative control of the management committee. The management committee is constituted under the Maharashtra Act No.XIV of 2004. This management committee i.e. Shri Shirdi Saibaba Sansthan Trust, Management Committee in turn is placed under the direct supervision and control of the State Government. This is evident from the preamble of the Act. In the

preamble to the Act, I wish to draw attention to the last paragraph of the preamble. The para is reproduced as below.

AND WHEREAS the Government of Maharashtra considers it expedient that the development and management of this important and popular Trust should not be hampered or in way suffer by avoidable litigation, and that there should be a separate law **to re-constitute the said Trust and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government** to enable the Trust to carry out its charitable activities more effectively and efficiently and be able to give more facilities for its devotees and to undertake wider welfare activities from its surplus funds for the general public; it is hereby enacted in the Fifty-fifth Year of the Republic of India as follows:-

The Preamble explains and declares the policy and purpose, the reasons for and the motives for, and the objects sought to be accomplished by the enactment of the statute. The preamble is the key to the understanding of the Act and is used as a tool to know the aims and objects of the Act.. In the present case, the preamble shows that the Shri Sai baba Sansthan Management Committee would provide for the efficient management of the Trust. **This Management Committee is to be appointed under section 5 of the Act by the State Government.** It is an authority which is constituted by the State Government through Maharashtra Act No.XIV of 2004. The trust through the management committee is placed under the direct administration of the State Government. As per Section 6 the fees and honorarium to be paid to the members of the Committee is to be determined by the State Government. The resignations of the members are subject to the decision of the State Government. As per Section 13, the Executive Officer shall be appointed by the State Government. As per Section 17, the management of the properties and affairs of the trust shall be subject to the general /special orders of the State Government. As per Section 17(2)(f), the Committee is required to submit the returns, statistics, accounts and other information to the State Government. As per Section 26, the State Government is empowered to give directions, call for reports, documents from the Committee. As per Section 29, the Annual Report of the Committee shall be submitted before the State Government. As per section 34 of the Act, the Committee may be dissolved by the State Government. This proves that the Shirdi Saibaba Sansthan Trust, now comes under the administrative control of the State Government. This translates into the fact that it comes under the purview of the deemed dealer as per clause (x). As the Shri Shirdi Saibaba

Sansthan Trust and the Management Committee, is subject to administrative control of the State Government it becomes a 'deemed dealer' under sub-clause (x).

The applicant had placed the argument that the Trust or the committee is not under the administrative control of the State Government but it is under the control of the legislature. This was in response to the statement made during the course of hearing that the applicant comes under the purview of X of Clause 2(8) of the Act. I do not agree with the proposition of the applicant. The preamble clearly states that the committee is under the control of the State Government. The legislature is merely an arm of the State Government. The State Government and the legislature are not different entities.

06. In accordance with the deliberations stated above, I pass an order as follows:-

ORDER

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

No.DDQ/11-2007/Adm.3/11/B-4

Mumbai, dt.18/03/2009

- a. The 'Shree Shirdi Sai Baba Sansthan Trust ' is a deemed dealer under clause iv(a) of the Explanation to the definition of dealer under Section 2(8) of the MVAT Act, 2002.
- b. The activities statutorily required to be undertaken by the Committee amount to a transaction of sale when the offerings in kind are liquidated or amenities afforded to the devotees through providing rooms, food and drink at a reasonable rate
- c. The applicant is liable to pay any tax for such transactions under the provisions of the MVAT Act, 2002.
- d. Without prejudice to the above, the applicant falls under clause (x) of the Explanation to the definition of dealer under clause 2(a) of the MVAT Act.

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