

**Read :-** 1) Application dt. 3.12.2005 from M/s.Fellowship of the Physically Handicapped holder of VAT RC No. 27080503431V.

**Heard :-** Shri U.R. Dalal, General Manager (Audit & Accounts).

## **PROCEEDINGS**

(U/s. 56(1)(a) of the MVAT Act, 2002.)

No. DDQ-11-2008/Adm-3/2/B-3

Mumbai, dt. 24.12.2008

An application has been filed by the Fellowship of the Physically Handicapped, holder of RC No. 27080503431V and having address as FPH Building, Lala Lajpatrai Marg, Haji Ali, Mumbai-400034 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**

It is submitted by the applicant that the Fellowship of the Physically Handicapped is a Training Institute working in the field of vocational training and rehabilitation of handicapped persons for the last 50 years. It is also informed that they give training in the trades like Machine Shop, Carpentry, Handloom, Tailoring, Assembly, Cap making, Telephone operating, Time-Keeping, Printing and Binding, Block Printing, Prosthetic and Orthotic, Accounting, Filing, Fast food making, Electrician etc. It is stated that their Institute comes under the Social Welfare Department, Maharashtra Government and they have been given financial grant from the department as a vocational Training Institute giving training to the handicapped persons. It is further submitted that they have a full fledged workshop for the vocational training with capacity of 225 trainees between the age group of 18 to 40 years in their workshop. The Institute has further informed that the Government has sanctioned the staff of the Training Center and gives 100% grant to the Institute against the salary and also give maintenance grant. The details of the grant received for the last 3 years are attached. It is argued by the applicant that they have been recognized as an Educational Institute by the Social Welfare Department, Govt. of Maharashtra. The technical name for the Institute is "Sheltered Workshop for the Handicapped" and registration number received from the Maharashtra Government, Social Welfare Department is 167.

It is informed that they have their prescribed courses of studies. The course of syllabus for each and every department is kept in the office. The syllabus is as per ITI courses of the Department of Technical Education, Govt. of Maharashtra. The teaching staff is on the pay roll of the Institution and the applicant has further attached a copy of the Paysheet. Their salary is received from the Government of Maharashtra. The applicant has informed that they issue certificates to their students when the course of studies in the particular trade is completed. A certificate to that effect is also enclosed by them. The tests are conducted by the Instructors of the courses individually to measure the proficiency, skills acquired in the trade. It is informed that they give admissions to trainees on any day of the year when they come to join the institute. The progress cards are kept on the files in the department.

The applicant has argued that they fulfill all the conditions as decided for the eligibility as an Educational Institution. They give vocational training in all the trades and as such there is production of material in our Workshop. It is informed that their

aim is to get placement to their trainees in the open market and hence they try to maintain the quality of skills of the trainees. It is stated that in the course of action they produce a lot of material in the Workshop which is to be sold in the market. It is stated that they get orders from Government and non Government organisations by filling the tenders and sending their quotations. The yearly production is to the tune of Rs. 30 lacs.

### 03. HEARING

Shri U.R. Dalal, attended on behalf of the applicant. He stated that the institute consists of 10 departments like the pressing department, tailoring department, handloom department etc. where training is imparted to handicapped students and the products manufactured by them in the course of training and sold outside. The handicapped students are kept for four years and attempt is made to rehabilitate them. He stated that the institute is not affiliated to any university but it has its own syllabus and it conducts its own exams.

### 04. OBSERVATION

In this issue I have to decide whether the Fellowship of the Physically Handicapped which is a training institute working in the field of 'vocational training and rehabilitation of handicapped persons' 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:-**

- 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 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.

I have carefully gone through the details submitted by the applicant. It is seen from the record that Fellowship of the Physically Handicapped is registered under the MVAT Act with VAT No. 27080503431V w.e.f. 4.2.2006. Therefore, the question arises as to whether the applicant is entitled to pose a question as to whether they are required to be registered under the Maharashtra Value Added Tax Act, 2002. A similar question has been decided by the larger bench of M.S.T.T. in the case of M/s. Chief Commercial Superintendent, Central Railway and others (Appeal No.2 of 1966) decided on 14.8.1967. In the said question, there were four appellants who raised a common question for determination under section 52(1) of the erstwhile BST Act, 1959 as regards their capacity as 'dealers' after obtaining certificate of registration on their own application. The point referred to the Special Bench was when a person applied for registration and obtained that certificate as a registered dealer, was it open for such person later on to apply under section 52 of the BST Act, 1959 raising a disputed question for determination that he was not a dealer. It was held by the Tribunal that the question could not be agitated under section 52 of this Act once a person has applied for registration. This was held on the grounds that once a person applies for registration, he knowingly and willingly does so and after obtaining it later on, is fully aware of the consequences of being a 'registered dealer'. Once he is a registered dealer, he sets off a chain of transactions and the people further up on the chain deal with him on the belief that he is a registered dealer. In the present case, the applicant is therefore precluded from raising the question as to whether they ought to be registered under the Value Added Tax Act. Therefore, the question remains a mere academic one.

A similar opinion has been given by the Commissioner in the case of Shri Siddhivinayak Ganapati Temple Trust (No. DDQ 11/2007/Adm-3/49/ B-2 Mumbai, Date: 10.9.08). In the said case, the applicant were already registered under the MVAT Act and by relying on the judgement in the case of M/s. Chief Commercial Superintendent, Central Railway and others (cited supra) it was held in the determination that the applicant cannot raise the question as to whether it is required to be registered under the Act. Therefore, a letter dt. 18.11.08 was sent to the applicant asking him to show cause as to why their application for determination should not be held as non-maintainable and rejected summarily as provided for in clause (d) of sub-rule (3) of rule 64 of the MVAT Rules 2005. In reply, the applicant sent letter dt. 26.11.2008 stating that their institute is a NGO working in the field of vocational training and rehabilitation of the handicapped trainees and they need to take all steps to establish themselves that they are not liable to pay tax and they have further requested that an order may be passed to enable them, to take such action as may be necessary on the receipt of the order.

It is seen that no arguments are made in the letter which could be considered by me. I, therefore hold that the application for determination made by Fellowship of the Physically Handicapped is non-maintainable under sub-clause (d) of sub-rule (3) of Rule 64 of the MVAT Rules, 2002.

**05.** In view of the above, I pass an order as follows:

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## **ORDER**

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

No.DDQ.11/2008/Adm-3/2/B-3

Mumbai, dt. 24.12.2008

The question before me as regards whether the Fellowship of the Physically Handicapped is a dealer under sub clause (8) of clause 2 of the MVAT Act is rejected being non-maintainable under sub-clause (d) of sub-rule (3) of Rule 64 of the MVAT Rules, 2002.

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