

Read -1) Application dt. 15.11.2007 by Shri Siddhivinayak Ganapati Temple Trust, Mumbai.

2) Written submission of the applicant dt. 14.4.08.

Heard - Shri. H.B. Jagtap (CEO) and Shri. P.V. Lakhani, C.A. on behalf of Shri Siddhivinayak Ganapati Temple Trust, Mumbai.

PROCEEDINGS

(U/s. 56 (1)(a) of the Maharashtra Value Added Tax Act, 2002.)

No. DDQ 11/2007/Adm-3/49/ B-2

Mumbai, Date: 10.9.08

The application is filed by Shri Siddhivinayak Ganapati Temple Trust, having address as Prabhadevi, Mumbai-400 028 requesting determination on the question as to whether the registration obtained by them under the Maharashtra Value Added Tax Act, 2002 was not required to be obtained at all and that it needs to be cancelled. In other words, the applicant seeks determination on whether the Shri Siddhivinayak Ganapati Temple Trust is a dealer under the Maharashtra Value Added Tax Act, 2002.

02. FACTS OF THE CASE

Shri Siddhivinayak Ganapati Temple Trust (Prabhadevi) is a Public Trust duly registered. It, therefore, holds a Certificate of Registration under the Bombay Public Trust Act, 1950. The Trust is under the control of Government of Maharashtra.

The Trust, in accordance with the wishes of the Devotees, is engaged in the sales and distribution of Prasad in the form of laddus and coconut wadi. It is submitted that the activity is carried out on a "No Profit – No Loss Basis". Apart from the sale of Prasad, the Trust also sells the statues and frames of Lord Ganapati. Besides, the Trust also sells pre-recorded audio cassettes of Bhakti-Sangeet and Aarti.

03. CONTENTION

It is contended that under the erstwhile Bombay Sales Tax Act, 1959, the Trust was not regarded as a dealer in view of the judgment of the Hon. Supreme Court in the case of M/s. Sai Publication Fund (126 STC 288). It is argued that the main activity of the Trust is not in the nature of business and hence, any transaction incidental or ancillary to it would also not amount to business. It is further contended that since the activity of the Trust cannot be treated as a business activity as the same is not in the nature of trade, commerce, manufacture or adventure in the nature of trade, commerce etc., the Trust is ordinarily not a dealer. It is stated that there are various other judgments as well to support this view.

It is stated that with the VAT system of taxation being put into place, *inter-alia*, in the State of Maharashtra w.e.f. 1.4.2005, there was an apprehension in their minds that all the judicial pronouncements would now not hold good since 'Public Charitable Trusts' are deemed to be dealers for the purpose of clause (8) of section (2) of the Maharashtra Value Added Tax Act, 2002. It is argued that there is another school of thought who holds the view that Public Charitable Trusts cannot be covered through this explanation. It is informed that as there were conflicting views, they decided to adopt a conservative approach. They, therefore, obtained registration Certificate under the Maharashtra Value Added Tax Act, 2002 as well as the Central Sales Tax Act, 1956. The said certificates are effective from 9.4.2007, being the date of application for grant of the registration certificates.

It is informed by the applicant that they have enquired with many other Temple Trusts and it has been learnt that most of such Trusts have not obtained the registration certificates under the Maharashtra Value Added Tax law. They, therefore, prima-facia feel that their registration certificates are now required to be cancelled.

It is therefore requested by the applicant that their views that the registration certificates were not required to be obtained at all and the same can now be cancelled be confirmed in the determination order. It is alternatively prayed that if it is felt that Public Charitable Trusts like theirs are clearly falling in the definition of "Dealer" on account of the explanation provided to the said definition, then their liability be protected for the period from 1.4.2005 (Date of enforcement of the VAT Act) to 8.4.2007 (Date preceding the day on which the registration certificates are obtained). This request is based in view of the specific sub section 2 to Section 56 of the Maharashtra Value Added Tax Act, 2002. It is submitted that the then Hon. Commissioner of Sales Tax, Maharashtra State has protected the liability for the past period in a number of cases. Reference is made to the following cases :-

- i. M/s. Ramkrishna Math. M/s. Chitshakti Trust.
DDQ No. DDQ-11-2005/Adm-5/53-54/B-2, dt. 20.1.2006
- ii. M/s. Bombay Natural History Society.
DDQ No. DDQ-10-2005/Adm-5/116/B-1, dt. 6.3.2006

Both these Determination Orders are passed under the Maharashtra Value Added Tax Act, 2002.

The applicant made an additional submission dt 14.4.08. It is submitted therein that the controversy, as to whether a Public Charitable or Religious Trust is a dealer or not, has been settled since long. In fact, there are a number of judicial pronouncements including a few which are pronounced by the Apex Court of the country holding that such Trusts are not dealers under the Sales Tax law. The applicant has placed reliance on the judgment of the Hon. Supreme Court in the case of Commissioner of Sales Tax, Maharashtra State, Mumbai v. Sai Publication Fund (126 – STC 288) wherein the decision of the Hon. Bombay High court is upheld by the Apex Court which had held that the Trust is not a dealer within the meaning of Section 2(11) of the Bombay Sales Tax Act, 1959.

The applicant has also placed reliance on various other judicial pronouncements. As per their contention, the facts in the judgments cited by them are similar to the facts of the above referred Trust. Under the erstwhile Bombay Sales Tax Act, 1959, the term "Dealer" was defined in Section 2(11) of the said Act. It read as under:-

"Dealer" means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State, and includes the Central Government, or any State Government which carries on such business, and also any society, club or other association of persons which buys goods from or sells goods to, its members".

It is stated that after the above stated definition, there were 3 exceptions whereby certain persons/ entities were not to be regarded as dealers. After the aforesaid 3 exceptions, an explanation clause existed whereby the persons and bodies listed in the said explanation were deemed to be dealers to the extent of disposal of any goods, including goods which were unclaimed or confiscated or unserviceable or the goods in nature of scrap, surplus, old, obsolete or discarded material or waste products. The Bombay Sales Tax Act, 1959 stands repealed w.e.f. 1st April, 2005 and from this date, the

Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as the "MVAT Act" for the sake of brevity) is in force.

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.

It is stated that here again, the 3 exceptions, as stated above, while dealing with the definition of "**Dealer**" under the Bombay Sales Tax Act, 1959 are stated and the said exceptions under both the Enactments are the same. An explanation is also given after the definition of the term "**Dealer**" whereby each of the persons, bodies and entities listed in the said explanation are deemed to be dealers vis-à-vis the sales of any goods, whether by auction or otherwise, directly or through an agent, for cash or for deferred payment, or for any other valuable consideration. It is contended that on comparing the 2 explanations, it is seen that Public Charitable Trusts are now listed as one of the entities for the purpose of the explanation. The entity was not regarded as a 'deemed dealer' earlier since it was not listed in the explanation under the erstwhile Bombay Sales Tax Act, 1959. The applicant has argued that they are, however, of the view that the deeming provisions would apply to the definition of the term "**Dealer**" only and only if the entities are first covered by the main definition. In case, if the entity is not covered by the main definition of the term "**Dealer**", then, the explanation given below the definition of dealer does not apply.

It is argued that in view of the above submissions, it is requested to hold the Trust as not a dealer for the purposes of the MVAT Act. It is further stated that they admit that the then Hon. Commissioner of Sales Tax, Maharashtra State has passed quite a few determination orders whereby Public Charitable Trusts and other Association of Persons are held to be dealers in view of Entry No. (iv-a) of the Explanation to Section 2(8) of the MVAT Act covering all **Public Charitable Trust**, but, they are still of the opinion that the matter deserves a total reconsideration in light of the judgments relied upon by them.

It is prayed that in the alternative and without prejudice to our aforesaid prayer of holding that the Trust is not a dealer, in case if a different view is held, then the liability of the Trust be protected from 1.4.2005 up to 8.4.2007 under sub-section (2) of Section 56 of the MVAT Act. It is stated that the Trust was guided by various judicial pronouncements and more particularly those now listed by them and, therefore, there was definitely a statutory misguidance. Moreover, in the following cases, the then Hon. Commissioner of Sales Tax, Maharashtra State has already protected the liability in respect of the past periods :-

- ii. M/s. Ramkrishna Math. M/s. Chitshakti Trust.
DDQ No. DDQ-11-2005/Adm-5/53-54/B-2, dt. 20.1.2006
- iii. M/s. Bombay Natural History Society.
DDQ No. DDQ-10-2005/Adm-5/116/B-1, dt. 6.3.2006

The applicant has relied on the following judgements in support of his contention:

1. Commissioner of Sales Tax, Maharashtra State, Mumbai vs. Sai Publication Fund (126-STC 288-Hon. Supreme Court).
2. The State of Bombay vs. The Ahmedabad Education Society (7 STC 497 - Hon. Bombay High Court).
3. Bombay Young Men's Christian Association vs. The State of Maharashtra (Appeal No.101 of 1996 dt.7.8.1998 - Hon. Maharashtra Sales Tax Tribunal)
4. Commissioner of Sales Tax, Maharashtra State, Mumbai vs. Catchi Dasha Oswal Mahajan Grahya Udyog Committee (36 - STC 1-Hon. Bombay High Court).
5. K.E.M. Hospital Society vs. State of Maharashtra (Appeal No.91 of 1992 dated 31.10.1994 - Hon. Maharashtra Sales Tax Tribunal).
6. Paramhans Shri Ganeshji Pandit Memorial Trust vs. The State of Maharashtra (S.A. No.148 of 1999 dt.25.1.2001 - Hon. Maharashtra Sales Tax Tribunal).
7. Determination order dated 30.9.1975 passed by the Learned Dy. Commissioner of Sales Tax, Mumbai in the case of Jaslok Hospital.
8. Determination order dated 30.7.1996 passed by the Hon. Commissioner of Sales Tax, Maharashtra State, Mumbai in the case of Pune Institute of Neurology.
9. Seva Sadan Society vs. State of Maharashtra (Appeal NO. 102 of 2002 dt.14.1.2005 - Hon. Maharashtra Sales Tax Tribunal).
10. Shri Mahila Griha Udyog Lijjat Papad (S.A. Nos. 1106, 1109 and 1110 of 1995 dated 15.12.2006 - Hon. Maharashtra Sales Tax Tribunal).
11. Shri Sai Baba Sansthan vs. State of Maharashtra (S.A. No. 221 of 1997 dated 20.3.1990 - Hon. Maharashtra Sales Tax Tribunal).

04. DOCUMENTS ATTACHED BY THE APPLICANT

- i. Certified copy of the Certificate of Registration granted under the Public Trusts Act, 1950,
- ii. Certified copy of the MVAT Registration Certificate,
- iii. Certified copy of the CST Registration Certificate,
- iv. Certified copy of the Certificate issued by the Income Tax Authorities, Mumbai whereby the donations given to the Trust qualify for deduction u/s. 80G of the Income Tax Act, 1961 in the hands of the donors.
- v. Copy of the memo dated 27.10.2005 issued by the Special Chief Secretary to the Government of Andhra Pradesh clarifying that the religious institutions including Tirupathi Temple do not come under the definition of "Dealer"

and so any purchase or sale made by such institutions for the purpose of propagation of religious teachings and practices as per the aims and objects of such institutions are not liable to tax under the Andhra Pradesh Value Added Tax Act, 2005.

- vi. Certified copy of the Official Gazette effective from 11.10.1980 whereby the Trust is vested under the control of the Government of Maharashtra.
- vii. Certified copy of the final accounts for the year ended 31.3.2006.
- viii. Certified copy of the challan of Rs. 100/- being the fees u/r. 73 of the Maharashtra Value Added Tax Rules, 2005.

05. OBSERVATIONS

I have carefully gone through the details submitted by the applicant. It is seen from the record that Shri Siddhivinayak Ganapati Temple Trust is registered under the MVAT Act and the registration certificate is effective w.e.f. 9.4.2007. 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. Further the question is not maintainable under section 56(4) of the VAT Act as a similar question has been decided by the Commissioner in the case of M/s. Bombay Natural History Society (cited supra) and in the case of Ramkrishna Math and Chitshakti Publication (cited supra). In both the decisions, it was held that M/s. BNHS as well as Ramkrishna Math & Chitshakti Publications are 'dealers' in view of the explanation to the definition of 'dealer' given under section 2(8) of the MVAT Act, 2002 which says that for the purpose of this clause (definition of dealer), **a Public Charitable Trust** which 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. Therefore, in view of the above, I hold that the application for determination made by Shri Siddhivinayak Ganapati Temple Trust is non-maintainable under sub-clause (d) of sub-rule (3) of Rule 64 of the MVAT Rules, 2002.

06. PRAYER FOR PROSPECTIVE EFFECT:

The applicant has made a prayer for prospective effect and has requested that the determination order be made applicable from 9.4.2007- the date on which the dealer applied for registration and got himself registered under the MVAT Act. In short, it is the prayer of the applicant that he should be protected from any liability for the period 1.4.2005 to 8.4.2007. The applicant has placed reliance on the fact that the then Commissioner has protected the liability of M/s. Ramkrishna Math, BNHS and Chitshakti Publication on the grounds that the law was unclear. It is seen that the applicant was under a genuine belief that they are not 'dealers' and therefore there was no need to be registered under the MVAT Act. The applicant has stated that they were also confused about the need for registration under the new Act.

Before dealing with the prayer of the applicant, I would examine the provisions underlying the power to give determination as also the power to make it applicable prospectively. The section dealing with determination and 'prospective effect' is reproduced as under:

56. Determination of disputed questions -

(1) If any question arises, otherwise than in a proceedings before a Court or the Tribunal under section 55, or before the Commissioner has commenced assessment of a dealer under section 23, whether, for the purposes of this Act, —

1. any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or
2. any particular person or dealer is required to be registered, or
3. any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or
4. any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or
5. in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof, or
6. set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed,

the Commissioner shall, subject to rules, make an order determining such question.

Explanation.—For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment of the dealer under section 23 when the dealer is served with any notice by the Commissioner under that section.

(2) The Commissioner may direct that the determination shall not affect the liability under this Act of the applicants or, if the circumstances so warrant, of any other person similarly situated, as respects any sale or purchase effected prior to the determination.

As per the above provisions, the Commissioner determines a question under sub-section (1) of section 56 of the MVAT Act. The Commissioner, then, if the circumstances so warrant, may under powers granted under sub-section (2) of section 56 direct that the *determination passed under sub-section (1) of section 56* be made applicable prospectively. Thus, in order that powers under *sub-section (1) of section 56* are exercised, a order of determination has to be passed under *sub-section (1) of section 56*. *In the present case, no order under sub-section (1) of section 56 is passed and therefore, there is no order to which prospective effect could be given and therefore, the prayer for prospective effect cannot be entertained, and is hereby rejected.*

07. In view of the aforementioned deliberations, it is hereby ordered that,.

ORDER

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

No. DDQ 11/2007/Adm-3/49/ B- 2

Mumbai, Date:10.9.08

- The question before me as regards whether the Shri Siddhivinayak Ganapati Temple Trust 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.
- The prayer for prospective effect is also rejected for reasons given in the body of the order.

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