Read: 1) Application dt.18/7/08 from Vipassana Research Institute under the Maharashtra Value Added Tax Act, 2002.

2)Additional submission dt. 28/7/08 by the applicant.

Heard: Shri V.A.Pasad, C.A.

PROCEEDINGS

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

NO.DDQ-11/2008/Adm-3/34/B- 4 Mumbai, dt.18.9.08

Vipassana Research Institute (referred to as 'VRI'), having address as Green House,2nd Floor, Green Road, Fort, Mumbai- 400 023 has made an application u/s 56 (1) (a) of the MVAT Act, 2002 requesting determination on whether the Institute is a 'dealer' for the purposes of the MVAT Act and whether he is liable to take registration as a 'dealer'.

02. FACTS OF THE CASE

The applicant has made a detailed submission which is given below:

- The **Vipassana Research Institute is an institute which is engaged in the spread and pursuance of the educational studies of Vipassana as a system of meditation.** It is informed that Vipassana meditation is a technique of realizing ultimate truth and it preaches and propagates **TRUE DHARMA** based on **SHEELA**, **SAMADHI and PRAGYA.** It is further informed that the technique is absolutely secular and it is non-sectarian, it is open to all without any distinction of race, cast,, creed, religion, gender, educational or economic backgrounds or nationality. It is claimed that the practice of Vipassana leads to total transformation of man, inculcation of moral values, national integration. It is informed that the **Vipassana Research Institute spreads and pursues educational studies of Vipassana as a system of meditation and** it carries out research on the impact and effect of Vipassana meditation on the various aspects of human life.
- It is further informed that the Institute conducts educational studies of Pali language, Pali literature and it also conducts research in them. It publishes books in various languages; it also publishes research reports, thesis, seminar findings, literature, reports on various seminar subjects, concerned with Vipassana meditation and various aspects of human life. It also publishes Vipassana monthly news letters (patrika) in the Hindi and the English language.
- The Vipassana Research Institute is a registered public charitable trust registered under 'educational category'.
- The Vipassana Research Institute is recognized by several Ministries of State and Central Government**.**
- It is informed that a major portion of Income of the Trust is from,1) **Interest** 2) **Donations** 3) **Capital Gains** 4) **Sales Of Books and Publications** 5) **Sundry Income**. Therefore, these incomes are not the "**Business Income**".
- The applicant has claimed that all the expenses are incurred only for the objectives of the Trust. Therefore, there are no Business expenses are incurred by the Trust.
- The applicant has also argued that Vipassana Research Institute is engaged to carry out Educational, Meditation, Literature activities. It does not carry any business activities, Sales of Books & Publications (Exempt from VAT under

entry A-6), Sales of Audio- Video C.Ds and purchases of Raw materials for the same are incidental activities to support the main activities which is not a "**Business**" and hence Vipassana Research Institute cannot be considered as"DEALER' u/s.2 (8) of the MVAT Act.

The applicant had also submitted information as below:

- VRI is recognized as a '**SCIENTIFIC AND RESEARCH ORGANISATION'** by the **Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India.**
- **The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India has notified U/s. 35(I)(III) of Income Tax Act, 1961,** exempting Donors by 125% of their donations to VRI.
- **The Department of Philosophy, University of Mumbai** has instituted a theory course named 'Diploma in Buddhist studies & Vipassana' from the academic year July, 1999 to March, 2000. The course is of two academic terms. About 50 students register every year.
- **The Urban Development Department, Government of Maharashtra** allowed structures for Vipassana and Yoga, as also structures for Club House, Gymnasium, Pavilion gymkhana etc on Private layout / plot R.Gs and Public / Private open space.
- **The Pune Municipal Corporation (PMC)** has granted leave of 14 days to its employees so as to enable them to take advantage of this Vipassana Mediation technique.
- The Education department, Ministry of Human Resources, Government of India, has requested the Ministry of External Affairs to advise the Embassies & Missions abroad to grant students/Scholars visa to those students/scholars who are admitted for various courses (such as teaching & research in Pali language.) conducted by the Vipassana Research Institute.
- Different State Governments, Municipal corporations,Government and semi-Government Bodies have granted facilities, benefits for their staff members to attend the 10 days Vipassana mediation by issuing circulars, notifications or orders.
    - **MAHARASHTRA STATE POLICE, PUNE.**
    - **GOVERNMENT OF ANDHRA PRADESH.**
    - **GOVERNMENT OF MADHYA PRADESH.**
    - **GOVERNMENT OF GUJARAT.**
    - **GOVERNMENT OF MAHARASHTRA.**
    - **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION DEPARTMENT.**
    - **DELHI PRISON HEADQUARTERS.**
    - **GOVERNMENT OF MAHARASHTRA, FINANCE DEPARTMENT.**

The applicant has submitted that the **AIMS & OBJECTS** of the Institute as follows:

i) **SECULAR EDUCATION** :-

- To propagate, Spread and to promote true Dharma based on SHEELA, SAMADHI & PRAGYA i.e. SECULAR EDUCATION free of any Blind faith, cult or creed (i.e.sampradaya.)

ii) **SPREAD OF VIPASSANA** :-

- To associate with other organizations with objective similar to the objects of this trust in and outside India for practice of Vipassana and research on the same for the benefit of all irrespective of colour, caste, creed or religion.

- To establish research units and or centers to discoveer and teach the scientific processes involved in practice of 'Vipassana'.

iii) **RESEARCH IN / FOR VIPASSANA**

To conduct Research :-

- In the Technique of Vipassana and to discover ways and means to make it more beneficial to one and all.
- In the effects of Vipassana on the various meditators in terms of their social behaviour and mental altitudes.
- On the effects of Vipassana on the meditators at physical level viz. State of health, mitigation of ailments etc.
- In all the Ancient Religious Literature of India and the world at large to discover various aspects of Vipassana.
- In the experience of various stages in the practice of Vipassana leading to the ultimate experience of Nirvana, and experience beyond the sensual fields, within this life.

The applicant has also submitted the following information on the other activities conducted by the Institute, which is reproduced as follow:

- **PALI STUDIES** :-

  It is informed that the Research Institute offers a year-long residential Vipassana & Pali Studies Programme. Those who participate are regular meditators. Since its conception in 1986, many students have completed the programme, some of whom are currently assisting in the research work. It is informed that the programme provides a foundation in both the theory and practice of Vipassana and in PALI LANGUAGE. It is claimed that this combination of scholarly and meditative approach makes the Pali programme unique and the periods of academic study are alternated with participation in the meditation programmes. It is informed that the daily meditation practice, intensive retreats and service deepen the experience of meditation and service. It is informed that Vipassana Research Institute is one of the few institutions in the world where the students can be taught both pariyati (theory) and patipatti (practice) in one setting.
- Regular classes are conducted at the Research centre to teach PALI in Hindi and in English, for Basic and Advance Course.
- Pali Studies education is specified for ½ years.
- Qualified teaching Staff is employed. Reading and Boarding facilities are provided to the needy students.
- There are Reading Rooms, Library, etc. for students and Research Scholars.
- Male and Female students from India and abroad attend the classes.
- Examinations are conducted at the end of the studies and period.
- Necessary certificates are issued to the student.
- **PALI STUDIES TRAINING PROGRAMS & RESEARCH** :-

  It is informed that for the fulfillment of the above objectives, the Vipassana Research Institute has undertaken Research studies on the Exploration of Sources of Vipassana in the Tipitaka, a monumental record in Pali literature and its commentaries and sub-commentaries, which contains the main source material. For the purpose of research, it is essential to have an authentic version of the Tipitaka and its commentaries and sub-commentaries in Devanagari Script. It is informed that to achieve this basic prerequisite for research, i.e. availability of material, the Institute has taken up a gigantic project of complication, editing and publication of the entire Pali Tipitaka, its Atthakathas (commentaries) and Tikas (sub-commentaries). The Institute has taken the authentic version as complied in the chattha Sangayana (Sixth Council) in Burma during 1954-56 in the Burmese script as the base material, for publication. Pali Scholars from India and other countries including many learned Bhikkhus and Research scholars in Burma are assisting in the project.

- **LOCATION OF VIPASSANA RESEARCH INSTITUTE.**

(B) **RESEARCH CENTRE :-**

The Vipassana Research Institute's centre is located at DhammaGiri, Igatpuri, DIST. NASIK, MAHARASHTRA, at Vipassana International Academy. It is today the largest residential meditation centre of Vipassana not only in India but also in the world. Its campus comprises about 200,026 sq.meters and has a built up area of over 22,949 sq.meters. It has facilities for boarding and lodging 800 students who can meditate there at any given point of time. It comprises residential quarters, meditation halls, an extensive library and office and workshops with computers and other paraphernalia.

- **REGISTRATION OF VIPASSANA RESEARCH INSTITUTE**

The Trust is registered under Registration Certificate no. 002903 dated 16th July 1985 by Assistant Charity Commissioner of Grater Bombay Division Mumbai under Mumbai Public Trust Act, 1950.

- **RESEARCH WORK PURSUED**

The applicant has enumerated some of the RESEARCH WORK pursued by the Institute.

NAME OF RESEARCHERS/ SCHOLARS	RESEARCH SUBJECT	REPORTS/ PUBLISHED - RECOGNISHED BY
Agrawal Rk & Bedi K	Transforming the Self : Exploring Effects of Vipassana on Delhi police trainees.	Journal of Human Values, Indian Institute of Management, Calcutta
Al-Hussaini A, Dorvlo ASS, Antony SX, Chavan D, Dave J, Purecha V, Rahbi S & Al-adawi	Vipassana Meditation : A Naturalistic, preliminary Observation in Muscat	SQU Journal for Scientific Research: Medical Sciences.
Ayyar KS & Chokhani RM	A Prospective study of the Effects of Vipassana on the Psychological Profile of Meditators	VRI Project Report.
Bebaie Ensiyeh	The Effect of Vipassana Meditation in cases of Hypertension.	Thesis by Psychologist from Iran, under the department of Philosophy, University of Mumbai, India
Bhakti W S	A Pilot study of the Effects of Vipassana on the Inmates of Acworth leprosy Hospital, Mumbai.	VRI Project Report.

- **LIST OF RESEARCH PROJECTS UNDER WAY :**

NAME OF RESEARACHERS/ SCHOLARS	RESEARCH SUBJECT	REPORTS/ PUBLISHED -RECOGNISHED BY
Goyal M, Ford D, Levine	Randomized Controlled Trial of	Johns Hopkins School od

NAME OF RESEARACHERS/ SCHOLARS	RESEARCH SUBJECT	REPORTS/ PUBLISHED -RECOGNISHED BY
D.Haythornthwaite J. Becker D. Vaidya D & Hill Briggs	Vipassana Meditation among Patients with Migraine	medicine,Baltimore, M.D. USA
Kutty BM, Shetty KT, Raju TR & Satya Prabha TN	Assessment of the Efficary of Vipassana Meditation on Ageing : A PolySomnoGraphic and Endoctrine Function Evaluation	National Institute of Mental Health & Neuro-Sciences, Bangalore, India.
Mukherjee P, Roy T & Banerjee R	A Cognitive and Electro physiological Study of long-Term Vipassana Meditators	Saha Institute of Nuclear Physics, Calcutta, India

In support of the contention that the institute is an educational institution, the applicant has submitted that the institute follows a syllabus, and employs staff etc for the teaching of Pali. The information is submitted as below:

- **SYLLABUS :-**
  A True Copy of the Syllabus for Diploma course in BUDDHIST STUDIES, VIPASSANA THEORY & PRACTICE and for PALI LANGUAGE & PALI LITERATURE is attached.
- **CERTIFICATE** :-
  A specimen copy of (cancelled) Certificate for completion of Pali Course for those students who pass out the Examination is also attached.
- **EXAMINATION** :-
  A sample Answer paper of the student Kishore Desai appearing for Pali Language (High – Level) is also attached.
- **TEACHING STAFF (PROFESSORS):-**
  Details of Teaching Staff i.e.Professors along with their Bio – Data teaching Pali Language and Literature at the Center.
- **STUDENTS FROM ABROAD :-**
  The Indian Council for Cultural Relations has sponsored and awarded a scholarship of Rs. 24,000=00 to a Spanish Student, Miss. Arceli Osuma for Pali Studies at the centre.
- **COLLABORATION WITH NAVA NALANDA MAHAVIHARA :-**
  The Institute has entered into a Memorandum of Undertaking with the NAVA NALANDA MAHAVIHARA with Vipassana Research Institute for the co – operation in the following spheres is enclosed herewith.

  ACADEMIC SPHERES :-

  a. To work in collaboration for compilation of Pali – Hindi Dictionary.
  b. To Conduct Multi – Faced Research on the age – old Technique of Vipassana Meditation.
  c. To work on Empower Ashok's contribution to and number of such other Subjects.

  CONFERENCE, SEMINARS, WORKSHOPS, VIPASSANA RETREATS etc.
  Both the institutes shall co – operate to hold these events on various aspects of Vipassana Meditation as per Mutual agreement from time to time.

- **SYLLABUS OF UNIVERSITY OF MUMBAI FOR MASTER DEGREE** :-

  The applicant has enclosed SYLLABUS from University of Mumbai for MASTER DEGREE COURSES in which several books published by VIPASSANA RESEARCH INSTITUTE are recommended as STUDY / REFERENCE Books for Graduate and Post Graduate Courses i.e.

  A. M.A. Degree Course in Pali
  B. M. PHILOSOPHY Degree Course in Pali
  C. Certificate Course in Pali
  D. Diploma Course in Pali

- **SYLLABUS OF UNIVERSITY OF UTTARMAHARASHTRA :-**

  The applicant has also enclosed SYLLABUS for Ancient Indian Languages (SANSKRIT, PALI ARDHMAGDHI) from University of Uttar Maharashtra, Jalgaon recommending several Books like (A) MAHAVGGA, (B) KHUDDAK NIKATA, (C) SUTPITAKA (D) VINAY PITAKA and (E) ABHIDHHAM PITAK authored by Guruji Shree S.N. Goenka and published by the Vipassana Research Institute, as study/ Reference Books for Graduates and Post Graduate Students.

- **MINISTRY OF EXTERNAL AFFAIRS, GOVT.OF INDIA** :-

  Under office memorandum No. F 30 – 17/88 – SK / dated 7th December 1989 by Deputy Secretary, Ministry of Human Resource Development, Education Department, Government of India (Page No. 41) of the folder attached with one application dated 18.07.08) has requested the Ministry of External Affairs to advise the Embassies and High Commissions abroad to grant student visa to such Scholars who apply for Admissions for various courses conducted by VRI.

- **DISTRIBUTION OF BOOKS AND AUDIO – VIDEO AND DVD, C.D**. :-

  It is submitted that 90% of Books and Audio – Video and DVD, C.D.s which are published and distributed by Vipassana Research Institute are distributed to the Vipassana Meditators, or to the Vipassana Centres all over the world for their onwards distribution.

03. OBSERVATIONS:

The applicant in the present case has requested determination order on whether Vipassana Research Institute is a dealer for the purposes of the MVAT Act, 2002. It is submitted by them that the VRI is neither a dealer nor is it a deemed dealer and in support of their contention they have referred to the Exception II of the definition of 'deemed dealer' given under section 2(8) of the MVAT Act. The clause under consideration 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 VRI 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', VRI 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 VRI 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.

The applicant has placed various facts and arguments to reinforce their contention and in order to arrive at a decision I will have to go through all the facts and list them down in order to examine whether these facts really support the say of the applicant or not?

Is VRI 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:

a. Recognised as an Educational Institution by University or the UGC or as the case may be by a Technical or Educational Board.
b. Has a prescribed course or syllabus for the alumni.
c. Has a teaching staff which is on the pay roll of the colleges or institution.
d. Issues certificate to it's students.
e. 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.

1] OBJECTS OF THE TRUST

As per the Trust Deed, the 'Vipassana Training Institute' was formed on 6th May, 1985 with the following objects in mind:

1. To propagate and promote true Dharma independent of any Blind faith, Cult or Sampradaya.
2. To conduct research in the Technique of Vipassana and to discover ways and means to make it more beneficial to one and all.
3. To conduct research on the effects of Vipassana on the various meditators in terms of their social behaviour and mental attitudes.
4. To conduct research on the effects of Vipassana on the meditators at physical level viz. state of health, mitigation of ailments etc.
5. To conduct research in all the ancient Religious literature of India and the World at large to discover various aspects of Vipassana and its practice and its influence on the contemporary ancient culture of India and other parts of the world.
6. To conduct research in the experience of various stages in the practice of Vipassana leading to the ultimate experience of Nirvana, and experience beyond the sensual field, within this life.
7. To conduct courses, arrange lectures, discourses and seminars and trainings.
8. To associate with other organisations with objects similar to the objects of this trust in and outside India for practice of Vipassana and research on the same for the benefit of all irrespective of colour, caste, creed or religion.
9. To establish research units and or centres to discover and teach the scientific processes involved in practice of 'Vipassana'.
10. To publish research papers, periodicals pamphlets, books and other literature and use other media of education/communication for promoting the objects of the trust and to achieve this object:-
    a. To acquire and operate machinery and equipment for printing, zeroxing, lithography, micro filming, comuterising, audio/video, cassette recording, duplicating and recording of written materials and for binding and packing of such materials.
    b. To acquire paper, ink, resins, card board and other raw materials required in production of books, periodicals and other literature.
    c. To acquire and run printing presses and or book binding works.
    d. To organise and run depots or centres for sale and distribution of books cassettes, other materials and articles produced.
    e. To appoint agents or distributors for sale and distribution of books, cassettes and other materials things and articles produced.
11. To propagate the practice of Vipassana for the good of all beings, fully dedicating the results of the research carried out to the above objectives.

A mere glance at the objects of the Trust as given above show they are singularly focused and single-minded in the sense that though the objects are many their purport is one. From an examination of the objects of VRI, I find that the VRI is established with the **sole purpose of conducting research and imparting knowledge on Vipassana**. It also gives the impression that VRI is established with the object of doing everything possible for the revival, spread, propagation and practice of the ancient technique of Vipassana- a technique of meditation. There cannot be any dispute that the objects of the institute revolve around the research in the field of meditation and the teaching of Vipassana.

2] WHAT IS VIPASSANA?

This brings me to the question as to what is Vipassana ?. This is because the Institute is not like an ordinary institution where the arts and sciences are taught. The Institute is a centre for learning a technique of meditation and I find that the applicant has described 'Vipassana' as one of India's most ancient meditation techniques. The Wikipedia describes Vipassana as follows:

> **Vipassanā** (pali) or **vipaśyanā** (□□□□□□□□, Sanskrit) means insight into the impermanent nature, or anicca, of mind and body. Vipassana is one of India's most ancient techniques of meditation, attributed to Gautama Buddha. It is a way of self-transformation through self-observation and introspection. In English, vipassanā meditation is referred to simply as "insight meditation". *Vipassanā* is a Pali word from the Sanskrit prefix "vi-" and verbal root √paś. It is often translated as "*insight*" or "*clear-seeing,*"

From the above **definition, t**here cannot be any question that Vipassana is a type of meditation. It is known that the practice of Vipassana by many people in and outside India has been possible because of the thousands of centers and branches were established by VRI throughout the world.

Vipassana is indeed a technique of meditation**. But can learning meditation be described as a process of learning? Can imparting knowledge of the technique of meditation be said to be a system of education?** If such is the case, then VRI can definitely be called an 'educational institution as it is involved primarily in imparting the technique of Vipassana meditation to those who wish to study it.

3]IS LEARNING 'MEDITATION' EDUCATION?

'Meditation' is described in the 'Wikipedia' as a mental discipline by which one attempts to get beyond the conditioned, "thinking" mind into a deeper state of relaxation or awareness. It involves turning attention to a single point of reference. Meditation is recognized as a component of almost all religions, and has been practiced for over 5,000 years.

There cannot be any dissension over the fact that in order to meditate, one has to learn to meditate. Meditation, as described is a form of mental discipline which in order to be inculcated has to be learned and practiced. It is for this precise reason that the help of a teacher or a ***Guru*** is sought in order to learn any art of meditation. **Education** encompasses both the teaching and learning of knowledge, proper conduct, and technical competency, the cultivation of skills, trades or professions, as well as **mental, moral & aesthetic development**. Meditation is nothing but a tool of achieving moral development and therefore it can be safely concluded that the instruction in Vipassana is nothing but education. It is no different from the learning of a language or learning Accountancy or learning management techniques.

4] ACTIVITIES PERTAINING TO TEACHING OF VIPASSANA

From the brochures submitted by the applicant I find the following:-

- Vipassana is taught throughout the world with the same schedule and same instructions during the course. The main center for the training and the practice is the Vipassana International Academy. Thousands of people from different backgrounds in India and abroad have attended Vipassana course.
- According to tradition, there is no fee for learning this course and neither the teachers receive any remuneration for their services. Expenses are met by voluntary donation from students who have benefited from Vipassana.

- The education is conducted through a ten days residential course under qualified teachers. The course of Vipassana meditation follows some basic rules which have to be strictly observed by the student. It also has an extraordinary rule where a student in the course should not have any contact with the outside world, has to refrain from reading and writing, follow a daily schedule and observe noble silence.
- The teaching is the step by step process with the first step being the 'observance of rules', the second component being 'anapan' i.e awareness of respiration and third step being 'panna' which is the purification of mind.

From the above essentials, it becomes clear that the course in Vipasssana follows a set pattern like any educational course though it also has its unique features, perhaps because of the distinctiveness of the topic.

6] ACTIVITIES PERTAINING TO RESEARCH

It is also seen that the VRI has taken up four major areas of research on the impact of Vipassana meditation. The following main research studies are made and the reports and findings are published by the institute.

a. Effect of vipassana on the body and mind.
b. Effect of vipassana on addiction.
c. Effect of vipassana in case of Hypertension.
d. Effect of vipassana on education, student and children.

The dissemination of research findings and all relevant literature of Vipassana is conducted through regular publications in Hindi and English once in a month. A number of books are published by the institute, a list of which is submitted by the applicant. It is seen that the institute has indeed published books on Vipassana in Hindi and English on topics as varied as "The Art of Living ", "Vipassana, its relevance of the present world", "Dharma, its true nature", "Vipassana, Addiction and Health", "Vipassana, Part-I & Part-II" ,Gujarati books like 'Vipassana Shamate' and Marathi books named 'Jagnyachi Kala', 'Nirmal Dhara Dharmachi and Pravachan Saransh'. It is also seen from the information submitted that the Institute has taken up the project of compilation, teaching and publication of the entire Pali Tripitika and the commentaries and sub commentaries. The Institute also has an editorial board which is called the "Pali Sampadan Mandal" and there is a permanent staff engaged in research. The institute has also published books in Tamil and Telugu as also in French and Spanish on the topic of Vipassana. **All these facts throw light on the essentially research-oriented nature of the VRI. It also shows that the objects of the VRI and its activities are closely intertwined and this is not a case where the objects are educational whereas the activities are everything but educational.**

5} RECOGNITION OF VIPASSANA

- It is seen by me that the Department of Philosophy of the University of Mumbai, for its ‘Diploma Course in Buddhist Studies and Vipassana’ has made compulsory a ten day’s course of Vipassana meditation to be attended at Igatpuri, Nashik or at any of the VRI Center. Thus the first criterion is fulfilled in that VRI has a direct nexus with the University of Mumbai wherein the training imparted in Vipassana is incorporated into the Diploma Course in Buddhist Studies. When the Mumbai University itself conducts a Diploma Course in Buddhist Studies and Vipassana , it makes it amply clear that the study on Vipassana is recognised as a branch of learning by the University itself.
- Secondly, the Scientific and Industrial Research Organisation under the Ministry of Science and Technology, Government of India has recognised VRI as a research institute.

- The Ministry of Home Research Development, Department of Education through its' office Memorandum dt.7.12.1989 has considered that the **Institute is engaged in fostering national integration and international understanding and is the only institute of its kind which integrates theoretical principles with the practice of Vipassana and therefore it recommended VRI for training in Vipassana.** In furtherance of the above, the Ministry had expressed the view that scholars from abroad who want to gain admission to the said institute for various courses run by them may be granted Student Visa.

Coming to the facts of the case, it is noticed that VRI is engaged exclusively in the research and teaching of Vipassana. VRI can be called as an educational institution not only because it educates people on 'Vipassana' but, more because it is the sole and only activity of the Trust. **The latter part is more important as an educational institution should be recognised for education and education should be its main activity and the driving force. Teaching Vipassana is not only the main activity of the trust- it is the motivating force of the Trust.**

7] ACTIVITIES PERTAINING TO TEACHING OF PALI

The other most essential thing which merits consideration is that VRI offers a year long residential Vipassana and **Pali studies programme**. According to the brochures, this combination of scholarly and meditative approach makes the Pali programme unique. The features of the Pali studies programme are as follows:

1. Regular classes are conducted at the research centre to teach Pali language in Hindi and English for basic and advance courses.
2. Pali studies education is specified for six months.
3. Qualified teaching staff is employed.
4. Lodging and boarding facility are provided to needy students.
5. There are reading rooms, library for student and research scholars.
6. Male and female student from India and abroad attend the classes.
7. Examinations are conducted at the end of the studies.
8. Necessary certificates are issued to the student.

8] APPLICABILITY OF CRITERIA

I would now go through the criteria specified in the determination order in the case of North Point Research and then test the activities of the VRI against them.

- The main requirement is that there should be recognition as an Educational Institution by University or the UGC or as the case may be by a Technical or Educational Board. The Vipassana meditation course has recognised by the University of Mumbai in that for the Diploma course in Buddhist studies and Vipassana, it is made compulsory for the candidate to attend the Vipassana meditation course organised by VRI. As per the letter issued by the Professor and Head of the Department of Philosophy, University of Mumbai dt. 9.8.08, the following is seen:-

> "All lectures are delivered by the faculty specialised in Buddhist philosophy, Pali language and Vipassana meditation. The practicals of Vipassana meditation are being conducted by the teachers approved by the VRI, Dhamma Giri, Igatpuri, Nashik and are conducted at VIA's premises and at Dhammagiri, Igatpuri or at any other center approved by them. VRI provides research material, research faculty and guidance to our research students. **Students in Buddhist**

studies and Vipassana are not allowed to appear for examination unless it is certified by the VRI that they have attended ten days Vipassana course. VRI has collaborated with or for educational courses of Buddhist studies and Vipassana".

The letter by the Department of Philosophy, University of Mumbai, reinforces the argument of the applicant that the Vipassana meditation course is recognised by the Mumbai University and therefore it fulfills the first criteria of recognition.

- The institute also conducts an independent diploma course in Pali language and Pali Literature. Though the diploma course is conducted independently and it does not have any affiliation with the Department of Pali, University of Mumbai, most of the books prescribed for M.A. in Pali are published by the VRI. Most of the books prescribed in this course are published by the VRI. It is seen that the syllabus in Ancient Indian Languages i.e. Sanskrit, Pali and Ardhamagdhi and the University of Uttar Maharashtra recommends several books published by the VRI. The institute is devoted entirely to research and meditation and disseminating the results of the research through out the world by conducting courses in Vipassana and Pali.
- The other criteria are that the Institute should have a prescribed course or syllabus for the alumni, should have a teaching staff which is on the pay roll of the colleges or institution and it should conduct exams as per prescribed rules and issues certificate to its students. It is observed that for both Vipassana meditation and teaching of Pali, the VRI has a prescribed course and prescribed syllabus. I have already given details in this order of the aspects of the Vipassana meditation course which is followed by all the Vipassana centres throughout the world. The institute also issues certificates after completion of the Pali course for those students who pass the examination. In support of this, the applicant has produced a specimen copy of the certificate as well as the answer paper of a student appearing for an examination for Pali language. The institute also has a teaching staff teaching both Vipassana and Pali language and literature at the centre. **All the above facts strongly support the contention of the applicant and they also succeed in persuading me that VRI is indeed a research and education oriented institute imparting education in both Vipassana meditation and Pali language and, more so because it fulfills all the criteria laid down in the DDQ in the case of North Point Research Institute.**

9] STATE RECOGNITION

The other fact worthy of notice, though not germane to the case is the State recognition gained by the Vipassana meditation course. The Vipassana meditation course has also gained recognition from the State Governments of different States. In a unique gesture, the Finance Department, Government of Maharashtra has issued a G.R. dt.15th May, 1996 where officers above age of 45 years are given a 14 days leave for attending the Vipassana course at VRI. The Office of the Additional General of Prisons, New Delhi has encouraged all the staff members to attend the Vipassana course by giving them TA/DA and also Rs.500/- as reward. The Finance Department, Government of Maharashtra has further through G.R. dt.21 July, 1998 has sanctioned to all of the gazetted officers of the Government of Maharashtra, 14 days leave to attend the Vipassana course. The department of Social Welfare, Cultural Affairs and Sports, Government of Maharashtra through G.R. dt.7 August, 1996 has also sanctioned special leave and tour expenses to officers desiring to take the Vipassana course. The

Madhyapradesh Government has followed suit. The Gujarat as well as the Government of Andhrapradesh has also sanctioned special leave to the officers for taking the Vipassana course. **The course and the teaching of Vipassana have received State patronage and, it reveals the authenticity of the technique as a system of education**.

10] WHETHER FALLS UNDER EXCEPTION II?

Now, after dealing with the essential facts of the case, I come to the clause 2(8) of the Act which decides the fate of a dealer/person**.** In the earlier part of the order, I had discussed that in order to come under the purview of exception II of the Explanation to the definition of dealer, the applicant has to prove the following:

- That VRI 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.

It has already been discussed in the earlier paragraphs and conclusion reached in as to how VRI can be called an 'educational institution.' However, the Exception II to clause 2(8) state that an educational institution would not be dealer if the activities of buying, selling, supplying and manufacturing should be on the performance of objects. This is another way of stating that the main activity and the secondary activity should be integrally connected and the secondary activity should be in the course of performance of the main activity. It is undoubtedly true that the main object of the institution is to impart education and training in Vipassana. The secondary activity is the sale of Books, Audio- Video C.Ds and purchases of Raw materials for the same.

The applicant has produced the books published by the Institute and the Audio-Video CDs sold by them. The CDs contain the following:

- 'Discourse at IIT,Powai,Mumbai on 'Buddha-The Super Scientist' by Acharya S.N.Goenka.
- Address at United nations on "Inner peace for World Peace' by Acharya S.N.Goenka.
- Address at the World Buddhist Summit, Myanmar 2004, on 'The Universal Appeal of the Buddha Dhamma' by Acharya S.N.Goenka.

The Books published are on the following topics:

- Vipassana- Addiction and Health (English).
- Dharma- Its true nature (English).
- Vipassana-Its relevance to the present world(English).
- Vipassana-Lokmat(Marathi)
- Jagnyachi Kala (Marathi)
- The Art of Living –Vipassana Meditation.(English)
- Gotama Buddha :His Life and His Teaching.(English)
- Vipassana Meditation : Healing the Healer(English)
- Realising Change –Vipassana meditation in change.(English)

The main object of the Institution is research on Dharma, Vipassana and teaching of Vipassana. The CDs and the Books published by the Institute are also on 'Vipassana', religion and Buddhism. There is no divergence in the main activity and the secondary activity. The purpose behind publishing the CDs and the Books is in complete harmony with the main object of the Trust which is to propogate Dharma, Vipassana and reach out Vipassana to as many people as possible as also to conduct research on 'Vipassana'. The applicant is an educational institution and the buying and selling of books is indeed in the performance of its objects. In the Supreme Court judgement in the case of M/s Sai Publication Fund (126 STC 288) the Court had to decide whether Sai Publication is a dealer for the purpose of the Bombay Sales Tax Act qua its activity of publishing books, pamphlets, photos containing the message of Saibaba. The Apex Court was pleased to hold that the primary object of the Trust is spreading the message of Sai Baba and the activity of the publishing of the books was incidental to the primary object. Likewise, in the present case, the manufacturing, buying or selling of the books and the CDs are integrally connected with the objects of the Trust.

Before concluding the issue, I would like to point out that facts which clinched the issue in the present case were the following:

1) Objects of the trust were solely aimed at education and research.
2) The criteria laid down in M/s North Point were entirely fulfilled.
3) No dichotomy in objects and activities.
4) The secondary activities were integrally connected with the objects of the Trusts.

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

<u>O R D E R</u>

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

NO.DDQ-11/2008/Adm-3/34/B- 4 Mumbai, dt. 18.9.08

- The question before me as regards whether Vipassana Research Institute is a dealer under clause (8) of section 2 of the MVAT Act is held in the negative. The applicant is not a dealer for the purposes of the MVAT Act in view of the Exception II to the Explanation to clause (8) of section 2of the MVAT Act.

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