

- Read : 1. Application dt.07.12.2009 by Society for the Vocational Rehabilitation of the Retarded.
2. Application dt.27.12.2010 by M/s. Swami Vivekananda Udyogalaya.
Heard : Shri C.B. Thakkar, Advocate, Smt. Savita Shah, President, Smt. Shruti Medh, Vice President and Shri Nitin Shah, Secretary.

PROCEEDINGS

(under section 56(1)(a) and (2) of the MVAT Act, 2002)

No. DDQ 11/2009/Adm-3/65/ B- 2

Mumbai, dt. 3/09/2013

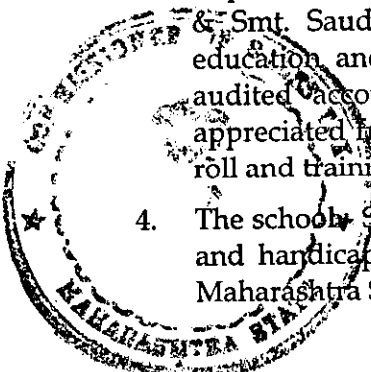
An application is received from Swami Vivekananda Udyogalaya, having office at Arya Nagar Municipal School Building, Opp. Tulsiwadi Post Office, Tardeo, Mumbai-400034 seeking determination of the following question :

"Whether the Swami Vivekananda Udyogalaya is liable to tax under MVAT Act, 2002, particularly in view of 'deemed' dealer category wherein Public Charitable Trust are specifically covered as dealer."

02. FACTS AND CONTENTION

The Society for the Vocational Rehabilitation of the Retarded (for short 'SVRR') runs the Swami Vivekananda Udyogalaya. It is contended that the applicant institution is covered by the Exception II provided to the definition of the term 'dealer'. With regard to this claim, the applicant has submitted thus :

1. The Society is registered under Societies Registration Act, 1860 bearing registration No.BOM.58/1965 GBBSD, dt.17th day of June, 1965. It is also registered since 14th July, 1965 bearing No.F-1270(Bom) under Bombay Public Trust Act, 1950 (copy given).
2. The main objects of the society as stated in the Memorandum of the society are as under:-
 - a) *To establish and maintain educational and vocational institutions for the education and rehabilitation of the mentally retarded adolescents and adults, so that they can achieve their maximum personal, social, emotional and vocational adjustment.*
 - b) *To provide in such institutions vocational rehabilitation of the Retarded by means, such as,*
 - i) *Vocational training by setting up vocational training centers and sheltered workshops;*
 - ii) *Placement in apprenticeships;*
 - iii) *Placement in open employment;*
 - iv) *Vocational guidance and counselling;*
 - v) *Follow up to ensure satisfactory vocational and social adjustment;*
 - vi) *Educating public opinion so as to enable the Retarded to find their rightful place in Society.*
3. In pursuance of the above objects, the society through Swami Vivekanand Udyogalaya & Smt. Saudamini Mehta Kanya Udyogalaya - referred to as schools is giving education and training for Vocational Courses, for last many years. Copy of last audited accounts for the year 2007-08 is given. The various activities can be appreciated from the said report. Amongst others, the society has teachers on its pay roll and training and education is given through them.
4. The school Swami Vivekanand Udyogalaya is also recognized as school for retarded and handicapped by Commissioner, Handicapped and Social Welfare Department, Maharashtra State, Pune-1 (copy given).

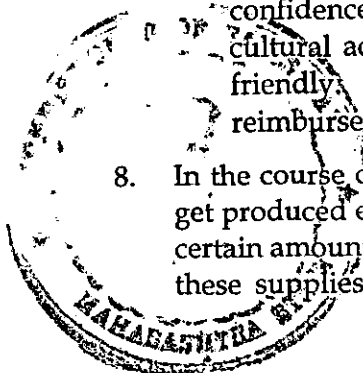


5. The school also receives grant in aid from government for meeting education expenditure like salaries of approved teaching & non teaching staff and non-salary grant. The other source of income of the Society is by way of donations from well wishers and income on investments like interest, dividend etc.
6. The society has teaching staff on its pay roll. The staff is approved by the Social Welfare Department. The teachers are well trained in the respective courses for which they are appointed.
7. The detailed information on the activities of the society, the schools run by it and other relevant details pertaining to education activity are given thus :
 - i. SVRR runs vocational institution at following four addresses :
 - a. Main Centre at Swami Vivekananda Udyogalaya, Arya Nagar Municipal School Building, Opp. Tulsiwadi Post Office, Tardeo, Mumbai-400034 - 9 rooms are allotted by the Municipal Corporation.
 - b. Smt. Saudamini Mehta Kanya Udyogalay, C.P.Tank, Mumbai-400004
 - c. Ramkrishna Mission, Savkar, Dist.-Thane
 - d. Nirdhar Pratisthan, Dist.-Thane

Thus, the society has other 3 centres which are the branches of the society and running the same activity as run by the main centre. The place for running Smt. Saudamini Mehta Kanya Udyogalaya, is allotted by the Bombay Municipal Corporation. The other 2 centres are run on the premises of others.

- ii. SVRR has prescribed courses in tailoring, weaving, cardboard section etc. The syllabus and course is based on practical training to the students which is supervised and reviewed by the Social Welfare Department of the Government of Maharashtra. The course comprises training in basic Vocational category and they are as per the direction of Social Welfare Department. Like for training in card board section the vocational training will include basic training for identifying card board for making particular type of files and various stages for making the files. The society has prescribed format for granting the completion certificate to the students.
- iii. The society is engaged in running the school for training and rehabilitation. Exams are by way of testing vocational training competence. There are 1 to 4 standards as per direction of Social Welfare Department. For each year valuation/progress report is prepared. Students are granted completion certificates based on their overall performance during the time they remain in the school.
- iv. There are total about 100 trainees at different Centres. They are given the vocational training, amongst others in the following fields - Tailoring, Weaving, file making, envelope making, fancy paper bags, napkins, dusters, lamination, screen printing, cane work, making of agarbatti, fridge bags, pouches, etc. All the above training is given by trained teachers. The articles made in the above training programme are sold out to different intending purchasers like banks, schools, corporate entities, hospitals, etc. Out of small income generated from above activity of sale of items, stipend is paid to the students. This gives them self confidence and also financial help. In addition to the above main activity, social, cultural activities are also organized to make the retarded students community friendly. The Social Welfare Department of Government of Maharashtra reimburses the partial expenses incurred on account of above activities.

8. In the course of giving education and training to the retarded students, some articles get produced eg. box files, dusters etc. These are supplied to intending purchasers and certain amount is received from them towards such supplies. It can be appreciated that these supplies are an integrated activity of education and training of the retarded



students. There is no intention to do any separate activity of sale/purchase in such items. Therefore, this supply activity is part and parcel of the education activity conducted by the society.

9. A question has arisen, as to whether the society is liable to tax under MVAT Act, 2002, particularly in view of 'deemed' dealer category wherein Public Charitable Trust are specifically covered as dealer. However, there is also exception provided by Exception-II as per which education institutions are excluded from the said definition of dealer. It is submitted that they are duly covered by Exception-II. However, for the sake of clarity for future, this application is filed to get the issue decided under section 56. It is prayed to declare that they are not covered in the definition of dealer, nor liable to tax under MVAT Act, 2002.
10. It is submitted that if at all it is held otherwise then it is prayed to grant prospective effect to the said order. In other words, the liability till the date of order be protected. The society is of the bonafide belief that it is exempt being educational institution. It is submitted that under the BST Act, 1959, though the society was registered, it was one of the notified institutions in entry C-5(58) issued u/s.41. Under MVAT Act, 2002 because of deeming provision, the applicant received advice from their Tax Consultant and continued the registration bearing TIN No.27480277201V. Thereafter, they again received advice from the Tax Consultant that they are covered by Exception II of the definition of 'dealer' and accordingly they applied for the cancellation of the above TIN number by application submitted on 07.02.2007. However, again doubts are being raised by their consultant that they may be liable. Their purchasers are also some time asking for TIN. Therefore, the application is filed to know the correct legal position. In the light of above facts, it is submitted that if it is held that the society is liable under MVAT Act, 2002 then the order be made prospective. The genuineness of the claim be appreciated from above facts and looking to the activity and intention, the liability, if any, be protected till the date of order.

In the light of the above, it is contended that the applicant is covered by the criteria laid down in the Determination Order in the case of NSD Industrial Home for the Blind (DDQ No.11/2006/Adm-5/34/B-3 dt.4.12.2009) and therefore covered by the Exception II to the definition of dealer.

03. HEARING

The case was taken up for hearing on dt.26.02.2013 when Shri C.B. Thakkar, Advocate, Smt. Savita Shah, President, Smt. Shruti Medh, Vice President and Shri Nitin Shah, Secretary attended the hearings held on dt.26.02.2013 and dt.26.06.2013. It was submitted as follows :

- a. The applicant had obtained Registration under the MVAT Act [TIN 27480277201V]. However, the same has been canceled. To this, they were asked to provide a copy of the cancellation order.
- b. The applicant was registered under the BST Act [400034/S/1089 w.e.f. 1.10.95]. However, they were exempted from tax by way of a notification in Group 'C' - C-5(c) - sr.no.58.
- c. The institution is basically formed for vocational training and rehabilitation of the mentally challenged adults [boys and girls].
- d. Activities - The activities at Ramkrishna Mission, Savkar, Dist.Thane have been

closed since 1 to 1.5 years. Now operations only from 3 places. At Virar, space is given by Nirdhar Parishthan but no rent given. At C.P. Tank & Taddev, space is given by Municipal School for which rent is given to Bombay Municipal Corporation.

e. Admissions to the Institution/School

i. Any time during the year. But the adult should satisfy the following criteria:

- Above 16 years and upto 45 years.
- IQ level minimum 40 and Maximum 70.
- Whether the person is trainable [for this they are kept under observations]
 - Family background
 - Economically backward people.

ii. No charges for admission.

iii. Bus service is provided to pick and drop the trainees [24 seater - 1 trip only].

iv. Free uniform, lunch and tea.

v. Identity card [Timing 10 - 4.30 for trainees]

f. Teachers

- Government of Maharashtra under Social Welfare Department has approved 12 staff - 3 teacher, 1 Superintendent, 2 helpers (Class attendant), 1 Office peon, 1 Accountant, 1 clerk, 1 driver and 1 cleaner (attendant), 1 part time social worker (Staff at Taddev only. This staff is given 50 students only). The Government gives salaries of the 11 persons except social worker as per government pay scale. A Social worker is appointed at a salary of Rs.21,000/- which is paid by applicant and a consolidated salary of Rs.450/- per month is paid by Government.
- Appointment of teacher is as per Government rule by advertisement, calling from Employment Exchange. During interview, members are from the applicant organization as also the Social Welfare Department.

g. Training

Sections 1. Tailoring 2. Cardboard 3. Weaving

i. Training is given for 3 to 4 years and then the trainees are tried to be rehabilitated in the open market or self employed. Being a very different category than other handicapped persons, there is no academic course and therefore, no course completion certificate is given. Only as per parent's request, a certificate that he/she has taken training is given.

ii. After 3-4 years names are recommended to Central & State Government for National and State awards given by the President of India and the Chief Minister of the State.

iii. The trainees are also given awards in the name of the founder member Shri B.C. Shah [both trainees as well as self employed/employed retarded person and from rural areas].

iv. From the three sections, work done is of simple assembling work and the products made under supervision are

TAILORING

1. Simple Bags (Non-woven carry bags)
2. Kitchen napkin
3. Mobile covers
4. Aprons
5. Saree covers

CARDBOARD

1. All types of cardboard files
2. Box file
3. Voucher file



4. Spring file
5. Flat file
6. Writing pad

WEAVING

1. Duster
2. Asan
3. Yoga Mat
4. Door mat

All the items are prepared only on paddle looms and not on electronic machines.
Use of hands and legs and head.

h. Orders and Sales

Orders for the products are obtained from well wishers and regular customers. In case of SBI, they give order for files (tender is also filed). The products are sold at exhibitions and visitors and well wishers, committee member, parents of trainees also purchase the goods. The applicant is asked to give invoice, bill, memo copies which are then raised by the applicant. The sales receipts are distributed amongst the trainees according to the work done and attendance. No profit is retained by the society except the cost of processing the materials. All other expenses such as food, equipment for the training and work, uniform, travelling, picnics, extra curricular activities, sports, cultural activities are funded through donations.

- i. As per Government rules, a trainee cannot be retained for more than 3-4 years. Such trainees if they have not found some self employment or placement, they are allowed to attend training and given stipend as per work. Only their attendance muster is kept separately.
- j. For places at Virar and C.P. Tank, the institution is bearing the expenses of the teachers.
- k. The applicant is also audited by the State Government - Social Welfare Department. Hence, the applicant was asked to submit latest audited accounts.
- l. The applicant is also given exemption for donation under section 80G of the Income Tax Act. Returns are filed by the applicant.

In view of all the above activities, it is requested as follows:-

- a) Since applicant is not registered, they do not get orders, thereby, less work and less stipend is paid to the trainees. The purchasing parties make enquiries about VAT Registration. Hence, they want DDQ order stating that they are not liable to pay tax and therefore no registration is required.
- b) On the purchases of raw materials, tax has to be paid therefore it is requested that same be exempted. Tax on the sales side be also exempted.
- c) To declare as non-dealer.
- d) It is requested to give prospective effect if request is not accepted.

A re-hearing was held on dt.26.06.2013 in the matter when the applicant was asked to produce the original certification as an educational institution given by the Social Welfare Department under the Special School Code. A written submission dt.26.6.2013 reiterates the points made in the application as also during hearing while contending that the applicant is covered by the Exception II to the definition of dealer.

04. OBSERVATIONS

I have gone through the facts of the case and elaborately recorded the contention of the applicant. Initially the application for determination was made by the Society for the Vocational Rehabilitation of the Retarded. However since it is claimed that the applicant is an educational institution and therefore, not a dealer, a revised application was made in the name of Swami Vivekananda Udyogalaya which is claimed to be an educational institution. Thus, the issue for determination before me is whether the applicant, Swami Vivekananda Udyogalaya is a dealer liable to pay tax under the provisions of the MVAT Act,2002. To decide this, I would have to refer to the definition of 'dealer' as appearing in clause 8 of section 2 of the MVAT Act,2002 thus :

"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 and includes,-

- (a) *a factor, broker, commission agent, del-credere agent or any other mercantile agent, by whatever name called, who for the purposes 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;*
- (b) *an auctioneer who sells or auctions goods whether acting as an agent or otherwise or, who organises 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;*
- (c) *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 purposes of or consequential to his engagement in or in connection with or incidental to or in the course of, the business,*
- (d) *any society, club or other association of persons which buys goods from, or sells goods to, its members;*

Explanation. — For the purposes of this clause, each of the following persons, bodies and entities who sell 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) *Marharashtra 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 (5 of 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 can be seen from the above that a 'public charitable trust' is deemed to be a dealer under the provisions of the MVAT Act,2002. The Explanation itself states that the fiction 'deemed dealers' would operate notwithstanding anything contained in clause (4). This clause (4) pertains to the definition of 'business'. Therefore, pretexts such as non-business or non-sale, to name a few, cannot fit into the scheme of things. Thus, in view of the deeming fiction, no good reason for non-applicability of the provisions of the Act can be entertained.

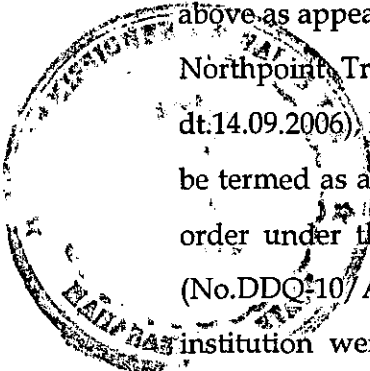
However, the legislation has provided certain exceptions in case of the fiction of 'deemed dealers'. One such exception pertains to an educational institution as per which *an educational institution carrying on the activity of manufacturing, buying or selling goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer.* Thus, the exception II is applicable when :

- a. *The institution is an educational institution; and*
- b. *The educational institution is manufacturing, buying or selling goods in the performance of its functions for achieving its objects*

I need to ascertain whether the above 2 conditions are satisfied. I begin thus :

WHETHER EDUCATIONAL INSTITUTION

The MVAT Act,2002 does not provide for a definition of an educational institution. Under the Bombay Sales Tax Act, 1959 (BST Act,1959) too, such definition was not provided. However, the then Commissioner, while interpreting the same *Exception* as above as appearing under the BST Act,1959, in the determination order in the case of M/s. Northpoint Training & Research Pvt. Ltd. (No.DDQ-11/2003/Adm-5/18/B-3 Mumbai dt.14.09.2006) had laid down certain criteria which an institution should satisfy in order to be termed as an educational institution. Even under MVAT Act,2002 in the determination order under the MVAT Act,2002 in the case of M/s. Bombay Natural History Society (No.DDQ-10/Adm-5/116/B-1 Mumbai dt.06.03.2006), the criteria for an educational institution were discussed. These criteria/principles have been reiterated in the later determinations thereafter. I would enumerate them as follows :



1. *recognized as an Educational Institution by an University or the UGC, or as the case may be, by a technical or educational board;*
2. *have prescribed courses or syllabus for the alumni;*
3. *has a teaching staff which is on the payroll of the college or institution;*
4. *issues certificates to its alumni; and*
5. *conducts tests/exams as per prescribed rules.*

During hearing, it was informed that the applicant is recognized as a school for retarded and handicapped by the Commissioner, Handicapped and Social Welfare Department, Maharashtra State. Accordingly, a copy of the Certificate to that effect is given. I have perused this Certificate bearing No.0234 of dt.25.01.1999 which states that the Society for the Vocational Rehabilitation of the Retarded, Mumbai, a voluntary (swayamsevi) institution for persons with disabilities is granted Registration Certificate for operating non-residential workshop (Karyashala) under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995 for the 'Retarded' category. This Certificate is given under the provisions of section 51 of Chapter X of the aforementioned Act. This Chapter pertains to 'RECOGNITION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES'. A copy of the renewal (by letter dt.24.07.2009) of this Certificate bearing the aforementioned number is submitted wherein it is mentioned that Swami Vivekananda Udyogalaya, a workshop operated by the SVRR is granted renewal for the period 01.04.2009 to 31.03.2012. This renewal letter further states that during the aforementioned period registration certificate is granted to the Institute for 70 students (50 non-residential aided + 20 non-residential permanent unaided). The applicant has submitted yet another Circular issued by the Social Welfare Department about the Government's decision to give grants for employees of such Workshops for the disabled or the handicapped. In pursuance thereto, the applicant has also submitted a copy of the cheque issued by the Asstt. Pay & Accounts Officer bearing dt.28.05.2009 to SVRR of Swami Vivekanand Vidyalay, Mumbai. Copies of the evaluation reports of the trainees are also tendered. I have enumerated the courses being taught in the applicant institution. Since the institution is recognized by the Government itself, I find that the criterion of a recognized educational institution stands fulfilled.

In view of all above, I have no hesitation to hold that the applicant institution is an educational institution. I would now move on to ascertain the fulfillment of the next condition qualifying for exclusion from the category of a 'deemed dealer'.

WHETHER MANUFACTURING, BUYING OR SELLING GOODS IN THE PERFORMANCE OF FUNCTIONS FOR ACHIEVING ITS OBJECTS

I have reproduced the objects of the applicant institution hereinafter. I would reproduce them again to appreciate the topic being discussed :

- a) *To establish and maintain educational and vocational institutions for the education and rehabilitation of the mentally retarded adolescents and adults, so that they can achieve their maximum personal, social, emotional and vocational adjustment.*
- b) *To provide in such institutions vocational rehabilitation of the Retarded by means, such as,*
 - i) *Vocational training by setting up vocational training centers and sheltered workshops;*
 - ii) *Placement in apprenticeships;*
 - iii) *Placement in open employment;*
 - iv) *Vocational guidance and counselling;*
 - v) *Follow up to ensure satisfactory vocational and social adjustment;*
 - vi) *Educating public opinion so as to enable the Retarded to find their rightful place in Society.*

What can be inferred from the above objects is that the applicant institution is established for the rehabilitation of the retarded through vocational training. It is informed that the training given here is - Tailoring, Cardboard and Weaving. Now to impart such training, there has to be purchases of materials from which articles could be taught to be manufactured, of machines/aids with the help of which such manufacturing is possible. Further during training when the students are taught to make the articles, it is inevitable that these articles come into existence. Such skillfully prepared articles cannot be possibly thrown away or discarded as redundant. They need to be disposed of and hence, it could be understood that there is a disposal in the form of sale of these articles which were manufactured during training. An educational institution could not possibly be foreseen as engaging into activities of manufacturing, buying or selling goods. With regard to such situations which are not commonplace, the legislature in anticipation of such contingencies has provided for an *Exception* for such activities of manufacturing, buying or selling goods in the performance of functions for achieving the objects of an educational institution. Thus, the sale of articles by the impugned institution can be said to be in performance of its objects. Further, it is informed that the proceeds from sale are given to the trainees as stipulated. The applicant has furnished a copy of the Audited Accounts for the period 2010-2011 which reveals thus :

ACTIVITIES

(3) *Retail Stall*

As a part of developing the skill for counting money, identifying products etc. we have a trainee stall which sells besides our products, some items of stationery and eatables. At the PCO booth, two mentally challenged trainees are regularly given experience of handling the booth by rotation. The results are encouraging.

(5) *Yoga*

.....By doing Yoga, our trainees become fresh and remain active throughout the day.

(8) *Counselling Centre*

We are happy to inform you that the Counselling Programme, started for our Mentally Challenged trainees who need counseling to deal with the various emotional and physical problems that they may face is a huge success.

ACCOUNTS

A look at the above Account Heads reveals that there are no expenses related to running of normal business such as Sales Promotion, Advertisement, etc. The expense heads such as Cultural Activities, Training Expenses, Sports Expenses & Exhibition, Picnic Expenses, Food for Trainees, Mini Bus Expenses, Milk Expenses, etc. help to appreciate that they are incurred during performance towards achievement of the objects of training the retarded. During the year 2010-11, the expense on account of 'Materials consumed for Training' of Swami Vivekanand Udyogalaya was Rs.7,64,730/- whereas the income from 'sale of articles prepared by Trainees' was Rs.7,68,433.50/-. Thus, there is not seen a keen sense to do business and gain profits. The assets of the Society include Music Instruments, Sports Equipment, etc. which are in the furtherance of the objects of vocational rehabilitation.

The above discussion shows that the main aim of the applicant institution is the overall development of the retarded trainees.

From a look at the above, it can be said that the Society is not performing business under the veil of running an educational institution. The activities of the applicant are not commercial in nature. In view of all above, it could be said that the Society is carrying out the activities in performance of functions for achievement of its objects.

Thus, it could be concluded that vocational training and rehabilitation which is the object of the applicant institution necessitates the applicant to carry out the activities of purchase, manufacture and sale and all these are integral activities as such. In view thereof, the applicant would be covered by the Exception clause II and thereby, would not be termed as a 'deemed dealer' under the MVAT Act,2002. However, I have to be quick to observe that the applicant would not be a 'deemed dealer' so long as the activities of the applicant educational institution are in performance of functions for achievement of its objects. Any activities of manufacturing, buying or selling goods not directed towards the achievement of objects of the educational institution would deprive the applicant from the saving as provided by the Exclusion clause and bring him under the ambit of the provision of 'deemed dealer' under the MVAT Act,2002.

Having seen so, the question of deliberating on the plea for prospective effect does not arise. However, here I need to address one issue and which is the obtaining and subsequent cancellation of Registration under the MVAT Act,2002 by the applicant. A

similar question has been decided by the larger bench of the Hon. Maharashtra Sales Tax Tribunal 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 (then section for Determination of Disputed Questions) of the BST Act, 1959 raising a disputed question for determination that he is not a dealer. It was held by the Tribunal that the question could not be agitated under section 52 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. Coming to the facts of the present case, the applicant has informed that he had applied for cancellation of the Registration Certificate and also that the same has been cancelled w.e.f 01.04.2006. Therefore, it is not the case that the applicant is a registered dealer posing a determination question about the possibility of being liable for registration. Hence, I have accordingly entertained this determination.

05. In view of detailed deliberations as at above, it is ordered thus -

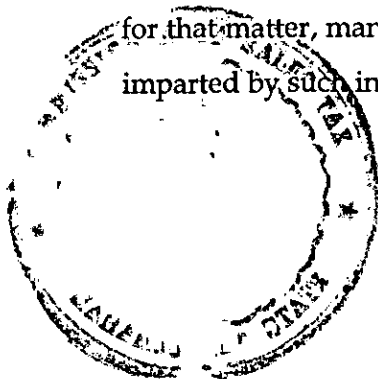
ORDER

(under section 56(1)(a) and (2) of the MVAT Act, 2002)

No. DDQ 11/2009/Adm-3/65/ B- 2

Mumbai, dt. 3/9/2013

The applicant, Swami Vivekananda Udyogalaya would not be a deemed dealer for the purposes of the MVAT Act, 2002 in view of the Exception II to the Explanation to clause (8) of section 2 of the said Act so long as the activities of manufacturing, buying or selling goods are in the performance of the functions for achieving the objects of the applicant educational institution and the training imparted during the execution of such orders or, for that matter, manufacture of any article is in keeping with the training as intended to be imparted by such institutions.




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI