

- Read:-
1. Application of Nil dt. received on 19th December, 2004 from Gram Mangal.
  2. Application dt. 1/12/2002 from Sadhana Village, Pune.
  3. Application dt. 24th April, 2004 from Yuvak Pratisthan.
  4. This office letter dt. 16/11/2005 calling all the applicants for hearing on a common date i.e. 22/11/2005.

- Heard:-
1. Mrs. Prerna Walimbe, Asstt. Director attended on behalf of Gram Mangal.
  2. Mrs. Ranjana Baji, Board Member attended on behalf of Sadhana Village, Pune.
  3. Shri. C. B. Thakkar, C.A. attended on behalf of Yuvak Pratisthan.

## PROCEEDINGS

(Under section 52 of the Bombay Sales Tax Act, 1959)

No. DDQ-11-2004/Adm-5/78/B-8

Mumbai, dt. 31/03/2006

DDQ-11-2002/Adm-5/83A

DDQ-11-2004/Adm-5/31

This is a set of three applications involving a common question for determination. Hence, it is decided to pass a common order determining the issue involved. The question posed for determination could be reproduced as follows :-

“Whether the applicants are carrying on the business of buying or selling goods and liable for registration under the Bombay Sales Tax Act, 1959?”

### **DETAILS SUBMITTED ALONGWITH APPLICATION**

02. The applicants have submitted the following details along with their applications :-

#### **[1] M/s. Gram Mangal :**

- Ø Rules and Regulations of the Trust
- Ø Broucher giving information about Gram Mangal
- Ø Copy of an Educational Book published by Gram Mangal
- Ø Copy of the accounts for the years 2001-2002, 2002-2003 and 2003-2004
- Ø Registration Certificate by the Charity Commissioner
- Ø Registration Certificate under The Societies Act
- Ø Registration under section 12A of the Income Tax Act, 1961
- Ø Registration under section 80G of the Income Tax Act, 1961
- Ø Photographs of the educational aids
- Ø Lists of various teaching aids
- Ø Lists of organizations to which teaching aids have been supplied

#### **[2] Sadhana Village :**

- Ø A broucher on Sadhana Village
- Ø Photographs of the inmates

- Ø Registration Certificate by Charity Commissioner
- Ø Registration under section 12A of the Income Tax Act, 1961
- Ø Registration under section 80G of the Income Tax Act, 1961
- Ø Certificate of registration under The Societies Registration Act
- Ø A copy of the letter from the Govt. of India, Ministry of Home Affairs, regarding registration under Foreign Contribution (Regulation) Act, 1976
- Ø Copy of the accounts for the years 1999-2000, 2000-2001 and 2001-2002
- Ø A copy of the Exemption Certificate under section 80G of the Income Tax Act for the period 1.4.2000 to 31.3.2003
- Ø A copy of an article from the "Pune Times of India" on Sadhana Village, Pune

**[3] Yuvak Pratisthan :**

- Ø Certificate of Registration under the Societies Act, 1860
- Ø Certificate of Registration under the Bombay Public Trust Act, 1950
- Ø Certificate of Registration by the Charity Commissioner
- Ø Memorandum of Association of Yuvak Pratisthan
- Ø Rules & Regulations of Yuvak Pratisthan
- Ø Certificate under section 80G of the Income Tax Act, 1961
- Ø List of the various activities of Yuvak Pratisthan
- Ø Report on the project "Hepatitis-B Free Mumbai"
- Ø Extract of the Limca Book of Records for the year 2001
- Ø A copy of the evaluation report from Tata Institute of Social Sciences, Mumbai on the project "Hepatitis-B Free Mumbai"
- Ø Copy of the audited financial reports for the years 2000-01, and 2001-02

**BACKGROUND OF THE CASE**

03. We could take a look at the three applicants one by one as follows :

**[1] GRAM MANGAL**

Gram Mangal is a Charitable Trust doing work in educational field and village development in the tribal area in Dahanu Taluka of Thane District. It is established in the year 1982 by the eminent social worker late (Padmashree) Smt. Anutai Wagh and educationist, Prof. Ramesh Panse. It is duly registered as a Charitable Trust under the Bombay Public Trust Act, 1950 and under the Societies Registration Act, 1860.

Gram Mangal is as much about urban child education, as about tribal and rural child education. Presently, Gram Mangal is running 14 schools (Vikas Vadis) up to 3rd Standard and around 450 students are taking education in these schools. Each of the 14 nursery schools [Vikaswadis] run by Gram Mangal is catering to children even beyond kindergarten. Gram Mangal is running one residential school upto 7th Standard at Aina (Dahanu) Project and one school upto 4th Standard at Vikramgad (Taluka Jawhar) in the tribal area.

As per the objects of the Trust, Gram Mangal has undertaken research in educational systems. Gram Mangal has developed its own system of education which is basically based on education through games, educational aids, education through nature, etc. Gram Mangal also organizes training camps for this purpose. The residential school which was started in 1999 has all local tribal population. Gram Mangal incurs all the expenses for their education, lodging and boarding. The institution offers individuals or institutions to act as foster parents of the tribal children.

Gram Mangal has developed non-formal education methodologies by carrying out extensive research and experimentation. The system is based on the concept of joyful education and interactive self-education with the help of scientifically developed educational aids such as handy materials prepared using locally available raw materials. The syllabus of Gram Mangal consists of free play, mathematics, sciences, arts and craft, physical training, and jeevan vyavahar (activities of daily life comprising of personal hygiene, keeping the neighborhood clean and house hold activities such as house-cleaning ,sweeping, stitching).Gram Mangal has also developed a program in their tribal schools to detect and encourage

Teaching with the aid of educational aids is the theme of this educational system and therefore Gram Mangal had decided to undertake production of "Educational Aids" by developing its own ideas with the help of the volunteers working for the institution. A number of educational institutions, including UNICEF, have agreed to purchase these teaching aids and therefore, a centre for production of teaching aids has been started by Gram Mangal which is referred to as a Resource-cum-Training Centre. The centre was constructed with the conscious effort that it should blend with the environment and yet provide the most appropriate means of training for the various resource persons that come to Gram Mangal in search of the best educational means for pre-school and primary school going children. The centre has carefully stored all the samples of educational aids developed at the Gram Mangal. Similarly, the work of publishing books, giving information about such teaching aids is also started by Gram Mangal.

Gram Mangal advocates and encourages the "organic farming method". Gram Mangal also sells vermiculture and organic fertilizer. For that, a portion of appropriately three acres is allotted for agriculture. The foremost consideration being, no use of chemical fertilizer or insecticides etc. in the farm. The farm produce is primarily used for consumption on the campus. Any surplus is offered first to the families of the staff and friends. The small dairy provides for the entire need of milk at Gram Mangal. From time to time, they have experiments with breeding rabbits and raising poultry.

Gram Mangal has been conducting a very detailed and intensive one year diploma for teachers along the lines suggested by Maharashtra Bal Shikshan Parishad. Traditionally, most of the teachers joining this course are girls. They undergo a very strict and useful regimen throughout the year, during which they receive training even of making the educational aids with their own hands. Thus, when they branch out, they are fully equipped to start a Balwadi or a Vikaswadi on their own. In this exercise, the senior and well trained staff of Gram Mangal support them.

Gram Mangal is a non-governmental organization and non-profit organization in Maharashtra. It does not get any aid from the Government. The basic object of the institution is to do social work and hence not to earn profits out of the sales of books and teaching aids. The funds collected from such sale are utilized for the benefits of the tribal community of Aina project. It is used for the education of the tribal youth of the Aina area. The other aim is to introduce its system of education and learning in other schools in Maharashtra.

#### **AIM AND OBJECTS OF GRAM MANGAL**

Some of the prominent objects could be reproduced thus -

- Ø to start and to undertake to run crèche, pre-primary, primary, secondary, higher secondary schools and colleges, adult education and physical education institutions.
- Ø to assist poor students by providing them with books, note books, school uniforms and scholarships etc.
- Ø to accept, as far as possible, the responsibility of looking after orphans and to start and to undertake to run children's homes, Sanskar kendras, hostels and crèche for them.
- Ø to start libraries, to organize seminars, lectures and discussions and camps and to co-operate and participate in similar programmes arranged by others and also to publish necessary literature, with a view to take knowledge and education to the door steps of the lowest strata of the society.
- Ø to undertake research projects pertaining to educational, social, economic and other fields.
- Ø to start educational courses in various branches like tailoring, needle-work, handicrafts, home science, vocational and medicines so as to train the villagers and to launch such projects as would absorb persons so trained.
- Ø to start and to undertake to run health centers, dispensaries, hospitals, to organize health-education camps and to make available medicines, ambulances etc. to the rural population.
- Ø to launch social welfare programmes with the help of the social welfare and other departments of the State Govt. and others.
- Ø to organize camps and to create opportunities of rural social service for the student population in the urban areas.
- Ø to raise funds through contribution, donations, deposits, mortgage loans or other means and to expand the same in fulfilling the aims and objectives of the organization and in giving assistance either in cash or in kind to affiliated bodies or like-minded organizations.
- Ø to endeavour for economic, social, cultural and physical development of the rural and Adivasi population irrespective

## TEACHING AIDS AT GRAM MANGAL

Gram Mangal has submitted a list of about 40 organizations/schools to which the teaching aids have been supplied. The various teaching aids used to teach could be summarized as follows :-

- (a) **Matching Sets** - to be able to find the similarity and difference and to find pairs.
- (b) **Domino** – to be able to find pairs and know new concept.
- (c) **Matching Pair**
- (d) **Sight Reading**– to be able to recognise the word by its formation.
- (e) **Odd One Out** – to be able to recognise a group and the odd one in the group, or one having different attribute than the rest.
- (f) **Auditory Discrimination** – to develop the auditory skills, to remember what has been heard in the correct order from left to right.
- (g) **Pre-Writing Skills**– to develop fine motor skills and develop the eye-hand co-ordination.
- (h) **Vocabulary Building** – to be able to find and read words.
- (i) **Mathematic - Classification**- to be able to classify using one to four attributes.
- (j) Classification, One to One Correspondence, Seriation, Number concept, Puzzles, Matching Sets, Sorting Cards, Number Circles, Primary Operations by Pictures, Multiplication Strips, Fraction Set.

## [2] SADHANA VILLAGE

The Sadhana Village, Pune is a Charitable Trust working for the mentally challenged adults and rural poor. It runs a residential rehabilitation centre for mentally challenged adults. It conducts programs for the upliftment of the rural poor people. The essence of the Sadhana Village is community based rehabilitation. Thus, the infrastructure of Sadhana village consists of houses, a community hall, a craft shop and a health centre. There is a trained house parents at the head of each house. The daily routine includes prayer, breakfast, exercise and workshop activities. The inmates are taught gardening, house keeping and working in the craft shop. These craft shops impart skills such as embroidery, knitting and candle making. Other vocational activities such as exquisitely brocaded shawls, well knit sweaters and daintily embroidered handkerchiefs and towels also are taught to be made.

There are more than 3300 rural families living in 18 – 19 communities. The co-workers and technical supporters of Sadhana Village sit with the families, assess their needs and then initiate projects to address some of these needs.

Water conservation dams have been constructed and 5 irrigation schemes have been implemented. In the near future, the Sadhana Village is also planning to start a rice processing unit.

About 140 families have been assisted with loans to buy milk animals and now milk marketing is also planned for them. Family toilets have been constructed in about nine communities. More than 500 women have been trained to manage and handle small businesses and other self-help activities.

The village tries to raise its own resources to run the rehabilitation centre by starting workshops like candle making, knitting and embroidery. The special friends gel well with the rural families inhabiting the valley. Sadhana Village has been active in mutual help programmes with the rural families. The needs of the rural families have been identified and programs have been planned to meet the same. Domestic as well as overseas financial support has been given by various institutions and individuals. The Rotary International, New York, has approved a proposal to assist Sadhana Village by providing, among other things, machinery and equipments for setting up a Rice Mill, Chilling plant and equipment for the Milk Collection scheme, equipment for the Health Centre, a new house and a craft shop.

Sadhana Village does not receive government grants and has to depend entirely on the support of institutions and individual donors and parents of the Special Friends.

## **AIMS AND OBJECTS OF SADHANA VILLAGE**

### **[A]**

- Ø To educate people about their condition in health, social, economic and educational spheres and help them to improve their condition.
- Ø To train in an effective manner, persons with mental/physical handicaps to become useful members of the community.
- Ø To train the poor and the needy, especially women, in becoming self-reliant in all respects.

### **[B]** To achieve the above objectives the Society may undertake any or all of the following activities :

- Ø To train the rural people in economic, educational and health activities.
- Ø To give medical and economic assistance to children and poor families.
- Ø To establish and maintain training and work-experience centres and institutions.
- Ø Organize seminars, workshops, meetings, tours for the benefit of the community.
- Ø To do everything necessary for the comprehensive development of the people in need.

## **[3] YUVAK PRATISTHAN**

Yuvak Pratisthan is a charitable Society registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act. It was established on the 30th July, 1980. It is also registered as a Charitable Trust under Section 12A and 80G of the Income Tax Act, 1961.

The main objects of the Pratisthan are advancement of social and educational activities and medical relief. The Pratisthan has undertaken various social projects in fulfillment of their main charitable objects. As a part of its various charitable activities, the Pratisthan had undertaken a unique health awareness project of "Hepatitis-B Free Mumbai" to control and prevent the Hepatitis-B (HB) Virus. The campaign was carried out with the help of a large number of volunteers including doctors and various other community based organizations. The efforts of the Pratisthan have been well acknowledged in the Limca Book of Records-2001 as well as in an Evaluation Report of this project by the Tata Institute of Social Sciences, Mumbai. As a part of the above project, the Hepatitis-B vaccines were administered to the children through mass vaccination and immunization camps at a normal contribution of Rs. 25/- against the market rate of over Rs. 300/-. The Pratisthan provided free vaccination to orphan and destitute children. Over 10 lakh children received benefit from the Project.

## **AIMS AND OBJECTS OF YUVAK PRATISTHAN**

The objects for which the society is established are :

- 1) To establish, manage, run or assist in establishing management or running bal mandirs, nurseries, kindergartens, schools, colleges, libraries, book banks, reading rooms and other educational institutions and for that purpose to give grants, donations, subscriptions, gifts or other monetary aid or to create endowments.
- 2) To give scholarships, stipends, or any other monetary assistance to persons for pursuance of their academic career.
- 3) To publish and aid the publication of books, magazines, newspapers and other literature of public importance on economic, social science, public policy and cultural matters.
- 4) To organize lectures, symposia, debates, conferences on matters of public importance and create consciousness among the youth to serve the people by constructive and charitable activities.
- 5) To establish, manage, run or assist in establishing, managing or running nursing homes, maternity homes, clinics, ambulances, diagnostic centres, dispensaries, hospitals or any other institutions providing medical aid and assistance and for that purpose to give donations, subscriptions, gifts or other monetary aid or create endowments.
- 6) To provide aid and assistance, monetary or otherwise to the sick and ailing.
- 7) To establish, manage, run or assist in establishing, managing or running hostels, youth centres, community centres, dharmashalas, sanitariums, health resorts, relaxation and resting centres and gymnasiums.
- 8) To provide aid and assistance to deserving authors, journalists, artists, sportsmen and social workers or their institutions and

9) To support any charitable cause.

10) To take over the management of any other society with objects wholly or partly similar to those of the society.

11) To engage in activities for alleviation or distress or to provide aid and assistance for alleviation of distress.

12) To provide aids and assistance to the workers dedicated to Yuvak Pratisthan.

## **LIST OF VARIOUS ACTIVITIES OF YUVAK PRATISTHAN**

The activities include organizing projects such as Hepatitis-B – Free Mumbai Project, Aids Free Mumbai Project and T.B. Free Mumbai Project. The project Balika Palak Yojana was undertaken to provide life support to the orphan girls. Free medical check-up camps were conducted for women and children living in slums and backward areas. The Apna Shauchalaya project was undertaken for construction and day to day maintenance of toilets for people living in slums and huts. Eye check-up and blood donation camps were organized all over Mumbai. Various programmes were organized for distribution of books, scholarships, uniforms and fees to the needy school going children. The Pratisthan has also established a gymnasium and the maintenance of the same is also looked after by the Pratisthan. A sports meet was also organized as a mark of fulfillment of their prime object of promotion of Indian sport and sportsmen. Under the operation Highway Greenway project, plantations have been laid on the middle stretch of the eastern express highway from Ghatkopar to Mulund.

## **CONTENTION AND HEARING**

**04.** The issue involved being common, all the applicants were called for hearing on the same day, i.e., 22-11-2005. The contentions and hearing of each of the three applicants could be seen thus :

### **[1] GRAM MANGAL**

Gram Mangal is a charitable trust. It is the contention of the applicant that since the trust is an educational institution carrying on the activity of manufacturing, buying, selling and supplying educational books and educational aids in performance of functions for achieving the Trust's objects, it shall not be deemed to a 'dealer' within the meaning of the Exception-II to the clause 11 of section 2 of the Bombay Sales Tax Act, 1959. The trust also submits that the books and teaching aids shall be covered by entry 3 of the schedule 'A' of the Bombay Sales Tax Act, 1959.

Mrs. Perna Walimbe, Asstt. Director attended on behalf of the applicant. It is the contention of the applicant that Grammangal is a non governmental organization working for education of the tribal area. It receives no government aids. The applicant organizes sale of various teaching/educational aids which are prepared by the tribal children. The funds obtained from such sales are utilized in supporting the children in these tribal areas. There is no formal training centre. Grammangal runs schools at the primary and secondary levels.

She also stated that the trust is running 14 schools. The educational aids prepared by the tribal children are used to teach the tribal children in the schools. They are also sold to other Schools with a view to promote the unique teaching method of Grammangal.

In view of the above position, the applicant feels that they are covered by the Exception-II to the definition of dealer and hence not liable for registration. In the alternative, it is prayed by the applicant that if it is held otherwise, the determination order be given prospective effect.

### **[2] SADHANA VILLAGE**

The Sadhana Village is a registered charitable trust working for the mentally retarded child, adult and rural poor. It is the contention of the applicant that they are not a dealer as they do not carry on any business. The funds raised through the various activities such as candle making, knitting and embroidery are used to support the mentally retarded persons and run the rehabilitation centre only.

Mrs. Ranjana Baji, Board Member attended on behalf of the applicant. She stated that the trust runs the house for the mentally retarded persons. Their activity is not of a business nature and hence the applicant cannot be termed as a dealer. The sale of candles and diya undertaken by the applicant is not a regular feature of the Sadhana Village. The village has adopted about 24 adults. Hence, it is the request of the applicant that the village should not be treated as a dealer.

In the alternative, it is prayed that if it is held otherwise, the determination order may be given prospective effect.

## [C] YUVAK PRATISTHAN

Yuvak Pratisthan is a charitable society duly registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act. The object of the Pratisthan is the advancement of social and educational activities and medical relief. Under the Hepatitis-B Free Mumbai Project, mass vaccination and immunization camps were organized by the Pratisthan at a normal contribution of Rs. 25/- against the market rate of over Rs. 300/-. The trust buys the injections for administering to the children/public by arranging camps. The nominal charges of Rs.25/- are the fees for participating in the camp. Alternatively it is contended that there is no sale of injections as the injections are not sold to participants but are administered to them by doctors. This activity was not a business and hence their activities are not liable to any tax. The activities are of a service nature. The applicant is of the opinion that it is a settled legal position that, if the trust is carrying out activities for the advancement of its charitable objects, it is not liable to tax as a dealer.

Shri C. B. Thakkar, C.A. attended on behalf of the applicant. The facts as mentioned in the application were reiterated. The activities of the applicant are not of a commercial nature but they are of the nature of rendering services. Hence, the applicant cannot be considered as a dealer.

In the alternative, the applicant has submitted that, if at all the applicant is held to be a dealer, the determination order be given a prospective effect because he has not collected any taxes nor considered its impact while collecting the nominal charge of Rs. 25/- which is an entry fee to participate in the camp.

## OBSERVATIONS

05. I have carefully gone through all the details. Let me proceed to assess each of the claims made before me in support of the contention of “not being a dealer”.

All the three applicants have posed an identical question of “**whether they are dealers carrying on the business of buying or selling any goods and liable for registration under the Bombay Sales Tax Act, 1959.**”

I proceed to assess each of the three in the order as follows :-

## [1] GRAM MANGAL

Gram Mangal is a non governmental organization. It is duly registered as a charitable Trust under the Bombay Public Trust Act, 1950 and under the Societies Registration Act, 1860.

The objective of the organization is to start and to undertake to run crèche, pre-primary, primary, secondary, higher secondary schools and colleges, adult education and physical education institutions. In addition to their main focus of bringing quality elementary education to the doorsteps of the tribal and rural children, they have committed themselves to revolutionizing the childhood education system itself, in rural and urban areas alike. They have developed a non-formal child education system that is consistent with methodologies designed by child education experts, worldwide, and that, at the same time, keeps children in close touch with our community, society and environment.

Gram Mangal receives no grants from the Government. All its activities are supported by individual/institutional donations and income generated by the training programs and other educational products. Funds are raised through the sales of products as follows :-

- 1) organic manure produced at Gram Mangal farm ;
- 2) authentic Warli paintings created by the student or teachers ;
- 3) literature concerning child education ;
- 4) educational Aids ;
- 5) milk ;

A look at a few items from the Income & Expenditure Accounts reveals income and expenses as follows :-

INCOME / YEAR	2001-02	2002-03	2003-04
Donation	638629.00	667831.00	598617.00
Donation from Trust	66170.00	-	519729.00
Training Fees	136950.00	417916.00	518550.00
Hostel Fees	-	7200.00	-
Prashikshan Fees	-	-	-
School Fees	69465.00	70520.00	100850.00
Dattak Palak Yojana	270700.00	274582.00	294758.00
Sale of Books *	479964.00	40030.00	23734.00
Sale of Milk *	37203.75	32531.50	7066.50
Sale of educational aids *	-	31293.00	463534.00

EXPENDITURE /YEAR	2001-02	2002-03	2003-04
On printing of books	-	-	-
<u>On objects of Trust</u>			
Educational	979910.60	1506745.70	2218469.40
Medical	-	-	-
Expenditure on Educational Aids	-	79401.50	459135.05

A look at the table on Income shows that the income of Gram Mangal is from donations, school training fees and sale of products only. A look at the table on expenditure shows that the income earned is channelised towards achievement of the objectives/aims of the Trust only and for no other purpose. Thus it can be clearly seen that there is no trace of a business or a commercial motive in any of the activities.

In the year 2003-04, the total income of the trust as per the Income & Expenditure Account was approximately Rs. 32.23 lakh out of which the proceeds from the sale of products is merely Rs. 4.94 lakh.

From these figures, no independent intention of carrying the business activity is seen either in the main activity of educating the rural poor or in the incidental activity of sale of educational aids. Therefore, the ratio of the Supreme Court judgment in the case of M/s. Sai Publication 126 STC 288 becomes fully applicable. Let me reproduce a few observations from the said judgment -

[1] **Commissioner of Sales Tax V/s. M/s. Sai Publication Fund [In the Supreme Court of India, 126 STC 288]:** In this case, the appellant had created a trust. The object of this trust was to spread the messages of Sai Baba of Shirdi. In order to achieve this aim, the trust undertook to publish books, booklets and allied publications. It also undertook the sale of pamphlets, photos, stickers etc., in connection with Sai Baba's messages. All this was sold at a nominal charge to meet the cost. It was held by the Supreme Court that the Trust is not a dealer and is not liable to sales tax. The following observations of the Supreme Court could be reproduced-

- 1) That a person would not be a dealer under section 2(11) in respect of the goods sold or purchased by him unless he carried on the business of buying and selling of such goods.
- 2) That under section 3 the liability to pay sales tax was only on dealers.
- 3) That on a combined reading of sections 3, 2(5-A) and 2(11), the tax under the Act was leviable on the sales or purchases of goods by a dealer and not every person.



containing the message of Sai Baba were distributed by the trust to devotees at cost price, the primary object of the trust was to spread the message of Sai Baba and its main activity did not amount to business. The activity of publishing and selling books and literature was incidental or ancillary to the main activity of spreading the message of Sai Baba and not any business as such. The trust was not established with an intention of carrying on business of selling or supplying goods. The trust did not carry on the business of selling and supplying goods so as to fall within the meaning of dealer under section 2(11).

- 5) The question of profit motive or no profit motive is relevant only where the person carries on a trade, commerce, manufacture or adventure in the nature of trade, commerce, etc.
- 6) Under section 2(5A), if the main activity is not business then, any transaction incidental or ancillary would not normally amount to business unless an independent intention to carry on business in the incidental or ancillary activity is established. The inclusion of incidental or ancillary activity in the definition of business contained in section 2(11) presupposes the existence of trade, commerce, etc.
- 7) The definition of dealer in section 2(11) clearly indicates that in order to hold a person to be a dealer, he must "carry on business" and then only he may also be deemed to be carrying on business in respect of transactions incidental and ancillary thereto.

The activities of the applicant can be easily understood as not being of a business nature. They are in keeping with their aims and objects. The incidental activities of sale of educational/teaching aids are not carried with a view to earn profit but they are an extension of their prime objective of work in the educational field.

## **[2] SADHANA VILLAGE, PUNE**

The Sadhana Village, Pune is a charitable Trust working for the mentally challenged adults and rural poor. A look at the aims and objects and the activities of the Trust confirms that the activities of the Trust are truly in performance of their objects i.e.

- a) To educate people.
- b) To train persons with physical/mental handicap.
- c) To train the poor and the needy.

They are raising their own resources to bring into actual their objectives by starting workshops like candle making, knitting and embroidery. The funds earned from these activities are utilized for the achievement of the objectives only. We could take a look at the Income & Expenditure Account of the Sadhana Village :

[ A ] Other Income :			
Rent	-	-	-
Interest	54000.00	28290.00	104231.00
Dividend	-	-	-
Grants	-	-	-
Donations in cash or kind	41842.00	7212.00	15654.00
B] Income from other sources:			
Expenses sharing fees	284255.00	344640.00	384200.00
Annual Membership fees	200.00	200.00	180.00
Misc. Receipts and others	6530.00	17400.00	17611.35
[C] Workshop Receipts :			
Candle	-	4586.00	39274.00
Knitting & Embroidery	-	450.00	-
Paper Bags	-	564.00	880.00
Cloth Bags	-	-	9024.00
Craft Shop	-	-	48838.00

Expenditure on objects of the trust :			
A] Religious, Educational and Social Developments	385047.80	363513.05	547878.47
B] Medical Relief, Relief of poverty	-	-	-
C] Other charitable objects	-	-	-
Household expenses	101947.05	66975.90	79932.52
Medical Expenses	34248.55	12375.05	2045.95
Donation for Gujarat Earthquake Relief Fund	-	-	1001.00
Donation for Kargil Fund	3464.00	-	-
Other donations	-	-	1000.00
Expenses for Yojana Mashroom	9228.15	-	-
Honorarium to Bachat Gat Leaders	4320.00	4560.00	4260.00
Honorarium	-	1200.00	28000.00
Hospitality Exp.	3432.00	2312.00	1532.00
Rural Development Exp.	8459.10	5325.35	-
MKS Benefit Exp.	4000.00	17527.00	56075.00
Workshop Exp.	1766.00	-	-
Farming Exp.	-	18460.00	20339.00
Candle workshop Exp.	-	3657.00	45366.75
Knitting & Embroidery Workshop Exp.	-	126.00	-
Paper Bags workshop Exp.	-	1998.00	408.00
Weaving workshop Exp.	-	396.00	-
Workshop Training Exp.	-	1858.00	-
Cloth workshop Exp.	-	-	8512.00
Craft workshop Exp.	-	-	51559.50
Health Center Exp.	-	-	50015.50

A look at the above tables on Income & Expenditure of the Trust confirms the applicant's claim that any income earned is channelised towards achievement of the objectives/aims of the Trust only. There is not much difference between the income earned from the products and the expenses involved in making the products. This could be very well seen from the figures for the year 2001-2002 relating to :

A] Candle workshop	39274.00	45366.75
B]Paper Bag workshop	880.00	408.00
C] Cloth Bags	9024.00	8512.00

Thus sometimes the expenses incurred are more than the revenue earned as in the above Table at A [figures for the year 2001-02 pertaining to Candle workshop- Income and Expenses].

In the year 2000-01, the total income of the trust as per the Income & Expenditure Account was approximately Rs. 5.91 lakh out of which the proceeds from the sale of products is merely Rs. 0.056 lakh. For the year 2001-02, the total income was approximately Rs.10.67 lakh out of which the proceeds from the sale of products is merely Rs. 0.98 lakh. From these figures, no independent intention of carrying the business activity is seen.

I have already discussed the case of M/s. Sai Publication. There is no intention to carry on any business in the main activity of educating and training persons with physical/mental handicap as well as in the incidental activities of candle making, knitting and embroidery. Therefore, the ratio of the Supreme Court judgment in the case of M/s. Sai Publication 126 STC 288 becomes fully applicable.

A sincere effort of the Trust is seen from the figures in the Income & Expenditure Accounts for the years reproduced above to raise their own resources, even though the ventures may result in losses. The workshops serve dual purposes. One of them being, to raise own resources to run the rehabilitation centre. The second, being to provide gainful employment to the needy and poor youth and women in the surrounding areas.

Hence, I am of the opinion that the Sadhana Village cannot be held to be a dealer qua its activities of candle making, knitting and embroidery.

### [3] YUVAK PRATISTHAN

The Yuvak Pratisthan is a charitable society registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act. The main object of the Pratisthan is the advancement of social and educational activities and medical relief. A look at the list of the various projects undertaken by the Pratisthan in fulfillment of their charitable objects confirms the applicant's contention that they are not carrying on business.

The Yuvak Pratisthan is not organizing camps with a view to make profits. This can be confirmed from the "Hepatitis-B Free Mumbai" project under which the Hepatitis 'B' Vaccine was administered at a nominal charge of Rs. 25/- as against the market rate of Rs. 300/- to Rs. 700/-. The financial details about one phase of this project could be reproduced as follows :-

#### **COST PER DOSE**

Cost of vaccine (after deducting concession, Direct Donation)	Rs. 28/-
Cost of Disposable syringe.	Rs. 3/-
Cost of arrangement of camps, literature, forms, awareness campaigns, wastages, pilferage and also free-doses.	Rs. 4/-
Total cost per Vaccine/Dose	Rs. 35/-
Less : Donations secured/Arranged through Organisers and local Doctors.	Rs. 4/-
Donations arranged directly by Yuvak Pratisthan through small and other donors.	Rs. 2/-
Contribution by Beneficiary.	Rs. 2/-
Total	Rs. 31/-
Net Deficit per dose of one phase (Rs.35 – Rs. 31)	Rs. 4/-

The figures from the Income & Expenditure Account give a fair idea of the activities at the Trust. It can be seen that all donations earned are channelised towards the fulfillment of the aims/objects of the Trust only. The trust is not engaged in the sale of medicines, but the charges of Rs. 25/- are towards the fees for participating in the camp and there is no element of sale in it. There is no sale of chattel or goods of any kind. The activities are not of a commercial/business nature. There is no sale of dosages/injections but the same are administered by doctors on

Herein I would take a look at the definitions of dealer and business under the Bombay Sales Tax Act, 1959

**Dealer :** Section 2(11) of the Bombay Sales Tax Act,1959 defines a dealer as a ‘dealer’ means “*any person who whether for commission, remuneration or otherwise carries on 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.*”

**Business :** Section 2(5A) of the Bombay Sales Tax Act,1959 defines business as “*business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern; and any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;*

What gathers from the above two definitions is that a dealer should carry on business of buying or selling goods and a business includes any trade, commerce, manufacture or any adventure or concern carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern.

In the context of the present case, we can very well see that -

- a) There is no transaction of any sale.
- b) The amount of Rs. 25/- is not the sale price but it is a fee to participate in the camp organized by the applicant wherein the dosages are administered by qualified doctors.
- c) The applicant does not come under the coverage of both the definitions due to the fact that they do not carry on any business of buying or selling goods.

Also the following observation from M/s. Sai Publication, becomes applicable-

“The main activity is not business, any transaction incidental or ancillary would not normally amount to business unless an independent intention to carry on business in the incidental or ancillary activity is established.

Thus, the applicant cannot be held to be a dealer for the purposes of the Bombay Sales Tax Act, 1959.

## **CONCLUSIONS :**

**08.** The applicants cannot be held to be dealers for the purposes of the Bombay Sales Tax Act, 1959. They do not carry on any business. Their activities of sale and purchase of goods are purely of a service nature with a view to attaining their charitable objectives.

In view of the deliberations put forth hereinabove, I proceed to pass an order as follows :-

## **ORDER**

(Under section 52 of the Bombay Sales Tax Act, 1959)

No.DDQ-11-2004/Adm-5/78/B-08

Mumbai,dt. 31.03.2006

DDQ-11-2002/Adm-5/83A

DDQ-11-2004/Adm-5/31

This set of three applications posing an identical question for determination is answered as follows :-

buying, selling and supplying educational books and educational aids in performance of the trust's functions for achieving the objects" is hereby answered in the negative. The Trust is undertaking the sale of educational aids, books in performance of its objects. Hence, the applicant is not a dealer for the purposes of the Bombay Sales Tax Act, 1959.

**B) M/s. Sadhana Village, Pune :** The question posed for determination as regards "whether we are dealer carrying on the business of buying or selling any goods liable for registration under the Bombay Sales Tax Act,1959" is hereby answered in the negative. The Trust is carrying on the activities of sale of candles, handicrafts, etc. with a view to raise their own resources to run the rehabilitation centre. Hence, the applicant is not a dealer for the purposes of the Bombay Sales Tax Act, 1959.

**C) M/s. Yuvak Pratisthan :** The question posed for determination as to "whether the Trust is a dealer carrying on the activities of purchasing and administering vaccines which are in performance of its objects" is hereby answered in the negative. The Trust is not carrying the activity of sale of goods. Hence, the Trust is not a dealer for the purposes of the Bombay Sales Tax Act, 1959.

**(B. C. KHATUA)**

**Commissioner of Sales Tax,**

**Maharashtra State, Mumbai.**

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