Read: Application for determination of disputed question under section 56 of the MVAT Act, 2002 by M/s. Seva Sadan Society.

Heard: Shri Deepak Thakkar, C.A. & Smt. Khurshed Pavri, Secretary.

PROCEEDINGS

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

No.DDQ/11-2006/Adm.3/66/B- 1 Mumbai, dt.09.03.2009

The applicant M/s. Seva Sadan Society has filed an application under Section 56 of the MVAT Act, 2002 for determination of disputed question. The question posed for determination is reproduced hereasunder:

Whether the applicant is an Educational Institution as defined under the term 'dealer' u/s 2 (8) of the Maharashtra Value Added Tax Act 2002 and not liable to pay tax on supply of food ,drinks and other articles which is in the performance of its functions for achieving its objects as an Educational Institution ?

02. FACTS OF THE CASE:

- ———The society was formed in the year 1908 with the objective of providing education and shelter to under—privileged women and girls without any distinction of caste, creeds and religion.
- The society is registered as a Public Trust under the Bombay Public Trust Act, 1950 as per certificate dt.21.5.1953.
- The society runs school and colleges as under.

  i) Girls High School permitted by certificate dt.12.7.1960.

  ii) Primary School of BMC, permitted by certificate dt.18.1.1986.

  iii) Ramabai Navrange Junior College of Education for Women which is ~~are~~ recognised under the National Council for Teacher Education Act, permitted by certificate dt.22.4.1998 for D.Eed Course.

  iv) The society runs a Aashram for the destitute and the needy girls and women.

The criteria for selection of girls and women is as under:

- An orphan child having single parent.
- Is from an economically backward family.
- Has an abused mother or drunk~~en~~ard father.

- Is an abused child.
- Is above eight years of age and school going.
- Is of average intelligence.
- Has good health and no contagious disease.

It is stated that, in order to carry out the objects the Seva Sadan Society carries out the following activities:

- ❖ A pre-primary school run by the society entirely.
- ❖ A primary school for the students of Junior Kg. to Std.IV
- ❖ The school is run with financial aid from the BMC and by the donations.
- ❖ The society also runs a Primary Teachers Training College for needy women and also inmates of the Aashram. It is informed by the applicant that the training college is recognised by the Government of Maharashtra.
- ❖ In addition to the above, the Seva Sadan Society also runs computer classes, judo classes, speech and drama colleges or a drama classes, sewing and embroidery classes for needy women.
- ❖ The Seva Sadan Society runs cooking department and food outlets where the inmates under-go training for cooking. The inmates and needy women helping in the cooking department are paid stipend to meet~~need~~ their expenses etc.
- ❖ The inmates consume~~d~~ the food so cooked and the surplus food is sold from the outlets at nominal rates.

It is contended that all the activities of the Seva Sadan Society are in the performance of its functions for achieving its objects. The activity of cooking food, preparing snacks and serving the same are towards fulfillment of its primary object of providing education, training and upliftment of women and girls coming from underprivileged class, who are destitute and/or from poor families. It is stated that ~~T~~the ~~s~~Seva Sadan Society is primarily an Educational Institution which is recognized by the Education Board of Maharashtra State.

The applicant has stated that the term 'Dealer' is defined u/s.2(8) such that any person who carries on business of buying or selling goods is liable for Registration and Tax. It includes certain specified entities as deemed dealers by way of an Explanation under the said definition. It includes the Public Charitable Trust. However, an

agriculturist, an educational institution and a transporter are excluded from the definition of dealer by way of Exception under the said definition of dealer.

Exception II is reproduced hereunder:

"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 within the meaning of this clause."

It is argued that Seva Sadan Society ~~(SEVA SADAN SOCIETY)~~, the applicant is an Educational Institution which fulfills the requirements of above exception II, and hence, it is not a dealer under the MVAT Act and not liable for registration and tax there-under. The said Society is running the school, training classes and carrying on other activities in the performance of its functions to achieve its objects of educating the underprivileged the girls and women in order to make them self-reliant in life.

The applicant has submitted the following documents:

1. The brochure of Seva Sadan Society which briefly narrates the educational activities.
2. The photographs of the society, school children and cooking department of Seva Sadan Society.
3. Income Tax Exemption Certificate u/s.80G renewed further upto 31.3.2010.
4. Annual Report and Financial Statements for year ended on 31.3.2007 and 31.3.2008.
5. The data chart of fees received and receipts from cooking from 1.4.2005 to 31.3.2008 which is reproduced below~~.~~:

Sr. No.	*Nature of Receipt*	*Year ending on 31.3.08 Rs.*	*% to total receipt*	*Year ending on 31.3.07 Rs.*	*% to total receipt*	*Year ending on 31.3.06 Rs.*	*% to total receipt*
1.	High School grant, fees, Scholarship & interest	43,83,899	25%	39,58,408	24%	40,96,824	25%
2.	Primary School grant, fees, Scholarship & interest	14,50,022	8%	16,30,571	10%	15,91,483	10%
3.	Training College grant, fees, Scholarship & interest	46,79,238	27%	42,79,284	26%	41,88,830	25%

4.	Pre-primary School grant, fees, Scholarship & interest	1,15,732	1%	1,33,955	1%	1,16,935	1%
5.	Fees for Vocational Classes	1,52,650	1%	86,800	1%	1,02,800	1%
6.	Home for Girls & Women-fees, Donation & Scholarship	23,82,372	14%	18,97,127	12%	17,98,556	11%
7.	Women's Self Sufficiency Scheme Canteen (Aahar) Receipt	9,96,804	6%	8,68,794	5%	7,62,861	4%
8.	Women's Self Sufficiency Scheme- Cooking (Tiffin) Receipt	5,93,807	3%	4,72,384	3%	5,26,981	3%
9.	Women's Self Sufficiency Scheme-By the way-food & Non Alcoholic Drinks receipts	26,43,250	15%	30,17,852	18%	18,78,201	11%
10.	Total receipts	17397774	100%	16345175	100%	16559588	100%
11.	Net Surplus/(Deficit) from School, College etc.	28,22,116		7,48,947	84%	10,74,353	
12.	Net Surplus/(Deficit) from food supply.	(3,45,028)	(loss)	1,41,274	16%	(6,89,561)	(Loss)
13.	Total Surplus or (Deficit)	24,77,088		8,90,221	100%	3,84,792	

It is stated that from the data chart it is evident that the receipts from education fees and grants are more than 75% of the Total Receipts and, ~~F~~ from the

cooking activity, generally there is ~~N~~net ~~D~~deficit. The ultimate ~~N~~net ~~S~~surplus is on account of receipts by way of donations, fund raising programs, classroom hire charges, hall rent, scholarships and interest on investments.

They have referred to the DDQ orders in case of NAB workshop for the Blind, DDQ No.10/2005/Adm-5/89/B-2 dt.13.3.2006 (33 MTJ 27) and M.N. Banajee Industrial Home for the Blind, DDQ No.11/2005/Adm-5/82/B-1 dt.2.6.2006 (34 MTJ 63), ~~copy enclosed~~ under which it was held that they are an educational institutions, and hence, excluded from the definition of the term dealer by virtue of Exception II to Section 2(8) of MVAT Act. As per the said orders, the Educational Institution that would be excluded from the purview of the definition of dealer are those institutions which satisfy all the following five criteria namely:

- Recognised as an Educational Institution by an University or the UGC, or as the case may be, by a Technical or Educational Board;
- Have prescribed Courses or syllabus for the alumni;
- Has a teaching staff which is on the pay-roll of the college or institution.
- Issue certificates to its alumni; and
- Conducts tests/exams as per prescribed rules.

It is pointed out that in case of NAB Workshop, there were receipts towards lease rental for hoardings, which is not there in case of Seva sadan Society. It is argued that Seva Sadan Society is recognized by the Educational Board of Maharashtra, having prescribed syllabus, teaching staff, conducting exams as per prescribed Rules and issuing certificates to its alumni. It also conducts certain other courses like computer course, sewing course, embroidery course, etc. to provide vocational training to girls and women, to whom even the certificates are issued~~. copy enclosed~~. The cooking activity is carried on by inmates of Seva Sadan Society which is in the nature of giving training/education to girls and women inmates. The applicant has informed that there may be some receipts, on account of supply of some products which are the result of training imparted to inmates. Thus, the receipts are from the activities of Seva Sadan Society which are in the performance of functions for achieving the primary object of educating underprivileged girls and women inmates so that they can be made self-reliant in life. It is informed that all the activities of Seva Sadan Society were referred to, by the Maharashtra Sales Tax Tribunal in case of Seva Sadan Society in appeal No.102 of 2002

dt.14.1.2005, wherein such activities were observed and accepted as being carried on in the performance of its functions for achieving its objects, namely, education to women.

It was informed that Seva Sadan Society had applied for DDQ on 23.8.2006 and was heard by the earlier Commissioner of Sales Rax on 10.4.2007 but the order was not passed.

It is stated that if the contention and the plea are not accepted, for whatever reasons, then the order shall be given prospective effect from the date of receipt of DDQ order, as provided ~~U~~u/s. 56(2), so that the society is not saddled with unforeseen liability for past period. It is informed that Seva Sadan Society is not collecting any VAT as there was a decision on 14.1.2005 from MSTT in their own case. It is argued that the DDQ orders in case of NAB & M.N. Banajee, on the similar issue are in favour of Seva Sadan Society. It is stated that there is Statutory misguidance by virtue of which prospective effect is deserved in this case. In support of the said request and contention for prospective effect, they have referred to the DDQ orders in case of Ramakrishna Math, DDQ No.11/2005/Adm-5/53/54/B-2 dt.20.1.2006 (33 MTJ 143) & Bombay Natural History Society DDQ No.10/2005/Adm-5/116/B-1 dt.7.3.2006 (52 STR 189, Mar.06)

The applicant has also given the details of nature of Receipts as per the Audited Accounts for last 3 years ended on 31.3.2008, 2007, 2006, from its Educational Activities which is already reproduced elsewhere in the order. It is stated that from the data chart it is evident that the receipts from education fees and grants are more than 75% of the Total Receipts and~~. F~~ from the cooking activity, generally there is ~~N~~net ~~D~~deficit. The ultimate ~~N~~net ~~S~~surplus is on account of receipts by way of donations, fund raising programs, classroom hire charges, hall rent, scholarships and interest on investments.

~~Sr. No.~~	~~Nature of Receipt~~	~~Year ending on 31.3.08 Rs.~~	~~% to total receipt~~	~~Year ending on 31.3.07 Rs.~~	~~% to total receipt~~	~~Year ending on 31.3.06 Rs.~~	~~% to total receipt~~
~~1.~~	~~High School grant, fees, Scholarship & interest~~	~~43,83,899~~	~~25%~~	~~39,58,408~~	~~24%~~	~~40,96,824~~	~~25%~~
~~2.~~	~~Primary School grant, fees,~~	~~14,50,022~~	~~8%~~	~~16,30,571~~	~~10%~~	~~15,91,483~~	~~10%~~

	Scholarship & interest						
3.	Training College grant, fees, Scholarship & interest	46,79,238	27%	42,79,284	26%	41,88,830	25%
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9.	Women's Self Sufficiency Scheme By the way food & Non Alcoholic Drinks receipts	26,43,250	15%	30,17,852	18%	18,78,201	11%

03. HEARING

The case was fixed for hearing on 7.10.2008. Shri Deepak Thakkar, CA attended on behalf of the applicant. He stated that, they had applied for determination in the year 2006 and first hearing took place in 2007. After the hearing, certain information was asked from them which they have submitted in time. He stated that Seva Sadan Society is a hundred years old trust set up for girls and underprivileged women. The Society runs an orphanage and schools. He referred to the decision of the Tribunal in their case (S.A. No.102 of 2002 dt.14.1.2005) in which the Tribunal reversed the decision of the

Commissioner and held that Seva Sadan Society is not a dealer. He further informed that the society provides tiffin services and food outlets. But the primary objective is to train women in cooking and make them self reliant. He informed that the school and pre-primary school, High School and Teachers School ~~which~~ is for the inmates as well as for underprivileged students. He further informed that the purpose of running the food canteen is not commercial in nature and the surplus is mainly because of the donations. He referred to the determination order passed by the Commissioner in the case of National Association for the Blind (Workshop for the Blind) DDQ-10/2005/Adm-5/89/B-2, dt.13.3.2006 and determination order in the case of M. N. Banaji Institute for the Blind, DDQ-11/2005/Adm-5/82/B-1 dt.2.6.2006 in which it was held by the Commissioner that the institutes are not dealer. In one of the determination orders in the case of NAB, it earned money on selling of hoardings and activity which is not conducted by Seva Sadan. He informed that Canteen and the Aahar activity is also not a commercial activity. He referred to the fact that Education Institutes are exempted from the category of dealers. In response to the queries made to them as to whether they are recognised educational institutions, he stated that nowhere it is mentioned in the provision that it should be a recognised institute. Irrespective of the above fact, he stated that they had produced evidence of being educational institute. At the end, he stated that if the case is not held in their favour, prospective effect should be given to them.

04. OBSERVATIONS

In this issue I have to decide whether the Seva Sadan Society which is a training institute working in the field of vocational training and rehabilitation centre for under privileged women and girls is a dealer under the MVAT Act. It is a registered under the Bombay Public Trust Act. The institute has ~~probably~~ raised the issue because for all person who are registered under the Bombay Public Trust Act are 'deemed dealers' under the MVAT Act due to the explanation to the definition of dealer which is reproduced as below:

> **"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.

The definition of a dealer and the explanation to it exclusively brings all 'Public Charitable Trusts' under the purview of a 'dealer'. Therefore, Seva Sadan Society, being a Registered Public Charitable Trust is ,without doubt, covered by the clause (iv-a) of the Explanation to the definition of a 'dealer'. Therefore, the decision of the MSTT in the case of Seva Sadan Society(cited supra) is without relevance as the decision was under the provisions of the Bombay Sales Tax Act wherein the definition of 'deemed dealers' did not contain 'Public Charitable Trusts'. The MSTT in the said case had reviewed the objects of the Trust and had come to the conclusion that as the main object of upliftment of women is not business, the secondary activities of running a restaurant and a food

outlet is connected with the main activity, the institute is not a dealer. However, now under VAT, all Trusts irrespective of whether their main activity is business or not come under the purview of a dealer. The Explanation specifically overrides clause (4) of section (2) which contains the definition of a 'business.'' Therefore, the examination of the fact as to whether the main activity is 'business' or not is now rendered unnecessary.

However, the applicant has referred to the~~there is an~~ exception II which specifically speaks ~~and states~~and states that an Educational Institution carrying on the activity of manufacturing, buying or selling goods in the performance of its function for achieving its object shall not be deemed to be a dealer within the meaning of this clause. The ~~dealer~~ Institute seeks umbrella of this section in order to fortify ~~its~~ the belief that it ~~it~~ is not a 'dealer' under the MVAT Act.

In short, I have to decide whether irrespective of being a 'deemed dealer' because of the insertion of the Clause ~~VIA~~ vi(a) to the definition of 'dealer', the applicant comes out of the purview of dealer as it falls under exception ~~2~~II to the explanation given under the definition of dealer. In order to fall under this exception the institute has to prove the following things.

1. It should be an Educational Institute.
2. Activity of manufacturing, buying or selling goods should be in the performance of its~~'~~ function for achieving its~~'~~ objects.

In order to decide whether the institution fulfills these criteria or not, a brief over view of the objects of the institute as well as the activities conducted by it has to be taken.

01. Objects of the Institute:

1. To work for the upliftment of women.
2. To found and maintain home for the homeless.
3. To train Indian women to be capable of their earning their livelihood, to find work for them and to help them in every possible way.
4. To find work for them and help in every possible way.
5. To co-operate with similar institutions, consistently with the above objects.
6. To publish books, magazines or papers as ma~~k~~ey promote any~~in all~~ of the above objects.
7. To have an ~~endorement~~Endowment Fund for the above purposes.

8. To do all their needs as are ~~instantly~~ incidental or conducive of the attainment of the above objects.

02. Brief over view of the activities:

- The society was formed in the year 1908 with the objective of providing education and shelter to under privilege women and girls without any distinction of caste, creeds and religion.
- The society is registered as a Public Trust under the Bombay Public Trust Act, 1950 as per certificate dt.21.5.1953.
- The society runs school and colleges as under.

i) Girls High School permitted by certificate dt.12.7.1960.

ii) Primary School of BMC, permitted by certificate dt.18.1.1986.

iii) Ramabai Navrange Junior College of Education for Women which are recognised under the National Council for Teacher Education Act, permitted by certificate dt.22.4.1998 for D~~e~~.Ed Course.

iv) The society runs a A~~a~~shram for the destitute and the needy girls and women.

The criteria for selection of girls and women is as under:

- An orphan child having single parent.
- Is from an economically backward family.
- Has an abused mother or drunken father.
- Is an abused child.
- Is above eight years of age and school going.
- Is of average intelligence.
- Has good health and no contagious disease.

It is stated that, in order to carry out the objects the Seva Sadan Society carries out the following activities:

- ❖ A pre-primary school run by the society entirely.
- ❖ A primary school for the student of Junior Kg. to Std.IV.
- ❖ The school is run with financial aid from the BMC and by the donation.
- ❖ The society also runs a Primary Teachers Training College for needy women and also inmates of the Aashram. It is informed by the applicant that the training college is recognised by the Government of Maharashtra.

- ❖ In addition to the above, the Seva Sadan Society also runs computer classes, judo classes, speech and drama colleges or a drama classes, sewing and embroidery classes for needy women.
- ❖ The Seva Sadan Society runs cooking department and food outlets where the inmates under-go training for cooking. The inmates and needy women helping in the cooking department are paid stipend to ~~need~~ meet their expenses etc.
- ❖ The inmates consume~~d~~ the food so cooked and the surplus food is sold from the outlets at nominal rates.

03. Documents attached with the application:

1) Copy of the certificates given by the Registrar of Joint School Companies Bombay, certifying that the society is registered under the Companies Act.

2) Certificate of registration under the Bombay Public Trust Act.

3) Certificate addressed to the Principal of Ramabai Navrange Institute given by the Educational Inspector, Grater Bombay, permitting Seva Sadan to start from June 1960, a new secondary day school for Std.V to VIII.

4) A registration certificate given by the Education Officer to Seva Sadan Society informing that the Education Committee of the BMC has granted temporary registration to Std.I to Std. IVof the Primary School.

5) Order of the National Council for Teacher Education granting provisional recognition to Seva Sadan Society are a Junior College of Education, Nana Chowk, Grant Road, Mumbai for the Ded course.

6) Copy of the order of the National Council for Teacher Education which is a statutory body of Government of India granting recognition to Ramabai Navrange Junior College of Education for the Ded Course with the condition that the institution shall ensure to get affiliated by this course to the concerned Board Directorate.

7) Copy of the MSTT decision in the case of Seva Sadan Society (S.A. No.102 of 2002 dt.14.1.2005) in which the Tribunal reversed the determination order of the Commissioner and held that Seva Sadan Society is not a dealer under the provisions of the BST Act.

8) Copy of the DDQ in the case of Ramkrishna Math and Chitshakti Trust (DDQ-11/2005/Adm-5/53-54/B-2 dt.20.1.2006.

9) Seva Sadan Society's Planning Booklets for Primary School.

10) Annual Report for the year 2005-06.

11) Details of cewing and Embroidery classes of Seva Sadan Society.

12) Booklets of Seva Sadan Society regarding planning of studies, rules and regulations of the school for Primary School.

13) A copy of the question paper set for Std.I of the Primary School of the Seva Sadan Society.

14) A copy of the School Leaving Certificate for Primary School.

15) A copy of the syllabus booklet for the diploma course in Teaching Education. The syllabus is set by Government of Maharashtra, Education Research and Training Council, Pune.

16) A copy of the question paper set for the final examination for D.ed.

17) A copy of the passing certificate of Bhandekar Janabai Nivruti from the Bed Course.

18) Details of teaching staff.

19) Details of the number of student in the Secondary School (High School).

20) Photocopies of the various Text Books in Marathi, Geography etc. for the High School.

21) Copies of the question papers set for the different subjects in the High School.

22) Copy of the DDQ passed in the case of Nab Workshop for the Blind (DDQ-10/2005/Adm-5/89/B-2, dt.13.3.2006.

23) Copy of the Annual Report for the year 2006-07.

24) Copy of the Annual Report for the year 2007-08.

The applicants were first called for hearing on 10th April, 2007. During the course of hearing the applicant informed the Commissioner that Seva Sadan Society is an Educational Institution also running the Cooking Department and food outlets which are specifically for the purpose of educating and training inmates from under privilege background and to equip them with culinary skill to provide them job opportunities for self reliance. It was informed through letter dt.26.4.2007 by the applicant that they were going to conduct certified course in various cuisines. This training course will be conducted by the Janshikshan Sansthan, Worli, Mumbai. It is a Central Government recognised institution. A copy of the certificate given by Life Trust that they conducted

cookery classes for 14 girls of Seva Sadan Society and the copy of the certificate given to one of the trainees is also attached.

04. Submission made during hearing of DDQ Application:

- The applicant submitted that Seva Sadan Society is an Educational Institution and hence it is not a dealer under the MVAT Act and therefore not liable for registration and tax. They draw attention to the data of receipts from different activities and stated that receipts from fees and grants are more than 75% of the total receipts.
- The applicant has referred to the DDQ order in the case of Nab Work Shop for the Blind (Cited supra) and M. N. Banajee Industrial Home for the Blind (Cited supra) in which it was held they are Educational Institution.
- They submitted that Seva Sadan Society is a recognised by the Educational Institution of Maharashtra having prescribed syllabus, teaching staff, conducting exam as per prescribed rules and issuing certificates to its' alumni. It also conducted other courses like computer courses to provide vocational training to girls and women.
- Plea for prospective effect.

After written submission is made by the applicant dt.23.10.2008 during the course of hearing, the applicant was told to furnish information on the number of girls who have taken education training in cooking and whether such inmates or trainees are taught in the outlets called 'Aahar' or in the restaurant named 'By the way'. In reply to this query, they have given the record of home inmates for the last five years and the summary of the letters given by them. In the letters, the girls have mentioned that they have taken training in the cooking course and practical training in the kitchen.

Is Seva Sadan Society is an educational institute? 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.14.9.2006), 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 Seva Sadan Society 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:

1. Recognised as an Educational Institution by University or the UGC or as the case may be by a Technical or Educational Board.
2. Has a prescribed course or syllabus for the alumni.
3. Has a teaching staff which is on the pay roll of the colleges or institution.
4. Issues certificates to its ~~'s~~ students.
5. Conducts exam as per prescribed rules.

From an examination of objects I find that the Seva Sadan is established with sole purpose of the upliftment of women. The other purpose is to found and maintain home for the homeless and to find schools and colleges, a library, a prayer room etc. Thus it is seen that Seva Sadan through the school and colleges is working for the upliftment of women.

05. Activities Pertaining To Education:

a. Seva Sadan Society is recognised as an educational institution and is approved by the Education Board, Government of Maharashtra. It runs a primary school for girls, a secondary school for girls and a Junior College of education for women. All these institutions are recognised by the Government and the Seva Sadan Society receives grant for running of the above schools and Junior Colleges.

b. Seva Sadan Society also has a prescribed course and syllabus for the students as prescribed by the Education Board and the National Council for Technical Education.

c. Seva Sadan Society has a teaching staff which is on the pay roll of school and colleges.

d. Seva Sadan Society conducts exam as per the rule prescribed by the Education Board and NCTE.

e. Seva Sadan Society issues certificates to its student on passing the prescribed exam.

f. Seva Sadan Society also runs computer classes, Judo classes, stitching and drama classes, art and craft classes.

Therefore, it is seen that it fulfills all the objectives of an educational institute. It is seen from the records submitted by the applicant that the school has a "Niyojan Pustika" for the pre-primary school. The copies of the diaries and planners are also attached by the applicant. I have also seen the photocopies of the question papers for the annual exam of the primary school. Copy of the school leaving certificate for primary school is also examined by me. The syllabus, booklets of the Diploma in Teacher's Education is also approved by the Government of Maharashtra and the syllabus is as per the NCTE. The set of final examination papers of the D.Ed examination is attached as well as the certificates given to successful candidates of this curricular. The Migration Certificate of the successful students is issued by the Maharashtra State Council of Pune. The certificate given to successful candidates of the D.Ed course is issued by the Maharashtra State Examination Council, Pune. School Leaving Certificate of the secondary school as well as the syllabus of the secondary school are also attached by the applicant. All the evidence points out to the fact that the primary school, secondary school and the Diploma in Teacher's Education is recognised by the Maharashtra Government. Therefore, I do not have any hesitation in holding that Seva Sadan Society is an educational institution and it works for the upliftment of women by the establishment of such institution.

It is seen from the record that Seva Sadan Society is also involved in the following activities:-

- It runs a 'women self sufficiency scheme' called 'Aahar'.
- It runs a tiffin service.
- It runs a restaurant called 'By the Way'.

Apparently, it was felt that running a cooking outlet and a restaurant is not connected in any way to the functions of the normal education institute. Under Explanation-II to Section 2(8) of the MVAT Act, an educational institution which carries on **the activity of manufacturing, buying or selling goods is exempted only if such activity is in the performance of its function for achieving its objects**. Therefore, it is necessary that the function of an education institutes should be educational and it should have nexus with the objectives which are also **impliedly educational**. The educational institution cannot have non-~~ee~~ducational objects in the performance of its function.

Therefore, the activity of manufacturing in the performance of the function and the objects are interlinked and should be necessarily educational in nature. One of the objects of Seva Sadan Society is to found a college and school, train the women and provide livelihood to them. Is running a restaurant or food outlet in any way in the interlinked with the educational objectives of the institution? It would be so, if there is inextricable connection between the educational activity of the institution and running of the restaurant or the food outlet. During the course of hearing, the appellant was requested to furnish evidence as to whether the running of the restaurant or the food outlet is in any way connected to the educational activities of the institution. For eg. the link can be soundly established if the cooking course run by the institution has a nexus with the restaurant in a way that the students in the course are employed in the restaurant or the outlet for experience. If such a case is proved, then it can be saidthey admitted t that its activity which is carried on in the performance of its function for achieving its objects. **I admit that if the restaurant or the food outlet is run by the inmates or homeless women ,thenand thereby the institute Institute would thereby be fulfilleding its objects of upliftment of women. But the present case, prima-facie, Seva Sadan Society is a public charitable trust and is a deemed dealer. Therefore, the charitable objectives of the institutes are of no relevance here**. The institute may be charitable but it is still a deemed dealer. It may be kept in mind that the only educational institutes are exempted and any commercial activity conducted by it should be connected to the educational objectives.

In reply to the request made during the course of hearing, the applicant submitted a letter dt.23.10.2008. In the letter, the applicant had stated that, they have attached a statement on the number of girls who have left the Seva Sadan Society and as to how the culinary education acquired had helped them in the professional lives. They also attached letters received from some of the inmates who have left Seva Sadan Society and managed to get jobs in five star hotels. They have also submitted that the objectives are not a commercial activity and largely who imparts education and whatever income is received from the activity is used only for the objectives of caring, education and empowering the girls.

The summary of the letters is seen by me. One of the inmates has stated that, she got practical training in the canteen and now works as a 'baker'. One inmate has

informed that the culinary training has helped her in a nursing course while another inmate has stated that she cooks meals for the inmates of Seva Sadan Society. One inmate ~~have~~has informed that the training in cooking has helped her to lead a happy married life. From the statements of these inmates, only one inmate has informed that she was given educational training in cookery. None has got an opportunity to work with hotels. The rest of them have taken the training in cooking but this does not prove that the cooking class and the 'Aahar' outlet /'~~b~~By the way' restaurant is connected. This link can be affirmed only if it is proved that the girls have under gone training in cooking as a part of the course or have worked in the outlet or the restaurant. In order to verify this fact, the Sales Tax Officer of the department of Legal Matter along with the Sales Tax Inspector of the department of Legal Matter undertook a visit to the premises of Seva Sadan Society on 12.1~~0~~2.2008. The following was seen in the report.

..''On the basis of the observations made during the rounds, the Society can be said to be engaged in following activities.

1. **Educational activities :** The Society runs High School, Primary School, Pre-primary school, Training College (D-Ed.) and Sewing Classes. For High School, Primary School and Training College, the Society receives 100% grant for expenses incurred on account of 'salary'. The Pre-primary school and Sewing classes are managed from the income earned through 'Fees'. The activity seems to be purely of the nature of academic education as set out by education department.
2. **Social Welfare Activities :** Under the Social Welfare activities, the Society runs (a) Home for Girls and Women (b) Women's Self-Sufficiency Scheme. These activities are stated to be purely of charitable activities in furtherance of objects of the Society.

   The Home for Girls and Women the Society takes care of girls from age group 4-5 years to young girls and women upto 70-80 years. They are provided with food. In all around 100 to 125 inmates could be said to be staying in the Society's premises.

   Under the Women's Self-Sufficiency Scheme the Society runs three food outlets. It was informed that some experts in culinary / cuisine field do pay visits and guide Some of the inmates were seen working in kitchens stated to be run for

preparing food and snacks for food outlets named Aahar, Tiffin and a restaurant 'By the Way'. The inmates were seen working as cooks or as helping hands alongside some other ladies who are paid employees. It was also informed that the inmates who work in kitchens are paid some amount. The Society have employed paid stewards and Supervisor for running restaurant. They are either paid under 'salary head' or the expenses are met through head 'operating expenses'. The heading 'operating expenses', as informed, comprises of various expenses such as gas (energy) expenses, honoraria, Supervising charges, etc. **It was also observed that none of the inmates seemed to be working in the kitchen under any kind of training programme / course in cooking or service of food.**

It was observed from the Menu Card of the restaurant 'By the Way' that they provide parcel service covering area from Worli to Cuffe Parade for orders above Rs.300/- only. The Scooter expenses incurred are separately shown in respective accounts. All the three food outlets are seen open for service to public at large. At 'Aahar' and 'Tiffin' some of the inmates were seen working alongside some paid employees.

~~* Tobe typed.~~

From the visit, it was observed by the officers that 'By the Way' is a restaurant which serves snacks and meals such as 'Parsi Specialities' and 'Indian meals'. In order to verify whether the people working in the restaurant or the outlet w~~h~~ere inmates or girls undergoing cookery classes, the officers got the salary statements of the staff working in the outlet and the restaurant. The statements for the month of April-2007, December-2007 and November-2008 were furnished by the applicant. It is seen that in the 'Aahar' restaurant an employee called 'Vrinda Govekar' is employed for the past one and half years. It is further seen that for the veg ahar canteen, employees Gauri Pitale, Nirmala Phatkare and Rima Bilgekar have been employed for the last one and half years. In the restaurant 'By the Way' staff of around fifteen to twenty people have been employed and the sizable number of employees are men. A majority of the employees have been employed in 'By the Way' for the last one and half years. This shows that the employees are paid employees of 'Aahar' and 'By the Way'. The people working in the outlet and the restaurant were not the same people who were attending the cookery classes. Thus, there

is no link between the cookery classes and the outlet. It cannot be said that the institution is running manufacturing activity of providing meals in performance of its function. The functions are totally different and not at all connected with the school or the colleges run by the institution. It may be that the money earned in the restaurant and the 'Aahar' outlet is used as Corpus Funds. But this fact has no relevance here. What is relevant is whether there is a link with the objectives of the institution and the manufacturing activity.

I have also gone through the reports submitted by the applicant giving the details of the nature of receipts as per the audited accounts ~~ended on~~for the years 31.3.2008, 31.3.2007 and 31.3.2006 from its educational activities. It is seen from the table that receipts from educational activities i.e. High School fees, Primary School fees, Pre-primary School fees, fees for educational classes and fees for the home for girls and women constitute 76% of the total receipts in the year 2008. The per-centage for the same for the year 2006 and 2007 is 82% and 74% respectively. Whereas the money received from the sale of food to the canteen 'Aahar' and the tiffin and the restaurant constitute 24% of the total receipts in the year 2008. This per-centage was 18~~% in~~% in the year 2006 and 26% in the year 2007. Thus it can be inferred from the above that ~~the~~a sizeable per centage from income comes from the non educational activities.

I would refer here to the MSTT judgement in the case of M/s BhaktiVedanta Hospital((036)-MTJ -0230).In the said case , the MSTT had to decide whether BhaktiVedanta Hospital is a dealer qua its activities of 'running a medical store and a gift shop. The MSTT held that running of a medical store is incidental to the objects of the Trust but the running of the gift shop is not. The MSTT observed,''

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..''As regards the activity of Gift Shop of M/s. Bhakti Vedant ~~Hospital~~ Hospital is concerned, it is stated that in the ~~hospital~~ hospital premises there is a temple. In the Gift Shop only limited articles are kept which are necessary for worship. Usually the patients in the ~~hospital~~ hospital and their relatives offer prayers in the temple. It is contended by the Appellant that the income of the Gift Shop is very meagre compared to the total income of the Trust and the said income derived from the Gift Shop is appropriated to run the main object of the trust i.e., the medical relief. Admittedly, articles like Religious Books, Photoframes, Gangajal, Agarbatti etc., are sold in the Gift Shop. The question is whether the activity carried out by the trust i.e., sale of articles of worship in the Gift Shop is incidentally or internally

connected to the main object of the trust. Apparently, it can be seen that the activity of selling articles in the Gift Shop cannot be said to be incidentally or internally connected to the main object of the Trust. **Merely, because profits derived from the sale of articles in the Gift Shop are utilised in furtherance of the main object of the Trust, it cannot be said that the said sales are not liable for Sales Tax.** We have gone through the Trust Deed dated 30.7.1991 of M/s. Bhakti Vedant ~~**Hospital.**~~Hospital. All the objects enumerated in the Trust Deed are charitable. However, those objects do not cover activity carried out by the Trust i.e., sale of articles in the Gift Shop. Therefore, it cannot be said that the activity of the Trust i.e., selling of articles of worship in the Gift Shop is an activity incidentally or internally connected to the main object of the Trust and therefore not a business. It must be noticed that the activity of sale and purchase of articles of worship in the Gift Shop was done by the Appellant like any commercial shopkeeper. It is not the case of the Appellant that the purchases and sales were effected in course of the direct implementation of the object of the Trust. The argument of the Appellant is that the profits earned in the Gift Shop were utilised towards a charitable object of the Trust. This argument of the Appellant cannot be accepted since the activity carried out by the Appellant has no connection with the main object of the Trust and therefore the activity of the Gift Shop should be treated as business. We get support for our view from the decision of the Madras High Court in case of Commissioner of Commercial Taxes, Board of Revenue, Madras v. Evangelical Literature Service, 33 STC 325. Therefore, finding to issue No. (v) is recorded in the negative. ''

In the aforesaid case, the MSTT has categorically stated that though the earnings from the gift shop may be used in the corpus, the said is not a determinative factor. If the activity carried out has no connection to the main object of the Trust then such an activity should be treated as business. In the case of Seva Sadan, the applicant ~~faild~~failed to establish any connection between the educationa~~n~~l activities and the running of the restaurant. As is clear from the facts brought out in the visit conducted by the Department of Legal matters, the ~~restaurant or~~restaurant or the Aahar activity is not an integral part of the cooking course conducted by the Institution. None of the people working there were the alumni of the cooking course but they all were paid employees. Thus, the Institute is liable to pay taxes on the sales effected through these activities.

05. PRAYER FOR PROSPECTIVE EFFECT

The applicant had [prayed for prospective effect in case the order is not held in their favour. The applicant had relied upon the MSTT decision in their own case and also the determination orders passed in the case of National Association for the Blind (Workshop for the Blind) DDQ-10/2005/Adm-5/89/B-2, dt.13.3.2006 and determination

order in the case of M. N. Banaji Institute for the Blind, DDQ-11/2005/Adm-5/82/B-1 dt.2.6.2006.

I have also gone through the d~~D~~etermination orders were passed in the case of M/s. Ramkrishna Math No. DDQ -11/2005/Adm-5/53-54/B-2 dt.8.1.2006 and in the case of Bombay Natural History Society No.DDQ-10/Adm-5/116/B-1, dt.6.3.2006. In these cases, prospective effect was granted by the Commissioner of Sales Tax to the dealers on the grounds that the applicants had not obtained registration under the MVAT Act, and have also not collected taxes from their sales. In the case of M/s Ramkrishna Math also the applicant had a MSTT decision in their own case where the MSTT had held that the applicant is not a 'dealer' under the provisions of the Bombay Sales Tax Act. In the case of Seva Sadan Society also, ~~-~~ the MSTT has held that the applicant is not a dealer for the purpose of Bombay Sales Tax Act(Appeal No.102 of 2002 dt 14.1.05) following ~~-~~the ~~The~~decision of the Supreme Court in the case of Sai Publication. Considering the fact that M/s. Ramkrishna Math and Bombay Natural History Society have been granted prospective effect on similar facts, ~~had confirmed the position of law. Therefore,~~ the applicant's request in the present case for prospective effect is hereby accepted and I hold that the liability of ~~both~~ the applicant is protected till the date of the order.

~~I have examined the issue. I have already discussed as to how the MSTT decision is not applicable due to the different underlying provisions. There is no statutory misguidance as it is expected that the applicant take cognizance of the changed provisions. Also, the determination orders in the case of National Association for the Blind (cited supra) was very clear. After taking into consideration the income from the lease of the hoardings, it was clarified that all those activities other than the ones which are not in the performance for achieving the objects of the institutions would not be covered by the exception clause and to that extent, they have to pay taxes on the sale Therefore, it can be said that the determination orders made the matter very clear and there was no statutory misguidance.~~

~~I, therefore, reject the application for prospective effect.~~**06**. In view of the above, I hold the following:

O R D E R

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

- The question before me as regards whether 'Seva Sadan Society'~~Vipassana Research Institute~~ is a dealer under clause (8) of section 2 of the MVAT Act is held as follows: The applicant is a 'dealer' qua its activities of running a 'canteen', 'cooking 'Aahar service' and the 'By the way' restaurant and the sales pertaining to the above activities are taxable under the MVAT Act,2002.
- The applicant's request in the present case for prospective effect is accepted and I hold that the liability of the applicant is protected till the date of the order.

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

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