

राजस्थान कर बोर्ड, अजमेरअपील संख्या – 1528 / 2014 / टोंक.

मैसर्स वनस्थली विद्यापीठ, निवाई, टोंक.

.....अपीलार्थी.

बनाम

वाणिज्यिक कर अधिकारी,  
प्रतिकरापवंचन, राजस्थान, वृत्त-प्रथम, जयपुर.

.....प्रत्यर्थी.

एकलपीठश्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री विवेक सिंघल, अभिभाषक

.....अपीलार्थी की ओर से.

श्री अनिल पोखरणा,

उप-राजकीय अभिभाषक

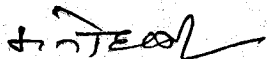
.....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 01 / 12 / 2014

निर्णय

1. यह अपील अपीलार्थी व्यवहारी द्वारा अपीलीय प्राधिकारी, वाणिज्यिक कर विभाग, अजमेर (जिसे आगे 'अपीलीय अधिकारी' कहा जायेगा) के अपील संख्या 96 / 14-15 / वेट / टोंक में पारित किये गये आदेश दिनांक 30.07.2014 के विरुद्ध राजस्थान मूल्य परिवर्धित कर अधिनियम, 2003 (जिसे आगे 'वेट अधिनियम' कहा जायेगा) की धारा 83 के अन्तर्गत प्रस्तुत की गयी है। अपीलीय अधिकारी ने उक्त आदेश से वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, राजस्थान, वृत्त-प्रथम, जयपुर (जिसे आगे 'कर निर्धारण अधिकारी' कहा जायेगा) के वेट अधिनियम की धारा 11 सपठित धारा 56 के तहत पारित किये गये आदेश दिनांक 18.03.2013 की पुष्टि की है।

2. प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि सहायक वाणिज्यिक कर अधिकारी, घट-प्रथम, प्रतिकरापवंचन, राजस्थान, वृत्त-प्रथम, जयपुर द्वारा दिनांक 12.12.2012 को अपीलार्थी के व्यवसाय स्थल का सर्वेक्षण किया गया। सर्वेक्षण में पाया गया कि अपीलार्थी द्वारा वर्ष 2007-08 से 2012-13 (कुल पाँच वर्ष) के दौरान ठेकेदारों से करवाये गये कार्य के लिये सीमेंट व लोहा सप्लाई किया गया है एवं विवरण पत्रिका मय प्रवेश फॉर्म की बिक्री की गई है। अपीलार्थी द्वारा ठेकेदारों को भुगतान की गई ठेका राशि में से सप्लाई किये गये माल की कीमत काटकर भुगतान गया है तथा विवरण पत्रिका मय प्रवेश फॉर्म को वेट अधिनियम की अनुसूची IV की प्रविष्टि संख्या 104 के तहत कर योग्य मानते हुए व्यवहारी का पंजीयन का दायित्व माना गया। अपीलार्थी का पंजीयन का दायित्व होते हुए भी, अपीलार्थी द्वारा वाणिज्यिक कर विभाग में पंजीयन नहीं करवाये जाने के कारण अपीलार्थी को कारण बताओ नोटिस जारी किया गया।



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उक्त नोटिस की पालना में अपीलार्थी द्वारा प्रस्तुत जवाब को अस्वीकार करते हुए कर निर्धारण अधिकारी द्वारा वेट अधिनियम की धारा 11 के तहत Obligatory Registration का दायित्व दिनांक 01.04.2007 से निर्धारित किया गया तथा पंजीयन दायित्व होते हुए भी पंजीयन नहीं करवाये जाने के कारण धारा 56 के तहत शास्ति रुपये 1000/- का आरोपण आदेश दिनांक 18.03.2013 से किया गया। अपीलार्थी द्वारा कर निर्धारण अधिकारी के उक्त आदेश के विरुद्ध प्रस्तुत की गयी अपील अपीलीय अधिकारी के अपीलाधीन आदेश दिनांक 30.07.2014 से स्वीकार किये जाने से व्यथित होकर अपीलार्थी द्वारा यह द्वितीय अपील प्रस्तुत की गयी है।

3. कर निर्धारण अधिकारी द्वारा अपीलार्थी की कर निर्धारण अवधि वर्ष 2007-08 से 2012-13 के कर निर्धारण हेतु वेट अधिनियम की धारा 25, 55 व 61 के तहत कर निर्धारण हेतु पृथक-पृथक नोटिस दिनांक 20.03.2013 को सुनवाई दिनांक 04.04.2013 के लिये जारी किये गये। उक्त नोटिसों के अतिरिक्त कर निर्धारण वर्ष 2007-08 से 2012-13 (कुल पाँच वर्ष) के लिये कर, ब्याज व शास्ति के रूप में रुपये 14,30,34,287/- की वसूली किये जाने के विरुद्ध अपीलार्थी द्वारा माननीय राजस्थान उच्च न्यायालय के समक्ष एस.बी. सिविल रिट पिटिशन संख्या 13059/2014 प्रस्तुत की गई। उक्त याचिका का माननीय उच्च न्यायालय द्वारा दिनांक 20.11.2014 को निस्तारण करते हुए, राजस्थान कर बोर्ड को यह प्रकरण निर्णय दिनांक (20.11.2014) से 10 दिवस की अवधि में निस्तारित करने हेतु निर्देशित किया गया है। अपीलार्थी वनस्थली विद्यापीठ के द्वारा सहायक आयुक्त, वाणिज्यिक कर, प्रतिकरापवंचन-प्रथम, जयपुर के आदेश दिनांक 18.03.2013 के विरुद्ध माननीय राजस्थान उच्च न्यायालय जयपुर के समक्ष एस.बी.सिविल रिट पिटिशन संख्या 5998/2013 का निस्तारण आदेश दिनांक 03.07.2014 के द्वारा किया गया है, जिसमें निम्न निष्कर्ष दिया गया है :-

"As the issue regarding registration under Section 11 of the Act of 2003 is contested seriously, it would be expected from the respondent/s not to finalize the assessment in pursuance to the impugned notice till disposal of the appeal.

It is, however, observed that the Appellate Authority would not only consider the issues independently but pass a detail and speaking order after considering all the arguments raised before it."

4. उभयपक्ष की बहस सुनी गयी।



लगातार.....3

5. अपीलार्थी के विद्वान अभिभाषक ने बहस के दौरान प्राथमिक आपत्ति उठाई कि प्रतिकरापवंचन शाखा के अधिकारी को वेट अधिनियम की धारा 11 सपठित राजस्थान मूल्य परिवर्धित कर नियम, 2006 के नियम 12 से 17 के अधीन अधिकारिता प्राप्त नहीं है कि वह पंजीकरण प्रमाण-पत्र जारी करने के आदेश जारी करें, क्योंकि यह अधिकारी पंजीकरण प्रमाण-पत्र जारी करने के लिये सक्षम अधिकारी नहीं है। अग्रिम कथन किया कि अपीलार्थी मैसर्स वनस्थली विद्यापीठ, निवाई, टोंक भारत सरकार के शिक्षा और संस्कृति मंत्रालय (शिक्षा विभाग) के आदेश संख्या एफ-9-6181-यू-3 नई दिल्ली दिनांक 25 अक्टूबर 1983 को जारी अधिसूचना के तहत वनस्थली विद्यापीठ (राजस्थान) को विश्वविद्यालय अनुदान आयोग अधिनियम, 1956 के प्रयोजनार्थ विश्वविद्यालय समझा जायेगा। अतः अपीलार्थी एक विश्वविद्यालय है। वनस्थली विद्यापीठ सोसायटी वनस्थली इंडियन सोसायटीज एक्ट 1860 के अन्तर्गत दिनांक 16 मार्च 1951 को रजिस्टर हुआ था। अब इस संस्था का नाम वनस्थली विद्यापीठ दैट इज वनस्थली यूनिवर्सिटी (Banasthali Vidyapith That is Banasthali University) कर दिया गया है, यह संस्था वनस्थली विद्यापीठ राजस्थान संस्था पंजीयन अधिनियम, 1958 के अन्तर्गत रजिस्टर्ड है।

6. अग्रिम कथन किया कि अपीलार्थी का प्रमुख कार्य शैक्षणिक गतिविधियों का संचालन करना है। बालिका शिक्षा के उच्च शैक्षणिक स्तर को बनाये रखने के लिये तथा शैक्षणिक उद्देश्यों की प्राप्ति के लिये आधारभूत सुविधाओं का विकास कराया जाता है। विद्वान अभिभाषक ने वेट अधिनियम की धारा 3, 2(6) व 2(11) का हवाला दिया गया, जो निम्न प्रकार है :-

### 3. Incidence of tax. -

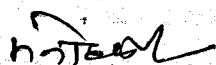
(1) Subject to the provisions of this Act, every dealer-

(a) who is an importer of goods; or

(b) who is a manufacturer of goods and whose annual turnover exceeds rupees two lacs; or

(c) whose annual turnover exceeds rupees five lacs, shall be liable to pay tax under this Act.

(2) Notwithstanding anything contained in sub-section (1) a dealer other than that enumerated in clause (a) or clause (b) of sub-section (1), who purchases goods from a registered dealer of the State and sells such goods within the State, may opt for payment of tax on his turnover excluding the turnover of the goods specified in Schedule I, at the rate as may be notified under sub-section (3) of section 4, subject to the condition that such annual turnover does not exceed rupees fifty lacs in a year.

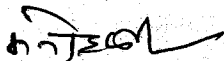


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- (3) Notwithstanding anything contained in sub-sections (1) and (2) every casual trader shall be liable to pay tax under this Act.
- (4) Notwithstanding anything contained in sub-sections (1) and (2) every person, other than a casual trader or a registered dealer, who carries on business temporarily for a period not exceeding one hundred twenty days in a year, shall be liable to pay tax under this Act in the manner as may be prescribed.
- (5) A dealer registered under the Central Sales Tax Act, 1956 (Central Act No.74 of 1956) who is not liable to pay tax under sub-sections (1) to (4), shall nevertheless be liable to pay tax in accordance with the provisions of this Act.
- (6) Notwithstanding anything contained in this Act, a dealer registered under this Act shall so long as his certificate of registration remains in force, be liable to pay tax, irrespective of his turnover.

## 2. Definitions. -

- (6) "business" includes-
  - (i) any trade, commerce or manufacture; or
  - (ii) 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; or
  - (iii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; or
  - (iv) any transaction in connection with or incidental or ancillary or consequential to the commencement or closure of such business; or
  - (v) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction;
- (11) "dealer" means any person, who carries on business in any capacity, of buying, selling, supplying or distributing goods directly or otherwise, or making purchases or sales as defined in clause (35) for himself or others, whether for cash or deferred payment, or for commission, remuneration or other valuable consideration and shall include-
  - (i) a factor, broker, commission agent, *del credere* agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing any goods belonging to any principal whether disclosed or not;



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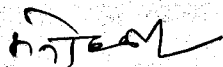
- (ii) an auctioneer, who sells or auctions goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
- (iii) a manager or an agent, of a non-resident dealer who buys, sells, supplies or distributes goods in the State belonging to such dealer;
- (iv) any society, club, trust or other association, whether incorporated or not, which buys goods from or sells goods to its members;
- (v) a casual trader;
- (vi) the Central or any State Government or any of their Departments or offices which, whether or not in the course of business, buy, sell, supply or distribute goods directly or otherwise, whether for cash or deferred payment or for commission, remuneration or other valuable consideration; and
- (vii) any trading, commercial or financial establishment including a bank, an insurance company, a transport company and the like which, whether or not in the course of its business, buys, sells, supplies or distributes goods, directly or otherwise, whether for cash or deferred payment, commission, remuneration or other valuable consideration;

**Explanation** - A person, who sells agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest as owner or tenant as defined in the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955), shall not be deemed to be a dealer in respect of such sales within the meaning of this clause;

7. अपीलार्थी सोसायटी द्वारा कोई व्यापारिक गतिविधि, जो वेट अधिनियम में परिभाषित है, नहीं की जाती है, लेकिन शैक्षणिक गतिविधियों को विकसित करने के लिये विभिन्न सामग्री प्राप्त की जाती है।

8. कर निर्धारण अधिकारी ने अपीलार्थी के संस्थान का सर्वेक्षण करके यह माना कि अपीलार्थी एक व्यवहारी है, जिसने अधिनियम के अधीन पंजीकरण प्राप्त नहीं किया है, जिसने विद्यार्थियों को Prospectuous (विवरण-पत्रिका) बेचे हैं तथा निर्माण कार्य के लिये सीमेंट व स्टील की आपूर्ति को बिक्री होना ठहराया है।

9. विद्वान अभिभाषक ने अग्रिम कथन किया कि अपीलार्थी एक शैक्षणिक संस्थान है, जिसे यूनिवर्सिटी का दर्जा प्राप्त है एवं इसका उद्देश्य बिना किसी लाभ अर्जन के शिक्षा प्रदान करना है। अपीलार्थी द्वारा चैरिटी के रूप में कार्य किया जाता है। अपीलार्थी द्वारा किसी प्रकार की खरीद-बिक्री का व्यवसाय



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नहीं किया जाता है। ठेकेदारों को सीमेन्ट एवं लोहे की सप्लाई स्वयं के शिक्षण संस्थानों में आवश्यकतानुसार निर्माण हेतु वेट भुगतान के पश्चात ही की गई है। अपीलार्थी द्वारा बिक्रीत विवरण पत्रिका मय प्रवेश फॉर्म किताब की श्रेणी में आने के कारण करमुक्त है। विद्वान अभिभाषक ने अग्रिम कथन किया कि वेट अधिनियम की धारा 11 के तहत पंजीयन का दायित्व तभी आता है, जब धारा 3 के तहत किसी प्रकार का कर दायित्व बनता है। अपीलार्थी द्वारा किसी प्रकार का खरीद-बिक्री का व्यवसाय नहीं किया जाता है। अतः कर दायित्व नहीं बनने से पंजीयन का दायित्व भी नहीं बनता है। अग्रिम कथन किया कि अपीलार्थी आयकर अधिनियम के तहत चैरिटेबल संस्थान के रूप में पंजीकृत है। इस प्रकार अपीलार्थी व्यवहारी पर किसी प्रकार का कर दायित्व नहीं होने से, वेट अधिनियम के तहत पंजीयन का दायित्व नहीं होते हुए भी कर निर्धारण अधिकारी द्वारा पंजीयन दायित्व मानते हुए तदनुसार धारा 56 के तहत शास्ति एवं आलौच्य अवधियों के लिये कर, ब्याज व शास्ति के रूप में भारी मांग सृजित किये जाने में विधिक त्रुटि की गयी है। इसी प्रकार अपीलीय अधिकारी द्वारा भी प्रकरण के तथ्यों एवं विधिक प्रावधानों की विवेचना किये बिना कर निर्धारण आदेश की पुष्टि किये जाने में विधिक त्रुटि की गयी है। विद्वान अभिभाषक ने अपीलार्थी की आलौच्य अवधियों का लेखा विवरण प्रस्तुत किया गया है, जो निम्न प्रकार है :-

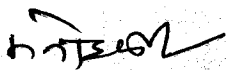
**Statement Showing Details of Prospectus & Admission Expenses and Fee Receipts**

S. No.	Expense Head	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
A.	Prospectus & Admission Receipt	1,41,43,321	1,53,18,165	1,49,63,298	1,55,64,880	1,55,95,850	1,95,67,915
B.	Prospectus & Admission Expenses	1,84,67,613	1,35,55,375	2,04,76,722	2,31,15,419	2,73,17,205	3,49,21,480
	Surplus / Deficit	43,24,292	17,62,790	55,13,424	75,50,539	1,17,17,355	1,53,53,565

10. विद्वान अभिभाषक ने अपीलार्थी विश्वविद्यालय के 'Constitution' (Memorandum of Association and Rules) प्रस्तुत किये हैं, जिसमें अपीलार्थी विश्वविद्यालय के निम्न **Objects** बताये गये हैं :-

Rule 3. The objects of the University shall be :

- (i) to provide for and otherwise promote, in the context of a synthesis of the spiritual heritage and the scientific achievements of the East and the West, education, training and research in different areas of knowledge viz., Humanities, Social Sciences, Home Science and Natural Sciences and to preserve and inculcate amongst students the essential values and ideals of Indian Culture and Indian way of life;
- (ii) to create, publish and disseminate literature in fulfillment of (i) of above;



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- (iii) to participate in and co-operate with, as far as possible, similar efforts carried on elsewhere in India and abroad; and
- (iv) to create Trusts, collect funds, raise loans and to utilise the same and the income therefrom for the objects referred to in (i) to (iii) above.

11. विद्वान अभिभाषक ने न्यायिक दृष्टान्त (2002) 126 S.T.C. 288 (SC) / (2002) 4 S.C.C. 57 (SC) C.S.T. vs. Sai Publication Funds प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -

"Held affirming the decision of the High Court, (i) 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 ; (see para 10)

(ii) That under section 3 the liability to pay sales tax was only on dealers ; (see para 10)

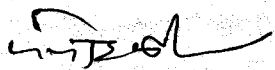
(iii) that on a combined reading of sections 3, 2(5-A) and 2 (11), the tax under the Act was leviable on the sales or purchases of goods by a dealer and not every person ; and (see para 10)

(iv) that, since the sole object of the trust was to spread the message of Saibaba of Shridi and the books, literature, etc., containing the message of Saibaba were distributed by the trust to devotees at cost price, the primary object of the trust was to spread the message of Saibaba 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 Saibaba and not any business as such. The trust was not established with an intention of carrying on business of selling or supplying goods so as to fall within the meaning of "dealer" under section 2(11). (see paras 10 and 11)

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. (see para 17)

Under section 2(5-A), 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 of sales rests on the department. The inclusion of incidental or ancillary activity in the definition of "business" contained in section (11) pre-suppose the existence of trade or commerce, etc. (see para 11)

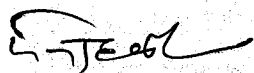
.....The definition of "dealer" in section 2(11) clearly indicates that in order to hold a person to be a "dealer", he must "carry on business" and then only he may also be deemed to be carrying on business in respect of transaction incidental or ancillary thereto. (see para 11)



This court in the afore mentioned Judgment further examined the cases to findout if the main activity was not business. In para 32, reference is made to the case of Bombay High Court in State of Bombay v. Ahemdabad Education Society [1956] 7 STC 497 (Bom). In that case, the educational society was entrusted with the task of founding a college and for that purpose it was to construct buildings therefor. It was held that it could not be said to be "carrying on business" merely because for the above purposes, it established a brick kiln and sold surplus bricks and scrap at cost price without intednding to make profit or again. Having regard to its main activites and its objects, it was held that the educational society was not established to "carry on business" and the sale of bricks was held not exigible to sales tax. Chagla, C.J., pointed out that it was not merely the act of selling or buying, etc., that constituted a person a "dealer" but the "object" of the person who carried on the activities was important. It was further stated that it was not every activity or any respeated activity resulting in sale or supply of goods that would attract sales tax. If Legislature intended to tax every sale or purchase irrespective of the object of the activities out of which the transactions arose, then it was unnecessary to state that the person must "carry on business" of selling, buying, etc."

"We see no reason to differ with the aforesaid proposition of law, which is based on correct reading of various judicial pronouncements of the apex court. The case on hand stands on a better footing in as much as in this facts situation the element of business i.e. motive on the part of the university to indulge in any business activity is totally lacking and statutorily impossible. It is a matter of mere convenience for students and university to get the forms printed for a price and not more than that.

The upshot of the above discussion is that if the main activity of the petitioner is business or not, is the decisive factor to answer the question – whether the person is dealer for incidental or ancillary activity. If the main activity of a person is not business activity, then, such person will not be dealer for incidental or ancillary transaction. Imparting education is a mission. Right to education, in the context of Articles 45, 41 means (a) every child/ citizen of this country has a right to free education until he completes the age of fourteen years; and (b) if a child or citizen completes the age of 14 years the state shall make effective provision or securing the right to work and education within the limits of it economic capacity and development. In the Unni Krishnan, J.P. And Ors. Etc. v. Andhra Pradesh (1993) 1 SCC 645, the Apex Court has laid down that a true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves.



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Viewed as above, we are of the opinion that the petitioner is not a dealer within the meaning of section 2(h) of the Act, therefore, its activity of printing and selling of admission forms to the students does not amount to business within the meaning of section 2(e) of the Act. The petitioner being beyond the purview of the U.P. VAT Act could not be compelled to obtain registration under the said Act or to produce its account books before the respondents. The impugned notice and orders passed by the Authorities under the U.P. VAT Act are palpably illegal and without jurisdiction and cannot be allowed to stand."

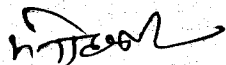
12. विद्वान अभिभाषक ने न्यायिक दृष्टान्त 1963 A.I.R. 1873 (SC) **University of Delhi & Ors. vs. Ram Nath** प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -

"Held that having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the non-inclusion of the whole class of teachers from the definition prescribed by 3. 2 (s) has an important bearing and significance in relation to the problem under consideration. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading s. 2(g), (j) and (s) together it is reasonable to hold that the work of education carried on by an educational institution like the University of Delhi is not an industry within the meaning of the Act.

In the main scheme of imparting education, the subordinate staff with function like those of the respondents play such a minor, subsidiary and insignificant part that it would not be reasonable to allow the work of this subordinate staff to lend its industrial colour to the principal activity of the University which is imparting education. From a rational point of view it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more of a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act.

The appellants cannot be regarded as carrying on an industry under s. 2 (j) and so the application made by the respondents against them under s. 33c (2) of the Act are held to be incompetent."

13. विद्वान अभिभाषक ने न्यायिक दृष्टान्त 19 V.S.T. 305 **M/s Gowtham Residential Junior College vs. Commercial Tax Officer** प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -



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"In view of these judgments, we have no doubt in our mind that purchasing of food items by the petitioners and supplying them to the students in the hostels could not be taxed under the Sales Tax Act. It appears that the Tribunal, in its order, had appreciated the law on the subject, but had misdirected itself, because it was under the impression that imparting of education and running of educational institutions could, in certain circumstances, be a commercial activity. It is also contended by the learned Government Pleader that these institutions are running the schools after collecting huge amounts from the students and as such are not doing any activity which is not commercial. We do not have facts before us as to how much fee is being charged from each student by each school, but so far, the law in this country treats imparting of education as a non-commercial activity and in this case, reliance can be placed on a judgment of the Supreme Court in *University of Delhi v. Ram Nath* AIR 1963 SC 1873. In para 6 of this judgment, the Supreme Court held :

"... it may be legitimate to observe that it is not surprising that the Act should have excluded education from its scope, because the distinctive purpose and object of education would make it very difficult to assimilate it to the position of any trade, business ..."

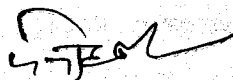
For these reasons, we allow the writ petitions as well as the revision cases and set aside the orders impugned. No order as to costs."

14. विद्वान अभिभाषक ने न्यायिक दृष्टान्त 2014 U.P.T.C. 340 **Commissioner Commercial Taxes Vs. Banaras Hindu University** प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -

"The issue has already been set at rest by Division Bench of this Court and it is well known to the respondent department. It is very surprising and unfortunate that revisionist is unnecessarily burdening this court in respect to a matter which has already been settled by this court very recently, particularly when it is not the case of the petitioner that it had taken the matter to the higher court and the judgment has not become final."

15. विद्वान अभिभाषक ने न्यायिक दृष्टान्त 42 V.S.T. 530 **Scholars Home Sr. Secondary School vs. State of Uttarakhand and another** प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -

"In the light of the aforesaid provisions, the Act would be applicable if a sale is made by a dealer or a person who carries on the business of taxable goods. The word "business" or "business activity" has been explained by various courts through several judgments.

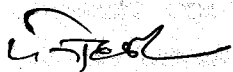


लगातार.....11

.....Thus, if the main activity of a person is not trade, commerce, etc., ordinarily incidental or ancillary activity may not come within the meaning of 'business'. To put it differently, the inclusion of incidental or ancillary activity in the definition of 'business' presupposes the existence of trade, commerce, etc. The definition of 'dealer' contained in section 2(11) of the Act 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 transaction incidental or ancillary thereto. We have stated above that the main and dominant activity of the Trust in furtherance of its object is to spread message. Hence, such activity does not amount to 'business'. Publication for the purpose of spreading message is incidental to the main activity which the Trust does not carry as business. In this view, the activity of the Trust in bringing out publications and selling them at cost price to spread message of Saibaba does not make it a dealer under section 2(11) of the Act."

From the aforesaid, it is clear that a tax is leviable on the sale of taxable goods by a dealer where the business of sale of that taxable goods is a primary and a dominant activity. The Supreme Court further held that if the main activity was not a business, then any transaction incidental or subsidiary to it would not amount to a business unless the main intention was to carry on the business.

In the light of the aforesaid decisions, it is clear that from a combined reading of sections 3, 2(6), 2(11), 2(27), 2(40) of the Act, that a tax is leviable on the sale made by a dealer or a person who is carrying on the business of taxable goods. There is no dispute that in the case of the petitioner, the primary and dominant activity is to impart education. This main activity of the petitioner does not amount to a commercial activity nor is a trade or business as held by the Andhra Pradesh High Court in Gowtham Residential Junior College [2009] 19 VST 305 (AP). In the opinion of the court, such education being imparted by the petitioner is neither a commercial activity nor a trade nor does it amount to "business". It cannot be contended that the establishment of an educational institution is a business nor can it be called a trade since no trading activities are being carried out. In University of Delhi AIR 1963 SC 1873, the Supreme Court held that imparting of education was a mission or a vocation rather than a trade or business. This court is of the opinion that imparting education cannot be treated as a trade or business and that education cannot be allowed to be converted into a commerce nor such activity could be a trade or business contemplated under article 19(1)(g) of the Constitution.



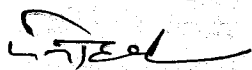
लगातार.....12

In the light of the aforesaid, the main activity of the petitioner is imparting education and is not business. Any transaction, namely, supply of foodstuff to its residential students which is incidental would not amount to "business" since the main activity of the petitioner could not be treated as a commerce or a business. The incidental activity of supplying foodstuff would not come within the meaning of the word "business" as defined under section 2(6) of the Act. Consequently, since no business is being carried out and there is no sale, the petitioner would not come within the meaning of the word "dealer" as defined under the Act.

.....If the person is not doing the business, the question of imposition of tax would not arise. Merely because there is a deemed sale or the fact that the deemed sale is incidental or casual, the tax could only be imposed if the person is a dealer and is engaged in a business activity of purchase and sale of taxable goods. The Supreme Court has clearly held that such business activity must be predominant, i.e., the main activity. As held earlier, the petitioner's main activity is to impart education which is not a business activity nor is a trade and, consequently, the petitioner is not a dealer and is not liable to be taxed under the Act.

16. विद्वान अभिभाषक ने न्यायिक दृष्टान्त (2011) 42 V.S.T. 530 (Uttra) **Scholors Home Senior Secondary School vs. State of Uttarakhand & Ors.** प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -

"Held accordingly, allowing the petitions, that the primary and dominant activity of the petitioner was to impart education. This main activity of the petitioner did not amount to a commercial activity nor was it a trade or business. Imparting education cannot be treated as a trade or business and education cannot be allowed to be converted into a commerce nor could such activity be a trade or business contemplated under article 19(1)(g) of the Constitution. Supply of foodstuff to its residential students which is incidental would not amount to "business" since the main activity of the petitioner could not be treated as a commerce or a business. The incidental activity of supplying foodstuff would not come within the meaning of the word "business" as defined under section 2(6) of the Act. Consequently, since no business was being carried out and there was not sale, the petitioner would not come within the meaning of the word "dealer" as defined under the Act. The issuance of notice proposing to make an assessment under the Act on the supply of foodstuff to the residential students was without jurisdiction and liable to be quashed."



लगातार.....13

17. विद्वान अभिभाषक ने न्यायिक दृष्टान्त 2013 U.P.T.C. 714 **Mahatma Gandhi Kashi Vidyapeeth vs. State of U.P. & Ors.** प्रस्तुत किया है, जिसमें सिद्धान्त प्रतिपादित किया गया है कि -

"Held : the upshot of the above discussion is that if the main activity of the petitioner is business or not, is the decisive factor to answer the question-Whether the person is dealer for incidental or ancillary activity. If the main activity of a person is not business activity, then, such person will not be dealer for incidental or ancillary transaction. Imparting education is a mission. Right to education, in the context of Articles 45, 41 means (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years; and (b) if a child or citizen completes the age of 14 years the State shall make effective provision or securing the right to work and education within the limits of its economic capacity and development. In the *Unni Krishnan, J.P. And Ors. Etc. V. Andhra Pradesh*, (1993) 1 SCC 645, the Apex Court has laid down that a true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves.

Held : Viewed as above, we are of the opinion that the petitioner is not a dealer within the meaning of Section 2(h) of the Act, therefore, its activity of printing and selling of admission forms to the students does not amount to business within the meaning of Section 2(e) of the Act. The petitioner being beyond the purview of the U.P. VAT Act could not be compelled to obtain registration under the said Act or to produce its account books before the respondents. The impugned notice and orders passed by the Authorities under the U.P VAT Act are palpably illegal and without jurisdiction and cannot be allowed to stand."

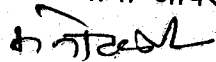
18. विद्वान अभिभाषक द्वारा निम्न न्यायिक दृष्टान्त भी प्रस्तुत किये गये हैं :-
- (i) (1976) 38 S.T.C. 428 (All) **The Indian Institute Of.... vs. The State of Uttar Pradesh & Ors.**
  - (ii) (2009) 19 V.S.T. 305 (AP) **Gowtham Residential Junior College vs. Commercial Tax Officer, Benz Circle, Vijaywada**

19. उक्त कथन के साथ विद्वान अभिभाषक अपीलार्थी ने अपील स्वीकार करते हुए अपीलीय अधिकारी एवं कर निर्धारण अधिकारी के आदेश अपास्त किये जाने का निवेदन किया।

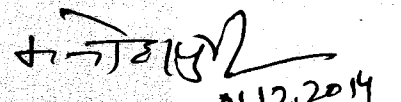


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20. प्रत्यर्थी विभाग की ओर से विद्वान उप-राजकीय अभिभाषक ने अपीलीय अधिकारी व कर निर्धारण अधिकारी के आदेशों का समर्थन करते हुए कथन किया कि अपीलार्थी द्वारा करवाये गये निर्माण कार्यों के लिये सीमेन्ट व लोहे की सप्लाई ठेकेदारों को की गई है तथा भुगतान के समय सीमेन्ट व लोहे की राशि काटी गई है। इस प्रकार अपीलार्थी द्वारा किया गया उक्त कृत्या स्पष्ट रूप से विक्रय की श्रेणी में आता है। विद्वान उप-राजकीय अभिभाषक ने वेट अधिनियम की धारा 2(35) "Sale" की ओर ध्यान आकृष्ट कर अपीलार्थी के उक्त कृत्य को विक्रय की परिभाषा में आना बताया। अतः अपीलार्थी का पंजीयन का दायित्व होने बाबत कथन किया। वेट अधिनियम की धारा 3 का उल्लेख करते हुए भी अपीलार्थी का पंजीयन का दायित्व होना बताया। उक्त कथन के साथ विद्वान उप-राजकीय अभिभाषक ने अपीलार्थी की अपील अस्वीकार किये जाने पर बल दिया। विद्वान अभिभाषक ने उक्त तर्कों के समर्थन में माननीय राजस्थान उच्च न्यायालय का न्यायिक दृष्टान्त (2004) 135 S.T.C. 511 (Raj) Garrison Engineer (Project-I) vs. State & Ors. प्रस्तुत किया।
21. उभयपक्ष की बहस पर मनन किया गया एवं पत्रावली का अवलोकन किया गया तथा उद्धरित न्यायिक दृष्टान्तों का ससम्मान अध्ययन किया गया।
22. विद्वान अभिभाषक द्वारा उठाई गई प्रारम्भिक आपत्ति के बिन्दु को विवादित आदेश पारित करने वाला अधिकारी, पंजीकरण प्रदान करने वाले अधिकारी के समतुल्य पद धारित करने वाला अधिकारी होने के कारण, के आधार पर खारिज करते हुए निस्तारण किया जाता है।
23. उपरोक्त पैरा संख्या 11 में माननीय उच्चतम न्यायालय द्वारा दिये गये निर्णय में व्यवस्था दी गई है कि यदि किसी व्यक्ति का मुख्य कार्य कारबारी नहीं है तो ऐसी स्थिति में वह उसके आनुषंगिक संव्यवहारों के सम्पादन के सम्बन्ध में डीलर नहीं होगा। कर भुगतान का दायित्व डीलर का होता है। किसी व्यक्ति के लिये डीलर की परिभाषा में शुमार करने के लिये उसके द्वारा कारबार किया जाना आवश्यक है। कारबार किये जाने पर ही वह उसके द्वारा किये जाने वाले आनुषंगिक संव्यवहारों के लिये कारबार किया जाना माना जा सकता है।
24. इसी प्रकार उपरोक्त पैरा संख्या 12 से 18 में उल्लेखित निर्णयों में माननीय न्यायालयों ने इसी आशय की व्यवस्था दी है कि यदि किसी व्यक्ति का मुख्य कार्य कारबार करना नहीं है तो सामान्यतया आनुषंगिक क्रिया कारबार की परिभाषा में नहीं आ सकती है। वेट अधिनियम की धारा 2(11) की परिभाषा के सन्दर्भ में किसी व्यक्ति को डीलर ठहराने के लिये उसका प्रमुख कार्य कारबार किया जाना आवश्यक है।



25. माननीय उच्चतम न्यायालय के पैरा संख्या 11 में वर्णित निर्णय व अन्य वर्णित निर्णयों के प्रकाश में वेट अधिनियम की धारा 11 के अनिवार्य पंजीयन के प्रावधान, धारा 2(11) में डीलर की परिभाषा एवं धारा 2(6) के कारबार (Business) की परिभाषा के संयुक्त पठन के पश्चात यह निष्कर्षित किया जाता है कि अपीलार्थी वनस्थली विद्यापीठ का मूलभूत/प्राथमिक व प्रबल/सर्वाधिक (Predominant) कार्य शिक्षा प्रदान करना है, व शैक्षणिक गतिविधियों का संचालन करना है। विवरण पत्रिका बेचने व संस्थान के परिसर में कक्षाओं के निर्माण के लिये उपलब्ध कराये गये सीमेन्ट व लोहे की आपूर्ति करने का कार्य वेट अधिनियम की धारा 2(11) में 'डीलर' की परिभाषा अनुसार अपीलार्थी द्वारा कारबार किया जाना नहीं पाया जाता है। अपीलार्थी विश्वविद्यालय का किसी कारबार (Business) की गतिविधियों में लगे रहने (indulge) के हेतुक का सर्वथा अभाव है। अपीलार्थी द्वारा कारबार किये जाने का तत्त्व परिलक्षित नहीं होता है। अपीलार्थी विश्वविद्यालय की स्थापना माल के खरीद बिक्री करने के कारबार करने के आशय से नहीं की गई है। शिक्षा प्रदान करने वाली संस्था को कारबार (business) करने वाली संस्था के रूप में रूपान्तरित नहीं किया जा सकता है। अपीलार्थी का मुख्य कार्य कारबार (Business) नहीं होने की स्थिति में इसके द्वारा किये गये आनुषंगिक संव्यवहार से अपीलार्थी को डीलर नहीं ठहराया जा सकता है। वेट अधिनियम की परिधि में नहीं होने के कारण अपीलार्थी पंजीकरण प्राप्त करने के लिये दायी नहीं है।
26. उपरोक्त विवेचन अनुसार अपीलार्थी का पंजीयन दायित्व नहीं होने के कारण कर निर्धारण अधिकारी द्वारा अपीलार्थी पर पंजीयन दायित्व दिये जाने सम्बन्धी आदेश दिनांक 18.03.2013 पारित किये जाने में विधिक त्रुटि की गयी है। इसी प्रकार अपीलीय अधिकारी द्वारा अपीलाधीन आदेश दिनांक 30.07.2014 से उक्त कर निर्धारण आदेश की पुष्टि किये जाने में विधिक त्रुटि की गयी है।
27. परिणामतः अपीलार्थी की अपील स्वीकार की जाकर कर निर्धारण आदेश दिनांक 18.03.2013 एवं अपीलीय आदेश दिनांक 30.07.2014 अपास्त किये जाते हैं।
28. निर्णय सुनाया गया।

  
( मनोहर पुरी )  
सदस्य