(2015) 02 RAJ CK 0170

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 205 of 2014

Commercial Taxes Officer — APPELLANT

Vs

Banasthali Vidyapith — RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Constitution of India, 1950 — Article 21A, 366
Income Tax Act, 1961 — Section 12AA
Rajasthan Value Added Tax Act, 2003 — Section 11, 2(11), 2(35), 2(4), 2(40)(f)

Citation : (2015) 79 VST 282

Hon'ble Judges : J.K. Ranka, J.

Bench : Single Bench

Advocate : R.B. Mathur and Tanvi Sahai, for the Appellant; K.K. Sharma, Senior Advocate assisted by Jatin Agarwal and V.K. Singhal, Advocates for the Respondent

Judgement

J.K. Ranka, J.—Instant sales tax revision petition under section 84 of the Rajasthan Value Added Tax Act, 2003 (for short, "the RVAT") has been filed by the Revenue assailing the order dated December 1, 2014 passed by the Rajasthan Tax Board, Ajmer (for short, "Tax Board") in Appeal No. 1528/2014/ Tonk. Brief facts are that the respondent is a renowned institution imparting education primarily to female students and is claimed to be not carrying on any trade, commerce or business but only carrying on the activity of imparting education which according to the respondent-institution is not at all in the nature of business, trade, commerce and is not into any activity of carrying on manufacturing or otherwise. The respondent-institution is registered under section 12AA of the Income-tax Act (for short, "the IT Act") and it is a public society formed and registered on March 16, 1951 under the provisions of the Indian Societies Act, 1860 and also under the Rajasthan Societies Act, 1958. It is claimed by the respondent-institution that it provides education to the girls and carries on similar activities for the welfare and over all development of girl students. It is claimed by the respondent-institution that it also has hostel facilities and is providing meals, books and other facilities to the students who reside in the hostel to get education in the university. The respondent has been treated as a "university" as per notification issued by the Education Department, Government of India.

2. A survey was carried in the premises of respondent-institution on December 12, 2012 by the Revenue Officials and during the course of survey, it was noticed that from the assessment years 2007-08 to 2012-13, the respondent-institution provided material, namely, cement, iron and steel to the contractors for constructing its premises or/and maintenance of the properties being owned by it. Apart from the same, it sold prospectus to the prospective students who wanted to seek admission in the institution. It has been claimed by the Revenue that providing material, namely, cement, iron and steel to the contractors and reducing the value of the same from the contract amount as also selling of the prospectus to the students is sale liable to RVAT under entry 104 and despite of the respondent-institution (assessee) being a dealer, liable to get registered under the RVAT, it did not got itself registered under the provisions of the RVAT.

3. The Revenue, on the basis of the aforesaid, was of the view that the assessee needs to get itself registered as a dealer under the RVAT and accordingly a show-cause notice under sections 11 and 56 of the RVAT was issued as to why the institution be not got registered provisionally under the RVAT. In response to the show-cause notice, it was claimed by the assessee (i) that the institution is imparting education only and there is no activity of purchase/sale as such; (ii) the prospectus is being provided to the students which contain not only the form but other information relating to the university, facilities provided, hostel, etc., etc., and it is in the nature of a book and, therefore, even otherwise, it being a book, is exempt under the provisions of the RVAT; (iii) the cement, iron and steel provided to the contractors is to safeguard quality of the items which is being purchased by the institution in bulk from reputed manufacturers for buildings for its own and that all the purchase of cement, iron and steel is after paying due VAT; (iv) that it is registered under the IT Act as a charitable society; (v) it is an educational institution run by the society and is a deemed university; (vi) under section 11, liability of registration only arises if there is liability to pay tax under section 3; (vii) under section 3(1)(c), liability arises of a person/dealer whose turnover is more than Rs. 10 lac; (viii) A dealer is one who carries on business activities and that the assessee, being a charitable society/institution whose dominant activity is imparting education; and (ix) providing of cement, iron and steel to its own contractors for the construction of hostel building, etc., does not come in the category of business activity.

4. The AO was dissatisfied and observed that the explanation, so offered, is not satisfactory and while registering the respondent-assessee as under the category "obligatory registration" held that even incidental activity comes into the category of business. The Revenue further contended that merely because it is a registered society, no exemption is available to it. It further expressed that

reducing the contract value by providing cement, iron and steel comes within the definition of sale as ultimately the assessee purchased the same, handed over to the contractors and reduced the value. Therefore, first it purchased and then it sold/provided to the contractor and as such, it is in the nature of sale. It was also observed that the prospectus cannot be termed as a "book" as it is not in the category of book and that in the assessment year 2007-08 itself, the receipts/ income by providing/selling the prospectus, was more than Rs. One crore. Accordingly, the AO registered the assessee as under the category of "obligatory registration" under section 11 of the RVAT and also imposed a penalty to the tune of Rs. one thousand as the assessee did not get itself registered.

5. The matter was carried in appeal before the appellate authority who dismissed the appeal of the respondent-assessee and upheld the finding of the AO after considering entry 54 of List II of the same Schedule to the Constitution; definition of sale under section 2(35); definition of taxable turnover under section 2(4); Incidence of tax under section 3 and rule 11(4). It discarded explanation after considering the judgment rendered by the honourable apex court in the case of Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, where the -CPWD constructed properties, buildings and that even they were not exempt and liable to sales tax.

6. Dissatisfied with the said order, the respondent-assessee carried the matter in appeal before the Rajasthan Tax Board and the Tax Board, after analysing the material on record, came to the conclusion that the assessee cannot be said to be a "dealer'''' under section 2(11) as it does not carry on any business. It further observed that the assessee is not carrying on any business as the primary and dominant activity is of imparting education which cannot be said to be business. Hence this revision petition.

7. Counsel for the petitioner-Revenue vehemently contended that both, the AO as well as the appellate authority, after going through the material on record, had correctly come to the conclusion that the assessee comes within the definition of a "dealer" as not only the assessee is providing iron, steel, cement, etc., to the contractor after purchasing the same but also selling prospectus and the supply of material and receipts of prospectus alone is worth crores in several years. He further contended that the Revenue has primarily to see whether a person/dealer/institution is required to get itself registered under the RVAT and prima facie view is required to be looked into at the time of "obligatory registration" and merits are not required to be looked into.

8. He further stressed that the respondent-assessee, though may be carrying on the activity of education but certainly is carrying on activities as a dealer because first of all, cement and iron and steel have been purchased in huge quantity and he pointed out by way of example that in the year 2007-08, the assessee purchased cement, iron and steel to the tune of Rs. 1,82,10,506 at four per cent and Rs. 1,64,57,510 at 12.5 per cent, respectively and provided the same to the contractors. In other words, it is in the nature of purchase and sale to the

contractors as the items provided by the assessee ultimately have been reduced out of the contract amount. He contended that in the subsequent years, the purchases have increased even three times to what has been shown in the assessment year 2007-08. He further contended that substantial amount is recovered/received by way of sale of prospectus and admission form and in the assessment year 2007-08, it was to the tune of Rs. 1,41,43,321 which increased every year. He further contended that there are benefits under the RVAT and if the assessee has purchased the items after paying VAT, it gets due benefit as input-tax credit and others but under section 11, it is primarily to be seen whether it is required to be registered or not. 9 He further contended that whether one is a society or a trust, if it carries on activity as a dealer, certainly it is required to be got registered. He contended that the definition of "sale" under section 2(35) is very wide and covers the respondent-institution as well. He further contended that the exemption has been provided under the RVAT to few universities, hostels and other institutions but not to the institutions like the present assessee. He further contended that the text books are certainly exempted but a prospectus cannot be said to be a text book as it contained no reading material and it only provides admission form and some brief activities about the institution. He relied upon judgment rendered by the Karnataka High Court in the case of M/s. Manipal University Vs. The State of Karnataka, Department of Finance, and the judgment rendered by the honourable apex court in the case of Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, . He contented that the issue before the Karnataka High Court in the case of M/s. Manipal University Vs. The State of Karnataka, Department of Finance, was only about sale of prospectus and the Karnataka High Court held that it is liable to tax as it is a sale. In the case of Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, , the honourable apex court expressed view that the CPWD is liable for sales tax as it gets no exemption. Accordingly, counsel for the petitioner contended that the questions of law are involved and the order of the Tax Board deserves to be quashed and set aside.

9. Per contra, learned senior counsel for the respondent-assessee contended that the assessee cannot be said to be a dealer and by no stretch of imagination, a university like the assessee, whose pre-dominant and sole purpose is imparting education, cannot be said to be a dealer carrying on business activity. He contended that once there is no business activity and a regular activity or a person, who is not carrying on any trade, commerce or manufacture, then one cannot be held liable for registration or liable to tax as a normal dealer would have been. He further contended that neither the main activity nor incidental activity is business. He further contended that the Revenue has been unable to prove by any evidence that even a single rupee has been earned by the assessee other than the receipts by way of tuition fees and other receipts which can be termed to be by way of business/sale. He further contended that the Tax Board has rightly come to the conclusion that the respondent-institution is not carrying

on any business activity, is not a dealer and has rightly held the assessee not liable for registration under the RVAT and relied upon judgments rendered by the honourable apex court in the case of Board of Revenue and Others Vs. A.M. Ansari and Others, and State of Tamil Nadu and Another Vs. Board of Trustee of the Port of Madras, . He also relied upon judgment rendered by the Allahabad High Court in the case of Mahatma Gandhi Kashi Vidyapeeth Vs. State of U.P. and Others, , Andhra Pradesh High Court in the case of Gowtham Residential Junior College and Others Vs. Commercial Tax Officer and Others, of the Uttarakhand High Court in the case of Scholors Home Senior Secondary School Vs. State of Uttarakhand and Another, . He laid stress on judgments of various courts who have primarily come to the same view as taken by the honourable apex court in its judgment rendered in the case of Commissioner of Sales Tax Vs. Sai Publication Fund, where even the honourable apex court came to the conclusion that even sale of religious books is not in the nature of business activities. He further contended that to maintain quality, the assessee had purchased cement, iron and steel directly from the dealers and provided the same to its contractors and there is no value addition at all as, on whatever cost value, items have been purchased, the same has been deducted out of the contract value and that entire purchases of these items is after paying due VAT and admittedly, the Revenue finds nothing adverse that the items, namely, cement, iron and steel are items on which the VAT has been paid. In so far as the prospectus is concerned, he contended that it contains useful information and not only the admission form but other material is available to enable to seek admission for the courses imparted by it thus it is in the nature of book. He further contended that the receipts by providing prospectus is minuscule and is just about one per cent, of the total receipts of the institution.

10. Both the counsel argued the matter finally at the admission stage and with the consent of the counsel, the matter is heard finally.

11. In my view, question of law does arise and to answer the instant revision petition, the following questions of law are framed:

"(i) Whether, in the facts and circumstances of the case, the Rajasthan Tax Board was justified in law and has not acted illegally in holding respondent not liable to registration despite of the fact that the respondent is engaged in business activity of sale and purchase of cement, iron, steel and sale of prospectus ?

(ii) Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in holding that the respondent is not liable to registration without appreciating provisions of section 2(6), 2(11) and 2(35) of the Act ?

(iii) Whether, in the facts and circumstances of the case, the respondent is not a dealer engaged in business activity of selling and purchasing cement and steel and selling prospectus ?"

12. I have heard counsel for the parties and perused the material on record including the judgments cited by counsel for both the sides.

13. In my view, the question hinges on the fact as to whether a university/ institution, whose dominant activity or the main activity is imparting education to the students merely, by providing cement, iron and steel by it to its contractors for execution of civil work and providing prospectus to the prospective students by it, can be said to be a business activity or otherwise and could the institution be a dealer.

14. It would be appropriate and fruitful to quote section 2(6), which defines "business"; section 2(11), which defines "dealer" and section 2(35), which defines "sale", under the RVAT Act to decide the controversy:

"2. (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 to 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;

2(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;

(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;

2(35) ''sale'' with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration and includes,--

(i) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) any delivery of goods on hire-purchase or other system of payment by instalments;

(iv) a transfer of the right to use goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply shall be deemed to be a sale and the word ''purchase'' or ''buy'' shall be construed accordingly;

Explanation.--Notwithstanding anything contained in this Act, where any goods are sold in packing, the packing material in such case shall be deemed to have been sold with the goods;"

15. A reading of all the sections, referred to supra, shows that it prescribes that a person, may be a university or an institution/society or otherwise who may

carry on any trade, commerce or manufacturing activity or in the nature of trade, commerce or manufacturing and whose even incidental or ancillary activity is in the nature of trade, commerce and manufacturing or even occasional transaction in the nature of such trade, commerce, manufacturing, then it comes within the definition of a "business". A dealer has been defined to be any person who carries on business in any capacity of buying, selling or supplying and distributing goods directly or otherwise or making purchases or sales as defined in clause 35 for himself or others, a factor, broker, commission agent, etc., etc. A dealer is one who also can be said to be an importer of goods or manufacturer.

16. The above definition explicitly lays that a society or a university or an institution by itself does not get exemption under the RVAT and if an institution or university, even if carry on activity of a business, then it comes within the ambit and purview of business then it is liable for registration under the RVAT. There is no question of profit-motive in the case where person is carrying on any trade or commerce.

17. The education, in true aspect, is more of a mission and vocation rather than a trade or a business. Education makes a man/woman perfect. It gives a person to learn and think. Education, in its true sense is more a mission and avocation rather than profession, trade or business, however, wide may be definition under the Sales Tax Act. The aim of education is creation of a well developed youth who after being educated will think in a progressive manner. Education is essentially for everyone. A child without education is like a bird without wings. It has been said that a man without education is a building without foundation. Education is the movement from darkness to light and enlightenment. Education is more than a luxury. It is responsibility that society owes to itself. Education is not received, it is achieved. It goes without saying that education has a positive effect on human life. All people need to study. Only with the advent of education can people gain knowledge and enlarge their views over the world. Education is important as essential element for the betterment of life, particularly, for the improvement or development of mental capacity and to make human life, living with contents of humanity. In my opinion, the educational institutions imparting general education cannot be said to be doing business and in particular they are not carrying on any activity of trade or commerce or manufacture. The institution, as the respondent-assessee is, is transferring knowledge, abilities, values and skills from the professors/ teachers to the students for the overall development of the students. Education helps to develop personality of a person. An educated youth becomes capable to find clear picture and right direction of his life. Education gives a man meaning of life. Education plays a key role in the development of the society as well. There is vast advancement in the field of education. Education leads to research, it opens new avenues, new vistas, new creations and new innovations. It is the ultimate path way of success. Education gives a great deal of support and encourages each and every student. "Being educated is the biggest asset of a person (male and female) and no one can deny that education is given highest place in this world." Education teaches

values, character and outshines a person when enters in the social field. Even right to education is a fundamental right under article 21A of the Constitution. Even as per this right, students up to the age of 14, should study but not work. In my view, education is an essential commodity like food, clothes and shelter. It is a key to success of an individual. Education is the real wealth for the nation. It opens the doors for employment. It certainly provides comforts. Education is also a lamp for desires of the poor. It keeps them away from superstitious belief. It directs the person to move in right path at all times in life. Education makes students physically and mentally strong and education is considered to be the best investment for the people because well educated have more opportunities to get a job which gives them satisfaction of life. An educated person will always be respected in any part of the world and his talent will be awarded and rewarded in times to come. Education is the best weapon to eradicate poverty. It increases the ethical values of the person. It not only is learning about books but also learning about life. There is a Sanskrit proverb which reads as under:

"Sahithya Sangeetha Kala viheena Sakshath pashu puchhavishana Heenaha; Thrunanna khadannapi jeevamanam; Tadbhagadheyam paramam pashunam." 18. It means, a man who is devoid of knowledge of literature, music and art, is just like a cattle or an animal, which has got no horns, no tail and which does not take grass and even though is really a cattle, but by the grace of God he is in the form of a man. This is the importance of education, i.e., one who suffers from want of education is just like a creature other than the human beings.

19. There is another Sanskrit Shloka from Uttar Geetha and Lord Krishna says :--

Aahar nidra bhaya. Maithhunancha Samaanmethat pashubhinaraanamm Gyaanam naraanamadhike visheshh Gyanainheenha pashubhissamaanaha; 20. Means-food, sleep, fear and sex are common to animals, birds and to man. There is no difference in the enjoyment of pleasures. What is special to man is gyaan, i.e., learning and knowledge that directed towards attaining the supreme being. One who is devoid of learning and knowledge (gyaan) is at par or is equivalent to an animal.

21. Such is the role of education in the building of personality and dignity of human beings. Therefore the need of the time is no doubt to expand the sphere of education and learning in the proper sense, which may inculcate in one the traits of humanity, the character and a sense of honour, apart from training the one for worldly life. It has the great effect in the building up of the character. So it is beyond doubt the need of educational institutions and establishments thereof in the areas which are inhabited by human beings or near the areas of human habitation where children, including those belonging to the down trodden classes or the poor men also may be able to be educated.

22. Therefore, when one consider the above aspects, in my view, there can be no dispute that in the case of the petitioner, the primary and predominant activity is to impart education. This primary and predominant activity of the petitioner

cannot be said to be a commercial activity nor it can be said to be a trade or business and this court is also of the same opinion.

23. The honourable apex court in State of Tamil Nadu and Another Vs. Board of Trustee of the Port of Madras,   has stated (paras 13, 14, page 528 in 114 STC):

"... The word ''business'' is wider than the words ''trade, commerce or manufacture, etc''. The word ''business'' though extensively used is a word of indefinite import, in taxing statutes, it is normally used in the sense of an occupation, a profession--which occupies time, attention and labour of a person, normally with a profit-motive and there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive and not for sport or pleasure State of Andhra Pradesh Vs. Abdul Bakhi and Bros.,   ..

The word ''carrying on business'' requires something more than merely selling or buying, etc. Whether a person ''carries on business'' in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive Board of Revenue and Others Vs. A.M. Ansari and Others,   ."

24. Further in para 30 of the same judgment, it is stated thus (para 28, pages 535 and 536 in 114 STC):

"30. In our view, if the main activity was not ''business'', then the connected, incidental or ancillary activities of sales would not normally amount to ''business'' unless an independent intention to conduct ''business'' in these connected, incidental or ancillary activities is established by the Revenue. It will then be necessary to find out whether the transactions which are connected, incidental or ancillary are only an infinitesimal or small part of the main activities. In other words, the presumption will be that these connected, incidental or ancillary activities of sales are not ''business'' and the onus of proof of an independent intention to do ''business'' in these connected, incidental and ancillary sales will rest on the Department. If, for example, these connected, incidental or ancillary transactions are so large as to render the main activity infinitesimal or very small, then of course the case would fall under the first category referred to earlier." 25. The apex court in Commissioner of Sales Tax Vs. Sai Publication Fund, after referring to the above stated case stated that the Revenue neither contended nor proved that in sale of publication the Trust had an independent intention to do business as incidental or as an ancillary activity. It also observed at page 67 in SCC; (page 299 in 126 STC) : "... It may be stated that the question of profit-motive or no profit-motive would be relevant only where person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce, etc. On the facts and in the circumstances of the present case irrespective of the profit-motive, it could not be said that the Trust either was ''dealer'' or was carrying on trade, commerce, etc. The trust is not carrying on trade, commerce, etc., in the sense of occupation to be a ''dealer'' as its main object is to spread message of Saibaba of Shridi as already noticed above..." In the ultimate analysis it held it not liable to be registered.

26. The Allahabad High Court in Mahatma Gandhi Kashi Vidyapeeth Vs. State of U.P. and Others, observed "that 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. The university in that case was established under the U.P. State Universities Act, 1973 to impart education in various discipline of higher education and research. In that case High Court observed that, it was a matter of mere convenience for students and university to get the forms printed for a price and not more than that and thus the university was not a "dealer" within the meaning of section 2(h) of the U.P. Value Added Tax Act and, its activities of printing and selling of admission forms to the students did not amount to business within the meaning of section 2(e) of the Act. Admittedly respondent is a reputed old university of high repute.

27. The case of M/s. Manipal University Vs. The State of Karnataka, Department of Finance, relied by counsel for the Revenue is completely distinguishable on its facts. In the said case it was not in dispute that the university was a registered dealer under the Act. They run medical colleges and hospitals attached thereto. Admittedly, medicines in the hospitals were sold by them and so also in the medical shops attached thereto.

28. The Allahabad High Court in Swadeshi Cotton Mills Co. Ltd. Vs. Sales Tax Officer and Another, was dealing with a batch of cases where different bodies were running canteens. One of the cases concerned the Aligarh Muslim University which was maintaining dining halls where it was serving food and refreshments to its residents-students. It was held, referring to observations in the case of University of Delhi and Another Vs. Ram Nath, that it was incongruous to call "educational activities" of the university as amounting to "carrying on business". The activity of serving food in the dining hall was a minor part of the overall activity of the university. Education was more a mission and avocation rather than a profession or trade or business. The aim of education was the creation of a well-educated, healthy, young generation imbued with a rational and progressive outlook of life. On this reasoning, it was held that the Aligarh University was not carrying on business and the sale of food at the dining halls was not liable to tax.

29. In The Indian Institute of Technology Vs. The State of Uttar Pradesh and Another, with respect to the visitor''s hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the institute in connection with education and the academic activities of the institute. It was observed that, the statutory obligation of maintenance of hostel which involved supply and sale of food was an integral part of the objects of the institute. Nor could the running of the hostel be treated as the principal activity of the institute. The institute could not be held to be doing business.

30. The Madras High Court in the case of Deputy Commissioner (C.T.) Vs. South India Textile Research Association, , held that purchasing of godown yard and godown waste resulting in research activities undertaken by South India Textile Research Association was construed as exclusively a research activity but not a business activity and the sales and purchases could not be subjected to sales tax.

31. The Uttarakhand High Court in the case of Scholors Home Senior Secondary School Vs. State of Uttarakhand and Another, , considering a case of supply of food to its residential students, which is incidental, whether would mean to business or not, held as under (pages 543 and 544 in 42 VST):

"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.

The contention of the respondents that the dominant intention is not required to be seen in view of the amended definition of the word ''sale'' pursuant to the 46th Amendment in the Constitution and that the sale of foodstuff would be a sale as contemplated under section 2(40)(f) of the Act is based upon a decision in Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, , in which the Supreme Court in para 49 held that after the 46th Amendment, the sale element of those contracts which are covered by sub-clause (6) of clause (29A) of article 366 are separable and subjected to sales tax and that there was no question of the dominant nature test to be applied. There is no quarrel with the aforesaid proposition. The judgment is however not applicable to the case at hand. Before imposing any tax, one has to see whether the Act is applicable or not. The question of a deemed sale under section 2(40)(f) of the Act would only apply if the person on whom the tax is being imposed is a dealer who is doing the business of sale of taxable goods. 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."

32. Counsel for the Revenue has laid stress on the judgment rendered by the honourable apex court in the case of Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, certainly, if a person is carrying on an activity of business, even if it is a Central Government undertaking, will

not be exempt and therefore, the honourable apex court, after considering that CPWD was purchasing the goods, held that huge quantity of cement and material was supplied in the works of construction, there was passing of property and by virtue of receipts of value of such transferred property by way of adjustment in the bills the consideration is also huge which justified the definition of "sale" in the local Sales Tax Act. However, the facts are distinguishable as the respondent is merely providing material for own use and there is no value addition out of the aforesaid.

33. It is well-settled that if the main activity is not business, then the connected, incidental or ancillary activities would not normally amount to business unless an independent intention to conduct business in these connected, incidental or ancillary activities is established by the Revenue. (See State of Tamil Nadu and Another Vs. Board of Trustee of the Port of Madras, . In such cases the onus of proof of an independent intention to "carry on business" connected with or incidental or ancillary would rests on the Department. Banasthali Vidyapeeth is also a deemed university and publication of "prospectus" contains activities of the university, courses, syllabus, applications, fees, etc. Making it available to the students for their information, knowledge, consideration and applying for admission to the course found suitable is ancillary, incidental and essential to its main and predominant object to impart education. It is well known that Banasthali Vidyapeeth is first in the State of Rajasthan for girls education and a pioneer institution serving for the last several decades. Its activity of printing and selling of prospectus is not main activity and would not amount to "business". Hence it is not a dealer liable to be registered under the Rajasthan VAT Act. It is also noticed that the sale of prospectus is only an infinitesimal or small part of the main activity. As stated in the case of State of Tamil Nadu and Another Vs. Board of Trustee of the Port of Madras, , the presumption will be that these connected, incidental or ancillary activities of sales are not "business" and the onus of proof of an independent intention to do "business" in these connected, incidental and ancillary sales will rest on the Department. The Department has utterly failed to discharge its onus.

34. Banasthali Vidyapeeth purchased cement, iron and steel, in bulk on payment of Rajasthan VAT for its consumption in civil work. The said cement as well as iron and steel was supplied to the contractors for the purpose of performance of the construction work entrusted to them of the very own properties of the respondent. The Department relies on the judgment of the honourable Supreme Court of India in Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, , where the honourable court after referring to the case of M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, held : "In order to be sale taxable to duty, there should be an independent contract--separate and distinct--apart from passing of the property, where a party purchases or procures goods from the Government. Mere passing of property would not suffice. There must be sale of goods. The primary object of the bargain, judged in its entirety must be viewed. In the instant case, clause 10

is significant. Though in a transaction of this type there is no inherent sale but a sale inheres from the transaction. Clause 10 read in the proper light indicates that position. By use or consumption of materials in the work of construction, there was passing of the property in the goods to the assessee from the PWD. By appropriation and by the agreement, there was a sale as envisaged in terms of clause 10 of the contract."

35. In the said case the honourable court also referred to the case of Rashtriya Ispat Nigam Ltd. Vs. State of A.P., where it was held (page 426 in 109 STC) : "For the purpose of performance, the contractor was bound to procure materials. But in order to ensure that quality materials are procured, the PWD undertook to supply such materials and stores as from time to time required by the contractor to be used for the purpose of performing the contract only. The value of such quantity of materials and stores so supplied was specified at a rate and got set off or deducted from any sum due or to become due thereafter to the contractor". The case of M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, was also followed in Cooch-Behar Contractors'' Association and Others Vs. State of W.B. and Others, . And ultimately held that it amounts to a sale within the definition of "sale" in the local Sales Tax Act.

36. However, the honourable court also observed : (page 649 in 136 STC)

"This leaves us to consider the argument advanced by Shri Nikhil Nayyar, learned counsel on behalf of one of the appellants in C.A. Nos. 5270 and 5271 of 2003 wherein the learned counsel contended that the levy under the local Act being a single point tax and the appellant having suffered the same when it purchased the material in question and same material cannot be subjected to another levy on its transfer to the contractor. This argument requires consideration of factual matrix of the case concerned, whether the levy in question is a single point tax and material purchased by the appellants had suffered the levy at the point of purchase by the appellants or not are matters to be decided by the authorities concerned and if the same is not already decided and has not become final, it will be open to the appellants to urge this question before the appropriate authorities." 37. The learned counsel on behalf of Banasthali Vidyapeeth also argues that admittedly the purchase of cement was after payment of VAT and that the levy under the Rajasthan Act being a single point tax and Banasthali Vidyapeeth having suffered the same when it purchased the material in question, the same material cannot be subjected to another levy on such transfer to the contractor for consumption. In view of the said observation of the honourable Supreme Court and considering the factual matrix of the case, the levy being a single point tax and tax having been suffered at the time of purchase by Banasthali Vidyapeeth, it cannot be taxed doubly. I hold accordingly.

38. After having considered these judgments (supra) and as expressed earlier, imparting of education cannot be said to be in the nature of business activity, a trade, commerce or manufacture and once the assessee is not carrying on business or a trade or commerce or manufacture and the predominant and main

activity is that of imparting education, it cannot be said to be a dealer and once this court comes to the conclusion that the assessee does not carry on any business and is not a dealer then it is not required to get itself registered under the provisions of the RVAT Act and therefore, in view of what has been expressed hereinabove, the Tax Board was right in coming to the conclusion that the respondent was not required to be granted "obligatory registration" under section 11 of the RVAT Act and I hold accordingly.

39. Resultantly, the questions of law, as framed hereinabove, are decided in favour of the respondent and against the Revenue. Consequently, the instant revision petition has no force and stands dismissed accordingly with no orders for cost.

