

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 354-355 OF 2015
(SPECIAL LEAVE PETITION (C) NOS.7939-7940 OF 2004)**

**ASSITANT COMMISSIONER,
ERNAKULAM**

... PETITIONER(S)

VERSUS

**HINDUSTAN URBAN INFRASTRUCTURE
LTD. AND ORS.**

... RESPONDENT(S)

J U D G M E N T

H.L. DATTU, CJI.

1. Leave granted.
2. The issue that arises for our consideration and decision in the present appeals is whether an "Official Liquidator" is a "dealer" within the meaning of section 2 (viii) of the Kerala General Sales Tax Act, 1963 (for short, "the Act, 1963"), and therefore would be required to collect sales tax in respect of the sales effected by him pursuant to winding up proceedings of a company in liquidation.
3. These appeals are directed against the judgment(s) and order(s) passed by the High Court of

Kerala in M.F.A. No.1394 of 2002, dated 11.02.2003, and in Review Petition No.191 of 2003, dated 21.03.2003. The Division Bench of the High Court in review confirmed the finding in M.F.A. No.1394 of 2002 and concluded that the Official Liquidator is not a "dealer" under the Act, 1963. However, by the impugned judgment, the High Court has set aside the finding of the learned Single Judge which held that the machinery purchased in the auction sale conducted by the Official Liquidator is not be liable to be taxed under the Act, 1963. The impugned judgment has further accepted a fresh plea raised by the appellant that the auction purchaser would be liable to pay purchase tax under section 5A of the Act, 1963.

4. It is relevant to state that respondent No.1, that is, Hindustan Urban Infrastructure Ltd., had filed a separate appeal- Civil Appeal No.5048 of 2003 against the specific finding of the High Court in the impugned judgment with regard to the liability to pay purchase tax which was imposed upon the auction purchaser thereunder. This Court has separately dealt with the aforesaid question by its order dated 04.09.2014 in the said civil appeal.

FACTS: -

5. To appreciate the issues involved, it would be necessary to notice the facts leading up to the present appeals. M/s. Premier Cable Company Ltd. (for short, "the Company"), was registered under the Companies Act, 1956 (for short, "the Act, 1956"), and engaged in the manufacturing of PVC power cables, Aluminium conductors, enameled wires, etc. Pursuant to a recommendation by the Board for Industrial and Financial Reconstruction, (for short, "BIFR"), the Company was ordered to be wound up by an order passed by the High Court in C.P. No.2 of 1996, dated 18.06.1998. Respondent No.2, that is, the Official Liquidator attached to the High Court was appointed to take charge of the assets and liabilities of the Company and to deal with the same in accordance with the provisions of the Act, 1956 and the Rules framed thereunder.

6. Pursuant to the aforesaid order, the Official Liquidator issued a notice inviting tenders, in respect of the sale of assets of the Company in liquidation, dated 26.11.2001. The aforesaid assets included land with factory building, workshop building, canteen building,

godowns, quarters and other auxiliary buildings and also plant and machinery of the company in liquidation. The Terms and Conditions of the sale of the assets of the Company expressly provided, *inter alia*, that such sale would be subject to confirmation by the High Court and further subject to any subsequent terms and conditions as may be imposed by the High Court.

7. Respondent No.1-auction purchaser, in response to the notice inviting tenders issued by the Official Liquidator, offered to purchase Lot Nos.1-2 for a total amount of Rs.5,76,00,000/- (Rupees Five Crore Seventy Six Lakh only), by an offer letter dated 18.12.2001. It was expressly stated therein that the said amount would be inclusive of all statutory levies such as Sales Tax, Central Sales Tax, Excise Duty, etc., if any, as may be applicable. After accepting the offer so made, the Official Liquidator had placed the same before the learned Judge dealing with the company matters for its confirmation.

8. Subsequent to the confirmation of the said sale, the auction purchaser, being desirous to transport the purchased assets across the border of multiple States,

had requested the Official Liquidator to incorporate the relevant sales tax registration numbers in the sale invoices, *vide* letter dated 29.08.2002. By letter dated 03.09.2002, the Official Liquidator had declined to accede to the request so made.

9. Subsequently, the Official Liquidator filed an affidavit before the learned Single Judge of the High Court, *inter alia*, stating that the Official Liquidator would neither be collecting nor be paying any cess or sales tax in respect of the sale effected by the respondent No.2. It was stated that, in the opinion of the Official Liquidator, the auction purchaser should be directed by the High Court to meet any expenses or liability towards payment of cess, sales tax, etc., if and when the same becomes payable.

10. An application was also filed by the Official Liquidator, in the Company Petition before the learned Single Judge, *inter alia*, seeking clarification on certain aspects of the matter including whether the auction purchaser would be liable to pay tax on the purchase of goods, pursuant to the auction conducted and further to direct the auction purchaser to pay any tax as may be

leviable by the Sales Tax Department. The learned Single Judge after considering the prayers made in the application has passed an order, in C.A. No.293 of 2002 and C.A. No.333 of 2002 in C.P. No.2 of 1996, dated 30.10.2002, wherein it was held that the sale in question cannot be treated as a sale by the Central Government or by a registered dealer entitled to collect tax and further has observed that the auction purchaser cannot be treated as a dealer under the Act, 1963 and further that the said sale in question would not be exigible to sales tax.

11. The Appellant, aggrieved by the order of the learned Single Judge, filed an appeal against the order dated 30.10.2002, *inter alia*, contending that the Official Liquidator would be bound to pay sales tax as and when a sale of the assets of the company in liquidation would be effected by him. The Division Bench of the High Court by an order passed in M.F.A. No.1394 of 2002, observed that the "Official Liquidator" would not fall within the definition of "dealer" under the Act, 1963, dated 11.02.2003. Accordingly the appeal was dismissed and the order of the learned Single Judge was

confirmed.

12. Aggrieved by the aforesaid order dated 11.02.2003, the appellant filed Review Petition No.191 of 2003 before the High Court. In the Review Petition, a new plea was advanced by the appellant claiming that even if the Official Liquidator did not fall within the definition of dealer under the Act, 1963, section 5A of the said Act would be attracted insofar as the auction purchaser is concerned.

13. By the impugned judgment(s) and order(s) passed in Review Petition No.191 of 2003, dated 21.03.2003, the High Court held that the Official Liquidator cannot be treated as a dealer under the Act, 1963, and therefore it is not exigible for payment of sales tax. However, the Court was of the view that the auction purchaser is liable to pay purchase tax under section 5A of the Act, 1963.

ISSUES: -

14. The issues that arise for the consideration in the present appeals are *firstly*, whether the Official Liquidator is a "dealer" within the meaning of the Act, 1963, and *secondly*, whether the Official Liquidator would

be required to pay sales tax in respect of sales effected pursuant to a winding up proceedings.

SUBMISSIONS:-

15. Shri V. Giri, learned counsel for the appellant, submits that the consistent stand taken by the Revenue, is that the Official Liquidator is liable to pay sales tax on the transaction in question. He would state that the Official Liquidator was held to be a "dealer" under the Act, 1963 by the learned Single Judge as well as by the Division Bench of the High Court, and that it is only in review that the said finding was reversed. To support the decision of the learned Single Judge and the Division Bench of the High Court, he would rely upon the definition of "dealer" as provided under the Act, 1963 and submit that the Official Liquidator is an agent of the Central Government and therefore would be deemed to be a dealer as provided under explanation 2 to section 2(viii) (f) of the Act, 1963. To further substantiate his contention, he would refer to the Statement filed, by the Special Government Pleader (Taxes), appearing for the Sales Tax Authorities, before the learned Single Judge of the High Court, wherein it was categorically stated that

the Official Liquidator would be liable to pay tax at the relevant rate under the Act, 1963, whether or not he had collected the same from the auction purchaser.

16. Shri C.S. Rajan, learned counsel for the Official Liquidator-respondent No.2, would support the findings of the High Court in the review petition and state that the Official Liquidator would not be liable to pay any tax under the Act, 1963. He would further state that the liability would in fact be on the auction purchaser who would be exigible to purchase tax under section 5A of the Act, 1963.

17. Shri Rajan would then elaborate upon the nature of the activities carried on by the Official Liquidator and submit that since an Official Liquidator is an officer of the Court, he merely discharges statutory functions imposed upon him and therefore cannot be held liable to pay tax under the Act, 1963. To support this submission, he would further refer to various provisions of the Act, 1956 and the Companies (Court) Rules, 1959 (for short, "the Rules, 1959"). Shri Rajan would lastly submit that since the Official Liquidator discharges statutory functions of selling the assets of the Company

in liquidation, he cannot be perceived to be carrying on "business" as defined under the Act, 1963 and thus cannot be exigible to tax.

18. Shri S.K. Bagaria, learned senior counsel for the auction purchaser would submit that the question of payment of purchase tax could not arise because *firstly*, the contention was raised for the first time in the review petition, and *secondly*, the said tax is a single-point levy at the first point of sale. He would contend that the auction purchaser could not be made liable for a tax that was not even imposed or demanded by the competent authority. He would then contend that the Official Liquidator makes the sale on behalf of the Company and not as the owner. Lastly, Shri Bagaria would refer to Rule 54 of the Kerala General Sales Tax Rules, 1963 (for short, "the Rules, 1963") and section 17 of the Central Sales Tax Act, 1956 (for short, "the CST Act") to demonstrate that the liability to pay sales tax was clearly on the Official Liquidator.

19. We have heard the learned counsel for the parties to the *lis* and also carefully perused the orders passed by the courts and the forums below.

20. The point for the consideration and decision of this Court is whether the Official Liquidator is a "dealer" within the meaning of the Act, 1963, and whether or not he would be required to pay sales tax in respect of sales effected by him pursuant to winding up proceedings.

RELEVANT PROVISIONS:-

21. To appreciate the arguments canvassed it is relevant to notice the relevant provisions. They are- sections 448, 456, 457 of the Act, 1956; Rules 232, 233 of the Rules, 1959; sections 2 (vi), 2 (viii), 5, 5A, 22 of the Act, 1963; and Rule 54 of the Rules, 1963. Since these provisions have been amended from time to time, we have considered the provisions as they were in statute book during the relevant period.

22. Sections 448, 456, 457 of the Act, 1956 deal with the appointment and powers of the Official Liquidator. Section 448 of the Act, 1956 provides for the appointment of an Official Liquidator for the purpose of winding up of a company. The Official Liquidator so appointed conducts the proceedings in the winding up of the company and performs other duties, as the court

imposes upon him, in consonance with the provisions of the Act, 1956. Section 456 of the Act, 1956 states that pursuant to a winding up order, the liquidator shall take into his custody or under his control, all the properties, effects and actionable claims to which the company is or appears to be entitled to. By the said provision, all the properties and effects of the company are deemed to be in the custody of the court, from the date of the winding up order. Section 457 of the Act, 1956 lists the powers of the Official Liquidator. The powers include, *inter alia*, to carry on business of the company for its beneficial winding up, to sell the immovable and movable property and actionable claims of the company, by public auction or private contract, and to do all things as may be necessary for winding up the affairs of the company and distribution of its assets. However, the powers conferred by virtue of the section 457 of the Act, 1956, on the liquidator, are subject to the control of the Court.

23. In exercise of the powers conferred by sub-sections (1) and (2) of section 643 of the Act, 1956, the Rules, 1959 were enacted. The relevant rules regarding

the collection and distribution of assets in a winding-up by court are found under Rules 232 to 234 of the Rules, 1959. Rule 232 deals with the powers of the Official Liquidator. As per the rule, the duties imposed on the Court under section 467(1) of the Act, 1956 concerning the collection of the assets of the company and the application of the assets in discharge of the company's liabilities must be discharged by the Official Liquidator as an officer of the Court. The discharge of the aforesaid functions would be subject to the control of the Court and to the proviso in section 643(2) of the Act, 1956. Rule 233 states that in discharge of the duties imposed upon the Official Liquidator, pursuant to section 467(1) of the Act, 1956, and for the purpose of acquiring and retaining possession of the property of the company, he must be treated as a Receiver of the property appointed by the Court.

24. Section 2 of the Act, 1963 provides for the meaning of certain expressions in the said Act. Section 2(vi) defines "business" as follows:

"(vi) "Business" includes: -

(a) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture, whether or not such

trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and
 (b) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern;"

25. Section 2(viii) of the Act, 1963 deals with the definition of the term 'dealer' as under:

"(viii) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes, -

(a) [Omitted]

(b) a casual trader;

(c) x x x x

(d) x x x x

(e) x x x x

(f) a person who whether in the course of business or not:

(1) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or deferred payment or other valuable consideration;

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

(3) delivers any goods on hire-purchase or any system of payment by installments;

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

(5) supplies, by way of or as part of any

service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

Explanation:- (1) A society including a co-operative society, club or firm or an association or body of persons, whether incorporated or not) which whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;

Explanation: - (2) The Central Government or a State Government, which whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.

(g) a bank or a financing institution, which, whether in the course of its business or not, sells any gold or other valuable article pledged with it to secure any loan, for the realisation of such loan amount.

Explanation I: - Bank for the purposes of this clause includes a Nationalized Bank or a Schedule Bank or a Co-operative Bank;

Explanation II: - Financing Institution means a financing institution other than a bank;"

26. On perusal of the aforementioned definitions, it would appear that the term "business" has been given a broad meaning by including within its ambit both incidental and ancillary transactions. Further, it has

also eliminated the requirement of a profit motive as being an essential component. The definition of "dealer" has also been given a wide ambit. It includes any person carrying on business of, *inter alia*, buying, selling, supply or distribution of goods, whether directly or otherwise. All modes of payment whether by way of cash, commission, remuneration or other valuable consideration have been included therein. It also includes, *inter alia*, a casual trader, a non-resident dealer, a commission agent, a broker, an auctioneer and other mercantile agents. Sub-section (f) of the definition further expands the scope of the provision by including within its ambit, an array of transactions, which may or may not be in the course of business. Section 2(viii)(f)(1) expressly includes, within the definition of a "dealer", a person who whether in the course of business or not transfers any goods, whether in the pursuance of a contract or not, for cash or deferred payment.

27. Section 5 of the Act, 1963 is the charging provision under the said Act and provides for the levy of tax on the sale and purchase of goods. It provides that every dealer, whose total turnover for that year is not

less than Rs.2,00,000/-, would be liable to pay tax as per rates and at points as specified in the Schedules to the Act, 1963. The First Schedule to the Act, 1963 would be relevant for the purpose of the present appeal. Serial No.84 of the said Schedule deals with, *inter alia*, Machinery and it provides that the point of levy shall be at the point of first sale in the State by a dealer who is liable to tax under section 5 of the Act, 1963.

28. Section 5A of the Act, 1963 is the charging provision as regard to the imposition of purchase tax. Under the said provision, the purchaser of any goods which may be consumed, used, disposed or dispatched to any place outside the State from a registered dealer will incur liability for payment of purchase tax. The provision amply clarifies that purchase tax would be applicable only in circumstances in which no tax is payable under sub-sections (1), (3), (4) or (5) of section 5 of the Act, 1963.

29. The Rules, 1963, have been enacted in exercise of the powers conferred by section 57 of the Act, 1963.

Rule 54 of the Rules, 1963, reads as follows:

"54. Liability of Court of Wards, Official Trustee etc.-

In the case of business, owned by a dealer whose estate or any portion of whose estate is under the control of Court of Wards, the Administrator General, the official trustee or any Receiver or manager (including any person whatever be his designation, who in fact manages the business on behalf of the dealer) appointed by, or, under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General, Official Trustee, Receiver or Manager in like manner and on the same terms as it would be leviable upon and recoverable from the dealer if he were conducting the business himself, and all the provisions of the Act and Rules made there under shall apply accordingly."

30. The aforementioned Rule contemplates a scenario wherein a business, owned by a dealer, is under the control of, *inter alia*, the official trustee or receiver or manager, including any other person who manages the business of the said dealer, who is appointed by an order of a Court. In such an event, tax would be recoverable from such a person who controls the business of the dealer in the same or like manner, as would have been recoverable from the dealer itself.

DISCUSSION: -

31. At the outset, it would be necessary to make reference to the Statement/Affidavit filed by the Special Government Pleader (Taxes), appearing for the Revenue,

before the learned Single Judge of the High Court. In the said Statement/Affidavit, the Revenue has stated that a sale by the Official Liquidator, whether by auction or otherwise, is a sale by the Central Government and therefore the Official Liquidator becomes a dealer under the Act, 1963. It was further stated that although tax may be collected only by a registered dealer, the Central Government is empowered to collect tax in the manner a registered dealer is entitled to. The Revenue, in its conclusion therein, has stated that the Official Liquidator would be liable to pay tax at the relevant rate, whether he had collected the same or not.

32. To appreciate the stand of the Revenue, it would be profitable to refer to Section 2(viii) of the Act, 1963 which defines the expression "dealer" as any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, transferring right to use any goods or supplying by way of or as part of any service, any goods directly or indirectly. The aforementioned activities are carried out for the payment of consideration, in the form of cash, deferred payment, commission, remuneration, etc. Thus,

the emphasis under this clause of "carrying on business" is to be understood in a wide sense and not merely restricted to the activity of buying and selling.

33. The expression "business" has been given a wide and inclusive definition, whereby 'any business, trade, commerce or manufacture or any activity of the said nature, whether or not it is carried on with a motive for profit' has been expressly included. It further includes any transaction in connection with such trade, commerce, etc. including within its purview, all ancillary or incidental activities in connection with any trade, commerce, etc.

34. Section 2(viii)(f) further expands the definition of "dealer" enabling a far wider class of persons to fall within its ambit. It includes any person who transfers any goods, transfers property in goods involved in the execution of a works contract, delivers any goods on hire purchase or any system of payment by installments, transfers the right to use any goods for any purpose and lastly, any food or beverage supplier or service provider, fit for human consumption. The

Explanation 1 to sub-clause (f) includes a society, club, firm or an association or body of persons, whether incorporated or not. Explanation 2 includes the Central Government, State Government and any of its apparatus within the scope of this section.

35. Therefore, given the exceptionally wide scope of the definition, *prima facie*, it can be concluded that any person or entity that carries on any activity of selling goods, could be categorized as a "dealer" under the Act, 1963. To test the aforesaid conclusion in the context of the issue at hand, we would delve into the interpretation ascribed by this Court to the term "dealer". A careful reading of the definition of "dealer" under the Act, 1963, would make it evident that the legislature intended to provide for an inclusive criterion and broaden the ambit of the said classification. The legislature did not propose to restrict the scope of the term as perceived in common parlance.

36. The definition of a dealer under various sales tax legislations has been given a wide import by several decisions of this Court. In *Chowringhee Sales Bureau (P) Ltd. v. CIT*, (1973) 1 SCC 46, *inter alia*, a challenge was

made to the explanation to the definition of "dealer" under the Bengal Finance (Sales Tax) Act, 1941 on the ground that is sought to levy a tax on a person who is neither a seller nor a purchaser. A three-Judge Bench of this Court, rejecting the said challenge, held that the term "dealer" would include an auctioneer who carries on the business of selling and who has in the customary course of business authority to sell goods belonging to the principal. It was further observed that the given explanation sought to tax a transaction of sale of goods. It was held that, a statutory provision providing for a levy of sales tax on a person such as an auctioneer, would be permissible, if there is a close and direct connection between the transaction of sale and the person made liable for the payment of sales tax.

37. In *State of U.P. v. Union of India*, (2003) 3 SCC 239, this Court held that the Central Government, when involved in the business of buying and selling, could be treated as a "dealer" under the U.P. Sales Tax Act, 1940. The Court observed as follows:

"11. ...It is thus clear that in regard to a transfer of the right to use any goods both a person and a Government will be within the ambit of the definition of "dealer" subject to the

following distinction: a person to be a "dealer" should carry on the business of buying, selling etc., whether regularly or otherwise, but a Government which buys, sells etc. (whether in the course of business or otherwise) will be a "dealer" for purposes of the U.P. Act. Inasmuch as the definition of "sale" includes any transfer of property in the goods and a transfer of the right to use any goods for any purpose, DoT which engages in transfer of right to use any goods will be a "dealer" within the meaning of sub-clause (iv) of clause (c) of section 2 of the U.P. Act."

38. In *State of T.N. v. Shakti Estates*, (1989) 1 SCC 636, this Court while ascertaining whether the assessee could be treated as a dealer gave a wide import to the term under the Tamil Nadu General Sales Tax Act, 1959. The Court observed as follows:

"10. Moreover, we have also to give full effect to the definitions in the statute we are concerned with. The definition of a "business" also includes "any transaction in connection with or incidental to or ancillary" to a trade and thus, even on the assessee's own arguments, these activities were incidental and ancillary to the business which the assessee was carrying on or definitely intended to carry on. It is also immaterial, on this definition that the assessee may not have had a "motive of making a profit or gain" on these sales though on the facts, it is clear that such motive must have existed and, in any event, could not be ruled out. The reference to a "casual" dealer in the second definition also renders it immaterial that the assessee may not have intended to be regular dealers in sleepers, timber, firewood or charcoal but that this was something casual or incidental to the acquisition and exploitation

of a forest for running a plantation."

39. In *State of T.N. v. M.K. Kandaswami*, (1975) 4 SCC 745, this Court while determining the interpretation of the term "dealer" under the Madras General Sales Tax Act, 1959 gave a broad interpretation to include a person who not only carries on business of "selling, supplying or distributing" goods but also the one who carries on the business of "buying" only.

40. In *Karya Palak Engineer, CPWD v. Rajasthan Taxation Board*, (2004) 7 SCC 195, this Court held that a contractor, despite not being the owner but merely the custodian of the goods, as a dealer under the Rajasthan Sales Tax Act, 1994.

41. In *State of Orissa v. Titaghur Paper Mills Co. Ltd.*, 1985 Supp SCC 280, while ascertaining whether the Central Government or its agents could be treated as be "dealer", this Court observed as follows:

"26. What is pertinent to note about the new definition of "dealer" is that in the case of the Central Government, a State Government or any of their employees acting in official capacity on behalf of such Government, it is not necessary that the purchase, sale, supply or distribution of goods should be in the course of business, while in all other cases for a person to be a dealer he must be carrying on the business of purchasing, selling, supplying or

distributing goods.”

42. In *Food Corporation of India v. State of Kerala*, (1997) 3 SCC 410, this Court was ascertaining whether the procurement of food grains by the Food Corporation of India, pursuant to levy orders could amount to sale or purchase to incur sales/ purchase tax liability as levied by the States. This Court held that since there was no statutory compulsion in the matter of sale or purchase of fertilizers and parties had the discretion to enter into consensual contractual agreements subject minimal restrictions such as price fixation, quota requirements, etc., there is no hesitation in holding that the activity of distribution of fertilizers, pursuant to levy orders would amount to sale which is eligible to incur tax liability. This Court stated that supply or distribution of goods need not be in course of business to be considered a sale.

43. Thus, on perusal of the aforesaid decisions of this Court, we are of the view that the definition of “dealer” under various sales tax legislations has been given a broad and inclusive interpretation. It would be gainsaid to state that such a broad and expansive

interpretation is in consonance with what the legislature intended with regard to imposing sales tax liability on all transactions of sale of goods. Therefore, it can be concluded that the definition of a "dealer" under the Act, 1963, would include persons, if they are involved in carrying on any business or trading activity, such as the sale of machinery as in the present case. Therefore, as a necessary *sequitur*, the Company in liquidation, whose assets are sold by way of an auction, would be a "dealer" under the Act, 1963.

44. Section 5 of the Act, 1963 is the charging provision with regard to imposition of sales tax. It envisages levy of tax on sale or purchase of goods by a dealer. Section 5(1) of the Act, 1963 imposes liability on every dealer whose total turnover for one year is not less than Two Lakh rupees. Section 5(1)(i) enumerates tax liability in case of goods specified in the First or Second Schedule to the Act, 1963 at the rates and only at the points specified against such goods in the said Schedules. Serial No.84(i) of the First Schedule stipulates the rate of tax payable on sale of, *inter alia*, machinery. In this regard, the point of levy of

sales tax is at the point of first sale in the State by a dealer who is liable to tax under section 5 of the Act, 1963.

45. Thus, pursuant to section 5 of the Act, 1963, in the case of goods specified in the First and Second Schedule, the single point tax could be levied only at the rates and points specified against such goods in the said Schedules. The First Schedule specifies that the point of levy of tax for the goods in question could be only at the point of first sale in the State by a dealer. In the instant case, the dealer under the Act, 1963 would be liable to pay sales tax for the machinery sold at the point of first sale, as per section 5 read with the First Schedule of the Act, 1963. In light of the above, we are of the considered opinion that the transaction in question in the present appeal would be exigible to tax under Section 5(1) of the Act, 1963.

46. Section 5-A of the Act, 1963 stipulates certain situations wherein purchase tax could be imposed on any dealer who purchases any goods, either from a registered dealer or from any other person, the sale or purchase of which is liable to tax under Act, 1963. The aforesaid

provision however will apply only in circumstances when no tax is payable under sub-sections (1),(3),(4),(5) of section 5. However, as noticed hereinabove, the given transaction is exigible to tax under Section 5(1) of the Act, 1963, and therefore tax liability under Section 5A of the Act, 1963 would not apply to the said transaction.

47. Before delving into whether the Official Liquidator could also be treated as a "dealer" under the Act, 1963, it would be apposite to take into account the powers of the Official Liquidator, as provided under the Act, 1956. The Official Liquidator, in generic terms, is an officer appointed to conduct the proceedings and to assist the Court in the winding up of a company.

48. In *A. Ramaiya, Guide to the Companies Act, 16th Edition (2004)*, while interpreting the powers of the Official Liquidator under section 457 of the Act, 1956 observed as follows:

"A liquidator is an agent employed for the purpose of winding up of the company. His principal duties are to take possession of assets, to make out the requisite lists of contributors and of creditors, to have disputed cases adjudicated upon, to realise the assets subject to the control of the court in certain matters and to apply the proceeds on the payments of the company's debts and liabilities in due course of administration, and having done

that, to divide the surplus amongst the contributories and to adjust their rights."

49. Section 457(3) of the Act, 1956 expressly states that the powers of the liquidator are subject to control by the court. The powers conferred upon the liquidator can be exercised by him alone and he cannot authorise any other person to exercise those powers. The expression 'control by court' was discussed by this Court in *Navlakha & Sons v. Ramanuja Das*, (1969) 3 SCC 537, wherein it was observed that when the liquidator exercises or proposes to exercise any of the powers, a creditor or contributory may apply to the Court with respect of such exercise. It is the duty of the Court to safeguard the interests of the company and its creditors and satisfy itself with the adequacy of the price fetched. It may also be appropriate to consider Rule 232 of the Rules, 1959 which enumerates the duty of an Official Liquidator in the collection and application of the assets of the company, which is discharged by him as an officer of the Court.

50. In the case of *Hari Prasad Jayantilal & Co. v. V.S. Gupta, Income Tax Officer, Ahmedabad & Anr.*, AIR 1966 SC 1481, this Court held that the liquidator is

merely an agent of the company to administer its property for the purposes prescribed by the Act, 1956. The Court held that while distributing the assets, including accumulated profits, the liquidator acts merely as an agent or administrator for and on behalf of the company.

The Court observed as follows:

"7. ...The property of the Company does not vest in the liquidator: it continues to remain vested in the Company. On the appointment of a liquidator, all the powers of the Board of directors and of the managing or whole-time directors, managing agents, secretaries and treasurers cease (s. 491), and the liquidator may exercise the powers mentioned in s. 512, including the power to do such things as may be necessary for winding up the affairs of the Company and distributing its assets. The liquidator appointed in a members' winding up is merely an agent of the Company to administer the property of the Company for purpose prescribed by the statute. In distributing the assets including accumulated profits the liquidator acts merely as an agent or administrator for and on behalf of the Company."

51. In *Ajay G. Podar v. Official Liquidator of J.S. & W.M. & Others*, (2008) 14 SCC 17, this Court considered the question pertaining to bar of limitation under the Act, 1956 for misfeasance proceedings filed by the Official Liquidator. While discussing the powers of the Official Liquidator under section 457(1) of the Act, 1956, the Court was of the view that the Official

Liquidator must be authorised to take steps for recovery of assets by the Company Court under the winding up order and the said proceedings must be initiated in the name of the company and on behalf of the company to be wound up. This Court had further opined that the Official Liquidator derives his authority from the provisions of the Act, 1956.

52. It would be beneficial to notice the views of Courts in England insofar as powers of the Official Liquidator during winding up proceedings. In *Re Mesco Properties*, (1980) 1 All ER 117, the Court of Appeal was ascertaining as to whether a company could incur tax liability in consequence of the realization of its assets after a winding up order was passed and whether the Official Liquidator was the proper officer to incur such liability. The Court, in the *Re Mesco Properties* case (supra), at p. 120, observed as follows:

"... It must, in my view, be open to a liquidator to apply to the court for guidance upon the question whether, if he discharges a certain liability of the company in liquidation, the payment will be a necessary disbursement within the meaning of rule 195. That is what the liquidator is doing in this case. The company is liable for the tax which is due. The tax ought to be paid. The liquidator is the proper officer to pay it. When he pays it, he will clearly make

a disbursement. In my judgment it will be a necessary disbursement within the meaning of the rule. Moreover common sense and justice seem to me to require that it should be discharged in full in priority to the unsecured creditors, and to any expenses which rank lower in priority under rule 195. The tax is a consequence of the realisation of the assets in the course of the winding up of the company. That realisation was a necessary step in the liquidation; that is to say, in the administration of the insolvent estate. The fact that in the event there may be nothing available for the unsecured creditors does not, in my view, mean that the realisation was not a step taken in the interests of all who have claims against the company. Those claims must necessarily be met out of the available assets in due order of priority. Superior claims may baulk inferior ones, but the liquidator's duty is to realise the assets for the benefit of all in accordance with their rights. If in consequence of the realisation, the company incurs a liability, the discharge of such liability must, in my judgment, constitute a charge or expense incurred in the winding up within section 267 of the Companies Act 1948 and must also, in my view, fall within rule 195."

53. Further, the House of Lords in *Ayerst (Inspector of Taxes) v. C & K (Construction) Ltd.*, (1975) 2 All ER 537, held that a company, pursuant to a winding up order, ceases to have the custody and control of its assets which are thereafter administered exclusively for the benefit of those persons who are entitled to share in the proceeds of realisation of the assets. The House of Lords elaborately discussed the role of the Official Liquidator

in this regard and observed, at p. 177, as follows:

"The functions of the liquidator are thus similar to those of a trustee (formerly official assignee) in bankruptcy or an executor in the administration of an estate of a deceased person. There is, however, this difference: that whereas the legal title in the property of the bankrupt vests in the trustee and the legal title to property of the deceased vests in the executor, a winding-up order does not of itself divest the company of the legal title to any of its assets. Though this is not expressly stated in the Act it is implicit in the language used throughout Part V, particularly in sections 243 to 246 which relate to the powers of liquidators and refer to 'property ... to which the company is... entitled,' to 'property... belonging to the company,' to 'assets... of the company' and to acts to be done by the liquidator 'in the name and on behalf of the company.'"

54. In light of the aforesaid, we would conclude that an Official Liquidator- (i) derives its authority from the provisions of the Act, 1956; (ii) acts on behalf of the company in liquidation for the purposes prescribed by the Act, 1956; (iii) is appointed by and is under the control and supervision of the Court while discharging his duties.

55. Having determined the status of an Official Liquidator under the Act, 1963, it would now be appropriate for this Court to look into the nature of liability, if any, imposed on the Official Liquidator for

the purposes of taxation. For this purpose, we require to consider Rule 54 of the Rules, 1963 which imposes liability, *inter alia*, on a receiver or manager or other person appointed by an order of the court, in the event that a business owned by a dealer, is under the control of the said receiver or manager or person, whatever be his designation, who in fact manages the business on behalf of the dealer. The aforesaid rule expressly provides that tax shall be levied upon and recoverable from such receiver, manager, etc., in the same manner, as it would be leviable upon and recoverable from the dealer. Such tax liability may be incurred by any person managing or conducting the business on behalf of the dealer. The tax liability incurred by such person will be equivalent to the liability which would be levied upon the dealer if he were conducting such business. Further that under Rule 233 of the Rules, 1959, for the purposes of acquiring and retaining possession of the property of the company in liquidation, the Official Liquidator would be in the same position as a receiver.

56. Since the Official Liquidator is akin to an agent employed for the purpose of winding up of a

company, he steps into the shoes of the Directors of the said Company for the purposes of discharging the statutory functions of an Official Liquidator. Thus, during the said proceedings, the Directors cease to exercise any functions from the date on which the Official Liquidator is appointed and all powers and functions for carrying on the business of the company thereafter vest with the official liquidator.

57. Having glanced through the settled principles of law, we would revert back to the controversy in the present appeals. The first issue canvassed before this Court by the learned counsel for the parties to the *lis*, is whether the Official Liquidator herein would fall under the purview of a "dealer" as defined under the Act, 1963. And secondly, whether the Official Liquidator would be liable to pay sales tax in respect of sales effected by him pursuant to winding up proceedings.

58. In the present case, the Official Liquidator had issued a notice inviting tenders for the sale of the assets of the Company. The offer of the auction purchaser was accepted and duly confirmed by the High Court. However, the dispute herein arose in respect to

determination of which party would be exigible to sales tax.

59. From the discussion in the preceding paragraphs, we can conclude an Official Liquidator is an officer of the Court and that for the purpose of discharging statutory obligations imposed under the Act, 1956, the Official Liquidator merely steps into the shoes of the company in liquidation. By virtue of the notice issued by the Official Liquidator for inviting tenders, dated 26.11.2001, it is amply evident that the liquidator intended to conduct a transfer of the said goods in liquidation. Since the conduct of an auctioned sale involved transfer of goods, it falls within the wide ambit of section 2(viii)(f) of the Act, 1963.

60. The observation of the Court of Appeals in the *Re Mesco Properties* case (supra), would appear to be squarely applicable to the present factual matrix, that is, during a winding up proceedings, if tax requires to be collected from the Company in liquidation, the liquidator would be the proper officer to pay the same.

61. This Court has noticed hereinabove that the Company in liquidation is a "dealer" with regard to the

sale of its assets by way of an auction under a winding up order. Further, we have noticed the settled law that an Official Liquidator steps into the shoes of the Director of the company in liquidation and performs his statutory functions in accordance with the directives of the Court. Furthermore, Rule 54 of the Rules, 1963 contemplates a situation where a business owned by a dealer, is under the control of a receiver or manager or any other person, irrespective of his designation, who manages the business on behalf of the said dealer. In the said scenario, the said person, in-charge of the business on behalf of the dealer, would be exigible to sales tax in the same manner as it would have been leviable upon and recoverable from the dealer itself. Therefore, it can be concluded that the liability to pay sales tax, in the present case, would be on the Official Liquidator in the same manner as the dealer, that is, the Company in liquidation.

62. Pursuant to section 5 of the Act, 1963, the Company in liquidation, as a dealer, will incur liability to pay sales tax at the point of first sale as incurred by any other dealer under the said Act. By placing

reliance upon Rule 54 of the Rules, 1963, the liability to pay sales tax is borne by the Official Liquidator as a manager or receiver of the property of the company in liquidation. Therefore, we are of the considered opinion that the Official Liquidator would be required to pay the tax payable on the sale of the assets of the company in liquidation.

63. As regards the liability of the auction purchaser, this Court, in an order passed in Civil Appeal No.5048 of 2003, has observed that in view of facts and circumstances of the case, the auction purchaser would not be liable to pay sales tax. The offer of the auction purchaser, as accepted by the Official Liquidator and confirmed by the High Court, was inclusive of all taxes. It would have been the bounden duty of the Official Liquidator to have separated an amount for the payment of taxes under the Act, 1963 to avoid any liability. It would be gainsaid in repeating that the Special Government Pleader (Taxes), on behalf of the Revenue, before the learned Single Judge of the High Court had clearly stated that the liability to pay sales tax would be on the Official Liquidator.

64. In the result, we allow these appeals and set aside the impugned judgments and orders passed by the High Court.

Ordered accordingly.

.....CJI.
[H.L. DATTU]

.....
.J.
[S.A. BOBDE]

NEW DELHI,
JANUARY 13, 2015.



JUDGMENT