

M/S. COCHIN PORT TRUST

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v.

STATE OF KERALA

(Civil Appeal No.1906 of 2007)

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APRIL 22, 2015

**[H.L. DATTU, CJI, R.K. AGRAWAL AND
ARUN MISHRA, JJ.]**

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Kerala General Sales Tax Act, 1963 – s. 2(viii) – Dealer – Exigibility to sales tax – Port trust, statutory authority constituted for rendering port services – Engaged in the activity of dealing in scrap items, in the nature of sale transactions besides its statutory functions – Port trust-Assessee, whether a dealer under the Act and liable to pay sales tax – Held: Activity carried out by the assessee-Port Trust fall within the meaning of “dealer” u/s. 2(viii) and thus, assessable to tax under the Act – Major Port Trusts Act, 1963.

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Dismissing the appeal, the Court

HELD: 1.1 Definition of dealer under the Kerala General Sales Tax Act, 1963 is an inclusive definition whereby wide range of persons has been placed under the ambit of “dealer”. It includes persons involved in carrying on any business or trading activity and transactions effected by them whether in the course of business or not. [Para 14] [351-D-E]

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1.2 It is pertinent to notice that the Tamil Nadu General Sales Tax Act, 1959 was amended by Act 22 of 2002 whereby explanation (3) was added to

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A definition clause 2(g) of the TN Act. By the said amendment the Madras Port Trust has now been declared as a dealer under the TN Act. Explanation (3) states that if the port trust disposes of any goods including unclaimed or confiscated or unserviceable or scrap surplus, old or obsolete goods or discarded material or waste products whether by auction or otherwise directly or through an agent for cash or for deferred payment or for any other valuable consideration, notwithstanding anything contained in the TNGST Act, it shall be deemed to be a dealer for the purpose of the Act. Therefore, by amendment act the legislature has specifically brought in Port Trust also within the definition of “dealer” u/s. 2(g) and thus, the substratum of the judgment in **Madras Port Trust* case has been lost. [Para 22] [357-B-E]

1.3 The activities of the assessee in respect 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, whether in course of business or not, would fall within the purview of Section 2(viii) of the Act. Thus, the assessee-Port Trust would fall within the meaning of “dealer” under Section 2(viii) of the Act and is consequently assessable to tax under the Act. The judgment and the order passed by the High Court is upheld. [Paras 24, 26] [358-D-F; 359-A]

**State of T.N. v. Board of Trustees of the Port of Madras 1999 (2) SCR 195; CST v. Sai Publication Fund 2002 (2) SCR 743: (2002) 4 SCC 57 – distinguished.*

Assistant Commissioner, Ernakulam v. Hindustan Urban Infrastructure Ltd. and Ors. (2015) 3 SCC 735 – referred to. A

Case Law Reference

1999 (2) SCR 195 Distinguished. Para 19, 20 B

(2015) 3 SCC 735 Referred to. Para 14

2002 (2) SCR 743 Distinguished. Para 23 C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1906 of 2007.

From the Judgment and Order dated 23.12.2005 of the High Court of Kerala at Ernakulam in TRC No. 412 of 2002. D

V. Giri. C. N. Sree Kumar, Sudha Shankar, Amit Sharma for the Appellant.

Liz Mathew, M. F. Philip for the Respondent.

The Judgment of the Court was delivered by E

H.L. DATTU, CJI. 1. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in TRC No. 412 of 2002 and Sales Tax Revision Nos. 321 and 326 of 2005, dated 23.12.2005, whereby and whereunder, the High Court has held that the appellant-assessee is a dealer under the Kerala General Sales Tax Act, 1963 (for short, "the Act") and dismissed the tax revision preferred by the appellant-assessee. F G

2. The question that arises for consideration in this appeal is whether the appellant-Trust is a dealer under the Act and liable to pay sales tax under the Act on account of certain activities in the nature of sale transactions carried on H

A by it besides its statutory functions. For the sake of convenience and brevity, we would only notice the facts relevant to the discussion with respect to the question(s) before us in this appeal.

B 3. Brief factual matrix of the case is as follows: The appellant-Trust is a statutory authority constituted for rendering port services under the Major Port Trusts Act, 1963. The appellant-Trust is a registered dealer under the Act and an assessee on the rolls of the Assistant
C Commissioner (Assessment), Commercial Taxes, Special Circle, Mattancherry. The assessee's specific activity of dealing in scrap items (sales of water to ships, tender forms, firewood, waste paper and disposal of unserviceable equipment) is the subject matter of assessments in the
D instant appeal for the assessment years 1990-91, 1994-95 and 1997-98.

4. For the aforesaid assessment years, the assessing authority had raised demand notices under the Act for the
E sales of scrap items effected by the assessee *vide* assessment orders dated 18.11.1995, 31.03.1999 and 24.10.2001, respectively.

5. The assessee aggrieved by the said assessment
F orders had approached the Deputy Commissioner (Appeals) in first statutory appeal. The assessee had assailed the assessment orders as illegal and unauthorised on the ground, *inter alia*, that it is not engaged in any trading activity and only discharging its statutory functions under the
G Major Port Trust Act, 1963 and hence, it is not a "dealer" under the Act and cannot be exigible to tax thereunder. The first appellate authority has disposed of the said appeal by separate orders dated 16.01.1998, 28.10.1999 and
H 25.04.2002 for each assessment year 1990-91, 1994-95

and 1997-98, respectively. The appellate authority has considered the definition of “dealer” under the Act and rejecting the plea of the assessee, held that it is a “dealer” under the provisions of the Act. A

6. Aggrieved by the aforesaid order(s), the assessee had preferred T.A. No. 479 of 1998 for the assessment year 1990-91 before the Kerala Sales Tax Appellate Tribunal (for short, “the Tribunal”). The assessee had contended that in the instant case the assessee-Trust is a statutory body merely discharging its functions of rendering port activities and not engaged in any trading activity or “business”. The transactions herein are merely causal and incidental sale transactions which only attract sales tax if the registered dealer is otherwise carrying on business under the Act, which is not the case herein and therefore, the assessee cannot be classified as a “dealer” under Section 2(viii) of the Act. Reliance was placed by the assessee on the dictum of this Court in *State of T.N. v. Board of Trustees of the Port of Madras, (1999) 4 SCC 630* (Madras Port Trust case). By the order dated 24.09.2001, the Tribunal rejected the aforesaid stand adopted by the assessee and held that the assessee is a “dealer” engaged in activities of sale under the Act and thus, exigible to sales tax. B
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7. Further, the assessee has approached the Tribunal in T. A. No. 1 of 2000 and T. A. No. 143 of 2003 questioning the orders passed by the first appellate authority for assessment years 1994-95 and 1997-98. The Tribunal has considered the definitions of “dealer” under the Tamil Nadu General Sales Tax Act, 1959 (for short, “the TN Act”) and the Act and concluded that since the two definitions are not *pari materia*, the observations of this Court in Madras Port Trust case would not be applicable to the assessee-Port Trust. The Tribunal has held that the definition of “dealer” under the F
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A Act is wide and in light of the activities performed by the assessee, it can be placed in the ambit of “dealer” under the Act and hence be liable to pay sales tax under the Act.

B 8. Dissatisfied by the orders passed by the Tribunal, the assessee approached the High Court in TRC No. 412 of 2002 and Sales Tax Revision Nos. 321 and 326 of 2005. The question as to whether the assessee is a “dealer” under the Act which was the cardinal issue before the Tribunal was agitated before the High Court as the main issue by both parties to the *lis*. The High Court has delved into the said question and also considered whether the Madras Port Trust case decided in the context of the TN Act apply to the assessee-Trust which is governed by the Act. The High Court, in its conclusion, has approved the findings of the Tribunal and dismissed the tax revision(s) filed by the appellant-assessee.

C 9. Aggrieved by the aforesaid, the assessee is before us in this appeal.

D 10. Shri V. Giri, learned senior counsel appearing for the appellant-assessee would submit that the assessee does not fall under the ambit of under Section 2(viii) of the Act and cannot be termed as a “dealer”. He would submit that the assessee is only discharging the statutory functions and is not engaged in any “business” or trade. Further, that the transactions in question being incidental and auxiliary would not qualify as business under the Act so as to deem the assessee as “dealer” under the Act. He would draw support from the observations of this Court in Madras Port Trust case wherein this Court has held that the said Port Trust constituted under the Major Port Trust Act, 1963 and carries on statutory functions, is not exigible to sales tax under the Tamil Nadu General Sales Tax Act, 1959 (for short, “the TN

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Act"). He would further contend that since the provisions of the TN Act are *pari materia* with that of the Act, the Madras Port Trust case would squarely apply to the assessee-Cochin Port Trust also. A

11. Per contra, Smt. Liz Mathew, learned counsel appearing for the respondent-Revenue would support the judgment and order passed by the High Court and contend that the assessee herein is a "dealer" under the Act engaged in sale of scrap material and therefore, exigible to sales tax under the Act. She would submit that the provisions of the TN Act and the Act are not *pari materia* and the claim of the assessee requires to be examined in the context of the Act only and not on the basis of the provisions of the TN Act. She would urge that the observations of this Court in Madras Port Trust case would not be applicable to the instant case in light of material difference between the definitions of "dealer" under the provisions of TN Act and the Act. B
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12. The issue that arises for our consideration and decision in the instant case is whether the assessee-Trust is a dealer under the Act and thus, liable to pay sales tax levied thereunder. E

13. At the outset, it is pertinent to notice Section 2(viii) of the Act which defines the term "dealer". The said definition is extracted hereunder: F

"2(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, G

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- A remuneration or other valuable consideration and includes:
- (a)...
- B (b)...
- (c)...
- (d)...
- C (e) *a person who, whether in the course of business or not, sells;*
- (i) goods produced by him by manufacture, agriculture, horticulture or otherwise; or
- D (ii) trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale;
- (f) *a person who whether in the course of business or not.*
- E (1) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or deferred payment or other valuable consideration;
- F (2) transfers property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- G (3) delivers any goods on hire-purchase or any system of payment by instalments;
- (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;
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(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) & (2) ...

(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;...”

(emphasis supplied)

14. A perusal of the aforesaid definition would indicate that definition of dealer under the Act is an inclusive definition whereby wide range of persons has been placed under the ambit of “dealer”. It includes persons involved in carrying on any business or trading activity and transactions effected by them whether in the course of business or not. It is profitable to refer to the decision of this Court in *Assistant Commissioner, Ernakulam v. Hindustan Urban Infrastructure Ltd. and Ors.*, (2015) 3 SCC 735 where this Court has interpreted the said provision. This Court has examined the scope and ambit of the definition of dealer under the Act. The question before this Court was whether an “Official Liquidator” is a “dealer” within the meaning of section 2 (viii) of the Act. This Court in paragraph 26 of the judgment has observed:

“...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

A 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.”

D 15. Therein, this Court has noticed the definition of dealer under various fiscal legislations and observed that the widest scope and ambit provided to the “dealer” under the definition clause of the Act is in consonance with the legislative intent to place the persons engaged in activities of sale and trade which would not otherwise fall in the restricted definition of “business”. This Court has observed as under:

F “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. A

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." B C D

16. Here, since the definition of "dealer" is wide to include transactions conducted in the course of business or otherwise, to answer the question posed before us, we do not deem it necessary to examine the nature of activity carried out by the assessee-Port Trust in as much as whether it falls under the definition of "business" under the Act or not. E

17. In the instant case, the appellant-assessee would place reliance on the decision of this Court in Madras Port Trust case, draw similarity between the provisions of TN Act and the Act and therefore, submit that the observations of the Madras Port Trust would be applicable to the instant case. Therein, the question before this Court was whether the Madras Port Trust is a "dealer" under the TN Act or not. The definition clauses contained in the TN Act under Section 2(g) and 2(d) have been dealt with to examine the aforesaid question. For the sake of clarity, we would refer to Section 2(g) and 2(d) of the TN Act as under: F G H

A "Section 2(g) 'dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

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(i) a local authority... which carries on such business;

(ii) . . .

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(iii) a factor, ... or an auctioneer, or any other mercantile agent by whatever name called, ... who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;

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(iv) to (ix) ...

Explanation (1) ...

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Explanation (2).-The Central Government or any 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;"

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"Section 2(d) 'business' includes,-

(i) any trade, or 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

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a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and A

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.” B

18. This Court in the said decision has elaborately considered various provisions of the TN Act in the context of the Major Port Trusts Act, 1963. This Court has noticed that port trusts are not established for carrying on business and thereafter, referred to the various activities of the Madras Port Trust and observed that its activities and services only indicate that the activity in question, that is, the sales of unserviceable or unclaimed goods is infinitesimal as compared to the very large range of the activities and services it is supposed to render. This Court has therefore concluded that the Madras Port Trust is not involved in any activity of “carrying on business” as provided for under Section 2 (g) read with Section 2(d) of the TN Act and therefore, it is not a “dealer’ within the meaning of Section 2(g) of the TN Act. C
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19. In our considered view, the aforesaid decision of this Court would not enure to the benefit of the assessee in the instant case. The said decision was rendered on the basis of the question whether the Port Trust is carrying on “business” under the TN Act and if it is a “dealer” under the TN Act so as to be exigible to tax thereunder. The aforesaid conclusion emanates from the stark distinction of definition of “dealer” under the TN Act and the Act. The definition under the Act is a wider definition while the TN Act as it then stood, provides for a very restricted meaning of the term “dealer”. A comparison of the definition clauses in the Act and the TN F
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- A Act would show that the requirement of “carrying on business”
by buying, selling, supplying or distributing goods directly or
otherwise whether for cash or deferred payment or for
commission, remuneration or other valuable consideration
was a necessary ingredient of a dealer under the TN Act,
B but clauses like (e), (f) and (g) of Section 2(viii) of the Act
were absent in the TN Act. Thus, the said definitions are not
pari materia.

20. In the Madras Port Trust case, this Court has laid
C emphasis on the expression “carrying on business” in the
context of the TN Act, and it is in that context it has reached
the conclusion that the Madras Port Trust is not engaged in
any business which is a necessary prerequisite under the
definition of a “dealer” under the TN Act. In the Act herein,
D the necessity of a person carrying on business to be placed
under the definition of “dealer” is absent. The definition
expressly includes the persons who whether in course of
business or not engage in the sale or transfer of goods and
thus, does not mandate the requirement of conducting
E business for a person to be exigible under the Act. The
contradistinction between the definition of “dealer” under the
TN Act and the Act makes it abundantly clear that the
observations of this Court in Madras Port Trust case, which
F refer to the definition of TN Act and interprets it to reach the
conclusion of the Trust not being exigible to tax, cannot be
accepted in the instant case.

21. Further, it is brought to our notice that in Madras Port
Trust case the applications were preferred by the Port Trusts
G of Cochin, Kandla and Calcutta before this Court for
intervention. However, this Court has only permitted them to
support the submissions of the Madras Port Trust in the
context of the Tamil Nadu statute and in paragraph 6 of the
said judgment observed that the exigibility of the said Port
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Trusts under the respective State enactments is not examined thereunder. Therefore, this Court has only referred to the provisions of TN Act and not examined the scope of the Act vis-à-vis the assessee-Port Trust in Madras Port Trust case.

22. It is further pertinent to notice that the TN Act was amended by Act 22 of 2002 whereby explanation (3) was added to definition clause 2(g) of the TN Act. By the said amendment the Madras Port Trust has now been declared as a dealer under the TN Act. Explanation (3) states that if the port trust disposes of any goods including unclaimed or confiscated or unserviceable or scrap surplus, old or obsolete goods or discarded material or waste products whether by auction or otherwise directly or through an agent for cash or for deferred payment or for any other valuable consideration, notwithstanding anything contained in the TNGST Act, it shall be deemed to be a dealer for the purpose of the Act. Therefore, by amendment act the legislature has specifically brought in Port Trust also within the definition of "dealer" under Section 2(g) of the Act and thus, the substratum of the judgment in Madras Port Trust case has been lost.

23. Shri Giri has relied upon the decision of this Court in *CST v. Sai Publication Fund*, (2002) 4 SCC 57 and submitted that where the main activity is not a business then any incidental or ancillary transaction would only amount to business if an independent intention to carry on business in the incidental or ancillary transaction is established. In the said case, the provisions of Bombay Sales Tax Act, 1959 were examined to ascertain whether the ancillary activity of publication and sale of books by Saibaba Trust amounted to "business" under the said Act, when the dominant activity of the said Trust was non-profit dissemination of message

A of Saibaba. Therein the Court has examined the definition
of dealer under Section 2(11) of the said Act and observed
that every person is not a “dealer” but only those persons
“who carry on the business” by buying or selling goods are
B regarded as “dealers”. Thus, under the said Act, from the very
definition of dealer, it follows that a person would not be a
dealer in respect of the goods sold or purchased by him
unless he carries on the business of buying and selling such
goods. In the instant case, the definition of dealer under
C Section 2(viii) is wide and specifically includes persons who
have effected sale or transfer of goods irrespective of the
said sale or transfer being in course of business or not.
Therefore, the dictum of this Court in the said decision would
also not be applicable in the instant case.

D 24. Therefore, in light of the foregoing discussions, we
are of the considered opinion that the activities of the
assessee in respect 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
E any service, any goods directly or otherwise, whether for
cash or for deferred payment or for commission,
remuneration or other valuable consideration, whether in
course of business or not, would fall within the purview of
F Section 2(viii) of the Act. Hence, the assessee-Port Trust
would fall within the meaning of “dealer” under Section 2(viii)
of the Act and is consequently assessable to tax under the
Act.

G 25. We are of the considered opinion that the High Court
has not committed any error, whatsoever, and therefore, the
civil appeal being devoid of any merit requires to be
dismissed.

H 26. In the result, the appeal is dismissed and the

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judgment and order passed by the High Court is confirmed. A
No costs.

Ordered accordingly.

Nidhi Jain

Appeal dismissed.