

Jsn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1020 OF 1990

**1. The Board of Trustees of the Port of
Bombay**

having their office at Shreeji Vallabhdas
Marg, Ballard Estate, Bombay 400 038.

...Petitioner

Versus

1. The State of Maharashtra

**2. The Commissioner of Sales Tax,
Maharashtra**

having his office at Vikrikar Bhavan,
Mazgaon, Bombay – 400 010.

3. Asstt. Commissioner of Sales Tax

having his office at Assessment 52, A-
Ward, Unit VIII, New Bldg., Vikrikar
Bhavan, 7th Floor, Room No. 726,
Mazgaon, Bombay – 400 010.

4. Sales Tax Officer.

Having on business at the above address. **...Respondents**

Mr. U.J. Makhija, with Mr. Kamal Khatta, Ms. Sneha Pandey
& Ms. Tulsi Dhaval, i/b Motitwala & Co. for the
Petitioner.

Mr. V.A. Sonpal, Special Counsel with Mr. K.R. Trivedi, AGP
for Respondent – State.

CORAM:

**A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 18th September 2017

JUDGMENT PRONOUNCED ON 07th November 2017

O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. The Petitioner is a body corporate originally established under the Bombay Port Trusts Act, 1979 and now constituted under the provisions of the Major Port Trust Act, 1963 (for short “**the Port Trust Act**”). The second, third and fourth Respondents are officers of the first Respondent, carrying on duties and performing functions under the provisions of Bombay Sales Tax Act 1954 (in short “**the said Act**”).

2. The Writ Petition is filed under Article 226 of the Constitution of India challenging the constitutional validity of Section 2(11) of the said Act and seeking appropriate declaration that the provisions of the explanation to Section 2(11) of the said Act are unconstitutional, *ultra vires*, null and void. The Writ Petition also seeks appropriate orders and directions from this Court prohibiting the Respondents from levying or collecting, demanding or recovering sales tax

under the said Act on sales effected by the Petitioner under Section 61 and 62 of the Port Trust Act.

3. The Petitioner in exercise of powers conferred on them under the Port Trust Act has been recovering rates for services rendered by them and recovering rent in respect of its properties. In the event such rates or rents remain unpaid, the Petitioner takes recourse to recovery of the same by sale of the goods which are in their custody in terms of Section 61 of the Port Trust Act. Further, when goods are placed in their custody after landing of the goods and that the goods are not removed within a particular period, the Petitioner disposed of the said goods under Section 62 of the Port Trusts Act. Sections 61 and 62 of the said Act read thus:-

61. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.—

(1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction 1[or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender,

private agreement or in any other manner] such goods or so much thereof as, in the opinion of the Board, may be necessary—(1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction 1[or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner] such goods or so much thereof as, in the opinion of the Board, may be necessary—"

(a) if any rates payable to the Board in respect of such goods have not been paid, or

(b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or

(c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charge has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in 2[the Port Gazette, or where there is no Port Gazette, in the Official Gazette] and also in at least one of the principal local daily newspapers: Provided that in the case of animals and perishable or hazardous goods, the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency of the case admits of.

(3) if the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Board, or is otherwise known notice shall also be given to him by letter delivered at such address, or sent by post, but the title of a bona fide purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such

purchaser be bound to inquire whether such notice has been sent.

(4) Notwithstanding anything contained in this section, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct. Explanation.—In this section and section 62—

(a) “arms and ammunition” have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959);

(b) “controlled goods” means goods the price or disposal of which is regulated under any law for the time being in force.

62. Disposal of goods not removed from premises of Board within time limit.—

(1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in 1[the Port Gazette or where there is no Port Gazette, in the Official Gazette] and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction 2[or by tender, private agreement or in any other manner]:—

(1) anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known,

cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in 1[the Port Gazette or where there is no Port Gazette, in the Official Gazette] and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction 2[or by tender, private agreement or in any other manner]\:" Provided that where all the rates and charges payable under this Act in, respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction 2[or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner] after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3)—

(a) the Board may, in the case of animals and perishable or hazardous goods, give notice of removal of such goods although the period of one month or, as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale and in such manner as, in the opinion of the Board, the urgency of the case requires;(b) arms and ammunition and controlled

goods may be sold in accordance with the provisions of sub-section (4) of section 61.

(5) The Central Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this section.

4. The Petitioner's main contention in the Writ Petition is that the sale of goods by the Petitioner is in pursuance of their statutory functions under the Port Trusts Act and these sales are not executed by the Petitioners as a matter of business for commercial enterprise but by way of administering and managing the port of Bombay. The Petitioner has accordingly submitted that they are not carrying on any business of buying or selling goods. The Petitioner has accordingly contended in the Petition that they are not entitled to pay tax on the sale of goods effected by them under the said Act.

5. Mr. Makhija the learned counsel appearing for the Petitioners has drawn this Court's attention to Section 2(5a) of the Said Act, which reads thus :-

5A) "business" includes 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 gain or profit accrues from such trade, commerce, manufacture, adventure or concern, and any transaction in connection with, or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern.

He has also drawn this Court's attention to Section 2(11) of the said Act and the explanation thereto, which reads thus:-

2(11) "dealer" means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State, and includes (the Central) Government, or any State Government which carries on such business, and also any society, club or other association of persons which buys goods from or sells goods to, its members.

Explanation – For the purpose of this clause –

[(i)] each of the following persons and bodies who dispose of any goods (including goods) as unclaimed or confiscated or as unserviceable or as (scrap, surplus, old, obsolete or discarded material or waste products) whether by auction or otherwise directly or through an agent for each, or for deferred payment, or for any other valuable consideration,

shall, notwithstanding anything contained in clause (5A) or any other provision of this Act, be deemed to be a dealer, to the extent of such disposal, namely:

- (a) Port Trust:
- (b) Municipal Corporation, and Municipal Councils, and other local authorities;
- (c) Railway administration as defined under the Indian Railway Act, 1890;
- (d) Shipping and construction companies;
- (e) Air transport Companies and Airlines;
- (f) 7[***];
- (g) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950;
- (h) Customs Department of the Government of India administering the Customs Act, 1962;
- (i) Insurance and financial corporations or Companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
- (j) Advertising agencies;
- (k) any other corporation, company, body or authority owned or set-up by, or subject to administrative control of, the Central Government or any State Government.

He has submitted that the words “Port Trust” included in the explanation to Section 2(11) was added by way of amendment vide Mah.11 of 1992 and brought into force by Mah. 18 of 1994 with effect from 1st April 1994. He has submitted that the explanation was added by Mah.24 of 1985 with effect from 16th August 1985. He has also drawn this Court's attention to Section 9 of the said Act, which provides for levy on turnover tax on goods of certain 'dealers' and the rate at which turnover tax is to be levied where the turnover of either all sales or all purchases by any dealer liable to pay tax is within the specified amounts. He has submitted that Section 22 of the said Act provides for registration and that no “dealer” is liable to pay tax for carrying on business as a dealer unless he possesses a valid certificate of registration as provided by the said Act. Mr. Makhija has relied upon the judgment of the Supreme Court in the case of ***State of T. N. Vs. Board of Trustees of the Port of Madras***¹ in support of his contention that the Port Trust is not involved in any activity of “carrying on business”. The Supreme Court had in that decision held that port trust is not involved in any activity

1 AIR 1999 Supreme Court 630.

of “carrying on business” and held in paragraph 45 that, the conclusions of the ***Madras High Court in State of Madras Vs. Trustees of the Port of Madras*** reported in ***(1974) 34 STC 135 (Mad.)*** and the decision of ***Andhra Pradesh High Court in Board of Trustees of the Visakhapatnam Port Trust Vs. CTO*** reported in ***(1979) 43 STC 36 (AP)*** holding that sales by the port trust are not eligible to tax, are correct, for the reasons given by the Supreme Court in the said decision. He has submitted that in the said decision of the Supreme Court, it has been held that if the main activity carried on by the port trust was not a business then the incidental or ancillary activities to the main “non-business” activities cannot be treated as “business” within the meaning of the said expression appearing in the T.N. General Sales Tax Act, 1959 (the Act which was in consideration in the case).

6. Mr. Makhija has submitted that the said Act was amended by virtue of the 46th amendment of the Constitution of India and in particular the Article 366 (29-A) of the Constitution of India, which reads thus:-

(29A) “tax on the sale or purchase of goods” includes

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

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

(c) a tax on the delivery of goods on hire-purchase or any system of payment by installments;

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

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the 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 or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

7. He has submitted that in the definition of Section 2(11) a dealer means any person who carries on “business” of buying and selling of goods in the State. Business is defined under Section 2 (5A) of the said Act and includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern. He has submitted that the sale which is contemplated under Sections 61 and 62 of the Port Trust Act is a sale by exercise of a statutory right. He has contended that Article 366(29A) of the Constitution of India which provides for tax on sale or purchase of goods include the tax on the transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration cannot contemplate such sale by the Port Trust under Sections 61 and 62 of the Port Trusts Act. He has placed

reliance upon the statement of objections and reasons to the Constitution (Forty-Sixth Amendment) Act, 1982 and in particular paragraphs 7 and 13 which read thus:-

“7. There were reports from State Governments to whom revenues from sales tax have been assigned, as to large scale avoidance of Central Sales Tax leviable on inter-State sales of goods through the device of consignment of goods from one State to another and as to the leakage of local sales tax in works contracts, hire-purchase transactions, lease of films, etc. Though Parliament could levy a tax on these transactions, as tax on sales has all along been treated as an item or revenue to be assigned to the States, in regard to these transactions which resemble sale also, it is considered that the same policy should be adopted.

13. The proposed amendments would help in the augmentation of the State revenues to a considerable extent. Clause 6 of the Bill seeks to validate laws levying tax on the supply of food or drink for consideration and also the collection or recoveries made by way of tax under any such law. However, no sales tax will be payable on food or drink supplied by a hotelier to a person lodged in the hotel during the period from the date of judgment in the Associated Hotels of India case and the commencement of the present Amendment Act if the conditions mentioned in sub-clause (2) of clause 6 of the Bill are satisfied. In the case of food or drink supplied by Restaurants this relief will be available only in respect of the period after the date of judgment in the Northern India Caterers (India) Limited case and the commencement of the present Amendment Act.

8. He has stated that for a transfer, otherwise than in pursuance of a contract, there should necessarily be a transfer title in those goods. He has contended that the Port Trust does not have any title in the goods which are sold and the Port Trust is only acting as a Bailee in respect of the goods which remain unclaimed or in respect of which rates or rents are not paid or discharged. He has submitted that for a sale of goods to be liable to tax, there must be concurrence of the four elements namely:-

- (a) parties competent to contract;
- (b) mutual assent;
- (c) a thing, the absolute or general property in which is transferred from the seller to the buyer;
- (d) a price in money paid or promised;

He has relied on the judgment of Supreme Court ***Bhopal Sugar Industries Ltd. M.P. Vs. D.P. Dube***² in support of this contention. It has been held in that decision that a transaction which does not confirm to the definition of

² AIR 1964 SC 1037.

sale of goods within the meaning of the Sale of Goods Act, the State legislature is not competent to impose liability for payment of tax. He has also relied upon the judgment of the Supreme Court in the case of ***M/s. New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar***³ which has gone into the definition of sale. Mr. Makhija has relied upon decision of the Supreme Court in ***M/s. Sunrise Associates V. Govt. of N.C.T. Of Delhi & Ors.***⁴ to contend that for a transfer of goods under the said Act, there must be a transfer of title or ownership in the said goods. This decision was in the context of a Lottery Tickets and it was held that a sale of lottery ticket did not involve the sale of goods under the said Act. He has relied upon the judgment of the Supreme Court in ***M.P. Cement Manufacturers' Association Vs. State of M.P. & Ors.***⁵ in support of his contention that an explanation cannot be read as changing or interfering with the incidence of the levy. He has submitted that by virtue of the explanation 2(11) of the said Act port trust has been included in as “dealer” despite the port trust not carrying on any business

3 AIR 1963 Supreme Court 1207.

4 AIR 2006 Supreme Court 1908.

5 (2004) 2 Supreme Court Cases 249.

which is an essential ingredient in the definition of “dealer”. Mr. Makhija has also relied upon Section 63(2) of the Maharashtra Major Port Trust Act which provides for the application of the proceeds of sale under Section 61 or 62 of the Major Port Trust Act and in the event there being a surplus in the proceeds, the surplus shall be paid to the importers, owner or consignee of the goods or his agent on application made by the concerned persons within six months from the date of the sale of the goods. He has contended that since the port trust does not retain the proceeds of sale, one of the elements of sale mentioned above are not met. He has contended that the explanation to Section 2(11) of the Port Trust Act by adding words “Port Trust” is beyond the legislative competence of the State and is therefore, unconstitutional *ultra vires, null and void*.

9. Mr. Sonpal, the learned counsel appearing for the Respondents has drawn this Court's attention to list 2, clause 54 of the Constitution of India, which reads thus :-

“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as

petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods”.

He has submitted that in Article 286 of the Constitution of India, the only restrictions to the imposing of tax on sale or purchase of goods have been provided. Apart from these restriction, there are no other restrictions to the imposition of tax by the State. He has pointed out that the ***The Trustees of the Port of Madras (Supra)*** relied upon by Mr. Makhija, has come up for consideration in the judgment of the Supreme Court in ***Cochin Port Trust Vs. State of Kerala***⁶; Paragraph 22 of the said decision, reads thus:-

“22. It is further pertinent to notice that the T.N. Act was amended by Act 22 of 2002 whereby Explanation (3) was added to definition clause 2(g) of the T.N. Act. By the said amendment the Madras Port Trust has now been declared as a dealer under the T.N. 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,

6 (2015) 11 Supreme Court Cases 618.

notwithstanding anything contained in the T.N. GST Act, it shall be deemed to be a dealer for the purpose of the Act. Therefore, by the 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”.

10. He has submitted that the explanation to Section 2 (11) of the said Act brought about by the amendment contains a non-obstante clause and by which *inter alia*, the port trust is deemed to be a dealer, notwithstanding anything contend in Clause (5A) or any other provisions of the said Act. This would, therefore, imply that, the port trust would be deemed to be a dealer despite the port trust not carrying on business. The judgment in ***Madras Port (Supra)*** has accordingly been held by the Supreme Court in ***Cochin Port Trust (Supra)*** to have lost its substratum. The learned APP has relied upon the judgment of this Court in the ***Controller of Stores, Central Railway, Bombay Vs. The Commissioner of Sales Tax, Maharashtra State***⁷ wherein the Explanation to Section 2(11) of the said Act which had included “Railway Administration” in “dealer” has been held to be clarificatory

7 Sales Tax Reference 5 of 1993 decided on 7th February 1995.

and that Indian Railways represented by the Controller of Stores is a dealer. The learned APP has also relied upon the decision of the Supreme Court in the case of ***Federal Bank Ltd & Ors. Vs. State of Kerela & Ors***⁸. wherein it has been held that a sale of pledged ornament for consideration falls in the course of business of the bank and banks are dealers by virtue of amendment and liable to pay service tax. The learned APP has also relied upon the decision of the Supreme Court in the case of ***State of Madhya Pradesh Vs. Rakesh Kohli & Anr***⁹. He has submitted that legislature in taxation statutes enjoys greater latitude for classification as held in that decision and that the explanation to Section 2(11) of the said Act is within the legislative competence of the State. The learned APP also relied upon the decision of this Court in ***Lalbugcha Raja Sarwajanik Ganeshotsav Mandal Vs. The State of Maharashtra***¹⁰, wherein a Division Bench of this Court considered the explanation to Section 2(8) of the MVAT Act, 2002 which is the *pari materia* to

8 (2007) 4 Supreme Court Cases 188.

9 (2012) 6 Supreme Court Cases 312.

10 MVZA Tax Appeal No. 10 of 2015 in VAT Appeal No. 178 of 2014 decided on 28th July 2015.

Section 2(11) of the said Act and had rejected the challenge of the Appellant and held that an auctioneer even if it was a public charitable trust will be a dealer by virtue of the deeming fiction in Clause (iv-a) of Section 2(8) of MVAT. This Court dismissed the Appeal being devoid of merits.

11. We have given careful consideration to the arguments on both sides. The explanation to Section 2(11) of the said Act in (i) reads thus:-

“Notwithstanding anything contained in clause (5A) or any other provision of this Act, be deemed to be a dealer, to the extent of such disposals, namely :

(a) Port trust”

From a plain reading of the non-obstante clause in the explanation to Section 2(11) of the said Act it is clear that the Port Trust by a deeming fiction falls within the definition of “dealer” irrespective of whether it carries on business as defined under Section 2(5A) of the Port Trust Act or not. In view of the explanation to the definition of dealer, the Supreme Court in ***Cochin Port Trust (Supra)*** has held that

its decision in ***Madras Port Trust (Supra)*** lost its substratum. We are of the view that the 46th Amendment of the Constitution by which 29(A) has been made a part of Article 266 provides for a tax on the sale or purchase of goods, includes a tax on the transfer, otherwise than in pursuance of the contract of property in any goods for cash, deferred payment or other valuable consideration. This would encompass a sale of goods by the Port trust under the Major Port Trust Act. Sections 61 and 62 of the Major Port Trust Act contemplates a sale of goods, either where the rates or rents are not paid or where the goods are not removed from its premises within a particular period. These sales clearly come within Article 366 (29A) of the Constitution. The explanation to Section 2 (11) of the said Act is resultant from the 46th amendment to the Constitution of India by which the Bombay Port Trust has been included in the definition of dealer. We are, therefore, of the view that the definition of dealer in Section 2(11) has been made wider by virtue of the deeming fiction brought about by the explanation and which has resulted in various entities mentioned in the explanation,

being included in the definition of dealer. These entities include:

- (a) Port Trust:
- (b) Municipal Corporation, and Municipal Councils, and other local authorities;
- (c) Railway administration as defined under the Indian Railway Act, 1890;
- (d) Shipping and construction companies;
- (e) Air transport Companies and Airlines;
- (f) 7[***];
- (g) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950;
- (h) Customs Department of the Government of India administering the Customs Act, 1962;
- (i) Insurance and financial corporations or Companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
- (j) Advertising agencies;
- (k) any other corporation, company, body or authority owned or set-up by, or subject to administrative control of, the Central Government or any State Government.

12. This Court has also in the case of **Controller of Stores (Supra)** and in **Lalbaugcha Raja (Supra)** considered the challenge to the inclusion of entities in the definition of “dealer” both amended by Section 2(11) of the said Act and Section 2(8) of the MVAT which is *pari materia*. It is clear from the deeming fiction brought in by the explanation that all these entities are now within the definition of “dealer” irrespective of whether they carry on business. We are of the view that the decisions relied upon by Mr. Makhija were decisions which did not take into consideration the deeming fiction brought about by the amendment to Section 2(11) and by which the above entities are now deemed to be a “dealer”. We are of the considered view that the judgment of the Supreme Court in **Cochin Port Trust (Supra)** holds the field. We are accordingly of the view that the Port Trust falls within the definition of dealer and is liable to sales tax under the said Act. The Supreme Court in the **State of Madhya Pradesh (Supra)** in the context of taxing statutes held thus:-

30. A well-known principle that in the field of taxation, the legislature enjoys a greater latitude for classification, has been noted by

this Court in a long line of cases. Some of these decisions are Steelworth Ltd. Vs. State of Assam, Gopal Narain V.s State of U.P., Ganga Sugar Corpn, Ltd. Vs. State of UP., R.K. Garg Vs. Union of India and State of W.B. V. EITA India Ltd.

13. We are therefore of the view that the legislature having greater latitude for classification in taxing statute was competent in amending Section 2(11) of the said Act and thus there is no merit in the challenge to the constitutional validity of Section 2(11) of the said Act.

14. We accordingly dismiss the Writ Petition with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)