IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2019

Delivered on: 19.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.18496 of 2019
&
W.M.P.Nos.17817 and 17818 of 2019

M.Saroopchand
.. Petitioner

vs.

1. The Commissioner
Commercial Tax Department
Puducherry

2. The Additional Deputy Commercial Tax Officer – II
Office of the Commercial Tax Officerv- II
100 Feet Road, Puducherry – 605 005

3. The Sub-Registrar
Office of the District Registrar
Saram, Puducherry
.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records leading to the passing of the impugned order passed by the 2nd respondent herein dated 30.10.2018 in TIN 34070001928/ADCTO-II/2018-2019 and quash the same and consequently direct the 3rd respondent to entertain registration in respect of petitioners' property situated at No.10, Easwaran Koil Street, Puducherry comprised in Ward C, Block No.17, T.S.No.155 in Puducherry Revenue Village.

For Petitioner : Mr.T.V.Ramanujam
Senior Counsel
for Mr.S.Prem Auxilian Raj

For Respondent : Mr.J.Kumaran
Additional Govt. Pleader (Puducherry)
for R1 to R3

ORDER

Immovable property at 'No.10, Eswaran Koil Street, Puducherry, situate in Ward C, Block No.17, T.S.No.155 in Puducherry Revenue Village with a two storied superstructure' (hereinafter 'said property' for the sake of brevity) was purchased by the writ petitioner from one D.Sundar in and under a registered Sale Deed dated 03.07.2017 registered as Document No.8618/2017 in the jurisdictional Registrar's Office viz., Sub-Registrar, Puducherry.

2. Second respondent before this Court passed an order of provisional attachment dated 30.10.2018 bearing reference TIN 34070001928/ADCTO-II/2018-2019 (hereinafter 'impugned order' for brevity) provisionally attaching said property to secure for what according to the impugned order is arrears of tax and penalty to the tune of over 11.72 Crores (Rs.11,72,51,886/- to be precise) under 'Pondicherry General Sales Tax Act' ('PGST Act) and 'Pondicherry Value Added Tax Act' ('PVAT Act' for brevity).

3. According to the impugned order, this arrears of tax and penalty under PGST and PVAT Acts are dues of a dealer in petroleum products being Sri Manakula Vinayagar Petro Agency with 'Tax Identification Number' ('TIN' for brevity) 34070001928. A reading of the impugned order also reveals that Sri Manakula Vinayagar Petroleum Agency is a proprietary concern and Tmt.D.Indira (petitioner's aforementioned vendor D.Sundar's mother) is the sole proprietrix.

4.Instant writ petition has been filed by D.Sundar's vendee who purchased said property under aforementioned registered Sale Deed dated 03.07.2017. Challenge to the impugned order, as can be culled out from the averments /grounds / contentions in the affidavit filed in support of the writ petition has been captured by this Court in earlier proceedings dated 03.07.2019 and the same reads as follows:

> ' Read this in conjunction with and in continuation of earlier proceedings of this Court dated 1.7.2019.
>
> 2. Today, Mr.S.Prem Auxilian Raj, learned counsel on record for writ petitioner is before this Court. Mr.J.Kumaran, learned 'Additional Government Pleader (Pondicherry)' ('AGP' for brevity) is before this Court on behalf of all official respondents. Learned AGP submits that he has come in place of learned Government Advocate Mr.Stalin Abhimanyu and

learned AGP will now be representing all the three respondents.

3. An order dated 30.10.2018 bearing Reference No.TIN: 34070001928/ADCTC-II/2018-19 (hereinafter referred to as 'impugned order') made by second respondent under 'The Pondicherry General Sales Tax Act' ('PGST' for brevity) and 'Pondicherry Value Added Tax Act, 2007 (Act No.9 of 2007)' {hereinafter 'PVAT Act'} has been called in question in the instant writ petition and therefore the same shall be referred to as 'impugned order'.

4. Vide 'impugned order', immovable property, being a residential house at No.10, Easwaran Koil Street, Puducherry situate in Ward-C, No.17, T.S.No.155, Puducherry Revenue Village, Puducherry (hereinafter referred to as 'the said property' for brevity) has been provisionally attached.

5. A perusal of 'impugned order' reveals that attachment has been made, for what according to learned AGP is arrears of tax and penalty to the tune of Rs.11,72,51,886/-, being tax dues under PGST Act and PVAT Act by one Tmt.D.Indira, Proprietrix Sri Manakula Vinayagar Petro Agency, Pudhcuerry.

6. It is the case of writ petitioner that 'said property' has been purchased by the writ petitioner in and by a Registered Sale Deed dated 3.7.2017 from one Mr.D.Sundar. This Registered Sale Deed is document No.8618 in the office of District Registrar, Puducherry and the jurisdictional Sub-Registrar has been arrayed as third respondent.

7. Writ petitioner submits that 'impugned order' has been made nearly one year and four months after purchase of 'said property' by the writ petitioner under aforesaid Registered Sale Deed.

8. Taking this Court through Section 40 of 'PVAT Act' and Rule 31(1) of 'The Puducherry Value Added Rules 2007' ('PVAT Rules' for brevity), learned counsel for writ petitioner submitted that attachment if any, can only be for liability of a 'dealer' within the meaning of PVAT Act. It was submitted by learned counsel for writ petitioner that writ petitioner's vendor is not a dealer and even according to 'impugned order', the dealer is one Tmt.D.Indira and she has been carrying on business as a sole Proprietrix in the name and style 'Manakula Vinayagar Petro Agency, Pudhcuerry' (to be noted Tmt.D.Indira is mother of vendor Mr.D.Sundar).

9. By way of preliminary submissions, learned

AGP, drawing the attention of this Court to Section 37 of PVAT Act submitted that tax liability under the said Act i.e., PVAT Act, becomes first charge on the property of the dealer, on 21 days elapsing from the date on which notice of tax assessment is served on the dealer.

10. This takes us to the question as to whether the vendor of writ petitioner can be described as a dealer under PVAT Act.

11. To be noted, the term 'dealer' is a term of art qua PVAT Act as it has been defined under Section 2(n) of PVAT Act.

12. These proceedings have been captured and recorded for narrowing down issues that fall for consideration.

13. Matters of utmost relevance are as follows:

(a) Date of assessment order under PVAT Act, qua Section 37(1) of the said Act.

(b) Whether writ petitioner's vendor Mr.D.Sundar would qualify as a dealer under PVAT Act, within the meaning of Section 2(n) of the said Act.

14. Learned AGP seeks time to file counter-affidavit inter-alia, setting out aforesaid details and meeting out aforesaid points.

15. At the request of learned State Counsel, adjourned by a week.

List on 11.7.2019.'

5.From the above, it can be seen that challenge to impugned order is predicated inter alia on the ground that writ petitioner is a bonafide third party purchaser. However, Sri.T.V.Ramanujam, learned senior counsel appearing on behalf of the counsel on record for writ petitioner (instructed by counsel on record Mr.S.Prem Auxilian Raj) submitted that writ petitioner does not want to tread into the arena of bonafide sale/bonafide purchase and that the challenge to the impugned order is confined to one point. That one point, according to learned senior counsel, is that writ petitioner's vendor D.Sundar is not a 'dealer' within the meaning of PVAT Act and therefore said property cannot be attached for liability under PVAT Act. Furthering his submissions in this direction, learned senior counsel submitted that even according to the impugned order, arrears of tax and penalty to the tune of little over 11.72 Crores under PGST and PVAT Acts is only arrears of Tmt.D.Indira carrying on business in the name and style 'Sri Manakula Vinayagar Petro Agency' as sole proprietrix. It was submitted that 'dealer' within the meaning of PVAT Act is only writ petitioner's vendor's mother Tmt.D.Indira and not writ petitioner's vendor. It was urged and argued that the writ petitioner's vendor is not a dealer within the meaning of PVAT Act and therefore the impugned order is liable to be quashed.

6. In response to the aforesaid lone contention on which the writ petition is now predicated, Mr.J.Kumaran, learned Additional Government Pleader (hereinafter 'State Counsel' for convenience and clarity) appearing on behalf of all the three respondents submitted that writ petitioner's vendor does qualify as a dealer within the meaning of PVAT Act as he was undoubtedly carrying on aforesaid business i.e., day-to-day affairs of 'Sri Manakula Vinayagar Petro Agency'. To be noted, learned State counsel has filed a detailed counter affidavit dated 11.07.2019 and also typed-set of papers along with the same.

7. Learned State counsel first drew the attention of this Court to Section 37 of PVAT Act and submitted that in the instant case on 21 days elapsing from the date of assessment under PVAT Act, the outstanding amount i.e., arrears of tax becomes a first charge on said property. For the purpose of convenience and clarity, this Court deems it appropriate to extract sub-sections (1) and (2) of Section 37 and provisos thereto, which reads as follows:

> '37.Payment and recovery of tax__(1) The tax assessed under this Act shall be paid in such manner and in such instalments, if any and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of assessment, the whole of the amount outstanding on date of default shall become immediately due and shall be a first charge on the properties of the dealer liable to pay the tax under this Act.
>
> (2) Where during the pendency of any proceedings under this Act, or after the completion thereof, any dealer or person creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever, of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of completion of such proceedings or otherwise.
>
> Provided that, such charge or transfer shall not be void if it is made_

(a) for adequate consideration and without notice of the pendency of such proceeding or as the case may be without notice of such tax or any other sum payable by such dealer; or

(b) with the previous permission of the Assessing Authority.'

8. As already alluded to supra, learned senior counsel for writ petitioner had made it clear on instructions that writ petitioner does not want to tread into the arena as to whether the sale by which the said property was transferred to writ petitioner was for adequate consideration without notice and that writ petitioner would abridge, restrict and confine his submission to the lone point that writ petitioner's vendor is not a 'dealer' within the meaning of PVAT Act and therefore said property cannot be attached for.

9.This takes us to the definition of 'dealer' in PVAT Act. The term 'dealer' is defined in Section 2(n) of PVAT Act and Section 2(n) reads as follows:

'2. In this Act, unless the context other wise requires--
(n) '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_

(i) a company, Hindu undivided family (HUF), partnership firm or other association of persons, whether incorporated or un-incorporated which carries on such business;
(ii) a casual trader;
(iii) a commission agent, a broker or a del-credere agent or an auctioneer or a factor or any other mercantile agent, by whatever name called and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;
(iv) every local branch of a firm or company or association situated outside the Union Territory and a non-resident dealer or an agent of a non-resident dealer;
(v) a person who sells goods produced by him by manufacture or otherwise;
(vi) a person engaged in the business of transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other

valuable consideration;
(vii) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
(viii) a person engaged in the business of delivery of goods on hire-purchase or any system of payment by instalments;
(ix) a person engaged in the business of 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;
(x) a person engaged in the business of supplying 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;
(xi) a society (including a co-operative society), club or firm or an association which, whether or not in the course of business, buys or sells goods from or to its members for cash or for deferred payment or for commission, remuneration or other valuable consideration;
(xii) an industrial, commercial, banking, insurance or trading undertaking whether or not of the Central Government or any of the State Governments or of a local authority; and
(xiii) a department of the Central Government or any State Government or any Union Territory Administration or a local authority by name of any panchayat, municipality, Development Authority or any autonomous or statutory body including a Port Trust and the like which, whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration;

10. Therefore, now the lone question that falls for consideration in the instant writ petition is whether the writ petitioner's vendor is a 'dealer' within the meaning of Section 2(n) of PVAT Act. Adverting to Section 2(n), learned senior counsel submitted that the expression 'any person' occurring in Section 2(n) is clearly writ petitioner's vendor's mother Tmt.D.Indira.

11. In response to this, learned State counsel submitted that Section 2(n) makes it clear that a dealer is a person who

carries on business directly or otherwise. Learned State counsel laid emphasis on the expression 'or otherwise' occurring in Section 2(n) and submitted that writ petitioner's vendor was undisputedly and certainly carrying on the business of dealer in petroleum products, but he was not carrying on the business directly. Writ petitioner's vendor was carrying on the said business not directly, but 'otherwise' i.e., in the name of his mother, who obviously had dealership licence for petroleum products from an oil company. Therefore, writ petitioner's vendor is a 'dealer' within the meaning of PVAT Act is learned State Counsel's say.

12. Reacting to this, learned Senior counsel submitted that expression 'or otherwise' occurring in Section 2(n) qualifies the activities of business enumerated therein, namely 'buying, selling, suppling or distributing'. In other words, it is the specific submission of learned senior counsel that the expression 'or otherwise' does not qualify how the business was carried on, but it qualifies the list of four business activities enumerated in Section 2(n). Elaborating his submission in this direction, it was also submitted by learned senior counsel that 'any person' occurring in Section 2(n) is fixed i.e., writ petitioner's vendor's mother and it makes no difference as to whether she was carrying on business directly or otherwise i.e., through her son. It was submitted by way of illustration that it may even be a manager or cashier in the petroleum dealership outlet.

13. Per contra, learned State counsel submitted that 'any person' occurring in Section 2(n) is not fixed as there is copious material to show that writ petitioner's vendor was only carrying on day-to-day affairs of Sri Manakula Vinayagar Petro Agency. To be noted such material forms part of respondents' typed-set and they remain unrefuted. 'Any person' in Section 2 (n) should be read as writ petitioner's vendor, who was carrying on business not directly, but otherwise.

14. Therefore, the lone question has further narrowed and it can be broken down into two micro questions, which read as follows:

> a) Whether the expression 'any person' occurring in Section 2(n) will accommodate only the writ petitioner's mother's vendor or it can be read as writ petitioner's vendor also; and
>
> b) Whether the expression 'or otherwise' occurring in Section 2(n) qualifies the list of business activities enumerated therein or whether it qualifies the manner in which the business activities was carried on.

15. In support of his contention, learned senior counsel also submitted that the kind and category of persons who get included as dealer have been adumbrated in various sub-clauses of Section 2(n) by way of sub-clauses (i) to (xiii) thereunder and sub-clauses (i) to (xiii) does not show 'son'. Therefore, writ petitioner's vendor does not qualify as 'dealer' within the meaning of Section 2(n) is his day.

16. In support of his contention that the expression 'or otherwise' occurring in Section 2(n) qualifies the manner in which the business is carried on, learned State counsel pressed into service a judgment of Hon'ble Supreme Court in Smt.Lila Vati Bai Vs. State of Bombay reported in 1957 AIR (SC) 521. To be noted, Lila Vati Bai is a Constitutional Bench judgment. Relying on Lila Vati Bai, learned State counsel submitted that the term 'or otherwise' occurring in explanation (a) to Section 6 of Bombay Land Requisition Act was explained in the said judgment. It was submitted that Hon'ble Constitution Bench while explaining the expression 'or otherwise' occurring in said provision made it clear that the two words constituting the expression are not words of limitation, but are words of extension so as to cover all possibilities.

17. Learned State counsel submitted that going by the Lila Vati Bai principle, in the instant case, 'or otherwise' in Section 2(n) of PVAT Act is possible ways in which a business may be carried on.

18. This Court has carefully considered the rival submissions and this Court now embarks upon the exercise of answering the aforementioned questions that have arisen before this Court. As alluded to supra, two micro questions have arisen from the lone issue /question in the instant case. One is with regard to the expression 'any dealer' occurring in Section 2(n) of PVAT Act and the other is expression 'or otherwise' occurring in Section 2(n) of PVAT Act.

19. With regard to 'any person' occurring in Section 2(n), in the considered view of this Court, the legislature in its wisdom has chosen to say 'any person' and not 'a person'. Therefore, intention was to take within its sweep different kinds of persons. In this view of the matter, this Court is unable to accept the submission that 'any person' is static and that it can refer only to writ petitioner's vendor's mother in this case. Another reason as to why this Court is unable to accept this contention is, PVAT Act does not stop with defining 'dealer'. It defines 'registered dealer' also. To be noted, 'registered dealer' is defined in Section 2(zc) of PVAT Act. Section 2(zc), which defines a 'registered dealer', reads as

follows:

'2(zc) "registered dealer' means a dealer registered under this Act.'

20. Therefore, a conjoint reading of 'dealer' and 'registered dealer' makes it clear that 'dealer' can be any person who carries on four kinds of business activities set out in Section 2(n), but 'registered dealer' can only be one and that one person or entity is the person or entity who or which is registered as dealer under PVAT Act. Therefore, in the instant case, writ petitioner's vendor, who was undisputedly carrying on the business albeit in the name of his mother, certainly qualifies as a 'dealer', but writ petitioner's vendor's mother alone will be 'registered dealer' within the meaning of Section 2(zc). Therefore, in the light of 'registered dealer' and 'dealer' being defined separately, this Court has no hesitation in taking a considered view that 'any person' occurring in Section 2(n) will accommodate both writ petitioner's vendor as well as writ petitioner's vendor's mother. If 'any person' is read as writ petitioner's vendor's mother, it will be a case of an individual carrying some of the business activities enlisted in Section 2(n), not directly but otherwise i.e., through her son. If any person is construed as writ petitioner's vendor, it will be a case of an individual carrying on some of the business activities enumerated in Section 2(n) not directly but otherwise i.e., in the name of his mother who is sole proprietrix qua Sri Manakula Vinayagar Petro Agency.

21. After having answered the first question that has fallen for consideration, namely question regarding 'any person' occurring in Section 2(n), this Court now proceeds to search for an answer to the second question i.e., the question regarding the expression 'or otherwise' occurring in Section 2(n).

22. As already alluded to supra, the question is whether this expression 'or otherwise' qualifies the business activities enumerated in Section 2(n) and adds/acts as an extension to the list of kinds of business activities or whether it qualifies the manner in which the business is carried on i.e., directly or through some one else. In this regard, as already mentioned above, Lila Vati Bai case is a Constitutional Bench judgment and therefore, besides being a binding ratio of Hon'ble Supreme Court, in the considered view of this court it is a determination of law when it comes to interpreting the term 'or otherwise'. As mentioned supra, Hon'ble Constitution Bench in Lila Vati Bai case interpreted the same expression 'or otherwise' occurring in Explanation (a) to Section 6 of Bombay

Land Requisition Act, 1948. Portions of Section 6 of said Act including Explanation (a) as extracted in the copy of Lila Vati Bai judgment placed before this Court reads as follows:

> '6.(1) If any premises situate in ail area specified by the State Government by notification in the Official Gazette, are vacant on the date of such notification and wherever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the State Government.
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> ......................................................................
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> (4) Whether or not an intimation under sub-section (1)is given and notwithstanding anything contained in section 5, the State Government may by order in writing-
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> (a) requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient, or
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> .....................................................................
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> Provided that where an order is to be made under clause (a) requisitioning the premises in respect of which no intimation is given by the landlord, the State Government shall make such inquirv as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in sub- section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant:
>
> Explanation-For the purposes of this section,
>
> (a) Premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation;

.......................................................
................................'

23. A careful perusal of the judgment of Hon'ble Supreme Court brings to light that interpretation of the aforesaid expression has been made by Hon'ble Supreme Court refers to the rule of ejusdem generis.

24. This Court is clear in its mind that no elaboration or elucidation is required to say that the rule of ejusdem generis will be applied when some general words or an expression constituted by a general word ('or otherwise' in instant case) are used immediately after particular and specific words of same nature, these general words shall be seen as different hues and shares of the particular and specific words of same nature, but when the context in which the general words are used is intended to eliminate a mischief, these general words will be given their plain and ordinary meaning.

25. To be noted, this is the approach taken by Hon'ble Supreme Court in Lila Vati Bai case and this approach has in turn been adopted by Hon'ble Supreme Court by placing reliance on the celebrated Skinner & Co. V. Shew and Co. reported in (1893) 1 Ch 413 (K) where the words 'or otherwise' used in Section 32 of the erstwhile Patents, Designs and Trade Marks Act, 1883 in England were interpreted in Skinner & Co. case.

26. In the instant case, with regard to generic words 'or otherwise' which we are concerned with, this Court has no hesitation in holding that Lila Vati Bai principle, being a Constitutional Bench judgment of Hon'ble Supreme Court, can be applied as these generic words used in Explanation (a) to Section 6 of Bombay Land Requisition Act and Section 2 (n) of PVAT Act are not different. It is nobody's case that deployment of these generic words are different in Explanation (a) to Section 6 of said Act and Section 2(n) of PVAT Act.

27. This takes us to the question as to whether the expression 'or otherwise' is an extension for directly i.e., an extension for the manner in which business is carried on or extension to the kinds of business activities. As already mentioned supra, four kinds of business activities are adumbrated in Section 2(n) and they are buying, selling, supplying or distributing. This Court is unable to accept the argument of learned senior counsel for writ petitioner that 'or otherwise' is a 5$^{th}$ kind of business activity in addition to the four business activities. The reason is straight, simple and clear.

28. A careful and close reading of Section 2(n) reveals that with regard to the four kinds of business activities a ' , ' i.e., a comma (punctuation mark) has been used after the first and second activities and between the third and fourth activities, the expression 'or' has been used. To be noted, Section 2(n) says '......... buying, selling, supplying or distributing goods .......'. thereafter there is a ' , ' i.e., a comma (punctuation mark) and the provision says '......directly or otherwise ..........'. Therefore, 'or otherwise' has been used only as a continuation/extension of 'directly'. If the intention of the legislature was to add to the kinds of business activities, the provision would have read ' buying, selling, supplying or distributing goods or otherwise'. This is not the case. Therefore, this Court has no hesitation in coming to the conclusion that generic words 'or otherwise' as an expression occurring in Section 2(n) of PVAT Act is only an extension of directly to include all possible ways of carrying on the four kinds of business activities.

29. This takes us to the further question as to whether these generic words have to be given a restricted meaning or should be construed with wide amplitude meant to act as an extension and not as a limitation.

30. As 'registered dealer' has been separately defined under Section 2(zc), it is clear that 'or otherwise' should be read with wide amplitude and should be understood as words used as extension include all possible ways of carrying on business activities. However, on an extreme demurrer, now that this Court has clearly come to the conclusion that the generic words 'or otherwise' will only qualify 'directly', even if ejusdem generis principle is applied, it would at best read directly or indirectly. Even if 'directly or otherwise' is read as 'directly or indirectly', it would only mean 'any person' who carries on any or some of the kinds of business activities enumerated in Section 2(n) directly or indirectly. In the instant case, it is the case of writ petitioner's vendor's mother carrying on three of the business activities, namely buying, selling and distributing petroleum products indirectly through her son.

31. Therefore, this Court having come to the conclusion that writ petitioner is carrying on business as a dealer not directly, but otherwise, even on an extreme demurrer, even if the expression 'or otherwise' is to be given a restricted meaning, it will still cover writ petitioner's vendor. As already alluded to supra, this is because the term 'registered dealer' has been defined separately and writ petitioner's vendor's mother will qualify as 'registered dealer'. This Court

is of the considered view that the width given to the term 'dealer' while defining the same is to eliminate the mischief of a person/entity carrying on some business without registering himself, herself or itself as a dealer and then getting away with it qua tax liability by saying that he is not a dealer under PVAT Act.

32. To borrow from Zoology, if 'dealer' is a family, 'registered dealer' is a species considering the definitions in Section 2(n) and Section 2(zc). As far as adumbration of 13 categories under Section 2(n) is concerned, it is the conclusive part of the definition to point out that various categories of entities and personnel can be included within the meaning of 'dealer'. Therefore that does not impact the interpretation which this Court is now making.

33. For the purpose of enhancing clarity, this Court deems it pertinent to say that the clincher in the instant case in definition of the term 'registered dealer' in Section 2(zc) which brings to light the mischief which the PVAT Act intends to eliminate and the mischief it eliminates has already been alluded to supra.

34. This takes us to the very last aspect of the matter. This last aspect of the matter is Section 37 of PVAT Act. A careful perusal of Section 37, which has already been extracted and reproduced supra brings to light that in sub-section (1) of Section 37, the statute talks about charge on the properties of a 'dealer' and not 'registered dealer'. Therefore, the interpretation which this Court is now making with regard to 'or otherwise' occurring in Section 2(n) inter alia by placing reliance on the mischief which is sought to be eliminated, stands buttressed. If the intention of the statute was otherwise, the statute could have used the expression 'properties of a registered dealer'.

35. This Court has already come to the conclusion that the writ petitioner's vendor qualifies as a 'dealer' within the meaning of Section 2(n) and that writ petitioner's vendor's property i.e., said property will clearly be covered under Section 37(1) of PVAT Act. With regard to proviso to Section 37 (2) which deals with bonafide transfer, there is copious and undisputed material before this Court to show that writ petitioner was carrying on day-to-day affairs of the business and in any event, learned senior counsel for writ petitioner made it clear that writ petitioner does not want to tread into that arena. Therefore this Court deems it appropriate to not to delve into the same any further.

36. It is thus the end of the campaign of the writ petitioner in the instant writ petition as far as writ petitioner's challenge to the impugned order is concerned. However, this Court, before parting with this case, considers it appropriate to deal with two aspects of the matter. One aspect of the matter is, nothing prevents the writ petitioner from proceeding against his vendor for having palmed off a property, which was subject matter of first charge under Section 37(1) of TNVAT Act. There is no material placed before this Court to demonstrate that writ petitioner has issued any notice or initiated any proceedings against his vendor. If the writ petitioner now chooses to proceed against his vendor, this order will not impede such proceedings.

37. One other aspect of the matter is regarding communication to the jurisdictional Registrar's office about first charge on properties of a dealer when the same occurs under Section 37(1) of PVAT Act. Learned State counsel submits that as of now, there is no procedure to communicate such a charge when it occurs. This Court deems it pertinent to set out, obviously in a recommendatory tone that it would be appropriate for the Government to consider making Rules in this regard. This Court also notices that Rule making power has been vested in the Government under Section 27(1) of TNVAT Act. This Court also deems it appropriate to mention that 'Attachment Before Judgment' ('ABJ' for brevity) orders made under Order XXXVIII Rule 5 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) have to be communicated to the jurisdictional Registrar Office. When judicial orders of attachment i.e, ABJ orders under Order XXXVIII Rule 5 of CPC are communicated to the jurisdictional Registrar's Office, this Court finds no impediment for making provision for communication of attachments occurring by operation of Section 37(1) of PVAT to the jurisdictional Registrars as and when such first charge / attachments occur. However, though obvious, it is made clear that this is only a recommendatory part of the order as this Court is of the considered view that if such communication is made, it will protect the interest of the Revenue and also serve as a safety valve for innocent bonafide third party purchasers. To be noted, in the instant case, this Court expresses no opinion as to whether writ petitioner is a bonafide third party purchaser or not in the light of trajectory of the hearing which has been set out supra.

In the light of the discussion thus far, it follows as a sequitur that writ petitioner has not made out a case for interference qua impugned order. Therefore, this writ petition fails and the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
   Commercial Tax Department,
   Puducherry.

2. The Additional Deputy Commercial Tax Officer – II
   Office of the Commercial Tax Officerv- II
   100 Feet Road, Puducherry – 605 005.

3. The Sub-Registrar,
   Office of the District Registrar,
   Saram, Puducherry.

+1cc to Mr.S.Prem Auxilian Raj, Advocate Sr.70442

W.P.No.18496 of 2019 &
W.M.P.Nos.17817 and 17818 of 2019

pa[co]
srg 19/09/2019