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

MAHARASHTRA VALUE ADDED TAX APPEAL NO.16 OF 2016
IN
APPEAL NO.23 OF 2014

WITH

MAHARASHTRA VALUE ADDED TAX APPEAL NO.2 OF 2020
IN
APPEAL NO.23 OF 2014

Stressed Assets Stabilization Fund .. Appellant

Versus

The State of Maharashtra .. Respondent

Ms. Nikita Badheka a/w Parth Badheka, Lata Nagal Advocates for the Petitioner.

Ms. Jyoti Chavan, Addl.G.P. a/w Atul Vanarse, AGP for Respondent/State.

CORAM :B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON : FEBRUARY 4, 2025

PRONOUNCED ON: MARCH 03, 2025

JUDGMENT [PER: B. P. COLABAWALLA, J.]

1. *Maharashtra Value Added Tax Appeal No.16 of 2016* challenges the order dated 4th June 2015 [hereinafter referred to as

"impugned order No.1" or the **"1st impugned order"**] passed by the Maharashtra Sales Tax Tribunal (for short "**the MSTT**") in VAT Appeal No.23 of 2014. By impugned order No.1, the MSTT confirmed the Determination Order dated 28th March 2014 (for short "**the DDQ Order**") passed by the Commissioner of Sales Tax under Section 56(1) of the Maharashtra Value Added Tax, 2002 (for short "**the MVAT Act**") inter alia holding that the Appellant is a "deemed dealer" as per the Explanation to Section 2(8) of the said Act. *Maharashtra Value Added Tax Appeal No.16 of 2016* was admitted vide order dated 30th August 2016 on the following three questions of law:-

(a) *Whether on the facts, evidences, circumstances and details available on record, the Tribunal was justified in holding that the Appellant Trust is a deemed dealer under section 2(8) of MVAT Act 2002 liable for registration and payment of tax under MVAT Act.*

(b) *Whether on the facts, evidences, circumstances and details available on record, the Tribunal was justified in upholding the view of the Ld. Commissioner that "it is not necessary for levy of Sales Tax, that the Appellant must carry on 'business' in the capacity of the dealer".*

(c) *Whether on the facts, evidences, circumstances and details available on record the Tribunal was justified in*

holding that the transaction of sale of movable property is affected by SASF, especially when the Commissioner had clearly observed that whether there is sale of movable or immovable property, is to be ascertained by the field officers at the appropriate stage.

2. *Maharashtra Value Added Tax Appeal No.2 of 2020* challenges the order dated 24th February 2020 [hereinafter referred to as **"impugned order No.2"** or the **"2nd impugned order"**] passed the Larger Bench of the MSTT denying the Appellant the benefit of prospective effect to the DDQ Order passed by the Commissioner of Sales Tax. To put it simply, the Commissioner of Sales Tax, by the DDQ Order, [under section 56(2) of the MVAT Act], denied the Appellant the benefit of prospective effect to the said DDQ Order. This part of the DDQ Order was confirmed by the Larger Bench of the MSTT. The Larger Bench was constituted to decide the issue of prospective effect because initially when the DDQ Order passed the Commissioner of Sales Tax was challenged before the MSTT, a two member bench of the MSTT, whilst upholding the DDQ Order in so far as it held that the Appellant is a "deemed dealer" under the MVAT Act [impugned order No.1], had a difference of opinion on whether the Appellant was entitled to the benefit of prospective effect. It is in these circumstances,

that a Larger Bench was constituted pursuant to an order passed by this Court on 22nd November 2017 in MVAT Appeal No.46 of 2017. This order of the Larger Bench is challenged in *Maharashtra Value Added Tax Appeal No.2 of 2020*. This Appeal was admitted on 19th July 2023 on the following four questions of law:-

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting the plea of grant of prospective effect u/s. 56(2) of MVAT Act to the order of the Commissioner dt. 28.03.2014?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal's finding as listed below are perverse as they are not based on any evidence on record, contrary to evidence on record and otherwise unreasonable. The following perverse findings has resulted in denial of prospective effect to the Appellant

(i) There is no dispute that being instrumentality of central Government, Appellant, was aware that it was carrying the business of buying and selling the goods within the meaning of the MVAT Act and in such circumstances ought to have collected tax and therefore there is no case for grant of Prospective effect to the order of the Commissioner.

(ii) There was no disputed question and therefore the bonafide of the Appellant are conspicuously absent.

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in confirming, that the Appellant was effecting recovery of the stressed assets by sale of movable properties, when the Commissioner himself had kept this question open to be decided by field officers after due verification?

(d) Whether on the facts, evidence, circumstances and the details available on record, the Tribunal was justified in not appreciating that the Appellant Trust having disbursed the amount recovered amongst other secured creditors, it will not be able to recover any tax from the other secured creditors and therefore a case of grave hardship was made out especially when the Appellant trust has no income of its own and its administrative expenses are born by successor of IDBI (now IDBI Bank Ltd.) as per Trust Deed?"

3. Both the above Appeals have now come up for hearing and final disposal before us. Before we proceed to decide the questions of law raised in both the aforesaid Appeals, it would be necessary to set

out some facts. Since the facts in both the Appeals are identical, we will refer to the facts as we go along.

FACTS OF THE CASE:

4. The Appellant before us, namely M/s. Stressed Assests Stabilization Fund (SASF), is a trust set up by the Central Government pursuant to a Trust Deed dated 24th September 2004. The purpose of setting up the aforesaid Trust was basically to acquire, by transfer, the stressed assets of the Industrial Development Bank of India (IDBI) who had accumulated non-performing assets to the tune of approximately Rs.9,000/- Crores as on 31st March 2004. It is to deal with this aspect that the Central Government, through the President of India, as the settlor, decided to set up a Special Purpose Vehicle (SPV) in the form of a Trust for acquiring the stressed assets of IDBI with a view to recover the loans that were to be acquired by the Appellant Trust from IDBI. The Central Government allocated funds of Rs.9,000/- Crores in the budget for the year 2004-05 for extending a loan to the Trust. The Trust Deed also defined "Stressed Assets" to mean the assets financed by IDBI in the form of loans and advances and which were not recovered by IDBI. In other words, the Appellant – SASF was assigned

the legal debts owed to IDBI along with the underlying securities, which were then to be disposed of/sold for recovery of loans from the defaulting borrowers. The main, or rather, the only object of the Trust was realization and recovery of dues with or without the intervention of the Courts/Tribunals.

5. Pursuant to the aforesaid Trust Deed and to take its object forward, a Transfer Deed dated 30th September 2004 was executed between IDBI and the Appellant Trust (SASF) whereby the stressed assets of IDBI were transferred to the Appellant. After the aforesaid transfer, the Central Government also notified the Appellant (Notification No.41 dated 9th October 2004) as a public financial institution for the purpose of Section 2(h) of the *Recovery of Debts Due to Banks and Financial Institution Act, 1993* (for short **"the RDDB Act, 1993"**). By virtue of this Notification, the Appellant (SASF) could therefore recover the stressed assets either by resorting to the provisions of the said RDDB Act, 1993 or the provisions of SARFAESI Act, 2002.

6. It is the case of the Appellant that on or around 10th December 2013 to 16th December 2013 the Appellant was visited by the

Investigation Branch of the Sales Tax Authorities of Maharashtra. The Appellant produced all necessary details before the Investigating Officers, and they did not find any discriminatory material for suspicion. However, according to the Investigating Officers, the Appellant was a dealer (as contemplated under the provisions of the MVAT Act) and ought to have registered itself under the said Act and should have paid tax on the sale of movable properties which it undertook whilst it was seeking to recover the loans and advances of the defaulting borrowers, and which were assigned to the Appellant.

7. According to the Appellant, it was not a dealer in terms of the provisions of the MVAT Act as it was not carrying on any business of buying or selling goods. According to the Appellant, it was constituted by the Government of India, for the Government of India, and the Government of India was the beneficiary of the Trust set up by it. It was the further case of the Appellant that the money realized by it had to be transferred to the Central Government under the Trust Deed which set up/constituted the Appellant. Since the Government of India was the beneficiary, and also the fact that if the Trust was unable to sell the stressed assets within the period mentioned in the Trust Deed (20 years from the date of formation of the Appellant) the stressed assets

were to vest in the Central Government. This being the case, it was also the argument of the Appellant that as per Article 285 of the Constitution of India, the property of the Union Government was exempted from all taxes imposed by the State Government. It is because of this impression of the Appellant that it filed an Application under Section 56(1) of the MVAT Act before the Commissioner of Sales Tax for *Determination of Disputed Questions* as to whether the Appellant can be treated as a dealer under the MVAT Act.

8. In the Application filed by the Appellant [under Section 56(1)], it was argued before the Commissioner of Sales Tax, that in the facts of the present case, it could not ever be said that the Appellant was carrying on business of buying or selling goods. It was the contention of the Appellant that realization of debts by the Appellant by resorting to enforcement of securities does not amount to sale of assets by the Appellant. It was further contended that the immovable properties having plant, machinery and structures, were sold by the Appellant on an "as is where is basis" and therefore, whether such immovable properties can be subjected to tax by the State of Maharashtra was the question posed to the Commissioner. The argument of Article 285 of the Constitution of India was also canvassed before the Commissioner.

Apart from this, the Appellant also requested the Commissioner to give prospective effect to the DDQ Order he proposed to pass, if the points canvassed by the Appellant were not accepted by the Commissioner.

9. After hearing the Appellant, by a detailed order dated 28th March 2014 [the DDQ Order], the learned Commissioner came to the conclusion that the Appellant is a "deemed dealer" as per the Explanation to Section 2(8) of the MVAT Act. The Commissioner also held that the definition of "business" would not apply to the Appellant and the only aspect to be considered is whether the Appellant is selling any goods (movable property) by auction. He held that the sale of movable property by the Appellant through the auction process amounted to a sale of movable property and therefore exigible to Sales Tax. As far as the request for prospective effect was concerned, the Commissioner held that under the MVAT Act, tax is on the incidence of sale within the State of Maharashtra. According to the Commissioner, the Appellant was aware that it is effecting recovery of stressed assets by sale of movable and immovable property and therefore it was not a fit case for granting prospective effect to the DDQ Order. In other words, the request for giving prospective effect to the DDQ Order was turned down by the Commissioner.

10. Being aggrieved by the DDQ Order passed by the Commissioner, the Appellant approached the MSTT by filing an Appeal under Section 26(1)(c) of the MVAT Act. The MSTT also, after giving a hearing to the Appellant, by a detailed judgment and order dated 4th June 2015 [the 1st impugned order], confirmed the DDQ Order passed by the Commissioner, in so far as it held that the Appellant was a "deemed dealer". This forms the subject matter of *Maharashtra Value Added Tax Appeal No.16 of 2016*. However, the two members of the MSTT differed on whether the benefit of prospective effect ought to be given to the Appellant. One member was of the view that the Appellant had made out a case for getting the benefit of prospective effect to the DDQ Order, while the other member did not. It is because of this difference of opinion that a Larger Bench of the MSTT was constituted and which finally held, by its order dated 24th February 2020 [impugned order No.2], that the Appellant is not entitled to the benefit of prospective effect to the DDQ Order passed by the Commissioner. This order is the subject matter of *Maharashtra Value Added Tax Appeal No.2 of 2020*.

SUBMISSION OF THE APPELLANT:

11. In this factual backdrop, Ms. Badheka, the learned advocate appearing on behalf of the Appellant, submitted that the DDQ Order passed by the learned Commissioner and the Tribunal's 1st impugned order [confirming the DDQ Order], *inter alia* holding the Appellant as a "deemed dealer" is completely erroneous and contrary, not only to the facts, but also the law. Ms. Badheka submitted that the Appellant has only discharged its functions as per the directions of the Central Government as stated in the Trust Deed. The Appellant, therefore, cannot be treated as a dealer, especially in view of Article 285 of the Constitution of India. It was the submission of Ms. Badheka that as per Article 285 of the Constitution of India, the property of the Union Government is exempt from all taxes imposed by the State or by any Authority within the State. This apart, she submitted that the Appellant Trust was brought into existence by the Government of India as a settlor of the Trust and the beneficiary is also the Government of India. The Appellant is only a Special Purpose Vehicle set up to realize the stressed assets of IDBI, and as such, the Appellant cannot be termed as a dealer within the meaning of the MVAT Act. In this regard, Ms. Badheka invited our attention to the Trust Deed dated 24th

September 2004 and pointed out that the objectives of the Appellant Trust are mainly to administer and realize stressed assets of IDBI. She submitted that Trustees are appointed by the Government of India and the Trust Deed is also executed between the President of India and the Trustees. She submitted that the duration of the Trust is also for a limited period, and it is to stand terminated upon recovery in full of the stressed assets transferred to it under the Transfer Deed, or on the expiry period of 20 years (which has been extended). She submitted that the Appellant Trust can also be terminated if the Union Government is satisfied that no further amounts would be recovered from sale of the stressed assets. Placing reliance on these provisions of the Trust Deed, Ms. Badheka submitted that by no stretch of the imagination can it be said that the Appellant Trust is doing a "business" of sale and purchase of movable property. Since the Trust is formed by the Central Government for a specific purpose, with a limited duration, the Trust cannot be deemed to be a dealer within a meaning of the MVAT Act. Ms. Badheka submitted that the definition of word "business" in Section 2(4) of the MVAT Act *inter alia* includes any adventure or concern in the nature of service, trade, commerce, or manufacture. She submitted that looking at the objects of the Trust and what it is supposed to do in terms of the Trust Deed [under which it is

set up], the Appellant can never be said to be indulging in any activity of carrying on "business" as contemplated in terms of Section 2(4) of the MVAT Act. She further submitted that the definition of the word "sale" under Section 2(24) of the MVAT Act means a sale of goods made within the State of Maharashtra for cash or deferred payment or other valuable consideration. She submitted that the Appellant has not sold any goods within the State of Maharashtra but has discharged the functions assigned to it by the Trust. According to Ms. Badheka, the main object of the Trust, as is clear from the preamble of the Trust Deed, is to acquire by transfer the stressed assets of IDBI, administer and manage the said stressed assets with a view to recover the loans due thereunder, and for this purpose, the Appellant Trust was created. Ms. Badekha submitted that not only this, but the Trustees have to pay the amounts realized or recovered from the stressed assets to the Government of India. In such a situation, the activity of recovering loans by selling securities would not fall even within the definition of word "business" [as defined in Section 2(4)], or the word "sale" as defined under Section 2(24) of the MVAT Act.

12. To buttress this argument, Ms. Badheka placed reliance on the ruling of the Hon'ble Supreme Court in the case of **The State of**

Tamil Nadu and Anr. V/S The Board of Trustees of the Port of Madras [(1999) 4 SCC 630 : (1999) 144 STC 520]. She submitted that the Hon'ble Supreme Court (in the aforesaid decision) has clearly held that the expression "carrying on business" requires something more than mere selling and buying. Whether a person "carries on business" in any particular commodity must depend upon the volume, frequency, continuity, and the regularity of the transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive, which may, however, be statutorily excluded. She submitted that merely the act of selling or buying etc, would not constitute a person as a dealer but the object with which the person who carries on the activity is important. It is not as if every activity or any repeated activity which results in sale or supply of goods would attract sales tax. She submitted that if it was the intention of the legislature to tax every sale or purchase, irrespective of the object of the activities out of which the transactions arose, then it was not necessary to state in the legislation that the person must carry on business of selling, buying etc. She submitted that all these factors, and which are a *sine qua non* before the Appellant could be termed as a dealer, are absent in the present case. She submitted that the main activity of the Appellant Trust is not doing any business but in fact is to recover the

stressed assets of IDBI. Therefore, the incidental transaction of sale of securities (movable) is required to be carried out by the Appellant Trust and this activity carried out by the Appellant cannot be termed as "carrying on business". Since there is no sale or purchase of goods as understood in the normal parlance, coupled with the fact that there is no profit motive involved, the Appellant can never be said to be a "dealer" as contemplated under the MVAT Act. This is more so because the amount recovered by sale of securities by the Appellant is required to be credited to the Central Government which again clearly goes to establish that the Appellant is doing no business and has no profit motive.

13. Apart from the aforesaid argument, Ms. Badheka also submitted that the loans advanced by IDBI to its borrowers, and which were thereafter assigned to the Appellant Trust, was on the basis of securities and mortgage of immovable properties. She submitted that the entire properties that were auctioned by the Trust were immovable properties having plant and machinery embedded in the earth. Since the sale was carried out on an "as is where is basis" there was absolutely no sale of movable property and therefore would not be exigible to sales tax under the provisions of the MVAT Act.

14. The next submission made by Ms. Badheka was that the Commissioner, whilst passing the DDQ Order, appreciated the arguments of the Appellant and therefore observed that the bifurcation of goods as movable and immovable needs to be properly ascertained by the field officer and at the appropriate stage the question of levy of tax would come up. She submitted that the Tribunal, in impugned order No.1, in fact concluded that the property can be severed from the earth and therefore becomes movable property which was contrary to the Appellant's case that in all cases where the plant and machinery were sold the same was along with the land and on as "as is where is basis", and no plant and machinery was severed by the Appellant and no delivery was given by the Appellant of any goods to the buyer.

15. Ms. Badheka then submitted that the Tribunal wrongly interpreted the provisions of the Explanation to Section 2(8) of the MVAT Act. She submitted that the Tribunal has wrongly categorized the Appellant as a public financial institution as contemplated under Clause (vii) of the Explanation to Section 2(8). She submitted that the notification dated Notification No.41 dated 9th October 2004 conferring the status of a "public financial institution" on the Appellant was purely

for the purposes of RDDB Act, 1993 and the SARFAESI Act, 2002 so that the Appellant could recover monies from the defaulting borrowers efficiently and quickly under these special legislations. That by itself would not make the Appellant a public financial institution as contemplated under Clause (vii) of the Explanation to Section 2(8) of the MVAT Act. For all these reasons, Ms. Badheka submitted that the order passed by the Tribunal on 4th June 2015 (impugned order No.1) holding the Appellant as a "deemed dealer" under the provisions of the MVAT Act requires interference and the questions of law framed in *MVXA No.16 of 2016* be answered in the negative and in favour of the Appellant and against the Revenue.

16. As far as giving prospective effect to the DDQ Order of the Commissioner is concerned, Ms. Badheka submitted that the same forms the subject matter of *MVXA No.2 of 2020*. She submitted that the Larger Bench of the MSTT, by its order dated 24th February 2020 (impugned order No.2), denied the benefit of prospective effect [to the DDQ Order] to the Appellant. In this regard, Ms. Badheka pointed out the provisions of Section 56 of the MVAT Act. She submitted that Section 56 as it stood [prior to its deletion with effect from 1st May 2016], *inter alia* provided that if any question arises, otherwise than in

a proceeding before the Court or a Tribunal under Section 55, or before the Commissioner has commenced assessment of a dealer under Section 23, whether, for the purposes of this Act, any person is a dealer, or any particular person or dealer is required to be registered, or any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term, or any transaction is a sale or purchase, or where it is sale or purchase, the sale or purchase price thereof etc, the Commissioner shall, subject to rules, make an order determining such question. She submitted that under Section 56(2), the Commissioner has the power to rule that the determination made by him under sub-section (1) shall not affect the liability of the Applicant under the MVAT Act, or if the circumstances so warrant, of any other person similarly situated, with respect to any sale or purchase effected prior to the determination. She submitted that Section 56(2) is not attached with any conditions, and it is left to the discretion of the Commissioner. In the event of the refusal by the Commissioner to exercise its discretion to grant prospective effect under Section 56(2), such refusal can be agitated before the Tribunal as also before this Court. Ms. Badheka was fair to point out that although prospective effect of the order of the Commissioner can be granted by the Tribunal, or as the case may be, the High Court, the same can be

given only upto the date of the order of the Commissioner under Section 56, and which in the present case is 28th March 2014. She submitted that in fact after the order of the Commissioner (dated 28th March 2014) holding the Appellant as a "deemed dealer", the Appellant has obtained a certificate of registration as a dealer under protest and the said certificate is granted with effect from 10th June 2014. In any event, for the period after the order of the Commissioner, the Appellant has filed returns but has not sold any movable property nor collected any tax. Therefore, in the present case, the prospective effect argument is restricted to only 8 transactions effected by the Appellant in the State of Maharashtra prior to 10th June 2014. Ms. Badheka also tendered to the Court a list of those transactions.

17. Ms. Badheka submitted that as far as the prospective effect argument is concerned, in the 1st impugned order, there was a difference of opinion between the members of the MSTT whether the Appellant would be entitled to the benefit of prospective effect. She submitted that the judicial member rightly observed that though the Appellant is a "deemed dealer", the Commissioner has not stated in unequivocal terms that the Appellant Trust is carrying on business of buying or selling goods in terms of the MVAT Act. Further, the

Commissioner has also not decided whether the transfer of stressed assets to the Appellant Trust under the Transfer Deed amounts to purchase by it. She submitted that the judicial member therefore correctly came to the conclusion that it can't be definitively concluded that the Appellant Trust was carrying on business of buying and selling goods. She submitted that this apart, in view of the fact that the Appellant Trust was formed for a limited duration for recovery of stressed assets of IDBI, and admittedly was not carrying on any business [as understood in the common parlance] and neither was it making any profit, this was a fit case where the discretion ought to have been exercised in favour of the Appellant and the benefit of prospective effect ought to have been granted.

18. To carry this argument further, Ms. Badheka pointed out once again, that this is a unique case where the Central Government has set up the Appellant Trust in public interest. The object is to manage, administer and realize huge stressed assets of the erstwhile IDBI. Once the assets are realized and recovery was made, the same had to be passed on to the Central Government. All this is explicitly clear from the terms of the Trust Deed. It is in these facts and circumstances that the Appellant was of the *bonafide* belief that it

would not be liable to pay any sales tax on sale of securities (movable) as it was not carrying on any business of buying or selling goods. In fact, the Comptroller and Auditor General, who are the regular auditors of the Appellant, have also not pointed out any time that the sale of securities (movable) by the Appellant would be exigible to sales tax. It is for this reason that the Appellant, whilst selling the securities (movable), has not collected any sales tax from the purchaser. If prospective effect is not given to the DDQ Order passed by the Commissioner, grave hardship would be caused to the Appellant, as it would now be impossible to collect the sales tax from the concerned purchaser. This is more so when one takes into consideration that the Appellant does not have any income of its own and if the Appellant is asked to pay the sales tax on the sale of the securities already done in the past, it would have to approach to the Central Government for the said funds to pay over to the State Government. Further, considering that the Central Government is the only beneficiary under the Trust set up and created to recover the stressed assets of IDBI, the Appellant was under a *bonafide* impression that because of the mandate of Article 285 of the Constitution of India it was not required to collect any taxes from the purchasers for sale of stressed assets. For all these reasons, Ms. Badheka submitted that this is a fit case where the benefit of

prospective effect to the DDQ Order ought to be granted to the Appellant.

FINDINGS AND DISCUSSION OF THE COURT:

19. We have heard Ms. Badheka at great length. In the present Appeals there are 2 impugned orders. Impugned order No.1 (dated 4th June 2015) is the order of the MSTT that confirms the DDQ Order passed by the Commissioner on 28th March 2014 *inter alia* holding that the Appellant is a "deemed dealer" as per the Explanation to Section 2(8) of the MVAT Act. Impugned order No.2 is the order passed by the Larger Bench of the MSTT denying the benefit of prospective effect to the DDQ Order [under Section 56(2) of the MVAT Act], to the Appellant. As mentioned earlier, a Larger Bench was formed because in impugned order No.1, the two members of the MSTT had a difference of opinion on whether the Appellant would be entitled to the benefit of prospective effect as contemplated under Section 56(2) of the MVAT Act. Since impugned order No.1 (holding the Appellant as a "deemed dealer") is the subject matter of *MVXA No.16 of 2016*, we will deal with this issue first.

WHETHER THE APPELLANT IS A "DEEMED DEALER" AS CONTEMPLATED UNDER THE EXPLANATION TO SECTION 2(8) OF THE MVAT ACT.

20. The emphasis of the argument of the Appellant is that the Appellant is not carrying on any business as contemplated under the provisions of the MVAT Act and hence would not be liable to tax under the provisions thereunder. Before we examine the provisions of the MVAT Act, it would be necessary to examine the relevant clauses of the Trust Deed dated 24th September 2004 and the Transfer Deed dated 30th September 2004. From the Trust Deed it is clear that for four decades, IDBI had accumulated non-performing assets of approximately Rs.9,000/- Crores as on 31st March 2004. The Government of India, therefore, as a settlor, decided to set up a Special Purpose Vehicle in the form of a Trust for acquiring (by transfer) the stressed assets of IDBI with a view to recover the amounts due thereunder. It is for this purpose that the Appellant was constituted as "the Stressed Assets Stabilization Fund". The salient features of this Trust Deed indicates that the Trustees of the Appellant were to realize the stressed assets by re-structuring, arriving at settlement with borrowers, taking legal measures, or adopting such measures as it may deem fit, including but not limited to recovery as arrears of land revenue. The amounts realized or recovered from the stressed assets

were to be paid over to the Government of India. Basically, the objects of the Trust were to manage, administer and realize the stressed assets, and for that purpose, all that was required for realizing and recovering dues of defaulting borrowers, with or without the intervention of the Courts/Tribunals, was to be undertaken by the Trust, including taking measures under the SARFAESI Act, 2002. It is in furtherance of this object that a Transfer Deed was executed on 30th September 2004 between IDBI and the Appellant under which the loans of the defaulting borrowers with their underlying securities were transferred to the Appellant so that the Appellant could thereafter undertake the exercise of disposing of the stressed assets and pay over the sale proceeds to the Government of India. Thus, the Appellant became the full and absolute owner of the loans and the stressed assets [by virtue of the Transfer Deed dated 30th September 2004] and the only person legally entitled to recover those loans or any part thereof. To ensure that the Appellant could in fact avail of quick remedies of recovery under the provisions of the RDDB Act, 1993, as well as the SARFAESI Act, 2002, the Government, in exercise of powers conferred by sub-clause (ii) of clause (h) of Section 2 of the RDDB Act, 1993 specified/notified the Appellant to be a financial institution for the purposes of the said clause. On perusing the clauses of the Trust Deed

as well as the Transfer Deed, it is clear that the objects of the Appellant Trust were for recovering debts of defaulting borrowers by disposing of the stressed assets *inter alia* under the provisions of the SARFAESI Act, 2002.

21. Having said this, what we now have to decide is whether the Appellant can be termed as "dealer" for the purposes of the MVAT Act. According to the Appellant it cannot be termed as a dealer as it does no "business" of sale or purchase as contemplated under the provisions of the MVAT Act. To understand this argument, it would be necessary to reproduce the definition of the words *"business"*, *"sale"* and *"dealer"*. The word *"business"* is defined in Section 2(4) and reads thus:-

> *"2(4) "business" includes,-*
> *(a) any service;*
> *(b) any trade, commerce or manufacture;*
> *(c) any adventure or concern in the nature of service, trade, commerce or manufacturer;*
>
> *Whether or not the engagement in such service, trade, commerce, manufacture, adventure or concern is with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern.*
>
> *Explanation.- For the purpose of this clause,-*
> *[***]*

(ii) any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be a transaction comprised in business;

(iii) sale or purchase of any goods, the price of which would be credited or, as the case may be, debited to the profit and loss account of the business under the double entry system of accounting shall be deemed to be transactions comprised in business;

(iv) any transaction in connection with the commencement or closure of business shall be deemed to be a transaction comprised in business;"

22. Similarly the definition of the word *"sale"* is defined in Section 2(24) which reads as under:-

"2(24) "Sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words "sell", "buy" and "purchase", with all their grammatical variations and cognate expressions, shall be construed accordingly;

Explanation.- For the purposes of this clause,-

(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956 (74 of 1956);

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

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a [works contract including] an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any moveable or immoveable property];

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

(iv) 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 valuation consideration;
(v) the supply of goods by any association or body of persons incorporated or not, to a member thereof for cash, deferred payment or other valuable consideration;

[Explanation.- For the purposes of this sub-para, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, Tribunal or authority, any association or body of persons, incorporated or not, and its member shall be deemed to be two separate persons and the supply of goods inter se shall be deemed to take place from one such person to another.]

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, [of alcoholic liquor for human consumption] where such supply or service is made or given for cash, deferred payment or other valuable consideration;

23. The definition of the word "dealer", and which is important for our purposes, is defined in Section 2(8), and reproduced hereunder:-

"2(8) "dealer" means any person who, for the purposes of or consequential to his engagement in or, in connection with or incidental to or in the course of, his business buys or sells, goods in the State whether for commission, remuneration or otherwise and includes,—

(a) a factor, broker, commission agent, del-credere agent or any other mercantile agent, by whatever name called, who for the purposes of or consequential to his engagement in or [in connection with or incidental to or] in the course of the business, buys or sells any goods on behalf of any principal or principals whether disclosed or not;

(b) [an auctioneer who sells or auctions goods whether acting as an agent or otherwise or, who organises the sale of goods or

conducts the auction of goods whether or not he has the authority to sell the goods] belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;

(c) a non-resident dealer or, as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in the State for the purposes of or consequential to his [engagement in or in connection with or incidental to or in the course of, the business];

(d) any society, club or other association of persons which buys goods from, or sells goods to, its members;

Explanation.- For the purposes of this clause, each of the following persons, bodies and entities who [sell any goods] whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration shall, notwithstanding anything contained in clause (4) or any other provision of this Act, <u>be deemed to be a dealer</u>, namely:-

(i) Customs Department of the Government of India administering the Customs Act, 1962 (52 of 1962);

(ii) Departments of Union Government and any Department of any State Government;

(iii) Local authorities;

(iv) Port Trusts;

[(iv-a) Public Charitable Trust;]

(v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Konkan Railway Corporation Limited;

(vi) Incorporated or unincorporated societies, clubs or other associations of persons;

(vii) Insurance and financial Corporations, institutions or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934);

(viii) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950 (LXIV of 1950);

(ix) Shipping and construction companies, Air Transport Companies, Airlines and Advertising Agencies;

(x) any other corporation, company, body or authority owned or constituted by, or subject to administrative

control, of the Central Government, any State Government or any local authority."

(emphasis supplied)

24. The reason why we have set out the definition of the word "business" and "sale" is because the definition of the word "dealer" refers to these words. The word "dealer" as has been defined to mean any person who for the purposes of or consequential to his engagement in or, in connection with or incidental to or in the course of, his business buys or sells goods in the State, whether for commission, remuneration or otherwise and includes persons mentioned in clauses (a) to (d) of Section 2(8). What is important to note is the Explanation appended below Section 2(8) which stipulates that for the purposes of Section 2(8) [i.e. the definition of the word "dealer"], each of the persons, bodies and entities mentioned therein, who sell any goods, whether by auction or otherwise, directly or through an agent, for cash, or for deferred payment, or for other valuable consideration, shall, notwithstanding anything contained in Section 2(4) [i.e. the definition of the word "business"] or any other provisions of the MVAT Act, be deemed to be a "dealer". As can be seen from clause (vii) of the Explanation to Section 2(8), Insurance and Financial Corporations, institutions or companies and banks included in the Second Schedule

to the Reserve Bank of India Act, 1934 would be a deemed dealer under the provisions of the MVAT Act. Similarly, under clause (x) of the Explanation appended to Section 2(8) any other corporation, company, body or authority owned or constituted by, or subject to administrative control of the Central Government, any State Government or any local authority would be a deemed dealer for the purposes of the MVAT Act. Hence, under the provisions of the MVAT Act certain categories of persons have been deemed to be dealers under Section 2(8) of the said Act.

25. Before we procced further we must emphasize that a deeming provision in a statute basically creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done. The Court of course has to examine and ascertain to what extent and for what purpose and between which persons such a statutory fiction is to be resorted to. Thereafter, full effect has to be given to such a statutory fiction, and it is to be carried to its logical conclusion. This position is now well settled by a catena of judgments of the Hon'ble Supreme Court. If one were to refer to any judgment on this issue, we feel that the judgment in the case of ***Harish Tondon Vs. Additional District Magistrate,***

Allahabad U.P. & Ors. [(1995) 1 SCC 537] eloquently sets out the above proposition. In fact, the celebrated passage on this point of *Lord Asquith* in the case of ***East End Dwelling Company Ltd V/S Finsbury Borough Council [(1952) A.C. 109; (1951) 2 ALL ER 587]*** was also relied upon by the Hon'ble Supreme Court in its decision in ***Harish Tondon (supra)***. The relevant portion of this decision reads thus:-

> **"13.** The role of a provision in a statute creating legal fiction is by now well settled. When a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter full effect has to be given to such statutory fiction and it has to be carried to its logical conclusion. **In the well-known case of *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council* [1952 AC 109 : (1951) 2 All ER 587] Lord Asquith while dealing with the provisions of the Town and County Planning Act, 1947, observed**:
>
> > **"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. … The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."**
>
> That statement of law in respect of a statutory fiction is being consistently followed by this Court. Reference in this connection may be made to the case of *State of Bombay* v. *Pandurang Vinayak* [(1953) 1 SCC 425 : AIR 1953 SC 244 : 1953 SCR 773] . From the facts of that case it shall appear that Bombay Buildings (Control on Erection) Ordinance, 1948 which was applicable to certain areas mentioned in the schedule to it, was extended by a

> notification to all the areas in the province in respect of buildings intended to be used for the purposes of cinemas. The Ordinance was repealed and replaced by an Act which again extended to areas mentioned in the schedule with power under sub-section (3) of Section 1 to extend its operation to other areas. This Court held that the deemed clause in Section 15 of the Act read with Section 25 of the Bombay General Clauses Act has to be given full effect and the expression 'enactment' in the Act will cover the word 'Ordinance' occurring in the notification which had been issued. In that connection it was said:
>
> > "The corollary thus of declaring the provisions of Section 25, Bombay General Clauses Act, applicable to the repeal of the ordinance and of deeming that ordinance an enactment is that wherever the word 'ordinance' occurs in the notification, that word has to be read as an enactment."**"**
>
> (emphasis supplied)

26. Having said this, we will now examine the deeming provision as set out in the Explanation to Section 2(8). To our mind, the deemed dealer provision under the MVAT Act becomes operational when the categories thereunder sell any goods, whether by auction or otherwise. The Explanation which introduces the deeming provision further stipulates that the deemed dealer provision would operate notwithstanding anything contained in Section 2(4) [the definition of the word "business"] or any other provisions of the MVAT Act. Once this is the position in law, we are unable to accept the submission of Ms. Badheka that for the Appellant to be termed as a "dealer", the Appellant has to carry on "business" as contemplated in Section 2(4) of the MVAT Act. Once the Appellant falls within one of the categories as

mentioned in the Explanation, it would be deemed to be a "dealer" notwithstanding the fact that it may not be carrying on "business" as contemplated under Section 2(4) of the MVAT Act. We agree with the argument of the Revenue that the pretext of such non-business or non-profit etc, cannot be entertained to get out of the deeming fiction enacted by the statute. The Explanation in clear terms provides that the enumerated entities would be deemed to be a "dealer" when they sell any goods, by auction or otherwise. Thus, the definition itself specifies that the sale of goods, whether by auction or otherwise would render the person/body/entities enlisted in the clauses to the Explanation to be a dealer.

27. Having rendered our opinion on the Explanation to Section 2(8), we now have to examine whether the Appellant would fall within any of the ten clauses as set out in the Explanation to Section 2(8) of the MVAT Act. The two clauses that jump out at us are clauses (vii) and (x) of the Explanation appended to Section 2(8). Clause (vii) talks about insurance and financial corporations, institutions or companies and banks included in the second schedule to the Reserve Bank of India Act, 1934. Clause (x) talks about any other corporation, company, body or authority owned or constituted by, or subject to the

administrative control of the Central Government, any State Government or any local authority. The reason why we have referred to both these clauses is because though the Commissioner in his DDQ Order classifies the Appellant as a deemed dealer, under clause (x), according to the Appellant, the MSTT, in impugned order No.1, classifies it as a financial institution [i.e. under clause (vii)]. According to Ms. Badheka when one examines clause (vii) of the Explanation to Section 2(8), it only includes financial corporations/institutions included in the second schedule to the Reserve Bank of India Act, 1934. According to Ms. Badheka, the Appellant can never fall under clause (vii) as it is not an institution or bank or company included in the second schedule of the Reserve Bank of India Act, 1934. Even if we are to assume, for the sake of argument, that Ms. Badheka is correct in her submission, the same would make little difference to the outcome of the present matter. We say this because even assuming for the sake of argument that the Appellant would not fall within clause (vii), to our mind, it would squarely be covered in clause (x) of the Explanation to Section 2(8). As set out earlier, clause (x) of the Explanation clearly stipulates that any corporation, company, body or authority owned or constituted by or subject to the administrative control of the Central Government, any State Government or any local authority, would be

deemed to be a dealer for the purposes of the MVAT Act. It can hardly be disputed that the Appellant is a body constituted by the Central Government. This is abundantly clear from the Trust Deed which in fact constitutes and sets up the Appellant as a Trust and the settlor of this Trust is the Central Government. The Appellant therefore is clearly a body constituted by the Central Government. Once this is the case, we find that the Appellant is certainly a deemed dealer for the purposes of the MVAT Act.

28. To get over this argument, Ms. Badheka submitted that word "body" appearing in clause (x) should get its colour from the adjoining word namely, "corporation", "company", "authority". We find no reason to take such a narrow interpretation. The intention of the legislature appears to be clear that any "body" (and which would include a Trust) constituted by the Central Government, or owned by the Central Government, or under its administrative control, would be a deemed dealer for the purposes of the MVAT Act, when it sells any goods, whether by auction or otherwise. We, therefore, find that even this argument holds no substance.

29. As far as the argument of Ms. Badheka that the Appellant never sold any movable property and sold the stressed assets on an "as is where is basis" and consequently would not be liable to pay any sales tax, is wholly without merit and contrary to the record. The record clearly indicates that the eight cases in which the Appellant invoked the provisions of the SARFAESI Act, 2002 and sold the stressed assets of the borrowers, though selling it to single purchaser/entity, itself issued separate sale certificates for movable property as well as immovable property. Therefore, it is clear that even the Appellant was very well aware that it was selling movable property as well as immovable property and separate sale certificates were issued in relation thereto. In fact, the Commissioner, in the DDQ Order, has referred to one such sale certificate and which was for movable property of one of the borrowers namely, *Magnum Intermediates Limited*. We, therefore, find that the argument made by Ms. Badheka that there was sale of only immovable property and there was no sale of movable goods, is wholly without merit and contrary to the record. In fact, after going through the record, the Commissioner, in his DDQ Order, has come to the conclusion that the Appellant maintains a proper account of the movable properties and the valuation reports also ensure that a proper estimate of minimum realizable value is ascertained. Further the

certificates of sale also reproduced the details of the movable property sold. This argument of Ms. Badheka therefore does not hold any merit. We find that the DDQ Order passed by the Commissioner is a well-reasoned order and has taken all the arguments of the Appellant into consideration and answered them with proper cogent reasons. It is only thereafter that DDQ Order proceeds to hold that the Appellant is a "deemed dealer" for the purposes of the MVAT Act. We fully agree with the findings given by the Commissioner (in the DDQ Order) in so far as he holds that the Appellant is a "deemed dealer" under the MVAT Act.

30. Before parting on this issue, it would only be fair to deal with the decision of the Hon'ble Supreme Court relied upon by Ms. Badheka in the case of ***State of Tamil Nadu and Anr (supra)***. We have carefully perused this decision and find that the same is wholly inapplicable to the facts of the present case. The Hon'ble Supreme Court, after examining the various definitions in the *Tamil Nadu General Sales Tax Act, 1959*, came to the conclusion that the Port Trust of Madras (for short **"Port Trust"**) was not involved in any activity of "carrying on business" because unclaimed and unserviceable goods sold in discharge of various statutory charges, items etc, could not be treated as a "business" without any plea by the State of Tamil Nadu that the

Port Trust had an independent intention to "carry on business" in the sale of unserviceable/unclaimed goods. The major distinguishing factor between the case before the Hon'ble Supreme Court, and the one before us, is the definition of the word "dealer" as appearing in Section 2(g) of the *Tamil Nadu General Sales Tax Act, 1959* [as it stood before amendment on 26th May 2002], and the definition of the word "dealer" in Section 2(8) of the MVAT Act. They are materially different. Section 2(g) of the *Tamil Nadu General Sales Tax Act, 1959*, and which defines the word "dealer", had two Explanations appended to it. Explanation (1) stipulated that a society (including a co-operative society), club or firm or an association which, whether or not in the course of business, bought, sold, supplied or distributed goods from or to its members for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, was deemed to be a dealer for the purposes of the said Act. Explanation (2) stipulated that the Central Government or any State Government which, whether or not in the course of business, bought, sold supplied or distributed goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration was deemed to be a dealer for the purposes of the said Act. Interestingly, the Port Trust was not one of the entities that was deemed to be a dealer under the

provisions of that Act [before amendment]. It is in this light that the Hon'ble Supreme Court came to the conclusion that it is necessary for the Port Trust to be "carrying on business" for it to be liable to pay sales tax under that Act. As mentioned earlier, the definition of the word "dealer" in the MVAT Act is as explicit as it can be. The Explanation to Section 2(8) makes it clear that the entities mentioned therein would be deemed dealers if they sell any goods, notwithstanding the fact that they do not carry on any business. In these circumstances, we find that the reliance placed by Ms. Badheka on the decision of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu and Anr (supra)*** is wholly misplaced and does not carry her case any further.

31. In view of the foregoing discussion, we have no hesitation in answering the Questions of Law raised in *MVXA No.16 of 2016* in the affirmative, i.e. against the Appellant and in favour of the Revenue.

DENYING THE BENEFIT OF PROSPECTIVE EFFECT TO THE DDQ ORDER [UNDER SECTION 56(2) OF THE MVAT ACT]

32. This now leaves us to deal with the issue of whether the Appellant was entitled to the benefit of prospective effect to the DDQ Order as contemplated under Section 56(2) of the MVAT Act. As

mentioned earlier, by impugned order No.2 [passed by the Larger Bench of the MSTT], the Appellant was denied this benefit, and which forms the subject matter of *MVXA No.2 of 2020*.

33. Though four questions have been projected in this Appeal, the real and the only question to be decided is whether in the facts and circumstances of the present case, the Larger Bench of the MSTT was justified in rejecting the plea of the Appellant to grant prospective effect to the DDQ Order under Section 56(2) of the MVAT Act.

34. Before we proceed further, it would only be appropriate to reproduce the relevant provisions:-

> ***"56. Determination of disputed questions***
>
> *(1) If any question arises, otherwise than in a proceeding before a Court or the Tribunal under section 55, or before the Commissioner has commenced assessment of a dealer under section 23, whether, for the purposes of this Act,-*
>
> *(a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or*
>
> *(b) any particular person or dealer is required to be registered, or*
>
> *(c) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or*
>
> *(d) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or*
>
> *(e) in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any*

particular sale or purchase, or if tax is payable, the rate thereof, or

(f) set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed,

the Commissioner shall, subject to rules, make an order determining such question.

Explanation. - For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment of the dealer under section 23 when the dealer is served with any notice by the Commissioner under that section.

(2) The Commissioner may direct that the determination shall not affect the liability under this Act of the applicant or, if the circumstances so warrant, of any other person similarly situated, as respects any sale or purchase effected prior to the determination.

(3) The Commissioner, for reasons to be recorded in writing, may, on his own motion, review an order passed by him under sub-section (1) or (2) and pass such order thereon as he thinks just and proper. The Commissioner may direct that the order of review shall not affect the liability of the person in whose case the review is made in respect of any sale or purchase effected prior to the review and may likewise, if the circumstances so warrant, direct accordingly in respect of any other person similarly situated:

***Provided that**, no order shall be passed under this sub-section unless the dealer or the person in whose case the order is proposed to be passed has been given a reasonable opportunity of being heard:*

***Provided further that**, before initiating any action under this sub-section, the Commissioner shall obtain prior permission of the State Government.*

(4) If any such question arises from any order already passed under this Act or any earlier law, no such question shall be entertained for determination under this section; but such question may be raised in appeal against such order.

(5) The Commissioner, in so far as he may, shall decide the applications for determination in the chronological order in which they were filed."

(emphasis supplied)

35. As can be seen from these provisions, under Section 56(1), if any question arises regarding, *inter alia*, a person being a dealer, or whether such person is required to be registered as a dealer, or any particular thing done to any goods amounts to or results in the manufacture of goods, or any transaction is a sale or purchase etc., and such a question/s is posed to the Commissioner, the Commissioner shall determine such question/s in terms of Section 56(1) of the MVAT Act. Section 56(2) gives the power and discretion to the Commissioner to direct that the determination made by him under sub-section (1) shall not affect the liability under the MVAT Act in respect of any sale or purchase effected prior to the determination. In other words, the Commissioner has the power to rule that the party posing the question would be governed by the answer only from the date of his order and not for transactions entered into prior thereto. To put it simply, the Commissioner has the power and discretion to put a *quietus* to transactions entered into prior to his DDQ Order. It is, of course, needless to clarify that this discretion has to be exercised on sound judicial principles and cannot be on the *ipse dixit* of the Commissioner.

36. The question before us in *MVXA No.2 of 2020* is whether the Petitioner had made out a case for getting the benefit of prospective

effect to the DDQ Order. The arguments of Ms. Badheka as to why the Appellant is entitled to the benefit of prospective effect to the DDQ Order has already been stated by us earlier in this judgment. Hence, we are not repeating the same over here. However, we must note the arguments canvassed by the learned Addl. G.P. in opposition to the arguments canvassed by Ms. Badheka on this issue. Ms. Chavan, the learned Addl. G.P., submitted that this certainly is not a fit case to grant prospective effect to the DDQ Order. She submitted that in the present case, the Appellant itself was aware that it was effecting sale of movable and immovable property. The recovery of the stressed assets was made by the Appellant under the provisions of the SARFAESI Act, 2002. In fact, for the purposes of invoking the relevant provisions of the said Act, the Appellant was also declared as a Financial Institution. This apart, the Appellant issued a Certificate of Sale as per the provisions of the said Act and separate Certificates of Sale were issued for immovable and movable property. Once this the case, it should not have been difficult for the Appellant to understand its liability to pay sales tax on account of effecting sale of movable property. She submitted that the essence of the MVAT Act is that it's a tax on the incidence of sale within the State of Maharashtra. Since the Appellant was aware that it is effecting recovery of bad debts by adopting sale of properties

(movable), the liability to pay sales tax under the provisions of the MVAT Act could not have been lost sight of by the Appellant. She submitted that ignorance of law is no excuse and there is in fact no ambiguities in the provisions, and neither was the Appellant ever misled by any authority to think that the sale of movable properties under the provisions of the SARFAESI Act, 2002 would not be exigible to sales tax. In short, it was the submission of the learned Addl. G.P. that the facts and the law in the present case were extremely clear, and there being no ambiguity, no case whatsoever was made out for granting the benefit of prospective effect to the DDQ Order.

37. Ms. Chavan submitted that as far as the argument of hardship is concerned, the same cannot be a stand-alone argument. If any hardship is caused to the Appellant by virtue of its own wrongdoing, the same cannot be a ground for granting prospective effect to the DDQ Order. For all these reasons the learned Addl. G.P. submitted that there is no ground made out for interfering, either with the Commissioner's DDQ Order [in so far as it denied the benefit of prospective effect to the Appellant], or with impugned order No.2 passed by the Larger Bench of the MSTT. Consequently, she submitted that Question (a) framed in *MVXA No.2 of 2020* be answered in the

affirmative, i.e. against the Appellant and in favour of the Revenue; Question (b) be answered in the negative i.e. against the Appellant and in favour of the Revenue; and Questions (c) & (d) be answered in affirmative i.e. against the Appellant and in favour of the Revenue.

38. As far as extending the benefit of prospective effect to the DDQ Order is concerned, we are mindful of the fact that we have confirmed the findings of the lower authorities that under the definition of the word "dealer", the Appellant is deemed to be a "dealer", once it sells movable goods, by auction or otherwise. However, notwithstanding this finding, we find considerable merit in the arguments canvassed by Ms. Badheka on the issue of prospective effect. We say this because from the Trust Deed itself it is clear that the Appellant was not carrying on any business of selling or buying any goods. Under the Trust Deed, the Appellant was set up only to ensure the sale of securities for recovery of dues owed by the defaulter borrowers (i.e. the bad debts). Further, the monies realized were to be paid over to the Central Government. In other words, the Appellant was not set up with any profit motive or doing any business, but purely for the purpose of recovery of bad debts. We find force in the argument of Ms. Badheka that by virtue of Article 285 of the Constitution of India

the Appellant was of the *bonafide* opinion that it being set up and constituted by the Central Government, and all the proceeds that it recovers from sale of stressed assets are to go to the Central Government, coupled with the fact that if for any reason the stressed assets are not sold during the tenure of the Trust, the same would vest in the Central Government, it was not liable to collect any tax on the sale of securities of the stressed assets.

39. Another factor which we find is in favour of the Appellant is that though the Appellant is subjected to a regular audit by the Comptroller and Auditor General, not once was it brought to the attention of the Appellant that it would be liable to pay sales tax on sale of movable securities. In such circumstances, we agree with Ms. Badheka that grave hardship would be caused to the Appellant if prospective effect is not given to the DDQ Order because it would now be impossible for the Appellant to recover any sales tax from the purchasers of the movable securities. Ms. Badheka is correct in her submission when she states that the Trust has no money of its own as the sale proceeds of the stressed assets have to be paid over to the Central Government, and if this liability is foisted upon the Appellant Trust, they would have to approach the Central Government in order to

pay the sales tax which they are now unable to recover from their purchasers.

40. Another reason why we feel that the benefit of prospective effect ought to be extended to the Appellant is that initially, two members of the MSTT (in impugned order No.1) had a difference of opinion on whether the Appellant ought to be granted the benefit of prospective effect to the DDQ Order. In fact, the judicial member was of the opinion that the benefit of prospective effect ought to be granted to the Appellant. The technical member did not. This itself goes to show that what was being canvassed by the Appellant was debatable and hence, on this ground also the Appellant ought to have been granted the benefit of prospective effect to the DDQ Order.

41. Another factor that ought to have been taken into consideration is the fact that the Commissioner, in his DDQ Order, whilst deciding the issue whether the Appellant is a deemed dealer or otherwise, had itself opined that bifurcation of goods as movable and immovable needs to be properly ascertained by the field officers and only at the appropriate stage the question of levy of tax would come up.

42. When one takes all these cumulative factors into consideration, we are of the view that the Appellant ought to have been extended the benefit of prospective effect to the DDQ Order. We, accordingly, answer Question (a) in *MVXA No.2 of 2020* in the negative i.e. in favour of the Appellant and against the Revenue. Once Question (a) is answered in favour of the Appellant and against the Revenue we need not go into and decide any of the other questions raised in this Appeal.

CONCLUSION:

43. In light of the aforesaid discussion, Questions (a), (b) and (c) raised in *MVXA No.16 of 2016* are answered in the affirmative i.e. against the Appellant and in favour of the Revenue.

44. Question (a) in *MVXA No.2 of 2020* is answered in the negative i.e. in favour of the Appellant and against the Revenue. As far as the other questions in *MVXA No.2 of 2020* are concerned, the same require no answer in light of what we have held above.

45. Both the above Appeals are disposed of in the aforesaid

terms. However, there shall be no order as to costs.

46. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**