

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COURT RECEIVER'S REPORT NO. 213 OF 2017
IN
COMMERCIAL SUIT (L) NO. 236 OF 2017

- | | | | |
|----|--------------------------------------|---|----------------|
| 1. | Bai Mamubai Trust |] | |
| | 11, Neem Chhaya, Bhimji Bhamji Wadi, |] | |
| | M.G. Road, Ghatkopar (East), |] | |
| | Mumbai – 400 077. |] | |
| 2. | Vithaldas Laxmidas Bhatia |] | |
| 3. | Smt. Indu Vithaldas Bhatia |] | |
| | 11, Neem Chhaya, Bhimji Bhamji Wadi, |] | |
| | M.G. Road, Ghatkopar (East), |] | |
| | Mumbai – 400 077. |] | ... Plaintiffs |

Versus

- | | | | |
|--|--|---|---------------|
| | Suchitra wd/o. Sadhu Koraga Shetty |] | |
| | at Shop Nos. 1, 2 and 3 situated at |] | |
| | 11, Neem Chhaya, Bhimji Bhamji Wadi, |] | |
| | M.G. Road, Ghatkopar (East), |] | |
| | Mumbai – 400 077 and also residing at |] | |
| | Flat No.303, Sundaram CHS Ltd., M.G. Road, |] | |
| | Ghatkopar (East), Mumbai – 400 077. |] | ... Defendant |

Mr. V. Sreedharan, Senior Advocate as *Amicus Curiae*.

Mr. Anil C. Singh, Additional Solicitor General for the Union of India.

Mr. Ashutosh Kumbhakoni, Advocate General for the State of Maharashtra.

Mr. M.K. Tanna for the Plaintiffs.

Mr. Prasad Rao alongwith Ms. Kanchan Agarwal for the Defendant.

Mr. Sharan Jagtiani alongwith Mr. Priyank Kapadia instructed by the Court Receiver.

Mr. D.R. Shetty, Court Receiver alongwith Mrs. K.Y. Ambekar, 1st Assistant to Court Receiver, present.

CORAM : S.J. KATHAWALLA, J.

RESERVED ON : 9TH MARCH, 2019 / 23rd AUGUST, 2019

PRONOUNCED ON : 13th SEPTEMBER, 2019

JUDGMENT:

INDEX

ISSUES CONSIDERED IN THIS JUDGMENT.....	3
FACTUAL BACKGROUND ARISING FROM THE COURT RECEIVER'S REPORT.....	5
DISPUTE WITH RESPECT TO PAYMENT OF GST.....	7
RELEVANT PROVISIONS OF LAW.....	9
SUBMISSIONS ADVANCED.....	20
SUBMISSIONS ON BEHALF OF THE AMICUS CURIE.....	20
SUBMISSIONS ON BEHALF OF THE COURT RECEIVER.....	27
SUBMISSIONS ON BEHALF OF THE STATE OF MAHARASHTRA.....	31
SUBMISSIONS ON BEHALF OF THE UNION OF INDIA.....	36

FINDINGS AND REASONING.....	38
STATUS OF THE COURT RECEIVER.....	38
LIABILITY FOR PAYMENT OF GST ON ESTATES UNDER THE CONTROL OF THE COURT RECEIVER.....	55
CONCLUSION.....	82

1. By an Order dated 24th November 2017 (Coram: S.C. Gupte, J.), this Court appointed Mr. V. Sreedharan, Senior Advocate, as *Amicus Curiae*. The Court observed :

“Considering the importance of the issue involved in the matter, which bears generally on the liability to pay GST on any payment made to the Court Receiver by way of royalty, Mr. V. Sreedharan, Senior Advocate, is appointed as an amicus curiae to assist the Court on the issue.

2. Let notice also be given to Additional Solicitor General. Stand over to 13 December 2017 at 3.00 p.m.”

2. On 13th December 2017, the Learned *Amicus Curiae* suggested that the Learned Advocate General may also be heard as GST is shared between the Centre and the State. Accordingly, the papers were directed to be forwarded to the Learned Advocate General as well.

ISSUES CONSIDERED IN THIS JUDGMENT

3. Broadly stated, the issues to be considered by this Court is the applicability of Goods and Services Tax (“GST”) and the mode of discharge of

this statutory liability (where it arises) in matters where the Court Receiver is appointed by the Bombay High Court (“**Court**”) under Order XL of the Code of Civil Procedure, 1908 (“**CPC**”).

4. The following principal questions arise for consideration in this Court Receiver’s Report:

- i. Whether GST is liable to be paid on services or assistance rendered by the Court Receiver appointed by this Court under Order XL of the CPC ?
- ii. Whether GST is liable to be paid on royalty or payments under a different head paid by a defendant (or in a given case by the plaintiff or third party) to the Court Receiver in respect of properties over which a Court Receiver has been appointed ?
- iii. Specifically, in the facts of the present Suit, where the Plaintiff alleges that the Defendant is in illegal occupation of the Suit Premises: Whether there is any ‘supply’ within the meaning of the CGST Act? Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of ‘consideration’ for a ‘supply’ chargeable to payment of GST under Section 9 of the CGST Act ?
- iv. If in any circumstance GST is payable or applicable to payments made to the Court Receiver, how is that statutory

liability to be discharged? Is it to be paid by the Defendant / party in occupation directly, or by the Court Receiver ?

5. In addressing these questions, reference is made to the provisions of the Central Goods and Services Act, 2017 (“**CGST Act**”). It may be noted that the provisions of the Maharashtra Goods and Services Tax Act, 2017 (“**MGST Act**”) are in *pari-materia* with those of the CGST Act. As pointed out by the Learned Advocate General the provisions also have the same numbering and appear in the same sequence, with the only exception being the transitional provisions and repeal and savings provisions, which are not relevant to the issues presently under consideration. As such, the Court has considered the issues raised with reference to the CGST Act.

FACTUAL BACKGROUND ARISING FROM THE COURT RECEIVER’S REPORT

6. The Plaintiff has filed the present Suit seeking to recover possession of three shops, which together constitute a restaurant, where the Plaintiff trust is carrying on business in the name and style of “Manranjana Hotel” (“**Suit Premises**”). The Suit proceeds on the cause of action of trespass / unauthorized occupation.

7. The Plaintiff filed Notice of Motion (L) No. 227 of 2017 in the above Suit for interim reliefs pending the hearing and final disposal of the Suit. An Order dated 12th / 20th July 2017 came to be passed in the said Notice of Motion. By

the said Order dated 12th / 20th July 2017, a preliminary issue of limitation was framed and pending determination thereof, the Court Receiver, High Court, Bombay was appointed as receiver of the Suit Premises since the Court arrived at a *prima facie* finding that the Defendant had no semblance of right to the Suit Premises. The relevant portions of the Order dated 12th / 20th July 2017 are set out below:

6. *On these facts, the Defendant, having no semblance of right to the property, cannot simply hold on to the property without payment of any compensation. Considering the overwhelming prima facie case of the Plaintiffs in the present suit and also considering the fact that the litigation under the Rent Control Act has finally been disposed of in favour of the Plaintiffs by the Small Causes Court, this is a fit case for appointment of Court Receiver, though the Receiver may not disturb the possession of the Defendant during the pendency of the present suit subject to payment of compensation by the Defendant.*

7. *Considering the nature of the suit premises, namely, the original suit premises in respect of which the conducting license was granted in favour of the predecessor of the Defendant, and the present condition of the premises revealed by photographs tendered before this court (the photographs indicate that the Defendant is actually using a much larger area than what originally formed part of the suit business, the area currently stated to be of about 872 sq.ft.), this court is of the view that Rs.45,000/ per month would be an adequate adhoc royalty / compensation to be paid by the Defendant to the Court Receiver to remain in possession of the suit property as the Receiver's agent.*

8. *Accordingly, the following order is passed on the notice of motion :*

[...]

(II) Pending determination of this preliminary issue, the Court Receiver, High Court, Bombay, is appointed as receiver of the suit property described in prayer clause (a) of the plaint;

(III) The Court Receiver shall merely take formal possession of the suit property and not disturb the physical possession of the Defendant of the suit property;

(IV) The Defendant shall be appointed as an agent of the Court Receiver under an agency agreement on payment of monthly royalty of Rs.45,000/- to the Court Receiver but without any security;

8. As per the said Order dated 12th / 20th July 2017, the Court Receiver was directed to take formal possession of the Suit Premises and was directed not to disturb the physical possession of the Defendant. The Defendant was permitted to remain in possession of the Suit Premises as an agent of the Court Receiver under an agency agreement to be executed with the Court Receiver, on payment of monthly ad-hoc royalty of Rs. 45,000/-. The amount deposited by the Defendant with the Court Receiver was directed to be invested by the Court Receiver in fixed deposits of Nationalised Bank/s.

DISPUTE WITH RESPECT TO PAYMENT OF GST

9. The Plaintiff raised certain concerns regarding the applicability of GST on the royalty amounts to be paid by the Defendant pursuant to the Court's Order dated 12th / 20th July 2017.

10. The Plaintiff moved an application before the Court for speaking to the

minutes of the Order dated 12th / 20th July 2017, and the Order dated 12th / 20th July 2017 was modified by an Order dated 3rd August 2017 directing the Defendant to pay royalty with applicable GST. The modified Order dated 12th / 20th July 2017 read, *inter alia*, as follows:

(IV) The Defendant shall be appointed as an agent of the Court Receiver under an agency agreement on payment of monthly royalty of Rs.45,000/- to the Court Receiver but without any security alongwith GST at the applicable rate;

11. The Advocate for the Plaintiff addressed a letter dated 10th October 2017 to the Court Receiver with respect to the payment of GST on the royalty directed to be paid by the Defendant to the Court Receiver. According to the Plaintiff, if and when the royalty amount is paid over by the Court Receiver to the Plaintiff, the same would be treated as 'Income' of the Plaintiff falling under the category of 'Income from letting out and use of a shop / commercial premises'. The Plaintiff submits that GST will also be liable to be paid on the royalty. The Plaintiff submits that it comes within the GST net and that it is registered, having GST Registration No. 27AAATV1937B1ZO. Hence, GST will be payable on the amount finally transferred to the Plaintiff. It is the Plaintiff's case that if GST is not recovered from the Defendant from time to time, it will be very difficult to recover the same from the Defendant at the time of recovering possession.

12. The Court Receiver filed Court Receiver's Report No. 213 of 2017 dated 3rd November 2017. The Court Receiver reported that it had oral discussions with a Panel Chartered Accountant regarding the issue of GST. The Report states that:

“8. The office of Court Receiver has a oral discussion with Panel chartered Accountant regarding the issue of G.S.T. His opinion is as follows:

The person paying royalty (i.e. the Defendant) should pay the GST at applicable rate at RCM (Reverse Charge Mechanism) and challan of payment of GST should be produced before the Court Receiver.

Court Receiver cannot get GST number being part of Government as Representative Assessee.

In view of the above, the Court Receiver respectfully submits report seeking directions as under.

(a) What steps the Court Receiver should take regarding the issue of G.S.T.

(b) Whether the defendant/agent be directed to pay the G.S.T. at applicable rate at Reverse Charge Mechanism (RCM) and challan of payment of G.S.T. should be produced before the Court Receiver.

(c) Any other direction this Hon'ble Court deems fit and proper.”

RELEVANT PROVISIONS OF LAW

13. Before dealing with the submissions advanced by the respective parties, it would be appropriate to set out certain provisions of applicable law which will

have a bearing on the issues to be decided by this Court.

14. Order XL of the CPC provides for the appointment of receivers.

“1. Appointment of receivers

(1) Where it appears to the Court to be just and convenient, the Court may by order--

- (a) appoint a receiver of any property, whether before or after decree;*
- (b) remove any person from the possession or custody of the property;*
- (c) commit the same to the possession, custody or management of the receiver, and*
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.*

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.”

15. Chapter XXX of the Bombay High Court Original Side Rules, 1980 (Rule 589 - 599) deals with the Office of the Receiver.

16. Article 246A of the Constitution of India, inserted by the Constitution (One Hundred and First Amendment) Act, 2016, w.e.f 16th September 2016 prescribes special provision with respect to goods and services tax:

“246A. Special provision with respect to goods and services tax.

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have

power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.--The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”

17. Parliament enacted the CGST Act which came into force on 1st July

2017. The CGST Act is

‘An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.’

18. Section 9 of the CGST Act, which is the charging provision thereunder, provides as follows:

“9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by

notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.”

19. Section 7 of the CGST Act defines “supply” and provides as follows:

*“7. (1) For the purposes of this Act, the expression “**supply**” includes--*

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) *import of services for a consideration whether or not in the course or furtherance of business;*

(c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*

(d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

(2) *Notwithstanding anything contained in sub-section (1),--*

(a) *activities or transactions specified in Schedule III; or*

(b) *such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,*

shall be treated neither as a supply of goods nor a supply of services.

(3) *Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*

(a) *a supply of goods and not as a supply of services; or*

(b) *a supply of services and not as a supply of goods.”*

20. Section 7(1)(a) refers to a supply ‘*made or agreed to be made for a consideration by a person in the course or furtherance of business*’. Section 2(17) of the CGST Act defines ‘business’ and Section 2(31) of the CGST Act defines ‘consideration’ as follows:

“2. (17) “**business**” includes--

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

2. (31) “consideration” in relation to the supply of goods or services or both includes--

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall

not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”

21. Schedule II and Schedule III referred to in Section 7 of the CGST Act is set out below:

“ *SCHEDULE II [See section 7]*

*ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR
SUPPLY OF SERVICES*

1. [...]
2. *Land and Building*
 - (a) *any lease, tenancy, easement, licence to occupy land is a supply of services;*
 - (b) *any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*
3. [...]
4. [...]
5. *Supply of services*

The following shall be treated as supply of services, namely:—

 - (a) *renting of immovable property;*

[...]

SCHEDULE III

[See section 7]

*ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED
NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES*

1. [...]

2. Services by any court or Tribunal established under any law for the time being in force.”

22. Other important provisions of the CGST Act are set out below:

*“2. (84) “**person**” includes—*

- (a) an individual;*
- (b) a Hindu Undivided Family;*
- (c) a company;*
- (d) a firm;*
- (e) a Limited Liability Partnership;*
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
- (h) any body corporate incorporated by or under the laws of a country outside India;*
- (i) a co-operative society registered under any law relating to co-operative societies;*
- (j) a local authority;*
- (k) Central Government or a State Government;*
- (l) society as defined under the Societies Registration Act, 1860;*
- (m) trust; and*
- (n) every artificial juridical person, not falling within any of the above;”*

*“2. (93) “**recipient**” of supply of goods or services or both, means—*

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;”

“2. (98) “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;”

“2. (105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;”

“2. (107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24;”

“2. (108) “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act;”

“22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or

both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.--For the purposes of this section,--

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution."

"24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,--

- (i) persons making any inter-State taxable supply;*
- (ii) casual taxable persons making taxable supply;*
- (iii) persons who are required to pay tax under reverse charge;*
- (iv) person who are required to pay tax under sub-section (5) of section 9;*
- (v) non-resident taxable persons making taxable supply;*
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;*
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;***
- (viii) Input Service Distributor, whether or not separately registered under this Act;*
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;*
- (x) every electronic commerce operator;*
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and*
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.”*

23. Section 92 provides for the levy and recovery of GST from a Court of Wards, Administrator General, Official Trustee, receiver or manager.

“92. *Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.”*

24. Section 161 of the Income Tax Act, 1961, which was referred to during the course of submissions is also reproduced below:

“Liability of representative assessee.

161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate :

Provided that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.”

SUBMISSIONS ADVANCED

SUBMISSIONS ON BEHALF OF THE AMICUS CURIE

25. The Learned *Amicus Curiae* submitted as follows:

- i. Services provided by the Court Receiver is to be treated as *‘Services by any court or Tribunal established under any law for the time being in force’* within the meaning of Paragraph 2 of Schedule III to the CGST Act and is, accordingly, an activity or transaction which shall not be treated as a supply of goods or a supply of services. Therefore, GST should not be levied on amounts directed to be paid by litigants to the office of the Court Receiver for deputing its resources and completing the mandate given to it by this Court as these services are *‘Services by any court or Tribunal established under any law for the time being in force’*.
- ii. If the Court Receiver is in control of an estate or portion thereof of a taxable person owning a business in respect of which GST is payable, such tax, penalty, and interest thereon may be determined and recovered from the Court Receiver under Section 92 of the CGST Act in like manner and to the same extent as it would be determined and recovered from the taxable person as if he were conducting the business himself.
- iii. Section 92 of the CGST Act provides for the collection of GST from the Court Receiver. The Court Receiver would be a convenient point for the revenue to collect its tax being the person who is in direct receipt of the consideration / royalty where such payment itself is liable to be taxed under the

provisions of the CGST Act.

- iv. Whilst a transaction which is not in the course or furtherance of 'business' may otherwise attract GST, but the Court Receiver will not be liable to pay tax on such a transaction under Section 92 of the CGST Act. It is submitted that the language of Section 92 of the CGST Act is consciously and considerably narrow than Section 161 of the Income Tax Act, 1961, which is the corresponding section under the Income Tax Act which may require the Court Receiver to pay Income Tax as a representative assessee. The use of specific language in Section 92 of the CGST Act namely '*taxable person owning a business*' and '*tax, interest or penalty shall be levied upon and be recoverable from [...] receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself*' makes it clear that the legislative intent of Section 92 of the CGST Act is to permit GST to be determined and collected from the Court Receiver provided he is running the business of a taxable person. The running of a business is *sine qua non* to levying and collecting GST from the Court Receiver under Section 92 of the CGST Act as a representative assessee.

- v. Assuming that the Court Receiver is liable to pay GST (as a

supplier) by virtue of Section 92 of the CGST Act, the liability can be discharged by an agent of the Court Receiver '*acting as such on behalf of such supplier*' within the meaning of Section 2 (105) of the CGST Act (definition of supplier). If this is done, the Court Receiver will not be liable to pay GST again.

- vi. Where a dispute concerns price / payment for an earlier taxable supply, any amount paid under a court's order / decree or an out of court settlement is taxable if, and to the extent that, it is consideration for an earlier supply. In such cases, the making of a 'supply' is not disputed, but the dispute is regarding payment for supplies already made. The order / decree of the court links the payment to the taxable supply and the requisite element of reciprocity between supply and consideration is present.
- vii. If the dispute is settled out of court or compromised without the defendant admitting that the alleged supply took place, the payment made by the defendant may be characterised as an agreed estimate of the true worth of the plaintiff's claim, rather than consideration for an alleged supply, and as such will be outside the scope of VAT / GST. In such cases, compensation may be considered to be repatriation or restitution in respect of loss or damage. Any compensatory payment made would not be consideration for a supply.

- viii. However, a payment made under a court's order or an out of court settlement will attract VAT / GST where it amounts to consideration for one or more taxable supplies effected in terms of the court or terms of settlement.
- ix. As an illustration, where the plaintiff grants future rights (for example rights to exploit copyrighted material in the future) any payment received for such right will be treated as consideration for a new supply and is subject to levy of tax under GST laws. However, the portion of the payment which is related to past infringement will not be taxable as the same will not constitute a consideration for any supply made but it will be in the nature of damages for the alleged wrong.
- x. However, a distinction between future supplies and prospective damages for a continuing wrong should also be noted. In cases where prospective damages are awarded for a continuing wrong, instead of granting an injunction or specific performance, the payment received will not be a consideration for any supplies made but a payment of damages in lieu of the court's refusal to enforce the plaintiff's rights via an injunction. The court does not, in such cases, require the plaintiff to make any supply to the defendant, only that the plaintiff accepts the payment in return for non-enforcement of its property rights.

- xi. The method adopted for quantifying the damages i.e. value of goods or services purportedly supplied should not confuse the issue. Citing *Senairam Doongarmall vs. Commissioner of Income Tax*¹ it is submitted that it is the quality of the payment and not the method of the payment or its measure that makes it fall within capital or revenue.
- xii. Payment ordered in an action for damages arising out of property damage, illegal trespass, negligence causing loss of profits, wrongful use of trade name, breach of copyright, termination or breach of contract or personal injury is made to compensate loss suffered, and is not a payment towards any supply and hence no GST liability would arise.
- xiii. Liability to pay GST would arise only where the payment received can be linked to a supply. In case of compensatory damages, the payment is for loss suffered and not supply effected. While the process of determining loss suffered may be the value of the consideration receivable if the contract had been performed, such process of computing damages will not alter the character of the payment, namely a compensation for loss suffered. This is premised on the principle that the supply doctrine does not encompass a wrongful unilateral act or any act resulting in payment of damages.

1 (1962) SCR 1 257.

- xiv. A supply must involve enforceable reciprocal obligations. If something has been used, but there was no agreement for its supply between the relevant parties, any payment subsequently received by the aggrieved party is not consideration for supply. The receipt of payment is not premised on the enforcement of reciprocal obligations between parties and cannot be linked to a supply for levying GST. Such a payment is compensatory.
- xv. A payment made by a judgment debtor is in satisfaction of a judgment debt created by an order of court and not for any supply made by the party in whose favour the suit is decided. Whether such payment is towards a supply or is compensation for violation of a legal right is to be seen in the facts of a given case.
- xvi. In the facts of the present Suit, there is no agreement or contract for supply by the Plaintiff to the Defendant. Rather, the Plaintiff's grievance is that the Defendant is a trespasser / illegal occupier of the Suit Premises. Whilst the royalty / monthly amount may be calculated in accordance with prevailing rate of market rent, the transaction itself will not constitute a supply, as the reference to prevailing rent is only a means to arrive at the amount of damages.
- xvii. Even the language of Paragraph 5(e) of Schedule II to the

CGST Act will not result in the present activity to be a supply. Paragraph 5(e) of Schedule II to the CGST Act provides:

“
SCHEDULE II
[See section 7]
ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS
OR SUPPLY OF SERVICES
1. [...]
5. Supply of services
The following shall be treated as supply of services, namely:—
[...]
(e) agreeing to the obligation to refrain from an act, or to
tolerate an act or a situation, or to do an act; and [...]”

Thus, an activity will be a supply if it is agreeing to the obligation to :

- i. refrain from an act, or
- ii. to tolerate an act or a situation, or
- iii. to do an act.

An award of damages for trespass / illegal occupation is not an agreement to the obligation to refrain from an act, to tolerate an act or situation, or to do an act as contemplated by Paragraph 5(e) of Schedule II to the CGST Act.

SUBMISSIONS ON BEHALF OF THE COURT RECEIVER

26. Mr. Jagtiani, Learned Counsel for the Court Receiver submits as follows:

- i. There is a distinction between fees or remuneration of the Receiver (charged as per Rule 591 of the Bombay High Court

(Original Side) Rules, 1980) and moneys which may be paid to or deposited with the Court Receiver by a litigant / third person during the course of a litigation pursuant to orders of the Court. The former is entirely exempt from GST whereas GST may be applicable on the latter depending on the facts and circumstances of the case.

- ii. It is necessary to understand true nature of the office of the Court Receiver. The Court Receiver is an adjunct of this Court and a permanent department of the Court. It is through the office of the Court Receiver that various interim orders of protection are given effect to.
- iii. In *Shakti International Private Limited vs. Excel Metal Processors Private Limited*² this Court has held that the office of the Court Receiver is an establishment of the High Court and a permanent department of the High Court. The office of the Court Receiver is maintained by the High Court, Bombay, and its staff are employed by the High Court, Bombay. The appointment, functioning and discharge of the Court Receiver is governed by Chapter XXX of the Bombay High Court (Original Side) Rules, 1980 in addition to the provisions of Order XL of the CPC. The Court Receiver functions only under the supervision and control of this Court. These Rules institutionalise the manner of functioning of the office of the Court Receiver, High Court,

² 2018 (4) Arb LR 17 (Bom) : 2017 (3) ABR 388.

Bombay. Accordingly, services provided by the Court Receiver fall under Sr. No. 2 of Schedule III read with Section 7 of the CGST Act, namely, '*Services by any court or Tribunal established under any law for the time being in force*' which transaction or activity is not to be considered a supply of goods or services under the CGST Act.

- iv. With respect to monies paid to the Court Receiver which are not towards the Court Receiver's fees or remuneration, but paid in the course of litigation pursuant to an order of the Court, it must be seen if the underlying relationship between the parties, or claims made in that regard fall within the ambit of the CGST Act. If they do not, the taxable event of 'supply' cannot be any alleged or notional contract between either of the parties and the Court Receiver.
- v. Relying on the decision of this Court in *Humayun Dhanrajgir vs. Ezra Aboody* ³, Mr. Jagtiani submitted that the true nature of the payments made by one party to another / the Court Receiver for use and occupation of property is to be decided by the Court looking to the circumstances of the case and evidence on record. If, upon ascertaining the true nature of the payment the Court is of the view that the transaction or activity is a supply, GST is payable. For example, during the tenure of permissive use of a property, what is paid by the occupier to the right owner is

³ (2008) Bom C.R. 862.

the contractual consideration. If such permissive use or occupation is terminated or comes to an end and the occupation becomes unlawful, the nature of payment to be paid to the right owner changes from contractual consideration to damages or *mesne profits* for unauthorised use and occupation of the property. GST is payable on the former contractual consideration, but not on damages payable for unauthorised use and occupation of the property. The fact that the measure of damages is to be based on market rent should not conflate the nature of the payment being made i.e. a payment to compensate the right owner for violation of his legal right.

- vi. In the facts of the present Suit, where royalty is to be paid by the Defendant as 'compensation' for *prima facie* unauthorised occupation of the Suit Premises, the royalty is in the nature of compensation for violation of the Plaintiff's legal right and not towards payment of contractual consideration which is agreed to be paid but is otherwise not paid / refused to be paid.
- vii. If payments made pursuant to or under an order of receivership in a given case attracts CGST, that liability may be discharged by the Court Receiver under Section 92 of the CGST Act (akin to a representative assessee), or by the party acting as agent of the Receiver under Section 2(105) of the

CGST Act.

- viii. In such a scenario, the office of the Court Receiver may be directed to include a clause in the standard form of the agency agreement to the effect that where any payment to be made under an order of the Court attracts CGST, the agent appointed by the Court Receiver must have / obtain CGST registration and make such payment on behalf of the Court Receiver and indemnify the Court Receiver for any liability that may fall upon the Court Receiver under Section 92 of the CGST Act. This may obviate the requirement of the Court Receiver having to obtain separate CGST Registration for each matter or transaction in respect of which it is appointed to act by the Court. Needless to state, in the facts of a given case if the Court deems fit, the Court may direct the Court Receiver to apply for registration for the payments relatable to a particular matter. At any rate it is preferable from an audit and administrative perspective for there to be separate GST registration for each matter, where the same is paid for by the Court Receiver.

SUBMISSIONS ON BEHALF OF THE STATE OF MAHARASHTRA

27. The Learned Advocate General, on behalf of the State of Maharashtra, has submitted written submissions with respect to the issue of levy of GST on royalty paid by a litigant to the office of the Court Receiver.

28. It is submitted on behalf of the State (with reference to the provisions of the MGST Act the relevant provisions whereof are *in pari materia* with the CGST Act) that:

- i.* As per the language of Section 92 of the MGST Act, the receiver will be liable to levy and collection of GST only if the taxable person whose estate is under the control of the receiver is conducting a 'business'.
- ii.* GST may be recovered from the Court Receiver under Section 92 only if it is conducting a business of a taxable person. In the facts of the present case, the Plaintiff's rental income is above the ceiling limit, and the Plaintiff is registered under both Central and State GST laws. Hence, the Plaintiff is liable to pay GST on supplies.
- iii.* In the present case, a binding contract under the authority or with the imprimatur of the Court (albeit with hardly any liberty to the parties except to accept the offer or vacate the premises) has come into existence.
- iv.* The order permitting the Defendant to remain in possession of the Suit Premises is essentially a contract, and payment of royalty is 'consideration' for this 'supply' of premises to the Defendant pursuant to an order of Court. GST will be liable

to be paid under the MGST Act.

- v. Since the payment of royalty is towards a 'supply', GST may be recovered from the Court Receiver under Section 92 of the MGST Act. In other words, the transaction in question is the renting of immovable property for consideration as contemplated by Paragraph 5(a) of Schedule II to the MGST Act.
- vi. The definition of 'supply' under Section 7 of the MGST Act and the definition of 'business' under Section 2(17) of the MGST Act is an inclusive definition and very wide in its ambit.
- vii. The transaction in question is 'incidental to' the business of the Plaintiff trust as contemplated under Section 2(17)(b) of the MGST Act.
- viii. The transaction in question is akin to 'renting in relation to immovable property' which is one of the instances of supply prescribed in Item No. 5(a) of Schedule II to the MGST Act. The phrase 'renting in relation to immovable property' is defined in Clause 2(zz) of Notification No. 12/2017-State Tax (Rate) Mumbai, dated 29th June 2017:

'(zz) "renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property,

with or without the transfer of property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;'

Hence, the transaction in the present case is a supply.

- ix. Based on: (a) the interim order of the Court, (b) the legal status of the Court Receiver, and (c) the authority and capacity of the Court Receiver to enter into contracts, a contract has come into existence whereby the Defendant is permitted to occupy the Suit Premises. The offer in this contract is the option available to the Defendant to pay royalty and remain in possession of the Suit Premises. The Defendant elected to accept the offer, and therefore the royalty amount represents the consideration paid by the Defendant to the Court Receiver (who is in possession of the Suit Premises on behalf of the Court). The Learned Advocate General relied on a judgment of the Supreme Court in *Assistant Commissioner, Ernakulam vs. Hindustan Urban Infrastructure Ltd.*⁴ (which considers Rule 54 of the Kerala Sales Tax Rules which is *in pari materia* with Section 92 of the MGST Act) in this regard to contend that the act of permitting the Defendant to remain in possession of the Suit Premises is a contract and the transaction in question is a supply, even if the same is pursuant to an order of the Court. Relying on *Assistant Commissioner, Ernakulam (supra)* the Learned Advocate

4 (2015) 3 SCC 745.

General submits that sales tax was levied on sale of properties by the Official Liquidator under Rule 54 of the Kerala Sales Tax Rules (which is *in pari materia* with Section 92 of the MGST Act) even though the express consent of the Company in Liquidation is not present.

- x.* The monetary value of compensation is equivalent to, if not equal to, the market rent payable to the Plaintiff. Hence, the ad-hoc royalty amount of Rs. 45,000/- is covered within the definition of ‘consideration’ under Section 2(31) of the MGST Act for supply of services. The nomenclature of the amount will not affect the taxation under GST laws.
- xi.* Alternatively, even if the transaction in the present dispute is not to be considered a ‘supply’, the Court Receiver is nevertheless liable to be registered under the CGST Act inasmuch as there may be a situation where the Court Receiver is liable to pay GST under Section 92.
- xii.* Separately, it is submitted on behalf of the State that the meaning of the word ‘Court’ as per the provisions of the Court Fees Act, 1870 and as determined by the Supreme Court in *Virindar Kumar Satyawadi vs. The State of Punjab*⁵ and *Dr. Subramanian Swamy vs. Arun Shourie*⁶ does not include the office of the Court Receiver. Therefore, services rendered by the Court Receiver are not entitled to

⁵ AIR 1956 SC 153.

⁶ (2014) 12 SCC 344.

the exemption under Paragraph 2 of Schedule III of the MGST Act namely the exemption from payment of GST on services by any court or tribunal established under any law for the time being in force.

xiii. This approach would also prevent any probable mischief where the right owner and occupier create a false dispute to evade payment of GST.

29. Accordingly, the Learned Advocate General submitted that the estate under receivership is a 'business' and the Court Receiver is liable to pay GST at 9% under both the MGST Act and CGST Act and at 18% p.a. under the IGST Act. The Written Submissions filed on behalf of the State also deal with whether the Court Receiver should obtain a single registration or multiple registrations with respect to activities or transactions where GST is applicable.

SUBMISSIONS ON BEHALF OF THE UNION OF INDIA

30. The Learned Additional Solicitor General submits on behalf of the Union of India as under:

- i. Royalty is, in substance, a rent. As per the decision of this Court in *Humayun Dhanrajgir vs. Ezra Aboody (supra)*, royalty is a compensation payable by the occupier to the right owner in the property. It is submitted that the royalty is meant to compensate the right owner who permits or allows others to use his rights in his property.

- ii. To this extent, there is a clear supply of service of notionally providing premises (subject of course to the final determination of the rights of the parties to the suit). Such letting or providing of premises is clearly covered in the scope of 'supply' under Section 7 of the CGST Act as also under the definition of 'services' under Section 2(102) of the CGST Act.
- iii. The Plaintiff is providing, or is deemed to be providing a service. The act of supplying these services i.e. permitting the Defendant to occupy the premises in consideration of payment of royalty is clearly a business as understood under the CGST Act. The broad definition of business aids such interpretation.
- iv. That the Court Receiver acts as the agent of the Plaintiff who is liable to be taxed under the CGST Act and is therefore liable to make payment of GST on monies received by him as royalty on behalf of the Plaintiff under Section 92 of the CGST Act.
- v. Section 92 of the CGST Act gives express statutory recognition to this position in law. The Court Receiver is collecting royalty for and on behalf of the Plaintiff and hence, the same would be liable to tax.

- vi. The Court Receiver wears two hats, one as an agent of the Court, and another as an agent of the Plaintiff on whose application he is appointed. Tax is only levied on the services rendered by the Court Receiver as an agent / on behalf of the Plaintiff.

FINDINGS AND REASONING

STATUS OF THE COURT RECEIVER

31. In order to answer the issues raised and appreciate the various submissions advanced by the Learned *Amicus Curiae*, the Union of India, the State of Maharashtra, the Court Receiver, and the respective parties to the Suit, it would first be relevant to appreciate the status and nature of the office of the Court Receiver.

32. This Court has considered the status of the Court Receiver (albeit in a different context i.e. whether an arbitral tribunal may appoint the Court Receiver attached to the Bombay High Court under Section 17 of the Arbitration and Conciliation Act, 1996) in *Shakti International Private Limited vs. Excel Metal Processors Private Limited (supra)*.

33. In *Shakti International Private Limited (supra)*, this Court observed as follows:

“STATUS OF THE COURT RECEIVER - HIGH COURT, BOMBAY

16. *To appreciate whether the Court Receiver, High Court, Bombay, is liable to be appointed by a private forum like an arbitral tribunal, it would be relevant to understand the status or position of the Court Receiver, High Court, Bombay. This has been discussed in various judgments referred to by the parties, which arose in the context of transfer of bank suits (in which the Court Receiver, High Court, Bombay, had already been appointed) to the Debt Recovery Tribunal, when the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDB Act") came into force.*

17. *In I.C.I.C.I Ltd. v. Patheja Brothers Forgings and Stampings Ltd. (supra), the issues for consideration before this Court were:*

"(a) whether this Court had jurisdiction to issue directions to the Court Receiver in suits in which the Court Receiver stood appointed prior to 16th July, 1999, i.e., the date on which the Central Government by notification established the Debt Recovery Tribunal under Section 3 of the RDB Act; and

(b) If not, whether the High Court was empowered to give directions to the Court Receiver regarding the properties which were in custody of the Court Receiver till such time as the Debt Recovery Tribunal/Central Government set up an alternative office/machinery with a proper infrastructure."

18. *The Court at paragraph 5 (pages 215-216) set out a brief history, status and functioning of the Office of the Court Receiver as follows:*

"..... prelude

Before 1929, Receivership was granted to private persons. Gradually, the business in the hands of the private Receiver increased and it was thought it had grown too big to be entrusted to a single private individual. It was, therefore, decided that the work should be assigned to a salaried office on the establishment of the High Court. As a result, in 1929 the Government created the post of the Court Receiver, who took over all the pending Receiverships from the private Receiver. The system sanctioned by the Government for running the office, after it was taken over, was that the office should budget for its normal expenditure which the Government will pay in the first instance but which had

to be recouped to them from the takings of the office other than the Receiver's commission. In 1932, **the office was made a permanent department of the High Court.** The Court Receiver was directed to continue to charge to the estates under his management all expenses incurred in connection with his office including the payment of rent and to credit all recoveries to the Government. Accordingly, Rule 592 of the O.S. Rules, inter alia, **provides that the Court Receiver shall charge to the estates under his management a sum towards the expenses of his office including his salary. Under Rule 591, the Court Receiver is directed to charge fees according to a prescribed scale.** Under Rule 595, a Receiver is required to file accounts in the office of the Commissioner. In appropriate cases, this Court is also empowered to appoint a Receiver other than the Court Receiver. Such Receiver is also required to file accounts in the office of the Commissioner [See Rule 594 (a)]. When the Court Receiver is discharged, he is required to file his accounts upto the date of his discharge. Similarly, under Rule 924, the accounts of the Court Receiver are required to be audited by Accountant General and if any question between the auditor and the Court Receiver relating to accounts arises for determination, the question is required to be referred to the Chief Justice. This is under Rule 926. As stated in my order dated 4th February, 2000, properties worth Rs. 2000 crores are in possession of the Court Receiver, High Court, Bombay. These consist of shares, fixed deposits, jewellery, plant and machinery, buildings, dry docks, tea estates, ships, amounts in the personal ledger accounts of the Court Receiver with R.B.I. as also amounts lying in the hands of the Court Receiver in cash and cheques. The office of the Court Receiver, High Court, Bombay has various departments like accounts, department/section, cash department, record department, general administration department, etc. **The Court Receiver, High Court, Bombay and the entire staff constitute a permanent department of the High Court. The Court Receiver is a high-ranking official.** The present Court Receiver holds the pay scale of Additional Prothonotary and Senior Master. **The Court Receiver has to enter into agency agreements after the properties become custodial legis.** As a Court Receiver, she has to sign bills/vouchers. At this stage, it is important to note that after deducting costs, charges and expenses as also the commission by the Court Receiver, Banks and Financial Institutions are required to be paid the net royalty amount even during the pendency of the suit pursuant to the orders of the Court. These payments are made by the Court Receiver by cheques. Hence, the Court Receiver is required to sign cheques and payment vouchers by which net royalty amount is remitted to the parties to the suit. The Court

*Receiver is also required to sign daily vouchers to meet office expenses. The Court Receiver is also required to pay expenses to the officers, who visit the site by way of daily allowances. These officers are also required to go out of Bombay. The Court Receiver is also required to sign salary bills. The Court Receiver is also required to pay security guards who are appointed to protect plants, machinery and immovable properties all over India. The Court Receiver is also required to pay fees to Valuers, Architects and Chartered Accountants. In some cases, Court Receiver is also required to sign returns under the Income Tax Act. All these facts are mentioned only to indicate that in Bombay the Court Receiver, High Court, Bombay discharges a very important function. The properties are spread over in India between Assam and Kanyakumari. One more fact needs to be mentioned that the State Government provides annual grant to the High Court. The budget allocation also includes office of the Court Receiver, High Court, Bombay. After deduction all costs, charges and expenses, the Court Receiver remits the balance amounts to the State Government. In the last Financial Year ending on 31st March, 1999, the office of the Court Receiver, High Court, Bombay earned net revenue for the State Government of about Rs. 2 crores. These facts are required to be mentioned also for a different reason. With the coming up of the DRT, all suits, in which the claim is below Rs. 10 lakhs, remained within the jurisdiction of this Court. Apart from the Bank suits, we have private suits. In thousands of these suits Court Receiver's office still continues to have jurisdiction. **As stated hereinabove, the office of the Court Receiver, High Court, Bombay is a department of the High Court.** In last 60 years, this office has worked only for the High Court and not for any other Court like Small Causes Court. It is made clear once again that the Court Receiver has not worked for Small Causes Court or any other judicial forum."*

19. [...]

20. [...]

21. *The point that the Court Receiver, High Court, Bombay functions only under the control and supervision of this Court, is again apparent from paragraph 11 (at pages 226-227) of the judgment, which states:*

"In this matter, the learned Acting Chief Justice, High Court, Bombay has received a letter from the Hon'ble Finance Minister of India requesting the

High Court to lend the services of the Court Receiver to Debt Recovery Tribunal till alternate arrangements are made. The learned Acting Chief Justice, High Court, Bombay, thereafter invited submissions from the Prothonotary and Senior Master, High Court, Bombay. After due deliberation, it has been decided that administratively it would not be possible to lend the services of the Court Receiver to Debt Recovery Tribunal. Detailed reasons in that regard have been given. Some of the reasons have been mentioned hereinabove. It may be once again stated that in the past Court Receiver's services have not been lent to the Small Causes Court. In any event, in the light of this judgment, the question of lending services of the Court Receiver to Debt Recovery Tribunal does not arise."

22. *In Bank of Tokyo-Mitsubishi Ltd. v. M/s. Chembra Estates and others (supra), this Court (R.J. Kochar, J.) once again considered the issue of whether this Court could direct the Court Receiver to sell the suit property in proceedings that were before the Debt Recovery Tribunal. The Court discussed the aforementioned judgment in I.C.I.C.I Ltd. v. Patheja Brothers Forgings and Stampings Ltd. (supra).*

24. *Due to the conflict between the Judgments in ICICI Ltd. (supra), and Bank of Tokyo - Mitsubishi Ltd.(supra), as to whether this Court can continue to issue directions to the Court Receiver appointed by it, in bank suits transferred to the Debt Recovery Tribunal, the matter was referred to a larger bench of this Court.*

25. *The decision of the Division Bench (Larger Bench) (Coram: B.N. Srikrishna and S.D. Gundewar, JJ.) was by an Order dated 23rd July, 2001 in The Bank of Tokyo-Mitsubishi Ltd. v. M/s. Chembra Estates and others and Court Receiver, High Court, Bombay (supra). The Division Bench (in paragraphs 14 and 15) agreed with the view taken by the Court in Bank of Tokyo - Mitsubishi Ltd. (supra). For reasons of practical expediency, the Division Bench also recommended to the Chief Justice of this Court that the Court Receiver's services be made available to the Debts Recovery Tribunal/Appellate Tribunal for a period commencing from 23rd July 2001 until the completion of 1 (one) year therefrom, unless discharged by the Debt Recovery Tribunal either suo moto or on application by the parties. The Division Bench held that the Debt Recovery Tribunal or its Appellate Tribunal would have jurisdiction to issue all appropriate directions to the Court Receiver*

which were hitherto given by this Court, where the Court Receiver had been appointed in respect of proceedings pending before the Debt Recovery Tribunal. The relevant conclusions of the Division Bench at paragraph 15 are as follows:

[...]

26. *In ICICI Bank Ltd. v. J.K. Synthetics Ltd. & Anr. (supra), this Court (Coram: S.U. Kamdar, J.) also had an occasion to comment on the status of the Court Receiver, High Court, Bombay. The question before the Court related to the powers of the Chamber Judge to vary the charges/fees for services rendered by the Court Receiver, fixed by the Bombay High Court (Original Side) Rules. In this context, it was observed that:*

*"10. I have considered the rival submissions between the parties. There are two factors which are required to be set out at the outset before I deal with the issue at hand. **Firstly, on the Original Side of High Court of Mumbai, the office of the Court Receiver is maintained by the High Court in its regular discharge of function. On the Original Side in almost all the matters where the Receiver is appointed it is the Receiver of the High Court who takes charge and under the control and direction of the Court supervises and also manages the property and affairs thereof.** The office of the Court Receiver, High Court, Bombay has staff regularly employed on the basis of permanent employment by the High Court and the office is maintained by the Court. **The second significant factor which is also required to be considered is that as and by way of usual features and regular guidelines, r. 591 specifically prescribes the rates of charges and commission which has to be paid in each of the matters on the percentage basis.** These provisions are provided for under the High Court (Original Side) Rules with an intention that there is a non-arbitrary yard stick in respect of the amount to be recovered by the Court Receiver for the services rendered by him. The High Court (Original Side) Rules are framed in exercise of power conferred on the High Court under the provisions of the Civil Procedure Code. On the Original Side of the High Court it is not the case like in the other cases where private receivers are appointed as the Court Receiver and thus his remuneration of the amount charged by him for fees and commission is to be regulated by the Court. **It is undoubtedly true that even under r. 591 ultimate control is vested with the Court and under the Rules a discretion is conferred on the Chamber Judge to reduce the amount chargeable by the Court Receiver.***

However, the issue which is to be determined is whether the case has been made out by the defendant No. 1 for reduction of charges and/or deviation from the fees prescribed under r. 591 of the Original Side Rules".

27. *In Girish M. Joshi v. Jagat Manubhai Parikh (supra), this Court was considering the issue regarding appointment of the Court Receiver, High Court, Bombay by the City Civil Court and the Small Causes Court, Mumbai. This Court, after noticing the Larger/Division Bench decision in Bank of Tokyo-Mistubishi Ltd., (supra), by its Judgement and Order dated 11th September, 2009, stated in paragraphs 4 and 5, pages 2 - 3, that:*

"The Order of the Division Bench Notes that:

"the Court Receiver, High Court, Bombay is an employee of the High Court who is subject to the administrative control of the Hon'ble Chief Justice. There is no provision either in the Original Side Rules or in the Rules framed under the City Civil Courts Act which empowers the City Civil Court to appoint the Court Receiver, High Court, Bombay as a Receiver in the suits and proceedings filed in the City Civil Court at Bombay....

.....

5. *In the report of the Court Receiver various orders passed by the City Civil Court have been pointed out. The office of the Court Receiver is already under enormous pressure as by virtue of orders passed by this Court in various suits and proceedings including the arbitration petitions under section 9 of the Arbitration and Conciliation Act, 1946, the Court Receiver is required to look after very large and valuable immovable properties in the City of Bombay and at other places. **In fact, by virtue of appointment as of the Court Receiver in suits filed in this Court, the Receiver has to look after properties which are situated even outside the State of Maharashtra.** Considering the enormous pressure on the office of the Court Receiver, High Court, Bombay, and the lack adequate infrastructure, the said office cannot be burdened any further. There is no provision of law under which any Court subordinate to this Court can appoint the Court Receiver, High Court, Bombay, as a Receiver. Therefore, necessary directions may be required to be issued on the administrative side. It is, therefore, directed that a copy of this order shall be placed before the Hon'ble the Chief Justice for considering the matter on the*

administrative side."

28. [...]

29. *From a reading and consideration of the above Judgments, I am of the view that it has been clearly held that the Court Receiver, High Court, Bombay, **is an employee or a Department of the Bombay High Court** and that it is this Court that has the powers to direct its duties and responsibilities. [...]*

36. *[...] The appointment, functioning and discharge of the Court Receiver is governed by Chapter XXX of the Bombay High Court (Original Side) Rules in addition to the provisions of Order XL of the CPC. These rules further establish that the Office of the Court Receiver, High Court, Bombay, functions only under the supervision and control of this Court. These Rules institutionalise the manner of functioning of the Office of the Court Receiver, High Court, Bombay."*

(Emphasis Supplied).

34. As held in ***Shakti International Private Limited (supra)***, the status of the Court Receiver, High Court, Bombay is that of an employee or a department of the High Court, Bombay who is subject to the administrative control of the Hon'ble Chief Justice. The office of the Court Receiver is 'an establishment of the High Court' and 'a permanent department of the High Court'.

35. The judgment in ***ICICI Bank Ltd. v. J.K. Synthetics Ltd.***⁷ referred to in ***Shakti International Private Limited (supra)***, reiterates that the office of the Court Receiver is maintained by the High Court, Bombay, and its staff is employed by the High Court, Bombay. The appointment, functioning and

⁷ 2005 Vol. 107 (2) Bom. LR 272.

discharge of duties of the Court Receiver are governed by Chapter XXX of the Bombay High Court (Original Side) Rules in addition to the provisions of Order XL of the CPC. These rules further establish that the office of the Court Receiver, High Court, Bombay, functions only under the supervision and control of this Court. These Rules institutionalise the manner of functioning of the office of the Court Receiver, High Court, Bombay.

36. It is also relevant to note the language of Order XL of the CPC which empowers the Court to appoint a Receiver as an interim measure of protection.

“

ORDER XL

APPOINTMENT OF RECEIVER

1. *Appointment of receivers*

(1) *Where it appears to the Court to be just and convenient, the Court may by order—*

- (a) *appoint a receiver of any property, whether before or after decree;*
- (b) *remove any person from the possession or custody of the property;*
- (c) *commit the same to the possession, custody or management of the receiver, and*

(d) *confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.*

(2) *Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.*

2. *Remuneration*

The Court may by general or special order fix the amount to be paid as

remuneration for the services of the receiver.

3. Duties

Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;*
- (b) submit his accounts at such periods and in such form as the Court directs;*
- (c) pay the amount due from him as the Court directs; and*
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.*

4. Enforcement of receiver's duties

Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or*
 - (b) fails to pay the amount due from him as the Court directs, or*
 - (c) occasions loss to the property by his wilful default or gross negligence,*
- the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.*

5. When Collector may be appointed receiver

Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.”

37. Order XL Rule 1 of the CPC contemplates that a Court may, *inter alia*, confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and

disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit. Rule 2 provides that the Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver. Rules 591 and 592 of the Bombay High Court (Original Side) Rules, 1980 read as under:

“591. Fees of Receiver – Unless otherwise ordered by the Judge, the Court Receiver shall charge fees according to the following scale:-

	<i>Scale of Fees</i>	<i>Per cent</i>
(1)	<i>On Rents, Royalties or licence fees recovered...</i>	<i>6</i>
(2)	<i>On outstanding recovered except as provided in item 3 below:-</i>	
	<i>On the first Rs. 25,000 or fraction thereof...</i>	<i>5</i>
	<i>On the next Rs. 25,000 or fraction thereof...</i>	<i>3</i>
	<i>On the next Rs. 50,000 or fraction thereof...</i>	<i>2</i>
	<i>On any further sum over Rs. 1,00,000...</i>	<i>1</i>
(3)	<i>On outstanding recovered from a Bank or from a public Servant without filing a suit.....</i>	<i>1</i>
(4)	<i>On sale of properties movable or immovable calculated on the total value realized in any one estate:-</i>	<i>3</i>
	<i>On the first Rs. 25,000 or fraction thereof</i>	<i>2½</i>
	<i>On the next Rs. 25,000 or fraction thereof</i>	<i>2</i>
	<i>On the next Rs. 50,000 or fraction thereof</i>	<i>1</i>
	<i>On any sum above Rs. 1,00,000</i>	

- | | | |
|-----|--|---|
| (5) | <i>For taking charge of movable property which is not sold on the estimated value</i> | 1 |
| (6) | <i>For taking custody of moneys</i> | 1 |
| (7) | <i>For taking custody of Government Securities or Stocks, Shares, Debentures, Debenture-Stock or other Securities which are not sold on the estimated value.</i> | 1 |
| (8) | <i>On the interest earned by investment of funds in the Custody of the Court Receiver</i> | 5 |
| (9) | <i>For any special work, not provided for above, such remuneration as the Court on the application of the Receiver shall think reasonable.</i> | |

While calculating fees to be charged, the amount will be calculated to the nearer whole rupees by giving up the amount less 0.50ps. and counting the amount of 0.50ps. and above a whole rupee.”

“592. Court Receiver to charge office expenses to estate – *The Court Receiver shall, unless otherwise ordered by the Judge, charge to suits, estates or matters under his management a sum which in his discretion he considers proper, towards the expenses of his office including his salary and this he shall do so with due regard to the fees charged by him under rule 591 and to the value to each suit, estate or matter and the labour and trouble involved in its management.”*

38. Mr. Jagtiani rightly points out that there is a clear distinction between charges or fees / remuneration of the Receiver (charged as per Rules 591 - 592 of

the Bombay High Court (Original Side) Rules, 1980) and moneys which may be paid to or deposited with the Court Receiver by a litigant / third person during the course of a litigation pursuant to interim orders of protection passed by the Court. This is evident from the schedule under Rule 591 of the Bombay High Court (Original Side) Rules, 1980. The services, being charged by a permanent department of the Court, pursuant to orders passed by the Court from time to time, are naturally to be considered as '*Services by any court or Tribunal established under any law for the time being in force*' which is Item No. 2 of Schedule III to the CGST Act.

39. I am unable to accept the submission made on behalf of the State of Maharashtra that the meaning of the word 'Court' as per the provisions of the Court Fees Act, 1870 and as determined by the Supreme Court in *Virindar Kumar Satyawadi (supra)* and *Dr. Subramanian Swamy vs. Arun Shourie (supra)* does not include the office of the Court Receiver and therefore, services rendered by the Court Receiver do not fall under Paragraph 2 of Schedule III of the CGST Act.

40. The said decisions are distinguishable on facts and the principle it lays down. In *Virindar Kumar Satyawadi (supra)* the Supreme Court considered whether the District Magistrate functioning as the Returning Officer was a

‘court’ from whose order an appeal would lie under Section 476B of the Criminal Procedure Code. In the facts of the matter, the Supreme Court held that the Returning Officer is not a ‘Court’. The relevant findings of the Supreme Court are as under:

“6. “There has been much difference of opinion as to the precise character of the office of a Returning Officer viz. as to whether he is a judicial or ministerial officer”, says Parker in Election Agent and Returning Officer, Fifth Edn. p. 30. The true view, according to him, is that he partakes of both characters, and that in determining objections to nomination papers, he is a judicial officer. That is also the view taken in Indian decisions. But before we can hold that the proceedings before a Returning Officer resulting in the acceptance or rejection of a nomination paper fall within Section 195(1)(b) of the Code of Criminal Procedure, it must be shown not merely that they are judicial in character but that further he is acting as a Court in respect thereof. It is a familiar feature of modern legislation to set up bodies and tribunals, and entrust to them work of a judicial character, but they are not Courts in the accepted sense of that term, though they may possess, as observed by Lord Sankey, L.C. in Shell Company of Australia v. Federal Commissioner of Taxation [(1931) AC 275, 296] some of the trappings of a Court. The distinction between Courts and tribunals exercising quasi-judicial functions is well established, though whether an authority constituted by a particular enactment falls within one category or the other may, on the provisions of that enactment, be open to argument.

7. There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions. Vide Shell Company of Australia v. Federal Commissioner of Taxation [(1931) AC 275, 296], K. v. London County Council [(1931) 2 KB 215], Cooper v. Wilson [(1937) 2 KB 309], Huddart Parker and Co. v. Moorehead [(1908) 8 CLR 330] and Rola Co. v. Commonwealth [(1944) 69 CLR 185]. In this Court, the question

was considered in some fullness in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd. [(1950) SCR 459]. It is unnecessary to traverse the same ground once again. It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

(Emphasis Supplied).

41. In *Dr. Subramanian Swamy vs. Arun Shourie (supra)* the Supreme Court considered the meaning of ‘Court’ under the Contempt of Courts Act, 1971. This was in the context of an editorial published in the Indian Express containing allegedly scandalous statements with respect to a sitting Judge of the Supreme Court, who was appointed as Chairman, Commission of Inquiry under the Commissions of Inquiry Act, 1952 to probe into alleged acts of omissions and commissions by a former Chief Minister of Karnataka. The Supreme Court held:

“25. Though the 1971 Act does not define the term “court” but in our opinion, the “court” under that Act means the authority which has the legal power to give a judgment which, if confirmed by some other authority,

would be definitive. The court is an institution which has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court. The Commission constituted under the 1952 Act does not meet these pre-eminent tests of a court.”

42. Neither of the above cited decisions are in the context of tax legislations. They also do not deal with the status of the Court Receiver attached to the High Court, Bombay. The aforesaid judgments undoubtedly state that in order for an authority to be considered a ‘Court’, there must be a discharge of judicial functions. It must have the power to regulate legal rights by the delivery of definitive judgments and to enforce its orders by legal sanctions. If its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a Court. The Bombay High Court, in exercise of its civil jurisdiction, would undoubtedly meet with these requirements. Since the office of the Court Receiver is an establishment of the High Court and a permanent department of the High Court, it is necessarily an adjunct of the Court through which the orders of protection issued by the Court are given effect to. The said decisions cited by the State do not consider the status of the Court Receiver in the context of the CPC and Bombay High Court (Original Side) Rules as noted in *Shakti International Private Limited (supra)*. This is

also apparent from the different context in which the meaning of ‘court’ was considered.

43. I am also inclined to accept the Learned *Amicus Curiae*’s submission that fees of the Court Receiver fall under Item 2 of Schedule III to the CGST Act as it is for a service provided by an officer of the Court. Accordingly, this service is not treated as a supply of goods or services within the meaning of the CGST Act. The Court Receiver implements orders of the Court and functions under the supervision and direction of the Court.

44. It is thus clear that services of the Court Receiver are activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Accordingly, the fees or charges paid to the Court Receiver are not liable to GST. The answer to Issue No. (i) i.e. *Whether GST is liable to be paid on services rendered by the Court Receiver appointed by this Court under Order XL of the CPC* is answered in the negative. It is clarified that this Court has not considered this issue in the context of a private receiver who may be appointed by the Court under Order XL of the CPC.

45. For these reasons, GST cannot be levied or recovered on services provided by the Court Receiver. Rule 591 of the Bombay High Court (Original Side) Rules prescribes the fees of the Court Receiver. Therefore, GST should

not be levied on amounts directed to be paid by litigants to the office of the Court Receiver.

LIABILITY FOR PAYMENT OF GST ON ESTATES UNDER THE CONTROL OF THE COURT RECEIVER

46. The next question to be considered by this Court is whether payment made to the Receiver to be held in custody by it in relation to the underlying dispute between the parties attract GST. Issue Nos. (ii) and (iii) have arisen in this regard, namely:

- ii. Whether GST is liable to be paid on royalty or payments under a different head paid by a defendant (or in a given case by the plaintiff or third party) to the Court Receiver in respect of properties over which a Court Receiver has been appointed.*
- iii. Specifically, in the facts of the present Suit, where the Plaintiff alleges that the Defendant is in illegal occupation of the Suit Premises: Whether there is any 'supply' of services within the meaning of the CGST Act? Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of 'consideration' for a 'supply' chargeable to payment of GST under Section 9 of the CGST Act.*

47. Section 92 of the CGST Act provides that:

“92. Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly”.

48. I am of the view that the Learned *Amicus Curiae* is correct in submitting that the legislature has, in Section 92 of the CGST Act, provided that a receiver would be a convenient point for the revenue to determine and collect GST. If Section 92 of the CGST Act is applicable in a given case, GST may be determined and recovered from the Court Receiver by reason of the Court Receiver being akin to a ‘representative assessee’. However, whether or not GST is applicable depends on the nature of the cause of action pleaded by the Plaintiff or the order of the Court directing payment and which sets out the terms of receivership. This is because the cause of action and finding thereon will determine the character of the payments made. All or some of these would

have to be considered to determine if a 'taxable event' within the four corners of the CGST Act have taken place to attract liability for GST.

49. On a reading of Section 92 of the CGST Act it is clear that GST may be determined and levied from the receiver if:

- a. The receiver is in control of the business of a taxable person
- b. A taxable event of supply has taken place with respect to such business on account of which the estate of the taxable person would be liable to tax, interest or penalty under the CGST Act.

Section 92 of the CGST Act clearly contemplates that GST may be levied on and collected from the Court Receiver with respect to a business under its control provided that the taxable event of 'supply' for such levy of GST has taken place.

50. The requirement of a 'supply' is essential. It is the taxable event under the CGST Act. If there is no supply, there can be no liability for payment of tax (or any interest or penalty thereon). This is clear from Article 246A of the Constitution of India which deals with the legislative competence of the Union and the States to make laws with respect to goods and services tax imposed by the Union or such State and Article 366(12A) of the Constitution of India which defines '*goods and services tax*' as '*any tax on Supply of Goods or Services or both except taxes on the supply of the alcoholic liquor for human consumption*'. This is also

evident from the charging provision i.e. Section 9 of the CGST Act.

51. If these requirements are met with, Section 92 of the CGST Act provides that GST may be determined and recovered from the receiver in the like manner and to the same extent as it would be determined and be recoverable from a taxable person as if the receiver were conducting the business himself.

52. Therefore, the real issue to be determined in the facts of the present case is the effect of payment of royalty by the Defendant to the Court Receiver as a condition for remaining in possession of the Suit Premises.

53. The State of Maharashtra and the Union of India submit that pursuant to the Court's order directing payment of royalty, notionally, a contract having the authority or with the imprimatur of the Court has come into existence between the Defendant and the Plaintiff (at whose instance the Court Receiver is appointed). The Court Receiver acts as an agent of the Plaintiff and collects royalty, which is in substance a rent and therefore the transaction in question is a 'renting of immovable property' within the meaning of Item No. 5 of Schedule II of the CGST Act amounting to a 'supply' on which GST is payable.

54. The Learned *Amicus Curiae* submits and Mr. Jagtiani supports the submission that in the facts of the present case, there can be no such notional contract of lease or license which can be said to come into existence between a

party to litigation and a department of the Court.

55. In the present case, royalty is paid towards damages or compensation or securing any future determination of compensation or damages for a *prima facie* violation of the Plaintiff's legal right in the Suit Premises. The *prima facie* finding is that the Defendant has no semblance of right to be in occupation of the Suit Premises. The permission granted to the Defendant to remain in possession subject to payment of royalty is an order to balance the equities of the case. The basis of this payment is the alleged illegal occupation or trespass by the Defendant. Such payment lacks the necessary quality of reciprocity to make it a 'supply'. Hence no GST is payable.

56. I am in agreement with the submissions of the Learned *Amicus Curiae* that where a dispute concerns price / payment for a taxable supply, any amount paid under a court's order / decree is taxable if, and to the extent that, it is consideration for the said supply or a payment that partakes that character. In such cases, the happening of the taxable event of 'supply' is not disputed, but the dispute may be in regard to payment for supplies already made. This could be, for example, where the defendant denies the liability to pay the price forming consideration for the supply. The order / decree of the court links the payment to the taxable supply and the requisite element of reciprocity between supply

and consideration is present.

57. However, where no reciprocal relationship exists, and the plaintiff alleges violation of a legal right and seeks damages or compensation from a Court to make good the said violation (in closest possible monetary terms) it cannot be said that a 'supply' has taken place.

58. The Learned *Amicus Curiae* correctly submits that enforceable reciprocal obligations are essential to a supply. The supply doctrine does not contemplate or encompass a wrongful unilateral act or any resulting payment of damages. For example, in a money suit where the plaintiff seeks a money decree for unpaid consideration for letting out the premises to the defendant, the reciprocity of the enforceable obligations is present. The plaintiff in such a situation has permitted the defendant to occupy the premises for consideration which is not paid. The monies are payable as consideration towards an earlier taxable supply. However, in a suit, where the cause of action involves illegal occupation of immovable property or trespass (either by a party who was never authorised to occupy the premises or by a party whose authorization to occupy the premises is determined) the plaintiff's claim is one in damages.

59. McGregor on Damages defines 'Damages' '*quite simply as an award in money for a civil wrong*'.⁸ The commentary goes on to state that:

⁸ Paragraph 1-001, McGregor on Damages, 19th Edition (2014).

‘[...] Therefore, the preliminary question to be answered, before any issue of damages can arise, is whether a wrong has been committed.’⁹

60. Damages may arise in an action in tort, or one in breach of contract as they both entail civil wrongs. Damages represent the compensation or restitution for the loss caused to the plaintiff for the violation of a legal right. It may even be the closest monetary alternative to a remedy in specific performance. The term ‘Damages’ may be used to include payments towards contractual obligations which are performed yet unpaid for, but the law of damages is not restricted to ordering that what ought to have been done or ought to have been paid under contract. The law recognizes and awards damages between persons who do not have privity, if there is a violation of a legal right resulting in a civil wrong which must be remedied.

61. I am unable to accept the submission put forth by the State of Maharashtra that in the present case, a binding contract under the authority or with the imprimatur of the court has come into existence. I am also unable to accept the submission that the order dated 12th / 20th July 2017 permitting the Defendant to remain in possession of the Suit Premises subject to payment of

⁹ Paragraph 1-018, McGregor on Damages, 19th Edition (2014).

royalty is a contract, and that the royalty is ‘consideration’ for this ‘supply’ of premises to the Defendant pursuant to an order of Court. I am similarly unable to accept the Union of India’s submission that notionally there is a supply of services by the Court Receiver, as agent of the Plaintiff, to the Defendant. The reliance on the decision in *Assistant Commissioner, Ernakulam (supra)* in this regard is also misplaced.

62. In *Assistant Commissioner, Ernakulam (supra)* the Supreme Court had occasion to consider the following question:

1. [...] *Whether an “Official Liquidator” is a “dealer” within the meaning of Section 2(viii) of the Kerala General Sales Tax Act, 1963 (for short “the 1963 Act”), and therefore would be required to collect sales tax in respect of the sales effected by him pursuant to winding-up proceedings of a company in liquidation?*

63. The Supreme Court held as follows:

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

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

“A liquidator is an agent employed for the purpose of winding up of the company. His principal duties are to take possession of assets, to make out the requisite lists of contributors and of creditors, to have disputed cases

adjudicated upon, to realise the assets subject to the control of the court in certain matters and to apply the proceeds on the payments of the company's debts and liabilities in due course of administration, and having done that, to divide the surplus amongst the contributories and to adjust their rights."

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

49. *In Hari Prasad Jayantilal & Co. v. ITO [AIR 1966 SC 1481], this Court held that the liquidator is merely an agent of the company to administer its property for the purposes prescribed by the 1956 Act. The Court held that while distributing the assets, including accumulated profits, the liquidator acts merely as an agent or administrator for and on behalf of the company. The Court observed as follows: (AIR p. 1483, para 5)*

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

liquidator acts merely as an agent or administrator for and on behalf of the company.”

50. *In Ajay G. Podar v. Official Liquidator [(2008) 14 SCC 17], this Court considered the question pertaining to bar of limitation under the 1956 Act for misfeasance proceedings filed by the Official Liquidator. While discussing the powers of the Official Liquidator under Section 457(1) of the 1956 Act, the Court was of the view that the Official Liquidator must be authorised to take steps for recovery of assets by the Company Court under the winding-up order and the said proceedings must be initiated in the name of the company and on behalf of the company to be wound up. This Court had further opined that the Official Liquidator derives his authority from the provisions of the 1956 Act.*

51. *It would be beneficial to notice the views of Courts in England insofar as powers of the Official Liquidator during winding-up proceedings. In Mesco Properties Ltd., In re [Mesco Properties Ltd., In re, (1980) 1 WLR 96 : (1980) 1 All ER 117 (CA)], the Court of Appeal was ascertaining as to whether a company could incur tax liability in consequence of the realisation of its assets after a winding-up order was passed and whether the Official Liquidator was the proper officer to incur such liability. The Court, in Mesco Properties Ltd., In re [Mesco Properties Ltd., In re, (1980) 1 WLR 96 : (1980) 1 All ER 117 (CA)] case, at All ER p. 120, observed as follows: (WLR p. 100 B-E)*

“... It must, in my view, be open to a liquidator to apply to the court for guidance upon the question whether, if he discharges a certain liability of the company in liquidation, the payment will be a necessary disbursement within the meaning of Rule 195. That is what the liquidator is doing in this case. The company is liable for the tax which is due. The tax ought to be paid. The liquidator is the proper officer to pay it. When he pays it, he will clearly make a disbursement. In my judgment it will be a necessary disbursement within the meaning of the rule. Moreover, common sense and justice seem to me to require that it should be discharged in full in priority to the unsecured creditors, and to any expenses which rank lower in priority under Rule 195. The tax is a consequence of the realisation of the assets in the course of the winding up of the company. That realisation was a necessary step in the liquidation; that is to say, in

***the administration of the insolvent estate.** The fact that in the event there may be nothing available for the unsecured creditors does not, in my view, mean that the realisation was not a step taken in the interests of all who have claims against the company. Those claims must necessarily be met out of the available assets in due order of priority. Superior claims may baulk inferior ones, but the liquidator's duty is to realise the assets for the benefit of all in accordance with their rights. If in consequence of the realisation, the company incurs a liability, the discharge of such liability must, in my judgment, constitute a charge or expense incurred in the winding up within Section 267 of the Companies Act, 1948 and must also, in my view, fall within Rule 195."*

52. Further, the House of Lords in *Ayerst (Inspector of Taxes) v. C&K (Construction) Ltd.* [1976 AC 167 : (1975) 3 WLR 16 : (1975) 2 All ER 537 (HL)], held that a company, pursuant to a winding-up order, ceases to have the custody and control of its assets which are thereafter administered exclusively for the benefit of those persons who are entitled to share in the proceeds of realisation of the assets. The House of Lords elaborately discussed the role of the Official Liquidator in this regard and observed, at AC p. 177 D-F, as follows:

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

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

supervision of the court while discharging his duties.

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

59. *The observation of the Court of Appeals in Mesco Properties case [Mesco Properties Ltd., In re, (1980) 1 WLR 96 : (1980) 1 All ER 117 (CA)] , would appear to be squarely applicable to the present factual matrix, that is, during winding-up proceedings, if tax requires to be collected from the company in liquidation, the liquidator would be the proper officer to pay the same.*

60. *This Court has noticed hereinabove that the Company in liquidation is a “dealer” with regard to the sale of its assets by way of an auction under a winding-up order. Further, we have noticed the settled law that an Official Liquidator steps into the shoes of the Director of the company in liquidation and performs his statutory functions in accordance with the directives of the court. Furthermore, Rule 54 of the 1963 Rules contemplates a situation where a business owned by a dealer, is under the control of a receiver or manager or any other person, irrespective of his designation, who manages the business on behalf of the said*

dealer. In the said scenario, the said person, in-charge of the business on behalf of the dealer, would be exigible to sales tax in the same manner as it would have been leviable upon and recoverable from the dealer itself. Therefore, it can be concluded that the liability to pay sales tax, in the present case, would be on the Official Liquidator in the same manner as the dealer, that is, the Company in liquidation.”

(Emphasis supplied)

64. The decision in *Assistant Commissioner, Ernakulam (supra)* acknowledges that where tax is required to be collected from a company in liquidation in respect of its business, the Official Liquidator would be the proper officer to pay the same under Rule 54 of the Kerala Sales Tax Rules (which rule is similarly worded as Section 92 of the CGST Act). The liability incurred by the Official Liquidator will be equivalent to the liability which would be levied upon the dealer if he were conducting such business. This is on account of the fact that the business which is under the control of the receiver is liable to levy of tax.

65. There is no dispute on the proposition that if the business of an estate under the control of the Court Receiver is liable to tax, such tax may be recovered from the Court Receiver under Section 92 of the CGST Act (which is similar to Rule 54 of the Kerala General Sales Tax Rules, 1963). In the facts of *Assistant Commissioner, Ernakulam (supra)* it was held that the sale of properties of the company in liquidation by the Official Liquidator would attract

sales tax in the hands of the company in liquidation who is a 'dealer' under the said rules. Since the business of the dealer is under the control of the Official Liquidator, the Supreme Court held that the Official Liquidator is liable to be taxed in the same manner as a dealer.

66. Both Mr. Jagtiani on behalf of the Court Receiver and Mr. Singh, on behalf of the Union of India refer to a judgment of this Court in *Humayun Dhanrajgir vs. Ezra Aboody (supra)*. Mr. Jagtiani cites this decision in support of the submission that the true nature of the payments made by one party to another / the Court Receiver for use and occupation of property is to be decided by the Court looking to the circumstances of the case and material on record.

67. Mr. Singh submits on the other hand that the said decision is an authority for the proposition that royalty is, in substance, a rent which is 'consideration' for 'supply' of the Suit Premises to the Defendant.

68. In *Humayun Dhanrajgir vs. Ezra Aboody (supra)* this Court held as follows:

“ **CONCEPTS OF ROYALTY:**

17. In the case of (Kamakshya Narain v. I.T. Commissioner)¹, A.I.R. 1943 P.C. 153, the Privy Council observed that the royalty is “in substance a rent; it is the compensation which the occupier pays the landlord for that species of occupation which the contract between them allows.” Thus, royalty in substance is rent. It appears that the concept of royalty is to compensate a right owner of

the property who permits or allows others to use his rights from his property. This concept is also understood as 'Mesne profit' in legal parlance. Strictly speaking during the tenure of contractual tenancy what is paid by the tenant to his landlord is the contractual rent. After quit notice from the date of termination of tenancy, the characteristics of the subject matter is changed to damages for use and occupation of the premises and after filing of the suit for eviction till the possession is handed over, if the decree of possession is passed in favour of the landlord, the characteristic is changed to mesne profits. To what extent the quantum changes with the change of such characteristics is for the Courts to decide which the Courts do mould according to the facts and circumstances of the case to do justice between the parties.

18. One may use different words like compensation, licence, royalty and mesne profits, all in one form or another are diverse forms of rents in generic sense and what is the true colour of the payments made by one party to another for use and occupation of the property is to be decided by the Court looking to the circumstances of the case and evidence on record. Rent in English Law is said to be a profit from the property demised. It may assume the form of rent service or rent charge. It is described in generic sense as compensation for use and occupation and in legal sense, it is recompense paid by the tenant to his landlord for exclusive possession of the premises enjoyed by him. However, rent flows by virtue of the contract express or implied and after the contract of tenancy is terminated it will be damages or compensation. After the suit for possession is filed, monetary payments for use and occupation against the wish of the landlord assume the format of 'mesne profits'.

CONCEPTS OF MESNE PROFITS:

19. The term 'mesne profit' is used for damages for trespass, a wrongful act relating to immovable property and the said wrongful act forms one of the torts affecting realty i.e. immovable property. The enlarged scope of this term is meant to claim profit from one whose possession did not originate in trespass but is nevertheless wrong, as for example when the tenant or occupier of a property is dispossessed legally and decree of possession has been passed in favour of the landlord, still the tenant/occupier holds over the property for a specified period before handing over the possession to the

rightful owner. Though the tenant had a rightful possession when he entered the immovable property but it is the decree of possession which makes his possession wrongful.

[...]

22. The dissection of the aforesaid definition reveals that wrongful possession of the person is the very essence for the claim for mesne profits”.

(Emphasis supplied herein)

69. The judgment in *Humayun Dhanrajgir vs. Ezra Aboody (supra)* clearly states that the true colour of the payment depends on the facts and circumstances of the case. For example, it acknowledges that on termination of contractual occupation, the right holder is entitled to damages if the occupant continues to remain in what is now an unauthorised or illegal occupation of the property. In fact, in Paragraph 19, the Court says that the term ‘Mesne Profits’ is *‘used for damages for trespass, a wrongful act relating to immovable property and the said wrongful act forms one of the torts affecting realty i.e. immovable property. The enlarged scope of this term is meant to claim profit from one whose possession did not originate in trespass but is nevertheless wrong, as for example when the tenant or occupier of a property is dispossessed legally and decree of possession has been passed in favour of the landlord, still the tenant/occupier holds over the property for a specified period before handing over the possession to the rightful owner. Though the tenant had a rightful possession when he entered the immovable property but it is the decree of*

possession which makes his possession wrongful.'. The decision supports the submissions of the Learned *Amicus Curiae* and Mr. Jagtiani.

70. This view is also supported from the decision of the Supreme Court passed in *Senairam Doongarmall vs. Commissioner of Income Tax (supra)* cited by the Learned *Amicus Curiae*. As a matter of illustration, the *Amicus Curiae* submits that in a cause of action of trespass or illegal occupation, the computation of damages will involve the determination of rental income payable in surrounding areas to determine *mesne profits*. The *Amicus Curiae* submits that as held in *Senairam Doongarmall vs. Commissioner of Income Tax (supra)* it is the quality of the payment and not the method used to determine its measure that determines its character namely whether it is 'consideration' or damages. The method of computation is not material.

71. In *Senairam Doongarmall vs. Commissioner of Income Tax (supra)*, the Supreme Court held that:

The compensation which was paid in the two years was no doubt paid as an equivalent of the likely profits in those years; but, as pointed out by Lord Buckmaster in Glenboig Union Fireclay Co. Ltd. v. Commissioners of Inland Revenue (1922) 12 Tax Cas. 427 and affirmed by Lord Macmillan in Van Den Berghs Ltd. v. Clark (1935) 3 ITR (Eng.Cas.) 17, "there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test". This proposition is as sound as it is well-expressed, and has been followed in numerous cases under the Indian Income- tax Act and also by this Court. It is the quality of the

payment that is decisive of the character of the payment and not the method of the payment or its measure and makes it full within capital or revenue'.

(Emphasis supplied)

72. I am of the view that although the measure for quantifying a payment of royalty to the Court Receiver may be determined by looking at consideration payable under a contract or arising out of a business relationship, the royalty may still be in the nature of payments towards a potential award of damages or Mesne Profits, and therefore not liable to attract GST for reasons separately stated.

73. I am of the view that although the quantification of royalty towards a claim of damages involves ascertaining the market rent payable with respect to the property alleged to be illegally occupied, the compensation liable to be paid does not acquire the character of consideration so as to make the transaction a supply.

74. I am also unable to accept the State of Maharashtra's submission that the Defendant's occupation of the Suit Premises is a 'supply' since it falls within the definition of '*renting in relation to immovable property*' i.e. Item No. 5(a) of Schedule II to the CGST Act. The State of Maharashtra has relied upon the definition of '*renting in relation to immovable property*' found in Clause 2(zz) of

Notification No. 12/2017-State Tax (Rate) Mumbai, dated 29th June 2017 in support of this submission. Clause 2(zz) provides that:

“(zz) ‘renting in relation to immovable property’ means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;”

I find that the definition relied upon by the State uses the terms ‘*allowing, permitting or granting access, entry, occupation, use*’ which connotes that there must be a positive act by the property or right owner to permit the occupier to use the property in question. As discussed above, an act of illegal occupation, which may be compensated in damages by mesne profits, does not amount to a voluntary act of allowing, permitting, or granting access, entry, occupation or use of the property. The submission made by the State of Maharashtra as well as the Union of India that the Order of the Court permitting the Defendant to occupy the Suit Premises is notionally a contract between the Court Receiver and the Defendant overlooks the nature and meaning of a contract and ignores the character of damages and the circumstances necessitating the same to be paid under a decree of the Court.

75. On the submission that a notional contract has come into existence, I find that there can be no resulting contract between the Court Receiver and a

litigation arising from an order of the Court. The role of the Court Receiver is only to give effect to an order of the Court. If, in giving effect to an order of the Court, the Court Receiver receives payments that would otherwise attract CGST, then, and to that extent, the CGST may be conveniently collected from the Court Receiver under the provisions of Section 92. But the effect of appointing the receiver cannot mean that payments which do not attract CGST are now brought within the fold of the Act by notionally importing a contract between the Court Receiver and the Defendant. As I have already held above, the payment of royalty as compensation for unauthorized occupation of the Suit Premises is to remedy the violation of a legal right, and not as payment of consideration for a supply. The Court Receiver is merely the officer of the court to whom the payment is made.

76. Therefore, in the present case, where the Plaintiff has made out a strong *prima facie* case and the Defendant has not been able to demonstrate any semblance of right to occupy the Suit Premises, it cannot be said that the Defendant's occupation pursuant to an Order of the Court is a contract involving a 'supply' for consideration. In the absence of reciprocal enforceable obligations, it would not be correct to characterise the Defendant's occupation of the Suit Premises against payment of royalty as a 'supply' for 'consideration'

on which GST is payable by the Court Receiver.

77. The width of the inclusive definitions of ‘business’ and ‘supply’ do not further the submission of the State of Maharashtra or the Union of India. The definition of ‘business’ includes, *inter alia*, any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit. This is irrespective of whether or not there is volume, frequency, continuity or regularity of such transaction. “Business” also includes the admission, for a consideration, of persons to any premises. But as discussed above, no positive act of admission into premises for a consideration can be said to have taken place where the plaintiff’s allegation is that of illegal occupation.

78. Even the broad and inclusive definition of ‘supply’ does not assist the State and the Union. ‘Supply’ as defined in Section 7 of the CGST Act, includes, *inter alia*:

- i. A supply of goods or services (including a licence) or both;
- ii. Made or agreed to be made for a consideration by a person in the course or furtherance of business,
- iii. Import of services for a consideration whether or not in the course or furtherance of business;

- iv. The activities specified in Schedule I, made or agreed to be made without a consideration;
- v. The activities to be treated as supply of goods or supply of services as referred to in Schedule II to the CGST Act.

79. On a perusal of Section 7 of the CGST Act, it is clear that for a supply to fall under Section 7(a), 7(b) or 7(d) of the CGST Act there must be a contemplated consideration. Only activities specified in Schedule I to the CGST Act are considered a supply, even if made without consideration. It is not the contention of any of the parties before the Court that the occupation of the Defendant of the Suit Premises in the present case falls within Schedule I to the CGST Act. On a perusal of Schedule I to the CGST Act, it does not appear that the present activity would fall within the ambit of Section 7(c) of the Act read with Schedule I thereto. Therefore, it must be seen whether the activity in question falls within Section 7(a), 7(b) or 7(d) of the CGST Act.

80. Section 7(a) of the CGST Act requires the supply to be made 'in the course or furtherance of business'. It is submitted on behalf of the State that the Plaintiff is in the business of letting out immovable properties above the threshold requirement of Rs. 20,00,000/-. This position is not disputed by the Plaintiff. In fact, the Plaintiff itself submits that GST is to be levied on the

royalty to be paid by the Defendant. In fact, such was the Plaintiff's apprehension, that it sought to modify the Order dated 12th / 20th July 2017 by making an application for speaking to the Minutes of the Order, which was application was allowed and the words 'alongwith GST at the applicable rate' were added to Paragraph IV of the Order dated 12th / 20th July 2017.

81. Section 7(b) of the CGST Act deals with import of services for a consideration whether or not in the course or furtherance of business, which is not applicable to the present dispute. Similarly, Section 7(c) refers to Schedule I to the CGST Act which prescribes activities which will constitute a supply even if no consideration is paid or payable. It is not contended by any party before me that the supply in this case falls under Section 7(c) of the CGST Act read with Schedule I.

82. As regards Section 7(d) of the CGST Act read with Schedule II, I have already considered and rejected the submission that the transaction in the present case amounts to 'renting of immovable property' under Item No. 5(a) of Schedule II to the CGST Act.

83. Insofar as other cases are concerned, Rule 1(d) of Order XL contemplates that a Court may confer upon a receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation

and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit. Undoubtedly, there may be instances where a taxable supply has taken place by the Court Receiver in exercising the aforesaid powers. Section 92 of the CGST Act specifically provides for the taxation of the estate of a taxable person under the control of the receiver.

84. There may be instances where payments received by the Court Receiver may attract GST. For instance:

- (i) Where the Court Receiver is appointed to run the business of a partnership firm in dissolution, the business of the firm under the control of receivership may generate taxable revenues.
- (ii) Where the Court authorises the Court Receiver to let out the suit property on leave and license, the license fees paid may attract GST.
- (iii) Where the Court Receiver collects rents or profits from occupants of properties under receivership, the same will be liable to payment of GST.
- (iv) Consideration received for assignment, license or permitted use of intellectual property.

85. Obviously, this is not an exhaustive list but the principles applicable for answering the question of law raised in this Court Receiver's Report may be relevant to address issues that may otherwise arise. These instances are illustrative of the cases where the GST laws may apply. In such cases, GST may be collected from the Court Receiver as a representative assessee under Section 92 and as such the Court Receiver may be required to obtain registration under the relevant GST laws.

86. However, if the Court Receiver is deputed to make an inventory of goods, collect rents with respect to immovable property in dispute or where the property has to be sealed, or the Receiver is appointed to call bids for letting out the premises on leave and license, the fees or charges of the Court Receiver are exempt. In providing these services, the Office of the Court Receiver is acting as a department of the Court and therefore no GST is payable.

87. In light of the preceding discussion, Issue No. (ii) viz. *Whether GST is liable to be paid on royalty or payments under a different head paid by a defendant (or in a given case by the plaintiff or third party) to the Court Receiver in respect of properties over which a Court Receiver has been appointed*, is answered in the affirmative, subject to the payment towards royalty or the payment to the Court Receiver (described by whatever name) is towards or in relation to a 'supply'

within the meaning of the CGST Act.

88. In light of the preceding discussion, Issue No. (iii) i.e. *Specifically, in the facts of the present Suit, where the Plaintiff alleges that the Defendant is in illegal occupation of the Suit Premises: Whether there is any 'supply' of services within the meaning of the CGST Act? Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of 'consideration' for a 'supply' chargeable to payment of GST under Section 9 of the CGST Act* is answered in the negative.

89. As regards the final issue i.e. Issue No. (iv), namely *If in any circumstance GST is payable or applicable to payments made to the Court Receiver, how is that statutory liability to be discharged? Is it to be paid by the Defendant / party in occupation directly, or by the Court Receiver?*

90. It was submitted by Mr. Jagtiani for the Court Receiver and the Learned *Amicus Curiae* that where Section 92 of the concerned GST Act may apply, the agent of the Court Receiver, wherever one is appointed, may be directed to pay GST after obtaining registration on behalf of the Court Receiver or (if permissible) under a pre-existing registration. In such a situation, such payment will be made on behalf of the Receiver and would discharge the Receiver's statutory obligations under Section 92 of the Act. Mr. Jagtiani submits that this

is in line with Section 2(105) of the CGST Act which provides as follows:

*“2. (105) “**supplier**” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;”*

91. Although in the present case the Court Receiver is not the ‘supplier’, since under an order of the Court the payment towards ‘supply’ is being made to the Court Receiver, the person making payment may be entitled or permitted to pay the component of CGST by the statutory authorities. The suggestion made on behalf of the Court Receiver is that the office of the Court Receiver may be directed to include a clause in the standard form of the agency agreement to the effect that where any payment to be made under an order of the Court attracts GST, the agent appointed by the Court Receiver must have or must obtain CGST registration and make such payment on behalf of the Receiver and indemnify the Receiver for any liability that may fall upon the Receiver under Section 92 of the concerned GST Act. I am in agreement that such a clause may be added in the draft agency agreement and should be suitably worded. This may obviate the requirement of the Receiver having to obtain separate GST Registration for each matter or transaction in respect of which it is appointed to act by the Court, without resulting in any harm or prejudice to the revenue. Needless to state, in the facts of a given case if the court deems fit,

the Court may vary this standard clause. If the statutory authorities do not recognize or accept payment from the agent, then the Court Receiver should obtain separate CGST / MGST registration for each matter.

92. Such a clause will ensure that the agent of the Court Receiver continues to discharge any GST liability which may arise. Where no agent is appointed, naturally the Court Receiver will have to obtain registration. In cases where GST has to be paid by the Court Receiver, it is certainly advisable that the Court Receiver obtain CGST / MGST registration for each matter as opposed to a general registration under which CGST / MGST is paid in all matters. A separate registration will be preferable from both an accounting, audit and administration standpoint. This will also facilitate the handover of custody / charge of the property and accounts upon the discharge of the Court Receiver to any party as may be directed by the Court.

93. In conclusion, I am of the view that in the facts of the present case, no GST is payable on the royalty amount paid by the Defendant to the Court Receiver as a condition for remaining in possession of the Suit Premises. Accordingly, the change made in operative direction contained in Paragraph 8(IV) of the Order dated 12th / 20th July 2017 by the Order dated 3rd August 2017 is modified, and operative direction (IV) shall read as follows:

(IV) The Defendant shall be appointed as an agent of the Court Receiver under an agency agreement on payment of monthly royalty of Rs.45,000/- to the Court Receiver but without any security;

94. GST, if any, deposited by the Defendant with the Court Receiver but not paid to the concerned authority shall be adjusted against royalty amounts to be paid by the Defendant to the Court Receiver for the future period.

95. This Court expresses its appreciation to the Learned *Amicus Curiae* for the assistance rendered.

(S.J.KATHAWALLA, J.)