IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 40

Civil Appeal No 17 of 2020 and Summons No 1 of 2021

Between

Skyventure VWT Singapore Pte Ltd

… *Appellant*

And

(1) The Chief Assessor
(2) Comptroller of Property Tax

… *Respondents*

In the matter of Tax Appeal No 7 of 2019

In the matter of Order 55 of the Rules of Court (Cap 322, Rule 5)

And

In the matter of Section 35 of the Property Tax Act (Cap 254)

And

In the matter of Valuation Review Board Appeal No 776 of 2013 and 1153 of 2014 and a Decision delivered on 10 April 2019 ensuing therefrom

And

In the matter of the assessment of 43 Siloso Beach Walk #01-01 & #03-01, Singapore 099010 under the Property Tax Act (Cap 254)

Between

(1) The Chief Assessor
(2) Comptroller of Property Tax

… *Appellants*

And

Skyventure VWT Singapore Pte Ltd

… *Respondent*

JUDGMENT

[Revenue Law] — [Property tax] — [Annual value]

[Statutory interpretation] — [Construction of statute] — [Purposive approach]

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Andrew Phang Boon Leong JCA, Chao Hick Tin SJ and Belinda Ang Saw Ean JAD
28 January 2021

21 April 2021 Judgment reserved.

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") in *Chief Assessor v Skyventure VWT Singapore Pte Ltd* [2020] SGHC 10 ("the Judgment") in which the Judge had allowed an appeal against the decision of the Valuation Review Board in *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2019] SGVRB 1 ("the VRB decision"). In connection with the appeal, the appellant applies in Summons No 1 of 2021 ("SUM 1") for leave to tender two bundles of documents, both dated 28 December 2020. We shall elaborate on and deal with SUM 1 in due course.

2 The present appeal raises difficult questions as to how an appropriate balance should be achieved between giving effect to the relevant statutory

language on the one hand and the general policy underlying the relevant statute (or statutory provision(s), as the case may be) on the other. When striking this balance in the context of tax legislation, it must of course be borne in mind that tax law is wholly a creature of statute. There would of course be no difficulty whatsoever where there is no tension between the two aforementioned factors. However – as is the case here – where such a tension exists, the courts must guard against becoming "mini-legislatures" by giving statutory provisions a broad interpretation beyond what the Legislature had intended in enacting them, for that would be a patent usurpation of the legislative function. Indeed, the old adage that "hard cases make bad law" would also ring true in such a context.

3 With this brief introduction, we turn now to the facts of the present case.

Facts of the present appeal

4 The appellant, Skyventure VWT Singapore Pte Ltd, owns and operates "iFly Singapore", a tourist attraction at No 43 Siloso Beach Walk #01-01 and #03-01, Singapore 099010 ("the Property"). It provides a simulated skydiving experience for its guests.

The Wind Tunnel

5 The Property consists of three vertical concrete columns bridged at the top and the base. In the middle of the central column lies the flight chamber where simulated skydiving activities take place. Within the top bridge are four wind turbines which have a combined strength of 1,800 horsepower. A "primary diffuser" is situated between them. The wind turbines mechanically induce airflow in opposite directions and the airflow thus generated is directed downwards through the two side columns (termed "return air towers") towards

the bottom bridge. Within the bottom bridge are water-cooled turning vents. These remove heat from the airflow and move air upwards towards the inlet contractor which resides directly below the flight chamber in the bottom half of the central column. The inlet contractor increases the pressure and velocity of the airflow to one that is suitable for simulated skydiving within the flight chamber. After passing through the flight chamber, the airflow enters the abovementioned primary diffuser where it is drawn into the wind turbines to be recirculated.

6 The subject-matter of the present dispute is the "Wind Tunnel" which, according to the appellant, consists of the wind turbines, the primary diffuser, the turning vents, the inlet contractor and the flight chamber described above.

The decision at first instance

7 By two notices dated 22 December 2012, the respondents, who are the taxing authorities for property tax in Singapore, assessed the whole of the Property to property tax. This meant that the value of the Wind Tunnel was to be included in the computation of the Property's annual value ("AV") for the purpose of determining the amount of property tax chargeable at 10% thereon.

8 The appellant appealed the respondents' decision to the Valuation Review Board ("the VRB"), contending *inter alia* that the value of the Wind Tunnel should not have been included in the respondents' assessment of the Property's AV as it was exempt machinery under s 2(2) of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the Act"). The respondents, on the other hand, took issue with the appellant's characterisation of the Wind Tunnel as "machinery", and also argued that even if it was "machinery", the Wind Tunnel did not fall

within s 2(2) of the Act as that provision only applied to machinery used for "manufacturing, processing and other industrial purposes".

9 On 10 April 2019, by a two-to-one majority, the VRB found in the appellant's favour. The majority of the VRB found, *inter alia*, that the Wind Tunnel was machinery since its predominant function was to generate the necessary aerodynamic conditions for indoor skydiving (see the VRB decision at [25]). For the same reason, the Wind Tunnel altered and adapted the air within it by increasing its velocity and pressure while reducing its temperature, such that the lifting effect of the cooled airflow could be sold. It was therefore machinery "used for the purposes of making, altering, repairing or ornamenting, finishing or adapting for sale of articles" and therefore fell within the scope of s 2(2) of the Act (see the VRB decision at [28]). Thus, the majority held that the enhanced value given to the Property by the Wind Tunnel ought to be excluded from the Property's AV. They therefore allowed the appeal.

10 The minority disagreed, and penned a dissenting opinion which, while agreeing with the majority that the Wind Tunnel was "machinery" (see the VRB decision at [57]), took the view that s 2(2) of the Act applied *only* to machinery used for manufacturing, processing or other industrial purposes and that the Wind Tunnel was not used for such purposes (see the VRB decision at [64]). The minority also opined that there was no evidence that suggested that the turbulent effects of the changed air was the commodity being marketed and sold, and that what was in fact being sold was the experience of simulated skydiving and flying, or in other words, a sports and recreational service (see the VRB decision at [66]).

11 The respondents appealed from the VRB's decision to the High Court.

The decision below

12 On 16 January 2020, the Judge gave his decision on the respondents' appeal. He found that the VRB was right in concluding that the Wind Tunnel was machinery, and not merely the setting for business (see the Judgment at [7] and [11]). However, he took the view that the legislative purpose of s 2(2) of the Act was to "encourage investments in plant and machinery for manufacturing, processing and other industrial purposes" and to "promote investments in manufacturing machinery". Since the Wind Tunnel was used for social events and not for any industrial purpose, it did not belong to the class of machinery to which s 2(2) of the Act was intended to apply (see the Judgment at [8] and [11]). The Judge therefore allowed the appeal.

13 The appellant then appealed against the Judge's decision. With this, we now turn to the parties' respective cases.

The parties' cases

The appellant's case

14 The essence of the appellant's case is that s 2(2) of the Act was intended to have a wide scope and is not confined only to machinery for manufacturing, processing or other industrial processes, or to machinery in industrial premises. The appellant submits that when the Property Tax Ordinance (No 72 of 1960) (*ie*, the predecessor to the Act which contained what eventually became s 2(2) of the Act) was enacted in 1960, the Singapore Government had its eye on economic development so as to provide employment opportunities for its population and contribute to domestic prosperity. A broad-based economic development strategy was thus adopted, of which industrialisation was but one plank, alongside "tertiary industries" such as the tourist industry. The generality

of the language in s 2(2) of the Act is consistent with such a broad-based economic development strategy. The appellant also points out that in 2017, the Ministry of Finance proposed amendments to limit the generality of s 2(2) of the Act but decided not to proceed with them, thereby lending support to a broad, instead of narrow, interpretation of the provision.

15 According to the appellant, the Wind Tunnel alters the air within it, such that it has a velocity, pressure and temperature suitable for simulated skydiving within the flight chamber. Having thus framed the function of the Wind Tunnel, the appellant unsurprisingly draws an analogy with this court's earlier decision in *Chief Assessor and another v First DCS Pte Ltd* [2008] 2 SLR(R) 724 ("*First DCS (CA)*"), where it was held that machinery that chilled water which was then piped to customers' premises to provide a "district cooling service" had adapted the water for sale. Similarly, the Wind Tunnel altered or adapted the air within it for sale as it generated skydiving-suitable airflow in order to provide its customers with a simulated skydiving experience. The Wind Tunnel therefore fell within ss 2(2)(*b*) and 2(2)(*c*) of the Act.

The respondents' case

16 The respondents contend that the Wind Tunnel is not machinery because it functions as the setting or facility for simulated skydiving to take place. This function is at least as important as its function of generating the necessary aerodynamic conditions for simulated skydiving.

17 Even if the Wind Tunnel is machinery, the respondents submit that s 2(2) of the Act does not apply. The intended scope of that provision covered only machinery used for manufacturing, processing and other industrial purposes, and did not cover machinery used in a non-manufacturing context. In

support of that interpretation, the respondents point out that s 2(2) of the Act expressly covers machinery used for the purpose of making of any article or part thereof, altering, repairing, ornamenting or finishing any article, as well as the adapting for sale of any article. The common thread underlying these words is that there must be some productive work done by physical labour or machinery, to create, modify or improve "products of manufacture", "commodities" or "goods" for the benefit of sale. This is further bolstered by the express inclusion of steam engines, boilers and other motive power within the definition of "machinery" for the purposes of s 2(2) of the Act since such innovations were associated with factories, manufacturing processes and industrialisation. Thus, for machinery to come within ss 2(2)(*b*) and 2(2)(*c*) of the Act, it must "alter" or "adapt for sale" articles in furtherance of a manufacturing process.

18 The respondents also argue that the extension of s 2(2) of the Act to machinery used in the recreation, sports and tourist industries would mean that the provision would apply to machinery used for any and all purposes, including the enjoyment of property (for example, basic infrastructure such as lifts, escalators, air-conditioning and fire safety systems in buildings). This would, in their words, "severely undermine the legislative object behind s 2(2) [of the Act]".

Issues on appeal

19 There are therefore three issues in this appeal:

(a) The scope of s 2(2) of the Act.

(b) Whether the Wind Tunnel is "machinery".

(c) Whether s 2(2) of the Act applies to the Wind Tunnel, such that its value ought to be excluded from the AV of the Property.

Our decision

The scope of s 2(2) of the Act

The express language of s 2(2)

20 We begin with the express language of s 2(2) of the Act, which is as follows:

> (2) In assessing the annual value of any premises in or upon which there is any machinery used for any of the following purposes:
>
> (*a*) the making of any article of part thereof;
>
> (*b*) the altering, repairing, ornamenting or finishing of any article; or
>
> (*c*) the adapting for sale of any article,
>
> the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration, and for this purpose 'machinery' includes the steam engines, boilers and other motive power belonging to that machinery.

21 From the above, we observe that, in order for s 2(2) of the Act to apply to a particular piece of machinery, it must be shown that the machinery in question must be used *for the purposes* of making, altering, repairing, ornamenting, finishing, or adapting for sale any *article*, a term which the Act does not define. As long as the machinery in question satisfies these criteria, the type of machinery and the premises in or upon which it is situated are irrelevant considerations, since the terms "any premises" and "any machinery", as used in the provision, ordinarily refer to "any and all" premises and machinery without

any limitation (see also the decision of this court in *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 at [170]).

22 Accordingly, in order to ascertain what the scope of s 2(2) of the Act is, it is necessary to first determine what an "article" is for the purpose of s 2(2) of the Act.

The definition of "article" in s 2(2) of the Act

The statutory interpretation framework

23 It is well-settled that it is necessary to adopt a *purposive* approach in interpreting statutory provisions (s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed)). In *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37] and [54], this court laid down the framework for such an approach as follows:

> (a) First, the court will ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole;
>
> (b) Second, the court will ascertain the legislative purpose or object of the statutory provision in question; and
>
> (c) Third, the court will compare the possible interpretations of the text against the purposes or objects of the statute. The interpretation which furthers the purpose of the written text should be preferred to the interpretation which does not.

24 The court may rely on extraneous material in determining the legislative object or purpose of a statutory provision. However, this court cautioned in *Tan Cheng Bock* at [43] that:

> Consideration of extraneous material can be very helpful and such material tends to be referred to extensively in aid of purposive interpretation. However, we emphasise that in seeking to draw out the legislative purpose behind a provision, ***primacy should be accorded to the text of the provision and its statutory context*** over any extraneous material. The law enacted by Parliament is the text which Parliament has chosen in order to embody and to give effect to its purposes and objects. In line with this, ***the meaning and purpose of a provision should, as far as possible, be derived from the statute first, based on the provision(s) in question read in the context of the statute as a whole***. This approach also coheres with the language of s 9A(1), which suggests the *possibility* of the purpose or object of a statute being 'expressly stated in the written law'.
>
> [emphasis in original in italics; emphasis added in bold italics and underlined bold italics]

25 Applying the *Tan Cheng Bock* framework in the context of determining the meaning of the term "article" in s 2(2) of the Act, the analysis proceeds as follows:

(a) First, this court will ascertain the various possible meanings of the term "article" in s 2(2) of the Act, having regard not just to the text of s 2(2) of the Act but also to the context of that provision within the Act as a whole.

(b) Second, this court will ascertain the legislative purpose or object of s 2(2) of the Act. In so doing, the court ought to give primacy to the *text* of the provision. The court may also consider extraneous material for this purpose.

(c) Third, this court will compare the possible meanings of the term "article" in s 2(2) of the Act against the purposes or objects of the Act and ascertain which of these possible meanings best furthers the purpose of s 2(2) of the Act.

26 With this, we turn to the first stage of the *Tan Cheng Bock* framework, namely, determining the various possible meanings of the term "article" as used in s 2(2) of the Act.

The possible meanings of the term "article" in s 2(2) of the Act

27 The word "article", at its broadest, may refer to commodities or substances in general, in either solid, liquid or gaseous form. Under this broad definition, water, steam and coal gas may all be articles (see the English Court of Appeal decision in *Cox v S. Cutler & Sons, Ltd. and Hampton Court Gas Co.* [1948] 2 All ER 665 at 667). Indeed, natural elements may be considered articles in themselves (see the House of Lords decision in *Longhurst v Guildford, Godalming and District Water Board* [1963] 1 AC 265 ("*Longhurst*") at 277 – 278). We would further observe that it was undisputed in *First DCS (CA)* that chilled water was an article for the purposes of s 2(2) of the Act (at [8]). It follows that things occurring in nature, such as water, air and so on, may be "articles" for the purposes of s 2(2) of the Act. Manufactured items may also be articles, as is clear from s 2(2)(*a*) of the Act. Taken together, the term "article" in s 2(2) of the Act, in our view, is *ordinarily* capable of referring, at its broadest, to any matter or *thing* whether occurring in nature or otherwise.

28 That is not to say, however, that the term "article" bears its ordinary meaning in *every instance* where it is used in a statutory provision. Although

the word is *notionally* capable of referring to any matter in existence, the particular *statutory context* in which the word is used may not necessarily justify such a broad definition. *Longhurst* provides a useful illustration of how the meaning to be given to the word "article" depends on the relevant statutory context. In that case, the question before the House of Lords was whether the waterworks on which an accident had occurred was a "factory" within the definition set out in s 151(1) of the Factories Act 1937 (c 67) (UK) ("the Factories Act 1937") – the successor to earlier 19th century legislation intended for the protection of vulnerable workers in "the Dickensian smog-and-smokestack hell of Britain's Industrial Revolution" (see *First DCS (CA)* at [12] and [15]). The provision in question read as follows:

> **Interpretation of the expression 'factory'**
>
> (1) Subject to the provisions of this section, the expression 'factory' means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely: -
>
> (a) the *making of any article or of part of any article*;
>
> (b) the *altering, repairing, ornamenting, finishing,* cleaning, or washing, or the breaking up or demolition *of any article*; or
>
> (c) *the adapting for sale of any article*,
>
> being premises in which, or within the close or curtilage or precincts of which, *the work is carried on by way of trade or for purposes of gain* and to or over which the employer of the persons employed therein has the right of access or control[.]
>
> [emphasis added]

29 As to the definition of the word "article" applicable to that statutory provision, Lord Reid observed, at 273, that:

> The question whether premises are a factory depends on the nature of the process which is carried on there: the definition

> specifies various kinds of process *but all are processes dealing with 'articles'*. The respondents say that water is not an article and therefore dealing with it cannot make their premises a factory. They say that no one has ever maintained that the Factories Act applies to any kind of waterworks. This case therefore raises an important new point.
>
> ***The word 'article' has many different meanings or shades of meaning and therefore the context in which it occurs is of crucial importance***. The respondents maintain that an article must be a solid article, and that the word excludes liquids and gases, or alternatively, they maintain that a natural substance or at least a natural liquid or gas is not an article: no one would call water in a stream or air in a room an article, and it can make no difference that it is collected, impounded or confined in some way.
>
> There may have been a time when few liquids but alcohol and no gases were made or treated by industrial processes, but that time is long past and I find it *impossible to suppose that as recently as 1937 Parliament intended to make so fundamental a distinction between solid articles and, say, petrol or coal gas, as to* ***deny the benefits of the Factories Act to workers in premises where only liquids or gases were being treated or manufactured***. …
>
> [emphasis added in italics and bold italics]

30 The reasoning of Lord Reid in *Longhurst* reveals that the broad meaning of the term "article" was applied to the Factories Act 1937 *because* it directly determined which classes of employees could benefit from the protection afforded by the statute from unsatisfactory working conditions. A generous interpretation was therefore warranted *in that statutory context*. The similar observations of this court in *First DCS (CA)* at [16] (which pertain to the terms "make", "alter" and "adapt for sale" which, like the term "article", appear in both the Factories Act 1937 and s 2(2) of the Act) bear repeating:

> The terms 'make', 'alter' and 'adapt for sale' were hence *originally used in the UK to* ***define what sort of premises needed to comply with the regulations set out in the various Factory and Workshop Acts and, consequently, which employees could benefit from the protection therein***. The same terms were later adopted in the law on derating. ***It***

> ***was this connection that led the English courts to adopt a generous interpretation of provisions containing the three terms***. The rationale underlying the English courts' approach was succinctly summarised by Scrutton LJ in *Bailey v Stoke-on-Trent Assessment Committee and Potteries Electric Traction Company, Limited* [1931] 1 KB 385 at 493, as follows:
>
> > It must be borne in mind that if you exclude a hereditament from derating because there is no manufacturing process carried on in it, ***you are depriving the workmen of the protection of the Factory Acts, as well as the employer of the benefit of derating***. It must also be borne in mind that in construing the Factory Acts, the Courts have given a wide meaning to the words … Putting chocolates into a decorated box, in *Fuller's Case* [[1901] 2 KB 209], and arranging flowers on a metal cross or circle to make a wreath, in *Hoare v. Robert Green, Ld.* [[1907] 2 KB 315], have been treated as 'adapting for sale' to protect the workpeople employed in that occupation.
>
> [emphasis added in italics and bold italics]

31 It follows that while a broad definition of the terms "article", "make", "alter" and "adapt for sale" (all of which appear in s 2(2) of the Act) was warranted in the statutory context of the Factories Act 1937 as this was consistent with its legislative purpose (*ie*, to protect vulnerable workers in industrial premises), a broad or generous definition of those same terms may not *necessarily* be warranted in the context of property tax legislation (specifically, s 2(2) of the Act).

32 In other words, what the definition of "article" encompasses (though notionally capable of referring to any tangible thing in existence) must depend on the ***particular statutory context*** in which it is used, in particular, the ***legislative intention*** underlying the relevant statutory provision, which in turn is *primarily* embodied in the *text* of the statutory provision itself or, failing which, in extraneous material. With this, we turn to the second stage of the *Tan*

Cheng Bock analysis, which is to ascertain the legislative purpose or object of the Act.

The legislative purpose or object of s 2(2) of the Act

33 In *First DCS (CA)*, this court traced the history of s 2(2) of the Act and made the following observations:

(a) The genesis of property tax legislation in Singapore lay in the Indian Acts Nos 25 and 27 of 1856, as modified by An Ordinance to amend the Indian Act No 25 of 1856 (No 3 of 1879) (collectively, "the Indian Acts"). These statutes provided for the assessment and collection of municipal rates and taxes in what later became British India and the Straits Settlements. However, these statutes *expressly provided* that in estimating the annual value of a given piece of land, the value of *all* machinery "employed in manufacturing the produce of such land" [emphasis in original omitted] would be taken into account (at [17]).

(b) Subsequently, s 3 of the Municipal Ordinance 1887 (No 9 of 1887) contained a proviso which was virtually identical to s 2(2) of the Act. This proviso was preserved in the Municipal Ordinance 1896 (No 15 of 1896), the Municipal Ordinance 1913 (No 8 of 1913) and the Municipal Ordinance (SS Cap 133, 1936 Rev Ed), which was in turn superseded by the Local Government Ordinance 1957 (No 24 of 1957). This was superseded by the Property Tax Ordinance 1960 (No 72 of 1960), the direct predecessor of the Act (at [20]). All these statutes contained the property tax exemption for qualifying machinery stated in s 2(2) of the Act, which departed from the position set out in the Indian Acts. While there is no direct evidence of the reasons for this change, it

was most likely to encourage investments in machinery for manufacturing, processing and other industrial purposes (at [11] and [21]).

(c) The language used in ss 2(2)(*a*) to 2(2)(*c*) of the Act, including in particular, the use of the terms "making", "altering *etc*" and "adapting for sale", was "clearly adopted after the introduction of similar terminology" in earlier English legislation, namely, the Factory Acts Extension Act 1867 (c 103) (UK), which "used the terms to define a '[m]anufacturing [p]rocess' … which is the essence of what the terms are trying to capture" (at [22]).

34 At this juncture, we pause to deal with SUM 1 which, as we noted at the outset of this judgment, is the appellant's application for leave to tender two bundles of documents dated 28 December 2020, consisting of a further bundle of authorities and a further core bundle. These materials, the appellant argues, buttress its position that s 2(2) of the Act was intended to support a broad-based economic development strategy in or around 1960, and was therefore to be interpreted broadly. The materials in both bundles can be broadly classified into three categories, which we shall deal with in turn:

(a) The materials in the first category consist of authorities relating to the law on statutory interpretation and the meaning of the term "sale" as used in s 2(2) of the Act, which the appellant referred to in its submissions. In our view, such references in the submissions suffice. These are, strictly speaking, not documents required to be filed in an appeal under O 57 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

(b) The materials in the second category consist of *non-legislative* articles relating to the state of Singapore's economy around 1960 and *academic* opinions on how that economy ought to be developed, as well as materials relating to *proposed* 2017 amendments to the Act (which remain unenacted as of the date of this judgment). In our view, such materials are not relevant to the question of Parliament's *specific* intention as regards s 2(2) of the Act. The mere fact that Parliament may have pursued a broad-based economic strategy in 1960 (even if true) did *not ipso facto* mean that it intended to use s 2(2) of the Act as a way to drive such a strategy. As for the unenacted 2017 amendments to the Act, these are in our view unhelpful in determining what the Parliamentary intention undergirding the provisions of the Act *as such provisions presently stand* is. In our view, these materials are not relevant to the present appeal.

(c) The materials in the final category consist of evidence of the way in which the respondents have applied s 2(2) of the Act in granting property tax exemptions for various kinds of machinery. Such *non-legislative* materials are, in our view, irrelevant. The interpretation of s 2(2) of the Act adopted by an *administrative* agency (the respondents) *after* the enactment of that statutory provision does not, and indeed *cannot*, shed any light on what *Parliament* intended at the time of its enactment. Indeed, one cannot preclude the possibility that an administrative agency had wrongly applied the relevant statutory provision.

35 For the reasons set out in the preceding paragraph, we dismiss SUM 1.

36 Returning to the present appeal, having regard to the above background, the language adopted in ss 2(2)(*a*) to 2(2)(*c*) of the Act had been used to define a "manufacturing process" in 19th century English legislation for the protection of workers *before* being *imported* into local property tax legislation. This indicates that Parliament, in importing the aforesaid language, intended s 2(2) of the Act to incentivise the use of machinery for "manufacturing processes". Thus, ss 2(2)(*a*) to 2(2)(*c*) of the Act should be *interpreted in the* ***context*** *of a "manufacturing process"*.

37 Having set out the *likely* legislative purposes and objects of s 2(2) of the Act, we now turn to the third stage of the *Tan Cheng Bock* analysis, namely, determining the meaning of the term "article" which best comports with the abovementioned legislative purposes and objects of s 2(2) of the Act, *ie*, the incentivisation of machinery used for "manufacturing processes".

Ascertaining the proper definition of the term "article" in s 2(2) of the Act

38 We begin with the observation that the term "article" is used in ss 2(2)(*a*), 2(2)(*b*) and 2(2)(*c*) of the Act. It is therefore *presumed* that the same definition applies across all three of those limbs. In *Tan Cheng Bock* at [58(c)(i)], this court said:

> … *Where the identical expression is used in a statute, and all the more so, where it is used in the same sub-clause of a section in a statute, it should presumptively have the same meaning. This is a rule of interpretation rooted in simple logic.* However, this is not an inflexible rule and the court may, on construing the provision in context, conclude that the identical expressions means different things: see *Madras Electric Supply Corp Ltd v Boarland (Inspector of Taxes)* [1955] AC 667 at 685. … [emphasis added]

39 In certain cases, however, the same word may carry different meanings when used in different provisions within the same statute. In *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 ("*Soil Investigation*"), this court had to consider whether the term "employment" carried different meanings within the second and third limbs of s 56A of the Public Utilities Act (Cap 261, 2002 Rev Ed) ("the Public Utilities Act"). That provision read as follows:

> **Liability for offence committed by agent or employee**
>
> **56A.** Where an offence under this Act is committed by any person acting as an agent or *employee* of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any *employment* in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable for that offence in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part.
>
> [emphasis added]

40 In *Soil Investigation*, this court accepted that the word "employ" had both a broad as well as a technical meaning. The technical meaning referred to a legal relationship in the sense of employment pursuant to a contract of service, while the broad meaning referred to an engagement or use to do something whether or not there is a contract of service (at [31]). The word "employee" in the second limb of s 56A of the Public Utilities Act bore the *technical* meaning since it applied to technical and legal relationships such as agency and employment (at [32]–[34]), while the *broad* meaning applied to the word "employment" in the third limb of that same provision because it imposed secondary liability on any person who supervises and instructs a primary offender for the purposes of any engagement, whether or not there is a contract of service (at [31]).

41 Returning to the present case, it is clear to us that the "article" referred to in s 2(2)(*c*) of the Act refers to a *thing* that is *intended to be sold*, since that provision refers to the "adapting *for sale* of any article" [emphasis added]. In so far as s 2(2)(*a*) of the Act is concerned, it is difficult to discern any reason why Parliament would, in enacting that particular provision, intend to grant an exemption from property tax in respect of machinery used for the purposes of making matter which would *not* be *sold*, or in the processing of matter not intended to be sold (in so far as the latter is concerned, see the observations at [43] below). It seems to us that that would imply, rather counterintuitively, that Parliament intended to deprive the State of property tax revenue in order to encourage such an economically unproductive and potentially wasteful activity. We do not think that to be likely, in the absence of evidence to the contrary.

42 A *possible* counterargument that could be raised in response to the interpretation of the term "article" set out above (which was not argued before us) is that the words "for sale" are *expressly* mentioned *only* in s 2(2)(*c*) of the Act in relation to the "adapting" of the article in question, which supports an inference that Parliament intended to *confine* the requirement that the article in question be intended for sale *only* to ss 2(2)(*a*) (by implication) and 2(2)(*c*) but *not* s 2(2)(*b*) of the Act. In other words, it is arguable, from the text of s 2(2) of the Act, that while the term "article" in ss (2)(2)(*a*) and 2(2)(*c*) of the Act refers to an article intended to be sold, the same could not be said of the term "article" as used in s 2(2)(*b*) of the Act.

43 However, when considered in the light of the legislative purpose of s 2(2) of the Act, namely the incentivisation of machinery used for manufacturing processes, it is clear that the term "article" as used in s 2(2)(*b*) of the Act bears the *same* meaning as that in ss 2(2)(*a*) and 2(2)(*c*). It is, in our

view, difficult to conceive of manufacturing processes in which the *eventual* ***sale*** of the manufactured article was not intended. We do acknowledge that there may be situations – particularly in the context of s 2(2)(*b*) of the Act – in which the article ultimately intended to be sold first undergoes an intermediate process (for the purpose of "altering", "repairing", "ornamenting" or "finishing" the said article). However, even in such a situation, such a process must (as just mentioned) *generally* be undertaken with a view to the *eventual* ***sale*** of the article concerned. It *also* bears pointing out that such a situation would *also* necessarily involve a *sale* as well (although it would, in the nature of things, constitute a sale of *services* provided to "alter", "repair", "ornament" or "finish" the said article (for the ultimate sale of the same)). We do note, however, that the possible fact situations are myriad and Parliament may have intended to extend s 2(2) of the Act to fact scenarios which may not involve the eventual sale of the article. We have in mind, in particular, machinery that is used *only* in the context of "repairing" the article concerned. However, even in such a situation there is a sale of services to *repair* the article concerned and this may therefore fall within the letter and spirit of s 2(2)(*b*) of the Act. Accordingly, the presumption that Parliament intended a consistent definition of "article" throughout s 2(2) of the Act is *not*, in our view, rebutted. In our judgment, therefore, the definition of "article" in s 2(2) of the Act refers to matter which is *intended to be* ***sold*** or which is the subject-matter of a ***sale*** *of services* to make, alter, repair, ornament, finish or adapt for sale the same.

44 Bearing this in mind, we now turn to consider whether the Wind Tunnel is machinery, and if so, whether it falls within ss 2(2)(*b*) or 2(2)(*c*) of the Act.

Whether the Wind Tunnel is machinery

Identifying the Wind Tunnel

45 As stated at [6] above, the appellant's case is that the Wind Tunnel consists of the wind turbines, the primary diffuser, the turning vents, the inlet contractor and the flight chamber described above at [5]. The respondents, however, contend that the turning vents do not form part of the Wind Tunnel and that the appellant had purportedly made concessions to that effect before the VRB. The significance of this dispute is that the air-cooling properties of the turning vents would not be attributable to the Wind Tunnel if the respondents are correct.

46 In our view, the Wind Tunnel includes the turning vents. First, the turning vents were integral to the Wind Tunnel's control of airflow. Without them, the air generated by the wind turbines could not be directed into the flight chamber at the appropriate temperature for skydiving. Given that the appellant's case is that the Wind Tunnel altered the properties of air so as to allow for simulated skydiving, and therefore is qualifying machinery under s 2(2) of the Act, we think it highly unlikely that the appellant would concede that the turning vents – a critical component in achieving the desirable airflow for simulated skydiving – were not part and parcel of the Wind Tunnel. Furthermore, the appellant's case before the VRB was, in fact, that the turning vents were part of the dispute over the Property's annual value. When asked at the VRB hearing on 23 November 2018 by the respondents' representative, Mr Lau Kai Lee ("Mr Lau") what the machinery in question was, the appellant's representative, Mr Leung Yew Kwong ("Mr Leung"), responded as follows:

MR LAU:	Your Honours, I am instructed that the civil works are included, the 'T' itself excluded.
THE CHAIRPERSON:	Okay.
MR LEUNG:	I didn't quite hear, the 'T' is excluded?
MR LAU:	Excluded here.
MR LEUNG:	Okay.
MR LAU:	Just based on what you have tendered, right? What you all are claiming, right? Excluded, yes. We included everything.
MR LEUNG:	So in other words, the towers, the two return towers are included, because actually it's concrete, and the basement is included in the annual value, irrespective of this. In fact, it's already there. So even if we were to hold that – so the *issue is in relation to the 'T' only and the vents*.
THE CHAIRPERSON:	Okay, so correct.

[emphasis added]

47 Plainly, Mr Leung had informed the VRB that the dispute centred around the "T" shape (consisting of the central column and the upper bridge) *and* the turning vents. If the appellant's intention from the start was not to contest the inclusion of the turning vents in the annual value of the Property (implying that the turning vents were not part of the Wind Tunnel), it begs the question why Mr Leung would have mentioned that there was an issue as regards the vents at all.

Whether the Wind Tunnel is machinery

48 In determining whether the Wind Tunnel is "machinery" for the purposes of s 2(2) of the Act, the applicable test is that set out in the decision of this court in *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR(R) 569 ("*Pan-United*") at [66]. It must be shown that the dominant function of the Wind

Tunnel is one that would normally be attributed to machinery generally. In *Pan-United*, the structure in question was a floating dry-dock for lifting ships out of the water into a dry environment such that repair works could be conducted on the ships. It operated by pumping water into the tanks of the dock so as to submerge the dock in water. A ship would be led in directly above the dock, and water would be pumped out to resurface the dock and the ship along with it (at [7]). In that case, this court held that the floating dry-dock was not machinery. This was because while one of the functions of the floating dry-dock was to lift the ships up into a dry environment, it was not demonstrated to the satisfaction of the majority of this court that this function was a dominant one. The dry-dock served an equally, if not more important function of serving as the setting or environment in which the work could take place. It was therefore akin to a motor workshop, being the setting or environment to accommodate the vessel for the repair work, while the pumps were akin to a car jack, being the machinery used to facilitate the execution of the repair work (at [73]).

49 The respondents seek to draw a parallel between the Wind Tunnel and the floating dry-dock in *Pan-United*. They point out that:

(a) The flight chamber is a critical component of the Wind Tunnel. Without it, there would not be a safe and spacious setting for simulated skydiving to take place. The moving air column in the chamber is up to 16 feet wide while the flying height is 56.5 feet or five storeys high.

(b) The flight chamber is fully air-conditioned and has an 18 feet tall acrylic glass wall offering an unparalleled view of the South China Sea.

(c) Without the flight chamber to provide the necessary setting for simulated skydiving, it would be pointless for the fans to generate the

requisite airflow. The point of the Wind Tunnel was, therefore, to serve as a suitable environment for simulated skydiving.

50 In response, the appellant points out that:

(a) The flight chamber does not span the entire height of the five-storey building (*ie*, the Property) but is situated between the inlet contractor at the first storey and the primary diffuser at the upper part of the third storey.

(b) The cooling of the air in the Wind Tunnel is effected by the turning vents, and not by air-conditioning.

(c) Unlike the floating dry-dock in *Pan-United*, the Wind Tunnel was an apparatus for producing an "air-stream of known velocity" which fell within the dictionary meaning of the word "machinery", *ie*, "a device for altering the magnitude or direction of a force" [emphasis in original omitted]. It did not cease to perform this function. In any case, the flight chamber is only a small part of the entire Wind Tunnel. Serving as a setting for simulated skydiving was therefore not the dominant function of the Wind Tunnel as a whole.

51 Having considered the parties' arguments, we agree with the appellant that only the flight chamber had the function of serving as the setting or environment in which simulated skydiving could take place. The whole of the Wind Tunnel (including the flight chamber) constitute part of a system which creates, modifies and controls airflow. In *Pan-United*, the whole of the floating dry-dock was used as a setting for repair work on ships. That function was equally as important as the function of the dry-dock as machinery to lift ships

onto a dry area (at [73]). Here, the same argument only applies to *one* part of the Wind Tunnel (the flight chamber). It cannot be said that the function of the flight chamber as a setting for simulated skydiving applied to the other parts of the Wind Tunnel. Simulated skydiving could not take place in the wind turbines, the turning vents, the primary diffuser and the inlet contractor, even if the flying height could extend into these areas.

52 As for the respondents' contention that the point of operating the Wind Tunnel was to create an environment suitable for simulated skydiving within the flight chamber, this did not, in our view, *ipso facto* make the entire Wind Tunnel a setting or environment for simulated skydiving. To use the example referred to above, of the motor workshop and the car jack, the fact that there was no point in operating the car jack if the motor workshop received no vehicles to repair does *not* somehow render the car jack any less of a form of machinery, or somehow make the car jack a setting or environment for repairing vehicles. The same analysis applies in the present context.

Whether the Wind Tunnel is qualifying machinery under s 2(2) of the Act

*Whether the Wind Tunnel is qualifying machinery under s 2(2)(*c*) of the Act*

53 We now turn to the issue of whether the Wind Tunnel is qualifying machinery under s 2(2)(*c*) of the Act, or in other words, whether it is machinery used for the purpose of "adapting for sale" any article. As mentioned, the appellant unsurprisingly relied heavily on *First DCS (CA)* in order to make good its argument that s 2(2)(*c*) of the Act ought to apply in its favour in the present case. The appellant's argument was essentially that there was no meaningful distinction between *First DCS (CA)* and the present case. In our view, however,

the facts in *First DCS (CA)* can be *distinguished* from those in the present appeal. Let us elaborate.

54 In *First DCS (CA)*, this court quite clearly identified what product was involved right at the outset of its judgment, as follows (at [1]):

> … The respondent's [taxpayer's] business involves the *distribution of chilled water* to its customers ('the Customers'), other businesses on neighbouring properties in the Business Park, for the purposes of their air-conditioning needs. [emphasis added]

55 The primary issue that faced this court in that case was whether an "adapting ***for sale***" [emphasis added] had occurred within the meaning of s 2(2)(*c*) of the Act in so far as *the chilled water* was concerned. As both parties had agreed that an *adaptation* had in fact occurred (at [23]), the key issue that arose for the consideration of this court was whether a "*sale*" had occurred, given the fact "that ownership of the child water produced by the Cooling Machinery did not pass to the Customers" inasmuch as "there was technically no 'sale' of the chilled water" (at [24]). Whilst this court acknowledged (at [27]) that "it [was] true that the chilled water itself was not sold", and that "[i]n a *literal* sense, it is the *chilling effect of the water which was sold*; in other words, there was a provision of 'district cooling service'" [emphasis added], we nevertheless proceeded to observe thus:

> … But, in our view, it would be undue carping to insist that the article itself be sold where it is clear that a vital and essential characteristic of the article (*ie*, the cooling effect of the water in the present case) is the real subject of sale. In a modern society, manufacturing processes and the manner in which industries exploit such processes have endless inventions and permutations completely out of the wit and ken of the drafters of legislation dating from 140 years ago. A restrictive interpretation is uncalled for in such an instance. Indeed, s 9A of the Interpretation Act now requires the court to adopt a purposive approach …

56 If one were to examine the reasoning of this court in *First DCS (CA)* closely, it will be seen that what the court was, in *substance*, stating was that the *cooling effect of the water was* ***inextricably connected with*** the chilled water itself. In this regard, it will be recalled – and as we have noted above – that the taxpayer's business in this particular case "[involved] the distribution of chilled water to its customers" (see *First DCS (CA)* at [1]; also reproduced at [54] above). In so far as the *specific element* of "sale" was concerned, this court noted (in the quotation immediately preceding this paragraph) that "the *real subject* of sale" [emphasis added] was, in fact, the ***cooling or chilling effect*** of the water (at [27]). Viewed in this light, it could be said that *property in the cooling or chilling effect of the water had in fact passed* completely from the taxpayer in that case *to* the customers in return for monetary consideration passing from the latter to the former.

57 Put another way, what is indisputable, from the facts of *First DCS (CA)*, is that the taxpayer's machinery adapted water to a chilled state so as to produce the chilling effect sold. The important point is that *without the relevant act of adaptation* (the chilling of the water by the machinery)*, the chilling effect would* ***not*** *have existed*. The water itself was not sold; rather, it merely served as the ***means of transporting*** the property in the chilling effect to the customers: as to this, a useful analogy would be to liken the water travelling through the pipelines in *First DCS (CA)* to a delivery truck travelling on a road, carrying goods sold to the buyer, which, once the delivery has been made, returns empty to the seller's warehouse. In this hypothetical case, these facts undeniably point to the fact that the goods laden onto the truck were intended for sale.

58 Similarly, in *First DCS (CA)*, water travelled through pipelines to the customer's premises, carrying the *chilling effect* produced by the adaptation of

the water by the machinery. The chilling effect was delivered to the customers by means of their heat exchangers, whereupon the water returned, ***bereft of the chilling effect***, through pipelines to the taxpayer to be re-chilled. Again, these facts clearly point to the fact that the chilling effect of the water was intended to be sold. That is not, however, the case here; while we are prepared to accept that the adapted airflow in this case *did* carry aerodynamic properties of a kind conducive to simulated skydiving – which in turn would not have existed *but for* the adaptation of airflow by the Wind Tunnel – we are not satisfied that there was any transfer of property (*ie*, the skydiving-friendly aerodynamic properties of the air) to the customers of the appellant. Airflow was adapted by the Wind Tunnel into airflow carrying skydiving-friendly aerodynamic properties. The adapted article was the skydiving-friendly aerodynamic effect of the airflow. However, that did *not* change hands. The airflow carrying skydiving-friendly aerodynamic properties entered the flight chamber. Airflow carrying *the same* skydiving-friendly aerodynamic properties exited the flight chamber to be recirculated afresh. As the VRB noted in the VRB decision, "by its patented design and technology, the wind tunnel produces a *smooth and continuous flow of sped-up, high-pressured and cooled-down air in the flight chamber* when it is operated" [emphasis added] (at [8]). The skydivers themselves were not the terminus for the aerodynamic effect of the airflow, unlike the customers of the taxpayer in *First DCS (CA)*. This did not indicate that the aerodynamic effect of the airflow was intended to be *sold*.

59 Thus, in *First DCS (CA)*, the transfer of property in the adapted article – the *chilling effect* of the water – for monetary consideration took place in order for the customers of the taxpayer to enjoy it in their air-conditioning systems. *However*, in *this* case, there was no transfer of property in the adapted article (which, as mentioned, is the aerodynamic effect of the airflow). The skydivers

had paid money to enjoy the adapted article, the property in which remained at all times with the taxpayer. There was therefore ***no*** "*sale*" of the "adapted article" as such. The adapting of the aerodynamic effect of the airflow was therefore *not* an "adapting for sale" within the meaning of s 2(2)(*c*) of the Act – it was merely the means by which the skydivers could enjoy the experience of skydiving and was, in a manner of speaking, *one step removed* from what the customers in *First DCS (CA)* desired as well as received.

60 For completeness, we observe that thus rationalised, the decision of the VRB in another case which the respondents brought to our attention, *Wave House Singapore Pte Ltd v Chief Assessor* [2016] SGVRB 1 ("*Wave House*"), can be understood the same way. In that case the taxpayer's machinery, the "Wave Loch system", generated waves of up to 10 feet high by pumping water over curved walls to allow for surfing and other water sports (at [7]). The "adapted article" here would be the amplitude of the water. However, that article did not change hands, unlike in *First DCS (CA)*. Similar to the present case, the surfers and water sportsmen had paid money to enjoy the adapted article, the property in which remained at all times with the taxpayer. Section 2(2)(*c*) of the Act was therefore not satisfied on this analysis (although the VRB in *Wave House* reached the same conclusion on different grounds, namely, that s 2(2) of the Act did not apply to non-industrial premises).

61 At this juncture, however, it is important to note that the reasoning as well as decision of this court in *First DCS (CA)* probably stand at *the very border* of what would pass legal muster under s 2(2)(*c*) of the Act. It is axiomatic – as was pointed out right at the outset of this judgment – that tax is a creature of statute and it is not for the courts to stretch the relevant statutory provisions (such as s 2(2)(*c*) of the Act) beyond what their language and context

are able to reasonably bear, thus becoming "mini-legislatures" in the process. Legal provision can and must be made by the *Legislature* itself, if and when necessary. Whilst each situation is of course fact-specific, the facts in the present case go *beyond* even those in *First DCS (CA)*, as we have explained above – and the same could be said of the facts in *Wave House* as well (although, as already noted, the VRB utilised a different line of reasoning to arrive at its decision in that case).

*Whether the Wind Tunnel is qualifying machinery under s 2(2)(*b*) of the Act*

62 We now turn to the remaining issue, which is whether the Wind Tunnel is qualifying machinery under s 2(2)(*b*) of the Act, or whether it is used for the purpose of "altering, repairing, ornamenting or finishing" any "article". There is no doubt in our mind that the Wind Tunnel *did* alter airflow so as to induce its skydiving-friendly aerodynamic properties. However, for the reasons set out in the preceding section, such altered airflow was not an article which was intended to be *sold per se*. There was also no sale of an alteration service to the skydivers in respect of the airflow in the Wind Tunnel, which, as we observed in the preceding section, did not belong to the skydivers at any point in time. What occurred, instead, was that the appellant altered the airflow which existed at all material times in *its own premises* (*ie*, the Wind Tunnel) in order to charge a fee for the *enjoyment* of the altered airflow to the skydivers. This is not, in our view, a sale of services to the skydivers for the alteration of the airflow any more than the ornamentation of an object for exhibition in a gallery to which an admission fee is charged is a sale of services to the gallery's visitors for the ornamentation of that object. As such, in our view, the Wind Tunnel does *not* qualify for the property tax exemption under s 2(2)(*b*) of the Act; this conclusion applies with equal force to *Wave House* (though, again, the VRB in that case

reached the same conclusion on different grounds). For completeness, we note that the appellant (correctly, in our view) accepted that s 2(2)(*a*) of the Act was clearly *not* applicable in the present case as there was no "*making* of any article or part thereof" [emphasis added]. In any event (and as we have just noted), the altered airflow was not an article which was intended to be sold *per se*.

Conclusion

63 For the reasons set out above, we dismiss both the appeal (albeit for different reasons than those adopted by the Judge) and SUM 1. Having regard to the respective parties' cost schedules, we award the respondents costs in the sum of $35,000 (all-in) for both the appeal and SUM 1. There will be the usual consequential orders.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Belinda Ang Saw Ean
Judge of the Appellate Division

Tan Hee Joek (Tan See Swan & Co) for the appellant;
Quek Hui Ling, Pang Mei Yu and Shawn Joo Jian Hua (Inland Revenue Authority of Singapore (Law Division)) for the respondents.
