Pan-United Marine Ltd v Chief Assessor
[2008] SGCA 21

Case Number : CA 26/2007

Decision Date : 20 May 2008

Tribunal/Court : Court of Appeal

Coram : Andrew Ang J; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Ong Sim Ho, Yang Shi Yong and Chng Teck Un Stanley (Drew & Napier LLC) for the appellant; Julia Mohamed and Foo Hui Min (Inland Revenue Authority of Singapore) for the respondent

Parties : Pan-United Marine Ltd — Chief Assessor

Revenue Law – Property tax – Annual value – Assessment – Whether floating dry docks are "buildings" within the meaning of s 2(1) Property Tax Act (Cap 254, 1997 Rev Ed)

Revenue Law – Property tax – Annual value – Assessment – Whether floating dry docks are "machinery" within the meaning of s 2(2) Property Tax Act (Cap 254, 1997 Rev Ed)

Revenue Law – Property tax – Annual value – Assessment – Whether floating dry docks are part of land for purposes of property tax – Whether fixture test or enhancement test is correct test to apply

20 May 2008 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the majority):

Introduction

1 The present appeal raises extremely interesting – albeit difficult – issues of interpretation and application in the context of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the Act").

The facts

2 The facts are undisputed and straightforward. The appellant, Pan United Marine Ltd, is the owner of a shipyard and a concrete batching plant located at 33 Tuas Crescent ("the Property"). The Property comprises five plots of land leased from Jurong Town Corporation ("JTC") with an aggregate site area of 112,630m² and a water frontage of 359m at Tuas Bay. Three plots of land on which the Property sits were leased in 1982; the remaining two plots of land were leased in 1991 and 1993 respectively. All leases will expire simultaneously on 29 February 2012. Except for one plot of land, for which a lump sum premium was paid upfront, all the other lots were leased on annual land rents. Water frontage fees were also payable to JTC.

3 The Chief Assessor, the respondent in this appeal, had assessed the annual value of the Property under the Act to be $4,586,000 with effect from 1 January 2001. In his assessment, the respondent had adopted the "contractor's test" method in determining the annual value of the Property under the Act and had sought to include, *inter alia*, the cost of three floating dry docks which were berthed above the seabed adjacent to the Property.

4 The three floating dry docks in question are afloat in Tuas Bay. The appellant has a temporary occupation licence ("TOL") to use the seabed for the purpose of keeping the floating dry docks afloat in Tuas Bay. One of the docks was commissioned around 1987 ("the 1987 dock"); the other two were commissioned around 1992 and 1997 respectively.

5 The floating dry docks are hinged to pile-like structures which are permanently fixed to the seabed. The 1987 dock is held in place by means of anchor and anchor chains, and the remaining two docks are held by clamping collars to mooring pins. The floating dry docks are capable of being removed, towed away and reinstated, whether for a short or a long distance. The 1987 dock was moved several times for the purpose of repair as well as for getting it out of the way of vessels' launch paths. The other two docks were not moved, although they could be moved, if required. An older dock which was used before the 1987 dock was towed away to Batam in 1993, and another dock built by the appellant in 1992 was towed to India to its buyer.

6 The floating dry docks are connected to the Property by a ramp, similar to a bridge. The ramp permits workers, material and machinery to get to the floating docks via the Property. Aside from the ramp, the floating docks are not connected to the Property.

7 It would be helpful at this juncture to set out briefly how a floating dry dock and a conventional dry dock (commonly referred to as a basin, or graving, dry dock) operate. For the floating dry dock, water is pumped into tanks of the dock so as to make it submerge in water. The ship is subsequently led in directly above the dock. Water is then pumped out to allow the dock to gradually resurface, thus lifting the ship above the water. A basin dry dock, on the other hand, uses a gate to control the water. The gate is first released to allow water to cover the dock, and the ship is led in. The gate is then closed and water is pumped out so that the ship will rest on the dock and above the water level. Notably, in the present appeal, the appellant did not own or utilise any basin dry docks.

8 Both floating dry docks and basin dry docks are used for ship repair, maintenance, as well as other work, but the former will float on water while the latter are excavated into land. Unlike a basin dry dock, a floating dry dock is cheaper and can be moved away when needed elsewhere. However, a floating dry dock cannot take bigger vessels, as it will not be able to support the weight of such ships properly. As such, basin dry docks are used for bigger ships.

The proceedings below

9 The appellant appealed at first instance to the Valuation Review Board ("the Board") against the respondent's assessment of the annual value of the Property. The appellant disputed, *inter alia*, the inclusion of the three floating docks in the assessment of the annual value. The appeal was heard by the Board in October 2004. The Board reserved judgment and, on 16 November 2004, the Board dismissed the appeal and confirmed the annual value of $4,586,000 proposed by the respondent (see *Pan United Shipyard Pte Ltd v Chief Assessor* [2006] SGVRB 1).

10 Dissatisfied with the Board's decision on the issue of including the floating docks as being assessable to property tax, the appellant further appealed to the High Court. The High Court heard the appeal on 2 November 2006 and reserved judgment. On 8 February 2007, the High Court judge ("the Judge") dismissed the appeal and delivered his grounds of decision (see *Pan United Marine Ltd v Chief Assessor* [2007] 2 SLR 633 ("the GD")).

11 In essence, the Judge found, *inter alia*, that:

(a) the floating docks fell within the definition of "buildings" under s 2(1) of the Act and were therefore liable to the charge of property tax under s 6(1) of the Act;

(b) the floating docks were to be assessed as part of the shipyard land; and

(c) the floating docks were not "machinery" within the meaning of s 2(2) of the Act.

Issues on appeal

12 The issues that arise in this appeal were identical to the issues raised before the Board and the Judge. In essence, the pith and marrow of the appeal was whether the three floating docks ought to be included in the assessment of the annual value of the Property. This question turned on the following three issues:

(a) Are the floating dry docks "buildings" within the meaning of s 2(1) of the Act?

(b) Are the floating dry docks part of the land for the purposes of the Act?

(c) Are the floating dry docks "machinery" within the meaning of s 2(2) of the Act?

Are the floating dry docks "buildings" within the meaning of section 2(1) of the Act?

13 Before discussing the substantive issues at hand, we wish to make one observation. Although the appellant is merely the lessee of the Property, it is nonetheless deemed to be the owner thereof by virtue of s 2(8) of the Act which reads as follows (*cf* also the Singapore Valuation Review Board decision of *McAlister Developments Ltd v Chief Assessor* [1969] 1 MLJ xlv at xlix):

> In assessing the annual value of any property comprised in … a lease of property by a public authority [in this case, JTC] for a period exceeding 3 years —
>
> (*a*) the grantee or lessee of the property shall be deemed to be the owner thereof;
>
> …

14 The first issue stems from s 6(1) of the Act, which is the charging provision for the imposition of property tax. Section 6(1) of the Act reads as follows:

> **Charge of property tax**
>
> **6.**—(1) As from 1st January 1961, a property tax shall, subject to the provisions of this Act, be payable at the rate or rates specified in this Act for each year upon the annual value of all houses, *buildings*, lands and tenements whatsoever included in the Valuation List and amended from time to time in accordance with the provisions of this Act.
>
> [emphasis added]

Accordingly, the floating dry docks must fall within "houses, *buildings*, lands or tenements" [emphasis added] in order for them to be included for the purposes of assessment to property tax.

15 The term "building" is defined in s 2(1) of the Act, as follows:

> "building" means any structure erected on land *and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise,* ***any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery***; …
>
> [emphasis added in italics and bold italics]

16 The emphasis in the above definition illustrates what is, in our view, an extremely important point: Although perhaps a little infelicitously phrased, the definition of "building" comprises *two main parts*, the *second* part of which comprises, in turn, two sub-parts, which are identified by *italics and bold italics, respectively.* Indeed, the Singapore Valuation Review Board, in *Yat Yuen Hong Co Pte Ltd v Chief Assessor* [1959-1986] SPTC 135 ("*Yat Yuen Hong*"), refers to three separate parts, but, for reasons that will be apparent in a moment, the latter two parts which the Board refers to correspond to the aforementioned two sub-parts which, taken together, actually comprise one integral whole – thus resulting in *two* main parts as just mentioned. That this demarcation exists is clear from the relevant *legislative history*.

17 There had, in fact, been no definition of "building" in the Act when it was first promulgated in 1960 as the Property Tax Ordinance (Ord 72 of 1960). The definition was inserted later by s 2(*b*) of the Property Tax (Amendment) Act 1965 (Act 24 of 1965). The definition then was a little different from that which exists in the Act at present, and read as follows (with the additional words that are now not present in the Act highlighted in italics):

> "building" means any structure erected on land and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise, *and includes* any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery; … [emphasis added]

18 It will immediately be seen that the definition, in its *original* form (as set out in the preceding paragraph), supports our view that the definition of "building" in the Act comprises *two main parts (with the second main part comprising two sub-parts)*. The *first main part* is the *general* definition where a "building" is clearly stated to "*mean*" "any structure erected on land". There follows the *second main part*, which is represented by the words in italics and bold italics at [15] above. As we mentioned, the words in *italics* represent the commencement of the *first sub-part* (of this *second main part*), whilst the words in *bold italics* represent the commencement of the *second sub-part* (of this *second main part*). As we shall see, the *second main part* deals with *specific* structures. That there are *two sub-parts* is supported by *the inclusion of the phrase "and includes" twice* in the definition itself (see also *Yat Yuen Hong*). It is true that the phrase "and includes" (when it occurs a second time) is no longer present, but that is (as we explain below at [28]–[30]) probably due to a grammatical as well as a functional reason, and does *not* detract from the interpretation adopted in the present appeal. As already mentioned, this interpretation is also supported by the *legislative history* of the definition of "building", to which we now turn.

19 The rationale for this amendment is to be found, first, in the explanatory note to the Property Tax (Amendment) Bill (Bill 50 of 1965) ("the 1965 Bill"), as follows:

> [A] *new* definition of "building" is to be included *to remove doubts as to whether certain structures will be liable to the payment of property tax* under the Ordinance. [emphasis added]

20 Second, the following observations by the then Minister for Finance, Mr Lim Kim San, during the second reading of the 1965 Bill should also be noted (see *Singapore Parliamentary Debates, Official Report* (30 December 1965) vol 24 at col 774):

> There is *no definition* of "building" in the Ordinance *at the present time*, and one of the amendments made by clause 2 is the inclusion of a definition. *This, apart from its usefulness in regard to buildings and structures generally, specifically provides for the inclusion of items like underground and overground tanks and oil refineries*. [emphasis added]

21 The observations set out in the preceding paragraph are not only consistent with the relevant part of the explanatory note (set out above at [19]) but also elaborate upon it in important respects. In particular, it is clear that the (then) new definition of "building" was introduced in the Act for two distinct purposes.

22 The first was to set out a general definition of a "building" *as well as* to reiterate (by way of *specific elaboration*) the paradigm examples of a "building". As the Minister confirmed, one purpose of the definition lay in "its usefulness in regard to buildings and structures *generally*" [emphasis added] (see [20] above). And this purpose is encompassed in the *first main part* (which refers to a "building" as *meaning* "any structure erected on land"), which comprises the *general definition* of a "building" within the meaning of the Act. What *follows is* an *elaboration* of *specific (and typical or paradigm) examples* of a "building", which is *further* encompassed within what we have characterised as the *first sub-part* of the *second main part* of the present definition, as encompassed within the following words:

> … and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise …

23 The second purpose of the (then) new definition was to *extend* the definition of a "building" to encompass structures that would *not* be traditionally considered to be "buildings". In so far as this particular category of structures is concerned, the focus (at the time the (then) new definition of "building" was introduced) was, as the Minister himself observed, on "the inclusion of items *like* underground and overground tanks and oil refineries" [emphasis added] (see [20] above). However, the word "like" clearly demonstrates that the items mentioned are not exhaustive, although they do (as we have just noted) constitute the main examples. Indeed, this is evident from *the relevant statutory language itself*, as embodied within the *second sub-part of the second main part*, and which is encompassed within the following words:

> … any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery …

24 In *summary*:

(a) The definition of "building" in the Act has *two main parts*.

(b) The *first main part* comprises a *general definition* of a "building" as being "any structure erected on land".

(c) The *second main part* has *two sub-parts*, each of which has *slightly different* functions, although *both* sub-parts have a common thread inasmuch as they focus on *specific structures* (*unlike* the *first main part* which, as we have seen (at [24(b)] above) is a *general definition*).

(d) The *first sub-part of the second main part elaborates upon the first main part* by way of *specific (and traditional) examples* (and is encompassed within the words "and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise").

(e) The second sub-part of the second main part has a somewhat different function from the first sub-part. It is intended to *extend* the definition of "building".

25 Such an approach is also not only consistent with, but is (in many ways) buttressed by, the

approach adopted by the Singapore High Court in the leading decision of *Chief Assessor & Comptroller of Property Tax v Van Ommeren Terminal (S) Pte Ltd* [1993] 3 SLR 489 ("*Van Ommeren*") (where the legislative history was also referred to briefly). In that case, Chao Hick Tin J was of the view that the definition of "building" in s 2(1) of the Act was *not* confined only to structures erected on land. The learned judge observed thus (at 492, [11]–[13]):

> It is an established canon of construction that when the word 'means' is used in a definition that definition is intended to be exhaustive. It is different if the word 'include' is used. …
>
> …
>
> However, in the definition now under consideration, the legislature has used the words 'means … and includes'. How should one approach such a definition? In my opinion a plain reading of that definition is surely this. The legislature has defined the word 'building' to bear the ordinary sense of 'any structure erected on land'. *But it has also expanded the meaning of that word to encompass those items enumerated after the words 'and includes' irrespective of whether those items are structures erected on land. It will be noted that the legislature has used the words 'and includes' twice in the definition. With respect, I am unable to agree with the Board that the things enumerated after the words 'and includes' are merely examples of structures erected on land. For instance, a pier or jetty is not a structure erected on land. It is a structure erected over the sea or water. Similarly, I do not see how one could appropriately say that an underground tank is a structure erected on land. Indeed, most of the items listed are not items one would ordinarily think of as buildings.*
>
> [emphasis added]

26 Indeed, the approach adopted by this court (as summarised at [24] above) may in fact be seen as a slight elaboration of the perceptive analysis contained in the judgment of Chao J in *Van Ommeren* (the main part of which has been set out in the preceding paragraph).

27 A little side note might be relevant at this juncture. As we have noted above (at [18]), the phrase "and includes" appeared twice in the *original* version of the definition of the "building" in s 2(1) of the Act. However, it appears *only once* in the present definition (corresponding to the first time it appeared in the original version). There appears to be no clear explanation for the deletion of this phrase. We would, in this regard, venture one possible explanation and (if that explanation is accepted) one possible (and, more importantly, curious) result.

28 The possible explanation is grammatical in nature. It might have been thought that it sufficed to include the phrase "and includes" only once, right at the beginning of what we have termed the first sub-part of the second main part. It might, correspondingly, have been thought that the inclusion of that phrase twice imported a grammatical awkwardness. *However*, the *present* version of the definition of "building" in s 2(1) of the Act does raise a possible (and curious, albeit non-substantive) result.

29 In the original version of the definition of "building" under the Act, the use of the phrase "and includes" twice served an important *function* each time inasmuch as each time that phrase was used it assisted in the demarcation of the *first sub-part* of the second main part and the *second sub-part* (of the same (second) main part). Now that the phrase appears only once at the beginning of the second main part, there would – *grammatically speaking* – appear to be *three sub-parts* in the second main part instead. In *addition to* the two sub-parts already noted, the words at the end of that definition ("and any oil refinery") – in particular, the word "and" – suggest that oil refineries now

constitute a discrete *third sub-part*. However, it will readily be seen that *nothing of substance* turns on this, and we therefore say no more about it, save to observe that if the grammatical awkwardness can be ignored (as we argue it should), then we are left with just *two sub-parts* (instead of three) in so far as the *second main part* is concerned. This is, of course (and as we have explained in detail above), wholly consistent with the original spirit and intent of the definition when it was first introduced.

30 We wish to add that s 4(1) of the Revised Edition of the Laws Act (Cap 275, 1995 Rev Ed) ("RELA") sets out the powers of the Law Revision Commissioners in the preparation of the revised editions of all Acts of Parliament in Singapore. The salient portions of s 4(1) of the RELA read as follows:

> In the preparation of the revised edition of Acts, the Commissioners shall have power in their discretion —
>
> …
>
> (*j*) to alter the form of arrangement of any section of an Act by transposing words, by combining it in whole or in part with another section or other sections or by dividing it into two or more subsections;
>
> …
>
> (*l*) to correct grammatical, typographical and similar mistakes in any Act and to make verbal additions, omissions or alterations not affecting the meaning of any Act;
>
> …
>
> (*p*) to delete any words, expressions, nomenclature or other provisions in any Act which have expired or become obsolete, including references to repealed Acts, and to substitute therefor, where necessary, appropriate words, expressions, nomenclature or provisions or references to the appropriate Acts;
>
> …

In this regard, it appears that the phrase "and includes" was deleted by the Law Commissioners from the *original* version of the Act to correct any grammatical awkwardness without changing the original meaning of "building" in the Act. In our judgment, this only confirms our interpretation adopted above that the definition of "building" comprises *two main parts (with the second main part comprising two sub-parts)* (see above at [16] and [18]).

31 What is relevant (indeed, crucial) in so far as *the present appeal* is concerned is the meaning of the word "dock" in the definition of "building" in s 2(1) of the Act. More importantly, the word "dock" occurs within what we have described as the *second sub-part of the second main part* of this particular definition.

32 We have already seen (at [23] above) that the *second sub-part of the second main part* of the definition of "building" was intended to *extend* that particular definition. Indeed, as we have also seen (at [20] above), the Legislature did refer expressly to underground or overground tanks for the storage of solids, liquids or gases as well as to oil refineries (which are the last-mentioned items in that sub-part). What, then, about the *other structures* mentioned in that particular sub-part (*viz*,

"slip", "wharf", "pier", "jetty", "landing-stage", and (most importantly, from the perspective of the *present appeal*) "dock")? These structures refer, in fact, to structures which are *not part of the land in the conventional sense as such*; the reference is, specifically, to "any *slip*, *dock*, *wharf*, *pier*, *jetty*, *landing-stage*, *underground or overground tank for the storage of liquids or gases*, and *any oil refinery*" [emphasis added]. It is particularly significant, for the purposes of the present appeal, that there is reference to structures such as "slip", "dock", "wharf", "pier", "jetty" and "landing-stage".

33 The above interpretation (relating to the two main parts in the definition of "building" in s 2(1) of the Act) is, in fact, buttressed by the definition of "annual value" in (also) s 2(1) of the Act, which reads as follows:

> "annual value" —
>
> > (*a*) in relation to *a house or building or land or tenement, not being* a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax); and
> >
> > (*b*) in relation to *a wharf, pier, jetty or landing-stage*, means the gross amount at which the same can reasonably be expected to be let from year to year, the tenant paying the expenses of repair, insurance, maintenance or upkeep[.]
>
> [emphasis added]

3 4 It is clear, without more, from the very definition of "annual value" as set out in the preceding paragraph, that there is a distinction between structures that are part of the land in the conventional sense and those that are not.

35 It is appropriate, at this juncture, to consider the meanings commonly attributed to the structures mentioned in the *second* part of the definition of "building" in s 2(1) of the Act by reference to *The Concise Oxford Dictionary* (Oxford University Press, 10th Ed, 1999), as follows:

> "slip": short for "slipway" [which is defined as] a slope *leading into* water, used for launching and landing boats and ships or for building and repairing them.
>
> "dock": an enclosed area of water in a port for the loading, unloading *and repair* of ships … a group of *piers* where a ship or boat may moor for loading and unloading [and see the definition of "pier" below].
>
> "wharf": *a level quay-side area to which* a ship may be moored to load and unload.
>
> "pier": "a structure leading *out to sea* and used as a landing stage for boats or as a place of entertainment.
>
> "jetty": "a *landing stage or* small *pier* … a construction built *out into* the water to protect a harbour, stretch of coast, or riverbank [and see the definitions of "landing stage" below and of "pier" above].
>
> "landing stage": a platform on to which passengers or cargo can be landed *from* a boat.
>
> [emphasis added]

36 The corresponding meanings found in *The Oxford English Dictionary* (Clarendon Press, 2nd Ed, 1989) are as follows:

> "slip": **a.** An artificial slope of stone or other solid material, built or made beside a navigable water to serve as a landing-place. **b.** … An inclined plane, *sloping gradually down* to the water, on which ships or other vessels are built or repaired.
>
> "slip-way": A sloping way *leading down into* the water; a slip.
>
> "dock": An artificial basin excavated, built round with masonry, and fitted with flood-gates, into which ships are received for purposes of loading and unloading *or for repair*.
>
> "dry or graving dock": a narrow basin into which a single vessel is received, and from which the water is then pumped or let out, leaving the vessel dry for the purpose of repair (Sometimes also used for building ships).
>
> "*floating dock*": a large floating structure *that can be used like a dry dock*.
>
> "wharf": A substantial structure of timber, stone, etc., *built along the water's edge*, so that ships may lie alongside for loading and unloading.
>
> "pier": A solid structure of stone, or of earth faced with piles, *extending into the sea or a tidal river* to protect or partially enclose a harbour and form a landing-place for vessels; … also, *a projecting landing-stage or jetty* on the bank of a river or lake … [and see the definitions of "landing-stage" and of "jetty" below].
>
> "jetty": **a.** A *mole, pier, or the like*, *constructed at the entrance of* a harbour, *or running out into* the sea or a lake, so as to defend the harbour or coast; a similar structure running into a river so as to divert the current from a threatened part of the bank; an outwork of piles or timber protecting a pier, a starling. **b.** *A projecting part of a wharf; a landing-pier,* a timber pier of slight construction [see also the definitions of "wharf" and of "pier" above].
>
> "landing-stage": A platform, often a floating one, for the landing of passengers and goods *from* sea-vessels[.]
>
> [emphasis added]

37 The common thread amongst the structures just considered is that each structure, although connected to (and leading out of) the land or property concerned, is (with the possibility of one exception considered later at [38] below) not necessarily part of the land or property concerned but lies (in part or in whole) beyond the physical boundary of the land or property concerned. However, they are, from a purposive and functional perspective, intended to form part of that particular piece of land or property. This is, in fact, an extremely crucial point, which we shall have occasion to return to in the next section of this judgment.

38 It is true that a "dock" might possibly lie within the land or property concerned (this is a "basin dry dock", briefly referred to at [7]–[8] above, and considered at [71] below), but it could, equally, lie beyond the physical boundary of the land or property as well (this is a "floating dry dock", which is the type of dock considered in the present appeal). Indeed, given the similar functions of both types of docks just mentioned (which is to facilitate the necessary work with regard to ships and other sea-bound vessels), it would be artificial in the extreme to argue that the word "dock" in

the definition of "building" in s 2(1) of the Act should be confined only to "basin dry docks" and excludes "floating dry docks". Further, it is clear that all the rest of the structures (with, perhaps, the exception of "slip" which involves (according to the definition at [35] and [36] above) some part of that structure being on the land or property itself) mentioned in this particular definition (of "building") are (as the preceding paragraph clearly demonstrates) structures that lie wholly beyond the physical boundary of the land or property concerned.

39 Indeed, we are also in agreement with the reasoning of the Judge who arrived at the same conclusion by referring, first, to the definition of "dock" (in the maritime sense) in *The Oxford English Dictionary* (Clarendon Press, 2nd Ed, 1989) vol IV (see also above at [36]), where the reference is to "[a]n artificial basin excavated, built round with masonry, and fitted with flood-gates, into which ships are received for purposes of loading and unloading or for repair", but where there is also reference to a "floating dock" (see the GD at [11]). The Judge then proceeded to find that a floating dry dock was indeed a subset of "dock" by referring to the definition of the *verb* "dock" in the same work ("[t]o take, bring, or receive (a ship) into a dock"), and concluded thus (at [12] of the GD):

> In my view, the verb is the key. The activity concerned is the bringing of a ship into a dock. There are various types of docks depending on the purpose for which the ship is docked and the business decision of the entity that is performing the activity in furtherance of that purpose. A floating dry dock is just one type of dock. I therefore find that the floating dry docks in issue fall within the term "dock" in the definition of "building" in s 2(1) of the Act.

40 Reference may also be made to the definition of "annual value" set out above at [33], where, significantly perhaps, the terms "slip" and "dock" are not mentioned because, in so far as "docks" are concerned, these can refer to "basin dry docks" as well, and, in so far as "slips" are concerned, we have just noted that some part of that particular structure could be part of the land or property itself. *However*, it is clear that both "slips" and "docks" *can* lie *beyond the physical boundary* of the land or property concerned and – to that extent – are *grouped together* with *other structures* in the *second sub-part* of the *second main part* of the definition of "building" in s 2(1) of the Act which, as noted at the end of the preceding paragraph, whilst connected with the land or property concerned, lie *wholly beyond* the physical boundary of the land or property.

41 It suffices, for present purposes, to note that the structures that are the subject matter of the present appeal *do*, in fact, come, *prima facie*, under the rubric of a "*dock*" within the definition of "building" in s 2(1) of the Act. Having regard to the argument from artificiality (at [38] above), it is our view that a "dock" is *not* confined to a "basin dry dock" and would include a "floating dry dock" as well. In the circumstances, therefore, a "floating dry dock" would clearly fall *within* the definition of "building" in s 2(1) of the Act.

42 One final point remains. Did it matter that the connection of the floating dry docks to the land was by way of a ramp? In particular, did it matter that such connection was horizontal rather than vertical? In our view, nothing substantive turns on this issue in the context of the specific facts in the present appeal. As we have already noted, *sans* the floating dry docks, the leases would have been useless to the appellant, given the business it was in. These floating dry docks were clearly annexed to and considered (as well as used) as part of the land. One must look to the *substance* rather than the form of the situation concerned. Indeed, a concern merely with form leads to arid technicality and consequent artificiality; it also encourages (here) taxpayers to use any and every means to circumvent the *spirit* of the law whilst *ostensibly* obeying the letter thereof. As (if not more) importantly, the approach we have advocated is also wholly consistent with the fact that the definition of "building" in s 2(1) of the Act (as we have seen above) includes structures (such as docks, slips, wharves, piers, jetties and landing-stages) whose only clear connection with the land or

property concerned is, in point of fact, *horizontal rather than vertical*.

Are the floating dry docks part of the land for the purposes of the Act?

Introduction

43 Having found that the floating dry docks in the present proceedings fall within the definition of "building" in s 2(1) of the Act, it is, strictly speaking, unnecessary to consider the next issue, *viz*, whether the floating dry docks – which are positioned *outside the physical boundary* of the land – are *also part of the land* itself. This is because as the floating dry docks fall within the definition of "building" in s 2(1) of the Act, they are, in accordance with the terms of s 6(1) of the Act (which encompasses "buildings"), subject to property tax. Further, it would appear rather odd – if not illogical – to characterise a particular structure as a "building" within the meaning of the Act, only to decide that it was not subject to property tax because it did not form part of the land. Put simply, a "building" would, *by its very nature and definition*, constitute part of the land. If, however, that structure did not constitute a "building" within the meaning of the Act, it could still be subject to property tax if it fell, instead, within the (broader) concept of "lands" within the meaning of s 6(1) of the Act (which, it should be noted, is not defined precisely because it is so broad); in this regard, reference may also be made to *Van Ommeren* ([25] *supra*) and the Malaysian High Court decision of *The Shell Company of the Federation of Malaya Ltd v Commissioner of the Federal Capital of Kuala Lumpur* [1964] MLJ 302 ("*The Shell Company*"), as well as David Widdicombe, The Hon David Trustram Eve & Anthony Anderson, *Ryde on Rating* (Butterworth & Co (Publishers) Ltd, 13th Ed, 1976), especially at p 148. It is only at *this* particular stage that it would need to be ascertained whether or not the structure concerned was *part of the land*.

44 During the course of the hearing of this appeal, it transpired, in fact, that there were two alternative (and quite different) tests that could be adopted in order to resolve this particular issue. Not surprisingly, perhaps, the appellant advocated one whereas the respondent advocated the other.

The fixture test

45 The first test ("the fixture test"), which was relied on by the appellant and applied by the Judge in the court below, is that embodied in the oft-cited English decision of *Holland v Hodgson* (1872) LR 7 CP 328 ("*Holland*"), where Blackburn J, delivering the judgment of the court, observed thus (at 334–335) :

> *There is no doubt that the general maxim of law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances as indicating the intention, viz., the degree of annexation and the object of the annexation.* Where the article in question is no further attached to the land, then by its own weight it is generally to be considered a mere chattel; see *Wiltshear* v. *Cottrell* [(1853) 1 El & Bl 674; 118 ER 589], and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land: see *D'Eyncourt* v. *Gregory* [(1866) LR 3 Eq 382]. [emphasis added]

Accordingly, the two considerations for determining whether the floating dry docks are fixtures or chattels rested on (a) the degree of annexation; and (b) the object of annexation.

46 In so far as the purpose of annexation is concerned, the following observations by Boreham J in the English High Court decision of *Hamp v Bygrave* (1983) 266 EG 720 at 724 are apposite:

The second test is: What was the purpose of the annexation? Was it in order to enjoy the chattel as a chattel or was it to improve the freehold in a permanent way? There is, in my judgment, authority for the following propositions: (a) Items which are firmly fixed to the land may yet remain chattels if (1) the purpose of the annexation was to enjoy them as chattels and (2) the degree of annexation was no more than was necessary for that purpose. See *Re de Falbe, Ward* v *Taylor* [1901] 1 Ch 523, which was a case concerning valuable tapestries. (b) Articles which are intended to improve, in the sense of being a feature of, the land though their annexation is by no more than their own weight may be regarded as fixtures. See *D'Eyncourt* v *Gregory* (1866) LR 3 Eq 382. (c) *While the earlier law attached greater importance to the mode and degree of annexation, more recent authorities suggest that the relative importance of these considerations has declined and that the purpose of the annexation is now of first importance.* In judging the purpose of the annexation regard must be had to all the circumstances, including the manner of annexation and the intention of the annexor or occupier of the land at the relevant time. See *Leigh* v *Taylor* [1902] AC 157. (d) Nevertheless, in the absence of evidence of a contrary intention, the prima facie inference to be drawn from the mode and degree of annexation will not be displaced … [emphasis added]

47 The principles relating to the fixture test are also well-summarised in a leading textbook, as follows (see Kevin Gray & Susan Francis Gray, *Elements of Land Law* (Oxford University Press, 4th Ed, 2005) at paras 1.71, 1.72 , 1.75, and 1.81 (and the authorities cited therein, including the cases cited in the preceding two paragraphs)):

1.71 The distinction between fixtures and chattels has often been said to turn on two separate but related tests as to the intention of the original owner of an object in bringing it into close association with the realty. As Blackburn J indicated in *Holland v Hodgson*, these tests relate, ***first***, to the degree or mode of annexation present in the given circumstances and, ***second***, to the general purpose of annexation. The intention of the annexor himself is material only in so far as it can be presumed from either the degree or the overall purpose of the annexation. *In reality, however, the differentiation of fixtures and chattels may now depend so heavily upon the circumstances of each individual case that relatively few guidelines remain in the modern law which are capable of unambiguous application to particular facts. Almost the only immutable principle* is the idea that *some degree of physical connection* is necessary before a chattel can be said to have become part of the realty.

1.72 The *older* of the two traditional tests takes *the more primitive form* of an enquiry into the degree of the *physical attachment* between the object and the pre-existing realty. …

1.75 *… Modern case law strongly suggests that the relative significance of the degree of annexation has declined and that considerations of purpose are 'now of first importance'* [citing, *inter alia*, *Hamp v Bygrave*]. Generally the tests of degree and purpose coincide in result, but this is not always or necessarily the case. Inferences drawn from the *physical* mode of annexation *may well be overridden by more subtle considerations relating to the objectively understood motivation underlying the annexation in question.*

1.81 The contemporary borderline between fixtures and chattels may now be *more case-specific and more context-dependent than was once believed.*

[emphasis added; emphasis in original in bold italics]

The enhancement test

48 The second test ("the enhancement test") is also embodied in the English case law – notably, in the House of Lords decision of *London County Council v Wilkins* [1957] AC 362 ("*Wilkins*") and the English Court of Appeal decision of *Field Place Caravan Park Ltd v Harding* [1966] 2 QB 484 ("*Field Place Caravan Park*"), as well as in the more recent (also) English Court of Appeal decision of *Rudd v Cinderella Rockerfellas Ltd* [2003] 1 WLR 2423 ("*Rudd*") (reference may also be made to *Ryde on Rating* ([43] *supra*) at pp 148–152). Briefly put, pursuant to the enhancement test, if a *chattel* is *enjoyed with the land and enhances its value*, it forms part of the land for property tax purposes. More importantly, however, for the purposes of the present appeal, the key issue is whether the enhancement test is not (like the fixture test) only embodied in the English law but is also (and more importantly) considered, in the context of *property tax*, as being the operative test (the fixture test being consequently held, in this last-mentioned regard, to be *irrelevant*).

49 A succinct statement of the enhancement test can be found in the judgment of Lord Denning MR in *Field Place Caravan Park*, where the learned Master of the Rolls observed thus (at 497–498):

> Whatever the cases may have said in the past, I think that the law on this subject has been revolutionised or, perhaps I ought to say, made clear, by the decision of the House of Lords in *London County Council v. Wilkins.* The House considered at length whether a chattel which was placed on land could be a rateable hereditament. The Lord Chancellor, Lord Kilmuir, said: "In my view a chattel to be rateable must be enjoyed with the land on which it rests." Lord Radcliffe said: "A structure placed upon another person's land can with it form a rateable hereditament, even though the structure remains in law a chattel and as such the property of the person who placed it there." Lord Oaksey agreed.
>
> Mr. Albery [lead counsel for the appellants] urged us to hold that Lord Radcliffe was wrong. I am not prepared to do so. If I may respectfully say so, I think he was right. The correct proposition today is that, although a chattel is not a rateable hereditament by itself, nevertheless it may become rateable together with land, if it is placed on a piece of land and enjoyed with it in such circumstances and with such a degree of permanence that the chattel with the land can together be regarded as one unit of occupation.

50 It is clear, of course, that the enhancement test tends, by its very nature, to have a much wider reach compared to the fixture test (although, depending on the facts of the case concerned, both tests might give rise to the same result (*cf*, in this regard, *Van Ommeren* ([25] *supra*, especially at 496–497, [34])). By its very nature, the enhancement test also does not require the court to find that the structure concerned is in fact part of the land, applying (as it does) to *chattels*. It is not surprising, therefore, that counsel for the respondent, Mdm Julia Mohamed ("Mdm Julia"), advocated this particular test.

51 The leading *local* decision is the Singapore High Court decision of *Van Ommeren*. A principal difficulty lay in the fact that a reading of *Van Ommeren* could appear to support *either* of the above tests and, indeed, this particular decision was, in fact, raised by counsel for *both* parties in the present appeal as supporting their respective positions! However, a close perusal of the decision itself suggests that the court in that particular case was focusing, in substance, on the fixture test (where, *inter alia*, *Holland* ([45] *supra*) was cited).

52 If, in fact, the enhancement test is adopted, it does not (as noted above at [50]) matter whether the floating dry docks were part of the land or not. They would be subject to tax under the Act if it could be demonstrated that they had enhanced the value of the land (the other requirements laid down in the relevant case law (see, for example, *Rudd* ([48] *supra* at [44]) having, in our view,

also been satisfied, *viz*: (a) actual occupational possession; (b) occupation or possession which is exclusive; (c) occupation or possession which is of some value or benefit to the occupier or possessor (this particular requirement overlaps with a core characteristic in the enhancement test); and (d) occupation or possession which has a sufficient quality of permanence). At this particular juncture, it should be noted that although the fixture test is quite different, from a *literal* perspective, it must *also* be demonstrated that the structures concerned (here, the floating dry docks) *did enhance* the value of the land. *However*, this does *not* mean that the enhancement test and the fixture test are one and the same. For example, a structure may enhance the value of the land concerned, but may nevertheless not be considered to be a fixture. Conversely, a structure may be a fixture, but may not enhance the value of the land. However, in this *last-mentioned* situation, property tax, whilst *theoretically* chargeable under the Act, would *not* be so chargeable (in the *practical* sphere) simply because there would have been *no increase in the annual value of the property concerned*. Looked at in this light, it would appear that the fixture test is *more stringent* than the enhancement test – not only because it (the fixture test) has rather strict requirements (see above at [45]) but *also* because it appears that, in order for the fixture test to result in chargeable property tax, there must *also* be *enhancement* of the value of the property as well. *In other words, the fixture test not only incorporates (in substance at least) the enhancement test but also lays down independent criteria of its own.* The general issue that arises is whether or not the local legislature intended such a stringent test to apply before property tax could be levied.

Which test should apply?

53 Although interesting arguments were raised by both parties as to which test should apply, it is unnecessary to decide this issue based on the fact situation in the present appeal. As we shall elaborate in a moment, the *same* result would be arrived at *even if it is assumed that the fixture test applies.* In the circumstances, we do not propose to rule on this particular issue.

Our decision

54 Turning, then, to the application of the *fixture* test to the facts in the present appeal, we note that, although the floating dry docks were each attached to the property by only a ramp, the *purpose* of anchoring these docks where they were was clear beyond peradventure: It was intended that these docks constitute the very pith and marrow of the business conducted by the appellant on the Property. Indeed, without the docks, the lease of the property by the appellant from the JTC would have been an exercise in futility. As the Judge put it (see the GD at [20]):

> *In the present case the Board observed that the three floating dry docks were integral to the business of ship repair of the appellant*. *The Board pointed out that, as there were no other docks in the appellant's shipyard and all ship repairing were carried out on these three floating dry docks, they were essential to the use of the Property as a shipyard and their presence enhanced its value.* The Board took the view that, in those circumstances, the floating dry docks were part of the Property and they were properly included in the assessment of annual value. [emphasis added]

55 As we have also seen above (at [42]), it does *not* matter that these docks were located, strictly and literally, beyond the physical boundary of the property. Put simply, the floating dry docks were *clearly intended to be an integral part of the Property* – particularly from a functional perspective (see also GD at [22]). It is also important to note that, as we have seen above, as a point of *general legal principle*, the *purpose* of annexation is an extremely important factor (indeed, so it appears, *even more so* than the *degree* of annexation, as to which, see above at [46]–[47]).

56 It is also significant, in our view, that the functions of a floating dry dock and of a basin dry dock are the *same* (we elaborate upon this point in more detail below at [71]). And it is equally significant that it is unarguable that a basin dry dock would be clearly considered to be part of the land.

57 We should also add that the fact that the water frontage to which the floating dry docks were anchored onto was also leased by the appellant (together with a TOL granted to it with regard to the seabed) does not affect the conclusion we have arrived at. Indeed, if at all, this particular fact buttresses it. More specifically, it reinforces the conclusion – already arrived at above – to the effect that the floating dry docks are indeed part of the land. And they are, *a fortiori*, fixtures which have been attached to that land, especially if – as we have already done – we take into account the *purpose* of anchoring these docks in the first instance.

58 In any event, as we have already noted, there was sufficient physical connection by way of the *ramp*. There was also some discussion in *Rudd* ([48] *supra*), albeit in a slightly different context, as to whether or not it mattered that the physical connection was horizontal rather than lateral. We have, in fact, already explained above (at [42]) why this is not a crucial issue and the decision in *Rudd* itself supports our views. We should also add that although we have arrived (with respect to a similar fact situation) at the same conclusion as both the Hong Kong Lands Tribunal and the Hong Kong Court of Appeal in *Yiu Lian Machinery Repairing Works Ltd v Commissioner of Rating and Valuation* [1982] HKC 55 ("*Yiu Lian*") and *Comr of Rating and Valuation v Yiu Lian Machinery Repairing Works Ltd* [1985] 2 HKC 517, respectively, we do this via a quite different legal route. In particular, we do not agree with Judge Cruden in *Yiu Lian* that a floating dry dock is different from a basin dry dock (at least in so far as their respective functions are concerned).

59 In the circumstances, we therefore hold that the floating dry docks are not only "buildings" within the meaning of s 2(1) of the Act but that they also constitute part of the Property.

Are the floating dry docks "machinery" within the meaning of section 2(2) of the Act?

60 Section 2(2) of the Act provides that the enhanced value due to the presence of machinery which is used for the purposes therein stated is not to be taken into account for the assessment of property tax. The salient portion of s 2(2) of the Act reads as follows:

> In assessing the annual value of any premises in or upon which there is *any machinery used for any of the following purposes*:
>
> …
>
> (*b*) the altering, *repairing*, ornamenting or finishing *of any article*; or
>
> …
>
> *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.
>
> [emphasis added]

61 In the proceedings below, the Judge (at [15] of the GD) held that a floating dry dock could be described as a structure that, combined with machines such as water pumps, carried out the

function of hoisting a large vessel off the water. The Judge held that the floating dock might well be considered to be machinery under s 2(2) of the Act and, if that were the *exclusive* function of the floating dry dock, he would have held so. However, because the floating dry dock also functions as a place where the ship and other machinery and equipment are stored, and where repair works are carried out, the Judge found that the floating dry dock was more a floating factory than mere machinery.

62 The Judge (at [16] of the GD) was further of the view that the value of machinery (*ie*, the water pumps and welding equipment) on board the floating dry dock should not be taken into consideration pursuant to s 2(2) of the Act. The Judge held that lifting of the ship above water level was part of the process by which repair work was carried out. To this end, the Judge drew an analogy between a car which needed to be jacked up, so as to enable the mechanic to gain access to the undercarriage to carry out repair work to the car, and the lifting of the ship from the water. Accordingly, the Judge found that the pumps that pumped water into and out of the tanks were machinery under s 2(2) of the Act.

63 On appeal, Mr Ong Sim Ho ("Mr Ong"), counsel for the appellant, focused on this particular issue right at the outset of oral arguments before this court. This was because, as he correctly pointed out, if his client was successful on this issue, that would conclude the appeal in his client's favour without more. In other words, even if the respondent could prove that the floating dry docks were "buildings" within the meaning of the Act and/or constituted part of the land within the meaning of the Act, if the appellant could nevertheless prove that these floating dry docks were machinery within the meaning of s 2(2) of the Act, then the enhanced value that accrued as a result of such machinery would nonetheless be *excluded* (as an *exception*) under the clear terms of that particular provision itself.

64 In this regard, one must guard assiduously against a layperson's instincts and intuitions. This point was emphasised, in clear terms, by Mr Ong right at the outset of the appeal. It was, if we may say so, a timely reminder. For example, he pertinently pointed out that the exception in s 2(2) of the Act could apply *even if* the articles concerned (here, the floating dry docks) *did* constitute part of the land for the purposes of the Act.

65 Mr Ong contended that the Judge had erred in finding that a floating dry dock, as a system, must have the sole and exclusive function of lifting a vessel off the water. Mr Ong argued that so long as the primary purpose of the floating dry docks was one of the purposes set out in s 2(2) of the Act, the enhanced value from the floating dry docks should be excluded from assessment.

66 We are of the view, with respect, that the Judge's test of *exclusive* function is too strict. An alternative test of *dominant function* appears to us both just and fair. It would appear that the Judge had conflated two (albeit closely related) issues. The first (which is, in fact, a prerequisite) is whether or not the structure concerned is *machinery* in the first place. The second issue (assuming that the structure concerned is machinery) is whether or not its use falls within one or more of the purposes set out in ss 2(2)(*a*) to 2(2)(*c*) of the Act. There appear to us, therefore, to be *two* stages at which the *concept* of function operates (and in somewhat different ways). In this regard, the first stage corresponds to the first issue just mentioned, and involves the issue as to what the *predominant function* of the structure concerned (here, the floating dry docks) is, having regard to the crux of the inquiry (which is whether or not it is machinery in the first place). In other words, was the *predominant* function of the structure to serve the function which would normally be attributed to machinery generally *or* was it to serve some other function?

67 The second stage corresponds to the second issue mentioned in the preceding paragraph,

and involves the question as to whether or not (assuming that the predominant function of the structure concerned is one that would normally be attributed to machinery) that function falls within one or more of the purposes set out in ss 2(2)(*a*) to 2(2)(*c*) of the Act – in which case the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration.

68 However, at this juncture, it is important to note that the *actual evidence adduced* in relation to the first stage of the inquiry is of crucial importance. Indeed, the entire inquiry is necessarily *factual* in nature. That line-drawing is involved is not only a given but comports with reality generally. Indeed, the courts are constantly involved in such an exercise of discretion (which, in turn, involves issues of application of the law to the relevant facts of the situation at hand). However, in order to avoid arbitrariness (or even the perception thereof), it is necessary that there be a guiding legal principle (or set of such principles) and logical as well as commonsensical application of such a principle (or principles) to the facts concerned.

69 The guiding principle, as we have just mentioned, is that of dominant function. What, in other words, is the *dominant* function of the article (or articles) concerned (here, the floating dry docks)? More specifically, is the dominant function to serve as machinery or as an apparatus, *or* is it, instead, to serve as a setting or platform in which the necessary work on ships may be effected (bearing in mind the obvious fact that the ships concerned need to be in a *dry* environment in order for the necessary work to be effected).

70 It is our considered view that, whilst *one* of the functions of the floating dry docks in the present appeal is to *lift* the ships concerned up into a dry environment (and, in this sense, constitutes machinery or apparatus), it has, however, *not* been demonstrated to our satisfaction that that function was a *dominant* one. It is clear, in our view, that an *at least equally (if not more) important* function is to serve as the setting or environment in which the necessary work can take place.

71 In this regard, it would be helpful to compare the floating dry docks in the present appeal (see generally John W Gaythwaite, *Design of Marine Facilities for the Berthing, Mooring, and Repair of Vessels* (ASCE Press, 2nd Ed, 2004) ("*Gaythwaite*") at pp 442–456) with basin dry docks (see generally *id*, at pp 413–433). Indeed, Mr Ong *conceded* that the latter would not only be part of the land but would *also not* come within the exception relating to machinery within the meaning of s 2(2) of the Act. However, as Mdm Julia, correctly, in our view, pointed out, the *function* of both these types of docks is the *same*. The principal purpose is to enable the ship to be docked in a dry environment in order for the necessary work to be effected. The key difference lies in the *method* by which this purpose is achieved. In so far as floating dry docks are concerned, this purpose is achieved by *lifting* the ship concerned, whereas in so far as a basin dry dock on land is concerned, the purpose is achieved by *pumping out* the water once the ship has docked safely. Indeed, in the latter instance, *some mechanism* (albeit, here of pumping) is involved. This usually takes the form of "[a] separate building or chamber called *a pumping station*, *built into the wall of the dock*, [and which] contains the dewatering pumps and valve operators, as well as other smaller pumps and equipment for discharging rainwater and providing fire-fighting or ballast water, or, in the case of an underdrain-type dock, pumps for the discharge of groundwater" [emphasis added] (see *Gaythwaite* at p 425). One could not, especially with regard to the *concept of function*, meaningfully distinguish between mechanisms that were built outside and inside the wall of the dock, respectively, for this would be but a *literal or physical* difference – and no more. In *both* instances, it is clear to us that the *predominant* function is the *same* – and it is *to provide a proper setting or environment in which the necessary work can be properly and safely carried out*.

72 This is not, however, to state that if it had been demonstrated by the appellant that the *predominant* function of the floating dry docks in the present appeal was to *lift* ships out of the

water, we would not have been favourably disposed towards the appellant's case. Unfortunately, such evidence was simply not present on all the evidence available before us. We note that Mr Ong directed us to the affidavit of evidence-in-chief ("AEIC") of the appellant's executive director, Mr Ng Sing Chan ("Mr Ng"), and of the respondent's valuer, Mr Yong Guo Yeou. However, there was nothing in the AEICs which suggested that the primary or main purpose of the floating dry docks was not for repair. Although Mr Ng stated (at para 3 of his AEIC) that "[a] floating [dry] dock is a piece of mobile equipment or machinery", he added that "[i]n order to *accommodate* a vessel for purposes of repair, the floating [dry] dock is partially submerged directly below the vessel" [emphasis added].

73 Accordingly, as we have mentioned, it appears that the predominant function of the floating dry docks is to provide a proper setting or facility (principally a dry area) in which the necessary work can take place. In our judgment, we find that the floating dry dock is akin to a motor workshop whereas the water pumps are akin to a car jack. The former is the setting or environment to accommodate the vessel for the necessary work and the latter are machinery used to facilitate the execution of the necessary work. Indeed, the *furthest* we could possibly go in favour of the appellant on this particular issue is that the provision of such a setting or environment is *at least as important* as that of lifting the vessel concerned for the purposes of effecting the necessary work. Unfortunately, an *equally important* function is *insufficient* since, as we have already accepted above, the test is that of *dominant* function.

74 Finally, we note that our holding on this particular issue is also entirely consistent with our earlier holding that the floating dry docks are "buildings" within the meaning of the Act. Indeed, it would be both semantically as well as substantively odd (or even inconsistent) to describe a structure as being, at one and the same time, both a "building" as well as "machinery".

75 In the circumstances, we are of the view that the floating dry docks in the present appeal do *not* constitute machinery for the purposes of s 2(2) of the Act and that, the appellant having failed at this *threshold* stage, it is irrelevant that the floating dry docks could otherwise fall within sub-ss (*a*) and/or (*b*) and/or (*c*) of the same provision.

Conclusion

76 We should like to observe that although the appellant was unsuccessful in the present appeal, Mr Ong is to be commended for presenting as clear and as persuasive a case as he could on behalf of his client. Indeed, in our view, he could not have presented a stronger one. Failure to secure the decision in a case is not necessarily a reflection of the quality of the argument as well as advocacy; indeed, as we have just mentioned, this is one such instance to the contrary. We are also particularly impressed by Mr Ong's candour and his refusal to gloss over arguments as well as facts that did not appear to be in his client's favour. Although the court would, of course, disregard any such attempts, it is refreshing that Mr Ong resisted the temptation to do what happens so often, but which, we should hasten to add, is often due to inexperience and/or overzealousness rather than bad faith.

77 To summarise, we hold that:

(a) the floating dry docks constitute "buildings" within the meaning of the Act;

(b) the floating dry docks are in fact also part of the land for the purposes of the Act; and

(c) the floating dry docks do *not* constitute machinery within the meaning of s 2(2) of the Act, and the appellant is therefore precluded from availing itself of the benefit of that provision.

78 In the circumstances, therefore, we dismiss the appeal with costs, albeit for somewhat different reasons than those adopted by the Judge. The usual consequential orders are to follow.

Andrew Ang J (delivering the dissenting judgment):

Introduction

79 I have had the benefit of reading my learned brother Andrew Phang Boon Leong JA's judgment representing the views of the majority of the court. Regretfully, despite my greatest respect for his erudition, on this rare occasion, I must confess to my inability to agree with his judgment.

80 The facts have been clearly set out in my learned brother's judgment and I do not need to repeat them. For the sake of convenience, I will adopt, in my judgment, the same abbreviations as those used in the majority's judgment.

Issues on appeal

81 The issues that arise in this appeal are identical to the issues raised before the Board and the Judge. In essence, the main bone of contention in the appeal is whether the three floating docks ought to be included in the assessment of the annual value of the Property. This question turns on the following three issues:

(a) whether the floating docks fall within the definition of "buildings" in s 2(1) of the Act and are thus assessable to property tax under s 6(1) of the Act;

(b) whether the floating docks fall to be assessed as part of the land and are therefore assessable to property tax under s 6(1) of the Act; and

(c) whether the floating docks are machinery for the repair of vessels and therefore ought to be excluded from assessment pursuant to s 2(2) of the Act.

Whether the floating docks fall within the definition of "building" in section 2(1) and are thus assessable to property tax under section 6(1) of the Act

82 As a preliminary, s 6(1) of the Act is the charging provision for the imposition of property tax. Section 6(1) of the Act reads:

> **Charge of property tax**
>
> **6**.—(1) As from 1st January 1961, a property tax shall, subject to the provisions of this Act, be payable at the rate or rates specified in this Act for each year upon the annual value of *all houses, buildings, lands and tenements* whatsoever included in the Valuation List and amended from time to time in accordance with the provisions of this Act.
>
> [emphasis added]

In turn, s 2(1) of the Act defines "building" to mean:

> … any structure erected on land and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise, any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases,

and any oil refinery[.]

83 In the trial below, the Judge opined that the definition of "building" in s 2(1) of the Act had two limbs, *viz*, *the first limb*, "any structure erected on land"; and *the second limb*, "includes any house … any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery". The Judge also cited the Singapore High Court decision of *Van Ommeren* ([25] *supra*) for the proposition that the words "and includes" in the second limb extends the scope of the first limb so that the structures specified in the second limb do not have to be "erected on land".

84 I note that my learned brother, Phang JA (at [16] to [24] above), has read the definition slightly differently, treating the words "whether used for the purposes of human habitation or otherwise" as demarcating the end of the first limb so that whereas "any house, hut, shed or similar roofed enclosure" would each be an example of a *structure erected on land*, "any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery" would "not [be] part of the land in the conventional sense" (at [32] above).

85 With the greatest respect to my learned brethren, I must admit that I have difficulty agreeing with either interpretation. To my mind, there are no two distinct limbs; all the structures enumerated are examples of structures erected on land. I do not regard the words "whether used for the purposes of human habitation or otherwise" as anything more than parenthetical so that the words thereafter following would continue to be part of the enumeration of structures erected on land. In my view, the specific inclusion of structures serves to pre-empt any argument that might otherwise be advanced that certain of them do not qualify as "buildings" in the conventional sense. Whether or not water separates part of a structure from its foundation in the ground, the structures in s 2(1) of the Act are still erected on land (albeit not dry land but the seabed).

86 In determining whether the floating docks fell within the meaning of "dock" in the definition of "building" in s 2(1) of the Act, the Judge (at [11] of the GD) applied the *ejusdem generis* rule and found that the word "dock" was used in the maritime sense. In other words, the issue was whether the floating docks were a subset of "dock". The Judge held that there were various types of docks depending on the purpose for which a ship was docked and the business decision of the entity that was performing the activity in furtherance of that purpose. He found that a floating dock was just one type of dock and therefore found the floating docks to fall within the term "dock" in the definition of "building" in s 2(1) of the Act.

87 On appeal, Mr Ong submitted that floating docks were not "buildings" as they fell outside the definition in s 2(1) of the Act. He contended that whilst the terms "slip", "dock", "wharf", "pier", "jetty" and "landing-stage" all denote marine structures, "floating docks" were unique in that they were vessels actively involved not just in raising a ship above the water but holding them in a specific position for the purposes of repair.

88 Mdm Julia, counsel for the respondent, submitted that the word "dock" appeared in the definition of "building" and the Legislature had not made any distinction between the different types of docks. As such, *all* docks were assessable under the Act.

89 Another contention advanced by Mdm Julia was that the respondent had assessed the Property under the "contractor's test" method in the absence of rental evidence. Under this method, the annual value to be imputed to a property is arrived at by applying a rate of return on the total capital expenditure incurred in developing the property. As was explained in *Dawkins v Royal Leamington Spa Corporation and Warwickshire County Council* (1961) 8 RRC 241 at 251, the

underlying assumption is that the rent which such a property could reasonably fetch (*ie*, the annual value) cannot be less than the annual interest which the taxpayer would have to pay (were he to borrow) or to forgo (if he were to use his own money) to develop the property himself; if it were less it would have made more economic sense for him to rent it than to build it himself. Whatever the inadequacies of such an explanation, the contractor's test method is well established. Mdm Julia's argument was that it was proper to include the cost of the floating docks for the purpose of determining the annual value of the property using the contractor's test method. In this regard, Mdm Julia made reference to an earlier decision of the Board in *BP (Singapore) Ltd v Chief Assessor* [1959-1986] SPTC 86 ("the *BP* case") for the proposition that expenses incurred on land adjacent to the Property over which the appellant had merely a TOL could not be excluded from assessment so long as the expenses incurred were necessary for the benefit of the Property.

90 I deal first with *Van Ommeren* ([25] *supra*) which was the main authority relied upon by the Judge in support of his conclusion that the floating docks were assessable as "buildings". At [8] of the GD, the Judge quoted the observations of Chao Hick Tin J in *Van Ommeren* (at 429, [13]) on the scope of the term "building" in s 2:

> However, in the definition now under consideration, the legislature has used the words 'means … and includes'. How should one approach such a definition? In my opinion, a plain reading of that definition is surely this. The legislature has defined the word 'building' to bear the ordinary sense of 'any structure erected on land'. But it has also expanded the meaning of that word to encompass those items enumerated after the words 'and includes' *irrespective* of whether those items are structures erected on land. It will be noted that the legislature has used the words 'and includes' twice in the definition. *With respect, I am unable to agree with the Board that the things enumerated after the words 'and includes' are merely examples of structures erected on land. For instance, a pier or jetty is not a structure erected on land. It is a structure erected over the sea or water*. [emphasis added]

91 Chao J observed that the words "and includes" occurred twice in the definition. That is no longer the case. As to Chao J's other observation that a pier or jetty was not a structure erected on land, for the reason I gave at [85] above, I beg to differ. I would have thought that they would be supported by columns built into the seabed even if the top of such structures was above the water level. As such, a pier or jetty could still be aptly described as a structure erected on land.

92 The *Van Ommeren* case concerned the question whether storage tanks and pipes (attached thereto) on the land that was being assessed were (a) buildings or (b) part of the "land" such that they would be assessable, together with the land, for the purposes of property tax. An appreciation of the arguments raised by counsel for the taxpayer would serve usefully to contextualise Chao J's remarks in the case. Essentially, counsel was arguing that the storage tanks which sat in pits on the land were not "structures erected on land" and hence did not fall within the said definition. His argument was that all the illustrations referred to in s 2 had to be structures erected *on land* to qualify as "buildings". It was in this context that Chao J's observations at 492, [13] of *Van Ommeren* (set out at [90] above), in particular those which I have emphasised in italics, were made.

93 In my view, it would be a stretch to say that Chao J intended that structures on *adjoining property* could be taken into account for the purpose of property tax on the subject property. This question did not arise for consideration on the facts of the case as the tanks and pipes were all within the boundaries of the subject property. In referring to a pier or jetty as being a structure built over the sea and not on land, the thrust of his reasoning was that the word "building" should not be limited strictly to a structure erected on land. Chao J was not making the proposition that a structure outside the boundary of the subject land could still be considered a building on the land for tax

purposes. (Nothing in the definition of "building" warrants the assumption that the subject land does not include the seabed.) Such a conclusion would have been difficult to reconcile with his reliance upon Blackburn J's statement of the law in *Holland* ([45] *supra*) for his alternate holding that the tanks were part of the land. Chao J's observations therefore did not provide support for the Judge's holding.

94 Before moving on to the next issue, whether the floating docks fall to be assessed as "*part of the land*", I consider briefly the *BP* case ([89] *supra*) cited by Mdm Julia. The *BP* case concerned computation of the annual value of property using the contractor's method of assessment. There, the Board held, in the assessment of a petrol service station, that the expenses incurred for drains, culverts and roadways over the drains built *on the portion of land surrendered to the Government (adjoining the petrol service station)* ought to be included for the valuation of the said station. Two preliminary observations can be made about the *BP* case before turning to a substantive analysis of the case proper. First, it cited only one authority, the English case of *Mayor, Aldermen, and Citizens of Liverpool v Assessment Committee of Llanfyllin Union and Overseers of Llanwddyn* [1899] 2 QB 14 ("the *Liverpool Corporation* case"), decided in the late 19th century. That case, in turn, did not refer to any precedents. In that case, the corporation of Liverpool was required by statute (under a special Act constituted for the construction of a reservoir) to carry out the works, *ie*, providing sites and constructing new buildings on neighbouring land in place of those that, with the completion of the reservoir, would be submerged (the latter being *on the site in question*). The Court of Appeal agreed that they were necessarily part of the construction costs to be assessed in determining the effective capital value of the project. The primary ground for the court's decision was that the contractors would have been entitled to reimbursement, if they had paid compensation in cash to the owners of the buildings on the site, and there was no difference in principle between such a payment and construction of new buildings in substitution on a separate plot of land (in effect, payment in kind), especially since the special Act mandated that the contractors carry out such reconstruction. This is evident from the observations of Romer LJ (at 25), which merit reproduction below:

> In estimating the expenditure on works like this reservoir, it is obvious that the cost of acquiring buildings which stand upon the site which it is necessary to acquire for the works must be included. Applying that to the church, vicarage, and schools in the present case; their sites being required for the reservoir, it was necessary to acquire them, and the expenditure of the amount of money requisite for their acquisition could not be regarded as unnecessary or wasteful. If they had been paid for in cash, I do not think any question could possibly have arisen. But in this case, though the corporation did not pay in cash, they paid in kind. By the special Act, instead of paying money, they were required to erect similar buildings on other sites. I do not think that makes any difference in point of principle. *The expense of erecting the new buildings elsewhere was as much part of the capital expenditure on the works as if it had been cash paid to the owners of the old buildings for the purchase of them*. [emphasis added]

As such, the holding in the *Liverpool Corporation* case was specific to its factual matrix and did not actually stand for the broader proposition that the respondents sought to advance before us.

95 Returning to the *BP* case, the land adjoining the petrol station which was developed for access to the station (by construction of drains, culverts and roadways) *was part of the subject land owned by the company* but, after completion of the development, was acquired by the Government subject to a right of way (easement) reserved to the company for reasonable access to the station. This, in our opinion, suffices to distinguish the *BP* case from the present factual matrix.

96 Next, I move on to the question as to whether the floating docks nonetheless formed "part of the land" for the purposes of property tax assessment under s 6(1) of the Act.

Whether the floating docks fall to be assessed as part of the land and are therefore assessable to property tax under section 6(1) of the Act

97 The issue is whether in the assessment of the annual value of the Property, account may be taken of the floating docks connected to the Property by flapping ramps, but with the floating docks situated over the seabed *outside* the boundary of the Property.

98 The Judge agreed with the Board's reliance on the English rating cases in applying the fixture test laid down in *Holland* ([45] *supra*). This essentially formed the crux of the arguments on appeal, to which I now turn.

99 Mr Ong submitted that the English non-domestic rating cases were distinct from common law cases on annexation and therefore had no bearing on the application of the fixture test, which was the test applicable in Singapore. Mr Ong argued that the Judge erred in claiming to apply the fixture test when he in fact used the "enhancement" test imported from the English non-domestic rating cases which were inapplicable to our property tax regime. In response, Mdm Julia unsurprisingly contended that the rating cases in England were applicable to Singapore.

100 In order to properly appreciate Mr Ong's argument, it would be necessary, at this juncture, to trace the development of the law in the UK, starting from the seminal case of *Wilkins* ([48] *supra*), before moving on to the crucial question whether the English rating cases ought to apply locally in this regard.

Preliminary observations

101 I preface my analysis of the case law with some observations on the distinguishing features of our local property tax regime (and the distinct character it has taken on, as it has evolved over the years) to demonstrate that English rating principles cannot be resorted to in the context of the present case.

102 First, rating in UK is based on *occupation* (beneficial use of the land) and not on *ownership*. *Ryde on Rating* ([43] *supra*) states clearly (at p 20) that the person to be rated is the occupier and not the owner. It goes on to state (*ibid*) as follows:

> It is incorrect to say that land is rateable. The occupier, not the thing occupied, is rateable.

In contrast, the preamble to the Act describes it as "[a]n Act to provide for the levy of a tax on immovable properties …". The Board in *Cho Chih Yee v Chief Assessor* [1969] 2 MLJ iii at vi, put it correctly as follows:

> First, it is not correct to say that property tax attaches to the owner of property. The long title to the Ordinance is self-explanatory: property tax is "the levy of a tax on immovable properties …". The payment of this tax, however, is by the owners of the properties.

103 That the distinction is not a matter of mere semantic nicety (and that it has practical consequences) is aptly illustrated by *Ryde on Rating*'s cautionary words (albeit in relation to the English rating system) (at p 21) as follows:

> It is often convenient for the sake of brevity to say that the land is rateable, but there is danger in substituting for the words of the statute a phrase which is not an exact equivalent. If the substituted phrase be made the foundation of an argument, a fallacy may be involved.

104 In the same vein, I am of the view that to apply English rating cases (based on occupation) in defining "land" under s 2 of our Act would involve a fallacy; it is imperative that a tax on immovable properties does not attach to chattels (as distinct from fixtures) without statutory sanction. It is one thing in rating a person for his *occupation* of land to take into account chattels thereon (even when they do not belong to him) which enhance his enjoyment of the occupation. It is another thing altogether to say that chattels on land which do not form part of the land may be taxed as if they were part of the land.

105 Second, and this follows from the first point, the definition of rateable hereditament under the English system is of little or no assistance to our understanding of taxable property (in particular, the chattel/fixture distinction that has been firmly entrenched in our law).

106 I now proceed to consider the English position with a view to demonstrating that it is inappropriate to follow the English principles, and thereby detract from the settled jurisprudence in land law, in determining what constitutes "land" for property tax assessment.

The English position: Fixture/chattel distinction is irrelevant to rateability

107 The *Wilkins* case ([48] *supra*) decided that the test for rateability was whether there was evidence that the structures in question, occupied for a period which was not transient, were *enjoyed with the land and enhanced its value*. It held that the question of whether the structures had lost their chattel character (*ie*, the fixture/chattel distinction encapsulated in *Holland* ([45] *supra*) was *not decisive* as a test of rateability. As Lord Oaksey noted (at 376 of *Wilkins*):

> I am therefore in agreement with Jenkins L.J. that the case of *Holland* v. *Hodgson* is *really irrelevant*, since the present question is not whether the [structures in question] formed part of the realty by reason of the way in which they were annexed to the land and the intention with which they were so annexed, but *whether the contractors had sufficient exclusive possession* … [emphasis added]

In the same vein, Lord Radcliffe observed (at 378) as follows:

> On the second point, I think it equally well established that a structure placed upon *another* person's land can with it form a rateable hereditament, even though the *structure remains in law a chattel* and *as such the property of the person who placed it there*. [emphasis added]

Pausing for a moment here, under our system, where tax is on the property rather than the owner, chattels belonging to someone else cannot be assessed together with the land unless they have become part of the land. I should add that Mdm Julia has not been able to persuade me that there has been any instance in which *Wilkins* has been applied in Singapore.

108 The *Wilkins* decision has been lauded by subsequent cases in England as the *locus classicus* in so far as the test for rateability is concerned: *Ryan Industrial Fuels Ltd v Morgan* [1965] 1 WLR 1347, *Field Place Caravan Park* ([48] *supra*), *Floatels (UK) Ltd v Perrin* [1995] RA 326 and *Rudd* ([48] *supra*).

109 It would suffice, for present purposes, to deal with the case of *Rudd*, as it was relied upon principally by the Judge for the proposition that the floating docks could be assessed as part of the shipyard land. In that case, the ratepayer company acquired a former passenger ferry and converted it for use as an entertainment complex and moored it on the river. It was held in place by ropes and chains attached to the adjacent land which, together with the riverbed, formed part of the same

hereditament occupied by the ratepayer company. The question that arose was whether the vessel could be rated as part of the hereditament. The headnote to the case usefully summarises the holding of the case:

> [U]nder English rating law since its origin and as currently expressed in section 43(1) of the 1988 Act [Local Government Finance Act 1988 (c 41) (UK)] liability to be rated rested on occupation of property; … although such liability was limited to hereditaments in the nature of land, a chattel on or connected with the occupied land could also be rated if it were enjoyed with and enhanced the value of the land; … occupation of a floating vessel *horizontally connected to adjacent land* was rateable where such occupation was actual and exclusive, had a degree of permanence and was of benefit to the occupier, even if there were no vertical physical connection between the vessel and the land; and … since the vessel occupied a fixed position in the river immediately above the licensed foreshore and riverbed for a period of nine years without interference from the licensors and since such occupation was both exclusive, notwithstanding the interposition of water between the vessel and the riverbed, and of substantial benefits to the company, *it constituted rateable occupation of the licensed area of the riverbed for which the company was liable* … [emphasis added]

110 Turning now to the Judge's analysis of the case, he said at [19] of the GD:

> In applying the test in *Holland v Hodgson*, the Board relied on a line of English cases which held that a vessel docked adjacent to occupied land could be rated if it were enjoyed with and enhanced the value of the land. In *Rudd* … the rating authority assessed a vessel moored with the permission of the Port Authority and under a licence over the riverbed granted by the Crown. The vessel was fastened by ropes and chains to river frontage occupied by the ratepayer, with access secured by means of steel gangways. The English Court of Appeal upheld the decision of the authority to assess the vessel on the ground that it was a *chattel* sufficiently attached to the occupied land and [was] *enjoyed with* [the land] *and enhanced its value*. [emphasis added]

111 Two observations are pertinent at this juncture to demonstrate that, contrary to the Judge's decision, *Rudd* does not warrant a similar extension in the local context. First, in the light of the affirmative pronouncement by the House of Lords in *Wilkins* that *Holland* is irrelevant for assessing whether a chattel is part of a rateable hereditament, the Board's reliance on the English cases on rating while applying *Holland* was misconceived. Second, a close reading of the judgment in *Rudd* (especially at [46], [50] and [60] of the judgment) would show that the floating vessel was considered a rateable hereditament *together with the riverbed* and *not with the adjacent land* per se. The riverbed formed part of the same hereditament as the adjacent land and it was held, in effect, that the vessel's attachment to the adjacent land was good enough to constitute the vessel as part of the same hereditament as the riverbed. The vessel's attachment to the adjacent land did not *per se* make it part of the same hereditament as the adjacent land. The court's observations at [60] of the judgment delivered by Potter LJ clearly bear this out and merit reproduction in full:

> I do not find those observations telling or indeed accurate in relation to the facts of this case. As I have already indicated, it does not seem to me that the mere fact that a vessel floats on water above the *land (i e the riverbed)*, per se prevents it from being a chattel enjoyed with the land and which enhances its value. Nor, if it is secured permanently in position by horizontal attachment to *adjacent land forming part of the same hereditament*, is it vital that the vessel should be directly secured or connected to the land beneath. In such circumstances, the purpose and function of the horizontal attachment is to confine the vessel to the area of the *licensed land beneath*, thereby enjoying *that land* (albeit supported by the water above it) as a permanent means to support by which means the riverbed, together with the adjacent quay *as*

part of the same hereditament, is enhanced in value. [emphasis added]

112 From this, it is clear that *Rudd* is not authority for the proposition (even under the English rating system) that a vessel, horizontally attached to the adjacent land, without more, forms part of the same hereditament as the adjacent land. (In *Rudd*, the common link provided by the seabed made possible the finding that the vessel, the seabed and the adjacent land formed one hereditament.) It follows that the Judge's holding at [19] of the GD (see at [110] above), which was premised primarily on this interpretation, cannot be supported. In the case before us, the appellant only holds a TOL over the seabed.

Local position

113 Against this backdrop, we turn now to the local position. That the classic statement of the law by Blackburn J in *Holland* is part of our land law is evident from the fact that it was followed by our Court of Appeal in *Gebrueder Buehler AG v Chi Man Kwong Peter* [1988] SLR 24 and in *People's Park Chinatown Development Pte Ltd v Schindler Lifts (S) Pte Ltd* [1993] 1 SLR 591. Chattels which are "annexed" to the land (in the extended sense ascribed thereto in *Holland* are fixtures and therefore part of the land.

114 We now return to *Van Ommeren* ([25] *supra*) for guidance on the term "land" in s 6 of the Act. To recapitulate, the learned judge in that case, despite concluding that the storage tanks and pipes on the subject property in question were buildings, went on to consider if they were *part of the land*. The judge affirmed that the *Holland* test was decisive in this regard. I turn then to the oft-cited observations of Blackburn J (at 334–336) in *Holland*):

> There is no doubt that the general maxim of law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation. Where the article in question is no further attached to the land then by its own weight it is generally to be considered a mere chattel; see *Wiltshear* v. *Cottrell* [(1853) 1 El & Bl 674; 118 ER 589], and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land: see *D'Eyncourt* v. *Gregory* [(1866) LR 3 Eq 382]. Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels. … Perhaps the true rule, is that articles not otherwise attached to the land, than by their own weight are not to be considered as part of the land unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel. This last proposition seems to be in effect the basis of the judgment of the Court of Common Pleas delivered by Maule, J., in *Wilde* v*. Waters* [(1855) 16 CB 637; 139 ER 909]. This, however, only removes the difficulty one step, for it still remains a question in each case whether the circumstances are sufficient to satisfy this onus. In some cases, such as the anchor of the ship or the ordinary instance given of a carpet nailed to the floor of a room, the nature of the thing sufficiently shews it is only fastened as a chattel temporarily, and not affixed permanently as part of the land. But ordinary trade or tenant fixtures which are put up with the intention that they

should be removed by the tenant (and so are put up for a purpose in one sense only temporary, and certainly not for the purpose of improving the reversionary interest of the landlord) have always been considered as part of the land, though severable by the tenant. In most, if not all, of such cases the reason why the articles are considered fixtures is probably that indicated by Wood, V.C., in *Boyd* v. *Shorrock* [(1867) LR 5 Eq 72], that the tenant indicates by the mode in which he puts them up that he regards them as attached to the property during his interest in the property.

115 Applying this to the facts of the present case, I am of the opinion that the floating docks do not form part of the shipyard land for the purposes of property tax assessment for two reasons. First, they are not on or within the subject property. Second, there is no principle of law that any chattel lying outside the boundary of the land is part of the land unless, as seen from the definition of "immovable property" in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), it is permanently fastened to a fixture on the land and is not a fixture on the adjoining land. (The need for the second qualification is obvious since the same chattel cannot at one and the same time be part of two separate plots of land). As the floating docks were not permanently fastened to the shipyard (they were only joined by flapping ramps and could and have in fact been towed away before), they would not qualify as fixtures (even in the broader sense of being permanently fastened to a fixture on the property in question).

116 In the light of the foregoing conclusion(s), the appeal ought, without more, to be allowed. However, for the sake of completeness and in the interest of doing justice to counsel's submissions, I briefly address the third issue, *viz*, whether the floating docks, nevertheless, constituted machinery exempted under s 2(2) of the Act.

Whether the floating docks are machinery under section 2(2) of the Act

Preliminary point

117 Section 2(2) of the Act exempts machinery, in or upon any premises which is used for any of the purposes therein stated, from being taken into account in the determination of the annual value of the premises. Section 2(2) reads:

> 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 or 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.
>
> [emphasis added]

118 It is immediately obvious that the machinery must be *in or upon* the premises which are the subject of property tax. Moreover, as property tax is a tax on immovable property, unless the machinery is part of the land, its presence on the land does not enhance the value of the land for

property tax purposes. In the exceptional case where machinery lying on adjoining land (but not so as to become a fixture thereon) is permanently fastened to a fixture on the premises subject to property tax, such machinery could, in my view, still be said to be "in or upon" the premises.

119 On our facts, the floating docks are neither fixtures on the Property nor permanently fastened to any fixtures thereon. This, without more, suffices to dispose of the appeal. Moreover, the fact that the exemption is only accorded to qualifying machinery *in or upon* the premises also inferentially lends support to my holding that the floating docks adjacent to the Property cannot be included in its assessment to property tax. No reference is made in s 2(2) of the Act to machinery outside the land precisely because, *ex hypothesi*, these do not even fall within the definition of property subject to tax.

Are floating docks machinery?

120 Notwithstanding the preliminary point, I proceed to consider, in the light of the discussion undertaken by my brethren, whether the floating docks are qualifying machinery for the purposes of the s 2(2) exemption. Both the Board and the Judge found that the floating docks were machinery. However, because in their view the floating docks did not satisfy any of the limbs in s 2(2) of the Act, the enhanced value given to the Property could not be excluded from assessment.

121 Before us, Mdm Julia submitted that the floating docks were *not* machinery. She argued that the floating docks merely provided the land or building facility on which repair work could take place and were no different from any motor vehicle workshop.

122 Unfortunately, there is no definition of "machinery" in the Act. The word is defined in *Collins English Dictionary & Thesaurus* (HarperCollins Publishers, 4th Ed, 2006) principally as:

> **1** machines, machine parts, or machine systems collectively. **2** a particular machine system or set of machines. **3** a system similar to a machine.

"Machine" is in turn defined, *inter alia*, to mean:

> **1** an assembly of interconnected components arranged to transmit or modify force in order to perform useful work. **2** a device for altering the magnitude or direction of a force, such as a lever or screw. **3** a mechanically operated device or means of transport, such as a car or aircraft. **4** any mechanical or electrical device that automatically performs tasks or assists in performing tasks.

123 From the above, it is clear that the definition of machine is broad enough to encompass small and simple devices, such as a lever or screw, as well as bigger devices, such as a car or an aircraft. In other words, a machine is *any* device which makes work easier, regardless of its size. Take an aeroplane as an example. It assists in the transportation of people and goods from place to place. Apart from the jet engines which power the aeroplane, it also has facilities to accommodate both crew and passengers. Yet, is there any doubt that it is a machine? In this connection, I agree with the Judge that floating docks are machinery. I am not persuaded by Mdm Julia's contention that floating docks merely serve as a platform for repair works to be carried out. In my view, a floating dock is a piece of machinery which incorporates a system of water pumps and a deck strong enough to support a ship, both working together to assist in the performance of a human task. In this regard, the following observations of the Judge (at [15] of the GD) are apposite:

> *There is no doubt that a floating dry dock is an ingenious solution to the problem of lifting a*

large vessel, weighing perhaps thousands of tons, off the water so that repair work may be carried out under dry conditions. It is much easier to pump out the water surrounding a ship than to lift it out of the water, which is the principle utilised in a conventional dry dock. In the case of a floating dry dock, the vessel and the entire dock are lifted out of water by pumping water out of the flooded tanks. *A floating dry dock may be described as a structure that, combined with machines such as water pumps, carries out the function of lifting a large vessel off the water. This system may well be considered to be machinery under s 2(2) of the Act* and if that were the exclusive function of the floating dry dock, I would have so held. [emphasis added]

124 Reference may also be made to the Scottish case of *Inland Revenue Commissioners v Barclay, Curle & Co Ltd* [1969] 1 WLR 675, where the question that arose before the House of Lords was whether a dry dock was plant and machinery or was a mere setting or the premises on which ships were repaired. In that case, the dock in question was a dry dock excavated into the ground. Nonetheless, the Special Commissioners' analysis, which was approved by the House of Lords, is instructive for holding that a dry dock is similar in function to a machine. The pertinent portion of the Special Commissioners' analysis (see *Commissioners of Inland Revenue v Barclay, Curle & Co Ltd* (1968) 45 TC 221 at 230) reads:

[T]he dock was similar to an hydraulic tank which was used for taking ships out of their element, exposing them and then returning them. We accepted this, and found further that the dock acted like a large vice for holdings ships in position while they were repaired or cleaned. *The dry dock was in our view not the mere setting or premises in which ships were repaired. It was different from a factory which housed machinery, for, in the operation of the dock, the dock itself played a part in the control of water and enabled the valves, pumps and electricity generator, which were an integral part of its construction, to perform their functions. The dock was not a mere shelter or home but itself played an essential part in the operations* which took place in getting a ship into the dock, holding it securely and then returning it to the river. [emphasis added]

125 *A fortiori*, floating docks, which submerge below the water's surface to receive the ship and lift it out of the water, must be considered machines rather than merely the setting in which ships are repaired. Floating docks physically lift the ship from the water. In my view, the very work of hoisting the ship out of the water is part of the repair process. The floating docks are therefore machinery.

Does section 2(2) of the Act apply?

126 Having found that floating docks are machinery, the question then arises: Are the floating docks machinery "used for any of the following purposes" stated in s 2(2) (see [117] above) such that the enhanced value given to the Property may be excluded from assessment?

127 The Judge (at [16] of the GD) held that the activity of lifting a ship above water level was an activity which fell within s 2(2)(*b*) of the Act. He drew an analogy between the lifting of a ship from the water to the activity of jacking a car up for repair for the proposition that lifting is part of the process by which repair work is carried out. However, the Judge (at [15] of the GD) adopted a narrow interpretation of s 2(2) of the Act and held that unless the *exclusive* and *sole* function of the floating docks was to lift a ship above water level, s 2(2) of the Act would not apply. This was because, apart from lifting a vessel from the water, a floating dock also functioned as a place where the ship was stored and where repair works were carried out. There were other machinery and facilities such as toilets and rest areas on the floating dock and, in his view, the floating dock was more a "floating factory than a mere machine".

128 In the appeal, Mr Ong submitted that the Judge was wrong to insist that a floating dock, as a

system, must have the *exclusive* function of lifting a vessel off the water. Instead, the *primary* purpose, as opposed to the exclusive purpose, of the floating docks must be those listed in s 2(2) of the Act. Mr Ong added that the presence of other machinery and equipment as well as the availability of toilet facilities were directly related to the particular repair job carried out on a particular vessel.

Purpose behind section 2(2) of the Act

129 It will be appropriate, at this juncture, to examine the purpose behind s 2(2) of the Act in order to determine whether Parliament intended for s 2(2) of the Act to be interpreted narrowly. In other words, does s 2(2) of the Act require the floating docks to be *solely and exclusively* used for the purposes therein stated (*ie*, for repair) or does it suffice if the floating docks were *primarily* used for the purposes set out in s 2(2) of the Act?

130 Until the recent decision in *First DCS Pte Ltd v Chief Assessor* [2007] 3 SLR 326, there was a dearth of cases dealing with s 2(2) of the Act. One of the issues raised there was whether the district cooling machinery was machinery which qualified under any of the limbs in s 2(2) of the Act. In that case, the court found that water had been "adapted for sale" for the purposes of s 2(2)(*c*) and the enhancement in value due to the district cooling machinery was therefore not taken into account for assessment. It was suggested that the rationale behind s 2(2) of the Act is as follows (at [26] to [28]):

> [A]lthough our s 2(2) is similar to s 175 of the UK Factories Act 1961 (c 34) …, it bears noting that ss 3 and 4 of the UK Rating and Valuation (Apportionment) Act 1928 (c 44) ("the De-rating Act") also rode on the provisions in the Factories Act. As such, *where the premises were a "factory" within the meaning of the Factories Act, the premises* (*ie,* an industrial hereditament) *would be entitled to the benefit of the "de-rating" provisions of the De-rating Act. The object of the De-rating Act was to benefit manufacturers and industrial producers by granting them relief in respect of a portion of the rates.* Hence, where the *primary use* and purpose of the hereditament was non-factory (*eg*, as a dwelling house or retail shop or for a distributive wholesale business), one did not de-rate, for the hereditament was not industrial.
>
> In contrast, under s 2(2) of the Act, only machinery used for the purposes of making, altering or adapting for sale of articles is excluded from assessment. …
>
> The question then arises: what was the Legislature's intention in excluding only certain kinds of machinery? Although no express statement in this regard may be found, it seems to be likely that *the object behind s 2(2) was to encourage investments in plant and machinery for manufacturing, processing and other industrial purposes.*
>
> [emphasis added]

This was endorsed by the Court of Appeal in *Chief Assessor v First DCS Pte Ltd* [2008] 2 SLR 724.

131 In the light of the above observations, I am of the view that the Judge's "exclusive function" test does not comport with the purpose behind s 2(2) of the Act. In my judgment, as long as the *primary* and *dominant* (as opposed to the *exclusive*) function of the floating docks is for the purpose of repair, the floating docks ought to be excluded from assessment. Parliament could not have intended for s 2(2) of the Act to be so narrowly construed as to undermine its intention to encourage investments in manufacturing/processing/industrial machinery. Given that the primary function of the floating docks is to lift the vessel and to hold the same for repair, I find that the floating docks are "machinery" under s 2(2) of the Act. Accordingly (and for this reason additionally), the enhanced

value given to the premises by the presence of such machinery should not be taken into account for the purposes of property tax assessment.

Conclusion

132 For the reasons given above, I would allow the appeal.