

KARNATAKA PAWN BROKERS ASSON. AND ORS. ETC.

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v.

STATE OF KARNATAKA AND ORS.

OCTOBER 29, 1998

[S.P. BHARUCHA AND K. VENKATASWAMI, JJ.]

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Sales Tax :

Karnataka Sales Tax Act, 1957, Sections 2(f-2), (k) & (l)—Tamil Nadu General Sales Tax Act, 1959, Sections 2(d), (g) & (n)—'Dealer' and 'business'—Meaning and scope of—Pawnbrokers causing sale of articles/goods through statutory auctioneer on default of pawner to redeem the pledged articles—Held, such activities satisfy the definition of "dealer" as well as the definition of "business"—Hence, pawnbrokers are required to pay sales tax on such sale—Further held, that in such cases neither the pawner nor the statutory auctioneer is a dealer liable to pay sales tax—Sale—Pawnbroker—Debt Laws—Karnataka Pawnbrokers Act, 1961, Sections 2(7), 3, 7, 11 & 12—Karnataka Pawnbrokers Rules, 1966, Rule 20—Tamil Nadu Pawnbrokers Act, 1939, Sections 2(6), 3, 7, 11 and 12—Tamil Nadu Pawnbrokers Rules, 1943, Rule 12—Contract Act, 1872, Sections 172 and 173 to 177.

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Words and Phrases:

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Word "pawnbroker"—Meaning of—In the context of Karnataka Pawnbrokers Act, 1961, Section 2(7) and Tamil Nadu Pawnbrokers Act, 1939, Section 2(6).

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Words "dealer" and "business"—Meaning of—In the context of General Sales Tax Acts of Karnataka and Tamil Nadu.

The question involved in the instant appeals was whether a pawnbroker, causing sales of unredeemed articles/goods who carried on "business" within the meaning of the T. N. General Sales Tax Act, 1959 read with T. N. Pawnbrokers Act, 1943 as Rules thereunder as well as the Karnataka Sales Tax Act, 1957 read with the Karnataka Pawnbrokers Act, 1961 and Rules thereunder. Provisions of the Pawnbroker Acts of both the States were substantially the same.

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A It was contended by the appellants that pawnbrokers lent money on the pledge of articles and that they were not engaged in the business of buying and/or selling of goods; the pledge of the articles created a relation of bailor and bailee and as such they had no right to sell the property contrary to the contract or other statutory provisions regulating their relationship; in a sale occasioned by the default of the pawner in redeeming the article, the auctioneer and not the pawnbroker should be treated to be the seller and liable to pay sales tax; as the pawnbroker himself was entitled to bid at the sale under the Rules at most the sale could be deemed to be merely incidental to the main business to the pawnbroker not attracting sales tax; and that the statutory method of disposal of the pawned articles through an auctioneer did not amount to transferring the general property rights in the goods by the pawnbroker to the purchaser.

D It was contended by the respondents—States that the factum of sale in disposing of the pledged articles through public auction, could not be disputed; that the right to bring the articles for sale through public auction in the event of default on the part of the pawner to redeem vests with the pawnbrokers and the same was incidental to the business of ‘pawnbroker’; and that the concept of ‘business’ included the business of pawnbroker with the incidental right to sell the unredeemed goods and on these facts the auctioneer could not be treated as a seller for imposing tax on him.

E Dismissing the appeals, this Court

F **HELD :** 1.1. Pawnbroker is a person who carries on the business of taking goods and chattels in pawn for a loan. On payment of the money lent with interest and other admissible incidental expenses, the pawnbroker is liable to return the articles pledged. Sections 172 and 173 to 177 of the Contract Act, 1872, Sections 2(7), 3, 7, 11 and 12 of the Karnataka Pawnbrokers Act, 1961, Rule 20 of Karnataka Pawnbrokers Rules and Section 2(f-2), (k) and (t) of the Karnataka Sales Tax Act, 1957 show that the pawner can redeem the pledged article within the period stipulated or within the grace period provided or before the sale of the pawned article takes place through the auctioneer. However, once the article is brought for sale and sold, the pawner would lose his right in the pawned article as the general property right in the said article passes on to the purchaser.

[465-F; 466-E-F; 470-G-H]

H 1.2. The pawnbroker has special property rights in the goods pledged, a right higher than the mere right of detention of goods but a right lesser than general property right in the goods. The pawner at the time of the

pledge not only transfers to the pawnee the special right in the pledge but also passes on his right to transfer the general property right in the pledge in the event of the pledge remaining unredeemed resulting in the sale of the pledge by public auction through an approved auctioneer. Therefore, it is the pawnee who holds not only the absolute special property right in the pledge but also the conditional general property interest in the pledge, the condition being that he can pass on that general property only in the event of the pledge being brought to sale by public auction in accordance with the Act and the Rules framed thereunder. [474-C-E]

Bagal Kot Cement Co. v. State of Mysore, [1976] 1 SCC 336, relied on.

Kandula Radhakrishna Rao v. Province of Madras, (1952) 3 STC, 121 (Mad) approved.

1.3. In the sales of unredeemed goods through public auction by an approved auctioneer, the pawnee who has control or possession over the goods and who was given statutory authority to pass on the general property in and title to the goods, is the seller and as such, satisfies the definition of "dealer" under the General Sales Tax Act of both the States. This conclusion is further strengthened by the definition of "pawnbroker". The Explanation to the definition of "pawnbroker" contemplates that every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods and chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards repurchased on any terms, is a "pawnbroker" within the meaning of the main clause. The activities of a pawnbroker as in question, will satisfy the definition of "business" as well. The pawner has no role at all in the sale of the goods pledged except to redeem the same before the sale is concluded. Therefore, he cannot be treated as a seller in the context of the transaction. [476-A-D]

Bagal Kot Cement Co. v. State of Mysore, [1976] 1 SCC 336 and *Member, Board of Revenue, West Bengal v. Controller of Stores, Eastern Railway*, 74 STC 5, relied on.

1.4. An auctioneer cannot be treated as a seller liable to pay sales tax on the turnover as the role of the auctioneer in the facts of the present cases is very limited and he is not under the control of the pawnbroker. Instead the auctioneer is under the control of the authorities concerned who granted

A him approval for being an auctioneer. Therefore, the appellants' contention that in the transactions in question, the auctioneer must be held liable for payment of tax, is rejected. [476-D-E; 478-E]

Dy. Commissioner of Commercial Taxes v. Sri Dayanand Corporation, 21 STC 346 (Mad), approved.

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1.5. The appellants' further contention that having liberty to bid and purchase at the sale of unredeemed goods, the pawnbroker could not be deemed as a "seller" as he could not sell the goods to himself, is misconceived as the pawnbroker in such circumstance plays a dual role—one as a pawnbroker and the other as the individual self. Therefore, the contention that the pawnbroker could not be treated as a seller of goods in the facts and circumstances of the present cases and, therefore, not a "dealer" under the Sales Tax Act, has to be rejected. [478-F-H; 479-A-B]

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L.S. Chandramouli v. State of Madras, 18 STC 325 (Mad), approved.

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1.6. Moreover, it is now well settled that any activity incidental or ancillary to the main business will also come within the definition of "business" under the Sales Tax Act and, therefore, the contention that the sale of unredeemed goods, being incidental to the business of pawnbroker was not liable to sales tax, cannot be accepted. [479-B-C]

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Lallan Prasad v. Rahmat Ali, [1967] 2 SCR 233; *Balkrishan Gupta v. Swadeshi Politex Ltd.*, [1985] 2 SCC 167; *Chowringhee Sales Bureau (P) Ltd. v. CIT*, [1972] 3 SCC 196; *Provincial Govt. of Madras v. Mudukuru Munirathnam Chetti*, 4 STC 296 and *Dy. Commissioner of Commercial Taxes v. A.R.S. Thirumeninatha Nadar*, 21 STC 184 (Mad), distinguished.

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Bank of Bihar v. State of Bihar, [1972] 3 SCC 196, referred to.

2. Therefore, it has to be held that the impugned judgments of the High Courts holding that the pawnbrokers are liable to pay sales tax on the sales of articles through public auction on account of default committed by the pawner, lay down the correct law and do not call for any interference.

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[472-D; 481-A]

Karnataka Pawnbrokers' Association v. State of Karnataka, 94 STC 243 (Kant.) (DB) and *Madras Pawnbrokers' Association v. State of Tamil Nadu*, 98 STC 457 (Mad.) (DB), affirmed.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7321- A
7327 of 1995.

WITH

Civil Appeal Nos. 9297-9298 of 1995, 9482 of 1995, 1800 of 1996,
6894-6895 of 1996, 7683 of 1996, 11293 of 1995.

From the Judgment and Order dated 26.11.92 and 4.12.92 of the B
Karnataka High Court in W.A. Nos. 1710-11 and 1784-88 of 1992.

Dushyant Dave, K. Parasaran, T.L.V. Iyer, S.R. Setia, K.K. Mani, K.
Ram Kumar, T.V.S.N. Chari, M.A. Chinnaswamy, S. Srinivasan, M. Veerappa
and V. Krishnamurthy for the appearing Parties.

The Judgment of the Court was delivered by C

K. VENKATASWAMI, J. The common question that arises for
consideration in all these appeals is whether a Pawn-broker is a 'dealer' and
carries on 'business' within the meaning of the State General Sales Tax Act
read with the State Pawnbrokers Act and Rules when he causes the sales of D
unredeemed articles/goods, occasioned by the default of the Pawner through
(statutory) Auctioneer.

The above question has to be considered with reference to the provisions
of the Tamil Nadu General Sales Tax Act read with the Tamil Nadu
Pawnbrokers Act and Rules as well as the Karnataka Sales Tax Act read with E
the Karnataka Pawnbrokers Act and Rules. We may point out that the relevant
provisions of both the Sales Tax Acts and the Pawnbrokers Act are substantially
the same and for the sake of convenience the provisions mentioned hereinafter
are the provisions of the Karnataka Acts.

Before going into the submissions advanced at the bar, certain basic F
background facts need to be stated.

'Pawn-broker' is a person who carries on the business of taking goods
and chattels in pawn for a loan. On payment of the money lent with interest
and other admissible incidental expenses, the pawn-broker is liable to return
the articles pledged. Under the Act and Rules framed thereunder, the pawn- G
broker has to take out a licence to carry on the business of pawn-broker. In
addition to that, he has to maintain various account books, registers and
records as prescribed under the Rules. In the event of the pawner's failure to
redeem the pledged articles within the stipulated time and the grace period
statutorily allowed, the pawn-broker is at liberty to bring the articles pawned H
for sale at a public auction conducted in accordance with the rules prescribed

- A under the Act. Such sale by public auction must be conducted only through an approved auctioneer and in the manner specified in the rules. The pawn-broker is given liberty to bid at such public auction.

The relevant statutory provisions may now be noted.

- B Before the enactment of the Pawn-brokers Act by the States, the transactions of pledge/pawn were governed by the provisions of the Indian Contract Act. Chapter IX of the Contract Act deals with the bailments of Pledges. Section 172 defines 'pledge', 'pawner' and 'pawnee' as under :-

- C "The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawner". The bailee is called the "pawnee".

Sections 173 to 176 deal with the various rights of the Pawnee. Section 177 deals with the defaulting pawner's right to redeem.

- D In addition to the provisions in the Contract Act dealing with the pledge, it was felt necessary by the States to bring in a separate legislation concerning the business of Pawn-brokers in order to regulate and control that business of Pawn-brokers. Accordingly, the Pawnbrokers Act came to be enacted. The Pawnbrokers Act provides details of the manner in which the business of a Pawn-broker should be carried on and how the rights and liabilities of the Pawner and the Pawnee should be adjusted and settled.

A Pawn-broker in the Karnataka Pawnbrokers Act (hereinafter called the 'Act') is defined in Section 2(7) as follows:-

- F "Pawn-broker" means a person who carries on the business of taking goods and chattels in pawn for a loan;

Explanation—Every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards re-purchased on any terms, is a pawnbroker within the meaning of this clause."

- G Section 3 compels the Pawn-broker to obtain a licence. Section 7 directs the Pawn-broker to give a ticket to the Pawner on taking a pledge in pawn. Section 11, an important section, deals with the redemption of pledge, which reads as follows:-

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“11. *Redemption of pledge* - (1) Every pledge shall be redeemable within one year from the day of pawning exclusive of that day; and there shall be added to that year of redemption fifteen days of grace within which every pledge (if not redeemed within the period of redemption) shall continue to be redeemable. A

(2) A pledge pawned for a sum not exceeding ten rupees, if not redeemed within the period of redemption and days of grace, shall at the end of the days of grace become the pawnbroker's absolute property. B

(3) A pledge pawned for a sum exceeding ten rupees shall further continue to be redeemable until it is disposed of as provided in this Act, although the period of redemption and days of grace have expired. C

Explanation —Where the contract between the parties provides a longer period for redemption than one year, the provisions of sub-sections (1), (2) and (3) shall be read and construed as if references to such longer period had been substituted for the references to the period of one year therein.” D

Section 12 of the Act deals with the sale of pledge and inspection of sale book, which reads as follows:-

“*Sale of pledge and inspection of sale book*. (1) A pledge pawned for a sum exceeding ten rupees shall, when disposed of by the pawnbroker, be disposed of by sale by auction and not otherwise, and the sale shall be conducted in accordance with such rules as may be prescribed. E

(2) A pawnbroker may bid for and purchase at a sale by public auction conducted under sub-section (1), a pledge pawned with him; and on such purchase he shall become the absolute owner of the pledge. F

(3) At any time within three years after the public auction, the holder of the pawn-ticket may inspect the entry relating to the sale either in the pawnbroker's book or in such catalogue of the auction as may be prescribed. G

(4) (a) Where on such inspection or otherwise the pledge appears to have been sold for more than the amount of the loan and the interest and charges due at the time of the sale, the pawnbroker shall pay to H

A the holder of the pawn-ticket, on demand made within three years after the sale, the surplus after deducting therefrom the necessary costs and charges of the sale.

B (b) If on such demand it appears that the sale of the pledge has resulted in a surplus but that within twelve months before or after such sale, the sale of another pledge or pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus and shall be liable to pay only the balance, if any, after such set off."

C The next relevant provision will be Rule 20 of the Karnataka Pawnbrokers Rules, which reads as under :-

"20. *Procedure in auction of pledges.* — The procedure for sale by public auction of pledges shall be as follows:-

D (1) The sale shall be conducted by an auctioneer approved by the Licensing Authority or from the Inspector of Money Lenders and the Pawn-Brokers.

(2) The auctioneer shall—

E (i) cause all pledges to be exposed to public view;

(ii) get a catalogue of the pledges to be sold in auction containing the following particulars printed:-

(a) the name, place of business and licence number of the pawn-broker concerned;

F (b) date of loan;

(c) number of the pledge in the pledge book;

(d) full and detailed description of the article (weight to be noted in case of jewels);

G (e) name and address of pawner; and

(f) date, hour and place of sale;

H (iii) publish the printed catalogue by getting a copy thereof posted at the place of business of the pawn-broker and by distributing copies among intending bidders;

(iv) send at least a week before the date fixed for the sale:-

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(a) two copies of the printed catalogue to the police station having jurisdiction over the premises where the auction is to be held, one copy for being posted on the notice board of the police station and another copy for record at the police station;]

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[(aa) two copies of the printed catalogue to the Licensing Authority having jurisdiction over the premises where the auction is to be held, one copy for being pasted on the notice board of his office and another copy for record;

(b) one copy of the printed catalogue to the police station or each of the police stations having jurisdiction over the place of the business of the pawnbroker concerned for record at such police station; and

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(c) in any case, shall notify each of the police stations having jurisdiction over the places of business of the pawnbroker concerned and the place or places of sale, and postponement of such auction and all the subsequent dates of auction;]

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(v) send a copy of the printed catalogue by registered post to the pawner at least a week before the date fixed for sale.

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(3) The pledges of each pawnbroker in the catalogue shall be separate from the pledges of any other pawnbroker notifying the sale in a news paper approved by the Licensing Authority or the Inspectors of Money Lenders and the Pawnbrokers furnishing the following details also:

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(a) the pawnbroker's name and place of business; and

(b) the months in which the pledges were pawned.

(4) Where the pawnbroker himself bids at the sale, the auctioneer shall not take the bidding in any form other than that in which he takes, the bidding of other persons at the same scale, and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

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(5) The auctioneer shall, within fourteen days, after the sale deliver to the pawnbroker an authenticated copy of the catalogue, or of so

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- A much thereof as relates to the pledges of that pawnbroker indicating also the charges for the sale of each article.

(6) The pawnbroker shall preserve every such catalogue for at least three years after the auction."

- B Section 2(f-2) of the Karnataka Sales Tax Act, 1957 defines 'business' as follows;

"Business" includes -

- C "(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

- D "(ii) any transaction in connection with, or incidental or ancillary to such trade commerce, manufacture, adventure or concern."

Section 2(k) defines 'dealer'. The relevant portion is as follows:

- E "2(k) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes -"

The definition of 'sale' is found in Section 2(t). The relevant portion is as follows:-

- F "2(t) "Sale" with all its grammatical variation and cognate expressions means every transfer of the property in goods [other than by way of a mortgage, hypothecation, charge or pledge] by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, [and includes,"

- G A careful reading of the above extracted provisions will show that the Pawner can redeem the pledged article within the period stipulated or within the grace period provided or before the sale of pawned article takes place through auctioneer. However, once the article is brought for sale and sold, the Pawner would lose his right in the pawned article as the general property
- H right in the said article passes on to the purchaser.

On the basis of the general facts broadly stated as above, the contentions of the learned counsel were advanced. A

S/Shri K. Parasaran and D.A. Dave, learned senior counsel, advanced leading arguments on behalf of the appellants. The contentions raised by the counsel are as follows:-

The Pawn-brokers as money lenders lend money on the pledge of articles. It is incorrect to state that they are engaged in the business of buying and/ or selling of goods. On the pledge of the articles, a relationship of bailor and bailee comes into existence and as such the bailee has no right to sell the property contrary to the contract or other statutory provisions regulating their relationship. If at all there is a sale occasioned by the default of the Pawner in redeeming the article, the auctioneer must be treated as the seller and the liability to pay the sales tax will be only on the auctioneer. As the Pawn-broker himself is given a right to bid at the sale under the rules, he cannot be treated as the seller. Consequently, the Pawn-broker cannot be considered as a dealer effecting a sale. According to the learned senior counsel, on a harmonious reading of the relevant provisions of the Sales Tax Act and the Pawnbrokers Act, the only conclusion possible is that the Pawn-broker is not a dealer effecting a sale of property and, therefore, he is not liable for sales tax on such sales. At the most, it is contended that the sale of pledged articles, in the circumstances, must be deemed to be incidental to the main business of pawn-broker not attracting the provisions of the State General Sales Tax Act. It is also contended that the fact that Pawnbrokers Act and the Rules framed therein enabled the Pawn-brokers to dispose of the pawned articles by way of sale through an auctioneer; it does not in any way amount to transferring the general property right in goods by the Pawn-broker to the purchaser. Next it was contended that if it were to be held that the sale of pawned articles conducted at the instance of the Pawn-broker resulting in passing on of the property to the purchaser, it would be contrary to the concept of sale as contained in the Sale of Goods Act as the law does not recognise such a transaction as a sale. B C D E F

Mr. T.L.Vishwanatha Iyer, learned senior counsel appearing on behalf of the State of Karnataka and Mr. V. Krishnamurthi, learned counsel appearing on behalf of the State of Tamil Nadu, answering the contentions of learned counsel for the appellants, submitted that factually there is a sale in disposing of the pledged articles through public auction, cannot be disputed. The right to bring the articles for sale through public auction in the event of default on H

A the part of the pawner to redeem, vests with the 'Pawn-broker' and the same is incidental to the business of pawn-broker. The concept of 'business' includes the business of pawn-broker with incidental right to sell the unredeemed goods. On the facts of the case, the auctioneer cannot be treated as the seller for imposing tax on him. The appellants have admitted that the sale of unredeemed articles is incidental to the business of pawnbroker. If that be so
B the liability to pay sales tax on such sales cannot be avoided in view of the definitions of 'business', 'dealer' and 'sale' in the Sales Tax Acts. The learned counsel submitted that the reasonings given by the High Courts are well-founded and the conclusions thereon do not call for interference in these appeals.

C The case law cited by the learned counsel on both the sides will be referred to at the appropriate place.

D All the contentions now raised by the learned counsel for the appellants were raised before the High Courts of Karnataka and Madras, but without success. Both the High Courts rejected similar contentions and found that the Pawnbrokers are liable to pay sales tax on the sales of articles through public auction on account of default committed by the Pawner.

E The learned judges of the Division Bench of the Karnataka High Court after referring to a judgment of this Court in *Bank of Bihar v. State of Bihar*, AIR (1971) SC 1210, held that the Pawnbroker has a special property right in the pledge and that special property right is to be distinguished from the mere right of detention which the holder of a lien possesses. The Division Bench also held that the sale of unredeemed goods takes place at the instance of the Pawnbroker and such sale held through the approved auctioneer results
F in passing on the general property right in the goods to the purchaser. According to the learned Judges the Pawnbroker squarely falls in the main definition of 'dealer' under the Karnataka General Sales Tax Act. To come to the above conclusion the learned Judges invoked the aid of definition of 'pawnbroker' in Section 2(7) of the Pawn Brokers Act. After referring to a
G judgment of this Court in *Lallan Prasad v. Rahmat Ali and Anr.*, [1967] 2 SCR 233, the learned Judges held that a Pawn-broker has an implied authority to sell and such activity of sale which is incidental/ancillary to the business of Pawn-broker falls within the definition of business under the Karnataka Sales Tax Act. The learned Judges rejected the contention of the assessee that, if at all, for the sale of pawned articles the auctioneer is liable for sales
H tax and not the Pawn-broker. The reason for rejecting the above contention

was that the auctioneer was not the agent of the Pawn-broker but appointed as auctioneer under the relevant rule. According to the learned Judges, the Pawn-broker has authority under the statute to bring the pawned articles for sale and the pawner loses all his rights in the article sold through the auctioneer at the instance of the Pawn-broker. A

The learned Judges of the Division Bench of the Madras High Court also took the view as that of the Karnataka High Court and gave additional reasons as well. After referring to a full Bench judgment of the Madras High Court in *Kandula Radhakrishna Rao and Ors. v. The Province of Madras*, 3 STC 121, the learned judges held that the pawner, who pledges the article with the licensed Pawn-broker, not only parts with the possession of the pledged article in favour of the Pawn-broker, but by virtue of such pledge parts with the rights he held to sell the pledged article in case of default of payment and discharge of loan or redemption of the article pledged within the time stipulated therefor by the contract or by the provisions of the Act and the rules made thereunder. The learned Judges further held that the sale of the pawned article can be safely and legitimately be said to be occasioned or brought about by the action of the Pawn-broker only and consequently, he alone has to be treated in law as the person responsible and also as the person who has sold the pledged articles. The intervention of an approved auctioneer is only to prevent abuse by the Pawn-broker of his right to auction the unredeemed pledged articles to the detriment of the pawner and to prevent exploitation of his innocence or indigent circumstances. The position of the auctioneer was that of a mere crier or broker, who brings about sale. Therefore, the auctioneer can by no stretch of imagination be characterised as a seller inasmuch as he cannot be said to have any personal or propriety interest either in the pledged articles or in the amount realised by virtue of the sale. The pawner plays no role whatever in the actual sale of the articles, though it is his default in redemption of the pledged articles that results in the auction sale of the pledged articles. It was the view of the learned Judges that the Pawn-broker, whose action and decision brings about the sale and who alone having possession hands over the pledged articles to the successful bidder subsequently, is to be considered as a seller under the Sales Tax law. The learned Judges held that the Pawn-broker satisfies the definition of 'dealer' as well as 'business' under the Tamil Nadu General Sales Tax Act, which are substantially the same as that of the corresponding definitions in the Karnataka Sales Tax Act. B C D E F G

Aggrieved by the above conclusions the present appeals by special H

A leave are filed.

The learned Judges of the Division Bench of the Karnataka High Court as well as the learned Judges of the Division Bench of the Madras High Court have written elaborately on the subject citing numerous authorities of this Court and of the High Courts to support their conclusions. We are, with respect in agreement with the conclusions and the reasonings given for such conclusions in the judgments under appeal. We do not, therefore, propose to give elaborate reasonings, except to point out the principal reasonings to sustain the conclusions reached in judgments under appeal.

It cannot be and it is not disputed that the Pawn-broker has special property rights in the goods pledged, a right higher than a mere right of detention of goods but a right lesser than general property right in the goods. To put it differently, the pawner at the time of pledge not only transfers to the pawnee the special right in the pledge but also passes on his right to transfer the general property right in the pledge in the event of the pledge remained unredeemed resulting in the sale of the pledge by public auction through an approved auctioneer. The position being what is stated above the natural consequence will be that it is the pawnee who holds not only the absolute special property right in the pledge but also conditional general property interest in the pledge, the condition being that he can pass on that general property only in the event of the pledge brought to sale by public auction in accordance with the Act and the Rules framed thereunder.

In this connection, we can usefully quote a passage from *Kandula Radhakrishna Rao* (supra), which has been approved by this Court in *Bagal Kot Cement Co. v. State of Mysore*, [1976] 1 SCC 336.

The Madras High Court in *Kandula Radhakrishna Rao's* case (supra), (a Full Bench Judgment) speaking through Rajamannar, C.J., an eminent Judge, had an occasion to consider the position of a broker and a commission agent under the Madras General Sales Tax Act, 1939 and the rules made thereunder. The question that was considered in the said judgment was as to whether a commission agent is a dealer or not under the Taxing Enactment. The learned Chief Justice observed as follows :-

“As no written conveyance, still less a registered deed, is necessary for the sale of goods, unlike in the case of sale of immovable property, the contract of sale is preformed when the goods are actually delivered. It is because that there can be a sale by a person who has no title to the goods that Section 27 enunciates the rule that the buyer acquires

no better title to the goods than the seller had. In the case of a commission agent, the accepted mercantile practice is that he has control over or possession of the goods and he has the authority from the owner of the goods to pass the property in and title to the goods. If this is so, undoubtedly when a commission agent sells goods belonging to his principal with his authority and consent and without disclosing to the buyer the name of the owner, there is certainly a transfer of property in the goods from the commission agent to the buyer. A business which consists in such transactions can properly be described as a business of selling goods. A similar position would arise even in the case of a commission agent buying for an undisclosed principal. A Commission agent doing this kind of business would, in my opinion, fall within the definition of dealer in the Sales Tax Act. Neither the definition of dealer nor of sale contemplates as a necessary condition, that the goods sold should belong to the person selling or buying. There can be a sale or purchase on behalf of another."

We have already pointed out that this view of the Full Bench of the Madras High Court had the approval of this Court in *Bagal Kot Cement Co.* (supra).

In *Member, Board of Revenue, West Bengal v. Controller of Stores, Eastern Railway, Calcutta*, [74 STC 5], this Court had an occasion to consider whether the South Eastern Railway as a carrier of goods when sells the unclaimed goods was carrying on an activity incidental or ancillary to its business as carrier of goods and, therefore, was a 'dealer' for the purpose of the Bengal Finance (Sales Tax) Act, 1941 and liable to pay sales tax on the sale of unclaimed goods. While answering the question in the affirmative the learned judges held as follows :

"In these appeals the question is whether the assessee - railway in each case is a "dealer" for the purpose of assessment under the Bengal Finance (Sales Tax) Act, 1941. In the case of the assessee, South Eastern Railway, what were sold were unclaimed goods. The railway was a carrier of the goods and if at the stage of delivery goods remained unclaimed for a period the railway was entitled to dispose them of. There can be no doubt that the activity of so disposing of the goods was adjunctive to the principal activity of the carriage of goods by the railway. It is an activity which may be regarded as necessarily incidental or ancillary to its business as carrier of the

A goods. It seems to us that the assessee, South Eastern Railway, was a “dealer” for the purposes of the Bengal Finance (Sales Tax) Act, 1941.”

B Applying the above principle to the facts of these cases, we are clearly of the opinion that in the sales of unredeemed goods through public auction by an approved auctioneer the pawnee, who has control or possession over the goods and who was given statutory authority to pass the general property in and title to the goods, is the seller and as such, satisfies the definition of ‘dealer’ under the General Sales Tax Act of both the States. This conclusion is further strengthened by the definition of ‘Pawn-broker’ (supra). The explanation to the definition of ‘Pawn-broker’ contemplates that every person who keeps the shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards re-purchased on any terms, is a ‘Pawnbroker’ within the meaning of main clause. The activities of pawnbroker as detailed above will satisfy the definition of business as well. We have also noticed that the pawner has no role at all in the sale of goods pledged except to redeem the same before the sale is concluded. Therefore, he cannot be treated as seller in the context of the transaction.

E Likewise, the auctioneer cannot be treated as a seller liable to pay sales tax on the turnover as the role of the auctioneer in the facts of these cases is very limited and he is not under the control of the pawnbroker. Instead the auctioneer is under the control of authorities concerned who granted approval for being an auctioneer. In this connection we can usefully cite a Division Bench judgment of the Madras High Court in *The Deputy Commissioner of Commercial Taxes, Madras Division, Madras -7 v. Sri Dayanand Corporation, Madras-1*, [21 STC 346]. The issue for decision in that case was whether the auctioneer can be considered as a dealer for the purpose of levy of sales tax. The auctioneer in that case was also an approved Auctioneer under the provisions of the Tamil Nadu Pawnbrokers Act. While holding that the auctioneer was not a ‘dealer’ liable to pay tax, the learned judges observed as follows :-

H “We have carefully gone through the formalities which the above rules have laid down for the procedure at the auction of pledged goods by the auctioneer. But nowhere has it been stated that the auctioneer should take over possession of the goods from the pawnbroker and sell them. Even the specific provision in rule 15(2)

extracted above, only directs the auctioneer to cause all pledges to be exposed to public view. He could perform this obligation by directing the pawnbroker to be present at the time of the sale with the articles proposed to be sold and keep them ready for inspection. But this obligation will not make it necessary for the pawnbroker to part with possession of the goods in favour of the auctioneer.

With a little reflection, one also realises that a careful pawnbroker would like to keep the goods in his own custody until they are sold and would not like to hand over possession to the auctioneer without any security for their safe custody. The provisions in the pawnbrokers Act and in particular, the obligation that auction sales of unredeemed goods shall be effected according to certain prescribed rules through approved auctioneers are intended to safeguard the pledgers of goods from the effect of nominal or bogus sales of their goods by pawnbrokers in the event of non-redemption, which will otherwise have the effect of preventing poor persons, who resort to the pawnbrokers for loans, from getting a proper value of the pledged goods when they remain unredeemed. The intervention of the auctioneer is, therefore, intended for safeguarding the interest of the pledgers of goods but at the same time, the rules are careful to see that the interest of pawnbrokers are not also affected and they do not require them to part with the possession of the goods to the auctioneer before the sale. In fact the rules are silent about the mode of delivery of the goods. They have meticulously provided for the manner in which the sales are to be published and conducted. The auctioneer will be carrying out the obligations under the rules, even without taking possession of the pledged goods and delivering them to the highest bidder on the fall of the hammer. The pawnbroker can still be a person who retains the possession of the goods, and he can deliver them to the successful bidder at the auction by the auctioneer. It is from this point of view that we are impressed by the circumstances mentioned by the Tribunal in its order including clause 5 of the conditions of the auction sale which allows the bidder to take delivery of the goods from the pawnbroker, and the bill of sale which makes mention of the fact that the buyer will take delivery of the goods from the pawnbroker on payment of the price to the auctioneer.

It is no doubt a fact that Section 2(g) of the Madras General Sales Tax Act, 1959, which defines "dealer" includes an auctioneer. The

A “auctioneer” is, however, included therein only as an instance of other types of dealers who are also referred to in the definition. But the main part of the definition at the beginning of Section 2(g) refers to a person who carries on the business of buying, selling, supplying or distributing goods. Before these requirements can apply to a dealer, B for the purpose of levy of sales tax the transaction must amount to a sale as defined in Section 2(n) of the Act. That definition makes it necessary that there should be a transfer of property in the goods by one person to another in the course of business for cash or deferred payment or other valuable consideration. In the present case, there is a clear finding that the auctioneer merely served the purpose of C bringing the bidders and the pawnbrokers into contact with each other and also arranged for the holding of a sale in an open and fair manner, giving the widest publicity to the sales so that the pledgers might get the most advantageous price at the open sale of their pledged articles.

D But it is the pawnbroker who ultimately delivers possession of the goods to the bidder. On this finding of fact by the Tribunal it has to be concluded that the respondent discharged only the duty of a crier or a broker who brought the parties together, but he was not a dealer who transferred the property in the goods to the highest bidder.”

E We are in agreement with the above observations and the conclusions reached thereon. This answers, in the negative, the contention advanced on behalf of the appellants that if at all in the transactions in question, the Auctioneer must be held liable for payment of tax.

F Now coming to the contention that inasmuch as the pawn-broker is given liberty to bid and purchase at the sale of unredeemed goods, he cannot be deemed as a seller as one cannot sell the goods to himself. This contention is mis-conceived as the Pawn-broker in such circumstance plays a dual role-one as a pawnbroker and the other as individual self. As a matter of fact, a similar question arose before the Madras High Court in *L.S. Chandramouli and Co. v. The State of Madras*, 18 STC 325. In that case, the question for G consideration was whether a local agent of a non-resident principal, who carried on business of his own also transfers the goods of non-resident principal to his own business can be considered as a transaction of sale chargeable to tax. The learned judges overruling a similar contention held that the concerned agent held two different capacities - one as an agent of a non-resident principal H - and the other as proprietor of his own business, two different identities

altogether, while transferring the goods of the non-resident principal to himself, he not only acted as agent of his non-resident principal but also as a purchaser and there is nothing in law which militates against the said conclusions and consequent tax liability on such person. We have no hesitation to reject the contention of the learned counsel for the appellants that the Pawn-broker cannot be treated as a seller of goods in the facts and circumstances of these case and, therefore, not a 'dealer' under the Sales Tax Act.

It is now well settled that any activity incidental or ancillary to the main business will also come within the definition of 'business' under the Sales Tax Act and, therefore, the contention that the sale of unredeemed goods, being incidental to the business of Pawn-broker was not liable to sales tax, cannot be accepted.

Let us now consider the decisions cited on behalf of the learned counsel for the appellants.

Mr. K. Parasaran, learned senior counsel for the appellants, cited a Single Bench judgment of the Madras High Court in *Provincial Government of Madras v. Mudukuru Munirathnam Chetti and Anr.*, [4 STC 296]. This judgment apart from the fact that it was rendered under the Madras General Sales Tax Act, 1939, is not directly on the point and the context in which the judgment was rendered, was entirely different. That judgment considered a transaction treated by both the parties as loan and entrustment of goods for sale to others to discharge the loan. It was held that transaction cannot be treated as a sale at the hands of the person, who advanced the money for the purpose of levy of sales tax. The nature and character of the transaction in the case on hand are totally different. Therefore, the case cited has no application to the facts of this case.

Likewise, the decisions cited by Mr. Dave, learned senior counsel for the appellants, namely, *The Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. A.R.S. Thirumeninatha Nadar Firm, Tuticorin*, [21 STC 184], *Lallan Prasad v. Rahmat Ali and Anr.*, [1967] 2 SCR 233; *Balkrishnan Gupta and Ors. v. Swadeshi Polytex Ltd. and Anr.*, [1985] 2 SCC 167 and *M/s Chowringhee Sales Bureau (P) Ltd. v. C.I.T. West Bengal*, [1973] 1 SCC 46, are all under different circumstances and with reference to the facts of those cases which have no direct bearing to the issues raised in these cases.

In *The Deputy Commissioner of Commercial Taxes, Madurai Division*

A *Madurai* (supra), the Division Bench of the Madras High Court, on the facts of the case, held that the bank in selling the goods pawned to it did not act as agent of the assessee and the sales were on behalf of the pledger. The learned Judges further held that the pawn or pledge by itself did not make the pawnee or pledgee the owner of the goods on the peculiar facts of that case.

B In *Lallan Prasad's* case (supra), this Court considered a question whether the appellant in that case was entitled to a decree in view of his denial of the pledge and his failure to offer to redeliver the goods. In answering that question, this Court, after referring to Section 176 of the Indian Contract Act, held that so long, however, as the sale does not take place, the pawner is entitled to redeem the goods on payment of the debt. Therefore, the right to sue on the debt assumes that he is in a position to redeliver the goods on payment of the debt, and if by denying the pledge or otherwise, he has put himself in a position whereby he is not able to redeliver the goods, he cannot obtain a decree.

D In *Balkrishna Gupta and Ors.* (supra), again a judgment of this Court had considered a question that arose under the Companies Act, 1956 and the effect and consequence of appointment of a Receiver in respect of certain shares of a company.

E In *M/s Chowringhee Sales Bureau (P.) Ltd.* (supra), this Court, on the peculiar facts of that case, found that there was a close and direct connection between an auctioneer and the transaction of auction sale in that case. On the basis of the peculiar facts, this Court also found that the auctioneer had collected sales tax on the auction sale of the goods but had not passed on the same to the Revenue. In such circumstances, this Court held that the auctioneer was liable to pay sales tax under the West Bengal Act.

G None of the cases cited by the learned counsel for the appellants has any bearing to the facts of the cases on hand. On the other hand, the decisions cited in the judgments under appeal and cited in this judgment in support of the conclusions are directly on point.

H We have already stated that we are in agreement with the conclusions reached by the learned judges in the judgments under appeal and we have dealt with only the principal reasons sufficient for approving the judgments under appeal.

In the light of the discussions made above and for the reasons given A
above, we are of the view that the judgment under appeal lay down the
correct law and do not call for any interference. Accordingly, the appeals fail
and are dismissed. However, there will be no order as to costs.

R.K.S.

Appeals dismissed.