

Karnataka Pawnbrokers' Association and Others

Vs

State of Karnataka and Others

Civil Appeal Nos. 7321-27 of 1995 with Nos. 9297-98, 9482 of 1995, 1800 6894-95, 7683 of 1996
and 11293 of 1995

(S.P. Bharucha, K. Venkataswami JJ)

29.10.1998

JUDGMENT

K. VENKATASWAMI, J. -

1. The common question that arises for consideration in all these appeals is whether a pawnbroker 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 unredeemed articles/goods, occasioned by the default of the pawnor through (statutory) auctioneer.
2. The above question has to be considered with reference to the provisions of the Tamil Nadu General Sales Tax Act, 1959 read with the Tamil Nadu Pawnbrokers Act, 1943 and Rules as well as the Karnataka Sales Tax Act, 1957 read with the Karnataka Pawnbrokers Act, 1961 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.
3. Before going into the submissions advanced at the Bar, certain basic background facts need to be stated.
4. "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. Under the Act and Rules framed thereunder, the pawnbroker has to take out a licence to carry on the business of pawnbroker. In addition to that, he has to maintain various account books, register and records as prescribed under the Rules. In the event of the pawnor's failure to redeem the pledged articles within the stipulated time and the grace period statutorily allowed, the pawnbroker is at liberty to bring the articles pawned for sale at a public auction conducted in accordance with the Rules prescribed under the Act. Such sale by public auction must be conducted only through an approved auction and in the manner specified in the Rules. The pawnbroker is given liberty to bid at such public auction.
5. The relevant statutory provisions may now be noted.
6. Before the enactment of the Pawnbrokers Act by the States, the transactions of pledge/pawn were governed by the provisions of the Indian Contract Act, 1872. Chapter IX of the Contract Act, deals with the bailments of pledges. Section 172 defines "pledge", "pawnor" and "pawnee" as under :

"172. 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 'pawnor'. The bailee is called the 'pawnee'."

7. Sections 173 to 176 deal with the various rights of the pawnee. Section 177 deals with the defaulting pawnor's right to redeem.

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

9. A pawnbroker in the Karnataka Pawnbrokers Act (hereinafter of taking "the Act") is defined in Section 2(7) as follows :

"Pawnbroker' 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 repurchased on any terms, is a pawnbroker within the meaning of this clause."

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

"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.

(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.

(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.

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."

11. 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.

(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.

(3) At any time within three years after the public auction, the holder 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.

(4)(a) Where on such inspection or otherwise, the pledge appears, to have been sold for more than the amount of the loan and interest and charges due at the time of the sale, of the pawnbroker shall pay to the holder of the pawn-ticket, on demand made within three years after the sale, the surplus after deducting therefore, the necessary costs and charges of the sale.

(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."

12. 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 :

(1) The sale shall be conducted by an auctioneer approved by the licensing authority or from the Inspector of Moneylenders and Pawnbrokers.

(2) The auctioneer shall -

(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 pawnbroker concerned;

(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);

(e) name and address of pawnor; and

(f) date, hour and place of sale;

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

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

(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 pasted on the notice board of the police station and another copy for record at the police station;]

(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

(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;

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

(3) The pledges of each pawnbroker in the catalogue shall be separate from the pledges of any other pawnbroker notifying the sale in a newspaper approved by the licensing authority or the Inspector of Money lenders and Pawnbrokers furnishing the following details also :

(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.

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

13. Section 2(f-2) of the Karnataka Sales Tax Act, 1957 defines "business" as follows :

"Business' includes, -

(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

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

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

"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 -

* * * "##

15. The definition of "sale" is found in Section 2(t). The relevant portion is as follows :

"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, -

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16. A careful reading of the above extracted provisions will show that the pawnor 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 pawnor would lose his right in the pawned article as the general property right in the said article passes on to the purchaser.

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

18. 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 pawnbrokers as moneylenders 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 pawnor 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 pawnbroker himself is given the right to bid at the sale under the Rules, the cannot be treated as the seller. Consequently, the pawnbroker cannot be

considered as a dealer effecting a sale. Accordingly 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 pawnbroker 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 the pawnbroker not attracting the provisions of the State General Sales Tax Act. It is also contended that the fact that the Pawnbrokers Act and the Rules framed therein enabled the pawnbrokers 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 pawnbroker 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 pawnbroker 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, 1930 as the law does not recognise such a transaction as sale.

19. 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 the part of the pawnor to redeem, vests with the "pawnbroker" and the same is incidental to the business of pawnbroker. The concept of "business" includes the business of a pawnbroker with the 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, the liability to pay sales tax on such sales cannot be avoided in view of the definition of "business", "dealer" and "sale" in the Sales Tax Acts. The learned counsel submitted that the reasonings given by the High Court are well founded and the conclusions thereon do not call for interference in these appeals.

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

21. 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 committee by the pawnor.

22. 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* ((1972) 3 SCC 196 : 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 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 the definition of "pawnbroker" in Section 2(7) of the Pawnbrokers Act. After referring to a judgment of this Court in *Lallan Prasad v. Rahm(t Ali* (AIR 1967 SC 1322 : (1967) 2 SCR 233) the learned Judges held that a pawnbroker

has an implied authority to sell and such activity of sale which is incidental/ancillary to the business of pawnbroker falls within the definition of "business" under the Karnataka Sales Tax Act. The learned Judges rejected the contention of the assesseees that, if at all, for the sale of pawned articles the auctioneer is liable for sales tax and not the pawnbroker. The reason for rejecting the above contention was that the auctioneer was not the agent of the pawnbroker but appointed as auctioneer under the relevant Rule. According to the learned Judges, the pawnbroker has authority under the statute to bring the pawned articles for sale and the pawnor loses all his rights in the article sold through the auctioneer at the instance of the pawnbroker.

23. 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 v. Province of Madras* ((1952) 3 STC 121 (Mad)) the learned Judges held that the pawnor, who pledges the article with the licensed pawnbroker, not only parts with the possession of the pledged article in favour of the pawnbroker, 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 therefore 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 pawnbroker 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 pawnbroker of his right to auction the unredeemed pledged articles to the detriment of the pawnor 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 proprietary (sic proprietary) interest either in the pledged articles or in the amount realised by virtue of the sale. The pawnor 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 pawnbroker, 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 pawnbroker satisfies the definitions 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.

24. Aggrieved by the above conclusions, the present appeals by special leave are filed.

25. 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.

26. It cannot be and it is not disputed that the pawnbroker 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 in differently, the pawnor 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. 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 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.

27. In this connection, we can usefully quote a passage from *Kandula Radhakrishna Rao* ((1952) 3 STC 121 (Mad)) which has been approved by this Court in *Bagal Kot Cement Co. v. State of Mysore* ((1976) 1 SCC 336 : 1976 SCC (Tax) 53).

28. The Madras High Court in *Kandula Radhakrishna Rao* case ((1952) 3 STC 121 (Mad)) (a Full Bench judgment) speaking through *Rajamannar, C.J.*, an eminent Judge, had an occasion to consider the position of a broker and 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 performed 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 a better title to the goods than the seller had. In the case of 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 the 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."

29. 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.* ((1976) 1 SCC 336 : 1976 SCC (Tax) 53).

30. In *Member, Board of Revenue, W.B. v. Controller of Stores, E. Rly.* (1989 Supp (2) SCC 236 : 1990 SCC (Tax) 83 : (1989) 74 STC 5) this Court had an occasion to consider whether the South-Eastern Railway as a carrier of goods when selling 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 : (SCC pp. 238-39, para 7)

"7. 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 of them. 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 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."

31. 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 "pawnbroker" (supra). 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 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 repurchased on any terms, is a "pawnbroker" within the meaning of the main clause. The activities of a pawnbroker as detailed above will satisfy the definition of "business" as well. We have also noticed that the pawnor 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.

32. 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 the 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 *Dy. Commr. of Commercial Taxes v. Sri Dayanand Corpn.* ((1968) 21 STC 346 (Mad)). 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 :

"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 pledges of goods from the effect

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 the sale which 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 as auctioneer. The '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, for the purpose of levy of sales tax the transaction must amount to 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 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.

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".

33. 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.

34. Now coming to the contention that inasmuch as the pawnbroker is given liberty to bid and purchase at the sale of unredeemed goods, he cannot be deemed as a "seller" as he cannot sell the goods to himself. This contention is misconceived as the pawnbroker in such a circumstances plays a dual role - one as a pawnbroker and the other as the individual self. As a matter of fact, a similar

question arose before the Madras High Court in *L.S. Chandramouli & Co. v. State of Madras* ((1966) 18 STC 325 (Mad)). In that case, the question for consideration was whether a local agent of a non-resident principal who carried on business of his own also transfers the goods of the 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 agent concerned held two different capacities - one as an agent of a non-resident principal - and the other as the 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 an 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 pawnbroker cannot be treated as a seller of goods in the first and circumstances of these cases and, therefore, not a "dealer" under the Sales Tax Act.

35. 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.

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

37. Mr. K. Parasaran, learned Senior Counsel for the appellants, cited a Single Bench judgment of the Madras High Court in *Provincial Govt. of Madras v. Mudukuru Munirathnam Chetti* (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 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.

38. Likewise, the decision cited by Mr. Dave learned Senior Counsel for the appellants, namely, *Dy. Commr. of Commercial Taxes v. A.R.S. Thirumeninatha Nadar* ((1968) 21 STC 184 (Mad)); *Lallan Prasad v. Rahmat Ali* (AIR 1967 SC 1322 : (1967) 2 SCR 233); *Balkrishan Gupta v. Swadeshi Polytex Ltd.* ((1985) 2 SCC 167 : 1985 SCC (Tax) 215) and *Chowringhee Sales Bureau (P) Ltd. v. CIT* ((1973) 1 SCC 46 : 1973 SCC (Tax) 163) 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.

39. In *Dy. Commr. of Commercial Taxes* ((1968) 21 STC 184 (Mad)) 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 an 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.

40. In *Lallan Prasad* case (AIR 1967 SC 1322 : (1967) 2 SCR 233) 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 pawnor is entitled to redeem the goods on payment of the debt. Therefore, the right to sue on the debt assume that he is in a position to redeliver the goods on payment of the debt, and if by denying

the pledge or otherwise, he was put himself in a position whereby he is not able to redeliver the goods, he cannot obtain a decree.

41. In *Balkrishan Gupta* ((1985) 2 SCC 167 : 1985 SCC (Tax) 215) 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.

42. In *Chowringhee Sales Bureau (P) Ltd.* ((1973) 1 SCC 46 : 1973 SCC (Tax) 163) 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.

43. None of the cases cited by the learned counsel for the appellants had any bearing on 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.

44. 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.

45. In the light of the discussions made above and for the reasons given above, we are of the view that the judgments 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.