



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

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W.P. (MD) Nos.5878 to 5882 of 2011
and
M.P. (MD) Nos.1,1,1,1 and 1 of 2011

Arulmigu Dhandayuthapaniswamy Thirukoil,
Rep. by its Joint Commissioner/Executive Officer,
Palani, Dindigul District. : Petitioner in all W.Ps.

Vs.

The Assistant Commissioner -II,
Commercial Taxes (FAC),
Palani. : Respondent in all W.Ps.

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the entire records in connection with the impugned proceeding of the respondent in Roc.No.2304/2007/A4, dated 31.03.2011 served on 15.04.2011 for the Assessment Years 2007-2008, 2006-2007, 2003-2004, 2005-2006 and 2004-2005, Fasli 1417, 1416, 1413, 1415 and 1414 respectively and quash the said proceeding.

For Petitioner : Mr.R.Devaraj

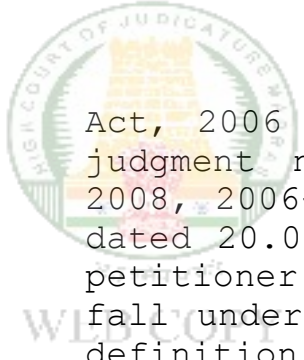
For Respondent : Mr.S.Dhayalan,
in all W.Ps. Government Advocate

Amicus Curiae : Mr.A.Chandrasekaran

COMMON ORDER

Challenging the orders passed by the respondent/Assistant Commissioner-II, Commercial Taxes (FAC), Palani, in Roc.No.2304/2007/A4, dated 31.03.2011 for the Assessment Years 2007-2008, 2006-2007, 2003-2004, 2005-2006 and 2004-2005, Fasli 1417, 1416, 1413, 1415 and 1414 respectively, these Writ Petitions have been preferred by Arulmigu Dhandayuthapaniswamy Thirukoil [hereinafter referred to as 'the Temple'].

2. Pursuant to a letter sent by the respondent to the Commercial Tax Officer, Chennai, dated 07.11.2007 that the sales tax in respect of human hair at the rate of 4% was not paid either by the bidder or the temple under the Tamil Nadu Value Added Tax



Act, 2006 [hereinafter referred to as 'the 'TNVAT Act'], best of judgment notices, vide proceedings in Roc.No.2304/2007/A4/2007-2008, 2006-2007, 2003-2004, 2005-2006 and 2004-2005, respectively, dated 20.03.2008, were issued for the respective Fasli years. The petitioner filed its objections stating that the Temple do not fall under the definition of "**dealer**" nor will it fall under the definition of "**business**" under Section 2(10) of the TNVAT Act and, therefore, they are not liable to pay tax. Further, it was stated that as per the judgment of this Court reported in **1998(108) STC 114 [Arulmigu Dhandayuthapani Swami Thirukkoil vs. Commercial Tax Officer-II, Palani]**, the Temple is not a dealer and no question of commercial activity is carried on by the Temple. It is not liable to pay any tax, as the auctioning also is incidental and not the business activity.

3. The respondent, after considering the objections made by the petitioner dated 13.04.2008, had observed as under:

"1. as per the definition under Sec.2(g) of the TNGST Act any person who carries on the business of buying, selling, supplying or distributing goods directly or other revise whether for case or for deferred payment or for commission remuneration or other valuable consideration are meant by a dealer. Hence the Arulmigu Dhandayuthapani Koil Devasthanam is a dealer.

2. as per the definition under sec.2(d) of the TNGST Act trade or commerce or manufacturer or any adventure or concern in the nature of trade whether or not such trade commerce manufacture, adventure or concern carried on by Tvl.Arulmigu Dhandayuthapani Thirukkoil Devasthanam with a motive to make gain or profit and whether or not any gain or profit was a business. Hence the Devasthanam had done a business/sales within the meaning of commercial activities as a dealer.

3. As per the Sec.2(g)(iii) of the TNGST Act.59 a factor, a broker, a commission agent or arhati a del credere agents or an auctioner or any other merchantile agent by what ever name called and whether of the same description as here in before or not who carries on the business of buying selling supplying or distributing goods on behalf of any principal or through whom the goods are bought sold supplied or distributed is a dealer. Hence the Arulmigu Dhandayuthapani Devasthanam is a dealer. Since they are not registered under the sec.20(2)(vi) of the TNGST Act.59. They are deemed as casual trader as per



the definition of sec 2(g)(ii) of the Act 59 having business activities as an auctioner."

4. Challenging the impugned orders on the ground of jurisdiction, the petitioner is before this Court.

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5. Mr.R.Devaraj, learned counsel for the petitioner and Mr.A.Chandrasekaran, learned *Amicus Curiae* appointed by this Court argued in detail and would submit that the petitioner Temple are not carrying on any business, trade or commerce much less with a motive to make gain or profit from such trade or commerce, etc. Secondly, it was contended that the Temple cannot be called as a dealer as per Section 2(15) of the TNVAT Act or Section 2(g) of the Tamil Nadu General Sales Tax Act, 1959, [hereinafter referred to as 'the TNGST Act']. Therefore, it cannot be said that the Temple is involved in any trade or business much less with a motive to make profit and, therefore, levying tax through the impugned orders is not sustainable and without jurisdiction.

6. According to the learned counsel, the main functioning of the Temple is to carry on poojas and they are not acting in profit motive and whatever amount comes to the Temple is spent for the charitable activities, like Annadhanam and to maintain the clean and hygienic atmosphere, facilitating the devotees to visit the Temple. They do not also fall under the administrative control of the State Government or its departments or any other instrumentalities falling within the definition of '**State**' under Article 12 of the Constitution of India. Even the officials deputed by the Hindu Religious and Charitable Endowments Department are paid by the Temple. Apart from that, there are servants employed by the Temple by itself from time immemorial. They are also paid by the Temple governed by the Trustees elected for that purpose. Therefore, the Temple is independently functioning under the monitoring of HR & CE Department, Government of Tamil Nadu. Further, the incidental activity of removing the human hair offered by the devotees with a view to maintain cleanliness and hygiene cannot be called as a business activity. Since the temple will not fall under the ambit of "dealer and business" the orders passed by the respondent on that basis are without jurisdiction.

7. Controverting the contention of the learned counsel for the petitioner as well as *Amicus Curiae*, Mr.S.Dhayalan, learned Government Advocate appearing for the respondent would contend that the Temple is distributing Prasatham, like Panchamirtham to the pilgrims and the sale ends gets terminated there itself and thereafter no further sales or manufacturing activity. Whereas the human hair auctioned by them is used in marketing chain continues therefrom, and, therefore, it cannot be



treated as incidental activity, but, it is purely a commercial transaction, wherein the Temple is getting profit. The table submitted by them showing the sale price of the human hair increasing year after year would show that the Temple is making profit by sale of human hair and, therefore, the Temple shall be treated as a dealer and involved in trade or commerce and hence, it is liable to pay tax. This increase in sale price of the human hair shall be construed as making profit year after year and there should be tax treating the Temple as a dealer and a person engaged in the business of sale. Further, it is contended that there is an appeal remedy available under the Act which is not exhausted and, therefore, the Writ Petitions are not maintainable and they are liable to be dismissed.

8. I have considered the rival submissions made on both sides.

9. The predominant issue in these Writ Petitions is whether the disposal of human hair will amount to '**business**' under Section 2(10) of the TNVAT Act, 2006, or 2(d) of the TNGST Act. Section 2(10) of the TNVAT Act, 2006, reads as under:

(10) "business" includes -- (i) any trade or 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;

10. Section 2(12) of the TNVAT Act, 2006, reads as under:

(12) "casual trader" means a person who has, whether as principal, agent or in any other capacity, occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration, or other valuable consideration, and who does not reside or has no fixed place of business within the State.

11. Section 2(15) of the TNVAT Act, 2006, reads as under:

<https://hcservices.ecourts.gov.in/hcservices/>

(15) "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-- (i) a local authority, company, Hindu undivided family, firm or other association of persons which carries on such business; (ii) a casual trader; (iii) a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed; (iv) every local branch of a firm or company situated outside the State; (v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration; (vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; (vii) a person engaged in the business of delivery of goods on hire-purchase or any system of payment by instalments; (viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; (ix) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

12. From a reading of the Section, it is seen that any trade or commerce or manufacture or any adventure or concern in the nature of trade and commerce, which is carried on with a motive to make more gain or profit, is defined as a business. But, insofar as the petitioner Temple is concerned, it is a religious place of worship, wherein lakhs of devotees come to worship the Deity and go back. By way of offering cash, human hair and so many things, like silver, gold, etc., they believe that they get the blessings of the Deity. In such circumstances, the main object is to do religious services to the Deity. The religious service made to the Deity will not be called as a trade or commerce, much less as a business, if it is done with a motive to make gain or profit. Therefore, in the absence of any trade or commerce in the main function of the temple, it cannot be called as business.



13. The next question arises is whether the petitioner is a dealer.

14. Section 2(15) of the TNVAT Act r/w 2(g) of the TNGST Act defines 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, is considered as a dealer. This definition includes nine persons involved in such activities. The Temple does not fall within the persons defined under the Section. The Temple is not involved in any business, trade or commerce and, therefore, cannot be called as a dealer. The explanation to the Section further expands the position of the dealers and the activities carried down by the persons. As per Sub-Clause (xi) of Explanation (III) to Section 2(15) of the TNVAT Act, any other Corporation, Company, body or authority owned or set up by, or subject to administrative control of the Central Government or any State Government is also called as a dealer. Analyzing the activity of the Temple, as per Explanation III, it shall be a body or authority owned or set up by the Central Government or any State Government and subject to administrative control of the Governments. In the instant case, the Temple is governed by a Board of Trustees. That is neither owned or set up by the Central or State Government but is subject to the monitoring and supervising control of the HR & CE Department. It is clearly stated in the affidavit filed by the petitioner that the officers and staff are deputed to supervise the functioning of the Temple and the financial transactions. Their salaries and other expenses are reimbursed to the Government from the funds of the Temple. Other than this, the Temple is also doing many charitable works for the benefit of the pilgrims and devotees. The Temple also looks after the basic requirements of the devotees and pilgrims who throng in and around Palani Hills. The Temple is providing Cottage and maintaining the giriveedhi, which has been given to the Temple by the Revenue Authorities. The Temple is also distributing Panchamirtham which is not governed under the TNGST Act. Apart from this, the Temple is also doing Annadhanam and during festivals, provides so many facilities and charities for the benefit of the devotees between 08.00 a.m. and 10.00 p.m. and caters the needs of nearly 4000 to 5000 devotees per day. Apart from that, the religious activities like painting, repairing the structures, roads and renovation of the Temple, maintenance of the health norms by having toilets at the Hill Temple and various Mandapams facilitating Utsavs', functions of the deity and devotees, apart from having free Choultries and clean drinking water, etc., and conducting Kumbabhishegam are carried on by the Temple. These activities are fully under the financial control of the Board of Trustees elected for that purpose, supervised by HR & CE Department. Therefore, the Temple will not come under the definition of 'dealer'.



15. The respondent would contend that since the petitioner is not registered under Section 20(2)(vi) of the TNGST Act, they shall be treated as a "casual dealer".

16. Considering the contention, it should be seen that Sub-Section (12) of Section 2 of the TNVAT Act defines a 'casual dealer'. A reading of this Section would specify any person who does not **reside or has no fixed place of business within the State** and who is involved in the activities of buying, selling, supplying or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration on his own or as a principal, agent or in any other capacity, occasional transactions of a business nature is called as a casual dealer. In the instant case, the Temple falls within the fixed place of Palani within the State. It cannot be said that it comes from outside the State and involves in business activities in the nature of buying and selling. Therefore, the contention that the Temple should be treated as a casual dealer is not sustainable.

17. When the sale of Panchamirtham by the very same Temple was questioned and tax was levied by the respondent Commercial Taxes Department, this Court, in the judgment reported in **CDJ 1997 MHC 222 [ARULMIGU DHANDAYUTHAPANI SWAMI THIRUKKOIL VS. COMMERCIAL TAX OFFICER - II, PALANI]** declared that the Temple will not fall within the definition of dealer and it does not carry out any business as contemplated under the Act. In Paragraph No.15, it was observed as under:

"15. We shall now consider the authority relied on by the learned Senior Counsel for the appellant, reported in 1972 (29) STC 266 (Mad.) (Tirumala Tirupati Devasthanam v. State of Madras). In the above case, the Devasthanam sold silverware and other articles in auction held at Madras at the Madras Jewellers and Diamond Merchants' Association and realised large sums of monies from out of such auctions. According to the State, the amount realised in the public auction, being the realisation in such auctions are to be deemed as monies obtained from sale of goods in the course of business of the Devasthanam and consequently the turnover involved in such sales in each of the years attracted sales tax under section 3(1) of the Act. The Devasthanam was also informed that they ought to have registered themselves as dealers under the Act, and not having done so under the provisions of the Act, the penal provisions of



the Act are attracted. The Devasthanam filed written objections. Their further contention was that it was not a commercial activity undertaken by them in the course of any business of theirs, and thought prima facie a sale, is involved, it is not in connection with the business of the Devasthanam and much less as a dealer under the provisions of the Act. The eminent Judge Ramaprasada Rao, J., after construing the provisions of section 2(d) and 2(g) held that in order to characterise a person as a dealer, the primary pre-requisite is that he should carry on business. In the words of the learned Judge:

"Such a business may be in myriad ways, such as buying, selling, etc. But he should carry on business before he could be terminologically called a dealer within the meaning of section 2 (g) of the Act. If a person, therefore, does not carry on business, he is not a dealer. It is in the perspective of this annotation of these two definitions that the facts in the present case have to be noticed."

The learned Judge has further observed that the Devasthanam besides being a charitable institution, is a Hindu institution of age-old antiquity, which has gained importance for the way in which the Devasthanam is functioning and propagating the Hindu religion and serving the needs of those who often visit the Hills for getting the darshan of the Lord and that the hundi collections from an asset of the Devasthanam which they utilise for the purpose of propagating the religion and for serving the various objects for which the Devasthanam has been founded. It, therefore, becomes necessary for the Devasthanam to convert such valuable metals which find their place in the hundi into cash, so that such cash may be utilised for the objects for the institution has been founded and for which it is existing. The learned Judge has further held as follows:

"It is with this sole and unambiguous object in view that the Devasthanam auctions such valuable metals such as silver, etc., at appointed places according to their discretion, and secure their money equivalent in public auctions held for the purpose. It is difficult to hold the view that in such cases, where the Devasthanam justifiably disposes of the metallic substances or metallic goods in their custody the same being the realisations in the Hundi, either



by private negotiation or by public auction, it could be said that the Devasthanam was doing a business or was indulging in a commercial activity, though not for a profitmotive. Business, which is intricately connected with commerce, is unknown to the Devasthanam, and it is impossible to conceive that while they dispose of their articles of silver, etc., found in the Hundi, they were doing a business."

18. Considering the charitable nature of the institution and having age-old antiquity and utilization of the offerings made by the devotees for the purpose of propagating the religion and for serving the various objects on which Devasthanam is founded, this Court has held that it is not doing a business or indulged in any commercial activity much less with a profit motive.

19. In yet another case, a Division Bench of this Court in **2011 SCC Online Mad 2098 [Sri.Velur Devasthanam v. State of T.N.]**, relying on various decisions on the aspect of dealer who carries on business, at Paragraph Nos.16 and 17, has held as under:

"16. In para 33 of the same judgment, this Court has referred to various decisions to consider whether one is a dealer or carries on business and the nature and object of activity. The said para reads thus:

33. In *Girdharilal Jiwanlal v. CST*, (1957) 8 STC 732 (Bom), relied on for the respondent-Port Trust, the Bombay High Court held that an agriculturist did not necessarily fall within the definition of a dealer under Section 2(c) of the C.P. & Berar Sales Tax Act (21 of 1967), merely because he sold or supplied commodities. It must be shown that he was carrying on a business. It was held that it must be established that his primary intention in engaging himself in such activities must be to carry on the business of sale or supply of agricultural produce. This High Court held that there was nothing to show that the petitioner acquired these lands with a view to doing the business of selling or supplying agricultural produce. According to (the assessee), he (was) principally an agriculturist who also deals in cotton, coal, oilseeds and groundnuts.



He was having agriculture for the purpose of earning income from the fields but there was nothing to show that he acquired the lands with the primary intention of doing business of selling or buying agricultural produce. This decision was approved by this Court in Dy. Commr. of Agricultural Income Tax & Sales Tax v. Travancore Rubber & Tea Co., (1967) 20 STC 520 (SC) and it was held that where the only facts established were that the assessee converted latex tapped from rubber trees into sheets and effected a sale of those sheets to its customers, the conversion of latex into sheets being a process essential for transport and marketing of the produce, the Department had failed to prove that the assessee was formed with a commercial purpose. The Allahabad High Court in Swadeshi Cotton Mills Co. Ltd. v. STO, (1964) 15 STC 505 (All) was dealing with a batch of cases where different bodies were running canteens. One of the cases concerned Aligarh Muslim University which was maintaining dining halls where it was serving food and refreshments to its resident-students. It was held, referring to observations of this Court in University of Delhi v. Ram Nath, AIR 1963 SC 1873 that it was incongruous to call educational activities of the University as amounting to carrying on business. The activity of serving food in the dining hall was a minor part of the overall activity of the University. Education was more a mission and avocation rather than a profession or trade or business. The aim of education was the creation of a well-educated, healthy, young generation imbued with a rational and progressive outlook of life. On this reasoning, it was held that Aligarh University was not carrying on business and the sale of food at the dining halls was not liable to tax. Likewise after the amendment of the definition of business question arose in Indian Institute of Technology v. State of U.P., (1976) 38 STC 428 (All) with respect to the visitors' hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the Institute in connection with education and the academic activities of the Institute. It was observed that the statutory obligation of maintenance of the hostel which involved supply and sale of food was an integral part of the



objects of the Institute. Nor could the running of the hostel be treated as the principal activity of the Institute. The Institute could not be held to be doing business. Similarly, in the case of a research organization, in *Dy. Commr. (C.T.) v. South India Textile Research Assn.*, (1978) 41 STC 197 (Mad) which was purchasing cotton and selling the cotton yarn/cotton waste resulting from the research activities, it was held that the Institute was solely and exclusively constituted for the purposes of research and was not carrying on business and these sales and purchases abovementioned could not be subjected to sales tax. Likewise, in *State of T.N. v. Cement Research Institute of India*, (1992) 86 TC 124 (Mad) it was held that the Institute was an organisation, the objects of which were to promote research and other scientific work, that the laboratories and workshops were maintained by the organization for conducting experiments, and that though the cement manufactured as a result of research was sold, it could not be considered to be a trading activity within Section 2(d) of the Tamil Nadu General Sales Tax Act, 1959. Again in *Tirumala Tirupati Devasthanam v. State of Madras*¹³ the dispute arose with regard to the sales of silverware etc. which are customarily deposited in the hundis by devotees. It was held by the Madras High Court that the Devasthanam's main activities were religious in nature and these sales were not liable to tax. (No doubt, the case related to a period where the profit motive was not excluded by statute.) We are of the view that all these decisions involve the general principle that the main activity must be business and these rulings do support the case of the respondent-Port Trust. (emphasis supplied)

17. This decision is directly on the point supporting the case of the respondent after noticing number of decisions on the point including the decisions cited by the learned counsel before us. It may be stated that the question of profit motive or no-profit motive would be relevant only where a person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce etc. On the facts and in the circumstances of the present case irrespective of the profit motive, it could not be said that the Trust either was dealer or was carrying on



trade, commerce etc. The Trust is not carrying on trade, commerce etc., in the sense of occupation to be a dealer as its main object is to spread message of Saibaba of Shirdi as already noticed above. Having regard to all aspects of the matter, the High Court was right in answering the question referred by the Tribunal in the affirmative and in favour of the respondent-assessee. We must however add here that whether a particular person is a dealer and whether he carries on business, are the matters to be decided on facts and in the circumstances of each case."

20. In **State of Andhra Pradesh vs. Sri Bhramaramba Mallikarjuna Swamy Devasthanam, Srisailam [1989 (73) STC 321]**, while dealing with the issue of sale of human hair, the High Court of Andhra Pradesh has held at Paragraph No.38 as under:

"38. The third activity, which should not detain us long in answering, is the sale of human hair. The human hair that is offered by the pilgrims who visit the temple in fulfilment of their vow, is taken by the Devasthanam and the same is sold just as in case of scrap material. The accumulation of the same would cause difficulty in storing and also hazardous to the health. In this case, the Devasthanam disposes of the human hair periodically, which activity cannot by any stretch constitute as commercial. Hence, this item also cannot be held to be eligible to tax."

21. The Hon'ble Supreme Court in **CST v. Sai Publication Fund [2002(4) SCC 57]**, while discussing the issue of main business, has held at Paragraph Nos.11 and 17 as follows:

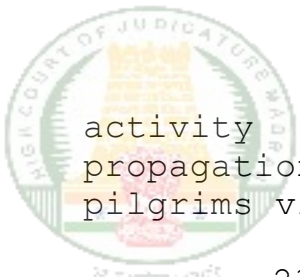
"11. No doubt, the definition of "business" given in Section 2(5A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business" connected with or



incidental or ancillary sales will rest on the Department. Thus, if the main activity of a person is not trade, commerce etc., ordinarily incidental or ancillary activity may not come within the meaning of "business". To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" pre-supposes the existence of trade, commerce etc. The definition of "dealer" contained in Section 2(11) of the Act clearly indicates that in order to hold a person to be a "dealer", he must 'carry on business' and then only he may also be deemed to be carrying on business in respect of transaction incidental or ancillary thereto. We have stated above that the main and dominant activity of the Trust in furtherance of its object is to spread message. Hence, such activity does not amount to "business". Publication for the purpose of spreading message is incidental to the main activity which the Trust does not carry as business. In this view, the activity of the Trust in bringing out publications and selling them at cost price to spread message of Saibaba does not make it a dealer under Section 2(11) of the Act.

17. This decision is directly on the point supporting the case of the respondent after noticing number of decisions on the point including the decisions cited by the learned counsel before us. It may be stated that the question of profit motive or no profit move would be relevant only where person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce etc. On the facts and in the circumstances of the present case irrespective of the profit motive, it could not be said that the Trust either was "dealer" or was carrying on trade, commerce etc. The Trust is not carrying on trade, commerce etc., in the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shridi as already noticed above. Having regard to all aspects of the matter, the High Court was right in answering the question referred by the Tribunal in the affirmative and in favour of the respondent-assessee. We must however add here that whether a particular person is a "dealer" and whether he carries on "business", are the matters to be decided on facts and in the circumstances of

22. Therefore, it can be easily inferred that the main



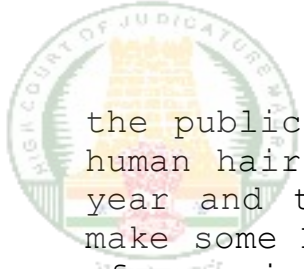
activity carried on by the petitioner Temple is only the propagation of religion and service to the Deities, devotees and pilgrims visiting the Temple.

23. Insofar as the contention of the learned Government Advocate appearing for the respondent that there is an alternative remedy available to the petitioner and non-exhaustion of alternative remedy will make the Writ Petition not maintainable and it should be dismissed for the same purpose is concerned, a Division Bench of this Court in respect of the very same parties before this Court reported in **2002(1) LW 318 [SRI PALANI DHANDAYUTHAPANI DEVASTHANAM REP. BY ITS EXECUTIVE OFFICER VS. THE COMMERCIAL TAX OFFICER, PALANI CIRCLE II, PALANI]** has categorically held that non-exhaustion of alternative remedy will not be a bar for maintaining the Writ Petition. It can be raised only at the time of admission and not at the stage of final disposal. Whereas, in this case, the very jurisdiction of the authority in passing the impugned orders is under question. Insofar as the contention that the Temple is liable to pay tax and will fall within the ambit of Sections 2(10) and 2(15) of the TNVAT Act and Sections 2(d) and 2(g) of the TNGST Act is concerned, this is a matter relating to jurisdiction and power of the authority under the statute and it has to be decided by this Court and hence the writ is maintainable.

24. Apart from this, Mr.A.Chandrasekaran, learned *Amicus Curiae* appointed by this Court has drawn the attention of this Court to the notices and orders.

25. Insofar as the tax jurisprudence is concerned, it goes by the financial year. Whereas, surprisingly, notices issued by the respondent and the impugned orders passed are based on the Fasli years. Normally, the Fasli year commences from 01st July of every year and closes on 30th June of every year. Whereas, the financial year commences from 01st April till 31st March of every year. In that case, the notices issued for the Fasli years are not at all sustainable, because the assessment should be made upto 31st March of every year and it cannot be extended upto 30th June. Further, the TNVAT Act came into force with effect from 01.01.2007. Whereas, the impugned orders for the assessment years 2006-2007, 2003-2004, 2005-2006 and 2004-2005, Fasli 1416, 1413, 1415 and 1414 are issued under the TNGST Act, which is under the provisions of the Obsolete Act. Therefore, it is also contended that the issuance of notices as well as passing of final orders is without application of mind and without any jurisdiction. The argument of the learned *Amicus Curiae* has enough force to set aside the notices as well as the orders at the threshold.

26. Considering the arguments, I have gone into the auction notice issued by the Temple. The Auction notice reads that



the public auction/tenders are called for to collect the tonsured human hair from the Temple Tonsure Sheds for the particular Fasli year and the tender conditions imposed is that the bidder shall make some EMD as well as some Solvency Certificate for the purpose of carrying on the work entrusted to him. The auction notice by itself is only for the purpose of collecting the human hair from the Temple which indicates the object of cleaning the human hair from the precincts of the Temple and to maintain the hygiene of the Temple.

27. As held by this Court in **1998(108) STC 114 [Arulmigu Dhandayuthapani Swami Thirukkoil vs. Commercial Tax Officer-II, Palani]**, it is only an incidental activity and has no relevance to the core activity carried on by the Temple. In such circumstances, this Court is inclined to hold that the removal of human hair from the Temple will not fall under the definition of 'business' and the Temple cannot be defined as carrying on trade or business with a motive to make profit.

28. Insofar as the contention of the learned Government Advocate with regard to the revenue loss is concerned, Mr.A.Chandrasekaran, learned *Amicus Curiae*, appointed by this Court argued that Section 7-A of the TNGST Act and Section 12 of the TNVAT Act take care of such instances.

29. Section 7-A of the TNGST Act reads as under:

"Section 7-A. Levy of purchase tax.- (1) Subject to the provisions of sub-section (1) of Section 3, every dealer, who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act), in circumstances in which no tax is payable under Section 3 or 4, as the case may be, (not being a circumstance in which goods liable to tax under sub-section (2), [(2-A) or (2-C)] of Section 3 or Section 4, were purchased at a point other than the taxable point specified in the First, [the Fifth, the Eleventh] or the Second Schedule, respectively, and either -

(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce; or

(d) installs and uses such goods in the



factory for the manufacture of any goods, shall pay tax on the turnover relating to the purchase as aforesaid at the rate mentioned in Section 3 or 4, as the case may be.

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30. Section 12 of the TNVAT Act reads as under:

"Section 12. Levy of purchase tax.- (1) Subject to the provisions of sub-section (1) of section 3, every dealer, who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act), in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act, and either -

(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce or in the course of export out of the territory of India; or

(d) installs and uses such goods in the factory for the manufacture of any goods,

shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to this Act."

31. When the goods were purchased from a unregistered dealer and it is used in any manufacturing process, at the time of sale, a dealer has to pay the purchase tax. In the instant case, the human hair, as contended by the learned Government Advocate, is used for making wigs. In that event, through the sale of wigs, the dealer has to make the payment of purchase tax. In that instance, there will not be any revenue loss to the Government. Therefore, the contention that the petitioner has to remit sales tax treating it as a casual dealer cannot be sustained.

32. In view of the above observations, the impugned orders passed by the respondent are without jurisdiction and accordingly, they are set aside. Thus, the Writ Petitions are allowed.

<https://hcservices.ecourts.gov.in/hcservices/>

33. At this juncture, it is submitted by Mr.R.Devaraj, learned counsel for the petitioner that the petitioner Temple paid



a sum of Rs.15,00,000/- [Rupees Fifteen Lakhs only] in order to comply with the interim directions given by this Court dated 22.02.2013, made in W.P.(MD)Nos.5878 to 5882 of 2011 and M.P.(MD) Nos.1,1,1,1 and 1 of 2011.

34. In view of the decision taken in these main Writ Petitions, the respondent is directed to refund the payment made by the petitioner Temple, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Assistant Commissioner -II,
Commercial Taxes (FAC),
Palani.

+1 cc to Mr.R.Devaraj , Advocate SR.No.73869
+1 cc to The Special Government Pleader Sr.No.73538

SML/TK

Common Order made in
W.P. (MD) Nos.5878 to 5882 of 2011
Dated: 17.07.2018

__KM/ (25.03.2019) 17P 4C