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W.P.Nos.11208, 11209, 11210, 11211, 11212 & 11213 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

**W.P.Nos.11208, 11209, 11210,
11211, 11212 & 11213 of 2008
and M.P.No.1 of 2008**

WP.No.11208 of 2008

The Triplicane Permanent Fund Ltd.,
New No.162 (Old No.116) Big Street,
Triplicane,
Chennai-600 005.

.. Petitioner

Vs

1.The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
represented by its Secretary,
City Civil Court Building,
Chennai – 600 104.

2.The State of Tamil Nadu
Represented by
The Deputy Commissioner of Commercial Taxes
Chennai (East) Division,
PAPJM Building, Greams Road,
Chennai-600 006.

3.The Commercial Tax Officer,
Ice House Assessment Circle,
46, Greenways Road,
Chennai-600 028.

.. Respondents



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PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the said proceedings No. Nil of the third respondent dated 31.03.2008 demanding immediate payment of penal interest of Rs.8,48,581.59 under Sec.24(3) of TNGST Act 1959.

(In all WPs)

For Appellant : Mr.C.Subramanian

For Respondents : Ms.Amirtha Dinakaran
Government Advocate

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH..J)

The petitioner is the Triplicane Permanent Fund. The issue that arose for assessment in respect of assessment years (AY) 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 is the taxability of the consideration received on sale of unredeemed articles by the auctioneers in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). The assessee's contention at the stage of assessment was that it is the auctioneer that would be so liable.

2. The above stand was initially canvassed before us as well and we have, vide order dated 15.10.2024, extracted below, rejected the said contention.

Print the name of Ms.Amirtha Dinakaran, learned Government Advocate, for respondents.

2.In W.P.No.11208 of 2008, a specific contention of the petitioner is that the manner of computation of penalty



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is unclear in the impugned intimation dated 31.03.2008. Specific reference is made to the percentage set out in Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 (Act).

3.The counter filed by the respondents also does not throw any light on this aspect. Hence, a break-up of how the penalty has been arrived at in intimation dated 31.01.2008, will be provided prior to the next date of hearing with a copy served in advance upon the petitioner.

4.List on 21.10.2024.

5.As far as the remaining writ petitions are concerned, the issue that arises for consideration is as to whether turnover received from auction of unredeemed pledged goods would be taxable in the hands of the petitioner, a permanent fund.

6.The issue is prima facie covered by a judgment of the Hon'ble Supreme Court in the case of Karnataka Pawn Brokers' Association and others v. State of Karnataka and others [(1998) 111 STC 752]. The operative portion is set out in paragraphs 20 and 21 extracted below:

'20.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 one cannot sell the goods to himself. This contention is misconceived as the pawnbroker 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 Company v. State of Madras [1996] 18 STC 325. 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 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-and the other as proprietor of his own business, two different identities altogether, while transferring the goods of the non-resident



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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 pawnbroker 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.

21.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.'

7.The Supreme Court has affirmed the decision of this Court in Madras Pawn Brokers Association v. State of Tamil Nadu [(1995) 98 STC 457 (Mad.)]. In light of the same, there is no justification in the assessee not remitting sales tax.

8.There is also no merit in the contention that the auctioneer, being a dealer, will be liable to tax. While an auctioneer may be a dealer in its own right, the auction consideration in the present case enures as turnover of the petitioner fund and hence and in light of the authoritative pronouncement of the Supreme Court as aforesaid, the same is liable to tax.

9.On the levy of penalty under Section 12(3)(a), respondents relies on the decision in Sakthi Sugars Limited v. Assistant Commissioner of Commercial Taxes [(1985) 59 STC 52 (MAD)], while the petitioner would rely on the decision of the case of Appollo Satine Pharmaceuticals (P) Ltd. v. Commercial Tax Officer (FAC) and others [(2002) 125 STC 505].

10.List on 21.10.2024.

3. In regard to the additional submissions made in the context of



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applicable rate of tax, written statements from the assessing authority have been obtained both on 18.09.2024 and today (29.10.2024) to the effect that the appropriate rate of tax for the period 12.03.1993 and 16.07.1996 would be 3% and for the period post 17.07.1996, the rate would be 4%. The assessing authority has adopted 4% as the rate of tax for all the assessment years in question. This is clearly erroneous and directions for rectification have been issued in conclusion.

4. On the question of penalty, learned counsel for petitioner would rely on the decision in the case of *Appollo Saline Pharmaceuticals (P) Limited v Commercial Tax Officer (FAC) & Others* [125 STC 505], submitting that the levy of penalty under Section 12(3)(a) of the Act is possible only in cases of best judgment assessment.

5. Per contra, learned counsel for respondent relies on the decision in the case of *Sakthi Sugars Limited v Assistant Commissioner of Commercial Taxes* [(1985) 59 STC 52(MAD)].

6. The levy of penalty under Section 12(3)(a), in the case of non-filing of returns, is, in our view, automatic. Admittedly, in the present case, the petitioner has not filed the returns and hence, the basis of assessment would be irrelevant.

7. That apart, and in any event, the assessing authority has rightly



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proceeded to assess the actuals of the sale consideration as obtained from the auctioneers and hence there is no question of best judgment assessment. This argument of the petitioner is hence rejected and levy of penalty under Section 12(3)(a) is confirmed.

8. As regards W.P.No.11208 of 2008, the petitioner has received intimation dated 31.03.2008 calling upon it to pay demands set out therein in respect of tax and penalty. Petitioner has been called upon to remit the amounts forthwith without any opportunity being granted to it to raise a dispute in respect of the quantification of the demands or the periods to which they relate.

9. Since the petitioner has raised a dispute in respect of the period for which the amounts have remained unpaid (relating to the levy of penal interest alone), let objections be submitted in writing before the assessing authority within a period of two (2) weeks from date of receipt of a copy of this order.

10. Upon receipt of the objections, if any, petitioner will be heard and orders will be passed in respect of the quantification of the penal interest to be demanded, if any. It is made clear that there is no flaw in the demand of penal interest per se and it is only in respect of the period to which the interest relates, that the assessee is extended an opportunity.



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The reduction in rate of tax dealt with under paragraph 3 will be taken note of at this juncture and a revised demand prepared.

11. If the assessee does not avail of the opportunity granted as above, the assessing authority shall proceed with the recovery as proposed, in accordance with law.

12. In light of the above, W.P.No.11208 of 2008 is dismissed with liberty. The remaining writ petitions are disposed in terms of this order. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
29.10.2024

Index:Yes/No

Speaking order

Neutral Citation:Yes

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To

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(Additional Bench) represented by its Secretary,
City Civil Court Building,
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