
(1989) 06 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 209 of 1981

Braja Lal Banik

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 16-06-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 7, 9(2)
Tripura Sales Tax Act, 1976 — Section 13(3)

Citation : (1990) 78 STC 283

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S. Deb and R. Dasgupta, for the Appellant; M. Majumdar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—By this application under Article 226 of the Constitution the petitioner challenges the order of penalty dated September 2, 1980, passed by the Superintendent of Taxes, Agartala, u/s 10A of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act") for commission of offence u/s 10(b) of the Act and the orders passed in appeals confirming the same.

2. The petitioner, a dealer carrying on business under the name and style of Auto Engineering Works, Agartala, is registered under the Central Act. In course of its business, the petitioner purchased from time to time certain goods at concessional rate by issuing C forms and submitted statements containing the requisite particulars of use and utilisation of C forms to the Superintendent of Taxes. On August 29, 1980, the Superintendent of Taxes, Agartala, issued a notice u/s 10-A of the Central Act stating, inter alia, that from information in his possession he was led to believe that the petitioner had made some unauthorised purchases of goods by issuing C forms and it was reasonably suspected by him that the petitioner had committed an offence u/s 10(b) of the Central Act, By the said notice the petitioner was also directed to show cause as to why penalty u/s

10-A of the Central Act in lieu of prosecution should not be imposed on him for the said offence. The petitioner showed cause by letter dated September 1, 1980. In the said letter it was stated that the petitioner had already submitted in detail as to how C forms were used by him vide his letter dated August 29, 1980. It was also pointed out that use and utilisation of C forms for purchase of materials used in the construction of factory and workshop had been done with the approval of the competent authority, namely, the Superintendent of Taxes. The utilisation of C forms was checked by authorities from time to time and approved. The petitioner, therefore, denied commission of any offence u/s 10(b) of the Central Act and asked the Superintendent of Taxes to furnish to him the details of purchases of goods in respect of which commission of offence u/s 10(b) was alleged, to enable him to explain the same. The Superintendent of Taxes, however, neither replied to the said letter nor furnished the particulars asked for by the petitioner. By order dated September 2, 1980, a penalty of Rs. 5,000 was imposed u/s 10-A of the Central Act for commission of offence u/s 10(b) of the Central Act. The petitioner preferred an appeal against the said order before the Assistant Commissioner of Taxes, who confirmed the order of penalty. On further appeal, the Revenue Commissioner also confirmed the order of penalty. Against the said orders the petitioner has come up before this Court.

3. The order of penalty has been challenged mainly on three counts. Firstly, it is contended that the Superintendent of Taxes, Agartala, had no jurisdiction to levy penalty u/s 10-A of the Central Act as the authority who granted him the certificate of registration, was the Chief Secretary and not the Superintendent of Taxes. It is contended that it is the authority which granted the registration that alone can exercise power u/s 10-A and none else. Secondly, it is contended that the essential ingredients of an offence u/s 10(b) were totally absent in the instant case and, as such, the levy of penalty on the ground that the purchases made by the petitioner were not covered by his certificate of registration at the relevant time without a finding that there was any false representation by the petitioner, is untenable in law. Thirdly, the impugned order has been challenged as being violative of the principles of natural justice, inasmuch as the petitioner was not supplied with particulars or details of the purchases alleged to have been made by him by making false declaration which attracted Section 10(b) of the Central Act.

4. We have heard Mr. S. Deb, the learned counsel for the petitioner and Mr. M. Majumdar, the learned Government Advocate, Tripura. We have perused the show cause notice issued by the Superintendent of Taxes, the cause shown by the petitioner, and the impugned order of penalty as well as the orders passed by the appellate authorities confirming the same. We have also examined the relevant provisions of the Central Act in this regard.

5. Before taking up the points raised by the petitioner, it may be appropriate to refer to the relevant provisions of the Central Act. Section 10 of the Act enumerates certain offences which are punishable by simple imprisonment and

fine. Clause (b) of Section 10, which is relevant for the present case, makes false representation by registered dealer when purchasing any class of goods that goods of such class are covered by the certificate of registration, an offence under the said section. Section 10 (as amended) is quoted below :

"10. Penalties.--If any person--

(a) furnishes a certificate or declaration under Sub-section (2) of Section 6 or Sub-section (1) of Section 6A or Sub-section (4) of Section 8, which he knows or has reason to believe, to be false ; or

(aa) fails to get himself registered as required by Section 7, or fails to comply with an order under Sub-section (3-A) or with the requirements of Sub-section (3-C) or Sub-section (3-E), of that section ;

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration ; or

(c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer ; or

(d) after purchasing any goods for any of the purposes specified in Clause (b) or Clause (c) or Clause (d) of Sub-section (3) of Section 8 fails, without reasonable excuse, to make use of the goods for any such purpose ;

(e) has in his possession any form prescribed for the purpose of Subsection (4) of Section 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder ;

(f) collects any amount by way of tax in contravention of the provisions contained in Section 9-A ;

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both ; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues."

Section 10-A empowers the authority who granted the certificate of registration, to impose penalty on persons guilty of an offence under Clause (b) or Clause (c) or Clause (d) of Section 10 in lieu of prosecution. Section 10A (as amended) reads as under :

"10-A. Imposition of penalty in lieu of prosecution.--(1) If any person purchasing goods is guilty of an offence under Clause (b) or Clause (c) or Clause (d) of Section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act, may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under Sub-section (2) of Section 8 in respect of

the sale to him of the goods, if the sale had been a sale falling within that sub-section :

Provided that no prosecution for an offence u/s 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) The penalty imposed upon any dealer under Sub-section (1) shall be collected by the Government of India in the manner provided in Subsection (2) of Section 9--

(a) in the case of an offence falling under Clause (b) or Clause (d) of Section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods ;

(b) in the case of an offence falling under Clause (c) of Section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed."

This section thus gives an option to the competent authority to impose penalty in respect of offences under Clauses (b), (c) and (d) of Section 10 in lieu of prosecution. It also makes it clear that once penalty is imposed, no prosecution u/s 10 can be instituted in respect of the same facts.

6. Let us deal now with the first submission of the learned counsel for the petitioner that the Superintendent of Taxes, Agartala, had no jurisdiction to exercise power u/s 10A in respect of the petitioner inasmuch as he was not the authority who granted him the certificate of registration. It was stated that the original certificate of registration was granted to the petitioner by the Chief Secretary of Tripura in the year 1962 and, as such, it was the Chief Secretary who could levy the penalty and not the Superintendent of Taxes. We have perused the provisions of Section 10A and other relevant provisions of the Act and the Rules in this regard. On consideration of the same it appears that the aforesaid argument of the learned counsel is misconceived and has no force. Section 10A of the Act vests the power of levying penalty on a person or the authority "who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act". Section 7 of the Central Act which deals with registration provides that an application for registration under the Act should be made to such authority in the appropriate State as the Central Government may, by general or special order, specify. In exercise of the power conferred by the aforesaid section, the Central Government issued Notification No. S.R.O.643 dated February 22, 1957, specifying the persons who would be the authorities to whom dealers should apply for registration. By the said notification the authority competent to register a dealer under the general sales tax law of the State was specified to be competent authority to grant registration under the Central Sales Tax Act in the appropriate State. As at that time there was no sales tax law in Tripura, the Central Government by Notification No. S.R.O. 2077 dated June 22, 1957, specified the Chief Secretary, Tripura Administration, as the

authority competent to grant registration to dealers under the Central Sales Tax Act in Tripura. The said notification was amended by Notification No. G.S.R. 1829 dated December 16, 1964 and in place of the Chief Secretary, the Deputy Secretary, Revenue Department, Government of Tripura was substituted. In the meantime the Tripura Sales Tax Act, 1976, came into force in the State of Tripura with effect from July 1, 1976. The Superintendent of Taxes is the competent authority to register a dealer under the said Act if he is so liable to be registered. In view of the aforesaid development, the Superintendent of Taxes, Agartala, became the authority who was competent to grant a certificate of registration to the petitioner. As such, he had the requisite power and jurisdiction to take action against the petitioner u/s 10-A of the Central Act. The argument advanced by the learned counsel ignores the fact that it is not only the authority "who granted the certificate of registration" but also the authority "who is competent to grant to him a certificate of registration under this Act" who has the power and authority to levy penalty. The authority who granted the certificate of registration, namely, Chief Secretary, was succeeded by the Deputy Secretary, Revenue Department, Government of Tripura, on December 16, 1964 and by the Superintendent of Taxes having territorial jurisdiction with effect from July 1, 1976, the date the general sales tax law, namely, Tripura Sales Tax Act, 1976, came into force. In view of the aforesaid factual position, we hold that the Superintendent of Taxes, Agartala, was the competent authority to exercise power u/s 10-A of the Act in respect of the petitioner. The submission of the petitioner on this count, therefore, fails.

7. Another limb of first contention of the learned counsel for the petitioner is that even if the Superintendent of Taxes was the competent authority to levy penalty u/s 10A of the Central Act the impugned order is without jurisdiction, inasmuch as the same was passed without obtaining previous sanction of the Commissioner. This argument is based on the supposition that the Superintendent of Taxes, Agartala, was empowered to levy penalty in the instant case by virtue of Section 9(2) of the Central Act which provides that the authorities empowered to assess, reassess, collect and enforce payment of tax under the State sales tax law shall on behalf of the Government of India assess, reassess, collect and enforce payment of tax including the penalty payable by the dealer under the Central Act as if the tax or penalty payable by such dealer under the Act was a tax or penalty payable under the State Sales Tax Act. It also provides that for that purpose the authority may exercise all or any of the powers it enjoys under the State Sales Tax Act and the provisions of such Act, including the provisions relating to penalties would apply accordingly. On the basis of the aforesaid provision, it is contended that the Superintendent of Taxes gets his authority to levy penalty u/s 10A by virtue of Section 9(2) of the Act and the scope of his powers is also limited to that given under the State Sales Tax Act which in the instant case is the Tripura Sales Tax Act, 1956 (hereinafter "Tripura Act"). It is submitted that the powers which the Superintendent of Taxes enjoys for the purpose of imposing penalty u/s 10A of the Central Act are the same as

are vested in him under the Tripura Act and they are subject to the same limitation as applicable in relation to imposition of penalty under the Tripura Act. Section 13 of the Tripura Act deals with the powers to impose penalty under the said Act. At the relevant time there was a provision in the said section, namely, Sub-section (3), which required that no penalty would be imposed by an officer appointed to assist the Commissioner without the previous sanction of the Commissioner. The said Sub-section (3), however, was later deleted by the Tripura Sales Tax (Second Amendment) Act, 1981, with effect from May 20, 1981. It is, therefore, contended that in the instant case admittedly no previous sanction having been obtained from the Commissioner before levying penalty, the impugned order is illegal and without jurisdiction.

8. We have given our careful consideration to the aforesaid submission of the learned counsel, which at the first flash, appears to be impressive. However, on a careful scrutiny of the language of Section 10A as well as Section 9(2) of the Central Act we find that it is not tenable. The Superintendent of Taxes derives his power to levy penalty u/s 10A not from Section 9(2) of the Central Act but by virtue of the specific provision contained in Section 10A itself to that effect. Section 10A clearly provides that it shall be the authority who granted or, as the case may be, is competent to grant a certificate of registration under the Act, who shall have the power to levy penalty u/s 10A. The Superintendent of Taxes, Agartala, got the power to levy penalty u/s 10A in that capacity, being the authority competent to grant registration to the petitioner and not by virtue of the provisions of Section 9(2). The manner of exercise of the power is also laid down in Section 10A including the requirement of giving reasonable opportunity of being heard to the person affected. Thus, for the purpose of levying penalty u/s 10A it is not necessary to take resort to Section 9(2). In this connection, we noticed a decision of the Allahabad High Court in Commissioner of Sales Tax, U.P. v. Janta Furniture Mart [1973] 31 STC 392 wherein it was held that while imposing penalty u/s 10A of the Central Sales Tax Act, 1956, by virtue of the operation of Section 9 of the Central Act the powers of the authorities shall be subject to the limitations contained in the State sales tax law in regard to levy of penalty. As in that case the State sales tax law required the authority to obtain the previous permission of the Commissioner before imposing penalty, it was held that penalty could not be levied u/s 10A of the Central Act also without the previous permission of the Commissioner. We have carefully gone through the aforesaid decision but we find it extremely difficult to agree with the same. It appears that in that case the court proceeded on the supposition that the authority concerned got its power to levy penalty u/s 10A by virtue of Section 9(2) of the Central Act. The fact that the authority empowered to levy penalty u/s 10A of the Central Act has been designated or specified under that section itself and Section 9 had no relevance for that purpose, did not come up for consideration at all in that case. In view of the discussions made above and the clear language of Section 10A we are not in agreement with the conclusion arrived at in the said decision and hold that the provisions of State sales tax law

in regard to levy of penalty are not applicable to the levy of penalty u/s 10A of the Central Act. They shall apply for the purpose of collection and enforcement thereof. This argument of the petitioner, therefore, also fails.

9. We shall now take up the next submission of the learned counsel that in order to make a person liable for an offence u/s 10(b) it is not enough to state that the goods purchased were not covered by his certificate of registration. What is required is a finding that such purchases were made on the strength of a false declaration made by him. According to the learned counsel, in the instant case, the Superintendent of Taxes completely ignored this essential ingredient of offence u/s 10(b) and levied the penalty without any such finding.

10. We have considered the aforesaid submission. Section 10(b) provides that if a person being a registered dealer "falsely represents" when purchasing any class of goods that goods of such class are covered by his certificate of registration he shall be punishable with imprisonment and fine. Section 10-A empowers the authority to impose penalty in lieu of prosecution. The expression "falsely represents" clearly shows that the element of mens rea is a necessary ingredient of the offence. A dealer may purchase various goods or classes of goods and issue C forms against such purchases stating that such goods are covered by his certificate of registration. In course of time it may be found that some of the goods so purchased by him were not really covered by his certificate of registration. That by itself would not be sufficient to attract Section 10(b) of the Act. In a particular case, the dealer might be under a bona fide belief that the goods in question were covered by his certificate of registration and might have made the purchases under such belief. He might have been negligent. He might even be ignorant of the fact that in spite of being a registered dealer he is not entitled to make purchases of goods at concessional rate even for permissible purchases without getting the same specified in his certificate of registration. It may be a technical breach but that will not make him liable to punishment u/s 10(b). The essential ingredient of an offence u/s 10(b) is "false representation". The use of the words "falsely represents" in Clause (b) is significant inasmuch as these words have been used only in Clauses (b) and (c) of Section 10 and in no other clauses. This also indicates intention of the legislature. The legislature was conscious while using these words in Clauses (b) and (c). In other clauses different expressions, such as "fails, without reasonable excuse", etc., have been used. The word "falsely" means something more than mistakenly or untruthfully. It usually imports somewhat more than the vernacular sense of erroneous or untrue. It is often used to characterise a wrongful or criminal act, such as involves an error or untruth. Thus the word may be construed to mean something designed by untrue or deceitful, and as involving an intention to perpetrate some fraud. In this sense "falsely" is defined as meaning perfidiously or treacherously (See 35 Corpus Juris Secundum, Factor 7.2). A wrong representation can be said to have been made falsely only if it is proved that it was made knowing it to be false. The gravamen of the offence is the representation of something as true which, in fact, and to the knowledge of the

person making the representation is false. Therefore, in order to levy penalty for commission of an offence u/s 10(b) there must be a definite finding regarding "false representation" or existence of mens rea. Mens rea means some blameworthy mental condition whether constituted by knowledge or intention or otherwise. An honest and -reasonable belief entertained by the accused of the existence of the facts, which, if true, would make the act charged against him innocent, would be enough to show the absence of mens rea. We are therefore of the opinion that mens rea is an essential ingredient of an offence under Clause (b) of Section 10 of the Central Act and in the absence of proof of mens rea a person cannot be penalised for the said offence.

11. It is well-settled by now that provisions dealing with penalty must be strictly construed. Penalties are to be construed within the term and language of the particular statute. Penalty provision should be interpreted as it stands and in case of doubt in a manner favourable to the tax payer. If the court finds that the language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt the interpretation which favours the assessee, more particularly so where the provision relates to the imposition of penalty [See The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another,]. In Hindustan Steel Ltd. Vs. State of Orissa, while deciding the question whether penalty can be imposed on a dealer under the Orissa Sales Tax Act, 1947, for failure to register as a dealer, the Supreme Court observed that liability to pay penalty does not arise merely upon proof of default in registering as a dealer. It was held :

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

12. In Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, Indore [1980] 45 STC 197 the Supreme Court had occasion to consider the nature of penalty provided u/s 43 of the Madhya Pradesh General Sales Tax Act, 1958, for filing an inaccurate return of turnover. It was held that imposition of

penalty is penal in character and unless the filing of an inaccurate return is accompanied by guilty mind, the section cannot be invoked for imposing penalty. It was further held that the assessee could not be said to have filed "false" return unless there is an element of deliberateness in it. The court observed :

"It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the court may, in a given case, infer deliberateness and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it would not be right to condemn the return as a "false" return inviting imposition of penalty."

13. Applying the aforesaid principles to the facts of the case before it where the contention of the assessee for not including the amount of freight in his taxable turnover throughout was that it did not fall within the definition of "sale price" and was not liable to be included in the taxable turnover, the Supreme Court held that it could not be said that his contention was frivolous, taken up merely for the purpose of avoiding liability to pay tax. It was a highly arguable contention that required serious consideration by the court, and the belief entertained by the assessee that it was not liable to include the amount of freight in the taxable turnover could not be said to be mala fide or unreasonable, but was a bona fide belief. It was therefore held that penalty could not be imposed on the assessee for filing "false" return.

14. From a reading of Section 10(b) of the Central Act in the light of the aforesaid decisions of the Supreme Court and the discussions made above, it is clear that in order to impose penalty on a dealer for making unauthorised purchases, the authority concerned must arrive at a definite finding about the "false representation" made by a dealer. The finding must be based on cogent materials on record. In the absence of such a finding any order imposing penalty will not be sustainable.

15. In the instant case we find from the impugned order that the Superintendent of Taxes levied the penalty simply on the ground that the petitioner purchased goods unauthorisedly even though it was not intentional as according to him it should have been known to him that necessary amendment had to be made for the import of goods not mentioned in the registration certificate. There is no material in the order to indicate any mens rea not to speak of any finding to that effect. On the other hand, the observation and finding of the Superintendent of Taxes clearly indicate absence of mens rea or guilty mind. The officer appears to have equated "false representation" with "wrong representation" and on that basis arrived at a wrong conclusion. The impugned order, therefore, cannot be sustained on that ground.

16. Another submission made by the learned counsel was that the show cause

notice issued to the petitioner was not a show cause notice in the real term inasmuch as it did not contain any particulars as to the alleged purchases made in violation of the requirements of the law. It was pointed out that such informations which formed the very basis of the penalty proceedings and were, necessary for submission of the explanation were not furnished to him in spite of specific prayer being made to that effect. We have considered this submission made on behalf of the petitioner. We find that it is factually correct. The notice in question did not contain any description of the goods which were alleged to have been purchased unauthorisedly by making false representation, nor did it contain the value of such goods, the date of purchase, the number of declaration form, etc., issued by the petitioner. In the absence of such informations it is not understandable as to how a person can submit any explanation. Sub-section (1) of Section 10A makes it obligatory on the part of the concerned authority to give a reasonable opportunity of hearing before passing any order imposing penalty. Reasonable opportunity of hearing postulates that the facts on the basis of which the penalty is proposed to be imposed, are intimated to the person concerned so that he may have a chance of showing cause against the proposed penalty. A notice which does not indicate the precise facts on the basis of which penalty is proposed to be levied, would not be a notice in the eye of law. It is not open to the Revenue to contend that the assessee was aware of the basis on which penalty was proposed to be imposed. Such a contention would not meet the requirement of Sub-section (1) of Section 10A. A notice to show cause against levy of penalty for commission of an offence u/s 10(b) should inform the person concerned at least the following : (1) descriptions of the goods purchased by him allegedly on the basis of false representation ; (2) value of such goods ; (3) date of purchase ; (4) particulars of declaration on the strength of which such goods were purchased, i.e., the number and date of C and D forms, as the case may be. These are the minimum informations which the officer has to supply to the person concerned to enable him to show cause effectively against the proposed action. If any further information is asked for by the dealer for the purpose of showing cause the same should also be supplied. The authority cannot refuse to furnish these informations. The defect in the show cause notice of not furnishing the requisite informations indicated above, cannot be cured by contending that at the time of hearing the dealer was shown the requisite details and he could have explained the same if he so desired. That will not meet the requirement of giving reasonable opportunity of hearing. Besides, the quantum of penalty is also linked up with the value of goods purchased on the basis of false declaration and the amount of tax which would have been levied thereon had the false representation not been made. The dealer can also put forward his grounds for levy of lower penalty. In short, it can be said that opportunity of hearing given to the affected person must be reasonable and real. It should not be a mere formality or ritual or a pretence. It is a valuable right given to the citizens and the same should not be taken lightly. The cause shown or the explanation submitted by the affected person must be carefully considered on its merits. It is only on consideration of all the facts and circumstances of the case and the

explanation, if any, submitted by the dealer that the authority concerned can arrive at a conclusion as to whether penalty should be levied or not. If he comes to such a conclusion, then he has to further apply his mind to the quantum of penalty. The section simply lays down the maximum penalty that can be levied. That does not mean that in each and every case where an offence is committed u/s 10(b) the maximum would be automatically imposed. The quantum of penalty, subject to the maximum fixed by the statute, has been left to the discretion of the authority concerned and the said discretion being a judicial discretion must be exercised on a consideration of all the relevant facts and circumstances of the case, including the degree of contumaciousness involved. The maximum penalty should be reserved only for exceptionally bad cases.

17. It is, therefore, clear that levy of penalty is a judicial act and must be performed in the manner indicated above. The order levying penalty must be a speaking order. It must contain reasons. This is so because the rule regarding reasons to be given in support of an order is like the principle of audi alteram partem and that rule must be observed in proper spirit. A mere pretence of compliance with it would not satisfy the requirement of law. (See The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another,). In the instant case from the impugned notice and the order of penalty it is clear that none of the requirements indicated above was fulfilled. The notice did not contain any details whatsoever of the alleged charge u/s 10(b) except repeating the language of the said clause. No such details were given even on being asked for. Even the order of penalty does not contain any of those informations. It simply -mentioned the value of goods alleged to have been purchased on the basis of false representation made by the petitioner. It does not show that the authority concerned applied its mind to the essential ingredients of Section 10(b). It also does not indicate as to how the quantum of penalty was fixed at Rs. 5,000. The impugned order of penalty, therefore, cannot be sustained.

18. In view of what have been stated above the petition is allowed. The impugned order of penalty dated September 2, 1980, passed by the Superintendent of Taxes, Agartala, is hereby quashed. No order as to costs.

J.M. Srivastava, J.

19. I agree.