

**(1993) 07 AP CK 0005**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 12538 of 1989**

Mahaveer Bangles

APPELLANT

Vs

Commercial Tax Officer, Tarapet, Vijayawada

RESPONDENT

**Date of Decision : 13-07-1993**

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 12, 13, 14, 14(1), 14(2)

**Citation : (1993) 91 STC 168**

**Hon'ble Judges : P.L.N. Sarma, J;P. Venkatarama Reddi, J;A. Lakshmana Rao, J**

**Bench : Full Bench**

**Advocate : M.V.K. Murthy, for the Appellant; Government Pleader, for the Respondent**

## **Judgement**

P. Venkatarama Reddi, J.—Noticing conflicting decisions of this Court on the interpretation of section 14(2) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the APGST Act"), a Division Bench of this Court consisting of M. N. Rao and Reddappa Reddi, JJ., felt that the question needs to be resolved authoritatively by a Full Bench. Accordingly the matter has been placed before this Full Bench.

2. Sub-section (2) of section 14 of the APGST Act lays down :

"When making an assessment to the best of judgment under sub-section (1), the assessing authority may also direct the dealer to pay in addition to tax assessed a penalty as specified in sub-section (8) on the turnover that was not disclosed by the dealer in his return."

3. The view expressed by a Division Bench of this Court consisting of Ramanujulu Naidu and Anjaneyulu, JJ., in Nagabandi Mallaiah v. State of A.P. [1988] 70 STC 160, was that the very same officer who passed an order of assessment to the best of his judgment should levy penalty simultaneously with the order of assessment. Following this decision, another Division Bench (Sivaraman Nair and Parvatha Rao, JJ.) in State of Andhra Pradesh Vs. Venkateswara Oil Producers,

held that the penalty under sub-section (2), (3) or (4) of section 14 should be imposed only at the time when the assessment is made but not subsequent thereto. As against these two decisions, long ago, two Division Benches of this Court had taken the view that the levy of penalty need not be simultaneously and it can be levied by a different assessing authority after the assessment is made. These two cases which were noticed by the Division Bench that has made the present reference are : Sri Radhakrishna & Co. v. State of Andhra Pradesh 1962 13 STC 117 and State of Andhra Pradesh v. Sri Immadisetty Venkateswarlu [1970] 25 STC 46 To this category, we may add one more case, i.e., a Division Bench judgment of this Court in State of Andhra Pradesh v. Rikabchand Siremal & Co. [1968] 22 STC 304.

4. Now, we would like to make a brief reference to the facts of the case. The writ petitioner is a registered dealer doing business in plastic goods, bangles, leather goods, etc., at Vijayawada. He submits monthly returns as required by the A.P. General Sales Tax Rules, 1957. During the year 1988-89, there was an inspection of the petitioner's business premises by the Commercial Tax Officer, Tarapet, Vijayawada (respondent). On a scrutiny of the books and documents including the account slips found in the business premises, it was found that there were variations in stocks and purchases and sales were not properly accounted for in the regular books of account. On December 3, 1988, pursuant to a notice issued, the petitioner expressed his willingness to compound the offence of improper maintenance of accounts and paid a sum of Rs. 3,000 towards the compounding fee. On collection of the compounding fee, the Commercial Tax Officer dropped the action to launch prosecution. It may be mentioned that on the same day, the petitioner also paid the tax of Rs. 25,281 worked out by the Commercial Tax Officer as relatable to the suppressed turnover though there was no formal order of assessment. After the expiry of the relevant assessment year, final assessment was taken up by the respondent. The final assessment order was passed on June 15, 1989, fixing the net turnover at Rs. 10,87,060. This included the suppressed turnover of Rs. 3,58,499 on which the tax had already been paid by the petitioner on December 3, 1988. This assessment made u/s 14(1) of the APGST Act was not contested by the petitioner. A few days later, i.e., on June 23, 1989, the same assessing officer who made the assessment, issued a notice proposing to levy a penalty of Rs. 75,843 which was equivalent to three times the tax due on the suppressed turnover as per section 14(2) read with section 14(8)(a) of the APGST Act and calling upon the petitioner to file his objections. The objections filed by the petitioner were overruled and by an order dated August 14, 1989, a penalty of Rs. 75,843 was levied. Challenging this order, the present writ petition was filed. The petitioner has sought for a declaration that the penalty order passed by the respondent is illegal, violative of section 14(1) and (2) of the APGST Act and opposed to the principles of natural justice. It may be mentioned that no appeal was filed against the penalty order though such an appeal is provided for u/s 19 of the APGST Act.

5. The relevant provisions are contained in section 14 of the APGST Act :

Section 14 : Assessment of tax. - (1) If the assessing authority is satisfied that any return submitted u/s 13 is correct and complete, he shall assess the amount of tax payable by the dealer on the basis thereof; but if the return appears to him to be incorrect or incomplete, he shall, after giving the dealer a reasonable opportunity of proving the correctness and completeness of the return submitted by him and making such inquiry as he deems necessary, assess to the best of his judgment, the amount of tax due from the dealer. An assessment under this section shall be made only within a period of four years from the expiry of the year to which the assessment relates.

(1-A) (Not relevant).

(2) When making an assessment to the best of judgment under sub-section (1), the assessing authority may also direct the dealer to pay in addition to tax assessed a penalty as specified in sub-section (8) on the turnover that was not disclosed by the dealer in his return."

Sub-section (3) of section 14 deals with a situation where a dealer fails to submit a return before the date prescribed in that behalf or submits a return subsequent to the date of inspection or produces the accounts, registers and other documents after inspection. In those contingencies, the assessing authority may make best judgment assessment within a period of six years from the expiry of the relevant assessment year. The assessing authority may also direct a dealer to pay in addition to the tax so assessed, a penalty as specified in sub-section (8). Sub-section (4) is another provision which provides for levy of penalty. Sub-section (4) comes into play, inter alia, where the whole or a part of turnover of a dealer had escaped assessment to tax or was under-assessed or assessed at a lower rate. Here also the assessing authority is empowered to determine to the best of his judgment the turnover that had escaped assessment. He is also empowered to assess the correct tax payable on the turnover that has been under-assessed. Sub-section (4) further enables the assessing authority to direct the dealer to pay penalty as specified in sub-section (8) in addition to the tax assessed. Sub-sections (2), (3) and (4), in so far as they provide for penalty, are incomplete without sub-section (8). Sub-section (8) of section 14 reads :

"(8) The penalty leviable under sub-section (2), sub-section (3) or sub-section (4) -

(a) shall not be less than three times but which may extend to five times the tax or the fee due in a case where the assessing is satisfied that the failure of the dealer to disclose the whole or part of the turnover or any other particulars correctly, or to submit the return before the prescribed date, was wilful; and

(b) shall not exceed one half of the tax or the fee due in a case where such failure was not wilful :

Provided that where such failure occurred due to a bona fide mistake on the part of the dealer, no such penalty shall be levied."

6. The dealer relevant provision of section 14 which deserves attention is sub-section (4-B). It was introduced into the APGST Act by A.P. Act 26 of 1961 and it reads as follows :

"Before issuing any direction for the payment of any penalty under sub-section (2), sub-section (3) or sub-section (4), the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the turnover or to furnish correctly any particulars and shall make such enquiry as he considers necessary."

7. Originally it was numbered as sub-section (4-A).

In the present case, we are concerned with sub-section (2) of section 14 read with sub-section (8) and sub-section (4-B). Resort to sub-section (2) could be had by the assessing authority in a case where the best judgment assessment is made under the latter part of sub-section (1). The foundation for making the best judgment assessment is that the return appears to the assessing authority to be incorrect or incomplete. When once such satisfaction is reached by the assessing authority he can proceed in the direction of making best judgment assessment. Of course, before making such assessment, it is mandatory that a reasonable opportunity of proving the correctness or completeness of the return is afforded to the dealer and appropriate enquiry is made by the assessing authority depending upon the nature of objections filed by the dealer. It is the making of best judgment assessment under sub-section (1) that gives rise to liability to pay penalty in appropriate cases. It is often said that a best judgment assessment is sine qua non for the levy of penalty. Under sub-section (8) of section 14, the quantum of penalty leviable is correlated to the tax due on the undisclosed turnover. It could be seen therefore that the penalty provision under sub-section (2) read with sub-section (8) is intimately connected with the provision contained in sub-section (1) empowering the assessing authority to make a best judgment assessment. While it is true that the best judgment assessment and penalty are interlinked in the sense that the levy of penalty depends first on the best judgment assessment, can it be said that an order imposing penalty should be passed only at the time of making the assessment under sub-section (1) or not at all ? Should the making of assessment under sub-section (1) and levy of penalty under sub-section (2) synchronise in point of time ? Or could the two proceedings be dissociated from each other so as to leave it open to the assessing authority to levy penalty some time after the assessment ? These are the questions which were debated before us and pointedly arise for our consideration.

8. Untrammelled by the decided cases aforementioned, let us see what is the true legal position. Considering the object sought to be achieved and the scheme of section 14, we do not think that there is any legal sanctity behind the plea that levy of penalty must be simultaneous with the making of a best judgment assessment. Even the language of section 14(2) as we shall explain hereinafter, does not justify such interpretation. In tax laws, penalty provisions are meant to

be deterrents against tax evasion. Penalty provisions must be construed keeping this fundamental objective in the forefront. By an unduly narrow and hypertechnical interpretation, the effectiveness of a legislative provision providing for penalty for a contumacious conduct on the part of the assessee should not be denuded of its efficacy and utility. The trite saying that the provisions relating to penalty must be construed strictly does not mean anything more than saying that the language of the provision must not be strained to sustain the power to levy penalty and in a case of reasonable doubt, the benefit should be given to the assessee. This principle does not rule out a reasonable interpretation consistent with the object of the provision. While the law imposing penalty in revenue matters should be fair and reasonable, an approach resting prominently on subtleties and a priori notions should be deprecated. Viewed from this angle, the requirement that penalty should be levied simultaneous with the assessment or not at all, is based upon no discernible principle of tax jurisprudence; on the other hand, many a time, it might stultify the objective of the provision and give rise to unintended situations. Supposing the assessing officer intentionally or unwittingly omits to initiate penalty proceedings simultaneous with the assessment proceedings and finalise the penal action, no penalty can be levied thereafter even in a case of large-scale evasion by a dishonest assessee. Let us again take a case where the best judgment assessment is taken up just before the expiry of the limitation period. The penalty proceedings being distinct and the method of approach in the penalty proceedings is qualitatively different from assessment proceedings, naturally the assessing authority will have to separately address himself to the question of levying penalty. Though the scope of enquiry may overlap, the nature of enquiry and the process of determination is not identical. That being the case, the finalisation of penalty proceedings might get delayed and it might not be possible to conclude the penalty proceedings before the period of limitation for assessment expires. In such an event, the test of simultaneously cannot be satisfied and the penalty cannot be levied even in a most deserving case. Apart from these general considerations, a survey of the relevant provisions contained in section 14 would themselves give a clue that the Legislature would not have intended that assessment and penalty should always be simultaneous. Sub-section (4-B) speaks of a pre-condition for directing the levy of penalty. It says that the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the turnover or to furnish the particulars correctly and he shall make such enquiry as he considers necessary. This sub-section embodies a principle of natural justice and makes it incumbent on the assessing authority to give a reasonable opportunity to the dealer and to make such enquiry as is warranted in the circumstances of the case. In making such an enquiry or arriving at a decision, the assessing authority must not only have regard to the question whether the return submitted by the assessee is incorrect or incomplete, but he should also consider the factors set out in sub-section (8) of section 14. He is bound to consider the fact-situation, the explanation of the assessee and decide whether the failure of the assessee to disclose the turnover

or the particulars correctly was wilful or not wilful or whether it was due to a bona fide mistake on the part of the assessee. Depending on a finding on these aspects, the levy or non-levy of penalty and the quantum of penalty depends. The quantum of penalty is also related to the tax due which in the context of sub-section (2) means, the tax assessed under sub-section (1). Thus, the assessment must necessarily precede the levy of penalty. When that be the case, the Legislature would not have intended that the penalty should also be levied then and there as an accompaniment to the assessment order. Very often, it may be found that the enquiry into the wilfulness or otherwise of the non-disclosure of turnover could be more appropriately made after the assessment proceedings are over. The assessee may be in a position to point out or rely upon the findings or observations in the assessment order. For this purpose, he may even seek for deferment of the penalty proceedings till the assessment is finalised. In such a case, if an insistence is made on the passing of penalty order at any cost simultaneous with the assessment, the assessee himself might very often be handicapped. The completion of enquiry in connection with the best judgment assessment and the enquiry in connection with levy of penalty may not be possible at one and the same time. When a separate enquiry for imposition of penalty is contemplated by sub-sections (4-B) and (8) and such an enquiry is qualitatively different from an enquiry concerning assessment, the Legislature would have least intended that the levy of tax and penalty should all be rolled up into a composite or simultaneous proceeding. Keeping all these considerations in view, unless the clear language of section 14(2) suggests otherwise, it is not proper and reasonable to place an interpretation that is suggested on behalf of the assessee.

9. The learned counsel for the petitioner Mr. M. V. K. Murthy tried to persuade us to accept the interpretation countenancing the simultaneity of assessment and penalty orders on the ostensible ground that such interpretation would not only avoid hardship to the assessee but also prevent loss of revenue to the State. We are unable to agree with the learned counsel. While we appreciate the desirability of expeditiously finalising the proceedings without sleeping over the matter for too long, we fail to see how the simultaneous passing of penalty order would alone achieve the dual objective pointed out by the learned counsel. On the other hand, as already pointed out by us, such a narrow interpretation might often lead to avoidance of penalty on unwholesome grounds and it might also result in disadvantage to the assessee.

10. Our attention has been drawn to the provisions of the Income Tax Act, 1961. Interpreting sections 271 and 275 of the said Act, it was held in certain decided cases that the action for imposition of penalty must be initiated in the course of the assessment proceedings. Apart from the fact that the language of the Income Tax Act is quite different, even that Act does not enjoin that the assessment and penalty orders should both be passed on the same day. As we have already stated, there is no established principle or paradigm of tax law that the making of assessment and imposition of penalty should be simultaneous

actions.

11. The learned counsel for the petitioner, Mr. Murthy then contended that the real source for levy of penalty is to be found in sub-section (1) but not in sub-section (2). Accordingly to the learned counsel, sub-section (2) merely speaks of the issue of a direction to levy penalty. The anterior steps to be taken in regard to levy of penalty could only be traced to sub-section (1) of section 14. In other words, the learned counsel submits that section 14(1) by itself gives power to the assessing authority to issue penalty notice along with the notice for best judgment assessment if the assessing authority feels inclined to levy penalty. We find it difficult to accept this argument.

12. The substantive power to levy penalty is to be found in sub-sections (2) and (8) of section 14. Procedural aspect is taken care of by sub-section (4-B). Thus, although the filing of an incorrect or incomplete return as contemplated by sub-section (1) and the making of a best judgment assessment is the foundation for levying penalty, the actual levy of penalty and the procedure in connection with the imposition of penalty are to be found in the three crucial provisions, viz., sub-sections (2), (4-B) and (8). Sub-section (1) of section 14 cannot be found as a repository from which the power to issue a notice for imposition of penalty could be drawn out. The occasion for the exercise of power ought not to be confounded with the method and the actual exercise of the power. The attempt of the learned counsel to dub the penalty proceedings as an integral part of the assessment proceedings and thereby imparting the idea of simultaneity is thus a futile attempt. It is no doubt true that penalty proceedings are not wholly independent of assessment proceedings. The enquiry in the assessment and penalty proceedings may, to some extent overlap. The facts which give rise to best judgment assessment may also give rise to levy of penalty without further proof. But that is not to say that penalty partakes of the same character as tax and both are integral parts of the same process. It is well-settled that the findings in the assessment order are not conclusive in regard to penalty though they may be relevant. (Vide Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . The burden of proof in an assessment proceeding and a penalty proceeding also varies. As pointed out by the Supreme Court in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, which is a case that arose under the Central Sales Tax Act, "penalty is in an addition to Income Tax, if any, determined as payable by the assessee. Tax and penalty like tax and interest are distinct and different concepts under the Indian Income Tax Act ..... Penalty is within assessment proceedings just as tax is within assessment proceedings when the relevant Act by substantive charging provision levies tax as well as penalty". Having clarified the position thus under the Income Tax Act, Ray, C.J., speaking for the Constitution Bench, pithily observed as follows :

"Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act."

13. The Supreme Court then referred to Jain Bros. and Others Vs. The Union of India (UOI) and Others, to say that "penalty is not a continuation of assessment proceedings". Thus, the general concept of tax and penalty - be it under the Income Tax Act or the Sales Tax Act, as expounded by the Supreme Court, militates against the contention that the assessment and penalty should be a part of the same unbreakable process of determining a tax-payer's liability.

14. Now we will turn our attention to the most important aspect, viz., the language of sub-section (2) to see whether the language employed therein conveys the idea of simultaneity in the process of best judgment assessment and penalty. It is contended that the opening word "when" is the key to understand the scope and meaning of sub-section (2). The contention is that the expression - "when making an assessment" means - the point of time at which the assessment is made. If that be the true meaning of the expression "when", the order levying penalty should be passed on the same day and almost at the same time when the assessment order is passed. The logical corollary would be that the same assessing authority who passed the assessment order should also impose the penalty by initiating proceedings for levy of penalty side by side with the initiation of the proceedings for best judgment assessment. It is mainly on the basis of the expression "when", this Court in the two decisions referred to supra came to the conclusion that the penalty must be imposed simultaneously with the tax by the same assessing authority. However, as long back as in 1961, this Court in Sri Radhakrishna & Co. [1962] 13 STC 117 referred to the various shades of meaning of the word "when" and held that the meaning which fits in with the context and the objective of the provision should be preferred. A perusal of the standard dictionaries would show that the word "when" need not necessarily be ascribed the limited meaning which is sought to be given by the petitioner's counsel.

15. In 20th Century Chambers Dictionary, the meaning of the expression "when" is given as follows :

"When : Adv. (interrog. and rel) and conj. at what time ? at which time : at or after the time that : upon or after which; while : although : at which ...."

"In Oxford English Dictionary, the meanings of "when" are given as :

"\*\* \*\* 4. As compound relative, or as correlative to then (implied and sometimes expressed); at the (or a) time at which : on the (or an) occasion on which.

(a) In reference to a definite actual occurrence or fact, chiefly with verb in past tense; At the time that, on the occasion that; sometimes with verb in present tense = now that.

(b) in reference to a future time (whether in the present or the past).

(c) Indefinitely or generally : At any time, or at the several times, at which; on any occasion that; most commonly with verb in present tense.

5. Introducing a clause as the object of a verb, or (later) governed by a preposition : The or a time at which; a case in which.

6. As simple relative : at which time, on which occasion; and then. Sometimes implying suddenness : = and just then, and at that moment.

8. With the notion of time modified by or merged in that of mere connexion : In the, or any, case or circumstances in which; sometimes nearly = if.

b. As simply relative (a) with case as antecedent : in which :

(b) in which case; whereupon; and then."

16. Thus, the expression "when" has different shades of meaning. The most appropriate meaning which in the context of sub-section (2) has to be given is - "in the circumstances in which" or "upon", as rightly pointed out by the Division Bench of this Court in *Sri Radhakrishna & Co.* [1962] 13 STC 117. It has no reference to the exact point of time. We are not inclined to understand that expression in the sense in which the learned counsel for the petitioner suggests, i.e., as conveying the meaning - "at the time of" or "just then" or "while". We are of the view that the Legislature employed this expression in a comprehensive sense so as to take in the idea of simultaneity as well as an action that closely follows. Viewed in this light, sub-section (2) of section 14 has to be interpreted to mean that the direction to pay penalty can be given after the assessment is made, but not necessarily at the point of time the assessment is made. As discussed already, this interpretation would accord with the scheme and intendment of the relevant provision relating to penalty.

17. We would like to draw support for our conclusion from one more aspect. Sub-section (4) of section 14 which, inter alia, deals with the assessment of escaped turnover also contains a provision for levy of penalty. That provision as it stood before August 1, 1963, was as follows :

"..... such authority may also direct the dealer to pay in addition to the tax so assessed, a penalty not exceeding one and half times the amount of that tax if the turnover had escaped assessment or had been under-assessed or assessed at too low a rate by reason of its not being disclosed by the dealer."

18. Harping on the expression "such authority", a Division Bench of this Court in *Pallapothu Sarveswara Rao v. State of Andhra Pradesh* [1962] 13 STC 122 held that section 14(4) contemplates levy of penalty by the very same assessing authority. To get over this judgment, the Legislature amended the provision by A.P. Act 16 of 1963. The amended provision as it now stands reads as follows :

"In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay a penalty as specified in sub-section (8) ".

19. Thus, the words "assessing authority" were substituted for the words "such authority", to make it clear that the penalty can be levied by any assessing

authority but not necessarily the same assessing authority who assessed the escaped turnover. This amendment gives a clue to the legislative intent and focusses some light on the interpretation of section 14(2) as well. What could be reasonably inferred from the legislative history is that the Legislature never wanted to place a fetter on the power to levy penalty by introducing the limitation that the very same authority should pass the assessment order as well as the penalty order at a time.

20. The learned counsel for the petitioner has relied upon the principle of interpretation reiterated by the Supreme Court in *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*, . The Supreme Court observed that the charging provisions of a taxing statute are to be construed strictly whereas the machinery provisions are not generally subject to a rigorous construction. "A machinery section" it is said, "should be construed so as to effectuate the charging provision". The learned counsel, Mr. Murthy contends that section 14(2) being in the nature of a charging provision as far as penalty is concerned, should be construed strictly, according to the letter of the law. We have already adverted to this aspect and explained that strict construction does not mean a construction based on subtleties nor does it mean that an interpretation which is more in accord with the objective of the provision is to be eschewed. We have also pointed out that even a literal construction of section 14(2) does not support the contention of the petitioner. We, therefore, reject this argument. While we lay down the law that the assessment order and the penalty order u/s 14(1) and (2) need not be simultaneous, at the same time, we would like to make it clear that there should be proximity between the date of passing the assessment order and the date of initiation of the penalty proceedings. A close and careful reading of sub-section (2) would indicate that the law-makers at least wanted a certain degree of proximity to be maintained between the best judgment assessment and the levy of penalty. The overall tenor of sub-section (2) and its contextual setting would indicate this. The words "when" and "also" used in the clause closely following the best judgment assessment provision are not without significance. It seems to suggest that the initiation and conclusion of penalty proceedings ought not to be far removed in point of time from the date of passing the assessment order. The process of levying penalty should follow within a reasonable proximity of time, unless, of course, the assessing authority is disabled from doing so for reasons beyond his control. The assessing authorities will do well in initiating the penalty proceedings with utmost expedition without inviting unnecessary controversy on the question whether the time taken was proximate. Whether or not the time taken by the assessing authority in taking steps regarding the levy of penalty is reasonably proximate, is a question of fact which is to be decided by the appellate authority or the court, as the case may be, in the light of the relevant facts. It must be remembered that while deterrence against tax evasion is necessary, it is desirable to keep another salutary principle in view. That principle is that tax laws should impart an element of certainty in the interests of both the tax-prayer as well as the

Revenue. The prospect of levying penalty at an uncertain point of time in future despite the possession of all relevant information, is a travesty of that cardinal rule. As pointed out by the learned counsel for the petitioner with certain amount of justification, as the time passes by, the assessing officer who is best suited to the job of launching penalty proceedings may be changed and the assessee also may be handicapped in presenting his case. Keeping all these considerations in view, we are inclined to hold that there should be close proximity of time between the date of assessment and the date of initiation of penalty proceedings though simultaneous passing of the two orders is not an essential requisite. In other words, the making of a best judgment assessment and initiation of penalty proceedings must be contemporaneous though not simultaneous.

21. Reverting back to the facts of the present case, it is to be seen that the show cause notice proposing to levy penalty was issued about a week after the assessment order was passed under sub-section (1) of section 14; the same assessing authority who made the best judgment assessment, passed the penalty order after considering the objections of the petitioner on August 14, 1989. The impugned order levying penalty passes the test laid down by us and although it was not simultaneous with assessment, its validity cannot be assailed.

22. The above discussion would have been sufficient to dispose of this reference. However, in order to dispel any misunderstanding on a closely allied aspect of the problem and to present the legal aspect in a clear perspective, we would like to advert to one more point, namely, whether a penalty order passed simultaneous with the assessment order could be said to be vitiated in law. We are of the view that broadly speaking, there could be no legal objection for simultaneous levy of penalty. The assessing authority while passing an order of best judgment assessment, can immediately, on the same day, levy penalty calculating the quantum of penalty as per the tax due on the suppressed turnover arrived at by him in the course of assessment. Of course, such levy of penalty must be preceded by a show cause notice and an enquiry to the extent it is warranted. After all the foundation for making the best judgment assessment as well as for levying penalty, is the filing of an incorrect or incomplete return. On a prima facie satisfaction that such incorrect or incomplete return has been filed and on further satisfaction that the furnishing of a wrong return was not for technical reasons or on account of a bona fide mistake, the assessing authority can issue show cause notice proposing to levy penalty soon after the assessment notice is given. The enquiry into assessment as well as penalty can proceed hand in hand and the assessing authority can take a decision simultaneously whether and to what extent the best judgment assessment is called for and what penalty if any is leviable. On the language of sub-section (2) of section 14 and the allied provisions referred to supra, such a course is not impermissible. In this connection, we may refer to a decision of this Court in *Narasimha Kirana Stores v. Deputy Commercial Tax Officer* ILR 1973 AP 496. In that case, there is an observation that if a penalty notice is issued even before the assessment is made, it might amount to prejudging the issue. In other words, an inference of

bias could be drawn against the assessing authority. Though the ultimate conclusion in the said judgment is supportable on a different basis, these observations broadly made, do not receive our approval. A mere proposal to levy penalty on a prima facie satisfaction does not amount to pre-judging the issue or approaching the issue with a foreclosed mind. There is no requirement of law that the process of initiation of penalty proceedings should necessarily start after the assessment order is passed. It cannot be said that till then, the assessing authority cannot even form a prima facie opinion especially when the facts relating to incorrect or incomplete information furnished by the assessee, have already come to light. No prejudice would be caused to the assessee by issuing such notice before finalisation of the assessment because the assessing authority must take a decision after considering the objections and after probing into the question whether there was wilful failure, bona fide mistake, etc. The scope of enquiry in the penalty proceedings may be wider and the norms for making assessment and for levying penalty may be different, but that is far from saying that the initiation of penalty proceedings should necessarily wait till the assessment proceedings are finalised. In *Prabhakara Oil Mills v. State of Andhra Pradesh* [1976] 38 STC 449 (AP), Jeevan Reddy, J., speaking for the Division Bench consisting of himself and Obul Reddi, C.J., observed as follows :

"Before making an assessment or a revised assessment, the authority has to provide a reasonable opportunity to the assessee to present his case, and so is the case in the matter of levying penalty. It may be that the assessing authority issues a notice proposing to levy a penalty on the ground that the assessee had wilfully suppressed or concealed a part of his turnover; but, that does not mean that the assessing authority has pre-determined the issue or finally made up his mind .....

So far as the facts of this case are concerned, notice for revised assessment seems to have been given much earlier than the notice in respect of penalty. It appears that, while examining the case in connection with the revised assessment, the assessing authority found a prima facie case, warranting levy of penalty and, therefore, issued the said show cause notice on 24th March, 1971. We do not see any illegality in the said procedure. It is not necessary that the assessing authority must first finalise the revised assessment and then alone commence the proceedings for levying penalty. Such an interpretation would, in fact, do violence to the language used by the Legislature in section 14."

23. We respectfully agree with these observations.

Thus, while we see no objection for the simultaneous levy of penalty, we have a note of caution against such simultaneous levy. As the cause of action for best judgment assessment and levy of penalty is broadly the same, viz., furnishing of an incomplete or incorrect return warranting rejection of the return, some times the assessee may find it useful to press into service the findings/observations in the assessment order. He may be able to demonstrate that the best judgment assessment was based upon the mere failure of the assessee to discharge the

burden of proof cast by section 7-A but not on account of deliberate concealment of the correct figures and particulars. The assessee may therefore plead that it is not a fit case for levy of penalty even on the findings of the assessing officer. Penalty being not consequential to the assessment, the assessee can very well take the plea that by reason of simultaneous levy of penalty, he was denied the opportunity of taking aid from the contents of the assessment order itself to the extent they help him. To avoid such objections, it is desirable that as far as practicable, the penalty proceedings are concluded after the assessment is made, though they might have been initiated earlier. Otherwise, the penalty orders may often become vulnerable to attack on the ground of denial of reasonable opportunity or the like grounds. However, we do not wish to state as a proposition of law that a penalty order passed simultaneous with an assessment order would always be vitiated. It depends upon the facts and circumstances of each case.

24. What remains to be done now is to make a brief survey of the case law on the subject and comment on the correctness of the principles laid down therein.

25. The first case is *Sri Radhakrishna & Co. v. State of Andhra Pradesh* [1962] 13 STC 117 . The facts of the case were almost identical to the present case. A best judgment assessment was made on March 19, 1958. The notice u/s 14(2) proposing to levy penalty was served on the assessee on April 17, 1958. The order imposing penalty was passed on May 8, 1958. At the relevant point of time, sub-section (2) stood as follows :

"(2) When making an assessment to the best of judgment under sub-section (1) the assessing authority may also direct the dealer to pay in addition to the tax assessed, a penalty not exceeding one and half times the tax due on the turnover that was disclosed by the dealer in his return."

26. The proviso to section 14 was in pari materia with the present sub-section (4-B) introduced by A.P. Act 26 of 1961. At that time, sub-section (8) was not on the statute book. As already noticed, it was introduced in the year 1963. After referring to the dictionary meanings of the word "when", Chandra Reddy, C.J., speaking for the Division Bench observed :

"If we now examine the scheme of section 14, the object thereof discloses itself, viz., that penalty should be levied in cases of deliberate suppression of turnover with a view to avoid tax liability. The Legislature intended to discourage the deliberate omission by making it unprofitable.

Is it necessary to achieve the object to insist upon levy of penalty or the issue of notice simultaneous with the making of the best judgment assessment ? We do not think that the purpose of the section is accomplished by requiring the authority concerned to initiate proceedings u/s 14(2) simultaneously with taking action u/s 14(1). In this connection, it should be borne in mind that the levy of penalty does not automatically follow upon assessment being made u/s 14(1). The officer concerned should exercise his mind and consider whether a particular

case is a proper one for resorting to section 14(2). It is apparent from the section that the best judgment assessment should form the basis of proceedings u/s 14(2). It does not envisage proceedings u/s 14(2) being initiated along with making the best judgment assessment.

If the literal and mechanical way of interpretation suggested by the learned counsel for the petitioner is to be followed, the levy of penalty should be a part of the best judgment assessment ....."

27. After referring to the proviso, the learned Judges observed that "this precludes the imposition of penalty without affording an opportunity to the assessee to explain the omission to disclose the information". The Division Bench then proceeded to say :

"It is clear from the proviso that an inquiry should be made by the assessing authority before imposing penalty on the assessee. This is inconsistent with the interpretation the learned counsel for the petitioner seeks to put upon section 14(2). A combined reading of sub-section (2) and the proviso inevitably leads us to the conclusion that the proper officer, after ascertaining the turnover to the best of his judgment u/s 14(1) has to examine the question of the levy of penalty and if he is satisfied that there was a case for proceeding under sub-section (2), he should give a reasonable opportunity to the assessee to explain the omission to disclose the information. This result is achieved by interpreting, "when making an assessment to the best of judgment under sub-section (1)" to mean "on making an assessment to the best of judgment under sub-section (1)" or "in a case of assessment to the best of judgment under sub-section (1)" or "in the circumstances in which an assessment to the best of judgment under sub-section (1) is made". This interpretation will carry out the legislative intent and gives effect to the object of the section.

In our opinion, sub-section (2) only vests jurisdiction or power in the authority concerned to levy on the assessee penalty in certain cases and there is nothing to compel the officer to levy a penalty or issue a notice for that purpose at the same time when assessment u/s 14(1) is made. Section 14(2) is only a provision enabling the revenue to have recourse to it in certain contingencies. It does not indicate the time at which it should be put into operation."

28. We respectfully agree with the interpretation placed by the learned Judges on sub-section (2) of section 14 and the conclusion reached by them. However, we would like to clarify that the broad observation made therein that "it does not envisage proceedings u/s 14(2) being initiated along with making the best judgment assessment" does not meet with our approval. As far as that case is concerned, those observations were in the nature of obiter dicta. According to the view which we have expressed supra, broadly speaking, there is no legal embargo against initiation of penalty proceeding side by side with the proceedings for best judgment assessment. Simultaneous levy of penalty is in our view, not prohibited.

29. Two months earlier, another Division Bench consisting of Chandra Reddy, C.J. and Jaganmohan Reddy, J., in *Pallapothu Sarveswara Rao v. State of Andhra Pradesh* [1962] 13 STC 122 while interpreting sub-section (4) of section 14 of the APGST Act, as it then stood, took the view that only the assessing authority who made the assessment of escaped turnover was competent to levy the penalty. In that case, long after the additional turnover was brought to tax u/s 14(4), penalty notice was issued under the same sub-section. Construing the wording of sub-section (4), viz., "such authority" the learned Judges held that the officer who made the additional assessment was alone competent to levy penalty. It was observed : "the making of additional assessment and the levy of penalty are involved in the same proceeding". To reinforce their view point, the learned Judges pointed out that the authority who makes the additional assessment is in the best position to judge whether the case requires the levy of penalty and, therefore, the same authority should make the assessment as well as levy the penalty. Here, the question is somewhat different. Moreover, the expression "such authority" occurring in the then existing sub-section (4) is not to be found in sub-section (2). Therefore that decision is distinguishable. However, there is an apparent contradiction between this decision and the later decision [*Sri Radhakrishna & Co. case* [1962] 13 STC 117 in so far as the reasoning is concerned. That the same authority is in a best position to decide upon the levy of penalty is a principle that would hold good even in a case of penalty under sub-section (2), but when it came to sub-section (2), the learned Judges did not pursue that line of thought. On the other hand, the Division Bench observed in *Sri Radhakrishna & Co.* [1962] 13 STC 117 that it would frustrate the objective behind the levy of penalty if there is insistence on initiation of penalty proceedings simultaneous with the best judgment assessment. The view which we have expressed above, reconciles these two ideas without doing violence to the language to the language of section 14.

30. The next decision which needs reference is that of the Madras High Court in *State of Madras v. V. P. Ramulu Naidu* [1965] 16 STC 865. In that case, a Division Bench of the Madras High Court, while interpreting sub-section (3) of section 12 of the Madras General Sales Tax Act, which was in *pari materia* with the old sub-section (2) of section 14 of the APGST Act, held as follows :

"Obviously, the penalty that is contemplated by the sub-section depends on and follows a finding as to the incompleteness or incorrectness of the return submitted, and forms part of the proceedings resulting in best judgment assessment. There is no independent enquiry contemplated by sub-section (3) for purposes of levy of penalty. While the assessing authority, after following the procedure prescribed by the proviso to sub-section (2), forms his conclusions on the materials before him that an assessment should be made on best judgment basis because the return submitted was earlier incomplete or incorrect, he also decides whether the circumstances of the case call for levy of penalty under sub-section (3). It is true, the opening words of sub-section (3), viz., "when making any assessment under sub-section (2) ", are not indicative of any time-limit and

that sub-section (3) itself is intended to confer upon the assessing authority power to levy penalty. But, to our minds, it is clear from a combined reading of sub-sections (2) and (3) including the proviso to the former that penalty has to be levied when making an assessment under sub-section (2), i.e., on the occasion of making and as part of the assessment order. The interpretation appears to us to be also quite reasonable, because any penalty under sub-section (2) can be levied only as a result of a best judgment assessment, and a decision to levy penalty is necessarily arrived at in the course of the proceedings under sub-section (2). The assessment proceedings based on best judgment is a quasi-judicial proceeding, and so too the levy of penalty under sub-section (3), and what is contemplated by the two sub-sections is one enquiry for both and it follows that the assessing authority while making the assessment by best judgment should also decide at the same time whether a penalty should be levied."

31. Referring to the judgment of this Court in *Sri Radhakrishna & Co. case* [1962] 13 STC 117, the learned Judges of the Madras High Court observed :

"The learned Judges in that case would seem to recognise that it was clear from the proviso to sub-section (3) that an enquiry should be made by the assessing authority before imposing penalty on the assessee. But as we said, no independent enquiry for the levying of penalty is permitted or contemplated by section 12. It follows from the two premises that penalty, if any, can only be levied as part and parcel of an assessment order, after an enquiry as prescribed by the proviso to sub-section (2) relating to assessment by a best judgment."

32. An analysis of this decision would show that the learned Judges approved of the interpretation placed by this Court on the phraseology "when making an assessment". However, the Madras High Court dissented from the view expressed by this Court in *Sri Radhakrishna & Co. case* [1962] 13 STC 117, on the limited ground that no independent enquiry for the levy of penalty was permitted or contemplated by section 12 and, therefore, the penalty if any, can only be levied as part parcel of an assessment order. The Madras High Court overlooked the fact that in the APGST Act, there was a separate provision for holding an enquiry for the purpose of levy of penalty and therefore the imposition of penalty need not be an integral part of the best judgment assessment itself. The ratio of the said decision that there should be one enquiry for both assessment and penalty has therefore, no application in so far as the APGST Act is concerned. Much support cannot therefore be drawn by the petitioner from this judgment. The aforementioned judgment of the Madras High Court was followed by another Division Bench of the same court in *Ramaswamy Pillai v. State of Madras* [1968] 22 STC 224. There are two judgments of this Court, viz., *State of Andhra Pradesh v. Rikabchand Siremal & Co.* [1968] 22 STC 304 and *State of Andhra Pradesh v. Sri Immadisetty Venkateswarlu* [1970] 25 STC 46, wherein the proposition enunciated in *Sri Radhakrishna & Co. case* [1962] 13 STC 117 was followed. In *Rikabchand Siremal & Co. case* [1968] 22 STC 304 (AP) the question

that arose for consideration was whether the penalty proceedings u/s 14(2) could be started after a lapse of more than four years from the expiry of the relevant assessment year. It was contended on behalf of the State that no time-limit was prescribed for commencing or concluding the penalty proceedings and the limitation for assessment cannot be made applicable to penalty. This contention was negated by the learned Judge. It was held :

"It must, therefore, necessarily follow that the penalty proceedings under sub-section (2) also should be taken up within the same period, viz., four years from the expiry of the year to which the best judgment assessment relates."

33. Having so held, the learned Judges pointed out :

"It, however, is not necessary that the penalty should be levied simultaneously with the making of the best judgment assessment. This position is made clear by the proviso which requires that the assessing authority should give the dealer a reasonable opportunity to explain the omission to disclose the information, before issuing any direction for the payment of any penalty under sub-section (2). After giving such reasonable opportunity, the assessing authority is also required to make such enquiry as he considers necessary. This precludes the imposition of penalty without giving a reasonable opportunity to the assessee to explain the omission on his part and making an enquiry into it. It is not, therefore, possible to postulate that the levy of the penalty should be simultaneous with the best judgment assessment. The same view was expressed by a Division Bench of this Court in *Radhakrishna & Co. v. State of Andhra Pradesh* [1962] 13 STC 117 ..."

34. The Division Bench also pointed out that in *Sri Radhakrishna & Co. case* [1962] 13 STC 117 the court was not concerned with the question whether the penalty proceedings should be started within the same period as was available for making best judgment assessment. Thus, the decision in *Sri Radhakrishna & Co.* [1962] 13 STC 117 (AP), found favour with the learned Judges in this case. As we already commented while discussing the case of *Sri Radhakrishna & Co.* [1962] 13 STC 117 (AP), the broad observation that the simultaneous levy of tax and penalty is not envisaged by section 14(2) cannot be countenanced.

35. Now we shall refer to the case of *State of Andhra Pradesh v. Immadisetty Venkateswarlu* [1970] 25 STC 46 This is a decision rendered by Kumarayya, Ag. C.J. and Kondaiah, J. The learned Acting C.J. formulated the question as follows :

"The main point for determination is whether, once the original assessment has been made by a particular assessing authority, the penalty could be levied by its successor to whom the file was transferred by reason of change in jurisdiction."

36. It was also a case of levy of penalty under sub-section (2) of section 14. The assessment order related to 1962-63. On the basis of an inspection made, the Commercial Tax Officer estimated the suppressed turnover at Rs. 1,33,549. In appeal, the suppressed turnover was reduced. After the appeal was disposed of,

the assessment file was transferred from the Commercial Tax Officer to the Deputy Commercial Tax Officer because of the change of jurisdiction. The Deputy Commercial Tax Officer who became seized of the matter, revised the assessment in terms of the appellate order. Thereafter, he started proceedings for the levy of penalty and levied the penalty. This Court held that the order of the Deputy Commercial Tax Officer levying the penalty was valid and it was not necessary that the penalty should be levied by the same assessing officer and at the same time while making the assessment. The learned Judges followed the view expressed by the Division Bench in Sri Radhakrishna & Co. case [1962] 13 STC 117 (AP) and dissented from the view taken by the Madras High Court in State of Madras v. V. P. Ramulu Naidu [1965] 16 STC 865. The learned Judges observed :

"As observed by this Court, section 14(2) is only a provision enabling the revenue to have recourse to the levy of penalty in certain contingencies and does not indicate the time at which it should be put into operation. Therefore, it is not at all necessary for the legal validity of the levy of penalty that the proceedings should have started simultaneous with the making of the original assessment order ..... We see not reason to doubt the correctness of the view taken by this Court that the opening words of section 14(2) are not indicative of any time-limit."

37. Referring to the other limb of the argument, the learned Judges further observed :

"Now, coming to the question whether the Act permits the successor-assessing authority to initiate penalty proceedings, we do not think that so long as the successor is the assessing authority within the meaning of the Act, the legality of levy can be assailed on the ground that he is not competent to levy penalty. We are no doubt referred to the decision of this Court in Pallapothu Sarveswara Rao v. State of Andhra Pradesh [1962] 13 STC 122. But that case was attracted by section 14(4) and the interpretation turned on the words "such authority" used therein ....

The rule in that case, therefore, has no application to the facts of the present case which is concerned with sub-sections (1) and (2) of section 14 and not with sub-section (4)."

38. The learned Judges then made the following crucial observations :

"It is wrong to think that the "assessing authority" used in sub-section (2) implies the same person or officer who had made the original assessment. It cannot be accepted on principle also that the person who imposes penalty should be the same as the person who had made the assessment order. If immediately on making the assessment, the officer is transferred or the jurisdiction is conferred on another authority, certainly such authority is competent to take up the case from that stage to its final stage. What is required by law is that the assessing authority has to initiate the proceedings for the levy of penalty and not

whether the same person or officer, who had made the assessment."

39. Chronologically, the next case is the one reported in Prabhakara Oil Mills case [1976] 38 STC 449 (AP). There, a Division Bench of this Court consisting of S. Obul Reddi, C.J. and Jeevan Reddy, J., was considering the question whether the penalty proceedings u/s 14(4) cannot be commenced until the revised assessment proceedings are concluded. Jeevan Reddy, J., speaking for the Division Bench answered the question in the negative. Referring incidentally to sub-section (2) of section 14 the Division Bench observed that having regard to the language of sub-section (2), the order levying penalty has to be made at the time of making best judgment assessment itself. Dealing with sub-section (4), the learned observed :

"Even the language of sub-section (4) does not, either expressly or by necessary implication, indicate that the penalty proceedings cannot be commenced until the revised assessment proceedings are concluded."

40. The learned Judges opined that sub-section (4-B) which embodies a principle of natural justice does not point to a different conclusion. The learned Judge then observed : "On the contrary, the Act contemplates that both the proceedings for assessment, revised assessment and penalty should be simultaneous."

41. The learned Judges then said : "It is not necessary that the assessing authority must first finalise the revised assessment and then alone commence proceedings for levying penalty. Such an interpretation would, in fact, do violence to the language used by the Legislature in section 14." While we are in agreement with the last extracted passage and the conclusion reached by the learned Judges in that case, the observation suggesting that both the best judgment assessment as well as proceedings should necessarily be simultaneous, does not reflect the correct legal position. We have already expressed our view on this aspect. In fact, Jeevan Reddy, J., himself sitting in another Division Bench in Eswara Oil Company Vs. State of Andhra Pradesh, made the following pertinent observation :

"Penalty u/s 7-A(2) can be levied for the mere issuance or production of a false bill, voucher or declaration, etc. whether before finalising the assessment, or thereafter; whereas penalty under sub-section (8) of section 14 can be levied only at the time of, or subsequent to, the making of the assessment order."

42. No doubt, the penalty with which the Division Bench was concerned in that case was the penalty u/s 7-A but not u/s 14. However, the enunciation of law by the learned Judges, though in the form of a passing observation, in our view, represents the correct legal position.

43. We shall now advert to the more recent decisions of this Court - Nagabandi Mallaiah v. State of A.P. [1988] 70 STC 160 and State of A.P. v. Venkateswara Oil Producers [1992] 86 STC 127. In the first of the cases, an identical question arose before the Division Bench consisting of Ramanujulu Naidu and Anjaneyulu,

JJ. In that case, the best judgment assessment was finalised on February 16, 1968. Nearly 2 1/2 years later, the successor-assessing authority issued a penalty notice u/s 14(2). The order imposing penalty was passed on March 31, 1971. Relying on the language of section 14(2), the learned Judges took the view that levy of penalty should be simultaneous with the assessment and, therefore, upheld the order of the Tribunal quashing the penalty order. The Division Bench observed :

"The expression, "while making the assessment", leaves no doubt in our mind that the very same authority, who makes an order of assessment to the best of his judgment, should derive satisfaction that the assessee did not disclose the entire taxable turnover and that penalty should be levied, simultaneously."

44. It may be seen that there is not much of discussion in that case. Obviously, the learned Judges missed to note that the expression "when" does not necessarily convey the idea that the direction to levy penalty should be issued only at the point of time of making the assessment. The various shades of meaning of the word "when" which were considered in *Sri Radhakrishna & Co. case* [1962] 13 STC 117 and which have been referred to by us were not kept in view by the learned Judges. We cannot therefore endorse the view of the learned Judges. With respect, we overrule the said judgment. The last of the series of cases is the judgment in *State of Andhra Pradesh Vs. Venkateswara Oil Producers*, . It appears that the Division Bench consisting of Sivaraman Nair and Parvatha Rao, JJ., dismissed the tax revision case at the admission stage following the judgment of this Court in *Nagabandi Mallaiah v. State of A.P.* [1988] 70 STC 160. After extracting sub-section (2) of section 14, the Division Bench observed :

"This provision makes it very clear that the point of time when the penalty should be imposed is the time when the assessment order is made. Admittedly, on the facts of the present case, penalty was sought to be levied three years after the assessment order was made. That was not permissible under sub-section (2) of section 14 of the Act."

45. The words "when" and "in addition to the tax assessed" were relied upon by the Division Bench. With respect to the learned Judges, we overrule this judgment as well, for the same reasons for which we have overruled *Nagabandi Mallaiah's case* [1988] 70 STC 160. Though we have overruled the above two judgments, we would like to clarify that we are only differing with the reasoning given by the learned Judges but not the conclusions. As far as the ultimate conclusion is concerned, it may be justified on the ground that the penalty proceedings were initiated long after the best judgment assessment was finalised. The test of proximity of time which we have enunciated was, therefore, not satisfied.

46. Now we will sum up the conclusions reached by us :

(1) It is not a requirement of law that the proceedings for levy of penalty should

be initiated u/s 14(2) of the APGST Act before or at the time of making the best judgment assessment u/s 14(1); nor is it necessary that the order imposing penalty should be passed simultaneous with the assessment order.

(2) While simultaneous levy of penalty along with assessment is not an essential requirement, there should be close proximity in point of time between the date of assessment and the date of initiation of penalty proceedings.

(3) There is no legal objection for simultaneous levy of penalty along with the best judgment assessment subject, of course, to the fulfilment of the mandatory requirement of sub-section (4-B). However, it is desirable that as far as practicable, the penalty proceedings are concluded after the assessment is made.

(4) The penalty order passed in the present case is not open to attack either on the ground that it was not made simultaneous with the best judgment assessment or that there was impermissible time lag between the date of assessment and the date of initiation/conclusion of penalty proceedings.

47. The learned counsel for the petitioner has urged certain other points, such as that there was no best judgment assessment in the present case and that the quantum of penalty imposed was excessive. These are all aspects which do not deserve consideration by a Full Bench of this Court. Moreover, all these aspects could very well be urged before the appellate authority. We do not wish to express any opinion on these points. It is open to the petitioner to file an appeal against the penalty order with a petition to condone the delay in filing the appeal.

Subject to the above observation, the writ petition is dismissed. No costs.

48. Writ petition dismissed.