
(1971) 03 CAL CK 0028
In the Calcutta High Court
Case No : F.M.A. 185 of 1970

Mohanlal Chokhany

APPELLANT

Vs

Commercial Tax Officer, Lyons Range

RESPONDENT

Date of Decision : 02-03-1971

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 10, 10(2), 11(1), 11(4B), 14(1)
Central Sales Tax (West Bengal) Rules, 1958 — Rule 12, 8, 9
Central Sales Tax Act, 1956 — Section 10, 10A, 10A(2), 11, 13(3)
Constitution of India, 1950 — Article 14, 21, 226, 301, 302
Income Tax Act, 1961 — Section 46(2)

Citation : (1972) CriLJ 544 : 77 CWN 41

Hon'ble Judges : P.B. Mukharji, C.J.; B.C. Mitra, J

Bench : Division Bench

Advocate : Prafulla Chandra Mukherjee, Chunilal Goswami and Basania Kumar Dutta, for the Appellant; Sachindra Chandra, Das Gupta and Bimal Kumar Dutta and Somendra Chandra Bose and D. Pal, for the Respondent

Final Decision : Allowed

Judgement

P.B. Mukharji, C.J.—This appeal raises a short but interesting point for determination. The short point is whether a dealer liable to Central sales tax under the Central Sales Tax Act can be subjected to a penalty for non-submission- of returns on turnover within time. The Appellant contends that there is no such power under the Central Sales Tax Act.

2. The Appellant made an application under Article 226 of the Constitution- for writs of mandamus, certiorari and prohibition and for appropriate directions and orders to cancel or rescind the order imposing penalty dated September 18, 1964, the notice of demand dated September 22, 1964, and the notice dated December 4, 1964, for further levy of penalty.

3. The Appellant's case is as follows:

He is a dealer registered u/s 7 of the Central Sales Tax Act, 1956, carrying on

business under the trade name of Messrs. Chokhany Sons in jute, jute goods, gunnies, hessian and other merchandise at No. 5 Clive Row, Calcutta, holding registration certificate No. 372A L.R. (Central). It is his case that for the purpose of assessment under the said Act he is required to submit a yearly return and his accounting year is the Ramnavami year. In respect of the year ended on Chait Sudi 8, 2019, corresponding to April 12, 1962, he had to submit return by June 11, 1962, in accordance with the provisions of the Central Sales Tax (Registration and Turnover) Rules, 1957, read with Rule 8 of the Central Sales Tax (West Bengal) Rules;-1958. On March 24, 1964, the Commercial Tax Officer issued a notice in Form 3, prescribed under r. 9 of the Central Sales Tax (West Bengal) Rules, 1958, calling upon the Appellant to appear and produce the books of accounts before him on May 7, 1964, for the purpose of assessment of the Central sales tax for the year ended on Chait Sudi 8," 2019, and also for showing cause why penalty u/s 11(1) of the Bengal Finance (Sales Tax) Act, 1941, should not be imposed upon him. On September 18, 1964, the Commercial- Tax Officer completed the assessment for the period u/s 9(3) of the Central Sales Tax Act, read with Section 11(1) of the Bengal Finance (Sales Tax) Act, 1941, and determined the Central sales tax payable at Rs. 13,026-69 and levied also a penalty of Rs. 2,500 u/s 11(1) of the Bengal Finance (Sales Tax) Act, 1941, for not filing the return within the prescribed time. Thereafter, the Commercial Tax Officer issued a Notice of Demand in Form 4, prescribed under Rule 9 of the Central Sales Tax (West Bengal) Rules, 1958, dated September 22, 1964, demanding the Central sales tax of Rs. 13,026-69 and a penalty of Rs. 2,500 u/s 11(1) of the Bengal Finance (Sales Tax) Act, 1941. Thereafter, another notice dated November 16, 1964, was issued by the Commercial Tax Officer asking the Appellant that, unless the outstanding tax and penalty amounting to Rs. 7,522-65 (which amount was arrived at after deducting Rs. 8,004-04 already paid) was paid within seven days, further penalty u/s 11(4B) of the Bengal Finance (Sales Tax) Act, 1941, would be imposed.

4. On November 25, 1964, the Appellant in response to this notice submitted a petition before the Commercial Tax Officer contending that the levy of penalty was illegal and ultra vires and also that the proposed levy of penalty u/s 11(4B) of the said Act was illegal and ultra vires the Central Sales Tax Act and also ultra vires the Constitution of India offending against Article 14 thereof. In those circumstances, the Appellant requested the Commercial Tax Officer to cancel and withdraw the demand of penalty amounting to Rs. 2,500 and to recall the notice dated November 16, 1964. Then the Commercial Tax Officer on December 4, 1964, issued a notice under Form VIIA prescribed under the Bengal Sales Tax Rules proposing the levy of penalty amounting to Rs. 5,000 and also a letter informing the Appellant that action had been taken according to law.

5. Thereupon the Appellant paid on December 30, 1964, the balance of Central sales tax amounting to Rs. 5,022-65.

6. The whole case of the Appellant challenging this order of penalty may be

briefly summarised at this stage. It is the contention of the Appellant that unless the levy of penalty for delay in submission, of returns and/or payment of tax is expressly provided for in the charging section of the Central Sales Tax Act itself, its machinery provisions cannot create that liability. In those circumstances, Form 3 and Form 4 in the Central Sales Tax (West Bengal) Rules, 1958, providing for imposition of penalty are illegal and ultra vires the Central Sales Tax Act and/or the rule making powers of the State Government.

7. The matter came up before P.K. Banerjee J. Banerjee J. discharged the rule and dismissed the application and petition by an order and judgment dated February 19, 1970. The learned Judge came to the conclusion that u/s 11 of the Bengal Finance (Sales Tax) Act the Sales Tax authorities in West Bengal were empowered to impose penalty for non-submission of return, or late submission of return and also for default in payment of assessed tax and, therefore, reading Section 9(3) of the Central Act with Section 11 of the Bengal Finance (Sales Tax) Act, the Sales Tax authorities could impose penalty on a registered dealer who did not file return under the Central (Sales Tax) Act and/or did not pay any amount due under that Act. The learned Judge also overruled the Appellant's contention that Section 9 of the Central Sales Tax Act, 1956, was ultra vires on the ground of Entry 92A or 93 of List I of sch. VH(1) of the Constitution of India. The learned Judge further came to the conclusion that by incorporation of the State machinery in the Central statute there was no infringement on the State subjects. From that judgment and order of Banerjee J. the present appeal has been filed.

8. Mr. Mukherjee, appearing for the Appellant, has urged the same grounds in the appeal before us as were urged before Banerjee

9. The Central question in this appeal is whether the Central Sales Tax Act, 1956, has given any power to the Sales Tax authorities to impose a penalty for delay in the submissions of returns on the turnover. The delay in this case, on the facts, is said to be about two years. The return was said to be due on or about June 11, 1962, but the return, in fact, was not submitted until March 24, 1964. The point is, can the Appellant be penalised in such circumstances under the Central Act ?

10. The basic foundation or claim to impose penalty is drawn from Section 9 of the Central Sales Tax Act dealing with levy and collection of taxes and penalties. Section 9(1) makes the provision that the tax payable by any dealer under the Central Act on sale of goods effected by him in course of inter-State trade or commerce shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of Sub-section (2) of Section 9 in the State from which the movement of the goods commences with a proviso that in the case of sale of goods during their movement, from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within Sub-section (2) of Section 6 of the Central Sales Tax Act, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the

case may be, could have obtained, the form prescribed for the purpose.

11. On a broad analysis of Section 9(1) of the Central Sales Tax Act, it is clear that it speaks only of the tax and not of any penalty or fine. The relevant provision in the statute, which is material for the purpose of determining the question in this appeal, appears in Section 9(2) of the Central Sales Tax Act as it now stands. Now, Section 9(2) of the Central Sales Tax Act reads as follows:

Subject to the other provisions of this Act and the rules made there under, the authorities for the time being empowered to Assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State ; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of, any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly. It is followed by a proviso which is not material for the present purpose. Section 9(3) provides that the proceeds of any tax in any financial year including penalty levied and collected under this Act in any State, on behalf of the Government of India, shall be assigned to that State and shall be retained by that State.

12. Mr. Mukherjee, the learned Advocate for the Appellant, bases his argument, on the provision of Section 9(2) of the Central Act by saying that this provision makes it dear that only penalty payable by a dealer under the Central Act can be imposed and not a penalty which might become payable under the sales tax law of a particular State. He emphasises the expressions "assess, re-assess, collect and enforce payment of tax, including any penalty payable by a dealer under this Act," appearing in Section 9(2) of the Central Sales Tax Act.

13. The next step in the argument for the Appellant is reference to Section 10 of the Central Sales Tax Act dealing with penalty, The marginal note of Section 10 of the Central Sales Tax Act is "penalties". Section 10 sets out six grounds from (a) to (f), namely, (a) failure of a dealer to get himself registered as required by Section 7, or (b) a registered dealer falsely representing 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 representing 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) of Sub-section (3) of Section 8 failing, without reasonable excuse, to make use of the goods for any such purpose, (e) having in his possession any form prescribed for the purpose of Sub-section (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 there under, and (f) collecting any amount by way of tax in contravention of the provisions contained in Section 9A. Now, when a person comes within any of the six grounds (a) to (f), Section 10 provides that 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.

14. Mr. Mukherjee for the Appellant relies on Section 10 and its provisions to show that delay in submission of return is not one of the grounds mentioned in Section 10 for which a penalty could be imposed under the Central Sales Tax Act. Actually, the first part of Section 10 does not mention penalties but fine and imprisonment.

15. Section 10A of the Central Sales Tax Act mentions imposition of penalty in lieu of prosecution". It provides:

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 this Act in respect of the sale to him of the goods if the offence had not been committed:

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.

16. By an amendment of this Section 10A which itself was introduced by Act XXXI of 1958 with effect from October 4, 1958, a new Sub-section (2) was added by Act XXVIII of 1969 with effect from October 1, 1958, which Sub-section (2) provides, inter alia, that the penalty imposed upon a dealer under Sub-section (1) of Section 10A should be collected by the Government of India in the manner provided in Section 9(2) and specified in Sub-clause. (a) and (b) of this new Sub-section (2) of Section 10A.

17. Before discussing authorities about the interpretation of Section 9(2) of the Central Sales Tax Act, a broad analysis of that statutory provision makes the following points clear. Section 9(2) of the Central Sales Tax Act, in the first instance, makes the whole provision "subject to the other provisions of this Act and the Rules made there under". The effect is that Section 9(2) does not stand alone by itself but is itself subject to the other provisions of the Central Sales Tax Act and the Rules made there under. Secondly, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under

the general sales tax law of the appropriate State are only so empowered "on behalf of the Government of India. In other words, the whole power to assess, re-assess, collect and enforce payment of any tax is only to be exercised "on behalf of the Government of India, suggesting the Government of India to be the principal and the State as the agent and that the agent can have no greater power than the principal himself, so that if the principal has no power to impose penalty for non-submission or delayed submission of returns, the State, "on behalf of the Government of India", cannot impose such penalty. Thirdly, this power includes the power to "assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act." Hence, the central idea is "penalty" payable under this (Central) Act, and not penalty payable under any State law. Fourthly, this power, mentioned just now, is qualified by the words "as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State." This is the deeming provision and can deem no more than what it say"s, namely, that the "penalty payable under this (Central) Act" and not any" other penalty, will be deemed "as if payable under the general sales tax law of this State. Fifthly, the other expression in Section 9(2) of the Act is, "for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State" followed by the provisions which have also been quoted above. There the limiting words are "for the purpose" and not any other purpose. Now, each one of these Give points of emphasis in Section 9(2) of the Central Sales Tax Act has a significant bearing and relevancy on the points to be decided in this appeal. Each one of these five considerations are in favour of this Appellant and against the Revenue. Before proceeding with the interpretation of these special features of Section 9(2) of the Central Sales Tax Act, it would be appropriate at this stage to notice the contention put forward by the learned Advocate for the taxing authorities, Mr. Das Gupta, Mr. Somendra Chandra Lose and Dr. Devi Pal.

18. The answer on behalf of the taxing authorities to these contentions of the Appellant appears to be this. According to the taxing authorities, s.9(2) incorporates the entire machinery for collecting taxes including penalties as provided in the State laws and the different State Sales Tax Acts. For this purpose, on behalf of the taxing authorities, reliance is placed on such expressions as the "general sales tax law of the appropriate State" and also the expressions "and the provisions of such law including provisions relating to returns.....shall apply accordingly" appearing in Section 9(2) of the Central Sales Tax Act. . Therefore, it is argued, on behalf of the taxing authorities, that although no penalty as such is expressly provided for by the Central Sales Tax Act for delay in the submission of returns on the turnover, yet because the West Bengal Sales Tax Act and the Rules made there under provide for it. Therefore, this penalty is incorporated in the Central Sales Tax Act on that ground .of delay in submission of returns.

19. In support of this argument, the Revenue authorities relied on the decision of the Mysore High Court in K.V. Adinarayana Setty Vs. Commercial Tax Officer,

Kolar Circle, Kolar, . There the Division Bench of the Mysore -High Court came to the conclusion that by virtue of Section 9(3) of the Central Sales Tax Act, 1956 [now after the amendment it is the same section as Section 9(2) of that Act] the provisions of the general sales tax law of the State including provisions relating to penalties, would be applicable to the entire process of assessment, payment, collection. and recovery of the tax payable under the Central Act. On that ground, it was held by that Division Bench of the Mysore High Court that a dealer under the Central Act, who defaulted in making payment of the tax payable under that Act within the prescribed time, became liable to pay the penalty provided in Section 13(2) of the Mysore Sales Tax Act, 1957, in the same way in which a "defaulting dealer under the Mysore Act incurred that liability. The relevant observations of the Court in support of that view appear in that case (1). We do not find from the judgment that the Court considered such crucial expressions in Section 9(2) of the Central Sales Tax Act as (i) "on behalf of the Government of India", (ii) "penalty payable under this Act", (iii) "for this purpose" and (iv) "subject to the. other provisions of this Act and the Rules made there under". These four expressions in Section 9(2) of the Central Sales Tax Act appear, in our view, to circumscribe the power for imposing penalty. To read Section 9(2) in such a manner as to make penalty not impossible under the Central Sales Tax Act as impossible, even though it is not a ground of penalty under that Act, would be to delete the express provisions in Section 9(2) saying "including penalty payable by a dealer under this Act" and also override the purpose for which such powers are exercisable u/s 9(2) of the Central Sales Tax Act which are clearly -limited by use of the expression "and for this purpose they may exercise all or any or the powers they have under the general sales tax law of the State". In the decision of the Division Bench of the Mysore High Court, we do not find any reference to these crucial expressions and their interpretations.

20. As against this authority of Adinarayana Setty v. Commercial Tax Officer (Supra (591,594,596-7)) it will be now necessary to notice another subsequent decision of a Division Bench of the same Mysore High Court in Guldass Narasappa Thimmiah Oil Mills Vs. Commercial Tax Officer, Raichur, on which Mr. Mukherjee, the learned Advocate for the Appellant, relies. The ratio of this decision in Guldass Narasappa's case is that the provisions relating to imposition of penalty in taxing statute are substantive in character and they cannot reasonably be said to form part of the procedural law and, unless such penal provisions in the local Sales Tax Act are expressly adopted by the provisions of Section 9(2) of the Central Sales Tax Act, they cannot be relied upon for the purpose of the recovery of tax due under the Central Act. This case is also an important authority, because it took notice of the" amendment made in the Act in 1969. This decision proceeds to observe that Section 9(2) of the Central Act, as amended by the Central Sales Tax (Amendment) Act (XXVUI of 1969), has effected change so as to exclude any idea of adoption of the substantive provisions of a State Act relating to assessment and recovery of tax and penalty. The importance of this decision in Guldass Narasappa's case lies further in the fact that the Court there noticed that

a provision relating to penalty similar to the one specified in Section 13(2) of the Mysore Sales Tax Act, 1957, was nowhere to be found in the Central Sales Tax Act, 1956, as amended by Act XXVIII of 1969. Therefore, this decision of the Mysore High Court came to the conclusion that unless the provision was specifically adopted by express words or by necessary implication, Section 13(2) of the State Act would not be attracted for levying penalty for a default committed in payment of sales tax assessed under the Central Act. Of particular significance is the emphasis that this decision gives to the expression "as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State" occurring in Section 9(2) of the Central Act and came to the conclusion that this phrase was relatable to the tax and penalty leviable under the Central Act. It was on that foundation that the Court in *Guldas Narasappa's case* (2) came to the conclusion that a levy of penalty u/s 13(2) of the State Act for default committed in the payment of tax assessed under the Central Act was without the authority of law. Lastly, the decision in *Guldas Narasappa's case* referred also to the previous decision in *Adinarayana Setty's case* (Supra) on which the taxing authority relied in this appeal before us. See the observations of Venkataswami J. in *Guldas Narasappa's case* (Supra (494, 495)) with which we associate ourselves.

21. It will be interesting here at this stage to notice the Supreme Court decision in *State of Kerala v. P. P. Joseph & Co. and Joseph Elias* 25 S.T.C. 483. There the Supreme Court points out that the effect of the Central Sales Tax (Amendment) Ordinance, 1969, was to supersede the judgment of the Supreme Court in the case of *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, . It also points out that by Section 9(2) of the Central Sales Tax Act, 1956, as amended by the Ordinance of 1959, the procedural law prescribed by the general sales tax law of the State applied in the matter of assessment, reassessment, collection and enforcement and payment under the Central Sales Tax Act, but the liability to pay was determined by the provisions of the Central Sales Tax Act. Plainly, the Supreme Court has clearly laid down the distinction between the "procedural law" and the "liability to pay" and that for the former the State law of machinery was attracted, but for the latter the "liability to pay" must be determined by the provisions of the Central Sales Tax Act. The Supreme Court further points out that the effect of the Amendment of Section 2(j) of the Central Sales Tax Act, 1956, by the Ordinance with retrospective effect from the date on which the principal Act was enacted is that the turnover for the purpose of the Central Sales Tax Act, 1956, has to be determined in accordance with the provisions of that Act and the Rules made there under. Of similar import is the decision of the Supreme Court in *Deputy Commissioner of Agricultural Income-tax and Sales Tax, South Zone, Quilon Aluminium Industries Ltd.* 25 S.T.C. 476.

22. On behalf of the taxing authorities, our attention has also been drawn to the decision of the High Court of Madhya Pradesh in *The Commissioner of Sales Tax Vs. Kantilal Mohanlal and Brothers*, where a Division Bench of the Madhya Pradesh High Court came to the conclusion that penalty for late sub-session of

return in Form V. appended to the Madhya Pradesh Sales Tax (Central) Rules, 1957, could be imposed u/s 17(3) of the Madhya Pradesh General Sales Tax Act, 1958. We do not find that this decision of the Madhya Pradesh High Court considered the crucial expressions of Section 9(2) of the Central Sales Tax Act which we have noticed, namely, (i) "on behalf- of the Government, of India", (ii) "penalty payable under this Act" and (iii) "for this purpose". We feel that those three expressions are controlling expressions on this point. We are, therefore, unable to accept the ratio of this Madhya Pradesh High Court's decision for the same reasons for which we could not agree with the earlier Mysore High Court decision. in Adinarayana Sally's case (Supra (228)).

23. The decision of the Supreme Court in Orissa Cement Ltd. Vs. State of Orissa and Another, cannot help the taxing authorities in this case, for there the question was one of rebate as stimulus for collection, and the Supreme Court there held that granting of rebate was a part of the process of collection. In that decision, the Supreme Court lays down that", in view of Section 9(3) of the Central Act; the rebate provided by Section 13(8)-of the Orissa Act was payable to the assessee under the Central Act, if they paid the tax assessed within the prescribed time. Therefore, the Supreme Court was of the opinion that the power to collect the tax assessed in the same manner as the tax on the sale and purchase of goods under the general sales tax law of the State provided. in Section 9(3) of the Central Act included within itself all concessions given under the Orissa Act for payment within the prescribed time and rebate was offered to facilitate and expedite that collection. Penalty stands, in our opinion, on an entirely different footing. Penalty can only be collected by express words or by necessary implication in the statute and not inferentially nor is it like rebate a matter of procedure for granting concession for earlier or due payment, but is a matter of substantive liability imposing additional burden, and imposition. We are also of the opinion that if tax must be clearly brought within the statute, penalty must equally, if not more so, be brought within the bounds of the statute.

24. It will be worthwhile to cite an authority of the Madras High Court in the State of Madras v. Af. Angappa Chettiar & Sons 22 S.T.C. 22G where the Madras High Court lays down the principle that the power to collect penalty u/s 9(3) of the Central Sales Tax Act, 1956 (as it stood before), will cover only the penalty payable under that Act and will not include a power to impose the penalty itself for a contravention or omission for which that Act does not contain a provision apart from the Madras General Sales Tax Act. The importance of this Madras decision lies in the fact that it goes on to express the view that the Legislature could not with propriety make a law to adopt by reference the provisions of a statute law as it stood amended by the Legislature from time to time and the Madras General Sales Tax Act, 1939, which, as incorporated by-reference by Section 9(3) of the Central Sales Tax Act, 1956, did not contain a provision for levy of a penalty referred to in Section 16(2) of the Madras General Sales Tax Act, 1959. The conclusion to. which the Madras High Court arrived at was that, therefore, the provisions of Section 9(3) of the Central Sales Tax Act, 1956, could

not be applied for the levy of penalty on a dealer for the contravention of the kind contemplated in Section 16(2) of the Madras General Sales Tax Act, 1959. See observations of the Madras High Court (Supra (228)).

25. There are One or two other portions of the Central Sales Tax Act to which reference may be made to show that the contention of the Central Sales Tax authorities cannot be upheld on this point. The charging section, Section 6 of the Central Sales Tax Act, inter alia, provides that subject to the other provisions every dealer shall be liable to pay tax under this Act on all sales effected by him in the course of inter-State trade or commerce during any year on and from the date notified. The subject of tax is the sales effected during inter-State trade or commerce. The rate of tax is determined by Section 8. The preamble of the statute also emphasises this aspect of inter-State trade or commerce. The context, therefore, is such that) most of the dealers would be liable to sales tax in the different States. Submission of returns under such circumstances is very often provided in the State Acts. The illustration can be drawn from the Bengal Finance (Sales Tax) Act, 1941. Section 5(2) of the Bengal Act in describing the turnover on which a dealer is liable to pay tax provides in Sub-clause (v) that a registered dealer under the Bengal Act is entitled to deduct sales of goods which are shown to the satisfaction of the Commissioner not to have taken place in West Bengal or to have taken place in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956, or in course of import of the goods into or export of the goods out of the territory of India, within the meaning of Section 5 of that Act. The result is that in the submission of returns of the sales tax payable under the Bengal Act in Form III. There is a specific column where in the return the registered dealer in showing the deductions has got to show, for, instance, in Clause 6: sales of goods which have not taken place in West Bengal, or have taken place in the course of inter-State trade or commerce, or in the course of import into, or export out of the territory of India. Therefore, the taxing authorities in the State, in any event, are having returns even of sales of inter-State trade or commerce, although the State cannot impose a tax on the State or the turnover in course of the inter-State trade or commerce. That perhaps maybe one of the reasons why non-submission of returns under the Central Sales Tax Act is not made an offence under the Central Sales Tax Act. That would tend to the conclusion that delay in submission of returns under the Central Sales Tax Act was not contemplated at all and, therefore, there was no question or scope for imposing any penalty for such delay.

26. In this connection, the Central Sales Tax (West Bengal) Rules, 1958, made under Sub-sections (3), (4) and (5) of Section 13 of the Central Sales Tax Act, may be noticed. Rule 8 of the Central Sales Tax (West Bengal) Rules provides for submission of returns in the following manner, namely, (1) Every dealer liable to pay tax and every dealer registered under the Act shall furnish a return in Form I in respect of each period of his turnover as referred to in Rule II of the Central Sales Tax (Registration and Turnover) Rules, 1957, to the appropriate

Commercial Tax Officer, in the manner and by the date as prescribed in this behalf under the Bengal Finance (Sales Tax) Act, 1941 (VI of 1941), and the Rules framed there under.

27. The provisions of the Bengal Sales Tax Act, which has been invoked in this case to impose penalty, are contained in Section 10(2) of the Bengal Finance (Sales Tax) Act, 1941, which as amended from March 31, 1949, reads as, follows:

If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall within 12 months after the expiry of such period proceed in such manner as may be prescribed to assess to the best of his judgment the amount of the tax due from the dealer and in making such assessment shall give the dealer a reasonable opportunity of being heard; and in the case of failure by a registered dealer to submit a return in respect of any period by the prescribed date, the Commissioner may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of the tax so assessed a sum not exceeding one and a half times that amount.

28. Now, this is a provision for best judgment assessment in the circumstances mentioned above and is also a provision for penalty as stated. The Central Sales Tax Act makes no provision for the best judgment assessment, nor does it make any provision for any penalty for non-submission of returns. In a case, therefore, under the Bengal Sales Tax Act for non-submission of returns, which would also include in the particular form mentioned above the deductions of the amount of inter-State sales, penalty ^ can be imposed on the ground of delay or non-submission of the returns within the meaning of Section 10(2) of the Bengal Act as quoted above. Presumably that is the reason why the Central Sales Tax Act does not make any special provision for penalty for delay or failure in submitting the return.

29. There is one more aspect to this problem. A penalty should be strictly construed. As a tax cannot be imposed by implication, a penalty cannot be imposed by implication. It must be clearly provided for. That is the settled principle of construction. In the present context, it is not necessary to discuss the different views on the question whether a penalty is an additional tax or not. See LAL CHAND GOPAL DAS Vs. COMMISSIONER OF Income Tax, U.P. AND V.P., and the Supreme Court decision in Commissioner of Income Tax, Andhra Pradesh Vs. Bhikaji Dadabhai and Co., . What is important from the point of view of construction is that penalty being ex hypothesis penal must be clearly imposed by statute. Many taxing statutes, as for instance income tax Act, make elaborate provision for penalty. Such penalties are not to be equated with criminal proceeding. In INLAND REVENUE COMMISSIONERS Vs. JACKSON., Lord Justice Sellers speaking for the English Court of Appeal observed as follows:

One can simply take this case as a claim for penalties. It is not a criminal

proceeding. It has also been said in some cases that this penalty is to be distinguished from prosecution or a fine in prosecution. See the decision in *King v. Hossain* 1 I.T.C. 48 .

30. One more cogent reason in support of the view that under the Central Sales Tax Act and the Rules made there under no penalty can be imposed for failure or delay in submission of returns on turnover is to be found by a- comparison of r. 8 and r. 12 of the Central Sales Tax (West Bengal) Rules. We have already stated r. 8 which relates to submission of returns and provides, inter alia, that--

Every dealer liable to pay tax and every dealer registered under the Central Sales Tax Act shall furnish a return in Form I in respect of each period of his turnover as referred to in Rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957, to the appropriate Commercial Tax Officer in the manner and . by the date as prescribed in this behalf under the Bengal Finance (Sales Tax) Act, 1941, and the Rules framed there under. The taxing authorities in this case rely on this r. 8 and then proceed to say that in the present appeal there has been a violation of r. 8 by the Appellant. The next step in the argument for the Revenue authorities is reliance on r. 12 which provides for "offences and penalties" in the following manner:

Any person contravening any provision of these Rules shall be punishable with fine not exceeding five hundred rupees and when the offence is a continuing one with a daily fine which may extend to fifty rupees for every day during the continuance of the offence. Therefore, it is argued for the Revenue that contravention of r. 8 makes the Appellant liable to this penalty. The argument appears superficially to be attractive, but on closer scrutiny, it is fallacious and cannot be accepted. We shall state our reasons very briefly on this, point.

31. Rule 12 expressly speaks of "offences and penalties", but the body of the Rule does not mention penalty at all. Rule 12 only mentions fine. The limit of that fine is Rs. 500 and, when the offence continues, a daily fine which may extend to Rs. 50 for every day during the continuance of the offence. The express use of the word "offence" in this connection is a dear indication that this fine and offence within the meaning of r. 12 are relatable only to prosecution and criminal proceedings provided in the Central Sales Tax Act and has nothing to do with "penalties" for non-submission of returns or delay in submission of returns. - Section 11 of the Central Sales Tax Act provides for cognizance of offences punishable under the Central Sales Tax Act or the Rules made there under. Section 10 of the Central Sales Tax Act to which reference has already been made provides that, if any person comes within Sub-clause."(a), (b), (c), (d), (e) and (f) of that section, 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 Rs. 50 for every day during which the offence continues. Although the marginal note to Section 10 of the Central Sales Tax Act is "penalties", yet the section is wholly taken- up with criminal prosecution, imprisonment and fine and not penalties at all. and, as

such, "penalties" are to be clearly distinguished from "fine" and "criminal prosecution".

32. This conclusion is further reinforced by the order of penalty imposed in the present appeal. It will be recalled that notice u/s 9 of the Central Sales Tax Act read with Section 11 and Section 14(1) of the Bengal Finance (Sales Tax) Act was given to the Appellant, inter alia, to show cause...why in addition to the amount "of tax to be assessed on you for the period, a penalty not-exceeding one and a half times the amount should not be imposed on you under the Central Sales Tax Act, 1956, read with Sub-section (1) of Section 11 of the Bengal Finance (Sales Tax) Act, 1941.

Now, surely on its own terms, this is not a penalty under r. 12 of the Central Sales Tax (West Bengal) Rules, 1958, quoted above, nor is it a penalty u/s 10 of the Central Sales Tax Act. What is worse, the actual order of penalty does not even conform to Section 10A of the Central Sales Tax Act which speaks of imposition of a penalty in lieu of prosecution but not exceeding a sum one and a half times the tax which should have been levied under the Act. It is appropriate to refer also to Section 13(5) of the Central Sales Tax Act which deals with the power (to make Rules and" which provides as follows:

In making any Rule under this Section the State Government may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees 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. The order of penalty imposed in this case is without any regard to these limits or provision of the Central Sales Tax Act or even the Rules made there under. The order of penalty imposed in this case is, inter alia in the following terms:

Add penalty u/s 11(1) for not filing the return and challan in due time and the default being of a recurring nature and no cause whatsoever having been shown for the default... Rs. 2,500.

33. A reference to Section 11(1) of the Bengal Finance (Sales Tax) Act under which this particular penalty was ordered shows, inter alia, that under that provision the Commissioner may, if, he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay b) way of penalty in addition to the amount of the tax so assessed a sum not. exceeding one and a half times that amount.

The order of penalty is not. calculated on that basis at all. On its own terms, therefore, the present order of penalty cannot in any event stand. For plainly it is in violation and in disregard of even Section 11(1) of the Bengal Sales Tax Act the material portion of which I have just now quoted.

34. Reading this order of penalty which is challenged in this appeal, we are left with, no doubt that the taxing authorities have made an utter confusion in fact and procedure. In the first place, although the order of penalty purports to say

that it is one u/s 11(1) of the Bengal Finance (Sales Tax) Act, yet in fact and in terms it is not so as has been indicated just now. Secondly, it makes a confusion between the Central Sales Tax Act and the Central Sales Tax (West Bengal) Rules, 1958. That confusion is first between "fine" and "penalty". The penalty the taxing, authorities have imposed in this case, is not in accordance with Rule 12 nor is it in accordance with the competence of the Rule making power u/s 13(5) of the Central Sales Tax Act. Lastly, the order of penalty makes a confusion between fine in a prosecution for an offence under the Central Sales Tax Act and the concept of penalty.

35. The order of penalty appealed from is, therefore, not only bad, in our opinion, on the ground that the Central Sales Tax Act and the Rules made there under do not provide for any penalty for delay or failure in submission of returns on turnover but also because, even if any power to impose a penalty could be deduced, the actual order of penalty in this case is entirely illegal, wrong and erroneous.

36. At this stage, we should like to make it clear that we do not want to be understood as laying down a proposition that a Central Act or a Central Statute within its area of legislative competence cannot pass a law incorporating State Statutes and their provisions. A Central Statute, within its legislative competence but not otherwise, can certainly incorporate State Statutes and their provisions in appropriate cases. This is known very often as legislation by reference to other Statutes. It is resorted to with the idea of avoiding prolixity repetition and possible conflict of interpretation. But the whole question here is whether the language and scheme of the Central Sales Tax Act in this particular case has in fact and effect done so and provided for penalty for delay or non-submission of returns of turnovers of inter-State sales. In our judgment the Central Sales Tax-Act, as we have analysed above, nor its Rules can be read to justify the conclusion that the substantive law of penalty for non-submission of returns under the West Bengal Finance (Sales Tax) Act has been incorporated into the Central Sales Tax Act by reason of Section 9(2) of the Central Sales Tax Act. We have already mentioned the specific and clear words of Section 9(2) of the Central Sales Tax Act which, in our opinion, prevent such a conclusion

37. That the Central Act can introduce, different kinds of penalties within its area of competence can be illustrated and supported by the Supreme Court decision in *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, . That was a decision mainly under the income tax Act. The ratio of that decision is that in a case where an Assessee had been arrested and was being detained in jail in execution of a warrant of arrest issued u/s 13 of the Bombay City Land Revenue Act, 1876. For the recovery of the demand certified u/s 46(2) of the income tax Act, no complaint could be made of infringement of Article 21, as these two sections constitute the procedure established by law and, secondly, the proviso to Section 46(2) of the income tax Act did not indicate a different and alternative mode of recovery of the certified amount of tax but only

conferred additional powers on the Collector for the better and more effective application of the only mode of recovery authorised by Sub-section (2) of Section 46 and, therefore, viewed in that light, there was no question of the possibility of any discrimination violating Article 14 of the Constitution. It is interesting to note that Chandrasekhar Aiyar J., who agreed with the majority view in that decision, expressed his doubts on this point of discrimination. The learned Judge observed in these terms:

We have to face and accept wholly different consequences for non-payment of income tax according as the Assessee belongs to one State or another. The nature of the tax is one and the same and it is levied under a single Central Act, and yet the ultimate coercive processes for recovery differ in nature and extent between State and State. We have to attribute to the Legislature a rational classification based on geographical areas, the susceptibilities of people in those areas, and their reactions to the adoption of methods of recovery. For arrest and detention, willful default or fraudulent conduct is required in Madras. In Assam, there can be no imprisonment at all.

The periods of detention vary between Bengal, U.P. and the Punjab. Talukdars in U.P. are completely exempt. Are we to assume that people in, Madras are more amenable and generally ready and willing to pay as compared with those in Bombay who are a tenacious lot and must be subjected to a longer process of detentive coercion ? Are that talukdars in U.P. exempt from arrest because of possible political repercussions if such influential persons are subjected to such-treatment ? What is the rationale in providing different periods of detention for Bengal and the Punjab ?

We must be in a position, to postulate some reasonable basis for the differentiation and we cannot get away from this necessity by vague references to the wisdom of the Legislature or by indulging in pure speculation as to what might have been" at the back of its mind. Speaking broadly, for the enforcement of the levy of a Central tax like the income tax, there should be uniformity of procedure and identity of consequences from non-payment. The machinery for recovery might, be different between the several States, but the defaulting Assessee must be put on the same footing as regards the penalties.

38. These observations are very relevant for the point under decision in this appeal before us. Mr. Mukherjee, the learned Advocate for the Appellant, has argued that, if the Central Sales Tax Act by reason of Section 9(2) of its provisions is construed to authorise the State Government to impose a penalty for delay or non-submission of returns of turnover, then it will lead to chaotic situation, because different penalties are provided under different State sales tax statutes in different States. A few illustrations were given by Mr. Mukherjee on this point. "According to him, Andhra Pradesh provides only for best judgment assessment and so also the Central Sales Tax (Madras) Rule 5(4). But here u/s 11(1) a full scale assessment is contemplated in West Bengal. The State of Bihar introduces a penalty for such failure a sum not exceeding five rupees per day,

whereas Orissa introduces a penalty for the same ground but for which the penalty cannot exceed 1/10th. per cent of the tax due or rupees five for every day thereafter. We have already noticed, Section 11(1) of the West Bengal Finance (Sales Tax) Act introduces a penalty which may amount to one and a half times the amount of tax which is similar to the provisions in the Gujarat Sales Tax Act and in the Maharashtra Sales Tax Act. According to Mr. Mukherjee, this is discriminatory and does not treat equal persons equally or equal offences equally. In support of this argument the learned Advocate for the Appellant also relies on the actual language of Entry 92A and Entry 93 in List I of the Legislative List in the 7th Schedule of the Constitution of India. Entry 92A of List I of the 7th Schedule of the Constitution of India uses these words:

Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce. From this it follows the State cannot invade this field by passing a legislation imposing taxes on sale or purchase of goods in the course of inter-State trade or commerce. Entry 93 of List I of the 7th Schedule of the Constitution of India rises the words-Offences against laws with respect to any of the matters in this list. From this it would follow that. Parliament could legislate for offences against laws imposing taxes on the sale or purchase of goods in course of inter-State trade or commerce. According to Mr., Mukherjee, the learned Advocate for the Appellant; to read Section 9(2) of the Central Sales Tax Act as granting power and authority to the State Government to impose penalties for delay or non-submission of returns would be against the competence of the State's legislative capacity. No doubt that is so. But Mr. Mukherjee, in our view* is in error in thinking that it is the State which is making the law in the fields covered by Entries 92A and 93 of List I of 7th Schedule of the Constitution of India. What is being stated by the Revenue authorities is that the Central Sales Tax Act itself has provided for the tax and the penalties for offences against such tax laws contained in the Central Sales Tax Act. Therefore, this argument of Mr. Mukherjee for the Appellant cannot really meet the argument of "the Revenue authorities. What, however, settles the point is that the Central Sales Tax Act on a proper construction and interpretation does not, in our view, authorises imposition of any penalty for non-submission or delay in submitting returns of turnovers for inter-State sales. That, in our view, makes an" end of this matter. In that view of the matter, it will not be necessary to examine further the two decisions, one of the Supreme Court in Commissioner of Income-tax, Andhra Pradesh v. Bhikaji Dadabhai & Co. (Supra) and of the Allahabad High Court in Lai Chand Gopal Das v. Commissioner of income tax, U.P. and V.P. (Supra). We need only conclude this part of our judgment by referring to a recent decision of the Full Bench of the Allahabad High Court in Mukhtiar Singh and Others Vs. The State of Punjab and Others, , where it has been observed that (i) reading Articles 301, 302 and 303(1) of the Constitution of India together with the mandate which emerges in that trade, commerce and intercourse" throughout the territory of India must be free, but this is subject to such restrictions imposed by parliamentary law as may

be required in the public interest; (ii) the law, however, must not give or authorise the giving of any preference to one State over another or discriminate or authorise the making of any discrimination between one State and another by virtue of any entry relating to the trade and commerce in any of the lists in the 7th Schedule of the Constitution of India; (iii) there can be no question of the Act giving preference to one State over another or discriminating between one State and another when it is a Central Statute operating throughout the land. Any benefit enjoyed by one State is enjoyed by all others. So also any disadvantage suffered by one State under the Act is suffered by all others. Then to infer that the imposition of tax on inter-State sales where it has been exempted in respect of interstate will necessarily impede the flow of trade is to oversimplify the complicated factors which influence the flow of trade, and for this the Supreme Court decision in the case of Nataraja Mudaliar AIR 1969 S.C. 147 is cited.

39. For the reasons stated above, we set aside the order of the learned Judge and allow this appeal. The rule is made absolute. Let appropriate writs issue in terms of prayers (a) and (c) of the petition.

40. The Respondents will pay the Appellant a consolidated cost of seven gold mohurs for the hearing of the appeal and the rule.

41. Let the operation of this order remain in abeyance for six weeks from date, as prayed for. We, however, direct that the amount of Rs. 2,500 deposited by the Appellant with the Registrar, Appellate Side, should now be returned to the Appellant upon furnishing security to the satisfaction of the Registrar, Appellate Side, which will include a bank guarantee.

B.C. Mitra, J.

I agree, with the judgment delivered by my Lord and also with the order made. But, since the question involved in this appeal are of some importance, I. would like to add a few words of my own with regard to the arguments advanced by the learned Advocates for the parties regarding Section 9(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act).

43. The contention of the learned Advocate for the Appellant was that Section 9(2) of the Central Act did not provide for imposing a penalty for failure to file a return and also for non-payment of the tax assessed. It was argued that Section 10 of the Central Act enumerated and prescribed the various acts and omissions for which a penalty might be imposed. It was next argued that delay in filing a return or non-payment of the assessed tax and penalty were not acts for which a penalty could be imposed under the Central Act. It was submitted that under the Central Act the only charging section was Section 6, and that Section 9 of the Central Act merely laid down the procedure for collection of tax and penalties. Therefore, it was argued that the imposition of penalty for not filing the return in time and the further threat to impose a penalty for non-payment of tax were illegal and ultra vires the Act. A taxing statute, it was submitted, must be strictly construed and, since in this case there was no provision for imposition of penalty,

the order imposing a penalty of Rs. 2,500 and the threat to impose a further penalty of Rs. 5,000 were altogether beyond the powers of the Respondent No>. 1.

44. In order to appreciate the contention of the learned Advocate for the Appellant it is necessary to refer to the provisions in Section 9 of the Central Act. That section, as the heading indicates, is a section concerned with the levy and collection of tax and penalties. Sub-section (1) of that section provides that tax payable by dealers under the Central Act shall be levied and collected by the Central Government in the manner provided in Sub-section (2). Sub-section (2), which is important for the purpose of this appeal, provides that the authorities empowered to assess, collect" and enforce sales tax in the States, shall on behalf of the Central Government assess, collect and enforce payment of any tax, including any penalty payable by any dealer under the Central Act, in the same manner as tax on sales or purchases of goods under the general sales tax law of the State, and that for this purpose such authorities may exercise all or any of the power they have under the general" sales tax, law of the State; alid the provisions of such law including the provisions relating to returns, appeals, reviews, revisions, references, refunds and penalties shall apply accordingly. It is clear that what Sub-section (3) provides is that the State Sales Tax authorities should assess, collect and enforce taxes under the Central Act including penalty payable under the Central Act and, in doing so, such authorities shall exercise all the powers they have under the sales tax law of the State. Quite plainly, the Legislature contemplated that the penalty to be realised by the States Sales Tax authorities would be a penalty under the Central Act and not any other penalty under any other Act. It is true that in realising penalty the State authorities would exercise all the powers under the general sales tax law of the State, but such authorisation does not amount to a provision for levy of a penalty under the Central Act. It is to be remembered that the Central Act has provided for various acts or omissions for which penalty may be imposed under the Central Act and delay in filing of returns or non-payment of tax already imposed arc not matters for which penalties can be imposed under the Central Act. In my view, the provisions in Section 9(2) of the Central Act do not enable the Sales Tax authorities of the State of West Bengal to impose a penalty for delay in filing a return, nor docs it empower them to impose a penalty for non-payment of a tax or a penalty. It is well-settled that a taxing statute must be strictly construed and, insofar as a penalty contemplated by Section 9(2) of the Central Act is concerned, I am of the opinion that it must be held to be a tax. In order to enable the Sales Tax authorities of the State of West Bengal to impose a tax for either of the purposes mentioned above, there must be clear and unambiguous provisions in the Central Act itself, and in the absence of such provision in the Central Act, it cannot be said that the reference to the procedure for realisation of tax and penalty in Section 9(2) of the Central Act enables the State Sales Tax authorities to impose a penalty either for delay, in filing, a return or for non-payment of a tax or penalty imposed upon an Assessee.

45. For these reasons, I am of the opinion that this appeal must succeed and I agree with the order made by my Lord.