Khemka & Co. (Agencies) Pvt. Ltd. vs State Of Maharashtra on 27 February, 1975

Equivalent citations: AIR1975SC1549, (1975)2SCC22, [1975]3SCR753, [1975]35STC571(SC), AIR 1975 SUPREME COURT 1549, 1975 2 SCC 22, 1975 TAX. L. R. 1777, 1976 2 SCJ 150, 1975 35 STC 571, 1975 SCC (TAX) 227, 1975 UPTC 378, 1975 3 SCR 753

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Bench: A.N. Ray, H.R. Khanna, K.K. Mathew, M.H. Beg, Y.V. Chandrachud

JUDGMENT

1. These appeals raise the question as to whether the assessees under the Central Sales.

2. The Central Act states Section 9(1) that the

tax payable by any dealer under the Central Act on sales of goods effected by him in the

3. Section 9(2) of the Central Act is as follows : -

Subject to the other provisions of this Act and the Rules made thereunder, the authoriti

Provided that if in any State or part thereof there is no general sales tax law in force

4. Section 6 of the Central Act provides for liability to tax on inter-State sales. Sect

5. Section 10 of the Central Act provides penalties. The various grounds for penalties a

6. The contention on behalf of the assessee is that there is no provision in the Central

7. The rival contention on behalf of the Revenue is that the provision for penalty for d

8. The Solicitor-General on behalf of the Revenue placed reliance on the decisions in K.

9. The contentions of the Solicitor General are these : Section 9(1) of the Central Act

10. The Solicitor-General further submitted as follows : The latter part of Section 9(2)

11. On behalf of the assessee it was said that the provisions contained in Section 9(2)

12. Counsel on behalf of the assessees relied on the decisions in B. H. Shah & Co. v. Th

13. Section 9(2) of the Central Act first provides that the authorities empowered to ass

14. To suggest that the words "under this Act" qualify dealer will be unsound for two re

15. It is only tax as well as penalty payable by a dealer under the Central Act which ca

16. The words "and for this purpose they may exercise all or any of the powers they have

17. The deeming provision in the Central Act that the tax as well as penalty levied unde

18. The Madras High Court in Angappa Chettiar & Sons case (supra) gave the. correct reas

19. The Mysore High Court in Guldas Narasappa Thimmaiah Oil Mills case (supra) which is

20. The Mysore High Court relied on the decision of this Court in Suite of Kerala v. P.

21. This Court in Orissa Cement Limited v. The State of Orissa and Anr. 27 S.T.C. 118 co

22. The decision of this Court in C. A, Abraham, Uppoottil, Kottayam v. The Income Tax O

23. This Court in Commissioner of Income-Tax, Andhra Pradesh v. Bhikaji Dadabhai & Co.

24. The Income Tax Act 1961 imposes penalty under Sections 270 and 271. These sections i

25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not me

26. The Federal Court in Chatturam and Ors. v. Commissioner of Income-tax, Bihar 15 I.T.

27. This Court in State of Tamil Nadu v. K. A. Ramudu Chettiar & Co. said that the powe

28. For the foregoing reasons we are of opinion that the provision in the State Act impo

29. For these reasons the appeal of M/s. Khemka & Co. is accepted-The answer to the refe

K.K. Mathew, J.

30. We take up for consideration Civil Appeal No. 2089 of 1969 and the decision there will govern the decision of Civil Appeal No. 2118 (NT) of 1970:

31. The question for consideration in Civil Appeal No. 2089 of 1969 is, whether, upon a correct construction of Section 9 of the Central Gales Tax Act (hereinafter referred to as the 'Central Act'), it was permissible for the Sales Tax Officer in question to invoke the provisions of Section 16(4) of the Bombay Sales Tax Act for imposing penalty for failure by the dealer to pay the sales tax payable under the Central Act. within the prescribed time. The High Court of Bombay held that the Sales Tax Officer had power to impose the penalty under that section and the question in this appeal is whether the High Court was right.

32. Section 9 of the Central Act, in its present form, was introduced in 1969 with retrospective effect from the date of the Act. Sub-section (1) provides that the tax payable by any dealer under the Act on sales of goods effected by him in the 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); and Sub-section (2) says :

> Subject to the other provisions of this Act and the rules made thereunder, 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 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 tux 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 several 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 petition 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.

33. Section 16 of the Bombay Sales Tax Act provides for payment and recovery of tax. Sub-section (1) of the section says that the tax shall be paid in the manner thereinafter provided at such intervals as may be prescribed. Sub-section (2) states that before any registered dealer furnishes the returns, he shall, in the prescribed manner, pay into a Government treasury the full amount of the tax due from him according to such returns. Sub-section (3) provides that before any registered dealer furnishes a revised return which shows a greater amount of tax to be due than was payable in accordance with the original return, he shall pay into a Government treasury the extra amount of the tax. Sub-section (4) states that if the tax is not paid by any dealer within the prescribed time, the dealer shall pay, a penalty in addition to the amount of tax and Sub-section (6) enables the realization of tax and penalty as an arrear of land revenue.

34. A careful analysis of Section 9(2) of the Central Act would show that the authorities empowered to assess, re-assess, collect and enforce payment of tax payable under the general sales tax law of the appropriate State shall assess, re-assess, collect and enforce payment of tax including any penalties payable by a dealer under the Central Act is if the tax or penalty payable by a dealer under that Act (Central Act) is a tax or penalty payable under the general sales tax law of the State and for that purpose, the authorities may exercise all or any of the powers they have under the general sales tax law of the Slate.

35. In effect, what Section 9(2) says is that sales tax and penalties payable by a dealer under the Central Act are deemed to be sales tax and penalties payable under the general sales tax law of the State and the sales tax authorities of the State can exercise all or any of the powers they have under the general sales tax law of the State for the purpose of assessment, re-assessment, collection and for enforcing payment of that tax. So, if the sales tax authorities of a State have power, when enforcing payment of sales tax payable under the general sales tax law of the State to impose penalty for non-payment of tax within the prescribed time, they will have a like power to impose penalty for enforcing payment of the tax payable under the Central Act within the time prescribed. It was not necessary that power to impose penalty for enforcing the payment of tax payable by a dealer under the Central Act should have been specifically provided in or conferred separately by the sub-section upon the sales tax authorities of the State, because, the power to enforce payment of tax payable under the Central Act in the same manner as the power to enforce tax payable under the general sales tax law of the State has been given by it. As the power to impose penalty is specifically provided for in Section 16 of the Bombay Sales Tax Act for enforcing payment of tax payable under it, it is unnecessary to speculate whether, but for the express provision in that Act, a power to impose penalty for enforcement of tax payable under that Act would have been implied. The object of the provision for the imposition of penalty in Section 16 of the Bombay Sales Tax Act is to provide a stimulant to the dealer to observe the mandate of the section directing the payment of the tax within the prescribed time. In other words the provision for imposition of penalty in Section 16 of the Bombay Sales Tax Act facilitates the collection of tax as it is a sanction for non-observance of the duty to pay the tax within the prescribed time. It operates as a deterrent against the commission of breach of that duty, and is a means to enforce the payment of tax within the time prescribed.

36. In C. A. Abraham Uppoottil v. The Income Tax Officer this Court was concerned with the question whether the appellant before the Court who was carrying on business in foodgrains in

partnership with another person was liable to a penalty for submitting the returns of the income of the firm even after his partner's death. It was found that certain income of the firm was concealed and the Income Tax Officer not only assessed the firm to tax for the suppressed income but also imposed penalty for concealing the same. Section 44 of the Indian Income Tax Act, 1922, at the material time stood as follows :

> Where any business...carried on by a firm...has been discontinued...every person who was at the time of such discontinuance... a partner of such firm, shall in respect of the income, profits and gain of the firm be jointly and severally liable to assessment under Chapter IV for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

37. It was contended for the assessee that a proceeding for imposition of penalty and a proceeding for assessment of income tax were distinct, that although Section 44 may be resorted to for assessing tax due and payable by a firm which has discontinued, an order imposing penalty under Section 28 cannot, by virtue of Section 44, be passed. The Court said that penalty "is imposable as a part of the machinery for assessment of tax liability". 'The Court quoted with approval the following observations of Subba Rao, C. J. in Mareddi Krishna Reddy v. Income-tax Officer, Tenali [1957] 31 I.T.R. 678 :

> ...The defaults enumerated therein (in Section 28) relate to the process of assessment. Section 28, therefore, is a provision enacted for facilitating the proper assessment of taxable income and can property be said to apply to an assessment made under Chapter IV...

38. The ratio of the decision is that penalty is imposed as part of the machinery for assessment of tax and that the power to assess would include the power to impose penalty for the effective exercise of the power to assess. It is a general principle of law that all powers which are necessary and appropriate to effectuate the main grant of power will be implied. Just as the provision for imposition of penalty under Section 28 of the Income Tax Act, 1922 facilitated the collection of tax as Subba Rao, C. J. has said and is imposable as part of the machinery for assessment of income tax, so also the provision for penalty under Section 16 of the Bombay Sales Tax Act for non-payment of sales tax within the time prescribed would facilitate the collection of tax and is part of the machinery for enforcing payment of tax.

39. In Commissioner of Income Tax v. Bhikaji Dadabhai & Co. the Income Tax Officer in question found that the books of account of the respondent were unreliable and after assessing the income for the year 1946-47, issued notice to the respondent on December, 22, 1949, under Section 40 of the Hyderabad Income Tax Act to show cause why penalty should not be levied in addition to the tax and, by an order dated 31-10-1951 directed payment of the penalty. The State of Hyderabad merged with the Indian Union during the pendency of the proceedings before the Income Tax Officer and by Section 13 of the Finance Act, 1950, the Hyderabad Income Tax Act ceased to have effect from April 1, 1950, but the operation of that Act in respect of levy, assessment and collection of income tax and super tax in respect of the period prior thereto for which liability to income tax should not be

imposed under the Indian Income Tax Act was saved. One question before this Court was whether the Income Tax Officer had power on October 31, 1951 to impose penalty under s, 40(1) of the Hyderabad Income Tax Act. The Court held that the power of the Income Tax Officer to impose penalty under Section 40(1) of the Hyderabad Income Tax Act in respect of the years preceding the date of the repeal of that Act was not lost because by Section 13 of the Finance Act, 1950, the operation of the Hyderabad Act in respect of levy, assessment and collection of income tax and super tax in respect of the period prior to April 1, 1951 was saved and therefore the proceedings for imposing the penalty could be continued even after the enactment of Section 13(1) of the Indian Finance Act, 1950.

40. The real significance of the ruling for the point under consideration here is that at the time when the penalty was imposed, the only provisions of the Hyderabad Income Tax Act which survived the repeal were those relating to levy, assessment and collection of income tax and super tax in respect of the period prior to April 1, 1951 and unless the power to impose the penalty was included within the power to levy, assess, or collect the tax, the imposition of penalty would have been ultra vires the power of the Income Tax Officer.

41. In Orissa Cement Limited v. The State of Orissa and Anr. 27 S.T.C. 118, the question was whether a dealer under the Central Act could claim the benefit of Section 13(8) of the Orissa Sales Tax Act, 1947, which provided that rebate of one per cent on the amount of tax payable by a dealer shall be allowed if such a tax is paid by the dealer on or before the due date of payment, by virtue of Section 9(3) (as it stood then) of the Central Act. This Court said that the rebate was offered to facilitate, expedite and stimulate the collection of tax and was part of the process of collection and that the appellant-dealer who paid the tax on the due date was entitled to the rebate.

42. If rebate can be given on the basis that it would facilitate, expedite and stimulate the collection of tax. we see no reason why a penalty cannot be imposed to expedite, facilitate and stimulate the collection of tax and as part of the process of collection. It is said that penalty is the imposition of a liability and is substantive in character whereas rebate is a concession and is part of the procedure. We are not clear whether this is a distinction at all. Payment of rebate is a liability from the point of view of the Revenue, though it is concession from the point of view of the assessee. If penalty is levy of money on an assessee, rebate means payment of money to an assessee. What then is the difference ? No body has yet succeeded in drawing the precise line between a procedural and substantive provision and in this case we do not think we are required to do so for the simple reason that we arc only concerned with the question whether for the purpose of enforcing the payment of tax payable under the Central Act, the authorities of" the State can exercise all the powers they have under the general sales tax law of the State whether one characterizes them as procedural or substantive.

43. It is difficult to imagine that Parliament, when it enacted Section 9(2) of the Central Act and adopted the machinery of the general sales tax law of the State for enforcing payment of tax payable under the Central Act, did not want to avail of the sanction of penalty for enforcing the payment of it which the general sales tax law of the State provides for enforcing payment of tax due under that law. We find it difficult to hold that Parliament invested the state authorities with power to assess,

re-assess, collect and enforce payment of tax payable under the Central Act as if the tax is tax payable under the general sales tax law of the State, but denuded them of their power to invoke the provision in the general sales tax law of the state for imposition of penalty for enforcing payment of the tax payable thereunder, as that is an effective means to the enforcement of payment of tax within the prescribed time.

44. It was contended that only the penalties expressly provided for in the Central Act could be imposed by the sales tax authorities of the State by employing the machinery for collection of tax under the general sales tax law of the State and that no penalty which is not provided for by the Central Act could be imposed by the State authorities. In this connection, the appellant placed great reliance upon the decision of a Division Bench of the Calcutta High Court in Mohan Lal Chokhany v. The Commercial Tax Officer 28 S.T.C. 367. The question there was whether penalty can be imposed for failure to submit the return by a dealer under the Central Act though only the general sales tax law of the State provided for it. The Court came to the conclusion that no penalty can be imposed. For doing so, the Court said : firstly, that by Section 9(2) of the Central Act, the whole machinery provided in the general sales tax law of the State has not been incorporated in the Central Act; secondly, that 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" suggesting thereby that the Government of India is to be the principal and the State only 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, that Section 9(2) speaks only of penalty payable under "this Act" (Central Act) and not of any penalty payable under State law; fourthly, that the power of state authorities 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", that this is the deeming provision and can deem no more than what it says, 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 the State; and, fifthly, that the expressions in Section 9(2) of the Central Act "for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State" are limiting words, viz., for the enforcement of tax and the penalties specified in the Central Act.

45. We do not understand how the analogy of principal and agent has any relevance in this context. If the power of enforcement of payment of tax payable under the Central Act conferred on the authorities of the State would include the power to impose penalties provided in the general sales tax law of the State, there is an end of the matter. The whole fallacy in the reasoning of the High Court is the assumption that only the penalties provided in the Central Act can be imposed by the authorities by using the machinery of the sales tax law of the State as they alone are specifically mentioned in Section 9(2) and in ignoring what are the powers actually conferred by the words "enforce payment of tax... as if the tax... payable by such a dealer under this Act is a tax...payable under the general Sales tax law of the State", in the sub-section.

46. The marginal note of Section 10 of the Central Act is 'penalties' and the section enumerates six grounds for imposing penalty from (a) to (f) : (a) failure of a dealer to get himself registered as

required by Section 7; (b) a registered dealer falsely representing when purchasing any class of goods that the goods of such class are covered by his certificate of registration; (c) not being a registered dealer, falsely representing when purchasing goods in the course of inter-state trade or commerce that he is a dealer, (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 in accordance with the provisions of the Act or any rules made thereunder; and (f) collecting any amount by way of tax in contravention of the provisions contained in Section 9A. When a person comes within any of these six grounds 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 per day during which the offence continued.

47. Sub-section (1) of Section 10A provides that 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, who is competent to grant to him a certificate of registration under the Act may. after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under Sub-section (2) of Section 8 in respect of the sale to him of the goods if the sale had been a sale falling within that sub-section. Sub-section (21 says that penalty imposed upon any dealer under Sub-section (1) shall be collected by the Government of India in the manner provided in Sub-section (2) of Section 9.

48. It is clear from Section 9(2) that the penalties which can be imposed by the State authorities by virtue of the express provision in it are the penalities provided in Section 10 read with Section 10A. The fact that Section 9(2) expressly authorizes the sales tax authorities of the State to impose the penalties payable by a dealer under the Central Act by employing the machinery of the general sales tax law of the State does not mean that they have no power to enforce payment of tax payable under the Central Act by imposing penalty as provided in the general sales tax law of the State. As we said, by virtue of Section 9(2), the machinery provided in the general sales tax law of the appropriate State for assessment, reassessment, collection and enforcement of payment of tax payable under the Central Act has been adopted and that machinery necessarily includes the means and facilities provided in that law for the effective exercise of the power to assess, re-assess, collect and enforce payment of tax; and, therefore, the absence of an express provision in the Central Act for imposition of penalty for nonpayment of tax within the prescribed time would n6t indicate that for enforcing payment of tax payable under the Central Act, the authorities of the State have no power to impose the penalty. When Section 9(2) says that assessment, re-assessment, collection and enforcement of payment of tax due under the Central Act should be made by the authorities of the State as if the tax payable under that Act is tax payable under the general sales tax law of the State and for that purpose "they may exercise all or any of the powers they have under the sales tax law of the State", there can be no manner of doubt that if, for enforcing payment of tax due under the sales tax law of the State, they have power to impose penalty, they have the same power of imposing penalty for enforcing payment of tax payable under the Central Act. The express provision in Section 9(2) enabling the imposition of penalties payable under the Central Act by the sales tax authorities of the State does not in any way derogate from the grant of power to those authorities to enforce the

payment of tax payable under the Central Act as if the tax was payable under the general sales tax law of the State and to enforce payment of it under the machinery of the general sales tax law of the State. The reason why the sales tax authorities of the State were given specific power under Section 9(2) to enforce the penalties payable by a dealer under the Central Act is that those penalties were not and perhaps could not have been provided for in the sales tax law of the State. The penalties provided for in Section 10 read with Section 10A of the Central Act are not for the purpose of or in connection with assessment, re-assessment, collection and enforcement of payment of tax payable by a dealer under the Central Act and could not have been imposed by the sales tax authorities of the State in making assessment, re-assessment, collection or in enforcing payment of the tax payable under the Central Act. Therefore, express power had to be conferred upon the sales tax authorities of the State to enforce the penalties payable by a dealer under the Central Act. This does not mean that these authorities have no power to impose the penalties provided in the general sales tax law of the State and which are necessary to make power of assessment, re-assessment, collection or enforcement of payment of tax effective. How could these penalties have been separately provided for in the Central Act when it is seen that the sales tax authorities of the State were given power to assess, reassess, collect and enforce payment of tax payable under the Central Act as if that tax were tax payable under the general sales tax law of the State and to exercise all or any of the powers they have under the sales tax law of the State for that purpose ? Parliament must be presumed to know when it adopted the machinery of the general sales tax law of the State for assessment, re-assessment, collection and enforcement of tax payable under the Central Act, the existence of the provisions for imposition of penalty in connection with and for the purpose of assessment, reassessment, collection and enforcement of payment of tax in the sale tax law of the State. Therefore, there was no necessity to provide separately for penalties in connection therewith in the Central Act or give express power to sales tax authorities of the State for imposition of penalties in connection therewith. If, in the process of or for the purpose of assessment, reassessment, collection and enforcement of payment of tax payable under the sales tax law of the State, a penalty can be imposed, we do not understand why it cannot be imposed in the process of or for the purpose of making the assessment, re-assessment, collection or enforcement of payment of tax payable under the Central Act. Is it possible to imagine any reason for Parliament to withhold from the sales tax authorities of the State an effective means for enforcing the payment of tax payable under the sales tax law of the State and which is specifically provided for in that law for collection of tax payable under the Central Act ? We think not. As we said, in the nature and the scheme of the Central Act, it was not necessary to provide for imposition of penalty or for the other methods of enforcing the payment of tax payable under the Central Act since Parliament has adopted the machinery provided in the general sales tax law of the State as respects enforcement of the tax payable under the Central Act.

49. The decisions in B.H. Shah & Co. v. The State of Madras 20 S.T.C. 146, The State of Madras v. M. Angappa Chettiar & Sons 22 S.T.C. 226, Guldas Narasappa Thimmaiah Oil Mills v. Commercial Tax Officer, Raichur 25 S.T.C. 489 and Hardatroy Jute Mills Pvt. Ltd. v. Superintendent of Commercial Taxes, Purnea 30 S.T.C. 489 relied on by the appellants do not require any elaborate-consideration as they do not advance any reasons other than those already referred to in this judgment. The reasoning of the Madras High Court in B. H. Shah & Co.'s case to the effect that Parliament could not have adopted by Section 9(3) of the Central Act (substantially corresponding to present Section

9(2) of the Central Act) a provision of the general sales tax law of the State which was not in existence at the time of the enactment of Section 9(3) has no relevance here.

50. The appellant did not contend that the provision in question for imposition of penalty in the general sales tax law of the State was not in existence at the relevant time and therefore they could not in any event have been adopted by Section 9(2). We do not therefore think it necessary or proper to consider the question whether Parliament can by legislation adopt a State law and the future amendments thereto.

51. It was argued that the expression 'penalties' occurring in the latter part of Section 9(2) must refer to the penalties mentioned in the former part of the sub-section, namely, penalties payable by a dealer under the Central Act. We see no reason why the expression 'penalties' in the latter part of the sub-section should refer to the penalties payable by a dealer under the Central Act at all. The expression 'penalties' in the latter part of the sub-section can only refer to penalties imposable under the general sales tax law of the State in connection with assessment, reassessment, collection and enforcement of payment of tax. The latter part of the sub-section only enumerates some of the powers exercisable by the sales tax authorities of the State to assess, reassess, collect and enforce payment of tax payable under the Central Act. The language of the sub-section beginning with "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...appeals, reviews, revisions, references, refunds, penalties..." makes it clear that the word 'penalties' occurring therein, can refer only to penalties provided in the general sales tax law of the State. In other words, the express mention of the power to impose 'penalties' among the enumerated powers beginning with the words "and the provisions of such law including the provisions relating to...penalties" would put it beyond doubt that the word 'penalties' in the latter part of the sub-section can only refer to penalties imposable under the general sales tax law of the State in relation to assessment, reassessment, collection and enforcement of payment of tax payable thereunder.

52. We hold that the Sales Tax Officer was empowered to impose penalty provided in Section 16(4) of the Bombay Sales Tax Act for non-payment of the tax payable under the Central Act within the prescribed time. We would dismiss Civil Appeal No. 2089 of 1969 and allow Civil Appeal No. 2118 (NT) of 1970 without any order as to costs.

M.H. Beg, J.

53. Civil Appeal No. 2089 of 1969 arises out of an assessment order relating to the period of assessment from 1-4-1959 to 30-12-1959. The order purports to have been made under the Central Sales Tax Act of 1956 (hereinafter referred to as the 'Central Act') and the assessment year given there is 1962-63. The total sales tax was assessed at Rs. 44,181.92. In addition, a penalty of Rs. 8347.32 was levied for delay in payment. The order passed on the appeal to the Assistant Commissioner of Sales Tax shows that the only point pressed in the appeal related to the penalty levied under Section 16(4) of the Bombay Sales Tax Act of 1953, (hereinafter referred to as 'the Bombay Act of 1953'). As the appeal was rejected, a revision application was filed before the Sales

Tax Tribunal. Bombay, which also upheld the penalty imposed under Section 16(4) of the Bombay Act of 1953. This provision laid down :

> 16(4) If the tax is not paid by any dealer within the prescribed time the dealer shall pay, by way of penalty in addition to the amount of tax, a sum equal to (i) one percent of the amount of tax for each month for the first three months after the expiry of the prescribed time, and (ii) two and one-half per cent for each month subsequent to the first three months as aforesaid during which he continues to make default in the payment of the tax. Provided that, where the tax has not been paid by any dealer within the prescribed time but the dealer has filed an appeal or an application for revision in respect of such tax, the authority hearing the appeal or the application for revision may direct that the penalty in respect of any period shall be paid at such rate as it may think fit, the rate being not less than one per cent and not more than two and one half per cent of the amount of tax for each month.

54. The High Court had, upon a reference to it, decided in favour of the Department the question framed as follows :

> Whether having regard to the facts and circumstances of the present case which is under the Central Sales Tax Act, 1956, the Tribunal was justified in law in holding that penalty could be levied under Section 16(4) of the Bombay Sales Tax Act, 1953 ?
>
> In the appeal now before us by special leave it has been contended for the assessee that the penalty was levied without jurisdiction as it was not warranted by the provisions of Section 9(2) of the Central Act, 1956.

55. Civil Appeal No. 2118 of 1970 arises out of an assessment order relating to the assessment year 1964-65 under the Central Act for a sum of Rs. 14,332.80 np. and a penalty of Rs. 10,104.36 ps. levied for default in the payment of penalty imposed under Section 13 of the Mysore Sales Tax Act of 1957, (hereinafter referred to as 'the Mysore Act'), which was assumed to be applicable by reason of Section 9(3) of the Central Act. The relevant provision of the Mysore Act lays down :

> Payment and recovery of tax : -
>
> (1) The tax under this Act, shall be paid in such manner and in such instalments, if any and within such time, as may be prescribed.
>
> (2) If default is made in making payment in accordance with Sub-section (1) :
>
> (i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax under this Act; and

(ii) the person or persons liable to pay the tax under this Act shall pay a penalty equal to-

(a) one per cent of the amount of tax remaining unpaid for each month for the first three months, after the expiry of the time prescribed under Sub-section (1) and

(b) two and one-half per cent, of such amount for each month subsequent to the first three months as aforesaid.

(3) Any tax assessed, or any other amount due under this Act from a dealer, may without prejudice to any other mode of collection, be recovered-

(a) as if it were an arrear of land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him...."

56. In this case, the Commercial Tax Officer, Raichur, filed application under Section 13(3)(b), of the Mysore Act before the Munsif Magistrate of Raichur for recovery of the sum due as penalty as if it was a fine imposed by the Court. The Munsif Magistrate having issued a distress warrant for recovery of this sum, the assessee applied to the High Court under Section 13(4) of the Mysore Act which reads as follows:

The High Court may either suo motu or an application by the Commissioner or any person aggrieved by the order revise any order made by a Magistrate under Clause (b) of Sub-section (3).

Thereafter, the assessee filed a Writ Petition which was heard together with the Sales Tax Revision petition. The High Court had allowed the assessee's claim that the levy of penalty was ultra-vires. The State of Mysore had, therefore, come up in appeal by special leave to this Court.

57. I have had the advantage of going through the judgments of the learned Chief Justice and my learned brother Mathew. Even if I was of the opinion that two views on an interpretation of Section 9(2) of the Central Act are equally well entertainable, as one could be on a mere reading of Section 9(2) of the Central Act only, I would, with great respect, prefer the view adopted by the learned Chief Justice on the principle that the assessee must get the benefit of such uncertainty. It, however, seems to me, on a careful consideration of the two possible views, that reasons for accepting the contentions on behalf of the assessee are quite compelling and decisive, I, therefore, proceed to state these shortly.

58. So far as the case from Bombay is concerned, I find that Section 76(a) of the Bombay Sales Tax Act of 1959 (hereinafter referred to as 'the Bombay Act of 1959'), repeals the Bombay Act of 1953. Section 16 of the Bombay Act of 1959 refers to an entirely different subject matter. Provisions

relating to penalties are contained in Section 36 to Section 38 of the Bombay Act of 1959, which have been amended from time to time. In any case, there was no provision, at the time when the assessment order was made, for imposition of any penalty under Section 16(4) of the Bombay Act of 1953, which the Sales Tax authorities and the High Court sought to utilize to justify the penalty imposed.

59. Relying upon the principles indicated by this Court in Re Delhi Laws Act (1912) etc., [1951] S.C.R. 747 I think one could say that in 1956 the Parliament could not have applied its mind to provisions which came into existence afterwards. It could not, therefore, have incorporated them by reference as parts of a procedure applicable to assessments which took place after 1959 when the Bombay Act of 1953 was repealed. At the time of the passing of the Central Act, the relevant statute in existence in Bombay was the Bombay Act of 1953. But, Section 16(4) of the Bombay Act of 1953 under which the Sales Tax authorities purported to act, did not exist on the statute book at the time of assessment. Unless we assume that Section 9(2) of the Central Act, by a necessary implication, authorises the State Legislatures to go on imposing such penalties for such breaches of duty as it pleases them to lay down on behalf of Parliament, subsequently enacted provisions of State enactments would not be available.

60. I also find from the Mysore Act of 1957, that Section 13 of the Act was entirely re-cast in 1958. It would, 1 think be carrying the theory of referential legislation too far to assume that Section 9(2) of the Central Act 1956 purported to authorise the State Legislatures to impose liabilities in the nature of additional tax or penalties leaving their rates and conditions for their imposition also to be determined by the State Legislatures as and when the State Legislatures decided to impose or amend them. It is evident that these differ from State to State, and, in the same State, at different times. A conferment of such an uncontrolled power upon the State Legislatures could, if it was really intended, be said to travel beyond the province of permissible delegated legislation on the principles laid down long ago by this Court in Re-Delhi Laws' case (supra) as no guide lines are given in Section 9(2) about the nature, conditions, or extent of penalties leviable. If such a power was really conferred would it not amount to an abdication of an essential legislative function with respect to a matter found as item 92A of the Union List I of the Seventh Schedule so that, according to Article 246(1) of our Constitution. Parliament has exclusive power to legislate on a topic covered by it ? As this question was not argued before us I would only say that the correct cannon of construction to apply in such a case is that we should so interpret Section 9(2) of the Central Act, if possible, that no part of it may conceivably be invalid for excessive delegation. The well known maxim applicable in such cases is : ut res magis valeat quam pereat.

61. It is evident from Section 16(4) of the Bombay Act of 1953 that there is a particular percentage of the amount of tax levied which is prescribed as penalty to be paid as an "addition to the amount of tax for every month after the expiry of the prescribed period of default". In other words, it is a liability in the nature of an additional or penal tax. Section 13(3)(b) of the Mysore Act also makes it clear that, on an application made to the Magistrate, such as the one made in the case which has come up before us from Mysore, the penalty may be equated with a fine. Section 63 of the Bombay Act of 1959 speaks of certain "offences and penalties". Indeed, Chapter 8 of that Act is itself headed as "Offences and Penalties".

62. On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization conies into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well settled cannon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realization of tax. It is more than that. Such liabilities must be created by clear, unambiguous, and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law arc not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good government of laws. It is implied in the Constitutional mandate found in Section 265 of our Constitution : "No tax shall be levied or collected except by authority of law".

63. It was argued on behalf of the State that Section 9(2) of the Central Act contains an express reference to provisions relating to, inter-alia, "refunds, rebates, penalties, compounding of offences". Relying upon these words in the last part of Section 9(2) of the Act, it was urged that there is no manner of doubt that the penalties leviable under the State law can be utilised for the purpose of enforcing the tax liabilities under the Central Act.

64. Section 9 of the Central Act itself has undergone several amendments. In 1956 it stood as follows :

> 9(1) The tax payable by any dealer under this Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-section (2).
>
> (2) The authorities for the time being empowered to assess, 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 and subject to any rules made under this Act, assess, collect and enforce payment of any tax payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; 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, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly.
>
> (3) The proceeds (reduced by the cost of collection) in any financial year of any tax levied and collected under this Act in any State on behalf of the Government of India shall, except in so far as those proceeds represent proceeds attributable to Union

territories, be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India.

65. It was amended by Act 31 of 1958, and Act 29 of 1969, and Act 61 of 1972. We are only concerned here with the amendment by Act 31 of 1958 because this Act introduced the provisions which were in operation at the time when the assessment orders under consideration were made.

66. Section 6 of the Central Sales Tax Second Amendment Act 31 of 1958 changed Section 9(2) and (3) and introduced Sub-section (4). These provisions read as follows :

(2) The penalty imposed upon any dealer under Section 10A shall be collected by the Government of India in the manner provided in Sub-section (3) :

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

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

(3) The authorities for the time being empowered to assess, 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 and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed paid and collected; 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 each law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales-tax law in force, the Central Government may, by rules made in this behalf, make necessary provision for all or any of the matters specified in this sub-section and such rules may provide that a breach of any rule shall be punishable with fine which may extend to five hundred rupees; and where the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

(4) The proceeds in any financial year of any tax including any penalty, levied and collected under this Act in any State (other than a Union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated

Fund of India".

67. It will be seen that Section 9(1) of the Central Act 1956 provided only for "the manner" of levy and assessment as provided in Section 9(2). Again, the new Section 9(2), introduced by Act 31 of 1958, empowered the Government of India only "to collect" the penalties mentioned in Section 10A of this Act "in the manner" laid down in Section 9(3). It is clear that Section 10, relating to the penalties provided by the Central Act, was meant for penalties by way of imprisonment and fine. Section 10A provided only for levy of certain penalties at the rate specified there in lieu of prosecutions under Section 10. This is the only kind of penalty which was enforceable by the procedure laid down in Section 9(3) of the Act as it stood after the 1958 amendment. Section 9(2), after the Act 31 of 1958, also makes it clear that Section 9(3), which corresponded to the earlier Section 9(2) of the 1,956 Act only lays down "the manner" of this "collection" of the penalty. In other words, Section 9(2) of the Act, as it stood after 1958, did not provide for an imposition of a penalty as a substantive pecuniary liability or tax. It only authorised collection of penalty in the manner laid down in Section 19(3) of the Central Act as it stood after 1958. The imposition of a penalty was regulated exclusively by Section 10A of the Central Act and not by any provision of the State Act.

68. It has to be remembered that Section 9(2) of the 1956 Act, which corresponds to Section 9(3) after 1958, begins with : "subject to the other provisions of this Act and the rules made thereunder, 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 shall...." In other words, the powers of the State Sales Tax Officers are specifically limited by the provisions of the Central Act. They cannot go beyond these provisions. The next part of Section 9(2) of the 1956 Act further emphasises this aspect by making it clear that these powers are exercisable only "for this purpose". In other words, they are not authorised to collect dues for purposes extraneous to the Central Act. We may then go to the last part of Section 9(2) of the 1956 Act, which is strongly relied upon on behalf of the States concerned, to urge that the State provisions relating not merely to collection of taxes but imposition of penalties are incorporated by reference into the provisions of the Central Act. In this debatable area, 1 think the true meaning can only be found by considering the provisions as a whole. The context of the whole sales tax law of the State as well as that of the law contained in the Central Act must be taken into account.

69. After considering the provisions of the Central Act as well as the State Acts relating to penalties, one is irresistably driven to the conclusion that provisions relating to penalties are special and specific provisions in each Act, They are not part of "the general sales tax law" of either the State or of Union. If the provisions relating to penalties, such as those found in the Central Act and the State Acts, are really special provisions which can be invoked in the special circumstances given in each statute, we must interpret the reference to penalties in the concluding portion of Section 9(2), preceding the proviso, to relate only to the special provisions relating to penalties provided for specifically in the Central Act.

70. I think that the maxim of interpretation to apply here is : "Expressio Unius exclusio alterius", This is explained as follows in Maxwell on the Interpretation of Statutes (12th Edn. p. 293);

By the rule usually known in the form of this Latin Maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class; expressing facit cessare tacitum.

71. No doubt this maxim has been described as "a useful servant hut a dangerous master". I can, however, think of no kind of case more apt for its application than the one before us. As the Privy Council said long ago, with regard to a statute purporting to impose a charge in Oriental Bank Corporation v. Wright (1880) 5 App. Cas. 842 at 856, that in such a case, the rule to be applied is "that the intention to impose a charge upon the subject, must be shown by clear and unambiguous language". If the language leaves room for coming to the conclusion that only penalties specified in the Central Act are enforceable by the machinery for enforcement of liability under the general Sales Tax law of a State, I think that the legislative intent could safely be presumed to be to confine penalties mentioned in the concluding part of Section 9(2) to only those mentioned specifically in the Central Act.

72. For the reasons given above, I respectfully concur with the opinion expressed and the orders proposed by My Lord the Chief Justice.