Supreme Court of India
State Of Tamil Nadu vs Kodaianal Motor Union (P) Ltd on 1 May, 1986
Equivalent citations: 1986 AIR 1973, 1986 SCR (2) 927
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
KODAIANAL MOTOR UNION (P) LTD.

DATE OF JUDGMENT01/05/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1986 AIR 1973 1986 SCR (2) 927
1986 SCC (3) 91 1986 SCALE (1)922
CITATOR INFO :
RF 1988 SC1737 (48)

ACT:
Central Sales Tax Act, 1956 - s. 10A - Penalty - Levy of - Quantum of Penalty - Determination of.
Interpretation of Statutes - Legislative intent - Ascertainment of - Duty of court.

HEADNOTE:
The assessee had purchased motor spare parts on the basis of 'C' form certificates issued to them under the Central Sales Tax Act, 1956, for sale, but instead of selling, the assessees used them for their own consumption. The Revenue proceeded on the basis that since the goods purchased had not been used for the purpose specified in s.8(3)(b) and as recorded in the 'C' form certificates, the assessees had committed offences under s. 10(d) of the Act and therefore, were liable to pay penalty as well. This view was affirmed by all the authorities including the Tribunal.
On the question of quantum of penalty, the Tribunal held that the penalty leviable under s. 10A should be one-and-a-half times the concessional rate of tax and not one-and-a-half the tax which would have been leviable if no 'C' form certificate had been produced.

The Revenue challenged before the High Court the correctness of the view taken by the Tribunal. The High Court following its earlier decision in the State of Madras v. Prem Industrial Corporation (24 S.T.C. 507) approved the view taken by the Tribunal.

Allowing the Appeals of the Revenue to this Court,

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HELD: 1. Sub-section (1) of s. 10A of the Central Sales Tax Act, 1956 makes it clear that penalty should be worked out

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at the rate of tax which would have been levied if the offence had not been committed. In other words the question is what tax would have been levied under the Act if the offence had not been committed. The assessee would not have committed any offence only if he had carried out the undertaking given by it in its declaration in form 'C' or if he purchased the goods without giving any declaration thereby incurring liability to pay normal rate of tax as contemplated by sub-s. (2) of s.8. One who commits defaults cannot be said to have carried out the undertaking given by him. [939 C-E]

2. The use of the expression "if" in the phrase "if the offence had not been committed" was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell under sub-s. (2) of s.8 of the Act. The scheme of s.8 indicated the concessional rates contemplated by sub-s. (1) thereof would be available only with reference to those goods which are covered by the declarations in form 'C'. The moment it is found that in respect of particular quantity of goods the undertaking given by the assessee in form 'C' declaration has not been carried out, the goods were presumed to be such in respect of which no undertaking was existing. Such goods would be liable to normal tax contemplated under sub-section (2) of s.8. Therefore, the penalty should be worked out only on the basis of the normal rates prescribed under sub-s. (2) of s.8. [939 F-H; 940 A-B]

M.Pais & Sons and Another v. The State of Mysore, 17 S.T.C. 161, Bisra Limestone Company Ltd. v. Sales Tax Officer, Rourkela Circle, Uditnagar, and Others, 27 S.T.C. 531, The Assessing Authority and another v. Jammu Metal Rolling Mills, [1971] Tax Law Report 1861, Kottayam Electricals Private Limited v. The State of Kerala, 32 S.T.C. 535 and The Gaekwar Mills Ltd. v. The State of Gujarat, 37 S.T.C. 129, approved.

The State of Madras v. Prem Industrial Corporation, 24, S.T.C. 507 and Deputy Commissioner of Commercial taxes, Madurai Division, Madurai v. Kodaikanal Motor Union Private Limited, 31 S.T.C. 1, overruled.

3. Section 10A was introduced for imposition of penalty

in lieu of prosecution, that is to visit the person guilty
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with certain penalty in place of prosecution. He cannot be placed in a better position than one who would have complied with the provisions of the Act. [940 B-C]

4. The Court must always seek to find out the intention of the legislature. This can be done from the language used in the statute. But the court need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. To make sense out of an unhappily worded provision, where purpose is apparent the judicial eye 'some' voilence to language is permissible. The purpose of the Act and the object of a particular section has to be borne in mind. [938 F-H]

Seaford Court Estates v. Asher, [1949] 2 All E.R. 155 at 164, K.P. Varghese v. Income-tax Officer, Ernakulam and another, 131 I.T.R. 597 at 604 to 606 and Luke v. Inland Revenue Commissioners, 54 I.T.R. 692, relied upon.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1121- 1124 (NT) of 1974.

From the Judgment and Order dated 4th April, 1972 of the Madras High Court in T.C. Nos. 158 to 161 of 1966.

S. Padmanabhan, A.V. Rangam and V.C. Nagaraj for the appellant.

Nemo for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. These appeals by certificate arise from the decision of the Madras High Court dated 4th April, 1972 in Tax Cases Nos. 158-161 of 1966. These are in respect of assessment under Central Sales Tax Act, 1956. The assessees in the four tax cases were assessed under Central Sales Tax Act, 1956 (hereinafter called the 'Act'). The assessment years involved are 1958-59 to 1961-62. It was found that the assessees had purchased motor spare parts on the basis of the 'C' form certificates issued to them under the provisions of the said Act for sale, but instead of selling those, the assessees had used those for their own consumption.

The revenue proceeded on the basis that since the goods purchased had not been used for the purposes specified in section 8(3)(b) of the Act and as recorded in the 'C' form certificates, the assessees had committed offences under section 10(d) of the Act inasmuch as they had used the goods purchased by them on the basis of 'C' form certificate for the purpose other than the one mentioned in the certificates and therefore were liable to pay penalty as well. All the authorities including the Tribunal had found that the assessees had actually committed the offences under section 10(d) of the Act in using the goods for the purposes other than the one mentioned in 'C' form

certificates. Being a finding of fact, the High Court proceeded on the basis that the assessees had committed the offence. The question that was posed before the High Court was what was the quantum of penalty that had to be levied under section 10-A of the Act. Section 10-A of the Act deal with penalties. Section 10-A is a provision for imposition of penalty in lieu of prosectuion. This section was initially added by section 8 of the Amendment Act 31 of 1958 with effect from 1st October, 1958. This section has undergone several amendments. On 9th June, 1969 with retrospective effect the section was amended. The section was again amended with effect from 1st April, 1973. Sub-section (1) of section 10A which is material for our present purpose at the relevant time was as follows :

> "10A. (1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him, or as the case may be, is competent to grant to him a certificate of registration under this Act may after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under this Act in respect of the sale to him of the goods, if the offence had not been committed;
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> Provided that no prosecution for an offence under section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

Sub-section (1) of section 10A provided that if any A 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 the Act, may, after giving him a reasonable opportunity of being heard, by an order in writing, impose upon him by way of penalty sum not exceeding one-and-a-half times the tax which would have been levied at the relevant time in respect of sale of goods if the offence had not been committed. The only question that was under consideration was the quantum of penalty that had to be levied under section 10A of the Act.

It may be mentioned that section 10 imposes penalty if any person, inter alia, under clause (d) of section 10 after purchasing any goods for the purpose specified in clause (b) or clause (c) or clause (d) of sub-section (3) of section 8, fails without reasonable excuse to make use of the goods for the purposes mentioned in the certificates. Section 8 deals with the rates of tax on sales in the course of inter-State trade or commerce. it stipulates that every dealer, who in the course of inter-State trade or commerce, inter alia, sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) shall be liable to pay tax under the Act, which shall be four per cent now and at the relevant time prior to 1975 was three per cent of the turnover. Sub-section (3) of section 8 deals with the goods referred to in clause (b) of sub-section (1) of section 8.

The Tribunal as mentioned hereinbefore accepted the contention that the penalty liable under section 10A in this case should be one-and-a-half times the concessional rate of tax and not one-and-a half times the tax which would have been leviable if no 'C' form certificate had been

produced. The Revenue challenged before the High Court the correctness of the view taken by the Tribunal.

The High Court followed the decision of the Madras High Court in the State of Madras v. Prem Industrial Corporation, 24 S.T.C. 507. Another view was expressed by the Mysore High Court in M. Pais & Sons and another v. The State of Mysore, 17 S.T.C. 161 and the Orissa High Court in Bisra Limestone Company Ltd. v. Sales Tax Officer, Rourkela Circle, uditnagar, & Ors., 27 S.T.C. 531 took a different view. It also appears H that in Bisra Limestone Company Ltd., the decision of the Madras High Court in The State of Madras v. Prem Industrial corporation, (supra) was specifically referred to but was not accepted as laying down the correct principle.

In the impugned judgment, the Madras High Court was of the view that these decisions apart from the decision of the Madras High Court in The State of Madras v. Prem Industrial Corporation had proceeded on the basis that if the offence had been committed under section 10A, it should be taken that the concerned assessee never applied for and obtained any valid certificate in form 'C' which would have entitled him to have the beneficial rate of tax and that therefore the penalty leviable under section 10A could only be 1-1/2 times the normal tax i.e. 1-1/2 times the tax that the dealer would have been liable to pay if he had not taken 'C' form certificate. The Madras High Court was on the view that if the principle on which the learned judges of the Mysore and Orissa High Courts in the above-mentioned decisions had proceeded was correct, then there was no question of any offence being committed by the assessee in not taking 'C' form certificate, though the assessee might be thrown open to a larger and normal rate of tax in place of concessional rate of tax. The Madras High Court in the judgment under appeal was unable to accept the principle laid down by the two decisions of the Mysore High Court and the Orissa High Court respectively. In that view of the matter, the challenge of the Revenue to the decision of the Tribunal failed.

Aggrieved by the impugned decision and in view of the conflict of decisions between different High Courts, the Revenue has come up in these appeals.

In M. Pais & Sons & Anr. v. The State of Mysore, (supra), Hegde, J. as the learned judge then was in the Mysore High Court held that as the goods purchased by the petitioner in that case were not covered by any valid 'C' form, sales tax was leviable at 7 per cent, and therefore the penalty that was leviable 10-1/2 per cent of the turnover. The petitioner, in another case, had manufactured soap and he had included the following goods in his application for certificate of registration under section 8: coconut oil, perfumes, silicate, caustic soda, nails, colours, strappings, papers and rosin.

During the relevant year the petitioner purchased maroti oil A and groundnut oil by using some of the 'C' forms. The question was whether he was guilty of the offence under section 10(b) of the Act. The last contention urged in that case as appears from page 169 of the report was that on a true interpretation of section 10A it was clear that the assessee should have been levied penalty only at 1-1/2 per cent of the disputed turnover and not at the rate of 10-1/2 per cent as was done by the authorities below. This contention did not appears to the High Court to be correct. All the sales of goods validly covered by 'C' forms were liable to be taxed at 1 per cent of the turnover. Such of the goods which were not validly covered by 'C' forms were liable to be taxed at 7 per cent of the

turnover. The penalty provided by section 10A was 1-1/2 times the tax leviable. It was found in that case that the goods with which the Court was concerned were not covered by any valid 'C' forms and, therefore, sales tax was leviable on them at 7 per cent of the turnover. If that was so, then the penalty on that turnover was leviable at 10-1/2 per cent of the turnover.

The Madras High Court in The State of Madras v. Prem Industrial Corporation, (supra) had occasion to consider this question and it was upon this decision that the Madras High Court in the judgment under appeal relied. There it was held that for an offence committed within the scope of section 10(b) of the Act by the misuse of 'C' forms, the penalty at one and a half times should be calculated on the concessional rate of tax that would have been applicable of the offence had not been committed, that is, if the 'C' forms had been properly used, and not on the basis OF the rate for sales not covered by the 'C' forms. The attention of the Madras High Court was drawn to the judgment of the Mysore High Court in the case of M. Pai & Sons. v. The State of Mysore, (supra). The Madras High Court, however, felt that the decision did not take into account the concluding words 'if the offence had not been committed' In section 10A. In that case before the Madras High Court, the revenue sought to revise and order of the Sales-tax Appellate Tribunal by which it modified the penalty imposed. It was not in controversy in that case as in the instant cases before us that 'C' forms had been misused and thereby an offence was committed within the scope of section 10(b) of the Act. The department had levied penalty at 10-1/2 per cent on the view that in the circumstances, the concessional rate would not be available and that the assessee would be liable to tax at 7 per cent under section 8(2) of the Act. The Tribunal reduced the penalty to one and a half times the tax, as, in its opinion, for purposes of levying penalty, the rate of tax should be taken as that which would have been applicable if the offence had not been committed. The Madras High Court accepted this view. According to the Madras High Court, the department's contention did not give effect to the concluding words of section 10A 'if the offence had not been committed'. The High Court was of the view that the offence under the provision was that a person being a registered dealer, falsely represented when purchasing any class of goods that goods of such class were covered by his certificate of registration. The words 'if the offence had not been committed' clearly pointed to the result that the tax for purposes of assessing one and a half times thereof was not that which would have been levied on the basis that the 'C' forms had not been complied with or had been misused, but, as n if they had been used in a proper way. It is this view which found favour in the impugned judgment before us.

The question again cropped up before the Orissa High Court in Bisra Limestone Company Ltd. v. Sales Tax Officer, (supra). There the Orissa High Court was of the view that the question of penalty would arise only when the goods were not mentioned In the certificate of registration and purchase of the same was made on a false representation made by the purchasing dealer that these were so mentioned. If the normal rate had been paid for the goods, without making any false representation, no offence under section 10(b) would be committed. It was only to such cases that the expression "if the offence had not been committed" had application and therefore the penalty payable under section 10A would be one and a half times the normal rate and not the concessional rate. Based on the language of section 10A(1), a contention was raised before the High Court that penalty should bot exceed 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'. According to the contention if

the goods were purchased on concessional rate on false representation that these were covered under the registration, the penalty that imposed should not exceed one and a half times the concessional rate and not the normal rate. The contention was held not to be sound. The Orissa High Court was of the view that if the goods mentioned in the certificate of registration and the goods purchased at concessional rate as purchasing dealer committed no offence under section 10(b) of the Act the question of imposing penalty did not arise. The question of penalty would arise only when goods were not mentioned in the certificate of registration and purchase of the same is made on a false representation by the purchasing dealer that they were so mentioned. If the normal rate had been paid for the goods without making any false representation, no offence under section 10(b) would be committed. It was only to such cases that the expression 'if the offence had not been committed' had application and the penalty payable would be one and a half times the normal rate.

The question was again considered by the Full Bench of Jammu & Kashmir High Court in the case of The assessing Authority and another v. Jammu Metal Rolling Mills, [1971] Tax Law Report 1861. There Jaswant Singh, J. as the learned judge then was of the Jammu & Kashmir High Court, had occasion to consider the concluding words of section 10A i.e. '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' and it was interpreted as not to mean that the penalty should be calculated at one and a half times the concessional rate of tax. All that the aforesaid words, according to the J & K High Court, meant was that the person committing the offence specified in section 10(d) would be liable to penalty which would extend to one and a half times the tax payable by a person who purchased goods for the purpose covered by the certificate of registration or the penalty would be upto one and a half times the tax which an honest dealer would have normally to pay while purchasing the goods of similar description for similar use. Any other interpretation according to the said High Court, would have the effect of putting a premium on the misuse of certificate of registration by unscrupulous dealers. The said High Court relied on the observations of the Orissa High Court in Bisra Limestone Co. Ltd., (supra) and also the Mysore High Court's view mentioned hereinbefore. The J & K High Court was unable to agree with the views of the Madras High Court in The State of Madras v. Prem Industrial Corporation (supra).

The question again came to be considered by the Kerala High Court in the case of Kottayam Electricals Private Limited v. The State of Kerala, 32 S.T.C. 535. mere the submission was that the courts should construe the phrase 'if the offence had not been committed' to mean 'if the assessee had not misused or misapplied the goods'. The argument was that if the goods were not misused or misapplied the tax payable would be at the concessional rate of 3 per cent under section 8(1)(b) of the Act and that the maximum penalty that could be imposed could only be one and a half times the tax calculated at 3 per cent on the turnover in respect of which the offence had been committed. After discussing the contentions and acknowledging that section 10A was not happily worded, the High Court felt that it was unable to accept the view of the Madras High Court in State of Madras v. Prem Industrial Corporation, (supra). The High Court was of the opinion that if the court interpreted the section to mean that such a person need pay penalty calculated only at the rate of one-and-a-half times the 'concessional rate', it would lead to absurd consequences. It accepted the views of the Orissa as well as the Mysore High Courts mentioned hereinbefore.

The Gujarat High Court had occasion to consider this question again in the case of The Gaekwar Mills Ltd. v. The State of Gujarat, 37 S.T.C. 129. me Gujarat High Court was of the view that the penalty which was contemplated by section 10A of the Act, was to be worked out by reference to the rate of tax provided in section 8(2) of the Act and not by reference to the concessional rate of tax provided in section 8(1) of the Act. The Gujarat High Court felt that the Tribunal was justified in rejecting the contention of the assessee that the maximum penalty that could be levied under section 10A was 1-1/2 times the concessional rate of tax provided in section 8(1). Dealing with the several authorities noted hereinbefore and the scheme and language of the section, the Gujarat High Court was of the opinion that to accept the contention that the true effect of the words 'if the offence had not been committed' was to presume a situation in which the undertaking given by the declaration was carried out even though in fact the same was not carried out that would not be a proper presumption because if such a presumption was raised, it would make the whole situation highly absurd. The absurdity would be that for the purpose of penalising the defaulter, a presumption was to be made that the defaulter was not one who had Committed any default. The legislature could not be attributed with any such absurd intention. The High Court noted that while framing section 10A, the legislature had not used the expression 'as if', at the time of using the words 'if the offence had not been committed', at choice of the word 'if', instead of the expression 'as if' indicated a conditional phrase, and not a phrase prescribing a deeming fiction. The High Court was of the view that the interpretation canvassed by the assessee obviously introduced the concept of a fiction which treated the offender as one who had not offended. Section 10A was a penal provision which stipulated penalty in lieu of the prosecution. me High Court expressed the view that one has yet to come across a penal provision, which created a fiction that an offender was not an offender, and should, therefore, be treated as a non-offender. Obviously, by such a fiction, the very object of the penal provision in question was frustrated and, therefore, the legislature could never have intended that by the creation of the above- referred fiction, the very object of introducing the penal clause contained in section 10A of the Act should have been destroyed. The truth of the matter, according to the High Court, was that the use of the word "if" simpliciter, was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell within the provisions of sub-section (2) of section 8 of the Act. The scheme of the section showed that concessional rates contemplated by sub-section (1) thereof would be available only with reference to those goods which were covered by the declaration of form 'C'. This was clear in the scheme of the section. Further the High Court noted that if the contention canvassed by the assessee was accepted, then the person who committed default In carrying out his solemn undertaking contemplated by form 'C', would be in a better position than the assessee, who honestly paid the tax under sub-section (2) of section 8 without giving any undertaking contemplated by form 'C ' .

In the case of Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Kodaikanal Motor & ion Private Limited, 31 S.T.C. 1 the Madras High Court agreed with the view of Veeraswami, C.J. in State of Madras v. Prem Industrial M Corporation, (supra).

The section as it stood at the relevant time permitted imposition on dealer by way of penalty of a sum not exceeding one-and-a-half times the tax which would have been levied under this Act in respect of the sale of goods to him 'if the offence had not been committed'. The section as it reads

today after amendment in 1973 permits imposition by way of penalty of a sum not exceeding one-and-a-half times the tax which would have been levied under sub-section (2) of section 8. Sub-section (2) of section 8 deals with tax in the course of inter-State sales.

Lord Denning, in Seaford Court Estates v. Asher, [1949] 2 All E.R. 155 at 164 said thus :

> "…. When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament…… and then he must supplement the written word so as to give 'force and life' to the intention of the legislature……. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavor to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible. (See K. P. Varghese v. Income-Tax Officer, Ernakulam & Anr., 131 I.T.R. 597 at 604 to 606 and Luke v. Inland Revenue Commissioner, 54 I.T.R. 692.

Bearing the scheme of the Act in perspective we are of the opinion that the contention of the revenue in this case has to be accepted. 'If the offence had not been committed' cannot have the effect that penalty should be levied on the basis of the rate which would have been levied had no offence been committed under clause (d) of section 10 of the Act. For the purpose of imposition of penalty, it could not be treated that the rate which would govern the question of penalty was the rate which could be levied on the basis that the assessee had made no fault. It would lead to putting a premium on avoidance of the provisions of the Act.

In our opinion sub-section (1) of section 10A makes it clear that penalty should be worked out at the rate of tax which would have been levied if the offence had not been committed. In other words the question is what tax would have been levied under the Act if the offence had not been committed. The assessee would not have committed any offence only if he had carried out the undertaking given by it in its declaration in form 'C' or if he purchased the goods without giving any declaration thereby incurring liability to pay normal rate of tax as contemplated by sub-section (2) of section 8. One who commits defaults cannot be said to have carried out the undertaking given by him. The presumption canvassed to be raised that the true effect of the words 'if the offence had not been committed' was to presume a situation In which the undertaking given by the assessee had been

carried out even though In fact the same had not been carried out. That would be an absurd result. In our opinion the else of the expression 'if' simpliciter, Will meant to indicate a condition, the condition being that at the time of assessing The penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell under sub-section (2) of section 8 of the Act. The scheme of section 8 indicated that concessional rates contemplated by sub-section (1) thereof would be available only with reference to those goods which are covered by the declarations in form 'C'. The moment it Is found that in respect of particular quantity of goods the undertaking given by the assessee In form 'C' declaration has not been carried out, the goods were presumed to be such in respect of which no undertaking was existing. Therefore such goods would be liable to normal tax contemplated under sub- section (2) of section 8. Therefore, the penalty should be worked out only on the basis of the normal rates prescribed under sub-section (2) of section 8. That would make sense. That is a reasonably possible construction. That would avoid absurd result.

It is further to be borne in mind that section 10A was introduced for imposition of penalty in lieu of prosecution, that is to visit the person guilty with certain penalty in place of prosecution. He cannot be placed in a better position than one who would have complied with the provisions of the Act. In this respect having regard to the object of the Act, in our opinion, we are in full agreement with the views expressed by the Gujarat High Court in The Gaekwar Mills Ltd. v. The State OF Gujarat, (supra). As Lord Denning has said, the judge has to perform the constructive task OF finding the intention of Parliament, and he must supplement the written word so as to give 'force and life' to the intention of the legislature. Primarily, it is always the duty to find out the intention of the legislature and if it can be done without doing much violence to the language as we Find it can be done in this case, though as we have noted that when the purpose was writ large in the scheme of the section "some violence" is permissible, here we are of the opinion that the construction put by the assessee cannot be accepted and the contention urged on behalf of the revenue in this case should be preferred.

We must remember that the provision is a penal provision. It has further to be borne in mind that the expression 'if' is not same as 'as if' nor does it contemplate a deeming provision. It has also to be borne in mind that the provision was introduced for the imposition of penalty in lieu of prosecution. The purpose of the Act and the object of a particular section has to be borne in mind. Having regard to the same, we are in agreement with he views expressed by the Orissa High Court in Bisra Limestone Company Ltd. v. Sales Tax Officer, Rourkela Circle, Uditnagar, and Others, (supra), Jammu & Kashmir High Court in The Assessing Authority and another v. Jammu Metal Rolling Mills, (supra), the High Court of Kerala in Kottayam Electricals Private Limited v. The State of Kerala (supra). The High Court of Mysore in M. Paid & Sons v. The State of Mysore (supra), the High Court of Gujarat in The Gaekwar Mills Ltd. v. The State of Gujarat (supra) and with respect we are unable to accept the views of Veeraswami, C.J. in State of Madras v. Prem Industrial Corporation (supra), and the other decision of the Madras High Court in Deputy Commissioner of Commercial Taxes (supra).

In the premises the dealer's contention cannot be accepted and revenue's stand must be upheld.

The decision under appeal cannot, therefore, be sustained. The appeals are allowed and the judgment and order of the High Court of Madras are set aside. The revenue is entitled to the costs of these appeals.

A.P.J. Appeals allowed.