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KHEMKA & CO.

v.

STATE OF MAHARASHTRA

27th February, 1975

B [A. N. RAY, C.J., H. R. KHANNA, K. K. MATHEW, M. H. BEG, Y. V. CHANDRACHUD, JJ.].

Central Sales Tax Act 1956—*S.* 9(2)—*Scope of Bombay Sales Tax Act—S.* 16(4)—*If penalty under the Central Act could be levied under s.* 16(4) *of the Bombay Act.*

Section 9(2) of the Central Sales-tax Act, 1956 provides 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 shall, on behalf C 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. Section 16 of the Bombay Sales-tax Act provides for payment and recovery of 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 sales-tax assessed.

D The assessee unsuccessfully contended before various sales-tax authorities as well as before the High Court that levy of penalty under s. 16(4) of the Bombay Sales-tax Act for delay or default in payment of tax under the Central Sales Tax Act was without jurisdiction as it was not warranted by the provisions of s. 9(2) of the Central Sales-tax Act, 1956.

In the Mysore case which was similar to the Bombay case, however, the High Court allowed the assessee's claim that the levy of penalty under the Mysore Sales-tax Act in respect of sales-tax payable under the Central Sales-tax Act was E *ultra vires.*

It was contended before this Court that there was no provision in the Central Sales-tax Act for imposition of penalty for delay or default in payment of tax and, therefore, imposition of penalty under the provisions of the State Act for delay or default in payment of tax was illegal.

[per Ray, C.J. and Khanna, J.] (Beg, J. concurring in the final results).

F Allowing the appeal,

HELD : The Mysore High Court correctly pointed out that the words "as if the tax or penalty payable by such a dealer under this Act" relate to tax or penalty which is payable only under the Central Act. [763B]

The provision in the State Sales Tax Act imposing penalty for non-payment of sales-tax within the prescribed time is not attracted to impose penalty on dealers under the Central Sales Tax Act in respect of tax and penalty payable under the Central Act. There is no lack of sanction for payment of tax. Any dealer G who would not comply with the provisions for payment of tax would be subjected to recovery proceedings under the Public Demands Recovery Act. A penalty is a statutory liability. The Central Act contains specific provisions for penalty. Those are the only provisions for penalty available against the dealers under the Central Act. Each State Sales Tax Act contains provisions for penalties. These provisions in some cases are also for failure to submit a return or failure to register. It is rightly said that those provisions cannot apply to dealers under the Central Act because the Central Act makes similar provisions. The Central H Act is a self-contained code which, by the charging section, creates liability for tax and which by other sections creates a liability for penalty and imposes penalty. Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, re-assessment, collection and enforcement of tax and penalty payable by a dealer under the Act. [765H; 766A-B]

(1) The words 'assess, re-assess, collect and enforce payment of tax including any penalty payable by a dealer under this Act' mean that the tax as well as penalty is payable only under the Central Act. By s. 9(2) of the Central Sales Tax Act the State Sales-Tax Authorities are created as agents of the Government of India. [761D: B]

(2) The words "and for this purpose they may exercise all or any of the powers they have under the general sales-tax law of the State" in s. 9(2) of the Central Act relate to "assess, re-assess, collect and enforce payment of tax including any penalty payable by a dealer under this Act." In that context the last limb of s. 9(2) of the Central Act, namely, "and the provisions of such law..... .....shall apply accordingly" means that the provisions of the State Act are applicable for the purpose of assessment, re-assessment, collection and enforcement of payment of tax including penalty payable under the Central Act. The words of the last part of s. 9(2) namely, "shall apply accordingly" relate clearly to the words "and for this purpose" with the result that the provisions of the State Act shall apply only for the purpose of assessment, re-assessment, collection and enforcement. [761G-H; 762A]

(3) The extent of liability for tax as well as penalty is not attracted by the doctrine of *ejusdem generis* in the application of the provisions of the State Act in regard to assessment, re-assessment, collection and enforcement of payment of tax including any penalty payable under the Central Act. The doctrine of *ejusdem generis* shows that the genus in s. 9(2) of the Central Act is 'for this purpose'. In other words, the genus is assessment, re-assessment, collection and enforcement of payment. The genus is applicable in regard to the procedure for assessment, re-assessment, collection and enforcement of payment. The genus is from whom to collect and against whom to enforce. [762A-C]

(4) The deeming provision in the Central Act that the tax as well as penalty levied under the Central Act will be deemed as if payable under the general sales tax law of the State, cannot possibly mean the tax or penalty imposed under any State Act will be deemed to be tax or penalty payable under the Central Act. The entire authority of the State machinery is that "for this purpose" meaning thereby the purpose of assessing, re-assessing, collecting and enforcing payment of tax including any penalty payable under the Central Act, they, meaning the State agencies, may exercise powers under the general sales tax law of the State. The words "for this purpose" cannot have the effect enlarging the content of tax and the content of penalty under the Central Act. Liability to pay tax as well as liability to pay penalty is created by the Central Act. [762D-E]

(5) If the liability to pay tax is determined by the provisions of the Central Act the liability to pay penalty is also that which is payable under the Central Act. The procedural law prescribed in the general sales-tax law of the State applies to the matter of assessment, re-assessment, collection and enforcement of payment of tax under the Central Act because the liability to pay tax is determined under the Central Act. Similarly liability to pay penalty is determined with reference to the provisions of the Central Act. [763D]

State of Kerala v. *P. P. Joseph & Co.*, 255 STC 483; followed.

(6) Rebate is a concession whereas penalty is an imposition. The concession does not impose liability but penalty does. It, therefore, stands to reason that rebate is included within the procedural part of collection and enforcement of payment of tax. Penalty, like imposition of tax, cannot be included within the procedural part. [763G-H]

Orissa Cement Limited v. *The State of Orissa & Anr.*, 27 S.T.C. 118; followed.

C. A. Abraham, Uppoottil, Kottayam v. *The Income Tax Officer, Kottayam & Anr.*, [1961] 2 S.C.R. 765 and *Commissioner of Income-Tax, Andhra Pradesh* v. *M/s. Bhikaji Dadabhai & Co.*, [1961] 3 S.C.R. 923, distinguished.

(7) Penalty is within assessment proceedings just as tax is within the assessment proceedings when the relevant Act by substantive charging provision levies

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tax as well as penalty. Penalty is not merely a sanction. It is not merely an adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Penalty is not a continuation of assessment proceedings and penalty partakes of the character of additional tax. [765B-D]

Jain Brothers & Ors. v. *Union of India*, 77, I.T.R. 107 followed.

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(8) Under a taxing statute liability does not begin on assessment. There must be a liability created by the Act, the Act must provide for assessment and the Act must provide for enforcement of the taxing provisions. The mere fact that there is machinery for assessment, collection and enforcement of tax and penalty in the State Act does not mean that the provision for penalty in the State Act is treated as penalty under the Central Act. The meaning of penalty under the Central Act cannot be enlarged by the provisions of machinery of the State Act incorporated for working out the Central Act. [765E-F]

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Jain Brothers & Ors., v. *Union of India*, 77, I.T.R. 107 and *Chatturam & Ors.* v. *Commissioner of Income-tax, Bihar*, 15, I.T.R. 302, followed.

Per BEG, J. (1) The 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 the 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, the reference to penalties in the concluding portion of s. 9(2) must be interpreted to relate only to the special provisions relating to penalties provided for specifically in the Central Act. [782B-C]

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(2) The rule to be applied with regard to a statute purporting to impose a charge 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, then, the legislative intent could safely be presumed to be to confine penalties mentioned in the concluding part of s. 9(2) to only those mentioned specifically in the Central Act. [782F-G]

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Oriental Bank Corporation v. *Wright*, [1880] 5 App. Cas. 842 @ 856 referred to.

(3) Section 76(a) of the Bombay Sales Tax Act, 1959 repealed the Bombay Sales Tax Act of 1953. Section 16 of the 1959 Act refers to an entirely different subject matter. At the time when the assessment order was made, there was no provision for imposition of any penalty under s. 16(4) of the Bombay Act of 1953 which the Sales Tax Authorities and the High Court sought to utilise to justify the penalty imposed. [777G-H]

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(4) In 1956 the Parliament could not have applied its mind to provisions which came into existence afterwards. It could not 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, 1953. But s. 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 it is assumed that s. 9(2) of the Central Act, by necessary implication, authorised the State Legislatures to go on imposing such penalties for such breaches of duty as it pleased them to lay down on behalf of Parliament, subsequently enacted provisions of State enactments would not be available. [778A-C]

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Re. Delhi Laws Act (1912) *etc.* [1951] S.C.R. 747 referred to.

(5) Section 13 of the Mysore Sales Tax Act 1957 was entirely recast in 1958. It would be carrying the theory of referential legislation too far to assume that s. 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. [778D] A

(6) On a consideration of the provisions of s. 16(4) of the Bombay Act it seems 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. It is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. [779B] B

(7) The imposition of a pecuniary liability, which take the form of a penalty or fine for a breach of a legal obligation, cannot be relegated to the region of mere procedure and machinery for the realization of tax. 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 liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. [779D] C

(8) The provisions of s. 9(2) of the Central Sales Tax Act make it clear that the powers of the State Sales Tax Officers were specifically limited by the provisions of the Central Act. They cannot go beyond these provisions. It is also clear from s. 9(2) 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. [781H]

Per Mathew and Chandrachud, JJ. (dissenting). D

(1) A careful analysis of s. 9(2) of the Central Act would show that the authorities empowered to assess, reassess, collect and enforce payment of tax payable under the general sales tax law of the appropriate State shall assess, reassess, collect and enforce payment of tax including penalties payable by a dealer under the Central Act as if the tax or penalty payable by a dealer under the 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 State. [767F-G] E

(2) 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. The provision for imposition of penalty in s. 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. [767H; 768A-D] F

C. A. Abraham Unnoottil v. *The Income Tax Officer* [1961] 2 S.C.R. 765, *Marsddi Krishna Reddy* v. *Income Tax Officer, Tenali* [1957] 31 I.T.R. 678, *Commissioner of Income Tax* v. *Bhikaji Dadabhai & Co.*, [1961] 3 S.C.R. 923 and *Orissa Cement Limited* v. *The State of Orissa and Anr.* 27 S.T.C. 118 referred to. G

(3) If rebate can be given on the basis that it would facilitate, expedite and stimulate the collection of tax there is no reason why a penalty could not be imposed to expedite, facilitate and stimulate the collection of tax and as part of the process of collection. Payment of rebate is a liability from the point of view of the Revenue, though it is a 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 [770C-D] H

A (4) It is 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 a tax payable under the general sales tax law of the State, but denuded them of the 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. [770F-G]

B (5) The analogy of principal and agent has no 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 falacy 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 s. 9(2) and in ignoring what are the powers actually conferred by the words enforce payment of tax.....as if the tax.....payable by C such a dealer under this Act is a tax.....payable under the general sales tax law of the State" in the sub-section. [772A-B]

(6) It is clear from s. 9(2) that the penalties which could be imposed by the State authorities by virtue of the express provision in it are the penalties provided in s. 10 read with s. 10A. [772H]

(7) When s. 9(2) says that assessment, re-assessment, collection and enforcement of payment of tax due under the Central Act should be made by the authoD rities 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 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 reason why the sales tax authorities of the State were given specific power under s. 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 E the sales-tax law of the State. The penalties provided in s. 10 read with s. 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. [773C-G]

F (8) In the nature and 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. [774E]

(9) The expression "penalties" in the latter part of the s. 9(2) can only refer to penalties imposable under the general sales tax law of the State in connection G with assessment, re-assessment, 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, re-assess, 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 penalH ties 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, re-assessment, collection and enforcement of payment of tax payable thereunder. [775B-D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2089 of 1969.

Appeal by Special Leave from the Judgment and Order dated the 22nd February 1968 of the Bombay High Court in Sales Tax Reference No. 36 of 1967 and B

Civil Appeal No. 2118 *of* 1970

From the Judgment and order dated the 18th March, 1970 of the Mysore High Court in Writ Petition No. 345 of 1970.

S. T. Desai, P. G. Bhartari and *K. J. John,* for the appellant (In C.A. 2089/69). C

M. Veerappa, for the appellant (in C.A. 2118/70).

Santosh Chatterjee and *G. S. Chatterjee* for the Applicant/Intervener (State of West Bengal).

L. N. Sinha, Solicitor General, M. N. Shroff for the Intervener (Union of India in C.A.2089/69). D

L. N. Sinha, Solicitor General, M. G. Bhandare and *M. N. Shroff* for respondent (C.A. No. 2089/69).

The Judgment of A. N. Ray, C.J. and H. R. Khanna, J. was delivered by Ray, C.J. K. K. Mathew, J. gave a dissenting opinion on behalf of himself and Y. V. Chandrachud, J., M. H. Beg, J. gave a separate Opinion. E

RAY, C.J.—These appeals raise the question as to whether the assessees under the Central Sales Tax Act, 1956 hereinafter referred to as the Central Act could be made liable for penalty under the provisions of the State Sales Tax Act hereinafter referred to as the State Act. The penalty imposed under the State Act is for default in payment of taxes within the prescribed time. F

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 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) in the State from which the movement of goods commenced. G

Section 9(2) of the Central Act is as follows :—

> "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 H

A 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
B 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, re-
C covery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, componding of offences and treatment of documents furnished a dealer as confidential 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,
D by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

Section 6 of the Central Act provides for liability to tax on inter-State sales. Section 8 of the Central Act provides for rates of tax on sales in the course of inter-State trade or commerce. Section 9 of the Central Act provides for collection of tax and penalties.

E Section 10 of the Central Act provides penalties. The various grounds for penalties are fully enumerated there. Section 10A(1) of the Central Act provides for imposition of penalty in lieu of prosecution.

The contention on behalf of the assessee is that there is no provision in the Central Act for imposition of penalty for delay or default in payment of tax, and, therefore, imposition of penalty under the provi-
F sions of the State Act for delay or default in payment of tax is illegal.

The rival contention on behalf of the Revenue is that the provision for penalty for default in payment of tax as enacted in the State Act is applicable to the payment and collection of the tax under the Central Act and is incidental to and part of the process of such payment and collection.

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The Solicitor-General on behalf of the Revenue placed reliance on the decisions in *K. V. Adinarayana Setty* v. *Commercial Tax Officer, Kolar Circle, Kolar* 14 S.T.C. 587; *Commissioner of Sales Tax, Madhya Pradesh, Indore* v. *Kantilal Mohanlal & Brothers* 19 S.T.C. 377; *M/s H. M. Esufali H. M. Abdulali* v. *Commissioner of Sales Tax M.P. Indore* 24 S.T.C. 1; and *Auto Pins (India)* v. *The State of Haryana*
H *& Ors.* 26 S.T.C. 466 in support of his contention.

The contentions of the Solicitor General are these : Section 9(1) of the Central Act speaks of tax. That section does not mention penalty.

Tax will include collection and enforcement of payment. The words "tax and penalty payable by a dealer under this Act" indicate that the words "under this Act" in the Central Act relate only to a dealer. Section 9(2) of the Central Act is a provision prescribing the procedure for assessing, collecting and enforcing payment of tax. The words "collect and enforce payment of tax, including any penalty" in Section 9(2) of the Central Act include not only penalties imposed by the Central Act but also penalties under the State Act. 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" indicate that tax or penalty is imposed by the Central Act and by incorporating the State Act as a part of the Central Act the liability to pay tax is enforced by penalty for delay or default in payment of tax.

The Solicitor-General further submitted as follows : The latter part of section 9(2) of the Central Act, viz., "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.....shall apply accordingly" shows that the enforcement provisions in the State Act for delay or default in payment of tax are adopted by the Central Act for working out the provisions relating to assessment, re-assessment, collection and enforcement of tax or penalties. Penalty is a sanction for non-payment. If the assessee does not pay and if there is no provision for imposition penalty, there will be no sanction for enforcement of payment The purpose for which the State Act is incorporated in the Central Act is, inter alia, enforcing payment of tax which includes penalty for delay and default in payment of tax. In short, just as penalty is imposed for non-payment of tax under the State Act that provision is attracted for delay or default, in payment of tax under the Cenrtal Act.

On behalf of the assessee it was said that the provisions contained in section 9(2) of the Central Act mean that only if tax as well as penalty is payable by a dealer under the Central Act then there can be collection and enforcement of tax and penalty in the same manner as provided in sales tax law of the State. Second, the Central Act must have a substantive provision to warrant imposition of penalty. The provision in a State Act regarding penalty for default in payment cannot be applied when there is no substantive provision relating to levy or penalty in the Central Act in respect of that default. Third, section 9(2) of the Central Act is procedural and only deals with utilisation of existing machinery in State law. The State authorities are empowered to exercise powers under the general sales tax law of the State to assess, re-assess, collect and enforce payment of tax and penalty payable under the Central Act. Just as tax payable under the Central Act can be collected and enforced similarly, only penalty payable under the Central Act can be collected and enforced.

Counsel on behalf of the assessees relied on 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 and Sons* 22 S.T.C. 226; *Guldas Narasappa Thimmaiah Oil Mills* v. *Commercial Tax Officer, Raichur* 25 S.T.C.

A 489; and *Hurdatroy Jute Mills Private Ltd. Katihar & Ors.* v. *Superintendent of Commercial Taxes, Purnea & Ors.* 30 S.T.C. 151 in support of the proposition that the substantive law for penalty under the State Act is not incorporated in the Central Act.

Section 9(2) of the Central Act first provides that the authorities empowered to assess, re-assess, collect and enforce payment of any tax B under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess and enforce payment of tax including any penalty payable by a dealer under the Central Act. The State Sales Tax authorities are thus created agents of the Government of India. The second important part in section 9(2) of the Central Act is that the State authorities shall assess, re-assess, collect and enforce payment of tax including any penalty payable by the dealer un- C der the Central Act as if the tax or penalty payable by such a dealer under the Central Act is a tax or penalty payable under the general sales tax law of the State. This part of the section sets out the scope of work of the State agencies. The words "assess, re-assess, collect and enforce payment of tax including any penalty payable by dealer under this Act" mean that the tax as well as penalty is payable only under the Central Act.

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To suggest that the words "under this Act" qualify dealer will be unsound for two reasons. First, section 2(b) of the Central Act defines a dealer. A dealer is not defined as dealer under the Central Act but as one who carries on business of buying and selling. If the words "under this Act" were to relate only to dealer then the words "under this Act" would have to be scored out in relation to the words "tax E including any penalty payable". The result would be that the words "payable by a dealer" in the context of the words "as if the tax or penalty payable by such a dealer under this Act" would be rootless.

It is only tax as well as penalty payable by a dealer under the Central Act which can be assessed, re-assessed, collected and enforced in regard to payment. The words "as if the tax or penalty payable by F such a dealer under the Central Act is a tax or penalty payable under the general sales tax law of the State" have origin and root in the words "payment of tax including any penalty payable by dealer under the Central Act." Just as tax under the State Act cannot be payable and collected and enforced, similarly penalty under the State Act cannot be assessed, collected and enforced.

The words "and for this purpose they may exercise all or any of G the powers they have under the general sales tax law of the State" in section 9(2) of the Central Act are important. The words "and for this purpose" relate to "assess, re-assess, collect and enforce payment of tax including any penalty payable by dealer under this Act." In that context, the last limb of section 9(2) of the Central Act viz. "and the provisions of such law.....shall apply accordingly" mean that H the provisions of the State Act are applicable for the purpose of assessment, re-assessment, collection and enforcement of payment of tax including penalty payable under the Central Act. The words of the last part of section 9(2) *viz.* "shall apply accordingly" relate clearly

to the words "and for this purpose" with the result that the provisions of the State Act shall apply only for the purpose of assessment, re-assessment, collection and enforcement. The doctrine of *ejusdem generis* shows that the genus in section 9(2) of the Central Act is "for this purpose". In other words, the genus is assessment, re-assessment, collection and enforcement of payment. The genus is applicable in regard to the procedure for assessment, re-assessment, collection and enforcement of payment. The genus is from whom to collect and against whom to enforce. It is apparent that the extent of liability for tax as well as penalty is not attracted by the doctrine of *ejusdem generis in* the application of the provisions of the State Act in regard to assessment, re-assessment, collection and enforcement of payment of tax including any penalty payable under the Central Act.

The deeming provision in the Central Act that the tax as well as penalty levied under the Central Act will be deemed as if payable under the general sales tax law of the State cannot possibly mean that tax or penalty imposed under any State Act will be deemed to be tax or penalty payable under the Central Act. The entire authority of the State machinery is that "for this purpose" meaning thereby the purpose of assessing, re-assessing, collecting and enforcing payment of tax including any penalty payable under the Central Act, they, meaning the State agencies, may exercise powers under the general sales tax law of the State. The words "for this purpose" cannot have the effect of enlarging the content of tax and the content of penalty payable under the Central Act. Liability to pay tax as well as liability to pay penalty is created by the Central Act. One of the reasons why tax as well as penalty is the substantive provision in the Central Act and is not incorporated by reference to the State Act is illustrated by the history of section 9(2) of the Central Act. The present section 9(2) of the Central Act was formerly section 9(3) of the Central Act. The Madras High Court in *D. H. Shah & Co.'s* case pointed out that the imposition of penalty under section 12(3) of the Madras Act, 1959 could not be attracted for levy of penalty. The Madras High Court gave the reason that then section 9(3) of the Central Act only adopted the procedure of the State Act for assessment, re-assessment, collection and enforcement of tax as well as penalty payable under the Central Act.

The Madras High Court in *Angappa Chettiar & Sons* case (supra) gave the correct reason that the power to collect penalty under the then section 9(3) of the Central Act would cover only the penalty payable under the Central Act and would not include a power to impose penalty for a contravention or omission for which the Central Act did not contain a provision. In that case, the Madras General Sales Tax Act, 1939 which was incorporated by reference by section 9(3) of the Central Act as it then stood did not contain a provision for levy of a penalty. Subsequently, section 16(2) of the Madras General Sales Tax Act 1959 provided for levy of penalty for failure to disclose a relevant turnover. The conclusion which the Madras High Court

A arrived at was that provisions of then section 9(3) of the Central Act could not be applied for levy of a penalty under section 16(2) of the Madras Act.

The Mysore High Court in *Guldas Narasappa Thimmaiah Oil Mills* case (supra) which is the present appeal pointed out that the provisions contained in section 13(1) and (2) of the State Act in re-
B gard to penalty for default in making payment could not be applicable because a comparable provision was not to be found in the Central Act. The Mysore High Court correctly pointed out that the words "as if the tax or penalty payable by such dealer under this Act" show that the words "payable by such a dealer under this Act" relate to tax or penalty which is payable only under the Central Act.

C The Mysore High Court relied on the decision of this Court in *State of Kerala* v. *P. P. Joseph & Co.* 25 S.T.C. 483 in support of the proposition that the State law is applicable only in regard to procedure for assessment, re-assessment, collection and enforcement. If the liability to pay tax is determined by the provisions of the Central Act the liability to pay penalty is also that which is payable under the Central Act. This Court in the Kerala case said that the procedural
D law prescribed in the general sales tax law of the State applies to the matter of assessment, re-assessment, collection and enforcement of payment of tax under the Central Act because the liability to pay tax is determined under the Central Act. Similarly, liability to pay penalty is determined with reference to the provisions of the Central Act.

This Court in *Orissa Cement Limited* v. *The State of Orissa & Anr.*
E 27 S.T.C. 118 considered whether rebate provided in section 13(8) of the Orissa Sales Tax Act was available to dealers if they paid the tax under the Central Act before the due date of payment. It may be stated that at the relevant time of the decision in the *Orissa Cement* case (supra) the provisions contained in the then section 9(3) of the Central Act stated *inter alia* that "the provisions of such law including the provisions relating to returns, appeals, reviews, revisions, referen-
F ces, penalties and compounding of offences shall apply accordingly," and the word "rebate" did not occur there. This Court said that rebate for payment of tax within the prescribed time under the State Act was available to dealers for payment of tax under the Central Act on the reasoning 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 would include within itself all concessions given under
G the State Act for payment within the prescribed time. The reason why rebate is allowed and penalty is disallowed is that rebate is a concession whereas penalty is an imposition. The concession does not impose liability but penalty does. It, therefore, stands to reason that rebate is included within the procedural part of collection and enforcement of payment. Penalty like imposition of tax cannot be included within the procedural part.

H The decision of this Court in *C. A. Abraham, Uppoottil, Kottayam* v.*The Income Tax Officer, Kottayam & Anr.* (1961) 2 S.C.R. 765 was relied on by the Solicitor General in support of the proposition that

"assessment" includes liability to pay penalty. The ratio of the decision does not support the submission. In *Abraham's* case (supra) the assessee was subjected to tax for suppressed income and penalties for concealing the income. The question was whether section 44 of the Income Tax Act would attract liability to pay. Section 44 of the Act stated that the assessee would be liable to assessment under Chapter IV for the amount of tax payable and all the provisions of that Chapter would apply. This Court said that the word "assessment" had been used in its widest connotation in Chapter IV of the Act. It was contended that an order imposing penalty under section 28 of the Act could not by virtue of section 44 be imposed. This Court held that section 44 of the Act expressly enacted that the provisions of Chapter IV would apply to the assessment of a business carried on by a firm even after discontinuance of its business. Section 28 is one of the sections in Chapter IV. Section 28 imposed a penalty for the concealment of income or the improper distribution of profits. The defaults made in furnishing a return of the total income, in complying with a notice and in concealing the particulars of income were treated as penalties under setion 28. Section 28 was held by this Court to be a provision enacted for facilitating the proper assessment of taxable income and to apply to an assessment under Chapter IV. The decision of this Court in *Abraham's* case (supra) is non-sequiter in regard to the contentions advanced on behalf of the Revenue in the present case. The reason is that in *Abraham's* case (supra) assessment and imposition of penalty is under the same Chapter in the Act. The assessment is under Chapter IV. Penalty is provided in a section under Chapter IV. Penalty is arising in course of assessment under the same Act.

This Court in *Commissioner of Income-Tax, Andhra Pradesh* v. M/s. *Bhikaji Dadabhai & Co.* (1961) 3 S.C.R. 923 dealt with the meaning of the word "assessment." The Income-tax Officer there found that the assessee's books of accounts were unreliable and he issued a notice under section 40 of the Hyderabad Income-tax Act to show cause why penalty should not be imposed in addition to tax. The State of Hyderabad merged with the Indian Union during the pendency of the proceedings before the Income Tax Officer. By section 13 of the Finance Act, 1950 the Hyderabad Income Tax Act ceased to have effect from 1 April, 1950, but the operation of that Act in respect of levy, assessment and collection of income tax and super-tax in respect of periods prior thereto for which liability to income-tax could not be imposed under the Indian Income Tax Act was saved by section 13(1) of the Finance Act. The question was whether the Income-tax Officer had power on 31 October, 1951 to impose penalty under section 40 of the Hyderabad Income Tax Act. This Court held that the power of the Income-tax Officer to impose penalty under section 40 of the Hyderabad Act in respect of the year preceding the date of the repeal of the Hyderabad Income-tax Act was not lost because section 13 of the Finance Act, 1950 saved its operation. The proceedings for imposing penalty could be continued after the enactment of the Finance Act, 1950. The decision of this Court in *Bhikaji Dadabhai & Co's* case (supra) shows that penalty is imposed as a substantive liability.

A The Income Tax Act 1961 imposes penalty under sections 270 and 271. These sections in the Income Tax Act provide for imposition of penalty on contumacious or fradulent assessees. Penalty is in addition to income tax, if any, determined as payable by the assessee. Tax and penalty like tax and interest are distinct and different concepts under the Indian Income Tax Act. The word "assessment" could cover penalty proceedings if it is used to denote the whole procedure B for imposing liability on the tax payer as happened in *Abraham's* case (supra). Penalty is within assessment proceedings just as tax is within assessment proceedings when the relevant Act by substantive charging provision levies tax as well as penalty.

Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely C machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to section 28 of the Indian Income-tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This Court in *Jain Brothers & Ors.* v. *Union of India* 77 I.T.R. 107 said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax.

D

The Federal Court in *Chatturam & Ors.* v. *Commissioner of Income-tax, Bihar* 15 I.T.R. 302 said that liability does not depend on assessment. There must be a charging section to create liability. There must be first a liability created by the Act. Second, the Act must provide for assessment. Third, the Act must provide for enforcement of E the taxing provisions. The mere fact that there is machinery for assessment, collection and enforcement of tax and penalty in the State Act does not mean that the provision for penalty in the State Act is treated as penalty under the Central Act. The meaning of penalty under the Central Act cannot be enlarged by the provisions of machinery of the State Act incorporated for working out the Central Act.

F This Court in *State of Tamil Nadu* v. *K. A. Ramudu Chettiar & Co.* A.I.R. 1973 S.C. 2230 said that the power to enhance assessment which was contained in the Madras Act of 1959 though such power was not available under the 1939 Act would be available in respect of assessment under the Central Act. Enhancement of assessment is in the process of assessment. It is a procedural power. The liability to tax is created by the statute. Therefore, when the power to assess G is attracted a *fortiori* enhancement is within the power.

For the foregoing reasons we are of opinion that the provision in the State Act imposing penalty for non-payment of income-tax within the prescribed time is not attracted to impose penalty on dealers under the Central Act in respect of tax and penalty payable under the Central Act. There is no lack of sanction for payment of H tax. Any dealer who would not comply with the provisions for payment of tax, would be subjected to recovery proceedings under the Public Demands Recovery Act. A penalty is a statutory liability. The

Central Act contains specific provisions for penalty. Those are the only provisions for penalty available against the dealers under the Central Act. Each State Sales Tax Act contains provisions for penalties. These provisions in some cases are also for failure to submit return or failure to register. It is rightly said that those provisions cannot apply to dealers under the Central Act because the Central Act makes similar provisions. The Central Act is a self contained code which by charging section creates liablity for tax and which by other sections creates a liability for penalty and impose penalty. Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, reassessment, collection and enforcement of tax and penalty by a dealer under the Act.

For these reasons the appeal of M/s Khemka & Co. is accepted. The answer to the reference by the High Court is discharged. The question is answered in the negative, *viz.*, that the Tribunal was wrong in holding that penalty could be levied under section 16(4) of the Bombay Sales Tax Act, 1953. The appeal of the State of Mysore in Civil Appeal No. 2118 of 1970 is dismissed. The appellant will be entitled to costs in Civil Appeal No. 2089 of 1969. In view of the fact that in Civil Appeal No. 2118 of 1970 the High Court made no order as to costs, the parties will pay and bear their own costs.

MATHEW, J. 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.

The question for consideration in Civil Appeal No. 2089 of 1969 is, whether, upon a correct construction of s.9 of the Central Sales Tax Act (hereinafter referred to as the 'Central Act'), it was permissible for the Sales Tax Officer in question to invoke the provisions of s.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.

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,

A 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 B 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, re- C covery 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."

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 D 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 re- E turn, 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.

A careful analysis of s. 9(2) of the Central Act would show that the authorities empowered to assess, re-assess, collect and enforce F 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 as 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 State.

G

In effect, what s. 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 H 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 s. 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 s. 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 s.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.

In *C. A. Abraham Uppoottil* v. *The Income Tax Officer*(1) 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."

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 s. 44 may be resorted to for assessing tax due and payable by a firm which has discontinued, an order imposing penalty under s. 28 cannot, by virtue of s.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*(2):

> "....The defaults enumerated therein (in s. 28) relate to the process of assessment. Section 28, therefore, is a

(1) [1961] 2 S.C.R. 765 (2) [1957] 31 I.T.R. 678.

A provision enacted for facilitating the proper assessment of taxable income and can properly be said to apply to an assessment made under Chapter IV...."

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 B 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 s. 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 s. 16 of the Bombay Sales C 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.

In *Commissioner of Income Tax* v. *Bhikaji Dadabhai & Co.*(1) the Income Tax Officer in question found that the books of account of the respondent were unreliable and after assessing the income for D the year 1946-47, issued notice to the respondent on December, 22, 1949, under s. 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 s. 13 of the Finance Act, 1950, the Hyderabad Income Tax Act ceased to have E 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 F Income Tax Officer to impose penalty under s. 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 s. 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 G of s. 13(1) of the Indian Finance Act, 1950.

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 H to levy, assess, or collect the tax, the imposition of penalty would have been *ultra vires* the power of the Income Tax Officer.

(1) [1961] 3 S.C.R. 923.

In *Orissa Cement Limited* v. *The State of Orissa & Another*(1), the question was whether a dealer under the Central Act could claim the benefit of s. 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 s. 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.

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 are 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.

It is difficult to imagine that Parliament, when it enacted s. 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

(1) 27 S.T.C. 118.

A 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.

It was contended that only the penalties expressly provided for in the Central Act could be imposed by the sales tax authorities of the B 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*(1). The C 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 s. 9(2) of the Central Act, the whole machinery provided in the general sales tax law of the State has not D 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 E 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 s. 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 F 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 G general sales tax law of the State; and, fifthly, that the expressions in s. 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.

H We do not understand how the analogy of principal and agent has any relevance in this context. If the power of enforcement of payment

(1) 28 S.T.C. 367.

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 s. 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.

The marginal note of s. 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 s. 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 s. 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 s. 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 s. 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.

Sub-section (1) of s. 10A provides that if any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of s. 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 s. 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 (2) 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 s. 9.

It is clear from s. 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 s. 10A. The fact that s. 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 s. 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 non-payment of tax within the prescribed time would not 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 s. 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 s. 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 s. 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 s. 10 read with s. 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.

The decisions in *B. H. Shah & Co.* v. *The State of Madras*(1), *The State of Madras* v. *M. Angappa Chettiar & Sons*(2), *Guldas Narasappa Thimmaiah Oil Mills* v. *Commercial Tax Officer, Raichur*(3) and *Hardatroy Jute Mills Pvt. Ltd.* v. *Superintendent of Commercial Taxes, Purnea*(4) 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 s. 9(3) of the Central Act (substantially corresponding to present s. 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 s. 9(3) has no relevance here.

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 s. 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.

It was argued that the expression 'penalties' occurring in the latter part of s. 9(2) must refer to the penalties mentioned in the former part

(1) 20 S.T.C. 146.
(2) 22 S.T.C. 226.
(3) 25 S.T.C. 489.
(4) 30 S.T.C. 151.

A 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 B 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 C 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 D ..... 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.

We hold that the Sales Tax Officer was empowered to impose penalty provided in s. 16(4) of the Bombay Sales Tax Act for non-payment of E 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.

BEG, J.—Civil Appeal No. 2089 of 1969 arises out of an assess- F ment 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 G 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 :

H "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".

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.

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

A (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—

B (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...."

In this case, the Commercial Tax Officer, Raichur, filed application under Section 13(3)(b), of the Mysore Act before the Munsif C 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 D 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 E to this Court.

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, F 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.

G 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 provi- H sion, 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.

Relying upon the principles indicated by this Court in *Re Delhi Laws Act* (1912) etc.,(1) 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.

I also find from the Mysore Act of 1957, that Section 13 of the Act was entirely re-cast in 1958. It would, I 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.*

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

(1) [1951] S.C.R. 747.

A of 1959 speaks of certain "offences and penalties". Indeed, Chapter 8 of that Act is itself headed as "Offences and Penalties".

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 B be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization comes 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 C 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 D effect so that the persons who are to be subjected to such a liability for the infringement of law are 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".

E 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.

F 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).
>
> G (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 H 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".

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.

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

"(2) The penalty imposed upon any dealer under section 10-A 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 :

A

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
B 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
C shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India".

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 Sec. 9(2). Again, the new Sec. 9(2), introduced by Act 31 of 1958,
D empowered the Government of India only "to collect" the penalties mentioned in Sec. 10A of this Act "in the manner" laid down in Sec. 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 Sec. 10. This is the only kind of penalty which was enforceable by the procedure
E 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 1956 Act only lays down "the manner" of this "collection" of the penalty. In other words, Sec. 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
F 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 Sec. 10A of the Central Act and not by any provision of the State Act.

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
G 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
H 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, I 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.

A

B

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.

C

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);

D

> "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; *expressum facit cessare tacitum*".

E

No doubt this maxim has been described as "a useful servant but 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*,(1) 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.

F

G

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

C.A. 2089 *of* 1969 *allowed.*

C.A. 2118 *of* 1970 *dismissed*

H

P.B.R.

(1) (1880) 5 App. Cas. 842 at 856.