Shiv Dutt Rai Fateh Chand and Others

Vs

Union of India and Another

M/S Om Prakash Sheo Prakash and Others

Vs

Union of India and Others

Writ Petitions Nos. 9057 of 1982, 318-319 of 1980, etc., etc.

(A. P. Sen, E. S. Venkatramiah JJ)

06.05.1983

JUDGMENT

VENKATARAMIAH, J.-

1. The petitioners in these two batches of petitions filed under Article 332 of the Constitution have questioned the constitutional validity of sub-section (2-A) of Section 99 of the Central Sales Tax Act, 1956 (Act 74 of 1956) (hereinafter referred to as 'the Act') as amended by the Central Sales Tax (Amendment) Act, 1976 (Act 103 of 1976) (hereinafter referred to as 'the Amending Act') and Section 9 of the Amending Act validating the levy of penalties under the Act with retrospective effect.

2. The petitioners are dealers under the Act having their places of business in the States of Maharashtra, Haryana etc.

3. For the purpose of understanding the points of dispute raised in these cases, it is necessary to deal with the history of the legislation relating to taxes on inter-state sales and purchases of goods during the post constitution period. Under Entry 54 of List II of the Seventh Schedule to the Constitutions, the power to levy tax on sale or purchase of goods other than newspapers was assigned to the State legislature. The power to levy taxes on the sale or purchase of newspapers and on advertisements published therein was, however, assigned to Parliaments under Entry 92 of List I of the Seventh Schedule to the constitution. Article 286 (as it was originally enacted) of the Constitution which imposed certain restrictions on a State in the matter of levy of tax on the sale or purchase of goods read as follows :

> 286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such, sale or purchase takes place -

(a) outside the State; or

> (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.- For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

> (2) Except insofar as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-state trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty first day of March, 1951.

> (3) No law made by the legislature of a state imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the consideration of the President and has received his assent.

4. The true effect of the above Article on inter-state sales and purchases of goods was considered by this court in State of Bombay v. United Motors (India) Ltd. In that case this court held that Article 286 (1) (a) of the Constitution read with the Explanation there to and construed in the light of the Article 301 and Article 304 of the Constitution prohibited the taxation of sales or purchases involving inter-state element by all States except the State in which the goods were delivered for the purpose of consumption therein. In other words it was held that in the case of inter-state sales, the importing State alone was competent to levy tax on transaction of sale under its sales tax law on persons who were resident outside its territory provided the goods were delivered in the importing State for the purpose of consumption therein. The result of this decision was that a dealer carrying on business in the exporting State became amenable to the sales tax law of the importing state in which the goods were consumed. The question was again reconsidered in Bengal Immunity Company Ltd. v. State of Bihar. In that case, this court held that a reading of clause (1) (a) read with the Explanation, clause (1) (b), clause (2) and clause (3) of Article 286 showed that those clause were intended to deal with different topics and one could not be projected or read into the other and, therefore, the Explanation to clause (1) could not be legitimately extended to clause (2) either as an exception or as proviso to it or read as curtailing or limiting clause (2). Consequently it was held that the State of Bihar could not levy sales tax under its law on goods which were subject-matter of inter-State sales even though they had been consumed in that state in the absence of a law made by a Parliament as provided in clause (2) of Article 286. This judgment was delivered on September 6, 1955 and the view expressed in this case was further reiterated in M/s Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax which was decided on September 20, 1955. The result was that no State could levy sales tax on inter-State sales as there was no central legislation authorising it. This judgment caused a serious financial disequilibrium on the budgets of the the several states which had collected sales tax in accordance with the decision in the case of United Motor as they had to refund all the taxes so collected from the non-resident traders. This situation was met by the President promulgating Ordinance No. 3 of 1956 which was later on replaced by the Sales Tax Laws Validation Act, 1956 (Act 7 of 1956), whereby all collections of sales tax on inter-State sales by the States up to September 6, 1955 were validated and proceedings in respect of the levy on inter-State

sales for assessment were also protected. Later on in the light of the report of the Taxation Enquiry Commission, the Constitution itself was amended by the Constitution (Sixth Amendment) Act, 1956 by introducing Entry 92-A in the Union List, substituting Entry 54 in the state List by a new entry and by amending Article 269 and Article 286. Entry 92-A in the Union List reads :

> 92-A Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

5. Entry 54 in the State List now reads :

> 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.

6. The taxes levied on the inter-State sales and purchases by the Central Government under a law made pursuant to the new Entry 92-A came to be assigned to the States in the manner provided in clause (2) of Article 269 by the inclusion of sub-clause (g) in clause (1) of Article 269 by the under the new clause i.e. clause (3) added to Article 269, Parliament was empowered to formulate principles for determining when a sale or purchase of goods took place in the course of inter-State trade or commerce. After amendment the relevant part of Article 269 of the Constitution reads :

> 269. (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely -

#* * *##

> (g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

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> (3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

7. In Article 286 of the Constitution, the Explanation to clause (1) was omitted and clauses (2) and (3) were substituted by new clauses (2) and (3). Article 286 now reads as follows :

> 286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

8. accordingly the Act was passed in 1956. It has been amended a number of times since then. The Preamble to the Act states that the object of the Act is to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject. The expression 'dealer' is defined in Section 2 (b) of the Act

and the expression 'sale' is defined in Section 2 (g) thereof. Section 3 of the Act lays down the principles with reference to which the question whether a sale or purchase of goods has taken place in the course 4 of the Act provides for determining when a sale or purchase of goods is deemed to take place outside a State and Section 5 of the Act lays down the principles governing the determination of the question whether a sale or purchase has taken place in the course of export or import. Section 6 of the Act is the charging section. Sub-section (1) and (1-A) of Section 6 of the Act which are material for purposes of this case read as follows :

6. Liability to tax on inter-State sales.- (1) Subjects to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified :

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which in accordance with the provisions of sub-section (3) of Section 5, is a sale in the course of export of those goods out of the territory of India.

> (1-A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-state trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

9. Sub-section (2) of Section 6 of the Act deals with the circumstances when certain inter-State sales or purchases will be exempt from the liability imposed under sub-sections (1) and (1-A) of Section 6. Section 6-A of the Act deals with the burden of proof in the proceedings under she Acts. Section 7 of the Acts provides for registration of dealers, Section 8 specifies the rates of tax on sales in the course of inter-State trade or commerce and Section 8-A lays down the rules relating to determination of turnover. Section 9 of the Act which has undergone a number of changes provides for assessment, collection etc. of the levy made under the Act. By reason of the retrospective amendment made by the Central Sales Tax (Amendment) Act 28 of 1969, Section 9 (with effect from the commencement of the Act) read as follows :

9. Levy and collection of tax and penalties.- (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of Section 3, shall be levied by the Government of India and the tax so levied shall be collected by that 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 the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within sub-section (2) of Section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained the form prescribed for the purposes of clause (a) of sub-section (4) of Section 8 in connection with with the purchase of such goods.

> (2) 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 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 dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

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.

> (3) The proceeds in any financial year of any tax, including any penalty, l levied and collected under this Act in any State (other than a union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it and the proceeds attributable to Union territories form part of the Consolidated Fund of India.

10. It is seen from sub-section (2) of Section 9 quoted above that the authorities empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State are authorised to assess, reassess and enforce payment of tax including any penalty payable by a dealer under the Act. The authorities under the general sales tax law of the State have thus been made the agents of the Union Government in discharging the duties of assessment etc. referred to in Section 9 (2) of the Act, and empowered to exercise all or any of the powers they have under the general sales tax law of the State for the aforesaid purposes. Section 9 (2) further provides that the provisions of the general sales tax law of the State concerned 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 dissolution of any firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential shall apply accordingly to the proceedings under the Act. The proviso to sub-section (2) of Section 9 of the Act provides the if in any State or part there of 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 that sub-section. Sub-section (3) of Section 9 of the Act virtually caries out the intention of Article 269 of the Constitution by providing that the proceedings in any financial year of any tax, including any penalty levied and collected under the Act in any state (other than a Union Territory) on behalf of the Government of India shall be retained by it. It may be mentioned here that there was no express provision in the act itself authorising the levy of any penalty for delay or default in payment of the tax due under the Act or for other breaches of the general sales tax laws of the State insofar as they were adopted by Section 9 (2) of the Act as part of the machinery under the Act. But it was

understood by all the sales tax authorities in the States who were authorised to exercise power under Section 9 (2) that penalty could also be collected by them in accordance with the provisions of the general sales tax of the appropriate state in order to enforce the provisions of the Act including collection of tax thereunder. In Khemka & Co. v. State of Maharashtra which was a case heard by a Bench office learned Judges of this court, an assessee under the Act who was a resident of the State of Maharashtra contended that the levy of penalty under Section 16 (4) of the Bombay Sales Tax Act for delay or default in payment of tax due under the act was not warranted by the provision of Section 9 (2) of the Act. There were three opinions expressed in that a penalty not being merely a sanction or an adjunct to or consequential to an assessment and not being just a machinery to enforce payment of a tax but in reality was a statutory liability in the absence of any express provision of levy of penalty for delay or default in payment of the tax under the Acts, it was not open to the authorities under the State law to levy and recover penalty for delay or default in payment of tax under the Act. It was not open to the authorities under the State law to levy and recover penalty for delay or default in payment of tax under the Act. Mathew, J. with whom Chandrachud, J. (as he then was) agreed took a contrary view holding that if for enforcing payment of tax due under the general sales tax law of the appropriate State the authorities thereunder had power to impose penalty, they had the same power of imposing penalty for enforcing payment of tax payable under the Act in accordance with the general sales tax payable under the Act in accordance with the general sales tax law of the State. While the existence of specific provision for levy of penalty under Section 10 read with Section 10-A of the Act was relied on by A. N. Ray, C.J. in support of his view, the said provisions were explained by Mathew, J. by observing that the penalties provided for in Section 10 read with Section 10-A of the Act were not for the purpose of or in connection with assessment, reassessment, collection and enforcement of payment of tax payable by a dealer under the Act. Beg, J. (as he then was) by his separate judgment concurred with the view of A. N. Ray, C.J. The result was that the penalty levied against the appellant was held to be unsustainable in accordance with the opinion of the majority. Consequently Section 9 came to be amended by the Amending Act which was published in the Gazette of India on September 9, 1976 introducing sub-section (2-A) in it. We are not concerned with the other amendments made by the Amending Act in this case. Sub-section (2-A) of Section 9 which was introduced by the Amending Act reads :

> (2-A) All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in Section 10 and 10-A) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.

11. Sub-section (1) of Section 9 of the Amending Act contains a validating provision. Section 9 of the Amending Act declared that the provisions of Section 9 of the Amending Act declared that the provisions of Section 9 of the Act would have effect and should be deemed always to have had effect in relation to the period commencing from January 5, 1957 and ending with the date immediately preceding the date of commencement of the Amending Act as if Section 9 of the Act also provided -

> (a) that all the provisions relating to penalties (including provision relating to

penalties in lieu of prosecution for an offence or in addition to the penalties or punishment on conviction for an offence but excluding the provisions relating to matters provided for in Sections 10 and 10-A of the principal Act and the provisions relating to offences) of the general sales tax law of each State shall, with necessary modifications, apply in relation to -

(i) the assessment, reassessment, collection and enforcement of payment of any tax required to be collected under the principal Act in such State; and

(ii) any process connected with such assessment, reassessment, collection or enforcement of payment; and

(b) that for the purposes of the application of the provisions of such law, the tax under the principal act shall be deemed to be tax under be tax under such law.

12. sub-section (2) of Section 9 of the Amending Act validated all actions taken in connection with the levy of penalties by declaring that notwithstanding anything contained in any judgment, decree or order of any court or tribunal or other authority, all penalties under the general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of Section 9 of the Act and all proceedings, acts or things taken or done for the purpose of, or in relation to the imposition or collection of such penalties before the commencement of the Amending Act should for all purposes be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of sub-section (1) had been in force when such penalties were imposed or proceedings or acts or things were taken or done and accordingly -

(a) no suit or other proceedings shall be maintained or continued in or before any court or any tribunal or other authority for the refund of any amount received or realised by way of such penalty;

(b) no court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realised by way of such penalty;

(c) where any amount which had been received or realised by way of such penalty had been refunded before the commencement of this Act and such refund would not have been allowed if the provisions of sub-section (1) had been in force on the date on which the order for such refund was passed, the amount so refunded maybe recovered as an arrear of tax under the Act;

(d) any proceeding, act or thing which could have been validly taken, continued or done for the imposition of such penalty at any time before the commencement of this Act if the provisions of sub-section (1) had then been in force but which had not been taken, continued or done, may after such commencement be taken, continued or done.

13. Sub-section (3) of Section 9 of the Amending Act provided that nothing in Section 9 (2) thereof should be construed as preventing any person from questioning the imposition or collection of any penalty or any proceeding, act or thing in connection there with or from claiming any refund in accordance with Section 9 of the Act. The Explanation to this sub-section provided for the exclusion of the period between February 27, 1975 and the date of the commencement of the Act in computing the period of limitation for questioning the penalty.

14. Sub-section (4) of Section 9 of the Amending Act validated the levy of interest on arrears of sales tax also.

15. These petitions are filed after the Amending Act came into force.

16. In support of these petitions the petitioners have urged the followings contentions :

> 1. that the introduction of sub-section (2-A) in Section 9 of the Act does not have the effects of making the provisions relating to penalties leviable under the general sales tax laws of the State applicable to the proceedings under the Act;
>
> 2. that the Parliament cannot adopt the provisions relating to penalties in the general sales tax laws of the States for enforcing the charge under the Act, as such a course would amount to an abdication of its essential legislative function by Parliament;
>
> 3. that the provision giving retrospective effect to sub-section (2-A) of Section 9 of the Act and the provision validating all the penalties levied prior to the coming into force of the Amending Act are violative of clause (1) of Article 20 of the Constitution;
>
> 4. that the levy of penalties with retrospective effect is also violative of Article 19 (1) (f) and (g) of the Constitution; and
>
> 5. that in the case of assessees of the State of Haryana it is urged that Section 48 of the Haryana General Sales Tax Act is void as it confers arbitrary and unguided power on the authorities to levy penalties.

17. We shall consider these contentions seriatim.

18. The first contention urged on behalf of the petitioners is that the lacuna in the Acts which was pointed out by this court in Khemka case namely that there was no specific provision levying penalties in the Act as it stood before its amendment in 1976 remains unfilled up even now and hence no penalties can be recovered by utilising the provisions of the general sales tax laws of the respective States. This argument is based upon the language of sub-section (2-A) of Section 9 of the Acts which is extracted above. It is contended that the words " [All the provisions relating to offences and penalties... of the general sales tax law of each State shall with necessary modifications apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act..." are insufficient to make the provisions relating to penalties in the State laws applicable to the assessees under the Act as the word 'penalties' is not found along with the words 'assessment' reassessment, collection and then enforcement of payment of any tax'. The argument is misconceived. The principal object of the Act is not the levying of penalties. Its object is assessment, reassessment, collection and the enforcement of payment of central sales tax. The assessees incur the liability to pay penalties on account of certain acts or omissions committed by them at the various stages specified above, namely, assessment, reassessment, collection and the enforcement of payment of tax. The inclusion of the word 'penalties' along with these four stages would have, therefore, been redundant apart from being in appropriate. Sub-section (2-A) of Section 9 of the Act expressly makes all the provisions relating to offences and penalties which are committed or incurred, as the case maybe, under the general sales tax laws of the respective States, applicable to persons who commit corresponding acts and omissions at the above mentioned stages under the Act. To illustrate, if a person is liable to pay any

penalty for not filing a return required to be filed by him under the general sales tax law of the State, a person who is similarly required to file a return under the Act incurs the penalty for not filing a return and the measure of penalty is the same as under the State law. If a person is liable to pay penalty at a particular rate in addition to the tax for not paying any part of the tax due under a State law within the specified time, a person liable to pay tax under the Act becomes liable to pay the penalty at the same rate if he commits default in paying the tax due under the Act. We do not, therefore, find any lacuna in the language of sub-section (2-A) of Section 9 of the Act which makes the provisions relating to penalties under the general sales tax laws of the respective States in applicable even now to the proceedings under the Act. While sub-section (2-A) of Section 9 of the Act makes the provisions relating to both offences and penalties in the general sales tax laws of States applicable to the proceedings under the Act prospectively, Section 9 of the Amending Act makes all the provisions relating to penalties only in the general sales tax laws of the States applicable to the proceedings under the Act retrospectively by adopting the same language appearing in sub-section (2-A) of Section 9 of the Acts. This pattern of legislation had to be adopted perhaps because Parliament wished rightly not to give retrospective effect to the provisions relating to offences also which are referred to in sub-section (2-A) of Section 9 with effect from January 5, 1957 insofar as penalties were concerned by enacting sub-section (1) of Section 9 of the Amending Act, Parliament removed the deficiency pointed out in Khemka case in the Act. In view of the retrospective amendment, the basis of the judgment in Khemka case was also removed. Consequently the judgment delivered in that case could not stand in the way of realisation of penalties in accordance with the validating provisions of section 9 (2) of the Amending Act. We are of the view that sub-section (2-A) of section 9 of the Act and Section 9 of the Amending Act are adequate enough to assess and realise penalties with effect from January 5, 1957 as contemplated therein. We, therefore, hold that there is no substance in this contention of the petitioners.

19. The second point urged on behalf of the petitioners is that sub-section (2-A) of Section 9 of the Act suffers from the vice of excessive delegation of legislative power. It is argued that Parliament by adopting the provisions relating to offences and penalties referred to in the various general sales tax laws of the States has abdicated its essential legislative function. The question whether there has been excessive delegation or abdication of legislative power has to be decided on the meaning of the words in the statute and the policy behind it. In the instant case, Parliament has not authorised the State legislatures to make laws in respect of offences and penalties that may be leviable under the Act. What is done by Parliament by enacting sub-section (2-A) of Section 9 is that whatever provisions relating to offences and penalties were there in the general sales tax laws of the States would be applicable with appropriate modification to assessment, reassessment, collection and enforcement of the provisions of the Act. Legislation by incorporation of provisions of another stature even though passed by a different legislature is a well known method of legislation which does not affect the validity of the legislation particularly when the scheme of the other stature similar and such incorporation is relevant and necessary for the purpose of advancing the objects and purposes of the of the legislation. In the instant case we should bear in mind the history of the central sales tax legislation and its object and purpose. The central sales tax levied on inter-State sales is assigned under Article 269 of the Constitution to the States who are the true beneficiaries. The assessees under the Act who are spread over various States are accustomed to the general pattern of sales tax law in the or respective States and the various duties and responsibilities of an assessee who is liable to pay sales tax. The officers who assess and collect the tax under the Act are the officers who discharge similar functions under the State laws. In this situation if Parliament has, with the knowledge of the various provisions relating to offences and penalties in the general sales tax laws of the various States, adopted them for purposes of assessment, reassessment, collection

and enforcement of the provisions of the Act it cannot be said that it has abdicated its legislative functions. In this connection it is necessary to refer to the decision of this court in State of Madras v. N. K. Nataraja Mudaliar. In that case one of the contentions raised by the assessee related to the validity of Section 8 of the Act as amended by Central Act 31 of 1958. By sub-section (1) of section 8 every dealer who in the course of inter-State trade or commerce sold to the Government any goods or to a registered dealer, other than the Government, goods of the description referred to in sub-section (3) of Section 8 was liable to pay tax under the Act at the rate of 1 percent of his turnover. Under sub-section (2) of Section 8 the tax payable on the turnover relating to inter-State sales not falling under sub-section (1) of Section 8 was (a) in the case of declared goods, to be computed at the rate applicable to the sale or purchase of such goods inside the appropriate State and (b) in the case of goods other than declared goods at the rate of 7 per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State whichever was higher. Sub-section (2-A) of Section 8 of the Act provided that notwithstanding anything contained in sub-section (1) or sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer was exempt from tax generally or subject to tax generally at a rate which was lower than 1 per cent (whether called a tax, a fee or by any other name) the tax payable under the Act on his turnover insofar as the turnover or any part thereof related to the sale of such goods should be nil or as the case might be, should be calculated at the lower rate. The Explanation to sub-section (2-A) of Section 8 provided that for the purpose of that sub-section, a sale or purchase of goods should not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that it was exempt only in specified circumstances or under specified conditions or in relation to which the tax was levied at specified stages or otherwise than with reference to the turnover of goods. Justifying the varying rates of tax under sub-section (2) and (2-A) of Section 8 depending upon the rates of tax levied in different States, Shah, J. observed at SCR pages 844-46 thus :

> The rates of tax in force at the date when the Central Sales Tax Act was enacted have again not become crystallised. The rate which the State Legislature determines, subject to the maximum prescribed for goods referred to in Section 8 (1) and (22) are the operative rates for those transaction : in respect of transactions falling within Section 8 (2) (b) the rate is determined by the State rate except where the Start rate is between the range of two and seven per cent. The rate which a State Legislature imposes in respect of inter-State transactions in a particular commodity must depend upon a variety of factors. A State may be led to impose a high rate of tax on a commodity either when it is not consumed at all within the State, or if it feels that the burden which is falling on consumers within the State will be more than offset by the gain in revenue ultimately derived from outside consumers. The imposition of rates of sales tax is normally influenced by factors political and economic. If the rate is so high as to drive away prospective traders from purchasing a commodity and to resort to other sources of supply, in its own interest the State will adjust the rate to attract purchasers. Again, in a democratic constitution political forces would operate against the levy of an unduly high rate of tax. The rate of tax on sales of a commodity may not ordinarily be based on arbitrary considerations but in the light of the facility of trade in a particular commodity, the market conditions-internal and external - and the likelihood of consumers not being scared away by they price which includes a high rate of tax. Attention must also be directed to subsection (5) of Section 8 which authorises the State Government, notwithstanding anything contained in Section 8, in the public interest to waive tax or impose tax on sales at a lower rate on inter-State

trade or commerce. It is clear that the legislature has contemplated that elasticity of rates consistent with economic forces may be maintained.

Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another. Under the Constitution as originally framed, revenue from sales-tax was reserved to the States. But since the power of taxation could be exercised in a manner prejudicial to the larger public interests by the States it was found necessary to restrict the power of taxation in respect of transactions which had an inter-State content. Amendment of Article 286 and the enactment of the Sales Tax Validation Act, 1956, and the Central Sales Tax Act, 1956, were all intended to serve a dual purpose : to maintain the source of revenue from sales-tax to the States and at the same time to prevent the State from subjecting transactions in the course of inter-State trade so as to obstruct the free flow of trade by making commodities unduly expensive. The effect of the Constitutional provisions achieved in a some what devious manner is still clear, viz. to reserve sales-tax as a source of revenue for the states. The Central Sales Tax Act is enacted under the authority of the Union Parliament, but the tax is collected through the agency of the State and is levied ultimately for the benefit of the States and is statutorily assigned to the States. That is clear from the amendments made by the Constitution (Sixth Amendment) Act, 1956, in Article 269, and the enactment of clauses (1) and (4) of Section 9 of the Central Sales Tax Act. The Central sales-tax though levied for and collected in the name of the Central Government is a part of the sales-tax levy imposed for the benefit of the states. By leaving it to the state transactions no discrimination is practised : and by authorising the State from which the movement of goods commences to levy on transactions of sale Central sales-tax, at rates prevailing in the State, subject to the limitation already set out, in our judgment, no discrimination can be deemed to be practised.

20. In Gwalior Rayon silk Mfg. (Wvg.) Co. Ltd. v. Asst. C. S. T. this court had to consider whether Section 8 (2) (b) of the Act suffered from the vice of excessive delegation. The material part of Section 8 (2) (b), as it stood then, provided that the tax payable by any dealer on his turnover insofar as it related to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) thereof and in case of goods other than dealered goods should be calculated at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State whichever was higher. This provision meant that while the tax due on the sale of the goods in question could not be less than 10 per cent of the turnover, it could be any amount higher than that as might be determined by a State legislature in respect of the intra-state transactions of sales or purchases of the said goods. In the above case there were two judgments both up holding the validity of the impugned provision.

21. The majority judgment delivered by Khanna, J. saw that there was a legislative policy behind the provision, namely, that the rate of sales tax on the goods in question should be not less than 10 per cent but in any event should be the same as the local sales tax for the said goods. Khanna, J., however, held that it was not possible to accept the view that the legislature would not be abdicating its essential legislative function merely because it could always repeal the law delegating legislative power to another authority. The minority view expressed by Mathew, J., however, differed from Khanna, J. on the above point, but agreed with the conclusion of the majority on the validity of the impugned provision. A reading of the above decisions shows that the question of valid delegation of legislative power requires to be further examined by this court in view of a subsequent decision of this court in M. K. Papiah & Sons v. Excise Commissioner in which we do not find any reference at all to the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. Even so, so far as the present case is concerned, judging it in the light of either of the two views, it has to be held that sub-section (2-A)

of Section 9 of the Act does not suffer from the vice of excessive delegation merely because the provisions relating to penalties in the general sales tax laws of the States are adopted for purposes of the Act.

22. It may be true that the circumstances leading to imposition of penalties and the rates of penalties vary from one State to the other but the power to make a legislative provision on matters relating to penalties is circumscribed by various economic factors and its cannot be said that Parliament has virtually surrendered its legislative judgment to the State legislatures. There is a clear legislative policy adopted by Parliament in the case of levy of penalties and that is that the penalties payable under the general sales tax law of each State. If the rates of penalties exceed reasonable limits the States which are the beneficiaries of the tax collected under the Act themselves suffer as such unreasonable levy is bound to lead to the killing of the goose which lays the golden egg. The trade would immediately shift to areas outside the State which resorts to higher taxes and penalties. The political and economic factors which operate in this field are so powerful that the provisions with regard to penalties to be made by the State legislature cannot but be reasonable as they would affect the levy of tax under the State Act also. The penal nature of the penalties it self is a sufficient guidance regarding maximum limits upto which penalties can be levied. A penalty cannot be wholly disproportionate to the extent of infringement of law. Moreover Parliament always has the power to amend its own law i.e. the Acts if it finds that the provisions relating to penalties in any State law cross the limits of public interest. It is of interest to note here that in the case of M. K. Papiah & Sons it was held that the existence of the power to repeal or modify its own law in order to bring a piece of delegated legislation in accord with its own legislative will should be considered as an effective check on the misuse of legislative power by the delegate. The power of Parliament to remedy a situation created by the levy of penalties by the general sales tax laws of States not in consonance with its own pleasure is also an answer to the criticism that Parliament has effaced itself in enacting sub-section (2-A) of "Section 9 of the Act. As long as such power is intact and can be exercised whenever Parliament wishes to take the matter directly into its own hands, there cannot be a total effacement of the legislative power of Parliament. The above view receives support from the following passage in Australian Constitutional Law by Fajgenbaum & Hanks (Second Edition) at page 202 :

3.009.... Parliament can delegate to the Crown, or to any servant of the Crown, the power to demand the payment of taxes, including the power to fix the rate of taxation. A clear illustration is provided by the provisions of the State Transport Facilities Act 1974 (Qld) and the State Transport Act 1960 (Qld) which gave to a commissioner for transport very broad powers to license services for the carriage of passengers and goods and to fix the amount of licence fee to be paid be every licencee. The validity of these provisions was upheld by the Privy Council in Cobb & Co. Ltd. v. Kropp, rejecting an argument that the Queensland Parliament had no power to abrogate its taxing power in this way :

> In their Lordships' view the Queensland legislature were fully warranted in legislating in the terms of the Transport Acts now being considered. They preserved their own capacity in tact and they retained perfect control over the commissioner for transport in as much as they could at any time repeal the legislation and withdraw such authority and discretion as they had vested in him. It cannot be asserted that there was a levying of money by pretence of prerogative without grant of Parliament or without parliamentary warrant.

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The legislature were entitled to use any agent or any subordinate agency or any machinery that they considered appropriate for carrying out the objects and purposes that they had in mind and which they designated. They were entitled to use the commissioner for transport as their instrument to fix and recover the licence and permit fees.

23. We feel that even applying the rule in the Gwalior Rayon Silk Mfg. (Wvg.) Co. case, it cannot be said that sub-section (2-A) of Section 9 suffers from the vice of excessive delegation of legislative power having regard to the nature of that provision.

24. We shall now proceed to consider the question whether by reason of retrospective effect having been given to sub-section (2-A) of Section 9 of the Act insofar as penalties are concerned by enacting Section 9 of the Amending Act Parliament has contravened Article 20 (1) of the Constitution. In order to make good the deficiency in the Act pointed out by the majority judgment in Khemka case the validating provision contained in Section 9 of the Amending Act provided in substance that insofar as penalties were concerned sub-section (2-A) of Section 9 should be deemed to have had effect in relation to the period commencing on January 5, 1957 and ending with the date immediately preceding the date of commencement of the Amending Act 6. That is obvious from the similarity of they language between sub-section (2-A) of Section 9 of the Act and Section 9 (1) of the Amending Act. Section 9 (2) of the Amending Act also contained the usual provision validating the levy of penalties completed prior to the commencement of the Amending Act and authorising the continuance of the proceedings for levy of penalties in respect of the period commencing from January 5, 1957. In the instant case it may be noted that in all the general sales tax laws of the States, there were provisions requiring every dealer to comply with statutory requirements such as the filing of returns, the payment of the tax due within the specified time etc. and they were applicable to the dealers under the Act by reason of Section 9 (2) of the Act. Notwithstanding such statutory provisions many dealers failed to perform their statutory duties. They would have been liable to penalties mentioned in the relevant statutory provisions if the defaults committed by them those committed under the said statutory provisions. On the basis of the language of sub-section (2) of Section 9 of the Act in many States proceedings for levying penalties in accordance with the provisions relating to penalties in their respective general sales tax laws were commenced against such defaulters under the Act and in some cases proceedings were completed and penalties were also recovered. Some High Courts also took the view that such penalties were validly leviable. But ultimately this court by a majority of 3 : 2 held in Khemka case that since there was no express provision in the Act permitting the levy of such penalties, the proceedings relating to the determination and recovery of penalties were not valid. The Amending Act was, therefore, passed expressly to make the levy of penalties as per the general sales tax laws in force in the States permissible with retrospective effect and also to validate all such previous proceedings. Article 20 of the Constitution reads thus :

> 20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

25. The contention of the petitioners is that any act or omission which is considered to be a default

under the Act for which penalty is leviable is an offence, that such act or omission was not an offence and no penalty was pay able under the law in force at the time when it was committed and hence they cannot be punished by the levy of penalty under a law which is given retrospective effect. They principally rely on Article 20 (1) in support of their case. Article 20 (1) is modelled on the basis of Section 9 (3) of Article 1 of the Constitution of the United States of America which reads : "No bill of attainder or ex post facto law shall be passed."This clause has been understood in the United States of America as being applicable only to legislation concerning crimes (see Calder v. Bull. The expression 'offence' is not defined in the Constitution. Article 367 of the Constitution says that unless the context otherwise provides for words which are not defined in the Constitution, the meaning assigned in the General Clauses Act defines 'offence' as any act or omission made punishable by any law for the time being in force. The marginal note of our Article 20 is 'protection in respect' of conviction for offences'. The presence of the words 'conviction' and 'offences', in the marginal note 'Convicted of an offence', 'the act charged as an offence' and 'commission of offence' in clause (1) of Article 20, 'prosecuted and punished'in clause (2) of Article 20 and 'accused of an offence' and 'compelled to be a witness against himself' in clause (3) of Article 20 clearly suggests that Article 20 relates to the constitutional protection given to persons who are charged with a crime before a criminal court [see H. M. seervai : Constitutional Law of India (3rd Edn.), Vol. 1, p. 759]. The word 'penalty' is a word of wide significance. Sometimes it means recovery of amount as a penal measure even in a civil proceeding. An exaction which is not of compensatory character is also termed as a penalty even though it is not being recovered pursuant to an order finding the person concerned guilty of a crime. In Article 20 (1) the expression 'penalty' is used in the narrow sense as meaning a payment which has to be made or a deprivation of liberty which has to be suffered as a consequence of a finding that the person accused of a crime is guilty of the charge.

26. In Maqbool Hussain v. State of Bombay, the question for consideration was where when the Customs authorities confiscated certain goods under the Sea Customs Act there was a prosecution and the order of confiscation constituted a punishment within the meaning of clause (2) of Article 20. Negativing the said plea, this court observed at SCR pages 738-39 :

> The very wording of Article 20 and the words used there in :- "convicted", "commission of the act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

27. The levy of charges for 'unauthorised use' of water enforced with retrospective effect was held to be not offending Article 20 (1) in Jawala Ram v. State of Pepsu Similarly in State of W. B. v. S. K. Ghosh the forfeiture provided under Section 13 (3) of the Criminal Law Amendment Ordinance 1944 (38 of 1944) was held to be not a penalty within the meaning of Article 20 (1) of the Constitution and in that connection this court observed at SCR pages 130-31 thus :

> Article 20 (1) deals with conviction of persons for offences and for subjection of them to penalties. It provides firstly that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence". Secondly, it provides that no person shall be "subjected to a penalty greater than that which might have been inflicted under the law in force at the time of

> the commission of the offence". Clearly, therefore Article 20 is dealing with punishment for offences and provides two safeguards namely, and (i) that no one shall be punished for an act which was not an offence under the law in force when it was committed, and (ii) that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. The provision for forfeiture of any Section 13 (3) has nothing to do with the infliction of any penalty on any person for an offence. If the forfeiture provided in Section 13 (3) were really a penalty on a convicted person for commission of an offence we should have found it provided in the 1943-Ordinance and that penalty of forfeiture would have been inflicted by the criminal court trying the offender.

28. Again while upholding Section 25-FFF (1) (which came into force on June 6, 1957) of the Industrial Disputes Act, 1947 which directed compensation to workers who had been retrenched earlier on and after November 28, 1956, this court observed in M/s Hatisingh Mfg. Co. Ltd. v. Union of India at SCR pages 536 and 545 thus :

> A law which creates a civil liability in respect of a transaction which has taken place before the date on which the Act was enacted does not per se impose an unreasonable restriction.... (page 536)

If the statute fixes criminal liability for contravention of the prohibition or the command which is made applicable to transactions which have taken place before the date of its enactment the protection of Article 20 (1) may be attracted.... By Section 33 (c), liability to pay compensation may be enforced by coercive process, but than again does not amount to infringement of Article 20 (1) of the Constitution. Undoubtedly for failure to discharge liability or pay compensation, a person may be imprisoned, under the statute providing for recovery of the amount e.g. the Bombay Land Revenue Code, but failure to discharge a civil liability is not unless the statute expressly so provides, an offence. The protection of Article 20 (1) avails only against punishment for an act which is treated as an offence, which when done was not an offence. (Page 545)

29. The petitioners have relied upon certain decisions in support of their contention. We shall deal with some of them. It is true that in Rai Bahadur Hurdut Roy Moti Lall Jute Mills v. State of Bihar. The High Court of Patna held that the amendment of Section 14-A of the Bihar Sales Tax Act, 1947 by Bihar Act 4 of 1955 insofar as it authorised the imposition of the penalty of forfeiture of the amounts collected earlier by dealers in contravention of the provisions of Section 14-A, without prejudice to any punishment for an offence under that Act, was violative of Article 20 (1) of the Constitution. We have gone through that decision. We do not find any tenable reason given by the High Court in support of its view. It may be added here that in the appeal filed against that decision before this court in State of Bihar v. Rai Bahadur Hurdut Roy Moti Lall Jute Mills the judgment of the High Court was confirmed on the ground that the penalty of forfeiture was not impossiable on the facts of that case, but on the question of the applicability of Article 20 (1) of the case, this court declined to express any opinion on the ground that it was purely an academic issue. In Shew Bhagwan Goenka v. C. T. O., the Calcutta High Court observed that the retrospectives operation of an amendment to the Bengal Finance (Sales Tax) Act, 1941 which imposed an unexpected liability in respect of certain transactions which when they took place were not subject to any charge or liability under that Act was opposed to Article 20 (1) of the Constitution. In that case the facts were that as a result of the modification of the definition of the word 'business' with retrospective effect, the assessee became liable to pay tax on the turnover relating to sales of certain old and discarded machineries and equipments. The assessee had not been prosecuted for any offence or punished by

any criminal court as a consequence of such amendment. It was open to the High Court to hold that if there was any such prosecution for any offence it was violative of Article 20 (1) was, therefore, unnecessary for realisation of tax was concerned Article 20 (1) was, therefore, unnecessary for deciding that case. The observations made by this court in C. W. T. v. Suresh Seth at SCR page 430 to the effect : [SCC para 11, p. 798 :

In the case of acts amounting to crimes the punishment to be imposed cannot be enhanced at all under our Constitution by any subsequent legislation by reason of Article 20 (1) of the Constitution which declares that no person shall be subjected to a penalty greater that that which might have been inflicted under the law in force at the time of the commission of the offence. In other cases, however, even though the liability may be enhanced it can only be done by a subsequent law (of course subject to the Constitution) which either by express words or by necessary implication provides for such enhancement.

are obviously of no assistance to the petitioners.

30. On the other hand, a Full Bench of the High Court of Allahabad has held in Raghunandan Prasad Mohan Lal v. I. T. A. T. that Article 20 of the Constitution contemplates proceedings in the nature of criminal proceeding and it does not apply to penalty proceeding under the Income Tax Act, 1961 which have a civil sanction and are revenue in nature. The High Court of Madhya Pradesh has held in Central India Motors v. Asst. C. S. T. that Article 20 (1) is not attracted to the case of a levy of penalty made with retrospective effect under the Madhya Pradesh General Sales Tax Act, 1958.

31. After giving an anxious consideration to the points urged before us, we feel that the word' penalty' used in Article 20 (1) cannot be construed as including a 'penalty' levied under the sales tax laws by the departmental authorities for violation of statutory provisions. A penalty imposed by the Sales Tax authorities is only a civil liability, though penal in character. It may be relevant to notice that sub section (2-A) of Section 9 of the Act specifically refers to certain acts and omissions which are offences for which a criminal prosecution would lie and the provisions relating to offences have not been given retrospective effect by Section 9 of the Amending Act. The argument based on Article 20 (1) of the Constitution is, therefore, rejected.

32. The next point to be considered is whether the imposition and collection of penalty with retrospective effect amounts to an imposition of an unreasonable restriction on the fundamental right of the petitioners to own property and to carry on business guaranteed under Article 19 (1) (f) and (g) of the Constitution. We have already indicated above the circumstances under which it became necessary to levy penalties with retrospective effect and to validate all the proceedings relating to levy of penalties and recovery thereof. The scope of the power of a legislature to make a law validating the levy of a tax or a duty retrospectively was considered by this court in Chhotabhai Jethabhai Patel & Co. v. Union of India. The court held that Parliament acting within its legislative filed had the power and the could by law both prospectively and retrospectively levy excise duty under the Central Excises and Salt Act, 1944 even where it was established that by reason of the retrospective effect being given to the law, the assesses were incapable of passing on the excise duty to the buyers. After considering certain American decisions, Ayyangar, J. observed at SCR page 37 thus :

It would thus be seen that even under the constitution of the United States of America the unconstitutionality of a retrospective tax is rested on what has been termed"the vague contours of

the 5th Amendment. Whereas under the Indian Constitution that grounds on which infraction of the rights a property is to be tested not by the flexible rule of "due - process"but on the more precise criteria set out in Article 19 (5), mere retrospectivity in the imposition of the tax cannot per se render the Law unconstitutional on the ground its infringing the right to hold property under Article 19 (1) (f) or depriving the person of property under Article 31 (1). If on the one hand, the tax enactment in question were beyond legislative competence of the Union or a State necessarily deferent considerations arise. Such unauthorised imposition would undoubtedly not be a reasonable restriction on the right to hold property besides being an unreasonable restraint on the carrying on of business, if the tax in questions is one which is laid on a person in respect of his business activity.

33. The court was more emphatic in Rai Ramkrishna v. State of Bihar about the power of the legislature in India to enact retrospective taxation laws. It held that if in its essential features an taxing statue is within the competence of the legislature, it would not cease to be so if retrospective effect is given to it. A power to make a law, therefore, includes within its scope to make all relevant provisions which are ancillary or incidental to it. The provision for levying of interest and to levy penalties retrospectively and to validate earlier proceedings under laws which have been declared unconstitutionality; after removing the element of unconstitutionaly is included within the scope of legislative power. In the above mentioned case of Rai Ramkrishna, a Bihar Act levying a tax on passengers and goods passed in 1950 was declared to be unconstitutional by this court in December 1960. An Act validating the said levy after removing constitutional deficiencies in it was passed with the assent of the President in September 23, 1961 and that Act was given retrospective effect from April 1, 1950 on which date the earlier Act which had been declared as unconstitutional had come into force. The limited challenge mounted against the validating Act was that the provisions contained in Section 23 (b) thereof which provided that any proceeding commenced or purported to have been commenced for the assessment, collection and recovery of any amount as tax or penalty under the provisions of the earlier Act which had been declared as unconstitutional or the rules made thereunder during the period from April 1, 1950 to July 31, 1961, i.e. till the date on which an Ordinance which was replaced by the provisions of the validating Acts and if not already completed should be continued and completed in accordance with the validating Act was opposed to Article 304 (b) and Article 19 (1) (f) and (g). It was urged in that case on the basis of the observation made in Sutherland on Statutes and Statutory Constructions to the effect that :

Tax statues may be retrospective if the legislature clearly so intends. If the retrospective features of a law is arbitrary and burdensome the statute will not be sustained.

that the length of retrospectivity, that is, 11 years was an unreasonable restriction on the rights guaranteed under Article 19 (1) (f) and (g). This contention was rejected by this court at SCR pages 915 and 916 of the Report as follows :

> We do not think that such a mechanical test can be applied in determining the validity of the retrospective operation of the Act. It is conceivable that cases may arise in which the retrospective operation of a taxing or other statue may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional; but the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test. We may have a statue whose retrospective operation covers a comparatively short period and yet it is possible that the nature of the restriction imposed by it may be of such a character as to introduce a serious infirmity in the retrospective operation. On the other hand, we may get cases where the period covered by the retrospective operation of the

> statute, though long, will not introduce any such infirmity. Take the case of Validating Act. If a statute passed by the legislature is challenged in proceedings before a court, and the challenge is ultimately sustained and the statute is struck down, it is not unlikely that the judicial proceedings may occupy a fairly long period and the legislature may well decide to await the final decision in the said proceedings before it uses its legislative power to cure the alleged infirmity in the earlier Act. In such a case, if after the final judicial verdict is pronounced in the matter true legislature passes a validating Act, it may well cover a long period taken by the judicial proceedings in Court and yet it would be inappropriate to hold that because the retrospective imposed by it is unreasonable. That is why we think the rest of the length of time covered by the retrospective operation cannot by itself be treated as a decisive test.

Take the present case. The earlier Act was passed in 1950 and came into force on April 1, 1950, and the tax imposed by it was being collected until an order of injunction was passed in the two suits to which we have already referred. The said suits were dismissed on May 8, 1952, but the appeals preferred by the appellants were pending in this Court until December 12, 1960. In other words, between 1950 and 1960 proceedings were pending in court in which the validity of the Act was being examined, and if a Validating Act had to be passed, the legislature cannot be blamed for the having awaited the final decision of this Court in the said proceedings. Thus the period covered between the institution of the said two suits and their final disposal by this Court cannot be pressed into service for challenging the reasonableness of the retrospective operation of the Act.

34. In the instant case, the facts are one shade better. There is no dispute in this case about the validity of the tax payable under the Act during the period between January 1, 1957 and the date of commencement of the Amending Act. It has to be presumed that all the tax has been co__llected by the dealers from their customers. There is also no dispute that the law required the dealers to pay the tax within the specified time. The dealers had also the knowledge of the provisions relating to penalties in the general sales tax laws of their respective States. It was only owing to the deficiency in the Act pointed out by this court in Khemka case the penalties became not payable. In this situation, where the dealers have utilised the money which should have been paid to the Government and have committed default in performing their duty, if Parliament calls upon them to pay penalties in accordance with the law as amended has been any unreasonable restriction effect it cannot be said that there has been any unreasonable restriction imposed on the right guaranteed under Article 19 (1) (f) and (g) of the Constitution, even though the period of retrospectivity is nearly 19 years. It is also pertinent to refer here to sub-section (3) of Section 9 of the Amending Act which provides that the provisions contained in sub-section (2) thereof world not prevent a person from questioning the imposition or collection therewith or for claiming any refund in accordance with the Act as amended by the Ameing Acts read with sub-section (1) of Section 9 of the Amending Act. Explanation to sub-section (3) of Section 9 of the Amending Act also provides for exclusion of the period between case was delivered up to the date of the commencement of the Amending Act in computing the period of limitation for questioning any order levying penalties. The contention that the impugned provision is violative of Article 19 (1) (f) and (g) of the Constitution has, therefore, to be rejected.

35. The next contention relates to the validity of Section 48 of the Haryana General Sales Tax Act, 1973 (Act 20 of 1973). It reads :

> 48. Failure to maintain correct accounts and to furnish correct returns.-If a dealer has

> maintained false or incorrect accounts with a view to suppressing his sales, purchase or stocks of goods, or has concealed any particulars of his sales, purchase or has furnished to, or produced before any authority under this Act or the rules made thereunder any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 may after affording such dealer a reasonable opportunity of being heard direct him to pay, by way of penalty, in addition to any tax payable by him, a sum not less than twice and more than ten times the amount of tax which would have been avoided if the turnover returned by such dealer had been accepted as correct and where no tax is payable a sum not less than one hundred rupees but not exceeding one thousand rupees.

36. The argument urged on behalf of the dealers in the State of Haryana is that this section which authorises the levy of penalty at 'a sum of not less than twice and more than ten times the amount of tax' on proof of the defaults mentioned therein is violative of Article 14 as there is no guidance given to the authority levying the penalty about the quantum of penalty. There is no substance in this plea. The provision in question itself suggests that the levy to be made it in the nature of a penalty which requires the authority concerned to apply his mind to all relevant aspects of the default alleged to have been committed by a dealer. First the default committed by the dealer should be established at an enquiry after giving the dealer concerned an opportunity of being heard. The degree of remissness involved in the default is a relevant factor to be taken into account while levying penalty. The section provides both the minimum and the maximum amount of penalty leviable and it is correlated to the amount of tax which would have been avoided if the turnover returned by such dealer had been accepted as correct. The order levying penalty is quasi-judicial in character and involves exercise of judicial discretion. The considerations which should weigh with the authorities while imposing penalty are well known and have been settled by many decisions. Hindustan Steel Ltd. v. State to Orissa is one such decision. An order levying penalty under Section 48 of the Haryana General Sales Tax Act is also subject to the provisions relating to appeal, etc. set out in Chapter VII thereof. In the circumstances, it is not possible to hold that Section 48 of the Haryana General Sales Tax Act, 1973 confers an uncanalised, unguided and arbitrary power on the authority levying penalty. This contention should, therefore, fail.

37. In writ Petition No. 7220 of 1982 it was faintly suggested that the order of penalty had been passed by an authority not authorised by law. We find from the record that the said order is passed by the Assessing Authority-cum-Excise and Taxation Officer, Hissar authorised by the State Government apparently under Section 2 (a) Rule 4 (1) of the Haryana General Sales Tax Rules, 1975. We do not find any substance in this contention too.

38. In the result these petitions fail and they are dismissed. In the circumstances of these cases, there will be no order as to costs.

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