

PATNA HIGH COURT

Hurdatroj Jute Mills Private Ltd

Vs

Superintendent of Commercial

(S.N.P. Singh and S A Husain, JJ.)

24.03.1972

JUDGMENT

S.N.P. Singh, J.

1. Hurdatroj Jute Mills Private Limited (petitioner No. 1) is a private limited company registered under the Indian Companies Act, 1913, and petitioners Nos. 2 and 3 are the directors of petitioner No. 1. Petitioner No. 1 has a factory at Katihar in the district of Purnea which manufactures jute products like hessians, twines, gunny bags, etc. Petitioner No. 1 is registered under the Central Sales Tax Act, 1956 (hereinafter to be called "the Central Act") as well as under the Bihar Sales Tax Act, 1959 (hereinafter to be called "the Bihar Act"). Respondent No. 1 is the officer appointed, under the Bihar Act having jurisdiction to assess petitioner No. 1 under the Central Act. In this writ application under articles 226 and 227 of the Constitution, the petitioners have challenged the validity of the assessment order dated the 20th of January, 1969, passed by respondent No. 1 for the period 1st of April, 1968, to the 30th of November, 1968. A copy of the assessment order has been made annexure 1 to the application.

2. It appears that the petitioners filed monthly returns showing Rs. 1,00,75,507.99 as gross turnover. Respondent No. 1 on examination of the books of account of petitioner No. 1 accepted that gross turnover and proceeded to determine the tax on the basis of that turnover. Petitioner No. 1 had claimed sales of Rs. 23,89,000 and odd outside the State of Bihar through arhat and had produced sale notes from the commission agents residing outside the State of Bihar. The claim of petitioner No. 1 was allowed. Petitioner No. 1 had further claimed a deduction on account of sales inside the State of Bihar for Rs. 3,00,000 and odd. That claim was also allowed by respondent No. 1. Deducting the two amounts aforesaid, the balance taxable turnover under the Central Act was determined at Rs. 73,53,649.16". It appears that petitioner No. 1 had shown total sales in the course of inter-State trade and commerce to the registered dealers and Government departments of the various States but it had filed declarations in forms 'C and 'D'

only for Rs. 53,18,465.41. As the declaration in respect of Rs. 3,324 in 'C form did not carry the requisite certificate by the purchasing dealers, the declaration for that amount was disallowed and petitioner No. 1 was made liable to pay tax at the rate of 10 per cent, on account of such sales. Finally, respondent No. 1 assessed petitioner No. 1 on the turnover of Rs. 53,15,141.41 at the rate of 3 per cent, and on the balance turnover of Rs. 20,38,507.75 at the rate of 10 per cent. The total tax calculated on that basis was assessed at Rs. 3,63,305.01. Respondent No. 1 further took the view that petitioner No. 1 is liable to pay penalty at the maximum rate of Rs. 5 under Section 14(4) of the Bihar Act for the delay in filing of the returns for 46 days and also penalty at the maximum rate of Rs. 5 under Section 20(4) of the Bihar Act for the delay in making payment of the tax for 1182 days amounting to Rs. 6,140. He, however, deducted out of that amount a sum of Rs. 2,655 on the ground that the assessee had already been penalised for such non-submission of returns. He imposed only the balance amount of penalty at Rs. 3,485 under Sections 14(4) and 20(4) of the Bihar Act. Thus, according to the assessment order (annexure 1), the total demand of tax and penalty which was made against petitioner No. 1 was for Rs. 3,66,790.01. The petitioners did not file any appeal against the order of assessment but filed the present application on the 6th of February, 1969, challenging the validity of the order of assessment.

3. Before dealing with the contentions, which have been raised by Mr. Asok Kumar Sen, learned counsel appearing for the petitioners, in support of this application, I would refer to the relevant provisions of the Central Act and the Bihar Act. Section 6 of the Central Act is the charging section. Sub-section (1) of Section 6, which is relevant for our purpose, reads as follows :

6. (1) Subject 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 effected by him in the course of inter-State trade or commerce during any year on or from the date so notified. Under Section 8 of the Central Act, the rates of tax on sales in the course of inter-State trade or commerce are prescribed. Sub-sections (1) and (2) of Section 8 read as under:

8. (1) Every dealer, who in the course of inter-State trade or commerce-

(a) sells to the Government any goods ; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3); shall be liable to pay tax under this Act, which shall be three per cent, of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof

relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)-

(a) in the case of declared goods, shall be calculated 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, shall be calculated at the rate of ten per cent, or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher ; and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law. Section 9 is divided into three sub-sections and each of them deals with a separate subject-matter. It may be stated here that original Section 9 has been amended with retrospective effect. Sub-section (1) of Section 9 lays down that the tax payable by any dealer under the Act (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). The provisions contained in Sub-section (2) of Section 9 are the most important provisions in the Central Act for our purpose. Sub-section (2) of Section 9 runs thus :Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :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. Sub-section (3) of Section 9 provides that the proceeds of any tax in any financial year, including any penalty, levied and collected under the Act (Central Act) in any State (other than Union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it. Section 10 of the Central Act is a penal

section and it makes the contravention of certain provisions of the Act punishable. Section 10 reads as under :If any person-

(a) furnishes a certificate of declaration, under Sub-section (2) of Section 6 or Sub-section (1) of Section 6-A or Sub-section (4) of Section 8, which he knows, or has reason to believe, to be false; or (aa) fails to get himself registered as required by Section 7, or fails to comply with an order under Sub-section (3-A) or with the requirements of Sub-section (3-C) or Sub-section (3-E), of that section ;

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

(c) not being a registered dealer falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer ; or

(d) after purchasing any goods for any of the purposes specified in Clause (b) of Sub-section (3) of Section 8 fails, without reasonable excuse, to make use of the goods for any such purpose ;

(e) has in his possession any form prescribed for the purposes of Sub-section (4) of Section 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;

(f) collects any amount by way of tax in contravention of the provisions of Sub-section (1) of Section 9-A or fails to deposit the amount required to be deposited under Sub-section (2) of that section ;he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both ; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

Section 10-A makes provisions for imposition of penalty on a dealer instead of prosecuting him in case of offences punishable under Clauses (b) to (d) of Section 10. As provided under Clause (b) of Sub-section (1) of Section 13 of the Central Act, the Central Government is specifically authorised to make rules providing for "the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions, which may be made in the process of such determination". Under Sub-section (3) of Section 13, the State Government has also been authorised to make rules, not inconsistent with the provisions of the Act and the Rules made under Sub-section (1) to carry out the purposes of the Act. In exercise of the powers conferred by Sub-section (1) of Section 13 of the Central Act, the Central Government made the Central Sales Tax (Registration and Turnover) Rules, 1957. Rule 11 of the Central Rules reads as follows :The period of turnover in relation to any dealer liable to pay tax

under this Act shall be the same as the period in respect of which he is liable to submit returns under the general sales tax law of the appropriate State: Provided that in relation to a dealer who is not liable to submit returns under the general sales tax law of the appropriate State, the period of turnover shall be a quarter ending on the 30th June, 30th September, 31st December and 31st March, as the case may be, in a financial year.

4. The Governor of Bihar in exercise of the powers conferred by Sub-section (3) of Section 13 of the Central Act framed the Central Sales Tax (Bihar) Rules, 1957. Rule 8 of the Central Sales Tax (Bihar) Rules, 1957, reads thus:

(1) Every registered dealer shall furnish to the Assistant Commissioner, the Superintendent or the Assistant Superintendent quarterly returns in form I, and also an annual return, in the same form, on the basis of the quarterly returns for the year. Such returns shall be furnished in the manner and by the date prescribed in respect of returns under the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) and the Rules framed thereunder.

(2) If, upon information, which has come into his possession, the Assistant Commissioner, the Superintendent or the Assistant Superintendent is satisfied that any dealer, while being liable to pay tax under the Act, is not registered under Section 7, he may direct such dealer to furnish a return in form I in respect of such period as may be specified in the direction.

(3) The Assistant Commissioner, the Superintendent or the Assistant Superintendent may direct a dealer to furnish with his return in Form I, statements, in duplicate, showing the total sales made by him to each registered dealer of different States separately during the period covered by the return.

Rule 12 of the Rules reads as under: The provisions of the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) and the Rules framed thereunder shall except in so far as they relate to publication of lists of registered dealers and publication of amendments of certificates of registration, mutatis mutandis apply in respect of all procedural and other matters incidental to the carrying out of the purposes of the Act for which no provision is made in these rules or in the Central Sales Tax (Registration and Turnover) Rules, 1957.

5. Now, I will refer to the relevant provisions of the Bihar Act and the Rules framed thereunder. In Section 2(k) "gross turnover" has been defined and it reads as follows: 'gross turnover' means the aggregate of the amounts of sale prices received and receivable by a dealer, during any given period, in respect of sale of goods (including the sale of goods made in the course of inter-State trade or commerce or export or outside the State) and the aggregate of the amounts of purchase prices paid and payable by a dealer in respect of the purchase of goods or classes of goods

declared under Section 3-A, but excludes the sale price of the said declared goods. Section 2(t) defines "year" as a financial year. Section 14 of the Bihar Act reads as follows :

(1) Every registered dealer shall furnish such returns within such period and to such authority as may be prescribed : Provided that the prescribed authority may require any dealer by notice in writing, to furnish such returns within such period as may be fixed by the said authority.

(2) If a dealer having furnished a return under Sub-section (1) discovers any omission or wrong statement therein, he may furnish a revised return in the prescribed manner to the prescribed authority at any time before the said authority passes order determining the amount of tax, if any, payable by the dealer for the period for which the return has been furnished: Provided that no such revised return shall be taken into consideration if, upon information .which has come into his possession, the prescribed authority is, for reasons to be recorded in writing, satisfied that the return originally furnished was deliberately false or that it was furnished with intent to defraud the State Government of its revenue.

(3) If the prescribed authority is satisfied that a dealer is, for reasonable cause, unable to furnish any return within the prescribed period or the period fixed under the proviso to Sub-section (1), the said authority may extend the period for submission of the return.

(4) If a registered dealer fails, without reasonable cause, to furnish any return within the prescribed period, or a dealer on whom a notice has been served under the proviso to Sub-section (1), fails likewise to furnish the return within the fixed period, the prescribed authority may direct that the dealer shall pay, by way of penalty for such failure, a sum not exceeding five rupees for every day, after the expiry of the prescribed or fixed period, during which the dealer fails to furnish the required return. Where the period for submission of any return is extended under Sub-section (3) and the dealer nevertheless fails, without reasonable cause, to furnish the return within the extended period, he shall be liable to penalty as aforesaid for each day after the expiry of the prescribed or fixed period.

(5) Any penalty imposed under Sub-section (4) shall be without prejudice to any action which is or may be taken under Clause (b) of Sub-section (1) of Section 38. Sub-sections (1), (2), (4) and (7) of Section 20 are relevant for our purpose and they read as under :

(1) The tax payable under this Act shall be paid in the manner hereinafter provided and at such intervals as may be prescribed.

(2) Before any registered dealer furnishes any return under this Act, he shall, in the prescribed manner, pay into a Government Treasury the full amount of tax due from him under this Act

according to such return and shall furnish, along with the return a receipt from such Treasury showing payment of the said amount....

(4) If any registered dealer fails, without any reasonable cause, to make payment of the tax or extra amount of tax due from him according to the return or revised return furnished under Sub-section (1) or (2) of Section 14, the prescribed authority may direct that the dealer shall pay, by way of penalty, a sum not exceeding five rupees for every day after the expiry of the period prescribed under the said section, during which the dealer has failed to make such payment....

(7) If a dealer has failed, without reasonable cause, to make payment of any amount of tax by the date specified in the notice issued under Sub-section (5) or the date extended under the proviso thereto, the prescribed authority may direct that the dealer shall pay, in the prescribed manner, by way of penalty for such failure, an amount which may extend to five per centum of the amount of tax, for each of the first three months following the expiry of such date and to ten per centum for each subsequent month or part thereof.

* * *

6. Now, I will refer to the relevant provisions of the Bihar Sales Tax Rules, 1959. Sub-rules (1) and (2) of Rule 10 are relevant for our purpose and they provide as follows :

(1) Every registered dealer shall, unless otherwise required under the proviso to Sub-section (1) of Section 14 by the authority prescribed in Rule 12, furnish to the said authority quarterly returns and also an annual return in form XII :Provided that the Commissioner may, by order in writing and subject to such conditions or restrictions as may be specified in the order, permit a registered dealer to furnish only an annual return in the said form; such permission may be refused, modified or annulled by the Commissioner in writing after giving the dealer a reasonable opportunity of being heard.

(2) Subject to Sub-rule (1), such returns shall be filed within one calendar month of the expiry of the period to which they relate and shall be signed and verified in the manner provided in the form, by the appropriate person mentioned in Clause (a) of Sub-rule (2) of Rule 4 or by the manager, if any, declared under Section 10.

Sub-rule (1) of Rule 18 reads thus :

(1) Every dealer, liable to pay tax under the Act, shall make quarterly payment of such tax, if he is a registered dealer or is liable for registration :

Provided that the authority prescribed in Rule 12 may, for reasons to be recorded in writing, require any dealer to make payment of such tax at such shorter intervals as may be specified by the said authority.

7. Having reproduced the relevant provisions of the Central Act and the Rules and the relevant provisions of the Bihar Act and the Rules, I proceed to deal with the contentions which were raised by Mr. Asok Kumar Sen. Broadly stated, the contentions which were raised by Mr. Sen are the following-(1) that respondent No. 1 had no jurisdiction to ask petitioner No. 1 to file monthly returns and to make assessment for the broken period, namely, 1st April to 30th November, 1968, instead of for the period 1st April, 1968, to 31st March, 1969, and (2) that respondent No. 1 had no jurisdiction to levy penalty for the late submission of the returns and for the late payment of the taxes.

8. In support of his first contention, Mr. Sen relied on the provisions of Sections 6(1) and 9(3) of the Central Act and the provisions contained in Rule 8(1) of the Central Sales Tax (Bihar) Rules, 1957. He emphasised on the expression "during any year" occurring in Section 6(1) and the expression "any financial year" occurring in Section 9(3) and submitted that the liability to pay tax is yearly and not for a broken period. Reliance was placed on Rule 8(1) of the Central Sales Tax (Bihar) Rules, 1957, in support of the submission that a registered dealer cannot be asked to submit monthly returns. Mr. Balbhadra Prasad Singh, the learned Advocate-General appearing for the respondents, submitted that discretion has been given to the sales tax authorities to ask a registered dealer to submit return for any period under the proviso to Section 14(1) of the Bihar Act. According to the learned Advocate-General, the provision of Section 14(1) of the Bihar Act has been referentially incorporated by force of Sub-section (2) of Section 9 of the Central Act. Reference was made to statements made in paragraph 4 of the counter-affidavit filed on behalf of respondent No. 1 which read as follows :In the petitioner's case, he had been directed to file monthly returns by the 10th of each following month until further orders, vide order No. 11 dated 7th December, 1966, in the permanent record of his registration under the Act. The above order runs as follows:'The dealer is habitual defaulter in filing returns and payment of admitted tax. Ask the dealer to file monthly return under the provisions of Sections 14(1) and 20(2) of the Bihar Sales Tax Act by the 10th of each following month until further orders.

Dictated
Sd. V. N. Vageesh,
S.C.T., Purnea.

Sd. V. N. Vageesh
Supdt. Commercial Taxes,
Purnea.'

The above order appears to have been seen and signed on the same date by the petitioner's

representative. In file monthly returns.

9. The first question, therefore, that falls for determination is whether the proviso to Section 14(1) of the Bihar Act is applicable in the case of a registered dealer under the Central Act and respondent No. 1 had the authority to ask petitioner No. 1 to submit monthly returns and to make assessment for a broken period. As provided under Rule 8(1) of the Central Sales Tax (Bihar) Rules, 1957, every registered dealer is required to furnish to the prescribed authority quarterly returns in form I and also an annual return in the same form on the basis of the quarterly returns for the year. Such returns are required to be filed in the manner and by the date prescribed in respect of returns under the Bihar Act and the Rules framed thereunder. Thus, Rule 8 makes specific provision for filing of quarterly returns and annual return in the case of a registered dealer. Sub-rule (2) of Rule 8, which empowers the prescribed authority to direct furnishing of return in respect of such period as may be specified in that direction, is not applicable in the case of a registered dealer. It was rightly contended by Mr. Sen that the expression "such return shall be furnished in the manner and by the date prescribed in respect of returns under the Bihar Sales Tax Act of 1959 (Bihar Act XIX of 1959) and the rules framed thereunder" occurring in Sub-rule (1) of Rule 8 does not make the provisions of the Bihar Act and the Rules framed thereunder relating to the period of return applicable in respect of Central sales tax. The Bihar Act and the Rules framed thereunder are applicable only with regard to the manner and the time within which the quarterly and the annual returns have to be filed. I will have occasion to deal fully with the question regarding the scope of Section 9(2) of the Central Act, while considering the second contention of Mr. Sen. Suffice it to state here that as specific provisions have been made in the Central Act and the Rules for submission of quarterly and annual returns, the provisions of Section 14(1) of the Bihar Act cannot be deemed to have been referentially incorporated in the Central Act by Sub-section (2) of Section 9 as that sub-section makes the provisions "subject to the other provisions of this Act and the rules made thereunder". That being the position, even if it be held that the proviso to Section 14(1) of the Bihar Act authorises the sales tax authorities to ask a registered dealer under that Act to submit a return for any period, it will not be applicable in the case of a registered dealer under the Central Act. It must, therefore, be held that respondent No. 1 had no jurisdiction to ask petitioner No. 1 to file monthly returns and to make assessment for a broken period.

10. As provided under Sub-section (1) of Section 14 of the Bihar Act, the period for which the returns are to be submitted, and the authority to which the returns are to be submitted are to be prescribed. A point of controversy arose whether under the proviso to Sub-section (1), the prescribed authority can ask a dealer to furnish return for a period other than the prescribed period. It may be stated here that under Rule 10(1) of the Bihar Sales Tax Rules, 1959, furnishing

of quarterly returns as also annual return in form XII has been prescribed. Under the proviso to that sub-rule, the Commissioner has been given the power to permit a registered dealer to furnish only an annual return. Under Sub-rule (2) of Rule 40, returns have to be filed within one calendar month of the expiry of the period to which they relate. Mr. Sen raised an alternative argument that the proviso to Section 14(1) of the Bihar Act does not empower the prescribed authority to ask a registered dealer to furnish returns for any period other than the prescribed period but only empowers him to ask a registered dealer to furnish returns for the prescribed period within such time or period other than the prescribed period as may be fixed by the said authority. The learned Advocate-General, however, contended that the proviso not only gives power to the prescribed authority to vary the period during which the return is to be filed but also authorises him to vary the period for which the return is to be filed. On a plain meaning of the expression "to furnish such returns within such period as may be fixed by the said authority", the construction put by Mr. Sen appears to be more sound. If the intention of the Legislature was to give power to the sales tax authority to vary the prescribed period of returns, there should have been a clear provision authorising the tax authority to ask a dealer to furnish return for such period as may be, fixed by the authority or. in any event there should have been the word "and" after "such returns" and before "within such period". I am, therefore, inclined to accept the contention raised by Mr. Sen and to hold that the proviso to Section 14(1) of the Bihar Act does not empower the sales tax authorities to vary the prescribed period for which the returns are to be filed.

11. Now, I proceed to consider the question whether respondent No. 1 had jurisdiction to levy penalty for the late submission of the return and for the late payment of the taxes. As already stated, the penalty for the late submission of the return has been imposed under Sub-section (4) of Section 14 of the Bihar Act and the penalty for the delay in making payment of the taxes has been imposed under Section 20(4) of the said Act. The question which falls for consideration is whether the provisions of Sections 14(4) and 20(4) of the Bihar Act are applicable in the case of a registered dealer under the Central Act. The provision contained in Section 9(2) of the Central Act is relevant for the purpose of deciding the question whether the provisions of the Bihar Act, referred to above, are applicable or not in the case of a registered dealer under the Central Act. Sub-section (2) of Section 9 consists of three parts. The learned Advocate-General relied on the last part of Sub-section (2), which provides, inter alia, that the provisions of the general sales tax law of the State, including provisions relating to returns, provisional assessment, advance payment of tax, penalty, etc., shall apply. Mr. Sen, however, submitted that under Sub-section (2) of Section 9 only the procedure prescribed under the State Act has been made applicable for the assessment, collection and enforcement of penalty which is payable under the Central Act. Sub-section (2) of Section 9 does not authorise imposition of penalty which is payable under the State Act but not under the Central Act. He, therefore, contended that there being no provision in the

Central Act for imposition of penalty for late submission of return and late payment of tax, no such penalty can be legally imposed by applying the provisions of Sections 14(4) and 20(4) of the Bihar Act as has been done in the instant case. According to the learned counsel, penalties under the Central Act can be imposed only for such acts and omissions as are specified in Section 10 of that Act. A number of cases were cited by Mr. Sen wherein it has been held that the substantive provisions relating to penalty under the State Act are not applicable by virtue of the provisions contained in Sub-section (2) of Section 9.

12. In the case of *D. H. Shah & Co. v. The State of Madras*¹, a Bench of the Madras High Court on a construction of the provisions of Section 9(3) of the Central Act [section 9(3) of the Act as it stood before amendment has been substituted by Section 9(2) with retrospective effect] held that under Sub-section (3) of Section 9, only the local procedure is applied for the assessment, collection and enforcement of penalty which is payable by a dealer under the Central Act. It was further held that the penalty levied under Section 12(3) of the Madras General Sales Tax Act, 1959, was not valid as the only provision in the Central Sales Tax Act providing for penalty is Section 10 and that does not cover a penalty of the type contemplated by Section 12(3) of the Madras Act.

13. In the case of *State of Madras v. M. Angappa Chettiar and Sons*² the same view was upheld and it was held that the power to collect penalty under Section 9(3) of the Central Sales Tax Act will cover only the penalty payable under that Act and will not include a power to impose the penalty itself, for a contravention or omission for which that Act does not contain a provision apart from the Madras General Sales Tax Act.

14. In a recent decision of the Calcutta High Court in the case of *Shri Mohan Lal Chokhany v. The Commercial Tax Officer, Lyons Range, and Ors*³. the scope of Section 9(2) of the Central Act was considered and it was held that the Central Act does not authorise the imposition of any penalty for non-submission or delay in the submission of returns of turn., overs of inter-State sales. It was further held that the substantive law of penalty for non-submission of returns under the Bengal Finance (Sales Tax) Act, 1941, has not been incorporated into the Central Act by Section 9(2) of that Act.

15. It appears that a Division Bench of the Madhya Pradesh High Court took a contrary view in the case of *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Kantilal Mohanlal and Brothers*⁴ and held, on an interpretation of Section 9(3) of the Act, as it stood before amendment, that penalty for late submission of returns in form V appended to the Madhya Pradesh Sales Tax (Central) Rules, 1957, can be imposed, under Section 17(3) of the Madhya Pradesh General Sales Tax Act, 1958.

16. In the case of *H. M. Esufali H. M. Abdulali v. Commissioner of Sales Tax, Madhya Pradesh, Indore*⁵ also, a Division Bench of the Madhya Pradesh High Court held that the effect of Section 9(3) of the Central Act is that the procedure of making an assessment, collection of tax and enforcing payment of any tax including penalty under that Act is the same as laid down in the local Sales Tax Act. Therefore, the provisions contained in Section 19(1) of the Madhya Pradesh Act including the provisions for the imposition of penalty for escaped assessment would apply for assessment and imposition of penalty for escaped assessment under the Central Act.

17. A Division Bench of the Mysore High Court in *K. V. Adinarayana Setty v. Commercial Tax Officer, Kolar Circle, Kolar*⁶ had also held that by virtue of Section 9(3) of the Central Act, the provisions of the general sales tax law of the State, including provisions relating to penalties would be applicable to the entire process of assessment, payment, collection and recovery of the tax payable under the Central Act. It was further held in that case that a dealer under the Central Act who defaulted in making payment of the tax payable under that Act within the prescribed time became liable to pay the penalty provided in Section 13(2) of the Mysore Sales Tax Act, 1957, in the same way in which a defaulting dealer under the Mysore Act incurred that liability. The Mysore High Court, however, subsequently in *Guldas Narasappa Thimmiah Oil Mills v. Commercial Tax Officer, Raichur*⁷ took a contrary view holding that the provisions relating to the imposition of penalty in a taxing statute are substantive in character and they cannot reasonably be said to form part of the procedural law and unless such penal provisions in the local Sales Tax Act are expressly adopted by the provisions of Section 9(2) of the Central Act, they cannot be relied upon for the purpose of the recovery of tax due under the Central Act. In that case, it was observed that Section 9(2) of the Central Act, as amended by the Central Sales Tax (Amendment) Act (28 of 1969), has effected changes so as to exclude any idea of adoption of the substantive provisions of a State Act relating to assessment and recovery of tax and penalty.

18. Thus, it will appear that the majority of the High Courts have taken the view that the provisions relating to imposition of penalty in the local Sales Tax Act would not apply by the provisions of Section 9(2) of the Central Act. I am also inclined, to take the same view. The expression "as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State" occurring in Section 9(2) of the Central Act clearly shows that it relates to the tax and penalty leviable under that Act. The provisions relating to the liability to pay penalty cannot be held to be a part of the procedural law. Therefore, in the absence of a clear provision in Section 9(2) of the Central Act, incorporating referentially the substantive provision of the State Acts relating to imposition of penalty, it is difficult to hold that Section 9(2) has referentially incorporated the provisions of Sections 14(4) and 20(4) of the Bihar Act relating to the imposition of penalties for late submission of return and for late

payment of tax. Thus, there being no provision in the Central Act or the Rules framed thereunder for imposition of penalty for delay in filing return or in payment of tax, respondent No. 1 was not authorised to impose such penalties on petitioner No. 1.

19. There is another aspect from which the question relating to the imposition of penalties on petitioner No. 1 for the late submission of return and for the late payment of tax may be considered. If the sales tax authority had no power to ask petitioner No. 1 to submit monthly returns and to make an assessment for a broken period, there was no question of imposing any penalty for not filing monthly returns within time or for the late payment of tax on the basis of monthly returns and on that ground also the imposition of penalty on petitioner No. 1 by respondent No. 1 must be held to be illegal.

20. For the reasons stated above, I accept both the contentions which have been raised by Mr. Sen and hold that the order of assessment passed by respondent No. 1 (annexure 1) is illegal and without jurisdiction.

21. In the result, this application is allowed and the order of assessment (annexure 1) is quashed by a writ of certiorari. There will be no order as to costs.

22. It will be open to the sales tax authorities to pass a fresh order of assessment against petitioner No. 1 for the entire period, 1st of April, 1968, to the 31st of March, 1969, in accordance with law.

S. Akbar Husain, J.

23. I agree.

Cases Referred.

1[1967] 20 S.T.C. 146

2[1968] 22 S.T.C. 226

3[1971] 28 S.T.C. 367

4[1967] 19 S.T.C. 377

5[1969] 24 S.T.C. 1

6[1963] 14 S.T.C. 587

7[1970] 25 S.T.C. 489