CIVIL MISCELLANEOUS

Before Harbans Singh and S. S. Sandhawalia, JJ.

M/S. AUTO PINS (INDIA) REGISTERED, FARIDABAD,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 2238 of 1968

February 12, 1970.

Central Sales Tax Act (LXXIV of 1956)—Section 9—Parliament adopting existing State legislation for assessment, collection and enforcement of payment of Central Sales Tax—Whether abdicates any of its functions—Such adoption—Whether can extend to prospective modifications in the existing State legislation—Central Sales Tax (Punjab Rules 1957)—Rules 7-A and 9—Punjab General Sales Tax Act (XLVI of 1948)—Sections 10(4) and 10(6)—Rule 9—Whether overrides the penalty clauses in sections 10(4) and 10(6).

Held, that Parliament has sovereign and plenary powers to legislate for the purpose of the imposition of the Central Sales Tax and consequently it can reasonably delegate this power to the relevant State Legislatures. Obviously it would have been impractical, if not impossible, to make different sets of legislation for the said purpose for each State of the Union. It can, therefore, utilise the agency of the State Legislature to the extent it found it necessary for doing so as it would have been patently inconvenient for it to legislate regarding the territory of each State. In doing so, Parliament does not in any way abdicate any of its functions nor does this act amount to any self-effacement or setting up of a parallel legislature thereby. In the complex situation arising in regard to the collection of the Central Sales Tax in the various States and Union Territories which comprise the Union of India any mode other than provided for in section 9(3) of the Central Sales Tax Act might well have led to serious anomalies.

(Para 7).

Held, that Parliament is fully competent to adopt by reference the existing legislations of the appropriate States for the purpose of assessment, collection and the enforcement of payment of any tax including penalties for the purposes of the Central Sales Tax. That being so, it does not exceed the bounds of constitutionality, if it adopts such existing legislation along with any subsequent modification, which may be made therein by the appropriate State legislatures. Reading section 9 of the Act in its entirety and in the scheme of the Central Act, it becomes clear that the provisions of the General Sales Tax Laws of the States including provisions relating to penalties were made applicable to the entire process of the assessment, payment, collection and recovery of the tax payable under the Central Act and that would be the true effect of the expression shall apply accordingly', which has been used at the end of section 9(3) of the Central Act. Hence there is no bar in principle to Parliament adopting the existing State

legislations for the purpose of collection of the Central Sales Tax alongwith any prospective modifications which may be made by the respective States therein. (Para 8).

Held, that the Central Sales Tax (Punjab Rules 1957) framed under Central Sales Tax Act occupy an altogether different field and have no bearing on the powers of the assessment, collection and the imposition of penalties for the non-payment of tax. The liability to pay and tender the tax is imposed by sub-section (4) of section 10 of the Punjab Act and the Rules framed thereunder prescribe the mode and manner of doing so. A contravention of these provisions would consequently attract directly the penal clause under section 10(6) of the Punjab Act. On a closer analysis of the provisions of Rule 7-A of the Rules, it is manifest that this rule is meant entirely for the furnishing of certain information which may be required by the authorities. These provisions are entirely procedural relating to the forms, etc., and the manner of the furnishing of information which may be required by the authorities. They patently have no relevance to the substantive provisions of the Punjab Act read with section 9(3) of the Central Act regarding the assessment or the liability of paying and tendering the taxes due under those provisions. The relevant field of the assessment, collection, and the power to enforce payment of any tax which necessarily includes any penalty is held by section 10 of the Punjab Act. Moreover, Rule 9 of the Rules makes the contravention of Rule 7-A a criminal offence punishable thereunder. It does not in any way take away the power of the authority to impose a penalty as provided for under section 10(6) of the Punjab Act. Hence Rule 9 does not override the penalty clauses in sections 10(4) and 10(6) of the Punjab Act.

(Paras 14 and 16).

Petition under Articles 226 and 227 of the Constitution of India praying that the power of the Assessing Authority to impose a penalty under Section 9(3) of the Central Sales Tax Act 1956 read with Section 10(6) of the Punjab General Sales Tax Act 1948 be quashed.

K. S. THAPAR, ADVOCATE, for the petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL, HARYANA, for the respondents.

JUDGMENT

SANDHAWALIA, J.—The power of the Assessing Authority to impose a penalty under section 9(3) of the Central Sales Tax Act 1956 read with section 10(6) of the Punjab General Sales Tax Act 1948 is the subject of challenge in these seven connected Writ Petitions Nos. 2238, 3414, 3415, 3416, 3628 and 3629 of 1968 and No. 234 of 1969. Identical points of law arise in these petitions and we propose to dispose all of them by this judgment.

(2) The facts in Civil Writ No. 2238 of 1968 in which the main argument has been addressed by Mr. Thapar may alone be recounted. Messrs Auto Pins (India), a registered partnership firm filed a return for the quarter ending the 31st December, 1967, showing a taxable turnover of Rs. 9,04,609.94 P. and the tax due calculated thereon by the assessee was stated to be Rs. 31,632.84 P. The payment of this tax was due by the 31st of January, 1968, but it is the admitted case of the parties that this tax was not so deposited and the reason for not doing so, as averred in the petition, is that the sales were made on approval basis to the Government Departments and as the payments of the amounts were not made by the Government, therefore, the tax could not be deposited. On behalf of the respondent-State it has been averred that as soon as the goods were taken delivery from the bailee by the purchasing parties, the sale is complete and the tax on the inter-State sale is attracted forthwith under section 6 of the Act and it has been further denied for want of knowledge that the Government Department did not make payment for the same during the relevant period. A show cause notice was issued to the assessee by the authority for the non-payment of the tax due, in response to which the petitioners appeared before the Assessing Authority on the 18th of March, 1968, and were directed to make payment in the Treasury and produce the receipt by the 21st of March, 1968 at 10.00 a.m., but it is averred that none appeared on behalf of the petitioners on the said date and time. Another show cause notice was issued before the final hearing on the 30th of March, 1968, but the petitioners did not deposit the amount in cash, though it has been averred in the petition that this was tendered by means of a Bank Draft. Before the Assessing Authority a plea of the poor financial position of the company and consequently its inability to deposit the tax was also taken which was rejected by the impugned order and the Assessing Authority proceeded to impose a penalty of Rs, 20,000 under section 9(3) of the Central Sales Tax Act, 1956, read with Section 10(6) of the Punjab General Sales Tax Act. The petitioners subsequently deposited the tax due on the 1st of April, 1968. It is the imposition of this penalty which has been assailed as unwarranted by law on behalf of the petitioners.

(3) Mr. Thapar has very lucidly advanced two contentions in support of the petition. The first of these is that the Central Sales Tax Act (hereinafter referred to as the Central Act) was enacted in the year 1956 and by sub-clause (3) of section 9 thereof the authority under

the General Sales Tax Law of the appropriate State was empowered to assess, collect and enforce payment of any tax including any penalty on behalf of the Government of India. The relevant provisions for the payment of tax and returns in the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Punjab Act) were then contained in section 10 of the said Act, as amended by Act 6 of 1952. It was hence argued that the Central Act of 1956 could have adopted only the existing provisions of section 10 of the Punjab Act as they stood at the enactment of the Central Act in 1956 and at that time section 10 did not contain sub-section (6) which is the relevant provision for imposing a penalty. This power was given by adding this sub-section to section 10 of the Punjab Act of 1948 with effect from 1st April, 1960, by the amending Punjab Act No. 18 of 1960. It was, therefore, submitted that Parliament could not adopt prospectively the amendments which may be made from time to time by the State Legislature in the Punjab and further it could not delegate to the Punjab Legislature its own functions of legislating regarding the Central Sales Tax. Any such delegation authorising the adoption of future amending legislation in respect of the Punjab Act was characterised as an abdication of legislative power by Parliament and hence unconstitutional and invalid. Apart from elaborating this argument on principle Mr. Thapar relied upon three Madras decisions *D. H. Shah and Co.* v. *The State of Madras* (1), *The State of Madras v. M. Angappa Chettiar* (2), and *K. A. Ramudu Chettiar* v. *State of Madras* (3). These authorities undoubtedly lend support to the contention raised on behalf of the petitioner.

(4) It becomes necessary to reproduce the relevant provisions of the statute around which the rival contentions revolve. Section 9(3) and section 9(4) of the Central Sales Tax Act are in the following terms:—

> "9(3) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on

(1) 20 S.T.C. 146.
(2) 22 S.T.C. 226.
(3) 22 S.T.C. 283.

the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns appeals, reviews, revisions, references, penalties, and compounding of offences, shall apply accordingly.

Provided * * * *

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

Section 10(1); 10(4) and 10(6) of the Punjab General Sales Tax Act are as follows:—

"PAYMENT OF TAX AND RETURNS.

10(1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed;

(2) & (3) * * * * *

(4) Before any registered dealer furnishes the returns required by sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury of the Reserve Bank of India the full amount of tax due from him under this Act according to such returns and shall furnish along with the returns receipt from such Treasury or Bank showing the payment of such amount;

(5) * * * * *

(6) If a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (3) or sub-section (4), the Commissioner or any person

> appointed to assist him under sub-section (1) or section 9 may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one and a half times of the amount of tax which may be assessed on him under section 11 in addition to the amount of tax assessed, and where no tax is payable, a sum not exceeding one hundred rupees."

In the light of the provisions of the statutes above-said the crux of the argument is whether Parliament whilst enacting section 9(3) of the Central Act was entitled to delegate to the appropriate States the powers to legislate for the purposes of collection of central sales tax and to adopt the existing legislation therefor prospectively with any future amendments that may be made thereto.

(5) This brings us to the rather vexed question of the scope and limits of delegated legislation. The classic exposition of the law on this point appears in the judgment of their Lordships of the Supreme Court *in re. Article* 143, *Constitution of India and Delhi Laws Act* (4). Fazal Ali J., who concurred with the majority in upholding the validity of the statutes in the said case first adverted to the compulsions and complexity of the present day administration which necessitates a resort to delegated legislation and his Lordship has observed as follows :—

> "I have referred to these instances to show that the complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions."

and again referring to delegated legislation—

> "This form of legislation has become a present day necessity, and it has come to stay—it is both inevitable and indispensible. The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the

(4) A.I.R. 1951 S.C. 332.

broad principles and leave the details to be worked out by those who are more familiar with the subject."

The learned Judge posed the following question which went to the root of the principle of delegated legislation and formulated it as follows:—

"Can a legislature which is sovereign or has plenary powers within the field assigned to it, delegate its legislative functions to an executive authority or to another agency, and, if so, to what extent it can do so"?

This was answered in the following terms:—

"The conclusions at which I have arrived so far may now be summed up:

(1) The legislature must normally discharge its primary legislative function itself and not through others ;

(2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or find it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation ;

(3) It cannot abdicate its legislative functions, and, therefore, while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature."

(6) It deserves notice that in the celebrated judgment above-said the majority of the learned Judges upheld the validity of the relevant provisions of the Ajmer-Merwara (Extension of Laws) Act and of the Part 'C' States (Laws) Act, 1950, which clothed the Executive (The Central Government) with the powers to extend by notification

in the official Gazette any enactment to the relevant territory which may be in force in any other province or State with such restrictions and modification as it may think fit.

(7) Applying the ratio of the *Delhi Laws Acts case supra* (4), it is apparent, that Parliament was fully competent to adopt by reference the existing legislations of the appropriate States for the purpose of assessment, collection and the enforcement of payment of any tax including penalties for the purposes of the Central Sales Tax. That being so, would it exceed the bounds of constitutionality, if it adopted such existing legislation along with any subsequent modification, which may be made therein by the appropriate State legislatures ? We do not think so. Parliament had sovereign and plenary powers to legislate for the purpose of the imposition of the Central Sales Tax and consequently it could reasonably delegate this power to the relevant State Legislatures. Obviously it would have been impractical, if not impossible, to make different sets of legislation for the said purpose for each State of the Union. It could, therefore, utilise the agency of the State Legislature to the extent it found it necessary for doing so as it would have been patently inconvenient for it to legislate regarding the territory of each State. In doing so, Parliament does not in any way abdicate any of its functions nor does this act amount to any self-effacement or setting up of a parallel legislature thereby. The power to control, recall or modify any such delegated legislation (for a limited ancillary purpose) for the collection of the tax which may have been made by the appropriate States continued to vest in Parliament and it could choose to do so at any time. Indeed in the complex situation arising in regard to the collection of the Central Sales Tax in the various States and Union Territories which comprise the Union of India any mode other than provided for in section 9(3) of the Central Act might well have led to serious anomalies.

(8) A brief reference to the history and the purposes of the enactment of section 9(3) of the Central Act would help to clarify the situation. By the time the Central Act of 1966 was enacted, there already existed in the different States Sales Tax Laws which contained detailed provisions for the payment and collection of the Sales Tax and there also existed an elaborate machinery for enforcement of the payment of the Sales Tax. It is patent that the intention of the Central Act was not to set upon another parallel machinery for the purpose of collection, etc., of the Central Sales Tax, but to adopt

the existing machinery for the said purpose. It was, therefore, that section 9(3) was enacted to authorise the utilisation of that existing machinery and the relevant provisions of the Sales-tax Laws already in force in the various States for the effective realisation of the tax payable under the Central Act. The purpose rightly was to avoid any multiplicity or complexity of procedure and to have uniformity in the process of both the General Sales-Tax in the States and the Central Tax imposed by the Act of 1956. To maintain this identity of procedure it was obviously necessary that any prospective amendments which may be made by the appropriate States should also be adopted for the purpose of the collection of the Central Tax. In this context it is particularly significant to note that section 9(4) of the Act laid down that the proceeds of the Central Sales-Tax collected on behalf of the Government of India shall be assigned to the relevant State and shall be retained by it. Not a penny of this tax was to go to the coffers of the Union. Consequently if the proceeds were to be appropriated to the States it was equally consistent that the procedure for the collection of these proceeds should also be identical with the procedure for the collection of the General Sales-Tax by the States. Reading section 9 in its entirety and in the scheme of the Act it becomes clear that the provisions of the General Sales-Tax Laws of the States including provisions relating to penalties were made applicable to the entire process of the assessment, payment, collection and recovery of the tax payable under the Central Act and that would be the true effect of the expression 'shall apply accordingly', which has been used at the end of section 9(3) of the Central Act. In view of the above we are unable to see any bar in principle to Parliament adopting the existing State legislations for the purpose of collection of the Central Sales Tax along with any prospective modifications which may be made by the respective States therein.

(9) The three Madras decisions relied upon by Mr. Thapar, may now be noticed. The first of these is *D. H. Shah and Co.* v. *The State of Madras* (1). The Division Bench in this case adopted the view enunciated earlier in *Haji J. A. Kareem Sait* v. *Deputy Commercial Tax Officer, Mettupalayam* (5). *Similarly in The State of Madras* v. *M. Angappa Chettiar and Sons* (2), the earlier view in the above-said two cases was accepted as the correctness thereof was never

(5) 18 S.T.C. 370.

challenged before the learned Judges. Lastly in *K. A. Ramudu Chettiar and Company* v. *The State of Madras* (3), the Bench followed the earlier decisions which were in fact binding on it by expressly saying that it was not necessary to elaborate the question in view of the earlier authorities. In these three judgments we find no elaborate elucidation of the principle on which their Lordships based themselves and the earlier Supreme Court authority referred to above was not noticed. No authority other than the earlier Madras High Court view which was binding has been considered. In *K. V. Adinarayana Setty* v. *Commercial Tax Officer, Kolar circle, Kolar* (6), the Division Bench of the Mysore High Court had taken a contrary view and again in *Commissioner of Sales Tax, Madhya Pradesh* v. *Kantilal Mohanlal and Brothers* (7), the Division Bench of the Madhya Pradesh High Court had also taken a view similar to that accepted by the Mysore High Court. These authorities also were not brought to the notice of the learned Judges. However, on a close perusal of *Haji J. A. Kareem Sait's case* (5), on the basis of which the subsequent Madras decisions proceed we find that the learned Judges of the Division Bench did not in fact hold section 9(3) of the Central Sales Tax Act to be invalid or unconstitutional. It is true that as a general principle they accepted the view that the Central Act could not make a law adopting the provisions of a local law which did not exist at that time. However, on a consideration of the relevant provisions of the Madras General Sales Tax Act, 1959, which had substituted the earlier Madras General Sales Tax Act of 1939, their Lordships held that by virtue of the provisions of section 9(3) of the Central Act the provisions of section 16 of the Madras Act of 1959 would be attracted. After discussion they observed as follows :—

> "This is not, therefore, a case where the law, as re-enacted by the local Legislature, is substantially different from what it was when the Central Legislature enacted by reference to it. The crux of the matter is that the subject-matter of section 16 of the Mardas, 1959, Act is not something which the Parliament had not applied its mind to when it enacted section 9(3). On that view we are not persuaded to hold that sub-section (3) of section 9 is unconstitutional."

(10) With great respect we are unable to accept the view expressed in the Madras cases above noted. We are inclined to prefer

(6) 14 S.T.C. 587.
(7) 19 S.T.C. 377.

the enunciation of law made by the Mysore and the Madhya Pradesh High Courts decisions noticed above. We are hence of the view that the Parliament was entitled to enact sub-section (3) of section 9 of the Central Act. That being so, the language of this sub-section is a clear pointer to the fact that the Parliament was adopting the State legislation with any future modifications which may be made therein by the appropriate States. This patently appears to be so by the use of the following words at the very opening of sub-section (3):

> "*The authorities for the time being* empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall,
>
> * * * * * *
>
> * * * * * *."

The use of the words "for the time being" is obviously significant. It clearly means that the Parliament was visualising that in the future the relevant machinery for the collection of sales tax may be varied by the States by amendment and hence empower the authorities existing at the said time for the purpose of the collection, etc., of the Central sales tax. Again, the words used at the close of the sub-section deserve notice. Thereby it is expressly provided that the authority under the General Sales Tax, law of the State may exercise all or any of the powers they have under those provisions and these *shall apply accordingly* for the purposes of the assessment, collection and enforcement of the payment of the Central Sales Tax. The use of the words 'shall apply accordingly' is of particular significance and read in the context of the words 'the authorities for the time being' used at the beginning of the sub-section, the inference is inescapable that the State Legislation with any future modification which may be made by the appropriate State was sought to be adopted by the Statute. As noticed above the language is itself clear, but a reference to the statements of objects and reasons when enacting the Central Sales Tax bill makes it even clearer. This statement of objects and reasons in reference to section 9 read as under:—

> "The Central Government should authorise the State Governments to impose on behalf of the Central Government a tax on the sale or purchase of goods in the course of inter-state trade or commerce. The Central Legislation should also delegate to the States the Central Government's power to

levy and collect the tax and for this purpose prescribe the same system of registration, assessment, etc., as prevails in the States concerned under their own sales tax system."

(11) It deserves notice that the provisions of section 9(3) of the Central Act fell for construction in *The State of Mysore* v. *Yaddalam Lakshminarasimhiah Setty and Sons* (8). Whilst it is true that the argument now raised was not considered in the said judgment, but their Lordships of the Supreme Court proceeded on the assumption that the sub-section was *intra-vires* and in the course of the judgment also observed as follows:—

"The Central Act was passed to levy and collect sales tax on *inter*-State Sales to avoid confusion and conflict of jurisdictions; the tax is also collected only for the benefit of the States."

(12) In view of the foregoing discussion, the first contention raised by Mr. Thapar must fail.

(13) We proceed to consider the second contention of Mr. Thapar. It is pointed out that sub-clause (3) of section 9 of the Central Act makes the power to collect the Sales Tax through the appropriate State machinery 'subject to any rules made under this Act'. In the present case the Punjab Government framed the Central Sales Tax (Punjab) Rules in 1957 and these were changed by way of amendment from time to time. Particular reliance was placed on Rules 7-A(1) and 9 of these Rules which are as follows:—

"*Furnishing of information*:

7-A(1) Every dealer registered under the Act shall furnish a return in Form I monthly/quarterly/annual as required by the Assessing Authority within 30 days of the expiry of each month/quarter/year, together with a treasury/bank receipt in token of the tax due having been paid. Payment shall also be permissible by means of cross-cheques/drafts drawn in favour of the Assessing Authority concerned at places where the treasury business is conducted by

(8) 16 S.T.C. 231.

the State Bank of India, due regard being had to the provisions of Note 4 under rule 2.5 of the Subsidiary Treasury Rules.

(2) * * *.

(3) * * *.

(4) * * *.

(5) * * *.

(8) * * * * * *.

(9) Whosoever commits a breach of any of the provisions of these rules, shall be punishable with fine which may extend to five hundred rupees and when the offence is a continuing one, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

On the basis of the above-said provisions it is argued that as Rule 7-A(1) directs that a treasury or bank receipt in token of the tax due having been paid has to be attached to the return required to be furnished in form I, the contravention thereof can be made punishable only under Rule 9. The burden of the argument is that this Rule 9 overrides the penalty clauses of the Punjab Act, namely, sections 10(4) and 10(6) of the Punjab Act and action can be taken only under this rule for both the non-payment of the tax and the failure to attach the relevant receipts when furnishing the requisite information required under Rule 7-A(1).

(14) We regret our inability to agree. In our view the Central Sales Tax (Punjab) Rules framed under the Central Act occupy an altogether different field and have no bearing to the powers of the assessment, collection and the imposition of penalties for the non-payment of tax. The liability to pay and tender the tax is imposed by sub-section (4) of section 10 of the Punjab Act and the Rules framed thereunder prescribe the mode and manner of doing so. A contravention of these provisions would consequently attract directly the penal clause under section 10(6) of the Punjab Act.

(15) The power of the State Government to frame rules under the Central Act is subject to the provisions of the Act and the rules made thereunder by the Central Government. The power to frame rules is given by section 13(4) of the Central Act. The Central Sales

Tax (Punjab) Rules 1957, are consequently framed under the authority of sub-sections (3) and (4) of section 13 of the Central Act. A reference to the relevant provisions of the Punjab Rules 1957 makes the object and the purpose of the framing of these rules manifest. This may be considered in reference to the relevant provisions of the Act. Sub-section (4) (a) of section 13 confers the power to frame rules for the publication of the lists of registered dealers, etc., and the corresponding rule providing for the same is rule 5. Similarly sub-section (4)(b) provides for the form and the manner in which accounts relating to sales, etc., are to be kept by registered dealers and rule 7 is related to this provision. Sub-section (4)(d) of section 13 provides for the inspection of any books, accounts or documents which are required under this Act and the relevant Rule framed is Rule 6. Similarly Rule 7-A, which is the subject-matter of particular consideration has been framed under the authority of section 13(4)(c) of the Act which provides for the furnishing of any information relating to stocks of goods, purchases and sales thereof. This Rule 7-A was originally framed on the 20th of February, 1957, and has undergone significant modifications by the amending notifications, dated the 23rd of May, 1958 and 30th of September, 1958, and addition of sub-rule (3), (4) and (5) were also made thereto. Rule 7-A is on the face of it preceded by the following heading which makes the intents of the framers of the Rules explicit.

"Furnishing of information."

(It deserves notice, however, in passing, that the authoritative publication of the Punjab Taxation Code, owing to a printer's error has inadvertently omitted this heading).

(16) Viewed in the context above and on a closer analysis of the provisions of Rule 7-A, it is manifest that this rule is meant entirely for the furnishing of certain information which may be required by the authorities. These provisions are entirely procedural relating to the forms, etc., and the manner of the furnishing of information which may be required by the authorities. Sub-rule (2) provides that payments shall be made in the challan form II and sub-rule (3) enjoins the maintenance of a register with the relevant declaration in form 'C' and sub-rule (4) empowers the inspection of the relevant declarations. Lastly sub-rule (5) provides for the furnishing of a revised return in case of any error or omission in the earlier one. An overall analysis of these provisions makes it manifest that these are

merely procedural, and laid down the form and the manner in which information has to be maintained and furnished to the authorities. These provisions patently have no relevance to the substantive provisions of the General Sales Tax Act read with section 9(3) of the General Act regarding the assessment or the liability of paying and tendering the taxes due under those provisions. The statutory liability to pay the tax falls under section 10 of the Punjab Act, sub-section (1) whereof provides that the tax payable under the same shall be paid in the manner provided and on such intervals as may be prescribed. Pursuant thereto detailed rules under the Punjab General Sales Tax Act have been framed and the Rules 40 to 45 thereof deal specifically with the mode of tendering and payment of the tax and other dues. They also prescribe the period at which tax has to be tendered. The statutory liability to pay the tax is provided for expressly under section 10(4) of the Punjab Act which has been already quoted above. Section 11 of the Punjab Act provides for the assessment of the tax. A consideration of the provisions of sections 10 and 11 which have to be read together makes it abundantly clear that the assessment of tax is provided under these two sections and the liability to pay and tender the same is expressly laid down in section 10(4). A violation of this statutory duty to tender the tax thus attracts a contravention of this provision and the relevant rules made therefor. The penalty for the contravention of this liability is in terms provided for in section 10(6) already noticed above. These provisions of the statute, therefore, make it amply clear that the relevant field of the assessment, collection, and the power to enforce payment of any tax which necessarily includes any penalty is held by the above-said provisions. Rules 7-A and 9 of the Central Sales Tax (Punjab) Rules occupy an altogether different field and have no direct bearing on the above aspect. In this context the provisions that are attracted are those of section 10(6) of the Punjab General Sales Tax Act and the imposition of the penalty thereunder is patently valid. It deserves notice that in *Commissioner of Income-tax, Andhra Pradesh, Hyderabad* v. *M/s. Bhikali Dadabhai and Co.* (9), it has been held that the imposition of a penalty is a necessary concomitant or incident of the process of assessment, levy and colletion of tax. Applying this principle it necessarily follows that the relevant provisions would be those of section 10(6)

(9) A.I.R. 1961 S.C. 1265.

rather than the incidental and procedural provisions for the furnishing of information under Rule 7-A of the Central Sales Tax (Punjab) Rules, the contravention whereof is made punishable under Rule 9 thereof.

(17) The learned Advocate-General for the State of Haryana had also contended that even if it be assumed for the sake of argument that Rue 9 of the Central Sales Tax (Punjab) Rules is also attracted to the non-payment of this tax yet the provisions of Rule 9 make it clear that it creates a punishable criminal offence. It was pointed out that Rule 9 provides for punishment with a fine and further that if the offence is continuing one then a daily fine may be imposed under its provisions. It was consequently contended with plausibility that this rule, if at all made the contravention of the duty to pay tax a criminal offence punishable thereunder. This, it was argued, would not in any way take away the power of the authority to impose a penalty as provided for under section 10(6) of the Act. We find considerable merit in this argument on behalf of the respondents as well.

(18) We are fortified in the view which we have taken, by the decisions referred to above. Both the Mysore and the Madhya Pradesh High Courts in these authorities have upheld the power to impose a penalty under the relevant provisons of the State Acts. The Madhya Pradesh case above is directly to the point because in it an identical argument based on Rule 7-A of the Madhya Pradesh Central Sales Tax Rules was raised. It deserves notice that the said Rule 7-A is in *pari materia* with the Rule 7-A of the Central Sales Tax (Punjab) Rules. On a consideration of the same learned Judges had held that the penalty clause of the relevant rules was not the one which was attracted and instead the relevant provisions of the Madhya Pradesh Act and the Rules made thereunder would apply. We have agreed with this line of reasoning. In view of the above, the second contention raised on behalf of the petitioners also fails. No other point has been urged.

(19) All these petitions, therefore, fail and stand dismissed, but we would make no order as to costs.

HARBANS SINGH, J.

(20) I agree with the order proposed by my learned brother. Two main arguments were addressed by the learned counsel. First

that by virtue of section 9(3) of the Central Sales Tax Act (hereinafter referred to as the Central Act), the only provisions of General Sales Tax Act as they existed on the date when the Central Act was enforced came to be incorporated and that any amendment made in the General Sales Tax Act subsequent to the passing of the Central Act would not be applicable in relation to the recovery of the Central Sales Tax. I am inclined to agree with the conclusions arrived at by my learned brother in respect of this contention and I have nothing more to add.

(21) The other point urged by the learned counsel was that the provisions of the General Sales Tax Act would in any case be subject to any rules made under the Central Act. The liability for payment of inter-State sales tax is imposed by section 6 of the Central Act. According to sub-section (1) of section 6, the liability to pay the tax arises "subject to the other provisions contained in this Act." Relevant part of sub-section (3) of section 9 of the Central Act is as follows:—

> "The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall on behalf of the Government of India and *subject to any rules made under this Act*, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act ..... for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties, and compounding of offences, shall apply accordingly."

The analysis of the above-mentioned provision goes to show that the authorities which have to collect the tax imposed by section 6 of the Central Act would be the same as the authorities to collect and enforce the general sales tax of the appropriate State. Secondly such authorities are authorised to assess, collect and enforce payment of any tax including any penalty payable by a dealer under this Act in the same manner as they could assess, collect and enforce payment of a tax under the State law; thirdly these authorities will be entitled to exercise all the powers that they have under the State law and lastly the provision of such a State law including the provisions relating to returns, appeals ..... and penalties shall apply

accordingly. The words underlined (Italics in this report) above, however, make it clear that the powers of the State authorities to assess and collect central tax etc. and the exercise of powers which they have under the State law *inter alia*, in respect of penalties are "subject to any rules made in this Act". Thus if the rules under the Act provide for a particular matter and the State law also provides for the same matter and there is a conflict between the two then the rules made under the Central Act will prevail. To this extent, therefore, the contention of the learned counsel seems to have force.

(22) The further contention of the learned counsel based on this superiority of the rules under the Central Act was that rule 9 of the Central Sales Tax (Punjab) Rules, 1957, provides the penalty for breach of any of the rules and one of such rules, viz., rule 7-A provides for depositing of the tax due and producing a treasury or bank receipt in token of the same having been paid along with the return. In the present case, obviously such a receipt was not produced and therefore, there has been a breach of this rule. It was consequently urged that penalty provided under rule 9 being different from the penalty provided under the General Sales Tax Act only the penalty provided by rule 9 would be enforceable. As has been pointed out by my learned brother, rule 9 does not provide for a penalty in the sense that it makes the tax-payer liable to pay any additional amount but only creates a criminal offence for breach of any of the rules, whereas the provision under the General Sales Tax Act provides for a penalty of paying additional tax which may be 1½ times of the tax payable. In the case of enforcement of rule 9, which created only a criminal offence, the punishment could be awarded only by a criminal court on a complaint being made, while on the other hand the penalty recoverable under the General Sales Tax Act will be only a civil liability, which can be enforced by the tax authorities. The same set of facts may create a criminal offence as well as create a civil liability and it was rightly urged on behalf of the respondents that rule 9 does not cover the same field as the penalty provision in the Act. In this respect, I am also in respectful agreement with my learned brother.

(23) With these observations, I agree with the order proposed that the writs should be dismissed.

N. K. S.