I respectfully agree with the above-mentioned observations.

I may also state that the impugned order in the present writ petition had been made by the Government before the earlier petition was filed. It is strange that this order was not challenged in that petition for reasons best known to the petitioner.

It is also noteworthy that the impugned order was passed on 20th of September, 1963 and the same was published in the Punjab Gazette on September 27, 1963. The present writ petition was filed in this Court on 30th of July, 1965, i.e., after about 22 months. No explanation for this inordinate delay has been given in the writ petition. This is an additional ground for not interfering with the impugned order in these proceedings.

In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to cost.

INDER DEV DUA, J.—I agree.

R. S. NARULA, J.—I also agree.

B. R. T.

FULL BENCH

Before Inder Dev Dua, Prem Chand Pandit and R. S. Narula, JJ.

M/S OM PARKASH-RAJINDER KUMAR,— *Petitioner*

versus

K. K. OPAL,—*Respondent*

Civil Writ No. 2306 of 1964.

October 10, 1966

Punjab General Sales Tax Act (XLVI of 1948)—S. 10(7)—Penalty—Whether can be imposed before the end of the year—S. 11—Assessment on the basis of quarterly returns submitted by the dealer—Whether can be made before the expiry of the relevant financial year.

Held, that sales tax can be assessed under section 11 of the Act on the basis of quarterly returns submitted by a dealer in pursuance of a notice served on him under section 10(3) of the Act before the expiry of the relevant financial year.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 21st January, 1966 to a Division Bench for decision of the important question of law involved in the case. The case was further referred by the Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula on 23rd March, 1966 to a Full Bench for decision on that important question of law The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice R. S. Narula on 10th October, 1966.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the notice, dated 17th October,* 1964.

BHAGIRATH DASS WITH B. K. JHINGAN AND S. K. HIRAJI, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL WITH MANMOHAN SINGH, ADVOCATE, for the Respondent.

ORDER OF THE FULL BENCH

NARULA, J.—This Full Bench is called upon to answer the following question:—

> "Can penalty be imposed on a dealer under section 10(7) of the Punjab General Sales Tax Act before the end of the year."

The circumstances which have led to the making of this reference may first be surveyed. The petitioner, a partnership firm of Amritsar, is a registered dealer under the Punjab General Sales Tax Act, 46 of 1948 (hereinafter referred to as the Act). Shri K. K. Opal, Excise and Taxation Officer (Enforcement), hereinafter called the respondent, was appointed the assessing authority under the Act for the whole of the State of Punjab by notification dated February 10, 1964 (Annexure B). His authority and jurisdiction to exercise all the powers and to perform all the functions of assessing authority under the Act *vis-a-vis* the petitioner have not been questioned before us. Several points originally raised in the writ petition based on the alleged attack on the authority and jurisdiction of the respondent have been specifically given up by Shri Bhagirath Dass, learned counsel for the petitioner, at the hearing of this case.

The petitioner was required to file quarterly returns under the Act. During the year 1964-65, when the petitioner had filed the prescribed returns for the first quarter ending June 30, 1964, but had not yet submitted the returns for the next quarter, for which the Act gave him time till October 30, 1964, the respondent served upon the petitioner the impunged notice dated October 17, 1964 (Annexure C) under sub-section (7) of section 10 of the Act calling upon the petitioner to appear before the respondent and to show cause to him on October 29, 1964, why penalty, not exceeding one and a half times of the amount of tax to which the petitioner was liable to be assessed, should not be imposed upon the petitioner—

(i) for maintaining false or incorrect account for the period ending 30th September, 1964.

(ii) for furnishing false or incorrect returns of turnover for the period ending 30th September, 1964.

(iii) for furnishing false or incorrected list of sales made to registered dealers or goods exported outside Punjab.

Instead of showing cause to the respondent the petitioner chose to invoke the extraordinary original jurisdiction of this Court under Article 226 of the Constitution on October 24, 1964, to quash the above mentioned notice and to restrain the respondent from making any assessment on its basis. The relevant attack on the notice is based on the allegations made in the first sentence of paragraph 9 and in paragraphs 12 and 13 of the writ petition, which are quoted below in the language of the petitioner itself:—

"9. That no proceedings for the assessment year 1964-65 can take place prior to the expiry of the year, nor can any notice be issued by the respondent under section 10(7) of the Act.

12. That the notice (Annexure C) is *ultra vires* on the face of it. Although, no return has been filed at all for the period ending 30th September, 1964, and still it has been mentioned that the petitioner has furnished false or incorrect return "for the period 30th September, 1964".

> 13. That the declaration forms, which are required to be produced at the time of assessment when the dealer claims the exemption, cannot be required to be produced at any time earlier to the time of assessment, and the respondent has unnecessarily assumed jurisdiction to demand either the furnishing of accounts or of the production of declaration forms".

Petitioner also claimed *ex parte* stay of further proceedings before the respondent during the pendency of the writ petition. By order dated October 26, 1964, the Motion Bench issued notice of the petition and granted interim stay of further proceedings, which interim order was thereafter extended from time to time till it was made absolute by Mahajan, J., on December 2, 1964, as no one appeared to oppose the grant of interim relief in spite of service of notice of the stay matter on the respondent. On February 20, 1965, the return of the respondent, dated February 5, 1965, was filed. The reply to the only contention of the petitioner, with which we are concerned, is contained in paragraph 12 of the written statement of the respondent in the following words:—

> "In reply to paragraph 12 of the petition, it is submitted that as already submitted in the preceding paragraph the respondent is fully competent to frame assessment of the petitioner-firm in accordance with the provisions of law. The notice issued for the production of accounts for the period ending the 30th September, 1964, pertaining to the year 1964-65 is not related only to the filing of quarterly returns but is also regarding maintaining of false accounts or submission of incorrect returns or submission of incorrect list of sales made to registered dealers or goods exported outside the Punjab during the year 1964-65, that is, from the 1st April, 1964 to the 30th Septefber, 1964. The dealer has been given due opportunity to prove their correctness".

An objection to the maintainability of the writ petition was also taken in paragraph 14 of the return on the ground that the petitioner had not availed of the alternative remedies by way of appeal and revision against the order of the assessing authority, which remedy is said to have been available to the petitioner under sections

20/21 of the Act. The said objection has not, however, been pressed at all on behalf of the respondents before us.

When this petition came up for hearing before my learned brother Dua J., on January 21, 1966, it was directed that in view of the importance of the question involved it was desirable that the case should be heard in the very first instance by a Division Bench. In pursuance of the said order the matter was heard by a Division Bench consisting of my learned brother Dua J., and myself. At the hearing before the Division Bench Shri J. N. Kaushal, Advocate-General of the State of Punjab (now Mr. Justice Kaushal) pressed for reconsideration of the view expressed by an earlier Division Bench of this Court (Grover and Gurdev Singh JJ.,), in *Mansa Ram Sushil Kumar* v. *The Assessing Authority, Ludhiana* (1), to the effect that there could be no assessment of tax under the Act before the expiry of a financial year. By our order dated March 23, 1966, Dua, J., and myself directed reference of the above-quoted question to a still larger Bench this case appeared to require re-examination of the earlier Division Bench judgment in the case of *Mansa Ram Sushil Kumar* (supra). This is how the case has come up before us for deciding the aforesaid question of law relating to the scope and interpretation of sub-section (7) of section 10 of the Act.

It would be appropriate at this stage to take notice of the relevant provisions of the Act and the Rules framed thereunder. The Act replaced the Punjab General Sales Tax Act, 1941, and by virtue of operation of sub-section (3) of section 1 came into force on the 1st of May, 1949. "Turnover" has been defined in clause (i) of section 2 of the Act to mean the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof. Clause (j) of section 2 provides that "year" means the financial year. Sections 4, 5, 7, 10, 11, 11-A, 11-B and 12 to 14 of the Act as amended upto 1960, are as follows:—

[His Lordship read these rules and continued:]

Sub-section (7) of section 10, with which we are directly concerned, was introduced into the Act by section 4 of the Punjab Sales

(1) (1964)15 S.T.C. 857.

Tax (Amendment) Ordinance of 1963, which was subsequently replaced by the General Sales Tax (Amendment) Act 2 of 1963, or January 10, 1963. By a subsequently amendment introduced by section 3(1) of Punjab General Sales Tax (Amendment) Act 28 of 1965, the words "every year" originally occurring in sub-section (1) of section 5 of the Act have been deleted. There have been various other amendments to the Act from time to time but we are not concerned with the same.

In exercise of the powers conferred by section 27 of the Act the State Government has framed Punjab General Sales Tax Rules, to which I will refer as "the Punjab Rules" in this judgment. Reference has been made at the hearing of this case before us to rules 17 to 21 and 32 to 37 only. These rules are, therefore, copied below:—

[His Lordship read these sections and continued:]

Rules 48 to 52 prescribe the procedure for obtaining refunds of tax admissible under section 12 of the Act.

I shall now proceed to deal with the rival contentions of the learned counsel for the parties.

Mr. Bhagirath Dass first pressed into service certain general principles for interpretation of charging sections in fiscal laws with which principles there neither is nor can be any quarrel. He referred to the judgment of the Supreme Court in *The Commissioner of Income Tax, Patiala* v. *Messrs Shahzada Nand and others* (2), wherein it was held that in a taxing statute one has to look merely at what is clearly said and that neither there is any room for any intendment nor is there any equity about a tax. Nothing is to be read into a taxing law and nothing has to be implied therein. One must only look fairly at the language used subject to the only rider that in case of reasonable doubt the construction most beneficial to the subject should be adopted.

On the merits of the question to be answered by us, counsel argued that penalty is related to the amount of tax assessed or liable to be assessed, the tax under the Act is a "yearly one" and, therefore, there could be no assessment before the expiry of the whole year

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(2) 1966 Current Law Journal (Pb.) 488.

(year as defined in the Act). Consequently, it was argued, respondent could not initiate penalty proceedings under section 10(7) of the Act prior to the assessment proceedings or otherwise than simultaneously with the quantification of the yearly tax. He submitted that on the authority of the earlier Division Bench judgment of this Court in the case of *Mansa Ram-Sushil Kumar* (supra) it is clear that assessment under the Act has to be made only at the end of the year and cannot be made during the course of the year as and when a return may be filed by a registered dealer. There is no doubt that the Division Bench in the earlier case had held that assessment of tax for the quarters ending 30th of June, and 30th of September made before the expiry of the assessment year on the 31st of March next was illegal on that short ground. Counsel further emphasised that in respect of the quarter ending 30th September, 1964,—even the prescribed returns had not yet been filed by the petitioner, and, therefore, the respondent could not assume jurisdiction in respect of anything alleged to have been done or omitted to have been done during that period before the expiry of the statutory period allowed by the Act. In support of the proposition that tax under the Act is "yearly". Mr. Bhagirath Dass relied on the judgment of the Supreme Court in *Messrs Mathra Parshad and Sons* v. *State of Punjab and others* (3). It was argued that the earlier Division Bench judgment of this Court was unassailable as it was based exclusively on the relevant observations of the Supreme Court in *Messrs Mathra Parshad and Son's case*. Mr. Bhagirath Dass most vehemently urged that since we are concerned in this case with section 2 of the Act, prior to its amendment in 1965, it would be doing violence to that provision of law if we were to hold that despite the clear phraseology of that section, tax could be assessed at any time before the expiry of the relevant year. He then referred us to the authority conferred on a dealer by sub-section (5) of section 10 to furnish a revised return before the date prescribed for the furnishing of the next return by him if the dealer discovers any ommission or other error in any return already furnished by him and argued that this statutory right of a dealer would be abrogated and nullified without any authority of law if the quarterly returns were allowed to be assessed before the expiry of the whole year. If the assessment could not be made before the expiry of the period allowed for filing returns for the entire financial year, argued counsel,

(3) A.I.R. 1962 S.C. 745.

penalty cannot possibly be imposed before completing the assessment. For determining whether and, if so, to what extent an account, a return or evidence produced before an authority under the Act is false, the authority has necessarily to determine the correct turnover of the dealer and this determination, it was submitted, is only another name for what is known as assessment. Counsel for the petitioner relied on the judgment of the Supreme Court in *C. A. Abraham* v. *Income-Tax Officer, Kottayam, and another* (4), for asserting that proceedings for imposition of penalty are a part of the assessment proceedings. In the case of *Commissioner of Income-Tax, Andhra Pradesh* v. *Bhikaji Dadabhai and Co.* (5), their Lordships of the Supreme Court had relied on the dictum of the Privy Council in *Commissioner of Income-Tax, Bombay Presidency and Aden* v. *Khemchand Ramdas* (6), to the effect that one of the pecularities of most Income-tax Acts is that the word "assessment" is used as meaning sometimes the computation of Income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax payer. Relying on their earlier judgment in *C. A. Abraham* v. *Income-tax Officer, Kottayam and another* (4), the Supreme Court reversed the view of the Hyderabad High Court to the effect that penalty not being tax, provisions relating to imposition of and collection of penalty did not survive the repeal of the Hyderabad Income-tax Act and held that the expression "assessment" as used in section 44 of the Indian Income-Tax Act included the procedure for imposition of penalty. Reliance was also placed on the judgment of the Supreme Court in *Commissioner of Income Tax, Madras, and another* v. *S. V. Angidi Chettiar* (7), wherein it was held that the penalty provisions under section 28 of the Income-tax Act would, in the event of the default contemplated by clauses (a), (b) or (c) of that provision, be applicable in the course of assessment of a registered Firm. Mr. Bhagirath Dass also emphasised implications of the 1965 amendment of section 5 and argued that the Legislature adopted that course to take away from the tax its original yearly colour. He then referred to rule 37 of the Punjab Rules and submitted that imposition of penalty and assessment of tax had to be simultaneous and that in any case the imposition of penalty could

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(4) A.I.R. 1961 S.C. 609=(1961)41 I.T.R. 425.
(5) (1961)42 I.T.R. 123.
(6) (1938)6 IT.R. 414.
(7) A.I.R. 1962 S.C. 970.

not precede the final assessment for the year in question. Mr. Bhagirath Dass admitted that quarterly assessment could be made under the Act but reiterated that whether the assessments are made for a quarter or a month or for any particular period, they should not be made before the expiry of the year. Relying on the judgment of the Orissa High Court in *Chakoo Bhai Ghelabhai* v. *The State of Orissa and others* (8), it was urged that a liability under section 4 of the Act is not incurred on the mere exceeding of the turnover of a dealer beyond the figure mentioned in the Act as liability means no more than "to be under an obligation" and does not necessarily cannote an existing liability. The charging section was referred to in that judgment as merely declaratory and it was held that the prospective and contingent liability to pay tax did not actually arise until an assessment had been made according to the directions laid down in the Sales Tax Act. Reference was also made to the judgment of the Supreme Court in *State of Rajasthan and others* v. *Ghasilal* (9), wherein it was held that there may be no non-compliance with section 16 of the Rajasthan Sales Tax Act 29 of 1954 (which provision authorised the imposition of a penalty on a dealer who had without reasonable cause failed to pay the tax due within time allowed) merely on the filing of the quarterly return as no tax was due till assessment had been made under section 10 of the Rajasthan Act. The reference to the Orissa case (*Chakoobhai Ghelabhai* v. *The State of Orissa and others* (supra) and to the Supreme Court judgment under the Rajasthan Act case appears to be misconceived. No question has arisen in the instant case about the stage at which payment of the tax can be enforced. Nor are the provisions of sub-section (7) of section 10 of the Act analogous to the provisions of section 16(1) (b) of the Rajasthan Sales Tax Act.

On the other hand, it was urged by Shri L. D. Kaushal, learned Senior Deputy Advocate-General, that the provisions of the Act were clear about the stage at which assessment of tax thereunder can be made. He submitted that not only is there no bar against making periodical assessment of tax under the Act on the basis of quarterly or monthly returns as the case may be, but the Act and the statutory Rules framed thereunder clearly provide for such a course to be adopted and further that the Supreme Court has also given indication in the same direction in several cases. On this

(8) (1956)7 S.T.C. 36.
(9) A.I.R. 1965 S.C. 1454.

basis he argued that the earlier Division Bench judgment of this Court needs reconsideration. He also contended that penalty proceedings under sub-section (7) of section 10 can be initiated even independently of and prior or subsequent to assessment proceedings besides being resorted to simultaneously with those proceedings. Mr. Kaushal relied on the well-known observations of Lord Dunedin in *Whitney* v. *Commissioners of Inland Revenue* (10), relating to three stages in the imposition of tax, viz. (1) declaration of liability, (2) the assessment and (3) recovery proceedings, and argued that liability, which is created and fixed by sections 4 and 5 of the Act, does not depend upon actual assessment under sections 10 and 11, which latter proceedings are resorted to for quantification of the tax due. In the same connection, learned counsel cited the Supreme Court judgment in *Chatturam Horilram Limited* v. *Commissioner of Income-Tax, Bihar and Orissa* (11), wherein it was observed by Jagannadhadas, J., as he then was, (who delivered the judgment of the Court) as below:—

> "The contention of the learned counsel for the appellant is that during the relevant year 1939-40 the income was not chargeable to tax as a fact and that the retrospective operation of the Finance Act for the relevant year by virtue of a latter legislation does not make a difference for this purpose. To decide this question it is necessary to have a clear idea of the scheme of the Income-tax Act and its corelation to the Finance Act of each year. The Income-tax Act is a standing piece of legislation which provides the entire machinery for the levy of income-tax. The Finance Act of each year imposes the obligation for the payment of a determinate sum for each such year calculated with reference to that machinery. As has been pointed out by the Federal Court in *Chatturam* v. *Commissioner of Income-Tax, Bihar* (12), (quoting from the judgment of Lord Dunedin in *Whitney* v. *Commissioners of Inland Revenue* (10), there are three stages in the imposition of a tax: There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment.

(10) L.R. 1926 A.C. 37.
(11) 27 I.T.R. 709.
(12) 1947 F.C.R. 116.

> That, *ex hypothesi*, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay. The same idea has been expressed in slightly different language by Lord Romer in the judgment of the Privy Council reported in *Commissioner of Income-tax, Bombay and Aden* v. *Khemchand Ramdas* (6), Chapter III of the Income-tax Act headed "Taxable Income" contains the various provisions with reference to which taxable income is determined."

Mr. L. D. Kaushal, who argued this case on behalf of the State with great ability and remarkable clarity, added that even independently of the powers of the authority under the Act to assess tax before the expiry of the whole year in cases where quarterly or monthly returns are submitted, penalty proceedings under section 10(7) of the Act can be taken against a dealer at any time. The first point relevant for deciding the question referred to us, which appears to emerge from the rival contentions of the learned counsel, is whether tax can be assessed under section 11 of the Act on the basis of quarterly returns submitted by a dealer in pursuance of a notice served on him under section 10(3) of the Act before the expiry of the relevant financial year. For the reasons hereinafter stated, I propose to answer this question in the affirmative. In the first place, the scheme of the Act and its various provisions appear to leave no doubt about assessability of a dealer on the returns submitted by him during the course of a year. Under sub-section (1) of section 10, tax is not required to be paid annually but "at such intervals as may be prescribed". Whereas lump sum acceptance of tax is provided by sub-section (2) of section 10, the determination of amount by way of composition is related to "any period" as distinguished from "any year" in the face of the statutory definition of "year" given in the Act. There is no doubt that monthly or quarterly returns are required to be furnished in the cases referred to in sub-section (3) of section 10 to provide an appropriate machinery for collection of the tax due. But in addition to the payment of tax monthly or quarterly the law also requires furnishing of the prescribed returns at the same interval. If the Authority was not intended to be given the power of assessment on the basis of those returns, it could have been left to the dealer to deposit the tax at such intervals according to their books but to file only annual returns. Great emphasis was laid by Mr. Bhagirath Dass on

the provision of sub-section (5) of section 10, which entitles a dealer to file a revised return before the date prescribed for the furnishing of the next return by him so as to correct any ommission or error, in the original return furnished by him, which omission or error might have been subsequently discovered by the dealer. It was argued by Mr. Bhagirath Dass that no assessment could be made so long as a dealer had not exhausted his statutory right to correct any possible error or, omission. The argument appears to me to be misconceived. In case of a dealer required to submit annual returns, the period within which he can exercise his right of correction of error under sub-section (5) of section 10 would expire 30 days after another year has gone by. Still counsel for the petitioner could not argue that in case of such a dealer assessment proceedings cannot be taken in hand till 13 or 14 months after the expiry of the year in respect of which assessment is sought to be made. Rest of the argument of Mr. Bhagirath Dass based on section 10(5) of the Act is directly related to the interpretation of section 10(7) and will be dealt with at its appropriate stage. Section 11(1) clearly states that if the Assessing Authority is satisfied even without calling the dealer or asking him to produce any evidence "that the returns furnished in respect of any period" are correct and complete, the assessing authority shall assess the amount of tax due from the dealer "on the basis of such returns". This shows that the unit of assessment has to be the period covered by one set of prescribed returns which may be either a year or any lesser part of a year which might be fixed in a given case by notice under sub-section (3) of sction 10. If undisputed assessment can be made under sub-section (1) of section 11, there is nothing to show that in case of a contested assessment envisaged by sub-sections (2) and (3) of that section a further period must elapse till the end of the relevant financial year. The provisions of section 11-A do not appear to help the petition. When the said section allows five years for reopening a case, it must necessarily specify the point of time from which the permitted period of five years has to commence. Since any escaped assessment in the course of a year is entitled to be re-assessed, the prescribed point of time has been fixed as the closing day of the year in which the turnover is proposed to be re-assessed. This does not conclusively show that there could be no separate assesment for periods of less than a year. In fact, Mr. Bhagirath Dass concerned that he does not question the jurisdiction of the authorities to make quarterly or monthly assessments but really insisted on arguing that even such assessment could not be taken in hand before the expiry of the financial year.

Rules 17 to 25 deal with the returns of taxable turnover required to be submitted by dealers. Rule 21 provides that "the return periods" fixed for any dealer have to remain in force for not less than three years. In my opinion, the Act does not distinguish between returns periods and assessment periods though the basis of the tax is no doubt yearly.

Great emphasis was laid by the counsel for the petitioner on the expression "every year" qualifying the phrase "taxable turnover" in sub-section (1) of section 5 of the Act. The tax under the Act, to which a registered dealer would be liable, would, it is admitted, not vary in quantum by assessment being taken in hand either at the end of the year or on the basis of the quarterly returns if any. From this point of view there could be three types of dealers. Firstly those who were registered dealers under the Punjab General Sales Tax Act of 1941. From the date of coming into force of the Act such a dealer becomes and continues to be liable to sales tax till his registration is cancelled or until his case falls within sub-section (3) of section 4 of the Act. The second category of dealers consists of those who were not registered under the previous Act. A dealer falling in this category could not get himself registered unless his gross turnover during the year immediately preceding the commencement of the Act exceeded the "taxable quantum". Taxable quantum (defined in sub-section (5) of section 4 varies from one kind of a dealer to another. The third category is of dealers who were not registered under the previous Act and who were either not carrying on business before the Act came into force or whose gross turnover during the year previous to the coming into force of the Act did not exceed the taxable quantum. Their case is covered by sub-section (2) of section 4. The liability of a dealer falling in this third category to pay sales tax and his entitlement to get himself registered under the Act accrues on the expiry of 30 days after the date on which his gross turnover first exceeds the taxable quantum during any year. The sum total of this analysis read with sub-section (3) of section 4 is that once a dealer becomes entitled to be registered under the Act and becomes liable to pay sales tax under any of the three categories mentioned above, his liability is not affected by the quantum of sales at least for a period of three years after the expiry of which period, except in the contingency provided in sub-section (3) of section 4, the liability would still continue. The rate of tax varies with different commodities but has nothing to do with the quantum of sales.

To support his argument in this connection, Mr. Bhagirath Dass relied on certain judgments based on the interpretation of section 28 of the Indian Income Tax Act, 11 of 1922, which corresponds to section 271 of the Income Tax Act, 43 of 1961. Section 23 of the 1922 Act provides for imposition of penalty for concealment of income or for improper distribution of profit. The opening part of the section, which alone is relevant for our purpose, is in the following terms:—

> "If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal *in the course of any proceedings under this Act,* is satisfied that any person has * * * * he or it may direct that such person shall pay by way of penalty * * * * *"
> (italicised by me).

The phraseology of the opening part of sub-section (1) of section 271 of 1961 Act is the same.

I have not been able to find any support for the proposition canvassed by Mr. Bhagirath Dass in the judgment of Lord Romer in *Commissioner of Income-tax,, Bombay Presidency and Aden* v. *Messrs Khemchand Ramdas* (13), wherein it was held that the relevant provisions of the Income-tax Act were exhaustive and prescribed the only circumstances in which and the only time in which fresh assessments could be made and fresh notices of demand could be issued. There is no doubt that if any provision is made in the relevant statute to limit the time within which an assessment has to be made, no assessment proceedings can be taken after the expiry of such time.

In *Commissioner of Income-tax, Madras, and another* v. *S. V. Angidi Chettiar* (7), it was held that the power to impose penalty under section 28 of the 1922 Act depended upon the satisfaction of the Income-tax Officer "in the course of the proceedings under the Act" and the said power could not, therefore, be exercised before the completion of the assessment proceedings by the Income-tax Officer. It is apparent that the ratio of the Supreme Court judgment in that case was based on the statutory requirement of imposition of penalty only " in the course of any proceedings" under the 1922 Act.

(13) A.I.R. 1938 P.C. 175.

No such expression occurs in section 10 (7) of the Act. The dictum of the Supreme Court in the above-mentioned case does not, therefore, help the petitioner at all.

Mr. Bhagirath Dass, then relied on the judgment of the Supreme Court in *Ghanshyamdas* v. *Regional Assistant Commissioner of Sales Tax, Nagpur and others* (14). Counsel referred to the following observations of the Supreme Court in that judgment:—

> "It is manifest that in the case of a registered dealer the proceedings before the Commissioner starts factually when a return is made or when a notice is issued to him either under section 10 (3) or under section 11 (2) of the Act. The acceptance of the contention that the statutory obligation to file a return initiates the proceedings is to invoke a fiction not sanctioned by the Act. The obligation can be enforced by taking a suitable action under the Act. Taking of such an action may have the effect of initiating proceedings against the defaulter. The default may be the occasion for initiating the proceedings, but the default itself *proprio vigore* cannot initiate proceedings. Proceedings in respect of the assessment of the turnover for the relevant period cannot, therefore, be said to be pending before the Commissioner. Learned counsel for the respondent contends that the certificate of registration is itself a notice to the registered dealer to furnish his returns within the prescribed time. Reliance is placed upon Form II, wherein under the appropriate column the particulars in regard to a dealer's return and the date within which he should submit it are given. The main purpose of the registration certificate is to localize dealers with taxable turnovers and to facilitate the collection of taxes. The registration certificate enables the dealer to carry on the business. Neither section 8, which enjoins such registration on every dealer with taxable turnover nor rule 8, which prescribes the particulars to be incorporated in a certificate suggests that the certificate itself is a statutory notice to a dealer. The objects of the certificate and the statutory notices under the Act are different and the former cannot be equated with the latter.

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(14) A.I.R. 1964 S.C. 766.

Rule 33, provides that the assessing authority shall maintain a register in Form XIII in which he shall enter the details of each case initiated under rules 31 and 32. Rule 31 says that on receipt of a return or returns required under rule 19, 20 or 22 from any dealer, the assessing authority shall serve on him a notice in Form XI. Rule 32 prescribes, *inter alia,* manner of assessment under sub-section (3) of section 10, clause (a) of sub-section (4) of section 11, and under subsection (5) of section 11. Form XIII gives the serial number, name of the dealer, nature of the business, gross turnover, taxable turnover as determined for the relevant years and the date of issue of notice in Form XI or Form XII. A perusal of the said rules and the forms discloses that the proceedings in the case of a registered dealer start only on the receipt of a return or returns required to be furnished under the rules. Under rule 33, a register is maintained giving the details of each case 'instituted' under rules 31 and 32. Rule 34 enacts that a case instituted would be pending till an order of assessment was made. No doubt, it would be pending till a final order of assessment was made by the highest tribunal or court under the Act.

At this stage some of the decisions cited at the Bar may conveniently be noticed. A Full Bench of the Bombay High Court in *Bisesar House* v. *State of Bombay* (15), held that a notice under sub-section (2) of section 11 of the C. P. and Berar Sales Tax Act, 1947, could not be issued more than three years after the expiry of the period for which it was proposed to make the assessment but an assessment under subsection (1) of section 11, could be made more than three years after the expiry of such period. There a dealer made his return and paid the tax, which according to him was due for three chargeable accounting years. The Commissioner of sales-tax served notices on him under section 11 (2) in respect of the first two years more than three years after the end of the chargeable accounting years. The Court drew a distinction between sub-sections (1) and (2) of section 11 and came to the conclusion that in the former case it was only a formal appropriation of the amounts paid

(15) (1958)9 S.T.C. 654 (F.B.).

towards the tax due and therefore it could be done even after three years, but in the latter case the issue of notice under section 11 (2) was in a substantial sense an initiation of proceedings by the Commissioner and his failure to tax these turnovers would constitute "escaped assessment" within the meaning of section 11-A of the Act and therefore, it could be reopened only within 3 years prescribed thereunder. The learned Judges, if we may say with respect, did not consider the question, in what circumstances assessment proceedings could be held to be pending? As we have held that the submission of a statutory return would initiate the proceedings and that the proceedings would be pending till a final order of assessment was made on the said return, no question of limitation would arise. A division Bench of the same High Court, in *Ramkrishna Ramnath* v. *Sales Tax Officer, Nagpur* (16), made a distinction between proceedings under section 11 (4) (a) and those under section 11 (2) of the Act in that proceedings under section 11 (2) are for the purpose of assessment whereas those under section 11 (4) (a) are taken in terrorem and the dealer is penalised by a best judgment assessment in default of compliance. On that reasoning they held that the period of limitation prescribed under section 11-A, might apply to a proceedings under section 11 (2), but no such period of limitation was laid down in the Act in respect of a proceeding under section 10 (3) or section 11 (4) (a) of the Act. We find it rather difficult to appreciate the reasoning on which the learned Judges distinguished the Full Bench decision. But the question of pendency of proceedings was not raised before the Division Bench and was not considered by it. For the foregoing reasons we hold that a statutory obligation to make a return within a prescribed time does not *proprio vigore* initiate the assessment proceedings before the Commissioner; but the proceedings would commence after the return was submitted and would continue till a final order of assessment was made in regard to the said return.

Now let us apply the said legal position to the facts of Civil Appeal No. 101 of 1961. The appellant has to submit

(16) (1960)11 S.T.C. 311.

quarterly returns and assessments are made on the basis of the said returns, that is to say, he has to be assessed for his turnover separately in respect of each quarter. Therefore, the question of escape of assessment has to be considered on the ground that each quarter is a separate period for the assessment. For the year, 1949-50, that is, for the period from October 22, 1949, to November 8, 1950, he had to submit 4 returns for the four quarters. But he had submitted only one return on October 5, 1950, for one quarter. No assessment was made in respect of any of the four quarters. So the assessment proceedings must be held to be pending before the Commissioner only in respect of the quarter for which the appellant had made the return. In respect of the other quarters no proceedings could be said to be pending before the Commissioner."

So far as, I have been able to see the above passages in the majority judgment of the Supreme Court in the case of *Ghanshyamdas* (supra) clearly indicate that in case of a dealer, who has to submit quarterly returns, assessments are made on the basis of such returns and he has to be assessed for his turnover "separately in respect of each quarter".

Mr. L. D. Kaushal, pointed out that similar indication is also available in the judgment of the Supreme Court in *Madan Lal Arora* v. *Excise and Taxation Officer, Amritsar* (17), wherein it was held that when sub-section (4) of section 11 of the Act talks of "returns in respect of a period", that refers, in the case of the assessee who has filed the returns, to the quarters in respect of which he submitted the returns and that the three years within which the authority could proceed to make the best judgment assessment have, therefore, to be counted from the end of each quarter in respect of which returns had been filed. The clear dictum of their Lordships of the Supreme Court in the *case of Ghanshyamdas* and in the *case of Madan Lal* are wholly inconsistent with the petitioner's version of the authorities under the Act having no jurisdiction to make assessment at the end of each quarter in case of a dealer who is required to submit quarterly returns.

In *Faridabad Industrial and Quarrying Company* v. *The Excise and Taxation Officer (Assessing Authority) and another* (18). I had

(17) A.I.R. 1961 S.C. 1565.
(18) 1966 S.T.C. 101.

held that the three years referred to in sub-section (5) of section 11 of the Act within which the assessing authority can proceed to make a best judgment assessment have to be counted from the end of each quarter in respect of which the return had to be filed.

Though a perusal of the relevant provisions of the Act, the Rules framed thereunder and the abovesaid judgments of the Supreme Court does not appear to support the petitioner, his mainstay is the Division Bench judgment of this Court in the case of *Mansa Ram Sush Kumar* (supra), the correctness of which judgment was most respectfully questioned by Mr. Kaushal. It had been contended in that case on behalf of the dealer that though he had to submit quarterly returns and to pay quarterly tax, the full amount of tax due from him under the Act according to such returns could not be assessed before the expiry of the financial year and the assessing authority could not proceed to make an assessment order with regard to each quarterly return furnished by the dealer. After referring to the rival contentions of the parties, the Division Bench accepted the dealer's contention with the following observations:—

> "There is a good deal of force in the submission of Mr. Bhagirath Dass that in view of the majority decision in *Mathra Prashad's case*, the Assessing Authority has to make the assessment for a whole year and has to take into account any exemptions or deductions to which the assessee becomes entitled at any time during that year. If that be so, it is not possible to see how the Assessing Authority could make any final orders before the expiry of the year in question and proceed to make assessment with regard to each quarter as was done in the present case. Section 11-A, further indicates that according to the provisions of the Act, it was never contemplated that an assessment order could be made with regard to a return for each period. This section provides for an eventuality when it is discovered that the turnover of the business of a dealer has been under-assessed, or escaped assessment in any year. The Assessing Authority is empowered within three years following the close of the year for which the turnover is proposed to be reassessed to proceed to reassess the tax payable on the turnover which has been under-assessed or has escaped assessment after giving the dealer a reasonable opportunity, in the prescribed manner of being heard. If an assessment can be made under

section 11, for each period, e.g., on the quarterly return as in the present case, it is not possible to see from which point of time the period of limitation prescribed in section 11-A, will be calculated. It is also noteworthy that there is no provision in the Act similar to section 22-B of Income-tax Act, 1922 and section 141 of the Income-tax Act, 1961, empowering the making of a provisional assessment before the end of the year. According to the majority judgment in *Mathra Prashad's case* (supra), the filing of periodical returns and the payment of tax according to those returns is only a method of collecting the tax, be it quarterly or monthly. It appears, therefore, that there is no machinery in the Act by which the assessment can be made every time a return for a period is filed.

It is true that section 11 contains language which may lend support to the view that the Assessing Authority can make an assessment with regard to each period for which the return is furnished. Similarly, rule 33 of the Rules seems to indicate that a notice can be served in Form S.T. XIV upon a dealer for assessing him for a period or periods but the language of this rule is only consistent with the provisions of section 11. It has been pointed out by the learned counsel for the respondent that if full effect is to be given to the plain language employed in section 11, no serious difficulty will arise even if during the assessment year the dealer becomes entitled to any exemption or deduction, the benefit of which has to be given to him in respect of the whole year. He can in that eventuality claim a refund under section 12 of the Act, read with rules 48 to 55. It cannot, however, be forgotton that all the provisions contained in the Act have to be read together and so read, it would seem that what is truly contemplated is that while making the assessment after the expiry of the assessment year the Assessing Authority shall proceed to assess the amount of tax due from a dealer on the basis of the periodical returns which have been filed. If the other view commended by the learned counsel for the respondent is to be adopted, it will mean following the minority decision of Kapur, J., in *Mathra Parshad's case* (supra), who relied on the language of section 11, a good deal for holding that

sales tax was not a yearly tax like the income-tax, which course is not permissible.

If the matter were *res integra*, it may have been arguable that owing to the provisions of section 11, read with the relevant rules, the Assessing Authority can make the assessment for each period for which the return is furnished but the majority judgment of the Supreme Court settles the matter so far as the nature of the tax and its incidence is concerned. If sales tax is a yearly tax, then the assessment has to be made at the end of the year and cannot be made during the pendency of the year as and when a return is filed in the absence of any clear and explicit provisions to that effect.

For the reasons given above, the petition is allowed and the order of assessment made by the respondent on 22nd January, 1963, is hereby quashed, it being open to that authority to make a proper order of assessment on the expiry of the assessment year."

The learned Senior Deputy Advocate General argued that the Division Bench Judgement is erroneous because:—

(1) The learned Judges were under an erroneous impression about the Supreme Court having impliedly held that there can be no assessment under the Act before the expiry of a financial year;

(2) The period referred to in section 11-A of the Act would, in the absence of statutory indication to the country, commence from the date on which the relavent assessment period ended, which would be the end of quarter in case of quarterly assessment and the end of a year in case where yearly returns were to be submitted;

(3) No doubt, there was no provision in the Act for making provisional assessment on the analogy of section 141 of the Income-Tax Act 1961 (or section 22-B of the Income-Tax Act 1922) but the assessment which had to be made on quarterly basis was not provisional for any periods but was to be final in every respect and that in case any tax was levied or paid, which would subsequently be found

to be not payable, the dealer could claim its refund under section 12 of the Act and that the mere fact that refund could be ordered in certain contingencies made the quarterly assessments no less final or no more provisional than annual assessments which would also be similarly subject to relief being granted under section 12; and

(4) The Act and the Rules framed thereunder did provide for machinery for quarterly assessments and section 11 of the Act was clear in that respect.

A perusal of this Court's Judgment in *Mansa Ram Sushil Kumar's case* (supra) shows that though the Division Bench thought that if the matter was *res integra*, it might have been arguable on the basis of section 11 of the Act, read with relevant Rules, that the Assessing Authority could make assessment for each period for which returns were furnished but the majority judgement of the Supreme Court in the case of Mathra Parshad, stood in their way from examining any such proposition. This really takes us to examine the Supreme Court's Judgement in *Mathra Parshad and Sons v. State of Punjab* (supra) Mr. Kaushal argued, if the Supreme Court has held that there can be no assessment under the Act before the expiry of the financial year, the matter stands concluded and the question is no more open for argument. If, however, it is found that this was not so held by the Supreme Court even by implication, the very foundation of the Division Bench Judgment falls and the matter has then to be decided afresh.

What happened in the Supreme Court case was this. The registered dealer who dealt, amongst other things, in the sale of manufactured tobacco was required to submit quarterly returns and had paid out the Tax due from him for the period ending 31st of March, 1954. On April 1, 1954, the Punjab Tobacca Vend Fees Act; 1954 (hereinafter called the Tobacco Act) came into force. On May 7, 1954, the State Government gave notice of its intention to add manufactured tobacco as an item in the schedule of exemptions under section 6 of the Act. In June 1954 the State Government issued a press note by which the dealers were inforced that it was not intended to levy both a tax on sales under the Acts as well as fee under the Tobacco Vend Fees Act for the same period. On August 2, 1954, came still another press note wherein the dealers were informed that levy of sales tax on manufactured tobacco would continue till the Vend Fee

Licences under Tobacco Act came into operation and that the vend fee under the latter Act would be proportionately reduced for the financial year then current in respect of the period for which sales tax would have to be charged. To avoid double taxation, provided the press note, any sales tax which had already been charged from the dealer in respect of manufactured tobacco would be refunded and no sales tax would be charged during the remaining year in respect of sale of such tobacco which fell under the Tobacco Act and that instead of sales tax, tobacco vend fees would be recovered at full rate for the whole year as and when rules under the Tobacco Act were finalised. But it so happended that rulers under the Tobacco Act were not finalised till after the expiry of the financial year. In those circumstances, notification dated September, 27; 1954; was issued by the Punjab Government under section 6 of the Act by which item 51 was added to the schedule of exemptions relating to manufactured tobacco as defined in the Tobacco Act. Though the notification was issued on the 27th September, 1954, it did not sepcify any point of time with effect from which the exemption entry would operate. The question which arose for decision by the Supreme Court was whether in such circumstances the exemption was to operate from the 27th of September, 1954, or from the very beginning of the financial year with effect from 31st March, 1954. This question had arisen because the Excise and Taxation Officer had by his notice issued in January, 1956 declined to grant to the dealer exemption even under the press note of 2nd August, 1954. The Supreme Court formulated the question which it was called upon to answer in the case of *Messrs Mathra Parshad and Sons* in the following words:—

> "Did the exemption in the notification issued on September 27, 1954 have effect from that date or from the beginning of the financial year".

In their Judgement their Lordships of the Supreme Court laid emphasis on the fact that they were dealing with the case of of exemption in the following words:—

> "If sales tax was not payable, it would be because of the exemption, and the only question thus is when the exemption began to operate. The notification does not say from what date the exemption operates".

Dealing with the above question, it was held in the majority Judgement as follows:—

"There is no doubt that the tax is a yearly tax. It was payable, in the first instance, by a dealer whose gross turnover during the financial year immediatly preceding May1, 1949, was above the taxable quantum. The tax is to be levied on the taxable turnover of a dealer every year.. The difference between gross turnover and taxable turnover is this, that to arrive at the taxable turnover of any period some deductions have to be made for the same period. This clearly shows that the tax is for a year. The method of collection allows collection of tax at intervals; in some cases the tax is collected at the end of the year; in some others, the tax is collcted quarterly and in still other cases, even monthly. If the exemption can be said to operate for that period for which the tax is payable according as it is annually, quarterly or monthly, the tax would be different for different persons. Those who are paying the tax annually would get exemption for the whole year but those who are paying it quarterly or monthly would get benefit in the quarter or the month of the notification but not for earlier quarters or months. It could not have been intended that the exemption was to operate differently in the case or dealers with different intervals of assessment.

The exemption thus must operate either from the date of the notification or from the commencement of the financial year, Here, the nature of the tax, as disclosed in sections 4 and 5 is decisive. In section 5 the tax is made leviable on the taxable turnover every year of a dealer'. The divisions of the year and the taxable turnover into different parts are to make easy the collection of tax, and form of the machinery sections. If the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever it comes in, in the year for which the tax is payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the exemption. In the present case, the

notification did not fix the date from which the exemption was to operate, probably because the Act omitted to make such provision, enabling the State to do so, and the exemption must, therefore, operate for the whole year, during which it was granted".

All that appears to me to have been held in the above-mentioned judgement of the Supreme Court was that if a notification under section 6 of the Act issued during the course of a year does not specify the date with effect from which the article in question is to be exempted from tax, the exemption must be deemed to operate from the first day of the financial year in which the notification is issued. The crucial finding of the Supreme Court to the effect that the exemption can be made to operate only for a part of the year if the notification so specifies is inconsistent with the case set up by the petitioner to the effect that the whole year must in all circumstances be treated at the same level and even assessment cannot be made before the expiry of the year. So far as the jurisdiction of the authorities under the Act to make assessment before the expiry of the year is concerned, the Supreme Court does not appear to have differed from its earlier pronouncements in *Madan Lal Arora* v. *Excise and Taxation Officer, Amritsar* (17) and *Ghanshyamdas* v. *Regional Assistant Commissioner of sales Tax, Nagpur and others* (14). On the contrary their Lordships again stated specifically that "it could not have been intended that the exemption was to operate differently *in the case of dealers with different intervals of assessment*". Different intervals referred to in an earlier part of the Supreme Court judgment referred to the intervals at which prescribed returns under the Act have to be filed. Those intervals for filing returns have been clearly equated by the Supreme Court with intervals of assessment.

While considering the same question D.K. Mahajan J., held on 31st of October, 1963, in Civil Writ No. 1123 of 1962, *Messrs Tara Chand-Lajpat Rai* v. *The Excise and Taxation Officer, Ludhiana and another,* after quoting in extenso from the judgment of the Supreme Court in the case of *Messrs Mathra Parshad and Sons* (supra), as follows:—

"The case before their Lordships related to the question of exemption and not to the question of assessment. Moreover, if the argument of Mr. Sibal that the assessment can only be made yearly and not quarterly

is correct, then their Lordships' observations that the exemption notification can limit the period of exemption for less than a year would be erroneous. Therefore, it follows that the contention of Mr. Sibal is incorrect. Sections 10 and 11, if read together, leave no manner of doubt that the Department can call upon the assessee to file quarterly or monthly returns and the assessment can be made on the returns filed; and once the assessment is made, the tax can be recovered. The Supreme Court decision relied upon has no applicability to the facts of the present case and, therefore, the first contention is rejected".

This view also appears to be consistent with the scheme of the Act, to which a detailed reference has already been made. Mr. L. D. Kaushal, also referred us to rule 33(b) of the Punjab Rules which provides for the assessing authority stating in the notice under Form S. T. XIV "the period or the return period or periods in respect of which assessment is proposed". This also clearly shows that assessment of tax under the Act can be made for a return period which may be less than the whole year. I find great force in the argument of the learned Senior Deputy Advocate-General to the effect that this statutory rule substantially clinches the matter.

An Act of a Legislature is intended to be fairly workable and in the absence of a statutory provision or a compelling reason Court should always lean to interpret a statute in such a manner as to achieve and secure its object. When the assessment of periodical returns cannot admittedly result in any difference in the incidence of taxation and in the quantification of the tax and when the statute requires monthly or quarterly payments of the amount of the tax in accordance with the period prescribed for submitting returns, quarterly assessments cannot possibly affect the assessee prejudicially. On the other hand, there seems to be no reason why assessment proceedings must wait till the expiry of the year after the submission of periodical returns. There does not appear to be any reason for treating quarterly assessments as provisional and, therefore, there is no necessity of searching in the Act for any provision like section 22-B of the Income Tax Act, 1922. J. L. Kapur, J., (as he then was) differed from the majority view in *Mathra Parshad's case* to the effect that the exemption notification must effect the entire financial

year. This does not appear to necessarily imply that every legal aspect on which the minority view was based (including the fact that quarterly assessments could be made under the Act) would have been disapproved by the majority of their Lordships of the Supreme Court if they had written the judgment subsequent to the note of dissent. Still, this appears to be the impression under which the learned Judges of this Court felt compelled to give the earlier Division Bench judgment contrary to the view of Mahajan, J., Supreme Court, no doubt referred to the provisions for quarterly or monthly or yearly returns and payments as machinery sections. But, as hereinafter discussed, the entire quantification proceedings from the stage of filing the returns till the pronouncement of the final assessment order constitute the machinery part of the Act.

For the foregoing reasons, but with the greatest respect to the learned Judges of this Court who decided the case of *Mansa Ram-Sushil Kumar.* (supra), both of which learned Judges I have always held in the highest esteem, I find myself more inclined to agree with the view adopted by D. K. Mahajan, J., as to the application of the ratio of the Supreme Court judgment in the case of *Messrs Mathra Parshad and Sons* to the question of legality of assessment of tax under the Act for a period of less than a year and at periodical intervals during the course of a financial year.

My above-mentioned finding really appears to take away the entire ground from under the feet of the petitioner's case. But even independently of my said finding, I would have answered the question referred to us in the affirmative on a proper interpretation of section 10(7) of the Act itself. This sub-section was introduced for the first time by paragraph 4 of the Punjab General Sales Tax (Amendment) Ordinance No. 2 of 1963, on and with effect from January 10, 1963, (date of its publication in the Punjab Gazette Extraordinary). When the Ordinance was replaced on March 23, 1963, by the Punjab General Sales Tax (Amendment) Act No. 2 of 1963, the first object of presenting the bill of the amending Act to the Legislature was described in the following words:—

> "With a view to prevent the evasion of tax by unscrupulous persons, through misuse of registration certificates, maintenance of false and incorrect accounts, or through dissolution or delay in assessment, the Punjab General Sales Tax Act was amended by issuing the Punjab Sales Tax

(Amendment) Ordinanee, 1963. The bill is now designed to replace the said Ordinance and thereby remove the loopholes in the existing law".

The very object of introducing the provision in question in the principal Act was to prevent maintenance of false and incorrect accounts by delay in assessment. A perusal of sub-section (7) of section 10 shows that action under it can be taken in three contingencies, namely: —

(1) Where a dealer has maintained false or inaccurate accounts with a view to suppressing his sales, etc.;

(2) Where a dealer has concealed any particulars of his sales or purchases, etc., from the returns submitted by him; and

(3) Where a dealer has produced before any authority under the Act any account, return or information which is false or incorrect in any material particular.

The scheme of the sub-section shows that proceedings under it can be initiated even before a return is submitted and even before the alleged false account is produced before the authority under the Act. Such a contingency may arise in various circumstances. To argue that in spite of false accounts or false information coming to the knowledge of the authorities under the Act they must sit with folded hands till the expiry of the year to allow the dealer to create or destory evidence appears to me to ask for defeating the very object of the provision. I do not find any force in the argument, which was vehemently pressed before us by Mr. Bhagirath Dass, to the effect that the interpretation which I am placing on sub-section (7) of section 10 of the Act would come into conflict with sub-section (5) of that section. His argument, to which a reference has already been made in another connection, was that it is the statutory right of a dealer to correct any error or omission in his account or return already furnished by him, howsoever dishonest may be such an error or omission, at any time by the date prescribed for the furnishing of the next return by the dealer. This argument of the learned counsel appears to ignore the fundamental difference between the scope of sub-section (5) and sub-section (7) of section 10 of the Act. The use of the word "discovers" in sub-section (5) appears to me to be conclusive to establish that the only omission

or error which a dealer is entitled to rectify within the time allowed by that provision is an accidental and honest error or omission in contra-distinction to the deliberately inaccurate or false entries or material for which a dealer is liable to be penalised under sub-section (7). The inaccurate accounts which can form the basis of action under sub-section (7) must be proved to the satisfaction of the authorities under the Act to have been inaccurately maintained or posted "with a view to suppressing his (dealer's) sales", etc. The use of the words "false", "suppressing", "concealed", etc., clearly shows that penalty is not intended to be imposed under sub-section (7) of section 10 of the Act for honest mistakes or clerical errors or omissions, but only for deliberate false entries or false evidence involving something like *mens rea.*

Nor have I been able to find any force in the contention of Mr. Bhagirath Dass, to the effect that if proceedings under section 10(7) of the Act could be taken and finalised before the expiry of a financial year, it would come into conflict with the Supreme Court judgment in the case of *Messrs Mathra Parshad and Sons (supra)*, as penalty may possibly be imposed on a dealer for maintaining false accounts in connection with the sale of an article which may in a later quarter of the same year be exempted from the operation of the Act by a notification under section 6. The eventuality envisaged by the counsel for the petitioner can conceivably occur even in case of assessment at the end of the financial year. According to the learned State counsel, section 12 of the Act immediately provides for the remedy. In a case of the type referred to by counsel, an application would, said Mr. Kaushal, lie under section 12(a) of the Act for refund of the amount of tax including the penalty, if any, paid by him which was not due from him under the Act.

Mr. Bhagirath Dass referred us to the judgment of the Supreme Court in *the State of Madhya Pradesh (now Maharashtra) v. Haji Hasan Dada* (19), wherein it was held that an assessee, who had paid the amount of tax assessed on him by the Assistant Commissioner of Sales Tax under the C.P. and Berar Sales Tax Act, 21 of 1947, for the period ending November 1, 1948, could not maintain an application under section 13 of that Act for an order for refund of the amount paid by him on the plea that in the turnover he had included dyeing charges which were not taxable. Shah J., who delivered the judgment of the Supreme Court, held that section 13 implied for

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(19) (1966)17 S.T.C. 343.

refund being granted of only such amount which was not lawfully due and whether a certain amount is lawfully due or not, must be determined by the Assistant Commissioner in making the order of assessment or reassessment. Upon that basis it was held that so long as the order of assessment passed by the Assistant Commissioner was not so set aside or modified, a dealer could not call upon the authorities to ignore the previous order and to grant refund contrary to the plain direction of the order. Reference was also made by the counsel for the petitioner to the judgment of my learned brother Pandit J., in *Karam Chand Thapar and Brothers Coal Sales Limited* v. *The State of Punjab and others* (20), wherein it was laid down that all previous assessments which had become final under the Act did not become without jurisdiction merely by the decision of the Supreme Court. There is no quarrel with the proposition of law referred to by Mr. Bhagirath Dass, in this connection. But a difficulty of this type can as much arise on account of a retrospective exemption being granted or a new deduction being allowed as in respect of penalty imposed under section 10(7) of the Act. A complication of this type is as much possible in case of an assessment at the end of a financial year as in case of quarterly assessment. Normally the obtaining of refund under section 12 of the Act would have to be based on an order of the competent authority in appeal or revision against the original assessment proceedings. The powers of revision conferred on the Commissioner by sub-section (1) of section 21 of the Act are wide and plenary. If the Commissioner illegally refuses relief on the basis of which a dealer may be entitled to obtain refund, further recourse can be had to proceedings under sub-section (3) of section 21 to the Financial Commissioner. In case of refusal of the Financial Commissioner to make a reference to this Court on any question of law arising out of such a situation, the High Court may even require the Financial Commissioner under sub-section (3) of section 22 to state the case and to refer the question. A dealer is, therefore, not without adequate remedy under the Act for a contingency of the type envisaged by Mr. Bhagirath Dass.

The body of sub-section (7) of section 10 also shows that the stage at which penalty can be imposed under that provision is not only the stage of final assessment as the quantum of tax is related not only to the amount of tax "to which a dealer is assessed", but also to the amount of tax to which he "is liable to be assessed". This

(20) 1965 P.L.R. 1185.

clearly shows that proceedings under section 10(7) of the Act can be taken even before arriving at a definite finding as to the quantification of the tax by merely working out the amount to which he may be liable to be assessed. Liability to tax is fixed by sections 4 and 5 and by the Schedule to the Act. The maximum and minimum amount of penalty, which can be imposed under the relevant provision, must, in the circumstances, have relation to the quantum of tax, which is assessed or is liable to be assessed for the return period to which the fault or default has reference. To illustrate this, it may be said that in a case where proceedings under section 10(7) of the Act are taken in respect of a quarterly return, the penalty which is liable to be imposed on the dealer would not be less than 10 per cent and not more than one and a half times the amount of tax to which the dealer is liable to be assessed for that particular quarter. The matter of actual quantification and imposition of penalty is, however, not before us in the present reference and all that we have been called upon to answer is the question whether the penalty can or cannot be imposed before the end of the year. One possible way of imposition of penalty under section 10(7) of the Act may be to take proceedings under that provision, to come to a definite finding about the alleged fault or default of the dealer and to impose the penalty in certain permissible proportion to the quantum of tax liable to be assessed and to leave out the working of the amount to the proceedings of the assessment of the tax if the same have not yet taken place. That, however, is not the precise question with which we are faced at present.

For the aforesaid reasons, the question referred to us is answered in the affirmative and it is held that penalty could be imposed by an appropriate authority under the Punjab General Sales Tax Act on a dealer under section 10(7) of the Act before the end of the "year". Costs of the reference will be included in the costs of the writ petition.

INDER DEV DUA, J.—I agree.

PREM CHAND PANDIT, J.—I also agree.

B.R.T.