PETITIONER:
COMMISSIONER OF SALES-TAX, U.P.

Vs.

RESPONDENT:
MANGAL SEN SHYAM LAL

DATE OF JUDGMENT02/04/1975

BENCH:

ACT:
U.P. Sales Tax Act, 1948-Section 10(3) and 10(3-B) period of limitation for filing revision by the Commissioner.
Interpretation of Statute-Whether scheme of the Act and rule can be taken into consideration in interpreting the Act-Whether provision of an Act can be construed on the analogy of another Act not part materia.

HEADNOTE:
The respondent, a dealer, was assessed in July, 1948. In January, 1960, the Sales Tax Officer wrote a letter to the Sales Tax Commissioner pointing out a mistake which had crept in the order of assessment. In April 1960, the Commissioner filed a Revision Application under s. 10 of the Act. Section 10(3) and s. 10(3-B) read as under :

> "(3)(i) The Revising Authority (or an Additional Revising Authority) may, for the purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion, call for and examine, either on its own motion or on the application of the Commissioner of Sales Tax or the persons aggrieved, the record of such order as it thinks fit :
> Provided that no such application shall be entertained in any case where an appeal lay against the order, but was not preferred.
> (3-B) The Application under sub-section (3) shall be made within one year from the date of service of the order complained of but the Revising Authority may on proof of sufficient cause entertain an application within a further period of six months."

The assessee contended before the Revisional Authority that the revision was time-barred inasmuch as it had been filed much beyond the period of limitation specified in s. 10(3-B). The Revenue contended that the starting point for limitation was January, 1960 when the Commissioner received the intimation of the assessment order and that since the revision had been filed within one year from that intimation, it was within time. The Revisional Authority accepted the contention of the assessee and dismissed the application as time barred. On a reference the High Court answered the questions against the Revenue and in favour of the assessee.
On appeal by Special Leave it was contended before this Court by the Revenue :

> (1) Sub-section (3-B) does not provide any starting point of limitation in the ease of a

> revision filed by the Commissioner.
> (2) In any case, the starting point of limitation is the date of service of the order on the Commissioner or the dealer, as the case may be.

On the other hand, the assessee contended that the starting point of limitation for a revision application whether filed by the dealer or the Commissioner is the date on which the order of assessment is served on the dealer.

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HELD : The contention of the Revenue that there is no limitation for a revision application filed by the Commissioner, is not correct. Sub-section (3-B) prescribes a period of limitation for every revision-application, whether filed by the Commissioner or the dealer (assessee), and the starting point of limitation is the date of the service of the order on the revision-applicant. [64E]

(2) For the purpose of sub-section (3-B) service of the order complained of means something subsequent to and distinct from the mere making of the order. It implies formal communication of the order after it has been passed, on the revision application. [64A]

(3) Since the revision application in the instant case was filed by the Commissioner within one year of the communication of the assessment order, it was within time. [66B]

(4)The difficulty in construing the unhappy language of the statute was felt in the year 1960 and even earlier, and has given rise to this protracted litigation extending over fifteen years. It is desirable that the Legislature should amend the statute and make its intent clear. In any event, it should make a statutory provision requiring the Sales Tax Officer to send forthwith a copy of every assessment order made by him to the Commissioner for information. [66F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1861 of 1971.

Appeal by Special Leave from the Judgment & Order dated the 22nd January, 1970 of the Allahabad High Court in S.T.R. No. 361 of 1964.

S. C. Manchanda and O. P. Rana for the appellant.

Hardayal Hardy, K. B. Rohtagi M. K. Garg and E. C. Agarwala for the respondent.

Hardayal Hardy, k. B. Rohtagi and Ram Lal for the intervener

The Judgment of the Court was delivered by

SARKARIA J.-This appeal by special leave is directed against the judgment of the Allahabad High Court answering against the Department, the following question referred to it under s. 11 of the U.P. Sales Tax Act, 1948

> "Whether under the circumstances of the case, starting point of limitation for the Department to prefer a revision against the original assessment order would start from the date of assessment order or would start according to the discretion of the assessing officer or the Department from the time the assessing officer wishes to apprise the Department about the passing of the assessment as in this case."

The respondent-assessce is a dealer carrying on business at Beriyaganj, Sbahjahanpur. On 26-7-1958, the Sales-tax Officer passed an order assessing him for the year 1957-58.

Subsequently, the Sales-tax Officer felt that by oversight a mistake had crept in the order of assessment made by him. Consequently, in January 1960, he wrote a letter to P. A. to the Commissioner, Sales-tax seeking

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guidance as to how he should proceed in the matter to rectify the omission. The Commissioner treated that intimation received on 27-1-1960 as service on him. Thereafter on 11-4-1960, the Commissioner filed a revision application under S. 10 of the Act before the Judge (Revisions).

When this revision came up for arguments before the revisional authority, the assessee urged that the revision was time-barred inasmuch as it had been filed more than 18 months after the date of the assessment order. The assessee's contention was that the starting point for limitation was the date of the assessment order. As against this, the Department maintained that the terminus a quo for limitation was 27-1-1960, on which date, the Personal Assistant to the Commissioner had received the intimation of the assessment order, and consequently the revision having been filed within one year of that date, was fully within time. The Judge (Revisions) accepted the contention of the assessee and dismissed the revision as barred by limitation. At the instance of the Commissioner, the Judge (Revisions) referred the question under s. 11 of the Act to the High Court for opinion. The reference, in the first instance, was heard by a Division Bench consisting of Jagdish Sahai and Mt H. Beg, JJ. Jagdish Sahai J. was of the view that the starting point of limitation in the case of a revision application filed by the Commissioner would be the date on which the assessment order was passed by the Sales-tax Officer because the law creates a presumption that the Commissioner would be deemed to have been served on that date.

Beg J. struck the discordant note :

> "My answer to the first part of the question, as framed, is in the negative. I am of opinion that the period of limitation for the Commissioner to prefer a revision application under s.10(3) (i) of the Act, will not start from the date of the assessment order. I would answer the second part of the question also in the negative by saying that the period of limitation would not commence to run from any date lying within the discretion of or depending upon the wishes of the assessing officer. It would commence, in accordance with s. 10 (3-B), from the actual date on which the Commissioner has been duly apprised of the contents of the assessment order in a mode which may be deemed to be "service" upon him. The mere passing of an assessment order cannot, in my opinion, be possibly deemed to be "service" Automatically upon the Commissioner. In the ease before us the Commissioner applied within the prescribed period after the communication of the contents of the assessment order to him which was sufficient "service"."

On account of this difference of opinion, the case was referred to Verma J. who agreed with Jagdish Sahai J. and answered the question against the Department. Hence this appeal.

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Before 1954, no limitation for filing an application for revision was provided in the Act or in the rules framed thereunder. Such a provision was first made by the U. P. Act VIII of 1954. This amending Act added sub-sections (3-A) and (3-B) in s.10 of the principal Act of 1948. Section 10, after this amendment, reads as follows :

"10. Power of Revision. (1) The State Government shall appoint as Revising Authority a person qualified under clause (2) of Article 217 of the Constitution for appointment as Judge of a High Court.

(2) The appellate authority appointed under section 9 shall be under the superintendence and control of the Revising Authority.

(3) (i) The Revising Authority (or an Additional Revising Authority) may, for the purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion, call for and examine, either on its own motion or on the application of the Commissioner of Sales Tax or the persons aggrieved, the record of such order as it thinks fit

Provided that no such application shall be entertained in any case where an appeal lay against the order, but was not preferred :

(Provided further that an application for stay of realisation of any amount of tax, fee or penalty, shall not be entertained by the Revising Authority or by any Additional Revising Authority, unless an appeal or revision from the order of the assessing authority or the appellate authority, as the case may be, is pending before proper authority :

Provided also that whenever realisation of any amount of tax, fee or penalty is stayed by the Revising Authority, or by any Additional Revising Authority, the applicant shall be required to furnish security to the satisfaction of the assessing authority concerned, within such period as may be specified by it).

(ii)The State Government may appoint (such number of Additional Revising Authorities as it may deem necessary, out of persons qualified for appointment as Revising Authority). The Additional Revising Authority shall exercise such powers of the Revising Authority as may be prescribed or assigned to him by the State Government either generally in any area or in respect of any class of cases.

(3-A) A copy of the order passed under sub-section (3) shall be served upon the applicant.

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(3-B) The application under sub-section (3) shall be madewithin one year from the date of service of the ordercomplained of but the Revising Authority may on proof of sufficient cause entertain an application within a further period of six months.

(4) The Revising Authority shall not pass any order under sub-section (3) adversely

affecting any person unless an opportunity has been given to such person to be heard.

(5) If the amount of tax assessed, fee levied or penalty imposed is reduced by the Revising Authority under subsection (3) it shall order the excess amount of tax, fee or penalty) if already realised to be refunded."

Answer to the question referred hinges upon a correct interpretation of sub-section (3-B).

From the imprecise and unhappy language of this provision, four different constructions can possibly be suggested, and indeed have been suggested at one stage or the other. First, that sub-section (3-B) does not at all take in a revision application by the Commissioner. Second, even if it does so, it does not provide any starting point of limitation in the case of a revision filed by the Commissioner. Third, that the starting point of limitation for a revision application, whether filed by the dealer or the Commissioner, is the date on which the order of assessment is serverd on the dealer. Fourth the starting point of limitation is the date of service of the order on the revision applicant, be he the Commissioner or the dealer.

The first is manifestly untenable. Sub-section (3-B) starts with an express reference to "the application under sub-section (3) ". Subsection (3), in terms, provides that the revision-application may be made either by the dealer or by the Commissioner. The Commissioner's right under sub-section (3) to move the Revising Authority by an application is distinct and independent of the one conferred on the dealer, although the latter has under s. 9, an additional right of appeal against the assessment order, which must be exhausted before he can invoke the revisional jurisdiction under this section. Thus, in the context, sub-section (3-B) comprehends both categories of revision-applicant, namely, the Commissioner as well as the dealer.

Mr. Manchanda, the learned Counsel for the appellant canvasses, in the first place, for the second construction, and, in the alternative, for the fourth, with the elucidation that the mere making of an order of assessment by the Sales-tax Officer does not-contrary to the reasoning of the High Court-amount to automatic 'service' of that order on the Commissioner.

Mr. Hardyal Hardy, the learned Counsel for the caveators, does not support the interpretation adopted by the High Court. He maintains that the third construction is the correct one. The starting point

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of limitation for a revision application, according to the Counsel, even if it be filed by the Commissioner, is the date of 'service' of the order on the assessee. 'Mr. Hardy does not dispute the correctness of the proposition propounded by Mr. Manchanda that the very act of passing an assessment order by the, Sales-tax Officer does not amount to its 'service' upon the Commissioner or his representative. Learned Counsel, however, points out that there is no provision in respect of 'service' of an order of assessment made against a dealer by the Sales-tax Officer, on the Commissioner, while elaborate provisions for service of such an order on the dealer exist in the Act and the rules framed thereunder. Viewed against this background, proceeds the argument, limitation would start running from the date of service of the order of assessment on the dealer, even against the Commissioner, irrespective of whether the latter was or was not aware of the order. This is so, contends the Counsel, because once limitation begins to run, then, on the

principle of s. 9, Limitation Act, unawareness of the order on the part of the Commissioner, will not stop it.

Once it is conceded that sub-section (3-B) encompasses all revision-applications, whether made by the assessee or by the Commissioner, then it necessarily follows that the period and the starting point of limitation provided therein, govern, without exception, all such applications. Contention in favour of the second construction thus suffers from an inherent infirmity and self-contradiction. It must, ,-therefore, be rejected.

We are now left to choose between the third and the fourth constructions.

The only starting point of limitation mentioned in s. 10(3-B) is "the date of service of the order complained of". Now, what is ,.meant by 'service'? And on whom is it contemplated ? The subsection is either obscure or silent on these points. The learned Judges ,of the High Court have tried to clear this obscurity by referring to the scheme of the Act and the Rules. They have also referred to somewhat similar provisions of the Income-tax Act, and imported them by analogy into the sub-section in question so as to reach the conclusion that in the case of a revision application by the Commissioner, the starting point of limitation is the date on which the assessment ,.,order is made by the Sales-tax Officer. If we may say so with respect, in accepting that construction, the High Court has, as it were, by ,'judicial legislation introduced in sub-section (3-B) a different starting point of limitation in case of a revision filed by the Commissioner.

In our opinion, it is not proper to interpret s. 10 (3-B) of the Act on the analogy of ss. 263(2) and 264(2) of the Income-tax 'Act, 1961 which are not in pari materia with the sub-section in ,question.

It is safe and sufficient for our purpose to adhere to the scheme ,and language of the Act and the Rules. 'Service' of an order of assessment in the context of the scheme of the Act and the Rules

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means something subsequent and distinct from the mere making of the order of assessment. It implies formal communication of the Order after it has been passed on termination of the proceedings, so that the party to whom it is communicated, may, if aggrieved,, seek redress in a higher forum in the manner prescribed by law. That this should be the sense of the term 'service' in sub-section (3-B) will be clear from a reference to Rule 70(1) which provides :

> "70(1). A copy of every order of the Assistant Commissioner (Judicial) under sub-section (3) of section 9 or of the Judge (Revisions) under sub-section (3) of s. 10 shall be delivered or sent by post to the person affected by the order, and to the Commissioner."

It is true that the Rule does not, in terms, apply to an original assessment order passed by the Sales-tax Officer, but that does not detract from its value as illustrative of the proposition that the mere passing of an order (in appeal or revision) does not operate as service or communication of its contents to the Commissioner. It is to be noted that an order passed under section 9(3) by the Assistant Commissioner (Judicial) in appeal, is revisable on an application filed by the Commissioner under sub-section (3) and limitation for such an application, also, is governed by sub-section (3-B) of S. 10. The starting point of limitation for a revision-application whether filed against

an appellate order or an original order of assessment, being the same viz., service of the order sought to be revised, the connotation of the term 'service' must also remain constant.

True, that the Act and the Rules do not make any provision for service of an assessment order passed by the Sales-tax Officer against a dealer, on the Commissioner. At the same time there is nothing in these statutory provisions, which inhibits the service of such an order on the Commissioner. Rather, the necessity of serving such an order of assessment on the Commissioner to enable him, if necessary, to file a revision-application. is implicit in the language of s. 10 (3-B). Indeed, regular and prompt communication of such orders to the Commissioner, is a must for a proper and fair working of the provision.

We are not persuaded to accept Mr. Hardy's contention that the phrase "the date of service of the order complained of" does not include service on the Commissioner. This phrase has to be. read as a whole, consistently with the scheme of the Act and the Rules [particularly Rule 70(1)] with due emphasis on the key words complained of'. This is the only interpretation which, in our opinion, expanded as "the date of service on the revision-applicant, of the orders complained of". This is the only interpretation which, in our opinion, comports best with the scheme and language of the statute and the maintenance of parity between the assessee and the Department in the matter of limitation which was intended to be secured by the amendment of 1954.

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The alternative interpretations-one suggested by Mr. Hardy, and the other devised by the High Court-appear to be repugnant to the scheme and object of the statute ; they envisage a varying and uneven construction of the scope, meaning and effect of the word "service", applying it differently to different applicants though similarly situated. The very nature of the right to file a revision under s. 10 imports, as a necessary condition, service or communication of the contents of the order complained of. In a sense, this remedial right cannot be said to accrue until the party concerned on being served, becomes Aware of the cause of grievance and consequent necessity of redress. The interpretation expounded by Mr. Hardy seems to be lop-sided and anomalous. It unfairly reserves the "service" exclusively for the dealer, keeping the Commissioner out in complete darkness without due chance of knowing whether an order of assessment passed by the Sales-tax Officer is injurious to public revenue or not. The construction put by the High Court is too fictional and innovative. Nor does it keep the Commissioner and the assessee in pari passer. Drawing more by analogy from sections 263 and 264 of the Income-tax Act, 1961 and less from the statute under consideration, it is, at best, a conception of law as it ought to be, rather than of what it actually is.

We are conscious that the law contained in s. 10(3-B), as exposed by us, is not perfect. It is susceptible to abuse. Indeed, it was such an apprehension that seems to have persuaded the learned Judges of the High Court, too far away from the language of the statute, into the realm of speculation and induced them, as it were, to substitute so far as the Commissioner was concerned "the date of the order" for "the date of service of the order" provided by the Legislature. Said Verma, J. :

> "If a different view were to be taken then it would be open to the Sales-tax Officer not to serve a copy of the assessment order on the

> Commissioner for ten or twenty years. It is prosperous to imagine that the period of limitation would remain in abeyance until the Sales-tax Officer chooses to serve, formally, a copy of the assessment order on the Commissioner".

These are strong words and the apprehension expressed therein is not altogether baseless. But the apprehension does not stem from any inherent defect in the legislature's choice of "service" as the terminus a quo for limitation. It arises out of the omission to make any provision in the Act and the Rules requiring the Sales-tax Officer to send forthwith a copy of every assessment order to the Commissioner, also. Supplying of that omission is a matter for the legislature and not for the Court.

Be that as it may, the court cannot scan the wisdom of the legislature in prescribing 'the date of service' as the starting point of limitation. Nor can the court refuse to give effect to it or substitute for it any other terminus which it thinks to be more reasonable. merely because there is an apprehension of its abuse.

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In the light of the above discussion, we are of the opinion that the date of service of the order complained of, on the revision applicant, is the starting point of limitation within the contemplation of s.10(3-B) of the Act. Accordingly we allow the appeal, set aside the judgment of the High Court and answer the question referred in favour of the Revenue. Since the revision-application in the instant case, was filed by the Commissioner within one year of the communication of the assessment order to him, it was within time. In the circumstances of the case, there will be no order as to costs.

We part with this judgment with a note of regret but in the hope that something good may come out of it.

A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is. not to resile. It has to abide by the maxim ut res magis valiat quam pereat, lest the intention of the legislature may go in vain or be left to evaporate into thin air. Where that intent is clearly expressed in the language of the Act, there is little difficulty in giving effect to it. But where such intent is covert and couched in language which is imperfect, imprecise and deficient, or in ambiguous or enigmatic, and external aids to interpretation are few, scanty and indeterminate, the court may despite application of all its experience, ingenuity and ratiocination, find itself in a position no better than that of a person solving a cross-word puzzle with a few given hints and bunches. In such a situation a mere reference to the High Court of a question for opinion may not afford an adequate solution. Only legislative amendment may furnish an efficacious and speedy remedy. The present is a typical illustration of such a case. The difficulty in the interpretation of the unhappy language of this statute was felt in, 1960 and even earlier. We are now in 1975. For fifteen long years, the Department has been fighting this tardy, expensive and sterile litigation. Even after this long-drawn struggle culminating in judicial finale, a doubt 'might persist as to whether the court has succeeded in divining the true legislative intent. It is therefore. desirable that the legislature should amend the statute and make its intent clear. In any event, to make the law workable, it should make a statutory provision

requiring the Sales-tax Officer to send forthwith a copy of every assessment order made by him to the Commissioner for information.

Appeal allowed. P.H.P.

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