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**(1970) 04 AHC CK 0012**

**Allahabad High Court**

**Case No:** Misc. S.T.R. No. 578 of 1969

Sunder Lal Janeshwar Dass

APPELLANT

Vs

The Commissioner, Sales Tax

RESPONDENT

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**Date of Decision:** April 28, 1970

**Acts Referred:**

- Uttar Pradesh Sales Tax Act, 1948 - Section 10

**Citation:** (1971) 27 STC 282

**Hon'ble Judges:** Satish Chandra, J; R.L. Gulati, J

**Bench:** Division Bench

**Advocate:** B.D. Mandhyan, for the Appellant; Standing Counsel, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Satish Chandra, J.

The Additional judge (Revisions) Sales Tax, Meerut, has submitted the statement of the case for the opinion of this court on the following question of law:

Whether in the facts and circumstances of the case the revision is time-barred.

2. The appeal was decided on 16th August, 1966. The appellate order was served on the counsel appearing for the assessee in the appeal on the 30th August, 1966. The memorandum of appeal despatched by the assessee by post was received in the Judge (Revisions) office on 1st March, 1968. The revision was accompanied by an application for the condonation of delay. The Judge (Revisions) dismissed the revision on the ground that it was barred by limitation. He held that service of the appellate order on the counsel was service on the assessee. The revision should have been filed within one year of 30th August, 1966. The application for condonation of delay was dismissed on the ground that it was not accompanied by an affidavit. The mere allegation that the assessee did not get the information about the dismissal of appeal from his lawyer was not sufficient.

3. The question referred to us does not involve the problem whether the application for condonation was rightly dismissed. The sole question is whether the revision was filed within time.

4. Sub-section (3-B) of Section 10, U.P. Sales Tax Act, provides :

(3-B) The application under Sub-section (3) shall be made within one year from the date of service of the order complained of...

5. The application under Sub-section (3) is the application for revision. Such an application has to be made within one year from the date of service of the order.

6. Rule 77, U.P. Sales Tax Rules, reads as follows :

77. Modes of service.--The service of any notice, summons or order under the Act or the rules may be effected in any of the following ways, namely--

(a) by giving or tendering a copy thereof to the dealer or licensee, or his manager or agent; or

(b) ...

(c) ...

(d) ...

7. Limitation for a revision commences from the date of service of the order under Sub-section (3-B) of Section 10. The modes of service of the order are prescribed by Rule 77. This rule would be attracted to the service of an appellate order. Under it, giving or tendering a copy of the order to the agent of the dealer is sufficient. In the present case the appellate order was served on the lawyer of the assessee. It has been found that the power-of-attorney executed by the assessee in favour of his lawyer authorised him to do all acts in connection with the case, including the filing of the revision. Thus, he was entitled to accept notices as well as copies of the orders. Consequently, the lawyer was the agent of the assessee within the meaning of Rule 77. Service on him was due service on the assessee within the meaning of Sub-section (3-B) of Section 10. Thereunder the assessee was liable to file the revision within one year from the date of service of the order, that is 30th August, 1966. The revision was admittedly filed on 1st March, 1968, beyond the prescribed period of limitation. It was barred by time.

8. Learned counsel, however, relied on Rule 70 of the U.P. Sales Tax Rules. That rule says :

70. Order in appeal or revision to be communicated to parties concerned.--(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 Section 10 shall be delivered or sent by post to the person affected by the order, and to the Commissioner.

(2) The first copy of such order shall be given to the person so affected free of charge. A copy other than the first copy shall be given to such person on his furnishing copying folios of the value of Re. 1 and 25 paise.

9. It will be seen that Rule 70 prescribes upon the appellate authority, sales tax, or the revising authority to communicate to the concerned parties orders that may be passed in appeal or revision. It also provides that the first copy of the order will be given free of charge. It goes on to say that the copy of the order shall be delivered or sent by post to the person affected by the order and to the Commissioner. Rule 70 does not contain the non obstante clause to exclude the applicability of Rule 77. Rule 77 is a special rule dealing with the modes of service whereas Rule 70 is a general provision in regard to the communication of the orders. So Rule 70 would not exclude the applicability of Rule 77.

10. Sub-section (3-B) of Section 10 uses the words "service of the order" in the phrase "within one year from the date of service of the order ". Thus, it is the service of the order which is material. Rule 70 expressly does not deal with service, but communication to the parties concerned of the orders in appeal or revision, whereas Rule 77 specifically deals with modes of service. To determine the date of service within the meaning of Sub-section (3-B) of Section 10, Rule 77 cannot be ignored. Rule 77 being applicable, service on the counsel was sufficient to make the period of limitation commence to run.

11. We would answer the question in the affirmative, against the assessee and in favour of the department. The Commissioner of Sales Tax would be entitled to costs which we assess at Rs. 100. The fee of the learned counsel for the department is also assessed at the same figure.