

Part-110- Whether a Notice served within limitation period was bad in law because assessee was asked to appear on a public holiday and although the said defect was cured by a subsequent letter (although issued after the limitation period) fixing the date of hearing on another date-Commissioner Of Sales Tax vs Paramount Industrial Stores 1976 384 STC 555 Bom CA Arpit Haldia

S.N.	Relevant Matter	Held
1.	Facts of the Case	On 29 th March, 1956, assessee was served a Notice under section 15(1) of Bombay Sales Tax Act, 1956 directing the assessee to attend in person or by a legal practitioner or by an agent authorised in writing at 11 a.m. on 19 th April, 1956, at the place and address mentioned therein. The Sales Tax Officer by his letter dated 18 th April, 1956, served on the assessee and purporting to be in continuation of the said notice requested the assessee to attend his office on 24 th April, 1956, at 11 a.m. instead of 19 th April, 1956, as the day on which the assessee were required to attend, 19 th April, 1956, happened to be a public holiday. It was contended by the assessee that that the notice served on 29 th March, 1956, " was defective, as 19 th April, 1956, was a public holiday.
2.	Decision of Tribunal	The notice was defective because 19 th April, 1956, which was the date fixed for hearing in the said notice, was a public holiday and the assessee was wrongly asked to appear on a holiday. Tribunal held that the defect could not be cured after expiry of a period of five years from the end of assessment period on 31 st March, 1951, and hence action taken to correct the same by way of the letter dated 18 th April, 1956, was clearly beyond limitation.
3.	Contention of Revenue	Department contended that the notification issued did not in any manner prevent and prohibit public officers from working or performing their official duties on public holidays. It was urged by him that there was nothing in law or by way of a binding order which prevented the Sales Tax Officer from directing the assessee to appear before him on 19 th April, 1956, and it was perfectly open to the Sales Tax Officer to proceed with the hearing on that date irrespective of whether the assessee appeared or not, and all that the assessee could do was to apply, if they so thought fit, for an adjournment of the hearing which the Sales Tax Officer would have normally granted on account of that day being a holiday. All that was required was that notice should be issued within the prescribed time and it must contain all or any of the requirements which may be included in a notice under sub-section (3) of section 14 of the said Act. Although it was agreed that for a notice under section 15 of the said Act to be a valid notice such notice must contain the date on which the dealer was required to attend and the place at which he was required to attend. But, once some date and some place was specified in the notice, validity of the notice would not be affected, although date or place might happen to be an impossible one on which it could not have been physically possible to hold a hearing. The said notice must be regarded as valid as it did not in any manner mislead the assessee, nor were the assessee prejudiced, because they were, in fact, heard before the order of reassessment was made.
4.	Whether Tribunal was justified in holding that notice served within prescribed period was bad in law because assessee was asked to appear on 19th April, 1956, being a holiday.	High Court observed that a notification to declare days set out therein to be public holidays was issued and 19 th April, 1956, being on account of Ramnavami was also a Holiday. High Court observed that to hold that once the date is stated in the notice, however meaningless it might be, the requirement regarding the stating of the date has been complied with would, reduce this requirement to a mere idle and meaningless formality. High Court cited an example stating that let us take a case where an assessee is served with a notice under section 15 of the said Act and the date on which he is required to attend is given in the notice as 1 st January, 1880, or let us say, 35 th January, 1976, and there was no other indication as to what was the correct date on which he is required to attend. Such a notice would convey no information whatsoever to the assessee concerned as to the date on which his attendance is required and, thus such notice cannot be treated on a better or higher footing than a notice which does not contain a date of hearing at all.
5.	Even if notice was bad in law, could the defect be cured by letter dated 18th April, 1956, issued by Sales Tax Officer, fixing date of hearing on 24th April, 1956.	The High Court observed that thus, even if an invalid notice under section 15 of the Bombay Sales Tax Act, 1956 was complied with by assessee, yet the defect cannot be said to have been waived and proceedings taken pursuant to such a notice would be invalid. In view of this, it was thus held that the defect in the notice could not be cured by reason of subsequent letter dated 18 th April, 1956 and quite apart from this, and what was even more important, was that the letter dated 18 th April, 1956, was admittedly written and served on the assessee after the period of five years prescribed under section 15 of the said Act in the case of concealed income had already expired, and hence such an attempted correction could have no legal effect.
6.	Cases Relied upon	Commissioner Of Income-Tax vs Ramsukh Motilal AIR 1955 Bom 227- If a notice under section 34 of the Income-tax Act, 1922, gave only six days to the assessee to make a return under that section, the notice was clearly illegal and such illegality cannot be waived by the assessee and no consent can confer jurisdiction upon a court if court had no jurisdiction, and if we take the view that the Income-tax Officer can have jurisdiction only provided he complies with the conditions laid down in section 34, then no consent by the assessee or no waiver on his part can confer jurisdiction upon the Income-tax Officer. Thus, in that case assessee had actually made a return pursuant to the invalid notice under section 34 and it was yet held that reassessment proceedings pursuant to the said notice were invalid. (This decision was approved by Supreme Court in Y. Narayana Chetty & Another vs The Income-Tax Officer, Nellore Equivalent citations: 1959 AIR 213). B.K. Gooyee vs Commissioner Of Income-Tax, AIR 1966 Cal 438- A notice issued under section 34 of the Indian Income-tax Act, 1922, which does not contain the signature of the Income-tax Officer, who issues it, is invalid and, all proceedings taken in pursuance of such a notice are invalid. Also Referred- Kulkarni v. Tribhovandas Bhimji Zaveri [1956] 7 S.T.C. 385 (Bom); Nyalchand Malukchand Dagli v. Commissioner of Income-tax [1966] 62 I.T.R. 10 (Guj).