NMLS

IN THE REVENUE COURT

REVENUE COURT APPEAL NO. 1 OF 1993

BETWEEN	SANGSTERS BOOKSTORE LIMITED	APPELLANT
AND	COMMISSIONER OF GENERAL CONSUMPTION TAX	RESPONDENT

Mrs. Angella Hudson Phillips Q.C. and Richard Ashenheim for the Appellant, instructed by Milholland Ashenhelm and Stone.

William Alder instructed by Sonia Mitchell for the Respondent.

Heard on the 11th Day of July 1994, and the 23rd day of July 1996.

JUDGEMENT

COURTENAY ORR J.

During the hearing of this matter I was experiencing great exhaustion; and this continued for the rest of the year, insomuch that I found it increasingly difficult to cope with my work load. As you know I became very ill suddenly in March last year, and as a result I had to be hospitalized twice.

I resumed duties on a reduced basis in the Michaelmas Term, but it soon became apparent that this was premature. So I was compelled to go on leave again in November last, and I could not return to work until March this year. I am not yet fully recovered. This explains why this judgement is only now being delivered.

I wish to thank counsel on both sides for your prayers and concern during my crisis. I also appreciate very much your patience and understanding in waiting until now for this judgement.

This case raises an interesting point of construction, namely what is the proper interpretation of Section 66(1) of the General Consumption Tax Act. But before considering that issue, it is useful to place it in the context of the matrix in which it developed.

THE BACKGROUND TO THE DEBATE

(1) The Appellant's Notice of Appeal and Grounds of Appeal

The starting point of this appeal is a decision of the Respondent in which it was ordered that the Appellant's claim to a stock-in-trade credit be disallowed.

The Appellant seeks an order that the Respondent allow a claim for a credit of $302,390.36 in regard to unused goods that were included in the Appellant's stock-in-trade on the appointed day, that is, the 22nd day of October, 1991.

The Appellant argued two grounds namely:

1. "That the General Consumption Tax Act does not make a reduction in the price of the inventory a condition for obtaining the stock credit and accordingly the Respondent erred in law in disallowing the Appellant's claim on the ground that the Appellant had failed to pass on to consumers the amount of the credit claimed by the Appellant through reduction in prices".

2. "That in view of the fact that:

   (a) the Appellant was, on the appointed day registered as a registered taxpayer under the General Consumption Tax Act, 1991";
   (b) the Appellant had on the said day unused goods that were its stock-in-trade;
   (c) that the said goods were those in respect of which one or more of the specified duties were payable.
   (d) that the said goods were included in the inventory of the Appellant as at the appointed day;
   (e) that the said goods were not such as were zero-rated or exempt for the purposes of the General Consumption Tax Act, 1991;
   (f) that the said goods were not used goods;
   (g) that the said goods had not been written off for income tax purposes;

The Respondent should, as a matter of law, have allowed the Appellant's claim:.

A third ground filed was not pursued. It reads as follows:

3. "That the Appellant had in fact passed on the benefits of the stock credit to consumers in taking into account the said stock credit in costing the items in times of rising prices and frequent devaluation's which affected the ultimate cost of the goods".

The facts as set out in ground 2 are admitted in the Respondent's statement of case and the affidavit of Veleta Maureen Pryce filed on behalf of the Respondent.

(ii) The Respondent's Statement of Case

The Statement of Case provides more details of the facts surrounding the decision from which the appeal arises.

The following facts which are not in dispute are stated in paragraph 2 thereof.

(a) "That the Appellant is a Registered Taxpayer under and by virtue of the General Consumption Tax Act (the "Act")
(b) That the Appellant claimed a credit of stock-in-trade at October 22, 1991, being the appointed day contained in section 66 of the Act, by Application for stock-in-trade credit dated January 31, 1991 and received by the Respondent on the 4th day of February, 1992.
(c) That the claim was in the sum of $303,067.93 and was based on an inventory as at October 22, 1991 valued at $2,755,163.00 comprising goods in respect of which one or more of the specified duties under section 66 of the Act was payable.
(d) That in accordance with the practice employed by the Respondent, the Appellant was authorized to credit $227,300.95, being 75% of the sum claimed, against its General Consumption Tax liability and was advised that this sum was subject to change depending on the decision reached with regard to the claim after an audit was conducted by the Respondent's officers.
(e) That the audit was conducted on or about the 12th day of June, 1992 as a result of which the decision was made to disallow the entire claim on the basis that:

    (i) The credit had not been passed on to the consumer with regard to goods valued at $2,749,003.25, for which the credit claimed was $302,390.36;
    (ii) Goods valued at $6,159.75, for which the credit claimed was $667.57, was not eligible for credit being zero-rated goods.

(f) That the decision to disallow the stock-in-trade credit was contained in letter dated December 9, 1992, and simultaneously a Notice of Assessment dated December 9, 1992, for $227,300.95 was served on the Appellant.
(g) That by letter dated January 18, 1993, the Appellant, through its Accountants, KMPG Peat Marwick objected to the decision to disallow the said sum of $302,390.36 on the grounds that it believed that a benefit had been passed on to the consumer in costing the items and further, that a reduction in price was not a condition for obtaining the said credit. The Appellant did not object with regard to the disallowance of $667.57.
(h) That by letter dated May 27, 1993, the Respondent advised the Appellant, inter alia, that if it could provide proof that the credit had been passed on to the consumer through costing of the items, then he could revise the adjustment accordingly.
(i) That in respect of the letter referred to in sub-paragraph (h) the Appellant has appealed to this Honourable Court."

The Respondent's prayer asked that the Appeal be struck qut and that the Appellant's claim for a stock-in-trade credit be disallowed on two grounds. namely:

(i) "No final decision has been made upon which to ground an Appeal; and/or
(ii) The decision, if final, should be confirmed by this Honourable Court, for the following inter alia reasons:

REASONS

(a) That the letter dated May 27, 1993, did not contain a final decision and therefore this Appeal is misconceived and not properly before this Honourable Court.
(b) That necessarily implicit in section 66 of the General Consumption Tax Act is a discretion in the Commissioner to determine the bases on which a stock-in-trade credit may be allowed, such discretion to be exercised once the taxpayer has satisfied the conditions stipulated for eligibility to claim.
(c) That the Respondent properly exercised his discretion in disallowing the Appellant's stock-in-trade credit claim on the basis that the benefit was not passed on to the consumer.
(d) That the Appellant provided no evidence to support its claim that it had passed on the credit to the consumer".

GROUND (1) above was not argued.

(iii) The Relevant Statutory Provision

As noted earlier, the General Consumption Tax Act; Act 16 of 1991 hereafter called the Act, came into operation on the 22nd day of October, 1991 - the appointed day. That Act was amended by the General Consumption (Amendment) Act 1991, which also came into operation on the 22nd day of October 1991.

Section 66 (1) of the Act so far as is relevant reads as follows:

"PART X

TRANSITIONAL

66 (1) Where on the appointed day a person is registered as a registered taxpayer and has any unused goods that are stock-in-trade, that taxpayer shall, subject to subsections (2) and (3), be eligible to claim against any tax payable by him under this Act, a credit at such rate as may be prescribed.

(2) Subsection (1) applies to goods -

(a) in respect of which consumption duty was payable under the Consumption Duty Act (repealed by this Act) or excise duty payable under the Excise Duty Act or additional stamp duty was payable under the Stamp Duty Act on the customs warrants inwards in relation to such goods, or duty was payable under the Customs Tariff (Common Market) Resolution 1977 (hereinafter referred to as "Specified duties").
(b) which are included in the inventory of the registered taxpayer as at the appointed day.

(3) Subsection (1) shall not apply in respect of -

(a) any goods which are zero-rated or exempt for the purposes of this Act;
(b) used goods; and
(c) goods which have been written off for income tax purposes".

(iv) <u>The Issue dividing the Parties</u>

There being no dispute as to the facts, the parties are diametrically opposed on the interpretation of Section 66 of the Act. The Respondent's position is two-fold: Firstly, in order to obtain a credit as defined in the section, the Appellant must "provide proof that the credit has been passed on to the consumer through costing of items". Secondly, that the Act impliedly gives him a discretion to impose that condition. The Appellant on the other hand, insists that the Section must be given its literal meaning, that no such discretion can be read into the Act, and therefore the Respondent has no power to demand compliance with the condition laid down by him, and consequently the Appellant is entitled to a credit as claimed.

THE SUBMISSIONS ON BEHALF OF THE PARTIES

(A) <u>The Arguments on Behalf of the Appellant</u>

The presentation of Mrs. Hudson-Phillips for the Appellant may be summarized thus:

1. The Appellant had, contrary to the contention of the Respondent, satisfied all the preconditions for the

grant of a credit under Section 66(1) of the Act. It is therefore quite wrong for the Respondent to impose a further precondition of the grant of such credit, namely, that the Appellant should pass on to the consumer the amount of the credit (i.e. 11 per centum) by the reduction of the price of the goods by 11 per centum.

2. The prescribed rate referred to in Section 66 (1) of the Act is specified in Regulation 26(1) (c) of the General Consumption Tax Regulations 1991, which provides in part as follows:

> "26 (1) For the purposes of Section 66 (1), (2) and (3) of the Act a person who is a registered taxpayer on the 22nd of October, 1991, and who has on the 21st of October, 1991, any unused goods that are stock-in-trade shall be eligible to claim against tax payable by him under the Act, a credit
> (a) in respect of 16%
> (b) .....
> (c) all other goods 11%"

This regulation cannot be used to enlarge or modify Section 66(1) of the Act, by adding a further precondition. Rather this regulation should be viewed as directions of a procedural nature. It should be noted that subparagraph 2 of Regulation 26, states:

> "(2) A claim under paragraph (1) shall be made in accordance with directions issued by the Commissioner."

3. The interpretation suggested by the Respondent is precluded by the well known rule that a taxing statute must be constructed strictly.

4. There is no ambiguity in Section 66, so that Court may not look at anything but the actual words of the statute - not statements in Parliament or moreso the Technical Information Bulletin issued by the General Consumption Tax Department, purporting to set out the objectives of the Act.

(B) The Arguments on Behalf of the Respondent

Mr. Alder, for the Respondent advanced the following line of reasoning:

1. To interpret the word "eligible" in Section 66(1) of the Act as meaning "entitled" would be to stretch the meaning. The Court should look only at the ordinary or popular meaning of the word. The Shorter Oxford English Dictionary of 1961 gives the meaning of the word as "fit or deserving to be chosen". None of these definitions say that an eligible person has a right or entitlement to be chosen.
2. What determines whether a taxpayer should be chosen is whether he is entitled; and he may prove this by showing that he has lost something. Hence the need for a discretion in the Respondent - a discretion to be exercised with justice and fairness. This responsibility requires that the Respondent ensure that there is no unjust enrichment.
3. The basis of entitlement is not set out in the Act, and so the only basis is justice.
4. That there would be no entitlement in the Appellant is seen when one analyses the facts surrounding the Appellant's claim.

On the 21st of October, 1991, the Appellant had a liability for Consumption Duties.

On the appointed day, the 22nd day of October, 1991, he would also be liable for General Consumption Tax. So the Respondent would allow a credit, because if the Appellant were to add Consumption Duty and General Consumption Tax in pricing his goods, the customer would suffer. Therefore Section 66 of the Act is designed to put the goods in the

position in which they were just prior to the Act taking effect.

It followed that the Respondent has a discretion to grant a claim a taxpayer must show that he had reduced the cost to the consumer. The provision was not intended to put extra money into the taxpayer's pocket.

5. The force of the Respondent's contention is illustrated by a computation submitted by the respondent and based on three different situations regarding goods which cost a taxpayer such as the Appellant $100.00.

   The computation proved the following:

   (a) On such goods with a mark-up of $25.00 prior to the 22nd day of October, 1991, (the appointed day), a taxpayer would have made a profit of $25.00.

   (b) After the 22nd day of October, 1991, with no reduction on the price as suggested by the Appellant, a taxpayer would make a profit of $38.97.

   (c) After the 22nd day of October 1991, applying the interpretation suggested by the Respondent, the profit on such goods would be the same as before 22nd October, 1991.

6. Finally, for the Act to be workable, a discretion must necessarily be implied.

THE INTERPRETATION OF TAXING ACTS

It is useful to look at how the Courts have developed the guidelines governing the interpretation of taxing statutes particularly on those issues relevant to this case. But in doing so one must bear in mind the cautionary words of Viscount Simmonds in Attorney General vs Prince Ernest of Hanover [1951] A.C. 436 at 461. He said:

> "Since a large and ever-increasing amount of time of the courts has, during the last three hundred years, been spent in the interpretation and exposition of statutes, it is natural enough that in a matter so complex the guiding principles should be stated in different language and with such varying emphasis on different aspects of the problem that support of high authority may be found for several apparently irreconcilable propositions".

Principle 1. Tax - the Creature of Statute

I think that the starting point of any analysis of this subject must be the dictum of Lord Cairns L.C. in Pryce v Monmouthshire Canal & Rail Company (1879) 4 App. Cas. 177 at 202 and 203. Here he pointed out that apart from statute there is no liability to pay any tax and no antecedent relationship between the taxing authority and the taxpayer, so that no reasoning founded on any such a priori liability or relationship could be brought to bear in the construction of a taxing act. Lord Cairns were reaffirming the basic principle that taxation is a creature of statute. There is no rule of common law or equity which makes a citizen liable to tax.

Principle 2 Literal Interpretation

Because tax is based on statute, the Courts have developed the rule that a taxing statute must be strictly construed by reference to its actual words. The classic expression of

this is the oft-quoted dictum of Rowlatt J. in Cape Brandy Syndicate v I.R.C. [1921] KB. 64 at 71.

He said:

> "[In] a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Lord Sands put it more succinctly in I.R.C. v The Granite City Steamship Co. Ltd. (1927) 13 T.C. 1 at 16.

> "Equity and Income Tax are strangers".

Principle 3 Onus on Crown to Prove Tax Exigible

It is for the Revenue to establish that the subject falls within the charge. Thus in Hochstrasser v Mayes 19 T.C. 490 at p. 520 Viscount Simmonds said:

> "It is for the Crown, seeking to tax the subject, to prove that the tax is exigible not for the subject to prove that his case falls within exceptions which are not expressed in the Statute but arbitrarily inferred from it".

(See also per Parke B in Re Michel-Waite (1855) 11 Ex. Ch. 452 at 456, approved by Lord Halsbury L.C. in Tennant v Smith [1892] A.C. 150 at 154).

Principle 4 Strict Interpretation Applies to Both Sides

The rule of strict interpretation applies to the taxpayer just as much as to the Revenue, once the Revenue has shown he falls within the charge. Lord Cairns L.C. puts it this way in Partington v Attorney General (1869) L.R. 4 H.L. 100 at p. 122:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

The severity of this rule is ably illustrated by the case of In re Joynson's Will Trusts, Gaddum vs Inland Revenue Commissioners [1954] Ch. 567. The headnote reads as follows:

> By his will dated May 7, 1908, a testator settled a legacy of £100,000 on his daughter B. for life with a power of appointment among her children and remoter issue. He died on June 12, 1908. By a deed of appointment dated December 1, 1947 B appointed £25,000 of the settled fund in favour of her elder son and his issue, and she declared by clause 3 of the deed that she thereby released 'her life interest in the ....sums of £20,000 and £5,000'. These sums were resettled by two settlements dated December 1, 1947.
>
> By her will dated March 2, 1948, B. appointed the remainder of the trust fund to her daughter for life with remainders over.
>
> B. died on January 17, 1952. It was not disputed that estate duty was leviable on the property released in 1947 under section 43 of the Finance Act, 1940, but the Inland Revenue Commissioners (Act) claimed that the trustees of the original trust fund were, by reason of section 44 (1) of the Finance Act, 1950, liable to account for that duty out of the balance of the settled funds remaining in their hands, and that they had a lien under subsection (4) of section 44 on the property for that purpose; the claim was without prejudice to the trustees right to recoupment out of the released property.
>
> The court was asked to determine whether the trustees were liable to account for the duty under section 44, and, if they were so liable, to what property the liability attached, namely, whether on the sum of £25,000 since that sum was what, under the terms of the deed of release in 1947, was actually released from the settlement.

In his judgement Dankwerts J., as he then was, said at page 573:

> "It is obvious that in the circumstances of this case - and it may be in the circumstances of many others -

> very great hardship may be imposed on the beneficiaries who are interested in the balance of the fund, which has not been the subject of an arrangement attracting duty under section 43 of the Finance Act, 1940. Mr. Cross says that there is a liability to recoupment thrown upon the persons who were interested under the arrangement of 1947, and it may be that in the present case effect can be given to that liability to recoupment, if required; but one can conceive of many cases in which the property of which there has been a surrender of the life interest, has been disposed of once and for all to persons who can never be made effectively liable to make any recoupment for estate duty in respect of the peoperty which they have had. This is very hard on beneficiaries who, it may be, were no party to the arrangement and who are interested in the balance left in the settlement. However, the fact that the result of the subsection is that hardship falls on innocent beneficiaries by the rights, monstrous or otherwise, conferred on the Inland Revenue by section 44, of the Finance Act, 1950, is not a relevant consideraation. I have to consider what is the effect of the words to be found in the Act".
>
> (emphasis mine)

5. A qualification of the strict literal rule of interpretation is found in the following double injunction:

An Act must be read as a whole. The words (of a section) must be construed in their context.

Lord Haldane L.C. in I.R.C. v Herbert [1913] A.C. 326 at p. 332 set out this principle as follows:

> "My Lords, in approaching the controversy as to the meaning of these section I think it worthwhile to recall a principle which must always be borne in mind in construing Acts of Parliament, and particularly legislation of a novel kind. The duty of a Court of Law is simply to take the statute it has to construe as it stands, and to construe its words according to their natural significance. While reference may be made to the state of the law, and the material facts and events with which it is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who framed the legislation, excepting in so far as these appear from the language of the statute. That language must indeed be read as a whole.

(See also per Buckley L.J. in L.J. in Turner v Follett 48 T.C. 614 at p. 622).

In explaining this concept, Lord Halsbury L.C. in I.R.C. v Priestly [1908] A.C. 208, points out at page 213, that when a statute is read as a whole, if the clearly expressed scheme of the Act so requires, particular expressions may have to be read in a sense which would not be the natural one if they were taken by themselves.

Lord Greene M.R. in Re Bidie (deceased) [1948] 2 All E.R. 995 at 998 F. had this to say:

> "The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort or prima facie meaning which you may have to displace or modify. It is to read the statute a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word?'"

In Wilks v Firth (Inspector of Taxes) [1982] Ch 355 at 370 [1982] 2 All ER 9 at 17E Oliver LJ, as he then was, said:

> "Accepting once more that the subject is not to be taxed except by clear words, the words must nevertheless, be construed in the context of the provisions in which they appear and of the intention patently discernible on the face of those provisions from the words used".
>
> (emphasis mine)

Another basic guiding principle of interpretation was enunciated by Lord Dunedin in the House of Lords in Whitney vs The Commissioner of Inland Revenue 10 TC. 88 at 110. He said:

> "....I shall now permit myself a general observation.... A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."
>
> (emphasis supplied)

But it is equally true that sometimes Parliament although intending to impose a tax, may yet fail to lay down any basis on which it may be assessed or levied. Such a case was Vestey vs I.R.C. (Nos. 1 and 2) [1980] AC 1148. Lord Wilberforce said at 1174:

> "....Parliament has attempted to impose a tax, but .... it has failed, in the case of discretionary beneficiaries, to lay down any basis on which it can be assessed or levied".

It has long been established that it is the duty of the Court to accept the purpose decided on by Parliament although disagreeing with it, and in seeking to ascertain the intention of Parliament the correct approach "is to find out what the Legislature must be taken to have really meant by the expressions which it has used, without necessarily attributing to the Legislature a precise appreciation of the technical appropriateness of its language" per Viscount Simon L.C. in Rex v General commissioners of Income Tax for the City of London (exparte Gibbs and Other) 24 TC 221 at 244.

Until the case of Pepper (Inspector of Taxes) vs Hart [1993] 1 All ER 42, it was the rule that in construing an act, the Court could not refer to speeches of members of Parliament when the Act was passed. But in that case the House of Lords sitting in a specially enlarged Appellate Committee of seven, Lord Mackay of Clashfern L.C. dissenting on the

point, introduced a new permissive rule regarding the use of Hansard. This rule is usefully summarized and assessed by Bennion at [1992] All E.R. review p.381 as follows:

"Pepper v Hart"

The following is the revised version of .... (use of Hansard).

(1) This section applies to an enactment contained in an Act where, in the opinion of the court construing the enactment, it is ambiguous or obscure, or its literal meaning leads to an absurdity.

(2) In arriving at the legal meaning of the enactment, the court may have regard to any statement, as set out in the Official Report of Debates ('Hansard') on the Bill for the Act, which satisfies the requirements of subsections (3) to (5) below, together with such other parliamentary material (if any) as is relevant for understanding that statement and its effect.

In allowing an advocate to cite such material the court must ensure that he or she does not in any way impugn or criticize the statement or the reasoning of the person making it.

(3) The statement must be made by or on behalf of the Minister or other person who is the promoter of the Bill.

(4) The statement must disclose the mischief aimed at by the enactment, or the legislative intention underlying its words.

(5) The statement must be clear.

(6) In applying the rule set out above in this section ("the rule in Pepper v Hart') the court may overrule an earlier decision which is not binding on it and was arrived at before the rule was introduced.

COMMENT

This section codifies the rule laid down by the House of Lords in Pepper (Inspector of Taxes) v Hart [1993] 1 All ER 42, where the leading speech, concurred in by all the other six Law Lords on a specially enlarged Appellate Committee except Lord MacKay of Clashfern L.C., was delivered by Lord Browne-Wilkinson (at 53-74). The decision was presented as the relaxation of a previously existing exclusionary rule under the 1966 practice statement (at 55) .... However, that rule was not set out in any of the speeches, no doubt because of the difficulty of formulating it. Accordingly, it has been thought most helpful to present Pepper v Hart here as laying down a permissive rule of its own rather than an exception."

I respectfully adopt this summary and commentary.

Before the case of Cape Brandy Syndicate vs I.R.C.(supra) in which Rowlatt J. gave his well known dictum, it was sometimes expressly denied that there was any such principle. Thus in Attorney General vs Carlton Bank [1879] 2 QB 158 at 164 Lord Russell of Killowen CJ said:

> "I see no reason why any special Canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be

> construed differently from any other Act. The duty of the Court is in my opinion in all cases the same, whether the Act to be construed relates to taxation or any other subject, viz to give effect to the intention of the legislature...."

Nevertheless the Courts from time to time have continued to follow the dictum of Rowlatt J. For instance in Neville vs IRC [1924] AC 385 at 399 Viscount Cave had this to say:

> "In construing a taxing Act regard must be had not to what one might expect to find in the Act, but to the words of the Act themselves".

Moreover it was expressly approved by the House of Lords in:

> Canadian' Eagle Oil Company vs R [1946] AC 119 at 140. It has been applied in New Zealand, in C.I.R. vs Phillips Gloelampenfabricken [1955] NZLR 868, at 882 by Cresson J. and at 887 by North J. It was followed by Hutchinson J. in Ward vs CIR [1955] NZLR 361 at 383 line 29.

Speaking in 1949, Lord Simmonds remarked in I.R.C. vs Wolfson [1949] 1 All ER 765 at 781.

> "It is not the function of a Court of law to give words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which had the legislature thought of it, would have been covered by appropriate words".

And in I.R.C. vs Saunders [1958] AC 285 at 298.

Lord Reid said:

> "It is sometimes said that we should apply the spirit and not the letter of law so as to bring in cases which though not within the letter of the law, are within the mischief at which the law is aimed. But it has long been recognized that our courts cannot so apply taxing Acts."

Notwithstanding the strong statements in favour of strict literal interpretation, the courts have shown a willingness to depart from the literal meaning even in taxing statutes in certain circumstances. The following are some examples:

1. Where to apply the literal meaning would lead to an impractical result: Section 31 of the Finance Act 1972 provides that where a taxable person fails to make VAT return, the Commissioners of Customs and Excise are empowered to assess the amount of tax due to the best of their ability, but an assessment "of an amount of tax due for any prescribed accounting period" must not be made later than a specified date. Prescribed accounting periods are of three months duration. In S.J. Grange Limited vs Commissioners of Customs and Excise [1979] 2 All ER 91 it was argued that the words underlined meant that a separate assessment must be made for each accounting period, even though the Commissioners would find the provision impractical.

In his judgement at pages 100 to 102, Lord Denning set out the difficulties which would make a literal application of the relevant section impractical. He said.

> "On 15th July 1976, the commissioners served this notice of assessment on S.J. Grange Limited of Cheap Street, Sherborne, Dorset:
>
> > 'Examination of your records for the period April 1973 to 31 December, 1974, has disclosed an underdeclaration of the amount shown above [£2,571.68]. This sum should be paid at once to the VAT central Unit, H.M. Customs and Excise....'
>
> You will see that notice was for a period of 21 months. That gives rise to the point of law. S.J. Grange Limited say that that notice of assessment was

completely bad. They say that a valid notice assessment could not be given for a continuous period of 21 months from 1st April 1973 to 31st December, 1974. They say that it ought to have been split up into three-monthly periods, and that as it was not split up it was bad. The judge upheld this agreement. The commissioners appeal to this court....

[P]roblems face the inspectors when they come to make an assessment. It is suggested.... over a period of 21 months value added tax has not been paid in an amount of £1,972.75. But the inspectors cannot say in which quarter this amount became due.

The goods may have been sold in any of those months from April 1973 to December 1974. Therefore, as they cannot say in which three months any of the goods were sold, the only way of dealing with it is to make the assessment, for the whole period from April 1973 to December 1974.

There it is. The commissioners say that from a practical point of view they can only do it in that way because it is the only sensible way of doing it. But the trader says that on the true construction of the 1972 Act the commissioners have to split it up into three-monthly periods.

The question in this case turns on the interpretation of a few words in s 31 of the 1972 Act. Subsection (1) supports the commissioner's point of view. It says:

> 'Where a taxable person has failed to make any returns under this Part of this Act or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the commissioners that such returns are incomplete or incorrect they may assess the amount of tax due from him to the best of their judgement and notify it to him'.

Stopping there, there is nothing to prevent the commissioners making an assessment for any period, whether it be three months, 12 months, 21 months or longer. But the trader says that an assessment can only be made for a prescribed accounting period, and that is three months. In support, he relies on s 31 (2), which says:

> 'An assessment under subsection (1) of this section of an amount of tax due for any prescribed accounting period shall not be made after the later of the following:- (a) two years after the end of the prescribed accounting period; or (b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge....'

The trader said that the amount 'due for any prescribed accounting period' can only be calculated sensibly in regard to each accounting period. So they submitted that the notice of assessment must related to each accounting period separately. The judge accepted that argument. I can see the force of it. It is literally correct. But it leads to such impracticable results that it is necessary to do a little adjustment so as to make the section workable.

This can be done by reading in a few words such as Bridge L.J. suggested in the course of the argument. That is, after 'for any prescribed accounting period'

read in these words 'which is included in the notice or assessment'. Making this interpolation, it means that the two years in sub-s 2 (a) runs from the end of the first three months included in the assessment.

The same problem arises under sub-s(4), which says:

> 'An assessment under subsection (1) or subsection(3) of this section shall not be made more than six years after the end of the prescribed accounting period....' and so forth. Again a workable result is obtained by reading in after 'prescribed accounting period' the words 'which is included in the notice of assessment'.

But most cases will not be subject to those time limits. The usual time limit will be the one year after knowledge by the commissioners of the facts; see s31(2)(b).

So read, it means that, in all cases where it is impossible for the commissioner to split the assessment up into three-monthly periods, they can assess the amount of tax for any period of time which they specify (be it six, 12, 15 or 21 months) and such assessment will be good. They must do it within one year after they get evidence of the facts sufficient to justify the nature of the assessment: see s31(2)(b).

I may add that, if the trader's argument were right, it would open the door to avoidance of value added tax.

It would mean that, for every three months, the commissioners would have to make a speculative assessment; to make a guess as to what sales the trader made in those three months. He might then evade it by

saying: 'I did not sell anything in that time, so you are wrong as regards that accounting period. You must try another'. There would have to be further enquiries, and these would take so long that the period of limitation would have expired. Many other practical difficulties would arise in making assessments if they had to be made for every accounting period separately. In my opinion, therefore, a notice of assessment can be made for a period such as 21 months. This notice of assessment was good. The preliminary point fails. The case should go back to the tribunal for them to enquire into the facts.

I would allow the appeal accordingly".

In the instant case the Revenue have been unable to demonstrate a practical difficulty which would arise in their adminsitration of the General Consumption Tax in relation to the section to be construed, if the section were to be interpreted as suggested by the Appellant.

Secondly, where the literal meaning would have imposed hardship on the taxpayer. Thus in I.R.C vs R. Woolf (Rubber) Limited [1962] Ch 35, at 44 - 45 the English Court of appeal departed from the literal reading of the definition of "member" of a company in the Income Tax Act 1952 section 255 (2) where it would have made a lending banker liable to surtax: and in South West Water Authority v Rumble [1985] AC 609, the House of Lords held that water rate was not chargeable under the Water Act 1973 s30 for "facilities provided" where facilities were not used by the occupier.

Thirdly, the Ramsey Principle. The House of Lords in I.R.C. vs Duke of Westminister [1936] AC 1, laid down that if a transaction is genuine the courts cannot go behind it to some supposed underlying "substance" and so construe an act to prevent avoidance of tax. In W T Ramsay Limited vs I.R.C. [1982] AC 300, the House of Lords modified the "Westminister" principle by holding that even though each transaction in a scheme is "genuine" and not a sham if the only object is tax avoidance this will not save it where the scheme has no business or commercial purpose.

Of course this need not detain us as the instant case does not fall into that category.

Fourthly, where to apply the literal meaning would defeat the obvious purpose of the legislation and produce a wholly irrational result. An example of such a situation arose in Luke vs I.R.C. [1963] AC557.

In that case the taxpayer occupied a large house which he had earlier sold to the company of which he was a director. It was considered desirable that he should have an imposing residence as he frequently entertained overseas customers of the company. He paid a proper rent, but in the year in question the company expended £950.00 on rates, for duties, insurance and repairs which included the installation of a new boiler and water main and renewal of plumbing and the roof. A literal interpretation of the relevant statute meant that amounts spent by the company on repairs were to be regarded as making the taxpayer liable to be taxed on an amount equivalent to the annual value and also on the expenditure on repairs.

Lord Reid described this effect in the following manner at p.581:

> "This result is so absurd and capricious that even the Inland Revenue shy at enforcing it.
>
> ....I cannot believe that this could have been the intention wither of Parliament or of the draftsman. So the case for adopting a secondary meaning if that is possible, is over-whelming".

It was held that the expenditure of the company did not form part of Luke's emolument, conferring upon him no benefit beyond what he had under his pre-existing rights under the lease.

THE APPLICATION OF THE GUIDELINES TO THE INSTANT CASE

I shall now deal directly with the arguments of counsel. I am entirely in agreement with Mrs. Hudson-Phillips that the General Consumption Tax Regulations 1991 cannot be used as a means of enlarging or modifying the provisions of the Act, and in particular Section 66(1), imposing a further condition which must be satisfied before the Appellant may receive a stock credit. I accept as a correct statement of the law paragraph 884 of volume 44 of Halsbury's Laws of England which was cited by Mrs. Hudson-Phillips.

It reads as follows:

> **"884. Subordinate legislation as an aid to construction.** It has been said that where a statute provides that subordinate legislation made under it is to have effect as if enacted in the statute, such legislation may be referred to for the purpose of construing a provision in the statute itself. Where a statute does not contain such a provision, and does not confer any power to modify the application of the statute by subordinate legislation, it is clear that subordinate legislation made under the statute cannot alter or vary the meaning of the statute itself where it is unambiguous, and only in exceptional cases may

> such legislation be referred to for the purpose of construing an expression in the statute, even if the meaning of the expression is ambiguous.

The Act does not contain any of the provisions, nor do any other circumstances exist which could enable the court to use the above mentioned regulations as an aid to the construction of Section 66.

Moreover I hold that paragraph 2 of Regulation 26 is merely procedural in nature and may not add to or modify the substantive law. It reads:

> "A claim under paragraph (1) shall be made in accordance with the directions issued by the Commissioner".

In considering the effect of delegated legislation the difference in juridical nature and provenance when compared with an Act of Parliament must not be forgotten. The essential function of delegated legislation is to carry out the purpose of the enabling Act. This means that the intention of the legislature as stated in the enabling Act must always be the prime guide as to the meaning of the delegated legislation. The duty of the delegate is to serve and promote the object of the legislature and may not go wider than that object, but must remain true to it.

This was ably stated int eh Australian case of Shanahan v Scott (1957) 96 CLR 245 at 250, and was endorsed by the Privy Council in Utah Construction and Engineering Pty Limited vs Pataky [1966] 2 WLR 197 at 202 in the following words:

> [Power delegated by an enactment] does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends".
>
> (emphasis mine)

It must also be noted that with delegated legislation, unlike an Act, there will usually be lacking much if not all of the parliamentary information usually made available as to the mischief which the Act is intended to cure, the nature of the proposed remedy and the purpose of the legislature. Moreover the scrutiny given to a regulation is much less than that of a statute. As Viscount Maugham pointed out in Liversidge v Anderson [1942] AC 206 at 233:

> "....regulations pursuant to an Act of Parliament do not receive the same attention and scrutiny as statutes, and it is important to remember that thought they may be annulled, they cannot be amended in either House.... so that errors in language, if detected, cannot be corrected. There are of course, no three readings and no committee stage in either House".

Mrs. Hudson-Phillips also attacked the attempt of the Respondent to set out the objectives of the legislation by means of an affidavit of Winston Karl Lawson who referred to the Technical Information Bulletin issued by the Head Office of the General Consumption Tax Department. She maintained that it was ultra vires in so far as it sought to lay down a further condition to be fulfilled in order for the Tax payer to obtain a stock-in-trade credit.

Paragraph 3 of Winston Karl Lawson's affidavit reads:

"That pursuant to the General Consumption Tax Regulations 1991, in particular Regulation 26, directions relating to the transitional stock-in-trade credit were issued in the form of a Technical Information Bulletin, a copy of which is exhibited hereto and marked 'W.K.L.I'. This Bulletin highlighted, inter alia, that the objective of the credit scheme was "to reduce the extent to which goods are subject to both General Consumption Tax and the [Specified] duties' and further that the credit was available as a set-off against any tax payable by the registered taxpayer under the Act".

The Technical Information Bulletin referred to above repeats sentiments to the same effect in paragraph 1 on page one of the Bulletin.

It reads as follows:

"1. Introduction

Provisions have been provided under the General Consumption Tax Act for a credit to be available to registered taxpayers who hold on October 22, 1991, stock-in-trade in respect of which excise duties, comsumption duties, CARICOM duties or additional stamp duties (specified duties) were payable under the various statutes etc. repealed. The credit is available as set-off against any tax payable by the registered taxpayer under the Act.

The objective of the scheme is to reduce the extent to which goods are subject to both General Consumption Tax and the duties named above (specified duties) in the transitional period."

Then follows paragraph 2 which is headed "Eligibility for Credit".

It is worded as follows:

"The stock credit is available only if all the following conditions are met:

(a) the person making the claim must be registered as a registered taxpayer by October 22, 1991.
(b) the goods for which the claim is made must have been subject to one or more of the specified duties before October 22, 1991.
(c) the goods must be subject to G.C.T. at standard rate (i.e.10%)
(d) the goods must be in a new and unused condition.

(e) the goods must be held for sale by the registered taxpayer in the ordinary course of his business. This means the goods must not be capital goods, the registered taxpayer must have title to them and they must be part of his stock-in-trade. Goods held for sale do not include:

(i) supplies, tools, equipment etc. used in providing a service;
(ii) supplies used in the day-to-day administration of the business;
(iii) goods to be consumed or expended in the registered taxpayer's operation;
(iv) packaging, coverings and containers

(f) the goods must be on had at the closing of business on October 21, 1991; goods for which the title has been transferred to a purchaser before October 22, 1991, or goods for which title was not yet passed to the registred taxpayer will not qualify.

(g) the stock-in-trade must be quantified, valued, attested to by a certified Public Accountant, and applied for in writing".

It will be observed that the Bulletin contains no specified direction that a taxpayer is only entitled to a creidt if he or she passed it on to the consumer by a similar reduction in price. The paragraph headed "Eligibility for Credit" does not even mention it!!

Nevertheless, there is some authority for the Respondent's invitation to the Court to seek assistance from the Technical Information Bulletin. The case of Wicks v Firth (Inspector of Taxes) [1983] 1 ALL ER 151, shows that unusually, the courts will sometimes regard as persuasive authority official statements by departments administering an Act, as to the meaning of its provisions.

In that case the House of Lords (Lord Templeman dissenting) overruled the Court of Appeal, and has regard to a press release issued by the Inland Revenue in 1978, in relation to the treatment of scholarships awarded by employers to children of employees. Lord Bridge with whom three other judges concurred said at 154 to 155b:

> "I note that in a press release.... in June 1978....the Revenue when announcing their intention to exact tax in cases such as those under appeal, indicated that they would still treat as exempt scholarships awarded, from a fund open to all, to scholars who happened to be children of employees of the firm by which the fund was financed. Yet, if the construction of the relevant provisions for which the Crown contends is right, liability would arise equally in such cases. This is not a decisive consideration, but in choosing between competing constructions of a taxing provision it is legitimate, I think, to incline against a construction which the Revenue are unwilling to apply in its full rigour but feel they must mitigate by way of extra-statutory concession, recognizing, presumably, that in some cases their construction would operate to produce a result which Parliament can hardly have intended".
>
> (emphasis supplied)

Lord Templeman dissenting said at page 159E:

> "In my opinion the press release is not relevant to statutory interpretation, and the approach which I have adopted is neither broad nor narrow, but merely gives effect to the words used by the legislature...."

Nothwithstanding this decision it must be remembered that a government department has no legislative power and so may not of its own accord alter the true meaning of a statute. Nor can an administrative ruling of this kind bind a department in future cases.

I find no ambiguity in the words of the section and so there is no need to look elsewhere for assistance in interpreting it. Further, I think that one should be extremely cautious, and wary of admitting as a guide to interpretation a document issued by the Revenue, and which unlike in the case of Wicks v Firth (supra) espouses the very view being advanced by the Revenue in Court. To permit such a practice would be to encourage amendment of doubtful legislation by administrative department and do little to discourage poor draftsmanship. For all these reasons I refuse to consider

the Technical Bulletin as an aid to interpretation. I am fortified in this position by the attitude of the courts towards preambles and purpose clauses in an Act, where the meaning of the statute is clear.

Firstly, the courts are disinclined to allow a preamble to override inconsistent operative provisions. This issue arose in the House of Lords in Attorney General v Prince Ernest Augustus of Hanover [1957] AC 436.

In the Princess Sophia Naturalisation Act (4 and 5 Anne C 16) 1705 the preamble stated that it was desirable that the descendants of the Electress Sophia of Hanover should be naturalised as Britain subjects "in Your Majesty's lifetime", referring to Queen Anne. However, the body of the Act naturalised "the said Princess (Sophia) .... and the issue of her body, and all persons lineally descending from her, born or hereafter to be born...."

Secondly, in Page (Inspector of Taxes) v Lowther 1983, The Times 27th October, the effect of a purpose clause was considered. Section 488 (1) of the Income and Corporation Taxes Act 1970, contained the following purpose clause.

> "This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land".

The Court of Appeal in England held that a transaction which did not, and was not intended to avoid tax nevertheless fell within the scope of Section 488. The clear words of the Section were not taken as reduced in scope by the purpose clause.

A major plinth of Mr. Alder's submissions was the word "eligible". I accept his positon that the words of the statute should be given their ordinary meaning. I also agree with the proposition which he stated that where an exception from taxation is given by a statute, that exception must be construed strictly and any ambiguity construed against the taxpayer. Authority for this statement is found in the dictum of Cohen L J in Litman v Barron [1951] Ch 993 at 1003, and in the case of Maughan v Free Church of Scotland (1892) 3 TC 207.

Mr. Adler submitted that the meaning of "eligible" excluded the idea of entitlement. In support of this assertion he quoted from the Oxford English Dictionary of 1961 which gave the following meanings:

> "Fit or proper to be chosen"
> "Subject to appointment by election"
> "Fit or deserving to be chosen"

These said he, he fell short of entitlement. For a taxpayer to be entitled to a stock credit something more was needed, and since the statute was silent on what else was needed a discretion to decide on when a taxpayer was eligible must be assigned to the Commissioner of General Consumption Tax. The basis for the exercise of the discretion should be justice and fairness; and this required that the taxpayer should not enjoy unjust enrichment. Hence the Commissioner's imposition that the benefit of any stock-in-trade credit granted to the taxpayer should be passed on to the consumer.

Counsel for the Respondent made the error of consulting only one dictionary, published in 1961, over thirty years ago, and applying its definition to a statute passed in 1991. Language is dynamic. The nuances of words change with the passing years. As Rudolph Quirk Vice Chancellor of the University of London writes in the preface to the Longman Dictionary of the English Language 1984:

> "Good dictionaries proceed from a controlled interaction of tradition and innovation. Too much of the one results in being locked into out dated practice and presentation. Too much of the other results in a book where the reader misses familiar focus on guidance."

The following is a sample of some of the meanings taken from other dictionaries, mainly of the more recent vintage. They indicate that "entitlement" is as much a meaning as the others noted by counsel:

The Lexicon Dictionary

"Legally qualified to be chosen"

Scott Foresman Advanced Dictionary

"Properly qualified"

Longman Dictionary of English Language 1984

"Qualified to be chosen; also entitled [for promotion] [to retire]".

(my emphais)

Webster Third New International Dictionary of English Language

"Fitted or qualified to be chosen or used: entitled to something".

(my emphasis)

The Oxford Reference Dictionary 1989

"Fit or entitled to be chosen for office, award etc."

"Desirable or suitably qualified for marriage"

The Concise Oxford Dictionary of Current English 8th Edition 1990

> "(1) (often followed by for) Fit or entitled to be chosen (eligible for a rebate).
>
> (2) Desirable or suitable esp. as a partner for marriage".

The New Shorter Oxford English Dictionary 1993 Edition

> (1) Fit or entitled to be chosen for a position award etc.
> (2) Subject to appointment by election.... Desirable, suitable, esp. as a partner in marriage."

It is apparent from the above that the work eligible has many meanings. But in the context of the section being construed the meanings most appropriate are "legally qualified" and entitled". I am fortified in this interpretation by the dictum of Lord Evershed in Faramus v Film Artistes' Association [1964]. I ALL ER 25 at 28 where he held that eligible meant "legally qualified".

I have already indicated that I find no ambiguity in the words of the section when read in context, and I therefore held that I am obliged to give the words their clear meaning. I respectfully adopt the dictum of Lord Templeman in Wicks vs Firth (supra)):

> ".... the approach which I have adopted is neither broad nor narrow but merely gives effect to the words used by the legislature...."

As regard ambiguity, a word may appear to be equivocal in nature when taken on its own, but when considered in context such equivocalness will usually be insignificant in construing an enactment. As Lord Reid explained in Kirkness (Inspector of Taxes) v Hudson [1955] AC 696 at 735:

> "A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgement, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning".
>
> (emphasis added)

What Lord Reid is pointing out by implication is that the inherent uncertainty of meaning possessed by many words is normally remedied in a given case by the context, that is by the choice of other words in the sentence. I hold that the subject matter of the section, that is, a stock-in-trade credit, rules out the type of meanings associated with choice of a marriage partner or selection of an employee, and is more in keeping with that associated with granting a rebate.

Following on his argument that "eligible" did not mean "entitled", Mr. Alder submitted that this meant that there resided in the Commissioner of General Consumption Tax, as the officer given responsibility to administer the tax, a discretion to determine whether the taxpayer had a right to receive a credit.

The short answer to that submission is that the words of the statute do not state that a discretion is given and so, none should be implied. The courts have shown a marked reluctance to admit of a construction which permits a person's tax liability to be fixed by the discretion of an administrator. The use of administrative discretion was considered in Vesty v IRC (Nos. 1 and 2) [1980] AC 1148 by the House of Lords. The issue arose in this way.

Section 412 of the Income Tax Act 1952 began with a recital which stated that the section was intended for the purpose of preventing the avoidance of tax by arranging for income to be paid to non-residents. The Revenue purported to apply Section 412 so as to tax beneficiaries under discretionary trusts regardless of whether they received any payment. For this purpose the Revenue apportioned by administrative discretion the total income of the trustees in each year.

Held. Notwithstanding earlier decisions of the House of Lords to the contrary, this practice was beyond what was authorised by the section and therefore quite illegal. Lord Wilberforce said at 1171 - 1174:

> "Taxes are imposed on subjects by parliament. A citizen cannot be taxed unless he is designated in clear terms by a taking Act as a taxpayer, and the amount of his liability is clearly defined. A proposition that whether a subject is to be taxed or not, or that, if he is, the amount of his liability is to be decided (even though within a limit) by an administrative body, represents a radical departure from constitutional principle... This would be taxation by self-asserted administrative discretion and not by law. As the judge well said, 'one should be taxed by law and not be untaxed by concession'. The fact in the present case is that Parliament has laid down no basis on which tax can be apportioned where there are a numerous discretionary beneficiaries.... I must regard this case therefore as one in which Parliament has attempted to impose a tax, but in which it has failed".

I hold that the Commissioner of General Consumption Tax does not have any such discretion as Mr. Alder suggests.

Mr. Alder further submitted that to avoid injustice the court should interpret Section 66 so as to impose a condition that the Appellant should pass on the benefit of the stock-in-trade credit to consumers. This amounts to asking the court to read into the statute words to that effect, and would be contrary to the dictum of Rowlatt J

noted above, that in a taxing act:

> "Nothing is to be read in, nothing is to be implied".

It is true to say however, that usually in appropriate cases the courts have departed from this principle, see for example SJ Grange Ltd., v Commissioner of Customs and Excise (supra). Other instances are found in the following sample of such cases:

> In Customs and Excise Commissioners vs. Mechanic Services (Trailer Engineers) Ltd. [1979] 1 WLR 305. The English Court of Appeal declined to adhere to a literal reading of a value added tax provision, which imposed tax at a higher rate on pleasure boats and related goods. If interpreted literally, tax at the higher rate should be extended to couplings and winches sold separately - even though more than nine tenths of them would be used in the assembly of lower rated goods. It was held that the injustice of this consequence must be taken into account, and required a different construction. Browne LJ said (at 313):
>
> > "The decision will not present the Commissioners from recovering tax at the higher rate on all couplings and winches which are in fact used on [higher rated goods].... What it will prevent is what I think the grossly unjust result that the Commissioners are authorised to levy the higher rate on the great majority of these goods which are used for purposes which have nothing to do with [such goods]."

And in Coutts and Company v IRC [1953] AC 267, by reason of the death of a trust beneficiary the income of another beneficiary was increased by a mere £1,976 per annum. The Revenue demanded estate duty of £60,000. Lord Reid said (at 281):

> "In general, if it is alleged that a statutory provision brings about a result which is so startling, one looks for some other possible meaning of the statute which will avoid such a result, because there is some presumption that Parliament does not intend its legislation to produce highly inequitable results."

However the Court was able to refuse the Revenue's demand without actually involving the principle stated in the dictum of Lord Reid. In the instant case any unfairness or injustice which could arise from the interpretation suggested by the Appellant, is far less significant than those in the last two cases just mentioned. It must also be remembered that the provision being considered unlike most of the cases cited is transitional, and covers only the situation on a special day.

Further, if a law is improperly drafted so that injustice to someone will arise, the courts will not always seek to prevent the injustice by imposing a strained interpretation. They will often give the interpretation which is proper and leave it to Parliament to make the necessary amendment. Indeed this is one of the methods used by the courts in an endeavour to cause draftsmen to be more careful in their work.

A non-taxation case provides a striking example of this, and it produced from Parliament the desired quick response. In Pickett v British Rail Engineering Ltd. [1980] AC 136 at 151 the issue was the quantum of damages recoverable by a deceased's estate under the Law Reform (Miscellaneous Provisions) Act 1934. In the House of Lords Lord Wilberforce admitted that in some cases there might be duplication of recovery, but he went on:

> "To that extent injustice may be caused to the wrongdoer. But if there is a choice between taking a view of the law which mitigates a clear and recognised injustice in cases of normal occurrence, at the cost of the possibility in fewer cases of excess payments being made, or leaving the law as it is, I think our duty is clear. We should carry the judicial process of seeking a just principle as far as we can, confident that the legislator will correct resultant anamolies".
> (emphasis added)

To my mind, the fact that the taxpayer may not pass on the credit to a customer would not justify the court in importing into the statute a condition which Parliament could easily have expressed yet failed to do so.

Another principle which is demonstrated by a number of cases is that the courts recognise that in a modern state legislation is often coersive on the taxpayer; and so whilst they are aware that it is in the public interest that proper taxes are collected, yet they frown upon imposing inconvenience on the taxpayer or what may amount to unreasonable harassment.

In Hallamshire Industrial Finance Trust Ltd. V IRAC [1979] 1 WLR 620; the Revenue argued that a tax assessment need specify no more than the amount of income liable to tax, without also stating the actual amount of tax claimed. Although the maxim was not cited, the argument was probably based on the maxim "id certum est quod certum reddi potest". (That is certain which can be rendered certain). Browne Wilkinson J., as he then was rejected this argument.

He said at page 625:

> "I do not find this contention attractive. It involves the proposition that the legislature envisaged the possibility of a taxpayer being liable to pay tax in an amount of which he has never been notified prior to a demand for payment under Section 60 of the [Taxes Management Act 1970]. The majority of taxpayers on receiving the assessment look only at the amount of tax payable, having neither the time nor the ability

> (without professional advice) to discover whether the sum is correct. Yet the Crown argues that they would have fully discharged their functions of assessing and giving notice of assessment without specifying any amount of tax payable, merely by stating the facts which would enable someone skilled in tax matters to compute the tax which the Crown is going to demand under Section 60, such demand probably not being made until after the time for appealing against the assessment had expired. In my judgement the words of the statute would have to be very clear to force the court to that conclusion".
>
> (emphasis supplied)

The next example is IRC v Helen Slater Charitable Trust Ltd. [1982] Ch. 49. Under various taxing statutes certain income of a charity was exempted from tax provided it was in fact applied for charitable purposes. The charity in question paid the income over to another charity which was by law required to apply it for charitable purposes. The Revenue argued that the exemption could not be claimed unless the first charity proved that the recipient charity had in fact used the money for charitable purposes.

The English Court of Appeal held that it was sufficient to prove that the recipient would be acting unlawfully if it used the money in any other way. Oliver LJ said at page 635:

> "The Crown's proposition is a startling one; it involves this, that the trustees of a charity, although they may discharge themselves as a matter of law by making a grant to another properly constituted charity, are obliged, if they wish to claim exemption under the sub-sections, to enquire into the application of the funds given and to demonstrate to the Revenue how those funds have been dealth with by other trustees over whom they have no control and for whose actions they are not answerable. Anything more inconvenient would be difficult to imagine, and I find myself quite unable to accept that Parliament in enacting these sections, can possibly have intended such a result."

In the final analysis it seems to me that the legislature has failed to provide for that which the Respondent asks.

And our law does not allow the court to stretch the meaning of the statute in the way suggested by the Respondent. It is true that as I have shown above, the courts sometimes invoke purposive or stained constructions, but the situation for such a maneouvre here is not ripe. I bear in mind that in Luke v IRC (supra) at 555 Lord Reid said:

> "To apply the words literally is to defeat the obvious purpose of the legislation and produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result we must do some violence to the words."
>
> (emphasis added)

But that case is easily distinguishable from the instant case in that in Luke's case the object of the statute was to prevent tax avoidance, a literal interpretation would impose tax on a subject where none ought to be imposed. It was in Lord Reid's words "a capricious result". No such situation exists here.

Even where the courts apply a purposive interpretation as in Luke's case (supra) they do not permit or require a wholesale jettisoning of the grammatical meaning of a provision. The rule remains that the purpose must be gathered from the language used and must necessarily conform to that language.

I think Mr. Alder would wish to echo the lament of Lord Denning in James Buchanan & Company Ltd. V Babco Forwarding and Shipping (U.K.) Ltd. [1977] 2 WLR 107 at 112. There he contrasted the method of statutory interpretation used by European judges with those adoped by their English counterparts. He said:

> "[European judges] adopt a method which they call in English by strange words - at any rate they were strange to me - the "schematic and teleogical" method of interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose .... behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unashamedly, without hesitation. They ask simply: What is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation? They lay down the law accordingly."

The House of Lords promptly rejected this suggestion when that case reached the House - at [1977] 3 All ER 1048. In conclusion, I hold that Section 66 of the Act is not ambiguous or obscure, and that the interpretation propounded by counsel for the Appellant does not lead to an absurdity. I find that the Appellant has satisfied all conditions laid down by the Act and is entitled to a credit for stock-in-trade at October 22, 1991, and that the respondent is wrong in disallowing the Appellant's claim for a stock-in-trade credit; and has no right in law to require the taxpayer to pass on the benefit of the credit to the consumer.

The position was ably stated by Lord Scarman in Duport Steels Ltd. V Sirs [1980] 1 WLR 142 at 168. He said:

> "....in the field of statute law the judge must be obedient to the rule of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law [and] the judge's duty is to interpret and apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgement best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be

> disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires."

I am satisfied that the words of Lord Reid in IRC v Hinchy [1960] AC 748 at 767, sum up the situation in this case. He said:

> "....[We] can only take the intention of Parliament from the words used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences, and however strongly we suspect that this was not the real intention of Parliament".
> (emphasis mine)

I respectfully adopt these words. My ruling therefore is that the decision of the respondent herein, made on 27th May 1993 is reversed, the assessment is discharged, the Appellant's claim for a stock-in-trade credit is granted. The appeal is therefore allowed with costs to the Appellant to be taxed if not agreed.