A. Venkata Subba Rao

Vs

State of Andhra Pradesh. (with connected appeals)

Civil Appeal Nos. 101, 131, 168, to 171, 259, to 260, 302 to 303, 306 to 309, 310, 644 and 837 to 857 1962 and 325, 437 to 441 and 996 of 1963

(A. K. Sarkar, N. Rajgopala Ayyangar, R. S. Bachawat JJ)

14.12.1964

JUDGMENT

SARKAR, J. -

These appeals arise out of suits filed for recovery of money from the Government. The appellants were the plaintiffs and the respondent in each appeal is a State, the defendant in the suits.

In the years 1947 and 1948 there was rice scarcity in certain distinct in Madras as it was then constituted. These districts are now in Andhra Pradesh. The Government of Madras took action under the Essential Supplies (Temporary Powers) Act, 1946 and passed various orders for the procurement and distribution of rice. Rice thereafter could be procured only by the Government or by the procuring agents appointed by it and disposed of according to the orders of the Government. Under these orders licensed wholesalers and retailers were also appointed. The appellants were procuring agents and wholesalers under this system. They entered into various agreements with the Government for the purpose. Their duty was to procure rice from specified areas at prices specified by the Government from time to time and to deliver it at prices so specified, to the Government or to persons nominated by it or to other licensed purchasers. The procurement price was in each case lower than the selling price and the procuring agents were under the contract entitled to the difference between the two prices.

During the period with which we are concerned, three successive order were made by the Government specifying the prices and in each case there was an increase. The first increase in prices took effect on July 27, 1947, the second on or about December 6, 1947 and the third on November 21, 1948. On the dates on which each of these order came into force, each appellant had lying with him in stock certain quantity of rice. This had been procured by the agents earlier and therefore at the them prevailing lower purchase price. The appellants had to sell this rice at the new increased price and hence became automatically entitled to a larger sum than they were before the increase. The enhancement of the procuring agents' profit was entirely due to the Government action in increasing the prices and the Government thought that they were not entitled to it and insisted that the excess sums should be paid to it by them. The appellants paid these moneys to the Government under protest and it is for the recovery of the moneys so paid that, broadly speaking, the suits were filed.

Now various methods had been employed by the Government for realising these excess amounts which have been described in these proceeding as 'surcharges'. Thus in some cases the procuring agents or wholesalers refusing to pay were threatened with cancellation of their licences and to

avoid this they made the payments. In other cases, these surcharges were deducted from moneys payable by the Government to them for rice supplied by them. The third method which concerned the increase made in November 1948 was to requisition the stock of rice lying with the procuring agents on the day immediately preceding the coming into force of the increased price at the rate then obtaining and thereafter releasing such rice to the procuring agents only upon their paying the surcharge or on their executing an agreement to pay the same.

It is clear that if the Government was not entitled to the amount of the surcharge, it could not retain the moneys paid by the appellants to it on that account. The principal question is, Was the Government entitled to those moneys ? In regard to the moneys collected except by the method of requisition and release, the Government's contention was that the appellants were its agents and that being so, any excess amount which was coming to them as a result of the orders was profit made by them in connection with the business of the agency for which they were liable to account to the Government. It was also said that if the appellants were not the Government's agents strictly speaking, they at least stood in a fiduciary relationship to it which made them liable to account for the extra profit. My learned brother Ayyangar has dealt with this question and there is nothing that I have to add to that. I am in full agreement with his view that no relationship of principal and agent or of a fiduciary character had ever come into existence between the appellants and the Government. I wish, however, to observe that I do not see how, even if the appellants were the Government's agents, Government was entitled to the extra profit. Admittedly under the contract between a procuring agent and the Government, even if that contract was of agency, the procuring agent was to procure and sell rice at the prices fixed and prevailing at the time respectively of the procurement and sale. It is not disputed that the difference belonged to him. It was in fact said that was the commission to which he was entitled under the contract as an agent. If this is so, the procuring agent would under the contract be entitled to keep the larger difference caused by the selling price having been increased after his procurement. Hence it seems to me that under the contract, irrespective of whatever kind it was, the difference, even though it became larger, belonged to the procuring agent and the Government has no right to it.

Another question that arises in these appeals in regards to the moneys collected by the methods other than requisition and releases is whether the claims of the appellants for the refund were not barred. I agree with my brother Ayyangar that Art. 62 of the Limitation Act governed the case and the claims were not barred if the suits in respect of them were filled within the time there specified. With regard to the meaning of the words "Money received by the defendant, for the plaintiff's use" in that article, I think, as Ayyangar J. pointed out, the correct view was taken in Mahomed Wahib v. Mahomed Ameer (I.L.R. 32 Cal. 527.). The suits in which the claims arose in circumstances other than those described hereafter the question on limitation has to be decided under Art. 62 only. I do not feel called upon on the present occasion to decide to what other cases, if any, Art. 62 might apply.

It remains to deal with the amounts realised by the method of requisitioning the rice in stock and releasing it. It was contended on behalf of the appellants that this was really taxation by executive fiat and was therefore an illegal levy of tax. I am unable to accept this contention. Support for it was sought by the appellants from Attorney-General v. Wilts United Dairies (127 L.T. 822.). It does not seem to me that that case furnishes any basis for the contention. There the Ministry of Food Production had granted a licence to a trader to buy milk on payment of a certain charge and it was held that the charge could not be levied except on the authority given by statute and that no such authority had been given. Another case to be considered in this connection is Attorney-General v. Homebush Flour Mills Limited (56 C.L.R. 390.). There it was held that a certain statute which had

been passed by the Parliament of New South Wales, though purporting to require payment upon the exercise of an option by a trader in fact left him no choice and compelled him to make the payment and therefore in reality imposed an excise duty which only the Commonwealth Parliament could impose and for this reason the statute was ultra vires the legislature. The last case on this point which I have to notice is Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy, Limited ([1933] L.R. 168.). There the provincial legislature of British Columbia had passed an Act which authorised a committee constituted under it to impose a certain levy and it was held that the levy was a tax which the legislature had no power to impose.

The Australian case and the Canadian case were cases of levy under ultra vires statutes and the English case was of a charge made without any statutory backing at all. It seems to me that the present case is not of any of these kinds. There is here no challenge to the legality of the Essential Supplies (Temporary Powers) Act under which the requisition and release had been made. Nor was it contended that under the Act the Government could not requisition the stock of rice in the possession of a procuring agent at the price previously prevailing, nor that having done so, it could not sell the rice so requisitioned at the price subsequently fixed. If it could so sell the rice requisitioned to an outsider, it could equally sell it back to the procuring agent from whom it was taken. This is precisely what was done in this case. The Government's acts were perfectly within its statutory powers and legal. It is not a case where the appellants had been compelled to obtain the release on payment to avoid going out of trade as was held in the Australian case to have happened. The appellants were free not to pay and to obtain or not to obtain the release. If they had not, it has not been said that their trade would have stopped. The ratio decidendi of the Australian case that the trader had been compelled to pay, which was why the payment was held to have amounted to a tax, does not apply to the case in hand.

There is not the slightest doubt that the extra profit with which we are concerned had not come to the procuring agents by reason of any merit of their own; it had come into existence only because the exigencies of the circumstances prevailing had compelled the Government to increase the price. The Government had apparently felt doubtful if its earlier methods of realising the extra profits were legal and to avoid the consequences of any illegality, it followed this procedure and to the legality of it I find no objection. If the procedure was legal, as I think it was, it could not have resulted in an illegal levy. I would, therefore, hold that where as a result of the requisition and release the Government had obtained moneys from the appellants, the realisation had been legal and did not amount to unauthorised levy of tax and the appellants are not entitled to recover them from the Government. For the same reason where in respect of such requisition and release the appellants had not paid money directly, but had entered into engagements to pay moneys, those engagements would be legal and enforceable. The question of payments and of agreements of this particular kind are involved in appeals Nos. 840, 842, 845, 850, 853 and 855 of 1962. I would dismiss those appeals so far as they concern claim for the recovery of moneys realised by the Government by requisition and release and the enforceability of the agreements in respect of them. The other appeals except where the suits were barred as stated by Ayyangar J. should be allowed.

AYYANGAR, J. -

This batch of 44 appeals have been heard together because most of the points of law raised in them are common. They are before us by virtue of certificates of fitness granted for each appeal by the High Court of Andhra Pradesh.

The facts leading to the suits out of which these appeals arise are briefly these : The appellants are

owners or lessees of rice mills in the districts of West Godavari, East Godavari and Krishna. Their business consisted in purchasing paddy from producers, milling their purchase in their mills and in selling the rice so milled to wholesale dealers in rice and others. While so, in or about 1946-47 and even before, severe restrictions were imposed in the State of Madras on the trade in foodgrains in order to maintain their supplies and ensure their proper and equitable distribution to the community. Action in that behalf was taken in respect of two matters; (1) Procurement of paddy and rice, and (2) Dealing in them. For this purpose the power vested in the State Government under the Essential Supplies (Temporary Powers) Act, 1946 was utilised and two orders "The Foodgrains Procurement Order, 1946" (later modified by the Foodgrains Intensive Procurement Order, 1947) and the Foodgrains Licensing Order, 1946 were issued. Under the former the procurement or purchase of foodgrains including paddy was placed under control and the right to purchase was restricted to the Government and to the Procurement agents appointed and notified by them. The appellants were among those who were appointed as "Procuring agents" under that order. The sales to be effected by the procuring agents of the milled rice were also placed under control by virtue of the Licensing Order which prohibited all trade or dealing in foodgrains including rice except by those who held licences and subject only to the terms and conditions of the license. The appellants were each one of them licensed to deal in rice under this Licensing Order. It might be mentioned that the prices at which paddy could be procured as well as the price at which paddy and rice could be sold by the licensed dealers were also fixed by orders, notification issued under the Essential Supplies Act. While the appellants were thus carrying on their business subject to the provisions of the two "Orders" we have mentioned earlier, the prices at which the appellants could sell rice which they milled out of the paddy procured by them were enhanced on three occasions - July, 1947, December, 1947 and November 1948 and, on each occasion, they were directed to submit statements regarding the stocks of paddy and rice held to them on the day just previous to that on which the increased prices were to come into effect and they were directed to pay as a "surcharge" the amount representing that increase on the stocks held by them. The appellants demurred, but payment was insisted on and the same was either paid under protest or recovered from them in several modes to which we shall refer in derail later. The suits out of which these appeals arise were brought by these miller-procuring agents for recovery of the amounts of one or more of the three surcharges that were collected from them, on the ground that the "surcharges" were virtually taxes which had been illegally imposed and levied on them. These suits were filed in Courts of different Subordinate Judges having territorial jurisdiction over their places of business. Some of these suits were decreed while others were dismissed. Appeals were filed to the High Court of Andhra Pradesh by the aggrieved parties and most of these appeals were heard together by the High Court and a common judgment was delivered directing the dismissal of all the suits. A few of them came on for hearing subsequently, but the learned Judged following the judgment of the Court in the main batch disposed of them in accordance with that decision. On applications made by the several plaintiffs certificates of fitness were granted by the High Court and that is how the appeals are now before us.

As would be seen from the foregoing, the main point in controversy in these appeals is the legality of the collection by the Government of amounts which are termed "surcharges" in these proceedings from these several plaintiffs who are the appellants before us. In order to appreciate how the surcharge came to be imposed and the circumstances attending their collections as also the defences raised to the suits, it is necessary briefly to advert to the statutory provisions which furnish the background in which this levy came to be made and collected.

As is well-known, at the end of the Second World War the country was faced with a scarcity of foodgrains with the result that statutory rationing had to be resorted to in most urban areas; and for the purpose of enforcing rationing stocks of paddy and rice had to be made available. Power in this

behalf was originally exercised under the Defence of India Act and the Rules framed thereunder and by subordinate legislation undertaken by virtue of powers conferred by the Defence of India Rules. When the Defence of India Act ceased to be in force on the expiry of six months after the termination of the war and as this scarcity still continued the Essential Supplied (Temporary Powers) Act, 1946 repleading and replacing the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946) was enacted to be in force originally for 5 years till April 1, 1951 to deal with the problem of maintaining supplied essential to the community. Under section 3 of this statute "The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplied of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein". Without prejudice to the generality of the powers conferred by sub-section (1), sub-section (2) empowered Government by order to provide inter alia for :

> "(c) for controlling the prices at which any essential commodity may be bought or sold;
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> (d) for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
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> (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
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> (f) for requiring any persons holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;
>
> (i) for requiring persons engaged in production, supply of distribution of, or trade or commerce in any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;"

Under the powers thus conferred a scheme was devised for (a) the procurement of foodgrains (we are here concerned with paddy and rice) from producers, (b) for their sale to wholesalers, (c) a further sale to retailers and (d) ultimately the sales to the consumers, the last of which was, as stated already, based on a system of rationing to secure equitable distribution. The appeal is concerned with the machinery and procedure employed for the procurement of foodgrains in the districts of East Godavari, West Godavari and Krishna which were reckoned as surplus districts. Though legislation or that of a similar type was also applicable to certain other areas, these appeals are only concerned with the events that happened in these three districts. The plaintiffs who filed the several suits which have been directed to be dismissed by the High Court and who are the appellants before us were owners of rice mills or lessees or licensees of such mills in these three districts. They were appointed as procurement agents for buying up paddy from the producers i.e., cultivators or landholders. They were also licensed under several Control Orders to which reference will be made later, to deal in the paddy which they procured or the rice into which they converted the paddy in their mills. The prices at which they could procure the paddy from the producers was fixed by executive order issued under the powers contained in section 3(2)(c) of the Essential Supplies (Temporary Powers) Act. Similarly, the price at which they could sell to wholesalers was likewise fixed.

While things were going on in this state with he prices fixed operating to determine the purchase and the sale price of these procuring agents, Government raised the purchase and sale price of paddy and rice in or about July, 1947. They then directed these procuring agents to pay over to them as a "surcharge" the difference between the original and the enhanced price on the stock of paddy held by them on the day previous to the rise in price. These miller-merchants resisted the levy but were forced to make the payment which they did under protest. There were similar rises in prices on December 7, 1947 and on November 21, 1948 and in a similar manner the amounts of these surcharges were collected from the several millers, the amount payable by each being calculated on the stock of paddy or rice remaining with them on December 6, 1947 and November 20, 1948 respectively.

A very large number of suits were filed by these merchants against the Government in the Courts of Subordinate Judges of Eluru, Narasapur, Amalapuram, Kakinada, Rajahmundry and Masulipatnam for the repayments of these sums which they alleged had been illegally collected from them. The main defence of the Government was that the millers were really the agents of the Government and so were accountable to them for the extra profit they would have made by reason of the increase in the price effected by Government. Besides, it was also asserted that the demand for the "surcharge" was authorised or permitted by the terms of the "procuring agreement" entered into with them as also by the condition of the licences which were granted to them under which they were permitted to trade in paddy or rice. There was also a minor point raised that the suits were barred by section 16 of the Essential Supplies Act, 1946. As stated earlier, suits filed in some of the Courts were dismissed accepting the defence raised by the Government while those filed in other Courts succeeded and decrees were passed for the repayment of the several sums collected by the Government. Appeals filed to the High Court from these decrees and then those filed by the Government were allowed while those by the miller-plaintiffs were directed to be dismissed by a common judgment from which most of the appeals before us arise. We should, however, mention even at this stage that besides this common question there have been other defences raised to some of these suits to which it would be necessary to advert but we shall defer stating them until after we have finished with the points that are common to all these appeals.

We shall first take up for consideration the main point urged before us by Mr. Agarwala for the respondent-State that the appellant-millers were "agent" of the Government or, in any event, stood in a fiduciary capacity to the Government, so that the latter had a right to call on them to disgorge any profit they might make in their business of procuring and selling foodgrains over and beyond the remuneration permitted to them by the relevant agreements, licences, notifications etc. For this purpose it is necessary to set out the various statutory provisions under which the appellants functioned as well as the terms and conditions of the agreements entered into by them with the Government. We shall also narrate in some detail the circumstances in which the "surcharge" were imposed and collected as they bear on the points urged before us in these appeals.

The first relevant statutory provision to which it is necessary to advert in this connection is the Madras Foodgrains Procurement Order, 1946 dated the June 15, 1946 under Rule 81(2) of the Defence of India Rules by the Government of Madras. It applied to several districts in the State, among them East Godavari, West Godavari and Krishna with which these appeals are concerned. Paragraph 1 of this Order required "every person who whether as holder, occupier, tenant, sub-tenant or licensee or in any other capacity cultivates any land with paddy during the Fasli 1355 or Fasli 1356 or who receives any portion of such paddy or rent or interest or repayment of loan in kind" "to sell the surplus of such paddy as determined by the District Collector to be available with such person after each harvest either as paddy or rice to the District Collector or an agent appointed

by him and to no one else". The District Collector and those authorised by him in that behalf were thus to have the monopoly of purchasing surplus paddy or rice from cultivators. The formula for the determination of the surplus was laid down in the same paragraph but to this it is unnecessary to refer. Under Paragraph 2 delivery of the paddy and rice had to be made to the Collector or his agent in the village in which that paddy rice was cultivated or at some place within the District in which the cultivation took place, the price varying with the place of delivery i.e., taking into account the transport charges. The provision that the procurement by the Government to their authorised agents and at the prices fixed by the Collector on a monopoly basis was reinforced by Para 3 of this Order which prohibited any person from selling or otherwise disposing of any quantity of paddy or rice to any person other than the District Collector or an agent notified in that behalf. We are omitting reference to the other paragraphs of this order as unnecessary for our purposes. This Order was, among several others, continued in force by the Essential Supplies (Temporary Powers) Act, 1946 when the Defence of India Act lapsed and ceased to be in operation. Slight variations were made in this Order by subsequent notified orders - vide for instance, the Intensive Procurement Order dated March 26, 1947 but those changes or modifications related mostly to the formula or basis for determining the surplus available for purchase, but as these made no material variation for our present purpose we are not setting them out.

Several millers in the three districts of East and West Godavari and Krishna whose business consisted in buying paddy, milling them and selling the rice, applied to the Government for appointment as procuring agents in accordance with this notification. Before however they could be appointed as procuring agents each of them had to execute an agreement in a form prescribed by rules and as the terms of this agreement from the core of the case of the State Government on the question of Agency it is necessary to refer to them in some detail. The heading of this model agreement which was signed by each one of the appellants reads :

> "Agreement executed by Procuring Agent/Authorised wholesale Distributor."

It then proceeds :

> "I..... having been appointed a dealer for the purchase, storage and distribution of paddy, rice or... under the Intensive Procurement Scheme and or Informal Rationing Scheme, shall abide by all the provisions prescribed from time to time by or under the said schemes and any directions issued thereunder
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> In particular -
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> I undertake to purchase paddy, rice.... that are available for purchase in the area allotted to me at the rates prescribed from time to time by the Commissioner of Civil Supplies, Madras, or any officer authorised by him in this behalf.
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> I undertake to store paddy, rice or millets purchased by me in proper godowns and to be responsible for their safe custody.
>
> I also undertake to sell the stocks of paddy, rice or millets with me to the persons to whom I am directed to sell it at such rates as may be prescribed from time to time. I agree to deposit with the District Supply Officer..... District Rs. 2,000/- against the fulfilment of this undertaking.
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> I agree to the forfeiture by the District Supply Officer..... District of this deposit for

any breach by me or by any person acting on my behalf for failure on my part to comply with or to secure compliance with the aforesaid provisions, regulations and duties prescribed from time to time under the Intensive Procurement and or Informal Rationing Scheme."

On the execution of this agreement they were appointed as agents for purchasing paddy and rice determined as surplus with the ryots. This appointment was notified in the District Gazette and as against each group of agents the area in which they were authorised to procure was set out.

This was, however, not the only statutory provision regulating the conduct and dealings of the appellants. Under the Madras Foodgrains Control Order, 1947 issued under the Essential Supplies Act, 1946 which was in supersession of the Madras Foodgrains Control Order, 1945 promulgated under Rule 81(2) of the Defence of India Rules though containing substantially the same terms, the business of dealing in foodgrains was subjected to statutory control. Clause 3 of this Order prohibited any person from engaging in any undertaking which involved the purchase, sale or storage for sale in wholesale quantities of any foodgrains "except and in accordance with a licence issued in that behalf by an officer authorised by the Government". Purchase and sale of 10 maunds and more in one transaction was defined by the Order as being in wholesale and, similarly, storage of 15 maunds and more was so treated. Each one of the appellants before us held licences to deal in foodgrains under this Order. Two of the clause of the licence issued under this Order are of some relevance to the points arising in these appeals and have been referred to during the course of the arguments and it would be convenient to set them out at this stage :

"Clause 8. The licensee shall give all facilities at all reasonable times to any authorised officer of Government, for the inspection of his stocks and accounts at any shop, godown or other place used by him for the storage or sale of any of the foodgrains mentioned in paragraph 1 and for the taking of samples of such foodgrains for examination.

Clause 9. The licensee shall comply with any directions that may be given to him by the Government or by the officer issuing this licence in regard to the purchase, sale or storage for sale of any of the foodgrains mentioned in paragraph 1....."

Of course, these licenses were granted on applications made in statutory form by the several applicants and a paragraph in this application read :

"I have carefully read the conditions of licence given in Form A of the Second Schedule to the Foodgrains Control Order and I agree to abide by them."

It need hardly be pointed out that the prices at which purchases and sales by the procuring agents, wholesalers and retailers could take place were all determined by orders issued from time to time, under sections 3(1) and 2(c) of the Essential Supplies Act, and these dealers were enjoined strictly to adhere to them on pain of prosecutions and cancellation of their licences. The prices fixed varied from district to district and, of course, between several varieties of paddy and rice. In their fixation allowance was made for transport charges by adding the freight to the prime cost. It is not necessary to go into the details of these prices but it is sufficient to state that they were varied from time to time.

Pausing here, it is necessary to refer to the manner in which the miller-procuring agents disposed of

the stock which they had procured from the producers. They could sell only to dealers who had licences to purchase from them, these buyers might be either wholesales or retailers. It is in evidence that in some cases the procedure followed (particularly where the purchasers authorised to buy from the millers were outside their district) was that the purchasers were directed to pay the value of the grain which they were authorised to purchase into the Government Treasury. Intimation was thereafter given to the millers of the deposit and of the quantity which the purchaser was permitted to obtain. The specified quantity of grain would then be delivered to the authorised purchaser and the millers would then be paid by Government. This, however, was not the only method by which the miller-procuring agents could or did effect sales. They were, besides, permitted and authorised to sell to dealers of their choice provided such dealers were licensed dealers and so authorised to buy. Needless to add that the price which the millers could charge the dealers had to be the controlled price.

Procurement, however, was, as would be evident from what we have stated earlier, confined to particular areas of the Province which were surplus in that type of foodgrain. There were deficit districts which the Government had to supply with the requisite quantity of foodgrains. The foodgrains necessary for this purpose was obtained by the Government by purchase from the procuring agents. For this purpose agreements were entered into with the miller-procuring agents to which it is now necessary to refer. That agreement ran, to quote only the material terms :

> "This agreement made the..... day of..... between His Excellency the Governor of Madras of the one part and.... (hereinafter called the supplier..) of the other part.
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> Whereas the District Supply Officer..... has been authorised to buy paddy and rice on behalf of the Government of Madras.
>
> Whereas the District Supply Officers has agreed to buy and the supplier has agreed to sell paddy/rice as detailed in the schedule below.
>
> Now these presents witness and the parties hereto hereby mutually agree as follows :-
>
> 1. The supplier shall deposit a sum of Rs..... (rupees.... only) with the District Supply Officer. The deposit shall unless it is forfeited under the terms of this agreement be returned to the supplier upon the complete fulfilment of this agreement by the supplier.
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> 2. The District Supply Officer will have the right to reject the whole or any portion of the paddy or rice supplied under this agreement on the ground that the paddy or rice supplied is different from or inferior to the sample tendered by the supplier and accepted by the District Supply Officer or that the packing is defective or that there is undue delay and default in supplying or on any other ground whatsoever. He will also have the right to accept the supply and to reduce the rate within six weeks from the date of dispatch of the consignment, in case he considers either suo motu or otherwise the paddy or rice supplied to be inferior in quality to the sample tendered. The decision of the District Supply Officer regarding the quantity and quality shall be final and binding and on the supplier.
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> 3. In the events of the District Supply Officer rejecting the whole or any portion of paddy or rice, the supplier shall be bound to supply paddy or rice of the proper

quality and quantity within such extended time, if any, as may be given to him by the District Supply Officer. If no time is given or if the time is given and the supplier fails to supply the balance or the whole of the paddy or rice within the time originally fixed or such extended time, the supplier shall be bound to pay such damages as may be fixed by the Commissioner of Civil Supplies, Madras (hereinafter called the Commissioner). The award of the Commissioner shall be final and binding on the supplier and shall not be open to question in any Court of law.

4. The District Supply Officer shall have the right to cancel the whole or any portion of this agreement at any time without assigning any reason whatsoever.

5. When paddy or rice is required to be delivered at any station/port the paddy or rice shall be considered to be at the risk of the supplier till it is loaded into railway wagons/steamer.

6. It is distinctly agreed by and between the parties that -

(1) The supplier will not hold the District Supply Officer responsible personally for any loss sustained by the supplier by reason of any act, deed or thing done by him touching this agreement; and

(9) The supplier shall pay the general sales tax."

To this agreement was a Schedule and the quantity in tons of what was contracted to be purchased was set out in it as also the rate as well as the place and dated fixed for delivery.

Paddy was thus being procured from the producers by the millers appointed so to procure under the Procurement Order we have set out earlier and they were disposing of the rice after milling the paddy procured to wholesalers and retailers at the prices fixed by the Government. Similarly those Millers who had entered into contracts to supply rice to the District Supply Officer were duly fulfilling the terms of the contract and were being paid the prices stipulated in the agreements subject to any deductions that were made on account of inferior quality, deterioration of goods etc. While things were in this state, the Government of Madras promulgated, on the July 17, 1947, what is termed "a bonus scheme" for subsidizing cultivators to induce them to increase their production so as to have more surpluses for enabling procurement of larger quantities. The amount of the bonus was Re. 1 per maund of surplus paddy. Out of this one-half was to be passed on to the consumers by enhancing by eight annas a maund the wholesale and retailed prices and the other half was to be paid to producers by the Government themselves. This increase in price was to take effect from July 27, 1947. Instructions were issued to the Collectors and revenue officials to ascertain the quantity to rice and paddy lying with procuring agents as also wholesalers at the end of the day's transactions on July 26, 1947 i.e., the stock remaining unsold which had been obtained by them at prices prevailing before the enhancement of price which was to have effect from the next day and to require them to pay over to the Government as "a surcharge" the enhanced prices at which they were permitted to sell after that date, namely, eight annas per maund of paddy and twelve annas per maund of rice. Demands were made on some of the appellants for the payment of this surcharge. When they failed and neglected to pay surcharge demanded they were threatened with the cancellation of licences which they held under the Licensing Order and by reason of this threat, it is stated that, they made the payments demanded from them.

A similar and further increase in price was effected in the first week of December, 1947. The increase was Rs. 2 per maund of rice and Re. 1/6/- per maund of paddy. The procuring agents, wholesalers and others who had stocks were, by the orders of Government issued on that occasion, directed to disclose the stock of paddy and rice with them as on the evening of December 6, 1947 and in respect of the stock on that date, they were directed to pay to the Government "the surcharge" at the rates specified earlier. Demands were mad on this basis on several of the appellants and when they refused to do so, two methods of recovery were adopt in order to enforce the demand. In the case of some of them where there were amounts owing by Government on account of rice supplied under the contract for supply referred to earlier or by reason of the Government having collected the amounts from purchasers who were authorised to life stocks from the procuring agents, the Government deducted the "surcharge" from the amounts due by them and paid only the balance. This was one method. The other method was that which had been adopted for the realisation of the "surcharge" levied in July, 1947, namely, by threatening them with cancellation of their licences to deal in paddy and rice.

Before proceeding further and for the sake of completeness and to avoid having to revert to it later it would be convenient to mention here the ground upon which the surcharge was justified in the G.O. dated December 6, 1947 by which it was imposed. In paragraph 8 after setting out the quantity of rice and paddy on which the surcharge would be levied and collected, the G.O. continued :

> "Increased price at the rate of Rs. 2 per maund of rice..... will have to be collected as surcharge on the quantity available with the wholesalers and retailers on the evening December 6, 1947, as directed in Government Memo No.....
>
> The collection of this surcharge will be unearned profit to Government. The Government direct that this profit should be utilised to set off the amount recoverable as surcharge."

Pausing here, it may be pointed out that it appears from the evidence that even with the adoption of these methods the Government were unable to realise the surcharge from every one of the procuring agents or other dealers wholesale and retail on whom these surcharges had been levied. We are mentioning this in order to indicate the change in the methods adopted for the recovery of the surcharge when it was imposed on the next occasion and this was on the 21st of November, 1948. By a G.O. of that date the Government directed the Collectors to levy on all stocks of paddy on the rice with the procuring agents, wholesalers and retailers on the evening of November 20, 1948, a further surcharge and recover the same from them. Some of the appellants paid this amount under protest; in the case of others the amount of the surcharge was deducted from the sums payable to them by Government for the supply by them of rice. In the case of certain others the Board of Revenue which had found that there were some merchants who had failed to pay the two earlier surcharges that had been imposed, suggested the adoption of a new method in order to realise the sum. This was that the Collectors should issue orders of requisition of paddy in the possession of these merchants in respect of the quantities which were ascertained as being with them on the 20th November, 1948, and release the stocks by cancelling the requisition order only on their payment of the surcharge or on their executing a writing agreeing to make the payment. We shall have occasion to refer to the special defence raised by Government in respect of this class of stockholders in the proper place.

With this narration we are now in a position to deal with the argument addressed to us in these appeals. As would be seen from what we have stated earlier, the contention urged by the State of

Andhra Pradesh was that the appellants were the agents of the Government and were, therefore, liable to account to them for the profits which they derived over and above the commission or remuneration which was fixed for them by the relevant notification of Government fixing the prices which might be charged. The learned Judges of the High Court were not prepared to accept this submission that the appellants were agents of the Government, but they nevertheless held that on a proper construction of the Intensive Procurement Order, 1947, read in conjunction with the terms of the Notification appointing the several plaintiffs as "procuring agents" coupled with the agreement which they executed to whose clauses we have already adverted, the plaintiffs were under a fiduciary obligation to Government which was akin to, though not exactly the same as an agency, by reason whereof they were bound to pay over to the Government the extra profit which they had made by the enhancement of the prices effected by the Government on the three occasions. The contention raised on behalf of the plaintiffs that the "surcharge" was in reality a tax which was illegally levied by executive order was rejected by them.

As the principal point in controversy between the parties related to the precise legal relationship between the Procuring agents and the Government, we shall take that up first. Before considering the arguments addressed to us by Mr. Agarwala it would be convenient to set out certain facts relevant to this matter which are not in dispute. It is common ground that the procuring agents had to buy and bought the grain from the producers with their own money. The grain purchased was transported to the godowns at their cost and stored by them at their own risk the godown rent being paid by them. In other words, there was no dispute that the property in the goods purchased by the procuring agents vested in them. If there was any depreciation in the quality or if there was any short-fall owing to driage, action of rodents, insects, moisture, theft, etc., the loss would be theirs. In order to raise the necessary funds and to finance themselves for the purchase the procuring agents pledged their goods including the foodgrains purchased by them and obtained loans from banks and other financing institutions. They could effect a sale of the grain with them subject, however, to two conditions : (1) the purchaser must be one authorised to buy, (2) the price should not exceed that fixed under the notification and orders issued from time to time, i.e., sales at free market rate were not permitted. Prima facie, therefore, it would appear that the procuring agents were merely conducting their business in the purchase of paddy and the sale of rice, on their own account, subject however to the regulation and restrictions imposed by the statutory orders and the licences issued thereunder which enabled Government to effectively control in the acquisition and distribution of foodgrains through the usual trade channels to the ultimate consumer in an orderly and equitable manner. Learned Counsel for the State, however, urged that the true legal relationship has to be determined on other considerations. First, there was the obligation cast by para 1 of the Foodgrains Procurement Order on producers of foodgrains to sell the surplus of their paddy as determined by the authorities to the District Collector or "an agent appointed and notified by him in this behalf" and to no one else. In the subsequent paragraphs of the same Order, the persons to whom the foodgrains were to be delivered were referred to as "the agents of the Collector" authorised or appointed by him in that behalf. Next was the description of these procuring agents in the notification regarding their appointment. There also the same terminology of referring to them "as agents" for procurement was employed. Thirdly, in the agreement executed by the "procuring agents" reliance was placed on the following clauses specifying the obligations undertaken by them :

> (1) They undertook to purchase paddy that were available for purchase in the areas allotted to them.
>
> (2) They undertook to store the paddy or rice purchased in proper godowns and made

themselves responsible for the safe custody of the grain.

(3) They undertook to sell the stocks of paddy or rice with them to persons to whom they were directed to sell at such prices as might be prescribed.

It was urged that their description as "agents" which prima facie had to be taken as having meaning as indicative of their real position, was established as a fact by the duties which they were called on to perform and which they undertook to perform under their agreement. In particular it was stressed they were constituted the "agent" of Government to buy up the surplus paddy made available for them, to store the grain purchased on behalf of the Government in secure godowns, and to sell the goods purchased on behalf of Government and also stored on behalf of Government to such persons who might be nominated in that behalf and at prices fixed by Government. It was, therefore, submitted that they were "agents" who would on the one hand be entitled to indemnity from the Government for any loss that they might sustain in their engaging in the business of the agency of purchase and storage and sale on behalf of Government and, on the other, were bound to make over to the Government such profit that they may obtain out of the business of the agency. It was the further case of the Government that the difference between the procurement price and the price which was fixed for sale by them constituted the commission or remuneration which would being to the agents. In further support of these submission learned Counsel referred us to the fact that in Notification appointing some of the plaintiffs as procuring agents, published in the Krishna District Gazette they were referred to as "village procuring agents for paddy or rice on behalf of Government" in their respective villages. Our attention was also drawn to a communication by the Collector of Kakinada dated April 26, 1947 in which he referred to the purchases of paddy by the procuring agents as having been made "on Government account". It may be pointed out that the order last referred to was to direct these "agents" not to engage in private trade apparently in connection with the sale of the paddy procured. This last document might be ignored as it emanated from the Collector and, as is clear from the context in which it occurred, that it was meant as a warning to the procuring agents not to sell the procured paddy or rice except to those authorised to purchase them.

The point that has now to be considered is whether the description of the plaintiffs as "procuring agents" and the undertaking by them in the agreements which they executed to purchase the paddy ordered, to store them in proper godowns and to sell them at prescribed prices to persons who had obtained requisite permission to purchase rice or paddy, would make them agents of the Government so as to (a) render Government liable to indemnify them for any losses which they might sustain in the business, and (b) conversely in a situation of immediate relevance, enable the Government to claim any profit made by them over and above the "remuneration" permitted to them.

Before proceeding further, it is necessary to clarify two matters. First, though Mr. Agarwala referred to the margin between the procurement price and the price at which the procured paddy or rice could be sold as "remuneration", a contention which found favour with the High Court, we do not find it possible to accept the submission. There was a similar margin between the price at which a wholesaler could buy rice and that at which he could sell and similarly, in the case of the retail dealer, but it is hardly possible to call these as "remuneration". This margin or difference in the purchase and sale price was necessary in order in induce any one to engage in this business and was of the essence of a control over procurement and distribution which utilised normal trade channels. It would, therefore, be a misnomer to call it "remuneration" or "commission" allowed to an agent and so really no argument can be built on it in favour of the relationship being that of principal and

agent.

The second matter to which we would like to refer is that in the present case the direction "to account by the agent" adopting the theory contended for by the respondent, was given and enforced even before the agent made any profit i.e., on the basis to anticipated profit. We are drawing attention to this feature to emphasise the fact that the several orders of Government imposing the surcharge and enforcing the levy did not proceed on any theory that the procuring agents were "agents" who were called on to account for profits which they made in the business of the agency. It is only necessary to add that not merely procuring agents but wholesalers and retailers who could on no argument he called "agents" were directed to pay the surcharge.

We shall now proceed to deal with the arguments advanced to establish that the proceeding agents were, in fact and in law, agents.

No doubt, the description in the Procurement Order and the agreement as "agent" is of some value, but is not decisive and one has to gather the real relationship by reference to the entire facts and circumstances. To start with, it is clear that as the purchases were made by the procuring agents out of their own funds, stored at their own cost, the risk of any deterioration, driage or shortfall fell on them, they were the full owners of the paddy procured and they pledged the goods for raising funds. This aspect of their full ownership of the grain purchased is highlighted by the fact that they entered into agreements with the Government itself to sell the rice with them to District Supply Officers at the controlled market prices. Any contention that the procuring agents were not full owners of paddy or rice procured by them must manifestly fail as being inconsistent with the basis upon which this agreement by them to sell Government was entered into. If further confirmation were needed it is provided by the fact that on the sales by procuring agents to Government under their Supply agreement sales-tax was payable which on the terms of the Madras General Sales Tax Act in force at the relevant time would not have been payable if the paddy and rice were that of Government and which they were holding merely as commission agents on behalf of the Government.

Next, it may be pointed out that these plaintiffs held licences under the Licensing Order under the Madras Foodgrains Control Order, 1947 in order that they might deal in the rice in their possession. In the licence which was granted to the plaintiffs which was in statutory form the foodgrains in their possession were referred to as their stocks. It may be pointed out that the form of the licence granted to procuring agents, wholesalers and retailers was the same.

Learn Counsel urged that even assuming that the property in the goods purchased passed to the procuring agents that would not by itself negative the relationship of principal and agent. For this purpose reliance was placed on Article 76 of Bowstead on Agency which runs :

> "Where an agent, by contracting personally, renders himself personally liable for the price of goods bought on behalf of his principal, the property in the goods, as between the principal and agent, vests in the agent, and does not pass to the principal until he pays for the goods, or the agent intends that is shall pass."

He also referred us to certain decisions of the Madras and Punjab High Courts in which the principle laid down in this passage had been applied. We do not consider it necessary to examine this question in its fulness because we are satisfied that the procuring agent, when he bought the goods, was purchasing it for himself and not on behalf of the Government. The acceptance of the argument addressed on this aspect would mean that if the procurement agent so desired he might contract in

the name of the principal, namely, the Government and thus establish privity between the Government and the purchaser and make the Government liable to pay for the price of the goods at which he had purchased. This situation would, in our opinion, he unthinkable on the scheme of the Procurement Orders and generally of the Food Control Orders under which the procurement and distribution of foodgrains was placed under statutory control. What the Government desired and what was implemented by these several orders was merely the regulation and control of the trade in foodgrains by rendering every activity connected with it subject to licensing and to the directions to be issued in pursuance thereof and not directly to engage in the trade in foodgrains.

The respondent can derive no advantage from the obligation on the part of the procuring agents to store the paddy or rice properly - a stipulation on which Mr. Agarwala laid considerable stress - and this for two reasons : (1) The purpose of the clause was to ensure that there was no loss of foodgrains which were then a scarce commodity. That this is so would be apparent from the terms of section 3(2)(d) of the Essential Supplies Act which was effectuated by cl. 9 of the licence granted under the Madras Foodgrains Control Order, 1947 which applied to all dealers in foodgrains, be they procuring agents (who also, as stated earlier had to obtain and obtained these licences), wholesalers or retailers. This clause reads :

> "9. The licensee shall comply with any directions that may be given to him by the Government or by the officer issuing this licence in regard to the purchase sale or storage for sale of any of the foodgrains mentioned in paragraph (1)....."

The second reason is that the agreement executed by the procuring agents in which clause as regards storage in proper godowns and undertaking responsibility for the safe-custody of the grain occurs, is one which was a form intended for execution not merely by procuring agents but also authorised wholesale distributors i.e., those who purchased their requirements from procuring agents; admittedly the authorised wholesale dealers were not "agents" and the fact that this condition was insisted on even in their case is clear proof that it has no relevance to the question now under discussion. If therefore, appears to us that the expression "agent" was used in the Intensive Procurement Order as well as in the agreements merely as a convenient expression to designate this class of dealers.

Before proceeding further it is necessary to advert to the decision of the High Court of Assam in Bhowrilal Mahesri and Ors. v. State of Assam (A.I.R. 1961 Assam 64.) on which Mr. Agarwala placed considerable reliance in support of this contention regarding agency. The Government of Assam had passed an ad hoc order directing certain foodgrains dealers to lift certain quantities of foodgrains from a Government Depot with a view to its being sold to persons nominated in that behalf by the Government. The dealers complied with this direction but when they tried to sell it to the persons nominated by the Government the latter refused to purchase or to accept the goods sold on the ground that the stuff was unfit for human consumption. At the time when the dealers took possession from Government godowns they had paid the price fixed by the Government and they filed a suit for the recovery of the price and the damage suffered by them on foot of indemnity climbable by an agent from a principal. The High Court of Assam upheld their claim and held that an agency had been constituted between the parties under which an obligation had been cast on the Government to make good the loss suffered by the dealer. We do not see how this decision assuming it is correct, on which we pronounce no opinion, bears any resemblance to the case on hand. There the dealers were required by Government to acquire from Government foodgrains which was Government property on the basis that they would be able to sell the same to purchasers designated. The terms of the contract were that they should pay the value in the first instance and recover it

from the purchasers specified by Government. It was in such situation that an agency was held to arise. The position in the case before us is totally different. By reason of the exercise of statutory power trade in foodgrains was controlled and placed under a licensing system. No persons could buy or sell rice or paddy exceeding specified limits of quantity unless he held a licence to do so. Dealers were classified into three classes, procuring agents, wholesalers and retailers. We are now concerned with procuring agents. Before the introduction of the licensing system, the millers as part of their business used to purchase paddy from growers, hull them in their mills and sell the rice obtained to wholesalers who in their turn sold to retailers from whom the consumers obtained their requirement. This method of trading and the same trade channels were utilised by the Government for the purpose of exercising control over the acquisition and distribution of foodgrains. In the first instance, the supplies available with producers for procurement was determined by Government so as not to leave with them more that what could reasonably be needed for their use. The producer was required to sell the quantity thus determined so as to make it available to the general public. The quantity having thus been determined the millers were brought under the Control Orders by requiring them to take out licences for purchases or sale of paddy and it is in the context of this method of utilising the trade channels for the purpose of procuring and distributing supplies of essential foodgrains that the legal relationship between the parties has to be viewed. As pointed out earlier, the agreement executed by procuring agents was in the same form and contained the same stipulations as that executed by "wholesale authorised distributors". These wholesale dealers thus undertook the same obligations as procuring agents to purchase, store and distribute paddy and rice in accordance with the licensing orders and the directions issueable under them. Obviously this could not turn the wholesalers into "agents". The argument that the procuring agents were agents because they were remunerated by the allowance of a commission in the shape of the margin or difference between the price fixed for procurement and for the sale by them has already been dealt with and need not be repeated.

Mr. Agarwala next submitted that assuming that even if he were not right in these contentions that the plaintiffs were the agents of the Government still they were under a fiduciary obligation to Government. Reference was, in this connection, made to section 88 of the Indian Trusts Act which reads :

> "Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by agailing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."

The relevance of this provision was explained by saying that even though the plaintiffs might be legal owners of the paddy and rice procured by them, the beneficial interest in these goods vested in Government and that thus the plaintiffs being persons bound in a fiduciary character to protect the interest of Government had obtained a pecuniary advantage by availing themselves of their position. We must plainly confess that we are unable to appreciate this argument. A fiduciary relationship would, no doubt, have arisen if the plaintiffs were agents, but if this were rejected we do not see on the basis of what relationship the fiduciary obligations can be rested. The purchase of paddy and rice by them was not as benamidars for Government, for their purchases were on their account with their own monies though at prices fixed by the Government because of the control orders; they could sell their goods to others, only the buyers had to be licensed as also to the Government. The

control exercised under statutory laws in respect of these matters cannot obviously render the trade of the plaintiffs one which they carried on for the benefit of the Government. If so, we fail to perceive the legal basis upon which the plaintiffs could be said to hold the stocks of grain with them for the benefit of Government. We have already pointed out that all risks of loss, deterioration, interest charges, godown rent etc., were all their responsibility. In the circumstances, we consider there is no basis for the suggestion of a fiduciary obligation de hors a principal and agent relationship.

It was then said that assuming that the plaintiffs were not agents and that they were the full and absolute owners of paddy and rice with them and which they held on their own account and for their benefit, still the direction to pay the surcharges was a direction which the Government was authorised to issue under the terms of the licence granted to the plaintiffs to deal in the stocks procured by them. For this submission reliance was placed on cl. (9) of the Licence under Foodgrains Order issued to them which ran :

> "The licensee shall comply with any directions that may be given to him by the Government or by the officer issuing this licence in regard to purchase, sale or storage for sale of any of the foodgrains mentioned in paragraph (A.I.R. 1961 Assam 64.)."

It was said that the direction to pay a surcharge was a direction in regard to the sale of the stocks. Further support was sought on a similar clause in the agreement executed by the procuring agents under which they agreed "to abide by all the provisions prescribed from time to time by or under the said scheme or any directions issued thereunder." We do not see any substance in this argument. The direction to pay such amounts as might bee demanded by Government is certainly not a direction contemplated or provided for by the scheme, namely, the Procurement Scheme nor is it a direction as regards the sale. Indeed, learned Counsel did not, when this was pointed out, seriously press this submission for our acceptance.

Before proceeding further it would be convenient to ascertain the precise legal category into which the surcharge would fall. The dealers including the procurement agents were dealing on their own account in the matter of purchase and sale of paddy and rice. The price at which they could buy was fixed and the relevant licensing orders specified that they were to sell at the prices which were in force from time to time. While things were in this state, the price at which the procuring agents, wholesalers and others could sell was raised. Of course, in respect of the stocks purchased by them after that date that date they would have paid a higher price which would be compensated by the higher price at which they were permitted to sell, but we are concerned with the stocks-on-hand already purchased and remaining with them on July 26, 1947, December 6, 1947 and November 20, 1948. Under the Foodgrains Control Order under which they were licensed to deal in foodgrains, they were entitled to sell the stocks with them at the price fixed under the Price Control Order and prevailing on the date of sale. They would, therefore, have, on an increase in the selling price, the benefit of the enhanced prices. It was this that was sought to be mopped up by Government by the three impugned orders by which the difference between the old and the new prices was directed to be collected as "surcharge."

It was not suggested that the surcharges could be justified under any of the provisions contained in the Essential Supplies (Temporary Powers) Act. They were not imposed by notified orders promulgated under section 3 of that enactment and if they were, the question would have to be seriously considered whether such orders would be within the rule making power under that Act.

We have already pointed out that they could not be justified as authorised directions which were permitted to be issued either under the Procurement Order, the agreement executed in pursuance thereof or the Foodgrains Control Order and the licences issued thereunder. That was why the only serious argument that was raised was an attempt to justify them on the ground of the same being a liability to account on behalf of an agent and this contention we have already negatived as lacking substance. There was thus no legal basis upon which the surcharge could be justified and it would, therefore, follow that subject to any argument based upon the claim being barred by limitation, the claim to the refund of the same could not be resisted.

We shall be dealing with the claims arising in the individual appeals later, but at this stage it is sufficient to point out that as regards the claim for the refund of the surcharge collected on the stocks of paddy and rice in July, 1947, there was no defence to the claim except that the same was barred by limitation. We should, however, add that in all the suits a defence that they were barred by reason of section 16 of the Essential Supplies (Temporary Powers) Act, 1946 was raised, but the plea was wholly untenable and learned Counsel very properly did not seek to urge it before us. When demands for these sums were made they were either paid under protest, or when they were not so paid, the amounts were recovered by threats that the licences of the merchants should be cancelled.

As regards the surcharge levied in December on the stocks held by the plaintiffs on December 6, 1947, we have already pointed out that two methods were employed for making this collection. They were (1) by withholding the amounts due to them from Government for rice supplied; and (2) by threats of cancellation of licences. It would follow from what we have stated earlier that if the surcharge was not legal or justifiable, the claim for refund could not be resisted subject again to the question whether the claims therefor in the various suits were within the period of limitation. When we come to the third surcharge imposed in November 1948, as already indicated, three methods were utilised for the purpose of making the collection. (1) Threat of cancellation of licences, (2) Withholding the amount of the surcharge from the amounts payable by Government for rice supplied to them by the procuring agents, and (3) requisition from them of paddy or rice of a quantity equal to the stocks held by them on the evening of November 20, 1948 and release of the same after they executed a writing agreeing to pay the amount of surcharge which agreements they honored by making the payment demanded. Mr. Agarwala conceded that if the surcharges were illegal, such amounts as were paid on demand under protest, the amounts collected by withholding sums due from Government, as well as sums collected on threats of cancellation of licences would all be recoverable by the several plaintiffs. He, however, contended that in those cases where the foodgrains were requisitioned and released on the execution of agreements to pay the surcharge which were implemented the plaintiff could not recover, and for two reason : (1) That the Government had the power to requisition the stock and direct the traders to sell the foodgrains to Government and it might therefore be taken as if the requisition had been made on terms of paying for the stock the price payable on an earlier day, and (2) That by reason of the agreements which they executed, as a condition of the release of the stocks, they had bound themselves to make the payment, and their payment in accordance with their agreement was a voluntary payment which could not be recovered. This point based on the agreements arises only in Civil Appeals 840, 842, 845, 850, 853 and 855 of 1962.

To appreciate this argument it would be necessary to advert to the terms of the agreement. By way sample owe might refer to the one taken from the Manager of Kanyaka Parameshwari Rice Mill - appellant in Civil Appeal No. 840 of 1962. It read :

> "As regards the first quality paddy of 8,220 maunds, second quality of 1,545 maunds, rice first quality 866, second quality 254, which you have requisitioned in our mill this day i.e., to say November 23, 1948, I am hereby declaring myself liable to pay the amount of difference in prices fixed by the Government for the aforesaid items on the November 21, 1948, and the prices prevailing previously. As you have released the goods on my liability I am in receipt of the same."

This was signed by the Manager of the Mills with an endorsement by the Taluka Supply Officer "released the sale". These agreements were, as already indicated taken in pursuance of the directions by the Board of Revenue. It prescribed this method of obtaining agreements as the one to be pursued for recovering the surcharge imposed on this occasion. In their communication to the Collectors the Board of Revenue state :

> "The stock with all stock-holders (whether millers, wholesalers or retailers) on the evening of November 20, 1948, should first be assessed with reference to the stock register. These stocks should be formally requisitioned at the old prices from July 19, 1948. ..... It is not necessary that the requisition notices should be issued on the November 21 itself; those may be issued as early as possible after the date there being no delay at any state, but only in respect of the quantity which was held in stock on the evening of November 20, 1948. If the stockholders agree in writing to pay the difference in price due to the increase in price sanctioned by the Government the stocks should be released from requisition otherwise the stocks in question should be seized and sold to other merchants including quota holders at the revised prices; the difference being the old and the new prices being credited to Government."

The argument that was addressed to the High Court was that whatever might to be the position as regards those plaintiffs who had made the payments under protest or on account of the threats to cancel their licences or by deducting the amount due from the Government, merchants who voluntarily entered into agreements of the type we have just set out, stood on a different footing and that in their case they could not legally claim a refund of the amount thus paid in pursuance of these agreements. The High Court was apparently inclined to accept this submissions. With great respect to the learned Judges we consider that there is no substance in this argument. If the theory that the plaintiffs were the agents of the Government be discarded as untenable, there would be no legal basis at all for the surcharge. It would then be in effect a tax imposed by an executive fiat without any legislative sanction on the capital value of the stocks of foodgrains held on Attorney General (N.S.W.) v. Homebush Flour Mills Ltd. (56 C.L.R. 390.) where a scheme by which flour was expropriated by the State at a "declared" price and subsequently sold by the Crown by "standard" price, the former owner being given the option of buying back flour at the latter price was held to constitute a tax.

Mr. Agarwala had to concede that if the surcharge was in substance a tax he could not successfully resist the claim of the plaintiffs to the recovery of the amount collected even in cases where the agreements were taken, for the agreements merely set out the nature of the surcharge and expressed the willingness of the executant to pay it. In this connection it has to be borne in mind that the Government was armed with coercive powers to enforce any demand which was legal and in the circumstances, it could hardly be contended that these payments were voluntary in the sense understood in this context.

In support of the submission that the surcharge was in essence a tax, learned Counsel for the

appellants referred to the decision of the House of Lords in Attorney-General v. Wilts United Dairies (127 Law Times 822.). The Food Controller was empowered by the Defence of the Realm Regulations to make orders regulating or giving directions with respect to "the production, manufacture, treatment, use, consumption, distribution, supply, sale or purchase or other dealing in any article as appears to him to be necessary or expedient" for the purpose of encouraging or maintaining the food supply of the country. It was found that there was disparity in the prices of milk prevailing in different areas and in order to equalise these prices the Food Controller purporting to exercise powers conferred on him by the Defence of the Realm Regulations, entered into agreements with the defendant-company by which the latter were permitted to purchase milk within certain defined areas on terms that they should pay him a sum of two pence per gallon for this privilege. The defendant-company who was required to make this payment, refused to do so and to the information laid against it raised the contention that the charge amounted in effect to a tax levied in an unconstitutional manner. The company succeeded in the Court of appeal and the Attorney-General brought the matter in appeal before the House. In dismissing the appeal, Lord Buckmaster after accepting the argument based upon the extreme difficulty of the situation in which the country found itself owing to the war, and the importance of securing and maintaining vital supplies essential for the life of the community, proceeded to consider the question whether a power to make such a levy was granted. The statute had confined the duties of the Food Controller to regulating the supply and consumption of food and taking the necessary steps for maintaining proper supplies.

It was observed :

> "The powers so given are no doubt very extensive and very drastic, but they do not include the power of levying upon any man payment of money which the Food Controller must receive as part of a national fund and can only apply under proper sanction for national purposes. However, the character of this payment may be clothed, by asking your Lordships to consider the necessity for its imposition, in the end it must remain a payment which certain classes of people were called upon to make for the purpose of exercising certain privileges and the result is that the money so raised can only be described as a tax the levying of which can never be imposed upon subjects of this country by anything except plain and direct statutory means."

Lord Wrenbury expressed the same idea in slightly different language when he said :

> "The Crown in my opinion cannot here succeed except by maintaining the proposition that where statutory authority has been given to the executive to make regulations controlling acts to be done by His Majesty's subjects, or some of them, the Minister may, without express authority so to do, demand and receive money as the price of exercising his power of control in a particular way, such money to be applied to some public purpose to be determined by the Executive."

Pausing here, we might advert to two matters : (1) The last words of the learned Lord we have just quoted sufficiently answer an arguments addressed to us based upon the use to which the amount of surcharge collected was to be expended, namely, as bonus to the producers. Secondly the fact that the company obtained licences from the Food Controller on the stipulation that they would pay him the two pence per gallon was not considered material for determining their obligation in law to make the payment.

While on this topic reference could usefully be made to the decision of the Privy Council in Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy, Limited ([1933] A.C. 168.). The case was concerned with the legality of certain adjustment levies imposed on farmers by an adjustment Committee created by an enactment of British Columbia by which the disparity in the production of fluid milk as compared with milk products was sought to be countered. It was contended on behalf of the State that the levies were not taxes but merely a scheme for pooling profits in a provincial trade. Lord Thankerton speaking for the Board said :

> "The main issue of this appeal in whether the adjustment levies are taxes,.... In the opinion of their Lordships, the adjustment levies are taxes. They are compulsorily imposed by a statutory committee... They are enforceable by law. Compulsory is an essential feature of taxation. The Committee is a public authority, and the imposition of these levies is for a public purpose. The fact that moneys so recovered or distributed as bonus among the traders in the manufactured products market does not affect the taking character of the levies made."

Besides, if there is no legal basis for these demands by the Government we consider that it is not possible to characterise them as anything else than as taxes. They were imposed compulsorily by the executive and are sought to be collected by the State by the exercise inter alia of coercive statutory powers, though these latter are vested in Government for very different purposes. We are clearly of opinion that the fact that agreements were taken from some of these merchants affords no defence to their claim of refund.

What remains for consideration is the defence based upon the claim being barred by limitation. The contention urged on behalf of the State is that the claim for a sum not legally due but illegally collected by Government which was the basis of these suits was governed by Art. 62 of the Indian Limitation Act which provides a period of three years from the time when the money is received. That Article reads :

#----------"Description of suits Periods of Time from which period limitation beings to run----------62. For money payable Three When the moneyby the defendant years. is received."to the plaintiff, formoney received by thedefendant for theplaintiff's use.----------##

If this Article were applied the portion of the claim in Civil Appeal No. 306 of 1962 relating to the refund of surcharge imposed in July, 1947 and the entirely of the claim in Civil Appeal No. 644 of 1962 would be barred.

The suit out of which Civil Appeal No. 306 of 19 62 arises namely, O.S. No. 2 of 1951 on the file of the Subordinate Judge, Rajahmundry made a claim for the refund of the surcharges collected from him in July, 1947, December, 1947 and November, 1948. The claim in regard to the surcharges of December, 1947 and November, 1948 were with the three year period of limitations in July, 1947 was beyond that period. The learned provided by Article 62, but the claim as regards what was collected in July, 1947 was beyond that period. The learned Subordinate Judge who negative the defence based on the plaintiff being the agent of the Government decreed the suit in its entirety holding that it was not Article 62 that applied but Article 120 of the Indian Limitation Act which prescribes a period of six years. The learned Judges of the High Court having dismissed the suit on the merits had to occasion to consider the proper Article of Limitation that would govern the

different claims contained in the suit.

The other appeal in which the question of limitation arises is Civil Appeal No. 644 of 1962. That arises out of original Suit No. 18 of 1954 filed before the Subordinate Judge of Rajahmundry which claimed repayment of sums paid in July, 1947, December 1947 and November, 1948. In the plaint the dates on which payments were made by him were stated as November 29, 1947, June 3, 1948, November 30, 1948 and August 1, 1949. The suit was filed on November 27, 1953 and unless therefore the period of limitation for the claims in the suit was the six years period specified in Article 120 the entirety of the claims in the suit would be barred. The learned Subordinate Judge upheld the claim of the plaintiff to refund on the merits but dismissed it on the ground that it was barred by limitation. The plaintiffs filed an appeal to the High Court but as his claim was rejected on the merits it becomes unnecessary to decide whether the suit was also barred by limitation. In view of our decision that the surcharges were not legally levied and that the Government was not authorised to collect them, the question whether the suit is barred by limitation necessarily arises for consideration.

It was submitted by the learned Counsel for the appellants that it was not Article 62 that applied to a suit making a claim of this nature but the residuary Article 120 which run :

#----------"Description of suits Period of Time from which period limitation begins to run----------(12). Suit for which Six years. When the right tono period of limitation sue accrues"is provided elsewhere inthis schedule.----------##

As Article 120 can apply only if no other specific Article were applicable, we have to examine the question whether there is any other specific Article applicable and in particular whether the language of the first column of Article 62 covers a suit making a claim of the nature made in the plaints before us. The contention urged by behalf of the appellant in Civil Appeals 306 and 644 of 1962 was that the Article refers to "money payable by the defendant to the plaintiff" only in those cases where "the money was received by the defendant for the plaintiff's use". The latter condition that the money which is sought to be recovered must have been received by the defendant for the plaintiff's use should, it was urged, be literally satisfied before that Article could be applied. In other words, the contention was that that Article could not apply unless at the moment when a defendant received the money, he received it specifically for the use of the plaintiff. On the other hand, the rival construction suggested by the respondent was that the language of the Article had reference to the action "for money had and received" as known to the English Law, and that the reference to the receipt being for the plaintiff's use was a technical term of English pleading and law which imposed upon a defendant who received money in circumstances which is justice and equity belonged to the plaintiff rendered its receipt a "receipt by the defendant to the use of the plaintiff". Here, it was pointed out, the money was received by the defendant from the plaintiff which the plaintiff was not bound in law to pay but which he was compelled or forced to pay because of the threats or apprehension of legal process. The circumstances, therefore, in which the money was received were, it was said, such that notwithstanding that the receipt by the defendant purported to be for his own benefit still it was money which at the very moment of the receipt in justice and equity belonged to the plaintiff, and that was the whole basis of the plaintiff's claim on the merits.

The questions for consideration, therefore, are : (1) Does Article 62 embody the essential elements of the action known in English Law and pleading as the "action for money had and received to the plaintiff's use ?" (2) Does the fact that at the moment of receipt the defendant intended to receive the

money for his own benefit and not for the use of the plaintiff render the Article inapplicable ? Stated in other terms is a literal compliance with the words that the money must have been received by the defendant for the plaintiff's use necessarily before the Article applies, or is it sufficient that the circumstances of the case are such that the plaintiff being entitled in equity to the money, the law would impute to the defendant the intention to hold it for the plaintiff's use and compel a refund of it to the plaintiff.

There has been difference of opinion on the exact rationale on which that obligation was rested. One view was based on imputed promise or a quasi contract which cast an obligation on the conscience of the party to restore benefits unjustly obtained. That quasi contract was necessitated by the allegation, necessary in the ancient writ of indebitatus assumpsit. There has been some difference of opinion observed in the cases decided by the several High Courts as to the circumstance in which Articles 62 could be invoked. The controversy has ranged on the point as to whether there ought to be a literal compliance with the last of the first column of the Article before it could be applied. This in its turn, as we shall show presently, stems from a difference of opinions as to the rationale on which the action for money had and received rests in the English Law.

The doctrine on which the action for "money had and received" was based was propounded by Lord Mansfield in Moses v. Macferlan ((1769) 2 Burr., 1005.) where it was example that it lay "for money which ex aquo et bono the defendant ought to refund" and in a later case (Sadler v. Evans (1960) 4 Burr. 1984.) as "a liberal action, founded on large principles of equity, where the defended cannot conscientiously hold the money". In later decision it was said to be based not merely on an equitable doctrine but was a Common Law right (See for instance Royal Bank of Canada v. Reh. [1913] A.C. 283.). The jural basis on which the action was originally supported, was promise to pay by the defendant implied or imputed by Law. Lord Mansfield explained :

> "If the defendant be under an obligation from the ties of natural justice to refund the law implies a debt and gives this action, founded on the equity of the plaintiffs case, as it were upon a contract."

Moses v. Macferlan ((1769) 2 Burr., 1005.) itself was an action of assumpsit and the imputed promise was an extension of the principle on which it was in its origin based as stated in Cheshire & Fitfoot. In the third Edition of Bullen and Leake published in 1868 they said (Cheshire & Fitfoot, Law of Contract, 5th Edn. p. 555-556.) :

> "The action for money had and received is the most comprehensive of all the common counts. It is applicable wherever the defendant has received money, which, in justice and equity, belongs to the plaintiff under circumstances which render the receipt of it a receipt by the defendant to the use of the plaintiff."
>
> "But, despite this formidable measure of unanimity, the abolition of the forms of action in the middle of the nineteenth century and the temptations of a new analytical jurisprudence gradually undermined Lord Mansfield's position. So long as the common lawyers thought in terms of procedure and associated quasi-contract with the writ of Indebitatus Assumpsit, they were content to accept the implications of unjust benefit. But when they abandoned their traditional forms and substituted a dichotomy of tort and contract, the old explanation seemed no longer to suffice. The various actions grouped under the insidious title of quasi-contract were clearly not tortious : if the new antithesis of the common law was inevitable, they must perforce

> be contractual. And, as they were equally clearly not based upon any genuine consent, they must rest upon an implied or hypothetical agreement."

Various bases have been suggested in modern times as the rational and proper foundations on which to rest this action. But we are not concerned with these theories or their history and evolution in England. What is of relevance is the content and signification of the words "received by the defendant for the plaintiff's use". Article 62 in its present form was first enacted in the Limitation Act of 1871 as Art. 60 and it has continued in the same terms since then with only a change in its number. We have, therefore, to see what exactly the draftsmen of this Article meant when it was first introduced in 1871. In Mahomed Wahib v. Mahomed Ameer (I.L.R. 32 Cal. 527 at p. 533.) Mookerjee, J. explained the basis of Article 62 in these terms :

> "The Article, when it speaks of a suit for money received by the defendant for the plaintiff's use, points to the well-known English action in that form; consequently the Article ought to apply wherever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it, a receipt by the defendant to the use of the plaintiff."

In other words, the learned Judge held that it was not necessary in order to attract Article 62 that at the moment of the receipt the defendant should have actually intended to receive it for the use of the plaintiff and that it was sufficient if the receipt was in such circumstances that the law would impute to him an obligation to retain it for the use of the plaintiff and refund to him when demanded. In Biman Chandra v. Promotho Nath (I.L.R. 49 Cal. 886.) it was said, following the decision in Mahomed Wahib v. Mahomed Ameer (I.L.R. 32 Cal. 527 at p. 533.) that Article 62 most nearly approaches the formula of 'money had and received by the defendant for the plaintiff's use, if read as a description and apart from the technical qualifications imported in English Law and Procedure'.

A different note was, however, struck by the Calcutta High Court in Anantram Bhattacharjee v. Hem Chandra Kar (I.L.R. 50 Cal. 475 at p. 480.). It was not a case where the defendant directly received the money from the plaintiff but where a defendant withdrew from the office of the Collector an amount which in a law belonged to the plaintiff. The learned Judge held that there was no reason why the artificial form of action of money had and received should be imported to decide a question whether the suit would come under Article 62. Ghose, J. with those judgment Walmsley, J. agreed, took the view that the Article would apply only to case where the defendant in terms received the money for the benefit of the plaintiff. The learned Judge observed :

> "The Common Law form of action for money had and received grew out of the circumstance that at Common Law in England an action in personam is maintainable only on contract or on tort. Where therefore an action was not based on trot and the plaintiff was unable to establish any contract by evidence, it was found necessary to have recourse to a fiction of a promise to pay "implied in law" in order to give relief to the plaintiff and to meet the justice of the case. The history of this form of action and the reasons which led to its extension are set forth in the case of Sinclair v. Brougham (1914 A.C. 398). Speech of Lord Haldane, L.C. at pages 415 - 417, and of Lord Sumner at pages 454-456. It is pointed out by Lord Sumner that this was said to be a 'liberal' action in that it was attended by a minimum of formality, and was elastic and readily capable of being adapted to new circumstances. There does not appear to be any sufficient reason why this artificial form of action should be imported in this country in order to decide whether a suit would come under Article 62 of the

> Limitation Act. In India law and equity are administered by the same Courts, which are untrammelled by any technical rules as to the form of an action in giving relief to the plaintiff, where the defendant has received money which according to the justice of the case he ought to refund. The observations of the Judicial Committee in the case of John v. Dodwell (1918 A.C. 563) furnish an illustration of this view. In my opinion the plain meaning of the words in Article 62 of the Limitation Act should be given effect to without having recourse to any technical rules of English Law regarding forms of action."

He then cited the decision of the Privy Council in Gurudas Pyne v. Ram Narain Sahu (I.L.R. 10 Cal. 860.) where Article 120 was applied to a claim against a person in a fiduciary position as supporting his views. A similar view was adopted by Chagla, C.J. in Lingangouda v. Lingangouda (I.L.R. 1953 Bom. 214.) where the learned judge preferred to follow Anantram's (I.L.R. 50 Cal. 475 at p. 480.) case in preference to Mahomed Wahib's (I.L.R. 32 Cal. 527 at p. 533.) case. In the case before him he held that the claim of the plaintiff was an equitable claim and not a contractual claim thus attracting not Article 62 but the residuary Article 120. One of the main reasons why Chagla, C.J., held that Article 62 should not apply to a case where the terms of the section were not literally complied with was that such a construction would result in plaintiffs losing a large number of cases on the ground of limitation, whereas if Article 120 were held applicable they would be safe. There are a few other decisions of the High Courts takings similar view but as these merely follow the Calcutta and the Bombay cases we have referred to, it is unnecessary to detail them.

Having considered the matter carefully we are inclined to prefer the interpretation of the Article by Mookerjee, J. in Mahomed Wahib's (I.L.R. 32 Cal. 527 at p. 533.) case. What we are solely concerned with is the meaning of the words employed in the first column of the Article which specifies the nature of the suit dealt with. That they were derived and adopted from the terminology employed in the English action for money had and received is not disputed. The Courts in India being courts administering both law and equity, non doubt we are not concerned with the technicalities of the English forms of action which originated at a time before the Judicature Acts when law and equity were administered by different Courts. But that is only as regards the merits of a claim and its maintainability in a Court. With great respect to the learned Judges who decided Anantram's (I.L.R. 50 Cal. 475 at p. 480.) and Lingangouda's (I.L.R. 1953 Bom. 214) cases, we are unable to agree that the changes which the doctrine has undergone in England have any bearing on what the Article meant in 1871 when the legislative lifted the words descriptive of a form of an English action and incorporated it in the Indian statute. Nor are we impressed with the argument that if the terms of a specific Article do apply to a specific case, one could ignore it and seek a general Article merely on the ground that the latter affords a longer period of limitation for the filing of a suit.

So far as the present claim for recovery of a tax illegally collected is concerned the authorities are fairly uniform that the period of limitation for a suit making such a claim is governed by Article 62. Rajputana Malwa Railway Co-operative Stores Ltd., v. The Ajmer Municipal Board (I.L.R. 32 All. 491.) arose out of a suit against a Municipal Board for refund of certain octroi duty which they were not legally entitled to levy. The suit for that claim was held to be governed by Article 62, the learned Judges stating :

> "The language of Article 62 is borrowed from the form of count in vogue in England under the Common Law Procedure Act of 1852. Prior to the passing of the Supreme Court of Judicature Acts of 1873 and 1875, there was a number of forms of pleading

> known as the common indebitatus counts, such as counts for money lent, money paid by the plaintiff for the use of the defendant at his request, money received by the defendant for the use of the plaintiff, & co..... The most comprehensive of the old common law counts was that for money received by the defendant for the use of the plaintiff. This count was applicable where a defendant received money which in justice and equity belonged to the plaintiff under circumstances which rendered the receipt by the defendant to the use of the plaintiff.... It was a form of claim was applicable when the plaintiff's money had been wrongfully obtained by the defendant."

A similar view was taken of claims of a like nature in Municipal Council Dindigul v. The Bombay Co. Ltd., Madras (I.L.R. 52 Mad. 207.), India Sugar and Refinery Ltd. v. The Municipal Council Hospet (I.L.R. 43 Mad. 521.), State of Madras v. A. M. N. A. Abdul Kader (A.I.R. 1953 Mad. 995), and The Municipal Committee, Amritsar v. Amar Dass (A.I.R. 1953 Punjab 99.). Learned Counsel submitted that these cases proceeded, in great part, on the inapplicability of the shorter periods of limitation provided in the particular statutes for amounts improperly collected thereunder. We do not, however, consider that this militates, in any manner, from the reasoning upon which the decisions are based, for they all refer to the terms of Article 62, to its scope and their applicability in terms to cases of suit for refund of tax illegally collected. In addition, we might point out that in India Sugar and Refinery Ltd. v. The Municipal Council, Hospet (I.L.R. 43 Mad. 521) the claim for some of the years for which the suit was filed was dismissed as barred by limitation by applying the three year rule. In fact, learned Counsel conceded that save a solitary decision in Govind Singh v. The State of Madhya Pradesh (12 S.T.C. 825.) to which we shall presently refer, the decisions were uniform in applying Article 62 to cases of suits for refund to taxes illegally collected. We consider that these decisions are correct and they have applied the proper article of limitation.

Before referring to Govind Singh's (12 S.T.C. 825.) case it would be convenient to clarify the position as regards certain circumstances in which the Article would be applicable without making any exhaustive list. Where the defendant occupies a fiduciary relationship towards the plaintiff it is clear that Article 62 is inapplicable. Next even if the claim could have been comprehended under the omnibus caption of the English "action for money had and received", still if there are other more specific articles in the Limitation Act - vide e.g., Article 96 (mistake), Article 97 (consideration which fails) Article 62 would be inapplicable. Lastly, if the right to refund does no arise immediately on receipt by the defendant but arises by the reason of facts transpiring subsequently, Article 62 cannot apply, for it proceeds on the basis that the plaintiff has a cause of action for instituting the suit at the very moment of the receipt.

It is this last point that was involved in Govind Singh v. The State of Madhya Pradesh on (12 S.T.C. 825.) which learned Counsel relied as a decision which had refused to apply Article 62 and applied Art. 120 to a claim for refund of tax overpaid. There the assessee deposited along with his return certain sums. He had overpaid and so was entitled to obtains refund when the assessment was completed. A suit for the amount of that excess was held to be governed by Article 120. It is clear that at the time when the assessee made the deposit of the tax he was not entitled to the refund. That right accrued to him only after the completion of the assessment. We consider, therefore, that this decision does not assist the appellant in the construction which he seeks to persuade us to adopt of Article 62.

If Article 62 were the proper Article of limitation applicable, Civil Appeal 644 of 1962 has to be dismissed as the suit was filed admittedly beyond three years after the receipt of the money by the

respondent. There should also have to be a modification in the decree passed in Civil Appeal 306 of 1962. The claim in that suit included the amounts collected from the appellant as surcharge in July, 1947, in December, 1947 and November, 1948 i.e., for all the three surcharges. It is common ground that if the three years' period of limitation under Article 62 was applied the claim for the refund of the surcharge imposed in July, 1947 would be beyond time. The appellant is, therefore, entitled only to his claim for the refund of the amounts collected for the surcharges imposed in December, 1947 and November, 1948.

As a result of the foregoing Civil Appeal 644 of 1962 shall stand dismissed, but there shall be no order as to costs as the appellant has succeeded on the merits of his claim, though the appeal fails on the ground of limitation.

All the other appeals excepting Civil Appeal 306 of 1962 will be allowed and the judgment of the High Court set aside. In Civil Appeals 101, 131, 168 to 171, 259, 260, 302, 307 to 310, 838, 839 of 1962 and Civil Appeals 325, 437 - 441 and 996 of 1963 the decrees of the trial court shall be restored with costs here and in the High Court.

In Civil appeals 30 of 1962 the amount decreed by the trial court shall be modified by deducting therefrom a sum of Rs. 2,725/14/- made up of Rs. 2,261/8/- paid for the surcharge in July, 1947 together with Rs. 464/6/- being the interest claimed on the said sum. Subject to this modification the decree of the trial Court shall be restored with costs here and in the High Court.

In Civil Appeals 303, 837, 840 - 857 of 1962 the suits will be decreed for the amounts prayed for with costs throughout.

In the computation of the costs in this Court two sets of hearing fees shall be allowed - one set to be shared by the appellants in Civil Appeals 131, 170, 307 to 309 and 837 - 857 of 1962 and the other set by the successful appellants in the other appeals to whom we have awarded costs.

ORDER

In accordance with the majority judgment, appeals are dismissed with costs.

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