Salonah Tea Co. Ltd. and Others

Vs

Superintendent of Taxes, Nowgong and Others

Civil Appeals Nos. 3023-29 of 1979

(Sabyasachi Mukharji, S. Ranganathan JJ)

18.12.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. These appeals arise out of the judgment and order dated June 14, 1979 of the High Court of Gauhati in Assam setting aside the order and notice of demand under the Assam Taxation (on Goods Carried by Road or Inland Waterways) Act, hereinafter called the Act, but declining to order any refund of the taxes paid. In 1954 Assam Taxation (on Goods Carried by Road or Inland Waterways) Act was first enacted. This Court struck down the Act as ultra vires the Constitution of India. See Atiabari Tea Co. Ltd. v. State of Assam (AIR 1961 SC 232). On April 6, 1961 a new Act passed received the assent of the President. The High Court again struck down the Act declaring it ultra vires the Constitution on August 1, 1963. On December 13, 1963 in Khyerbari Tea Co. Ltd. v. State of Assam ((1964) 5 SCR 975 : AIR 1964 SC 925) in a challenge to the Act under Article 32 of the Constitution, this Court held the Act to be intra vires. On December 19, 1966, judgment was passed in Civil Rule No. 190/1965. On April 1, 1968, the appeals preferred by the State of Assam against the High Court order dated December 13, 1963 were allowed on the basis of the declaration of the Act to be intra vires the Constitution. Thereafter notices were issued by Superintendent of Taxes, Nowgong, requiring the appellant under Section 7(2) of the Act to submit returns for the period ending June 30, 1961, September 30, 1961, December 31, 1961 and March 31, 1962. Returns were duly filed. Assessment orders were passed under Section 9(3) of the said Act. On July 10, 1973, the High Court passed judgment in Loong Soong Tea Estate (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) declaring the assessment as without jurisdiction. It is the case of the appellant-petitioner that in view of the above judgment, the appellant came to know about the mistake in paying the tax as per assessment order and also that the appellant became entitled to refund of the amount paid. The present writ petition was filed in November 1973 before the High Court of Assam. Thereafter in June 1976, the learned Single Judge of the High Court referred the matter to a larger Bench. The Division Bench on June 14, 1979, passed judgment setting aside the orders and notices of demand but refused relief of refund claimed by the appellant.

2. Aggrieved thereby, the appellants has preferred the present appeals. The appellant-petitioner claimed in all these petitions that the assessments were illegal and prayed that directions be given to the respondents to refund the tax collected in pursuance of those orders.

3. The legislature of Assam passed the Act, as mentioned hereinbefore in 1954 called the Assam Taxation (on Goods Carried by Road and Inland Waterways) Act, 1954 which purported to levy tax on manufactured tea and jute carried by road and inland waterways. The Act was declared ultra vires the Constitution by this Court in Atiabari case (AIR 1961 SC 232) on the ground that previous

sanction of the President was not taken. Thereafter the legislature passed the Act, which received the assent of the President on April 6, 1961. The validity of the Act was also challenged and the High Court declared that Act to be ultra vires on August 1, 1963. Against the judgment and order passed by the High Court, the State of Assam and other respondents preferred appeals before this Court. In the meantime, M/s. Khyerabari Tea Co. Ltd. challenged the provisions of the Act directly before this Court by filing an application under Article 32 of the Constitution and this Court in its judgment dated December 13, 1963 held the Act to be intra vires. Following the aforesaid decision of this Court, the appeals filed by the State of Assam and others against the judgment of the High Court were allowed by this Court on April 1, 1968. It was after this decision that the respondents required the appellant by a notice under Section 7(2) of the Act issued on July 8, 1968 to submit returns for four periods mentioned hereinbefore. Due to penal consequences mentioned in the said notices in the event of failure to file return and pay the taxes, the appellant filed return on July 11, 1968 and paid the various taxes.

4. In the judgment under appeal after elaborate discussion, the High Court came to the conclusion that when a petitioner approaches the High Court with the sole claim for refund of money by writ of mandamus, the same is normally not granted but where the refund is prayed as a consequential relief the same is normally entertained if there is no obstruction or if there be no triable issue like that of limitation which could not be conveniently tried in writ petition.

5. In this case indisputably it appears that tax was collected without the authority of law. Indeed the appellant had to pay the tax in view of the notices which were without jurisdiction. It appears that the assessment was made under Section 9(3) of the Act. Therefore, it was without jurisdiction. In the premises it is manifest that the respondents had no authority to retain the money collected without the authority of law and as such the money was liable to refund.

6. The only question that falls for consideration here is whether in an application under Article 226 of the Constitution the court should have directed refund. It is the case of the appellant that it was after the judgment in the case of Loong Soong Tea Estate (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) the cause of action arose. That judgment was passed in July 1973. It appears thus that the High Court was in error in coming to the conclusion that it was possible for the appellant to know about the legality of the tax sought to be imposed as early as 1963, when the Act in question was declared ultra vires as mentioned hereinbefore. Thereafter the taxes were paid in 1968. Therefore the claim in November 1973 was belated. We are unable to agree with this conclusion. As mentioned hereinbefore the question that arises in this case is whether the court should direct refund of the amount in question. Courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down of the order of assessment etc. Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally, as a corollary of the said statement of law it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realised from citizens without the authority of law.

7. In Suganmal v. State of M. P. (AIR 1965 SC 1740), this Court held that the High Courts have power to pass any appropriate order in the exercise of the powers conferred on them under Article 226 of the Constitution. A petition solely praying for the issue of a writ of mandamus directing the State to refund the money alleged to have been illegally collected by the State as tax was not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a

suit against the authority which had illegally collected the money as a tax and in such a suit it was open to the State to raise all possible defences to the claim, defences which cannot in most cases, be appropriately raised and considered in the exercise of writ jurisdiction. It appears that Section 23 of the Act deals with refund. In the facts of this case, the case did not come within Section 23 of the Act. But in the instant appeal, it is clear as the High Court found in our opinion rightly that the claim for refund was a consequential relief.

8. In Tilokchand Motichand v. H. B. Munshi ((1969) 2 SCR 824 : (1969) 1 SCC 110 : AIR 1970 SC 898), claimants in that case contended that they did pay taxes under Section 21(4) of the Bombay Sales Tax Act, 1953 which was ultra vires on the particular grounds on which it was struck down by this Court. On March 28, 1958 the petitioners in that case filed a writ petition in the High Court and contended that Section 21(4) of the said Act was ultra vires the powers of the State legislature and was violative of Articles 19(1)(f) and 226 of the Constitution. The Single Judge of the High Court dismissed the petition on the ground that the petitioners defrauded their customers and so were not entitled to any relief even if there was a violation of fundamental rights. The appellate bench of the High Court dismissed the appeal on the ground that it would not interfere with the discretionary order of the Single Judge. Thereafter, it appears that on December 24, 1958, the Collector attached the properties of the petitioners for recovering the amount as arrears of land revenue and the petitioners paid the amount in instalments between August 1959 and August 1960. On September 29, 1967 this Court in Kantilal Babulal v. H. C. Patel (21 STC 174 : AIR 1968 SC 445) struck down Section 12-A(4) of the Bombay Sales Tax Act, 1946 corresponding to Section 21(4) of the 1953 Act, on the ground that it was violative of Article 19(1)(f) of the Constitution inasmuch as the power conferred by the section was unguided, uncanalised and uncontrolled and so was not a reasonable restriction on the fundamental right guaranteed under that article. On the assumption that Section 21(4) of the 1953 Act was also liable to be struck down on the same ground, on February 9, 1968, the petitioners therein filed a writ petition under Article 32 of the Constitution claiming a refund of the amount. The petitioners contended that they did not know that the section was ultra vires on the particular ground on which this Court had struck it down and they had paid the amounts under coercion or mistake, that the mistake was discovered on September 29, 1967 (the date of the judgment of this Court) and that they were entitled to the refund under Section 72 of the Indian Contract Act, 1872.

9. It was held by the majority that the petition should be dismissed on the ground of laches. Hidayatullah, C.J. held that Article 32 gave the right to move the court by appropriate proceedings for enforcement of fundamental rights and the State cannot place any hindrance in the way of an aggrieved person. But once the matter had reached this Court, the extent or manner of interference is for this Court to decide. The Chief Justice reiterated that this Court had put itself in restraint in the matter of petitions under Article 32. For example, this Court, reiterated the Chief Justice, refrained from acting under the article if the party had already moved the High Court under Article 226 and if the High Court had exercised its parallel jurisdiction. It was said in such a case, the court would not allow fresh proceedings to be started under Article 32 but would insist on the decision of the High Court being brought before it on appeal. Similarly, in inquiring into belated and stale claims, this Court should take note of evidence of neglect of the petitioner's own rights for a long time or of the rights of innocent parties which might have emerged by reason of the delay. The Chief Justice emphasised that it was not possible for this Court to lay down any specific period as the ultimate limit of action and each case will have to be considered on its own facts. A petition under Article 32 was neither a suit nor an application to which the Limitation Act applied. Further, putting curbs in the way of enforcement of fundamental rights through such legislative action might be questioned under Article 13(2) for, if a short period of limitation was prescribed the fundamental

right might be frustrated. Therefore, for the matter of relief in each case, this Court had to exercise its discretion from case to case and where there was appearance of an avoidable delay and the delay affected the merits of the claim, this Court held the party disentitled to invoke its extraordinary jurisdiction. In the facts of that case, the majority judges found that by his own conduct, the petitioner had abandoned his own litigation years ago and the court would not apply the analogy of the article in the Limitation Act in cases of mistake of law and give him relief.

10. Bachawat, J. in a concurring judgment observed that the normal remedy for recovery of money paid to the State under coercion or mistake of law is by suit. The right to move this Court for enforcement of fundamental rights was guaranteed by Article 32, and no period of limitation was prescribed for such a petition. Bachawat, J. reiterated that the writ issues as a matter of course if a breach of a fundamental right is established, but this did not mean that in giving relief under the article this Court might ignore all laws of procedure. The extraordinary remedies under Articles 32 and 226 of the Constitution, said Bachawat, J., are not intended to enable a claimant to recover monies the recovery of which by suit is barred by limitation. In the absence of any rules of procedure under Article 145(1)(c), the court may adopt any reasonable rule. Bachawat, J. emphasised that for example, the court will not allow a petitioner to move this Court under Article 32 on a petition containing misleading and inaccurate statements. Similarly, the general principles of res judicata were applied where applicable on grounds of public policy. Bachawat, J. emphasised that where the remedy in a writ application under Article 32 or Article 226 corresponded to a remedy in an ordinary suit and the latter remedy was subject to the bar of a statute of limitation, the court imposed on analogy the same limitation on the summary remedy in the writ jurisdiction even though there was no express statutory bar of limitation, on grounds of public policy and on the principle that the laws aid the vigilant and not those who slumber. Mitter, J. more or less expressed the same view.

11. Sikri, J. allowed the appeal because he was of the opinion that the petitioners were under a mistake of law, the mistake was discovered, like all assessees, when the court struck down Section 12-A(4) of the 1946 Act and they came to this Court within six months of that date and hence there was no delay.

12. Hegde, J. allowed the petition. He was of the opinion that in the facts of that case, there was no delay. He observed that mere impression of a party that a provision of law might be ultra vires cannot be equated to knowledge that the provision was invalid.

13. Under Article 113 of the Limitation Act, 1963 the limitation was the period of three years from the date the right to sue accrues. It may be noted that in the instant case under Section 23 of the Act, it was provided that the Commissioner shall, in the prescribed manner refund to a producer or a dealer any sum paid or realised in excess of the sum due from him under this Act either by cash or, at the option of the producer or dealer, be set off against the sum due from him in respect of any other period. Section 23 applies only in a case where money is paid under the Act. If there is no provision for realisation of the money under the Act, the act of payment was ultra vires, the money had not been paid under the Act. In that view of the matter Section 23 would not apply.

14. The High Court in the instant case after analysing the various decisions came to the conclusion that where a petitioner approached the High Court with the sole prayer of claiming refund of money by writ of mandamus, the same was normally not granted but where the refund was prayed as a consequential relief the same was normally entertained if there was no obstruction or if there was no triable issue like that of limitation. We agree that normally in a case where tax or money has been

realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the court should not grant relief but that is not an inflexible rule. It depends upon the facts of each case. In this case, however, the High Court refused to grant the relief on the ground that when the section was declared ultra vires originally that was the time when refund should have been claimed. But it appears to us, it is only when the Loong Soong case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) was decided by the High Court in 1973 that he appellant became aware of his crystal right of having the assessment declared ultra vires and in that view of the matter in October 1973 when the judgment was delivered in July 1973 the appellant came to know that there is mistake in paying the tax and the appellant was entitled to refund of the amount paid. That was the time when the appellant came to know of it. Within a month in November 1973 the present petition was filed. There was no unexplained delay. There was no fact indicated to the High Court from which it could be inferred that the appellant had either abandoned his claims or the respondent had changed his position in such a way that granting relief of refund would cause either injury to the respondent or anybody else. On the other hand, refunding the amount as a consequence of declaring the assessment to be bad and recovery to be illegal will be in consonance with justice, equity and good conscience. We are, therefore of the view that the view of the High Court in this matter cannot be sustained.

15. Chandra Bhushan v. Deputy Director of Consolidation ((1967) 2 SCR 286 : AIR 1967 SC 1272) was a case where this Court observed that the High Court erred in exalting a rule of practice into a rule of limitation and rejecting the petition of the appellant for refund without considering whether the appellant was guilty of laches and undue delay. Shah, J. delivering the judgment of the court observed that the primary question in each case is whether the applicant had been guilty of laches or undue delay.

16. Reference may be made in this connection to R. L. Kapur v. State of Madras ((1972) 3 SCR 417 : (1972) 1 SCC 651 : 1972 SCC (Cri) 380 : AIR 1972 SC 858). There the question arose about punishing for contempt. The jurisdiction conferred on the High Court under Article 215 of the Constitution to punish for contempt of itself was a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of the Penal Code. Such a position is also clear from the provisions of the Contempt of Courts Act. The effect of Section 5 of that Act was only to widen the scope of the existing jurisdiction of a special kind and not conferring a new jurisdiction. So far as contempt of the High Court itself is concerned, as distinguished from that of courts subordinate to it, the Constitution vested these rights in every High Court, and so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. That being the position, this Court held that Section 25 of the General Clauses Act would not apply.

17. Similarly, it appears to us that this was a tax realised in breach of the section, the refund being of the money realised without the authority of law. The realisation is bad and there is a concomitant duty to refund the realisation as a corollary of the constitutional inhibition that should be respected unless it causes injustice or loss in any specific case or violates any specific provision of law.

18. In that view of the matter in the facts of this case we are of the opinion that the money was refundable to the appellant. The appellant had proceeded diligently. There is nothing to indicate that

had the appellant been more diligent, the appellant could have discovered the constitutional inhibition in 1966. The position is not clear even if there is any triable issue. The position becomes clearer only after the decision in Loong Soong case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) as mentioned hereinbefore.

19. Our attention was drawn on behalf of the respondents that under Section 16 of the Act an appeal lay in the prescribed manner within thirty days from the date of service of any order of assessment but the challenge to the assessment on the ground that the assessment was bad could not be made in an appeal under the Act because the right to appeal being a creature of the Act, if the Act is ultra vires that right would not enure to the benefit of the appellant.

20. In State of M. P. v. Bhailal Bhai ((1964) 6 SCR 261 : AIR 1964 SC 1006), this Court had occasion to consider what was unreasonable delay in moving the court when tax was paid under a mistake. There the respondents were dealers in tobacco in the State of Madhya Bharat. The State had imposed sales tax on the sale of imported tobacco by the respondents. But no such tax was imposed on the sale of indigenous tobacco. The respondents filed writ petitions under Article 226 of the Constitution for the issue of writ of mandamus directing the refund of sales tax collected from them. They contended that the impugned tax was violative of Article 301(a) of the Constitution and they paid the tax under a mistake of law and the tax so paid was refundable under Section 72 of the Indian Contract Act, 1872. The appellant contended that there was no violation of Article 301 of the Constitution, and even if there was such violation the tax came within the special provision under Article 304(a) of the Constitution and the High Court had no power to direct refund of tax already paid and in any event the High Court should not exercise its discretionary power of issuing a writ of mandamus directing this to be done since there was unreasonable delay in filing the petition. The High Court rejected all the contentions of the appellant and a writ of mandamus was issued as prayed for. It was held that tax was violative under Article 301 of the Constitution. But it was held that even though the tax contravened Article 301 of the Constitution, it was valid if it came within the saving provisions of Article 304 of the Constitution. Tobacco manufactured or produced in the appellant State, similar to the tobacco imported from outside had not been subjected to the tax and therefore the tax was not within the saving provisions of Article 304(a) of the Constitution. It was reiterated that the tax which had already been paid was so paid under a mistake of law under Section 72 of the Indian Contract Act. The High Courts had power for the purpose of enforcement of fundamental rights and statutory rights to grant consequential reliefs by ordering repayment of money realised by the government without the authority of law. It was reiterated that as a general rule if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by the extraordinary remedy of mandamus. Even if there is no such delay, in cases where the opposite party raises a prima facie issues as regards the availability of such relief on the merits on grounds like limitation the court should ordinarily refuse to issue the writ of mandamus. Though the provisions of the Limitation Act did not as such, it was further held, apply to the granting of relief under Article 226, the maximum period fixed by the legislature as the time within which relief by a suit in a civil court must be claimed may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 could be measured. The court might consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. Where the delay is more than that period it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act was three years from the date when the mistake was known. In this case knowledge is attributable from the date of the judgment in Loong Soong case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) on July 10, 1973 and there being a statement that the appellant came to know of that fact in October 1973 and there being no denial by

the averment made on this ground, the High Court, in our opinion, in the instant case was in error in presuming that there was a triable issue on this ground and refusing to grant refund.

21. In Ramchandra Shankar Deodhar v. State of Maharashtra ((1974) 2 SCR 216 : (1974) 1 SCC 317 : 1974 SCC (L&S) 137 : AIR 1974 SC 259), in a different context, it was observed that laches or existence of alternative remedy may be ground for not granting relief. But in view of the facts of this case, it is not necessary to deal with that case in any detail.

22. In A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani ((1962) 1 SCR 753 : AIR 1961 SC 1506), this Court held that the High Court was in error in its view that though the respondent had failed to exercise his statutory remedy, the fact that it had become time-barred at the date of the hearing of the appeal against the order in the petition under Article 226, was a good ground for the court to exercise its discretion in granting the relief prayed for by the respondent in his petition.

23. Learned counsel drew our attention to Rule 55 of Rules framed under the Act where it was stated that no claim to any refund shall be allowed unless it was made within one year from the date of the original order of assessment or within one year of the final order passed on appeal or revision as the case may be, in respect of such assessment. It was contended on behalf of the respondents that here a fixed period of limitation was prescribed and by virtue of Article 226 of the Constitution, we should not allow to subvert that rule. This principle, in our opinion, in view of the fact that the rule was unconstitutional will have no application.

24. In Shiv Shankar Dal Mills v. State of Haryana ((1980) 1 SCR 1170 : (1980) 2 SCC 437 : AIR 1980 SC 1037), Krishna Iyer, J. speaking on behalf of himself as well as on behalf of R. S. Pathak, J. as the learned Chief Justice then was and A. D. Koshal, J. observed that where public bodies under colour of public laws recover people's money, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There was no law of limitation especially for public bodies on the virtue of returning what was wrongly recovered to whom it belongs. In our jurisprudence it is not palatable to turn down the prayer for high prerogative writs on the negative plea of alternative remedy, since the root principle of law married to justice, is ubi jus ibi remedium. His Lordships observed as follows : (SCC pp. 438-39, paras 1 and 2)

. . . since the root principle of law married to justice, is ubi jus ibi remedium. Long ago Dicey wrote :

The saw ubi jus ibi remedium, becomes from this point of view something more important than a mere tautological proposition. In its bearing upon constitutional law, it means that the Englishmen whose labours gradually formed the complicated set of laws and institutions which we call the Constitution, fixed their minds far more intently on providing remedies for the enforcement of particular rights or for averting definite wrongs, than upon any declarations of the Rights of Man or Englishmen . . . . The Constitution of the United States and the Constitutions of the separate States are embodied in written or printed documents, and contain declaration of rights. But the statesmen of America have shown an unrivalled skill in providing means for giving legal security to the rights declared by American Constitutions. The rule of law is as marked a feature of the United States as of England.

Another point. In our jurisdiction, social justice is a pervasive presence; and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of

the judicial process to embrace the basic rule of distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong.

25. We are in respectful agreement with this approach.

26. In State of M. P. v. Nandlal Jaiswal (AIR 1987 SC 251 : (1986) 4 SCC 566 : 1987 Tax LR 1830) this principle was reiterated by Bhagwati, C.J. that it was well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution was discretionary and the High Court in the exercise of its discretion did not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there was inordinate delay on the part of the petitioner in filing a writ petition and such delay was not satisfactorily explained, the High Court might decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay was premised upon a number of factors. The High Court did not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it was likely to cause confusion and public inconvenience and bring in its train new injustices. It was emphasised that this rule of laches or delay is not a rigid rule which can be cast in a strait-jacket formula. There may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairy and justly so as to promote justice and not to defeat it. We are in respectful agreement with this approach also.

27. In this case looked at from one point of view, it is only on the delivery of the judgment in Loong Soong case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) in 1973, the appellant realised the right to claim the relief of refund as a consequential relief, setting aside the assessment and the assessment was set aside by the very order itself in this case. That right has been granted by the High Court, the High Court has not refused the setting aside on the ground of delay. It would be inconsistent for the High Court to refuse to grant consequential relief after setting aside the assessment. If the realisation was without the authority of law and that was declined by the High Court by the judgment in this case which claimed also the consequential relief, that relief must automatically follow and the High Court was wrong in taking the view that a triable issue of limitation arises in this case. In the absence of any averment to the contrary, the averment of the appellant in the petition that they came to know only after the Loong Soong case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) must be accepted. The High Court was wrong in contending that they should have been more diligent. After all the discretion must be fair and equitable. In the facts of this case, we are of the opinion that the High Court was in error in the approach it took. We, therefore, set aside the judgment and order of the High Court and direct refund of the tax illegally realised by the respondent.

28. The appeals are allowed. We set aside the judgment and order to the extent that it refused refund of the tax illegally realised. In the facts of this case the parties will pay and bear their own costs.

S. RANGANATHAN, J. (Concurring) - I agree with the order proposed by my learned brother but would like to add a word of reservation.

30. In view of the judgment of this Court in Supdt. of Taxes v. Onkarmal Nathmal Trust (1975 Supp SCR 365 : (1976) 1 SCC 766 : 1976 SCC (Tax) 73 : AIR 1975 SC 2065), there can be no doubt that

the assessments on the appellants were illegal and that the taxes demanded on the basis thereof had been collected without the authority of law from the appellants. The appellant's contention is that they had paid the taxes under a mistake of law and are entitled to seek refund thereof. It is difficult to see how the High Court could have allowed the appellant's prayer for quashing the assessments but refused the prayer for the refund of the illegally collected taxes. The appeals have, therefore, to be allowed.

31. Counsel for the respondents, however, places strong reliance on the following observations of a Constitution Bench of this Court in State of M. P. v. Bhailal Bhai ((1964) 6 SCR 261 : AIR 1964 SC 1006) :

> Though the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226 the maximum period fixed by the legislature as the time within which relief by a suit in a civil court must be claimed may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 could be measured . . . . Where the delay is more than this period it will almost always be proper for the court to hold that it is unreasonable.

He also relies on D. Cawasji & Co. v. State of Mysore ((1975) 2 SCR 511 : (1975) 1 SCC 636 : 1975 SCC (Tax) 172 : AIR 1975 SC 813) and draws our attention to the decision in Vallabh Glass Works v. Union of India ((1984) 3 SCR 180 : (1984) 3 SCC 362 : 1984 SCC (Tax) 186 : AIR 1984 SC 971) where the claim for refund in respect of a period beyond three years was rejected. He contends, on the strength of the above decisions, that the High Court rightly rejected the appellants' claim for refund.

32. On the other hand, it is contended for the appellants that a writ petition seeking refund of taxes collected without the authority of law cannot be rejected on the ground of limitation or delay unless such delay can be said to amount to laches or has caused some irreparable prejudice to the opposite party or some other like forceful reason exists. Counsel refers in this context to Venkateswaran v. Ramchand ((1962) 1 SCR 753 : AIR 1961 SC 1506), Chandra Bhushan v. Deputy Director of Consolidation ((1967) 2 SCR 286 : AIR 1967 SC 1272), Tilokchand Motichand v. Munshi ((1969) 2 SCR 824 : (1969) 1 SCC 110 : AIR 1970 SC 898), Ramchandra S. Deodhar v. State of Maharashtra ((1974) 2 SCR 216 : (1974) 1 SCC 317 : 1974 SCC (L&S) 137 : AIR 1974 SC 259), Joginder Nath v. Union of India ((1975) 2 SCR 553 : (1975) 3 SCC 459 : 1975 SCC (L&S) 2 : AIR 1975 SC 511), Shiv Shankar Dal Mills v. State of Haryana ((1980) 1 SCR 1170 : (1980) 2 SCC 437 : AIR 1980 SC 1037) and State of M. P. v. Nandlal Jaiswal (AIR 1987 SC 251 : (1986) 4 SCC 566 : 1987 Tax LR 1830) and contends that these decisions have qualified the observations of Das Gupta, J. in Bhailal Bhai case ((1964) 6 SCR 261 : AIR 1964 SC 1006).

33. As pointed out by my learned brother, in the present case, the appellants' averment that they realised their mistake only when they came to know about the decision in the Loong Soong Tea Estate case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) in July 1973 stands uncontroverted. There is nothing on record either to show that the appellants had realised their mistake even earlier, at about the time when the writ petition in the Loong Soong Tea Estate case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) was filed or at the time when the earlier decision of 1966 referred in the Loong Soong Tea Estate case (Civil Rule No. 1005 of 1969, decided on July 10, 1973 (Gau HC)) judgment was rendered. On this finding of fact, the writ petitions, filed by the appellants in November 1973, were filed within the period of limitation prescribed in Article 113 read with Section 23 of the Limitation Act, 1963. Thus the petitions were

within time even by the test enunciated in Bhailal Bhai case ((1964) 6 SCR 261 : AIR 1964 SC 1006).

34. I think, therefore, that, for the purposes of the present case, it is unnecessary to consider the larger question whether the bar of limitation should be considered as fatal to a writ petition as to a suit for recovery or whether it is only a relevant but not conclusive factor that should be taken into account by the court in exercising a discretion.

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