

(1968) 07 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1743 of 1966, 978 to 997, 1346 to 1348, 1421 to 1425, 1456, 1651 to 1654, 1794, 1795, 1821 to 1824, 1931, 2006, 2007, 2008, 3410, 3411, 3708, 3709 to 3799, 3861, 3862, 3863 to 3872 of 1967 and 251, 492, 493, 687 to 690, 992, 1002 to 1

Challa Appa Rao and Co.

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 19-07-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 9
Constitution of India, 1950 — Article 226, 265, 286, 301, 304
Contract Act, 1872 — Section 21, 22, 72

Citation : (1970) 25 STC 256

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Madhava Reddy, J

Bench : Division Bench

Advocate : P. Rama Rao, S. Dasaratharama Reddy, D. Venkatappayya Sastry and D. Sudhakara Rao, for the Appellant; Principal Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Jaganmohan Reddy, C.J.—The writ petitioners in this batch are dealers in various goods, such as turmeric, ghee, paddy, groundnut, jaggery and rice, which are both non-declared as well as declared goods. In all these cases the petitioners claim a refund of tax paid under a mistake of law, because they allege that at the time when they were assessed the law was that u/s 8(2) of the Central Sales Tax Act, 1956, the position of a dealer could not be equated to a dealer governed by the provisions of the Andhra Pradesh General Sales Tax Act, 1957, for every purpose and that where exemption is granted by a notification, it is only in respect of the goods exigible under the Andhra Pradesh Act and the State has no power acting u/s 9(1) to exempt goods liable to tax under the Central Act.

2. It was contended before a Bench of this court consisting of Chandra Reddy,

C.J., and Gopalakrishnan Nair, J., in *Surya Trading Firm v. State of Andhra Pradesh* [1963] 14 S.T.C. 720 that a dealer coming within the purview of Section 8(2) of the Central Sales Tax Act, 1956, should be regarded as a dealer governed by the provisions of the Andhra Pradesh General Sales Tax Act, 1957, for all purposes. It was founded on the clause "shall be calculated at the same rate and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State." This contention was, however, rejected by the Bench which held that the position of a dealer under that section, viz., Section 8(2), could not be equated to a dealer under the Andhra Pradesh General Sales Tax Act and that an assessee would be deemed to be a dealer under the State Act only for the limited purpose of calculating the rate and not for all purposes. The decision in *Yaddalam Lakshminarasimhiah Setty and Sons v. State of Mysore* 1962 13 S.T.C. 583 which took a different view was not brought to the notice of the Bench. In any case, the State of Mysore went in appeal to the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty and Sons* 1965 16 S.T.C. 231. Their Lordships of the Supreme Court by a majority (Subba Rao and Sikri, J J.; Shah, J., dissenting) held that the expression "levied" meaning "imposed" in Section 9(1) of the Central Act referred to the expression "levied" in Section 5(3) (a) of the State Act, and therefore, the Central Act had not made a departure in the manner of levy of tax on the specified goods which were taxed only at a single point under the State Act. Dealing with the interpretation of Section 8(2), Sikri, J., speaking for the majority said at page 239 :

The expression "in the manner" may give rise to two conflicting views, namely, (i) it is concerned only with the calculation of the tax, and (ii) it deals not only with the calculation of the rates but also the manner of levy of the tax. But Section 9(1) dispels the ambiguity for it says that the tax payable by any dealer under the Central Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-section (2); and Sub-section (2) of Section 9 empowers the appropriate State authorities to assess, collect and enforce payment of any tax payable by any dealer under the Central Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected....When Section 9(1) says that under the Central Act tax shall be levied in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected, it is reasonable to hold that the expression "levied" in Section 9(1) of the Central Act refers to the expression "levied" in Section 5(3)(a) of the State Act. There is no reason why the Central Act made a departure in the manner of levy of tax on the specified goods which are taxed only at a single point under the State Act; if any such radical departure was intended, the Central Act would have expressly stated so.

3. It was further noticed that there had been considerable difference of opinion among the High Courts about the true construction of Section 9(2). In any case, the construction given by their Lordships, it was claimed, avoids the anomaly of the State collecting tax on powerloom textiles only at a single point and the

Centre, through the agency of the State authorities, collecting the said tax for and on behalf of the State at multipoints. This decision was rendered on November 10, 1964, by which time in many States, at any rate in so far as the State of Andhra Pradesh is concerned, assessments were being made in accordance with the law as understood by the High Court. These assessments in respect of transactions of sale of the several commodities to outside State dealers at the first purchase point under the provisions of the Andhra Pradesh General Sales Tax Act had become final and the tax had been paid. But now having regard to the Supreme Court decision referred to above, it is contended by the petitioners that the tax has been paid under a mistake of law which could be recovered if writ petitions under Article 226 of the Constitution could be filed within three years from the date of discovery of the mistake of law under which the amount was paid.

4. In support of this contention the petitioners rely upon two decisions in State of Madhya Pradesh v. Bhailal Bhai 1964 15 S.T.C. 450 and State of Kerala v. Aluminium Industries Ltd 1965 16 S.T.C. 689 in which it was held that relief for refund of tax paid under a mistake of law could be granted. But before we deal with these two decisions, we would like to refer to another decision of the Supreme Court in Sales Tax Officer v. Kanhaiya Lal Makund Lal Saraf 1958 9 S.T.C. 747 which discussed comprehensively the question whether u/s 72 of the Indian Contract Act the money paid under a mistake of law could be recovered. The position under the English law was that money paid under a mistake of law with the full knowledge of the facts was not recoverable and that even a promise to pay, upon a supposed liability, and in ignorance of the law, will bind the party. But u/s 72 of the Indian Contract Act there had been a conflict of opinion which has been set at rest by the Privy Council in (1949) L.R. 76 I.A. 244 (Privy Council) Their Lordships of the Supreme Court approved the interpretation placed by the Privy Council as correct. It was contended both before the Privy Council as well as before the Supreme Court that there is a conflict between Section 72 on the one hand and Sections 21 and 22 of the Indian Contract Act on the other, because if u/s 72 mistake of law would entitle a person to obtain repayment, Section 21 would have no meaning, as under that section a contract is not voidable on the ground that the parties contracted under a mistaken belief of the law existing in British India. That contention was negatived in these words :

In their Lordships' opinion this reasoning is fallacious. If a mistake of law has led to the formation of a contract, Section 21 enacts that that contract is not for that reason voidable. If money is paid under that contract, it cannot be said that that money was paid under mistake of law; it was paid because it was due under a valid contract, and if it had not been paid payment could have been enforced. Payment "by mistake" in Section 72 must refer to a payment which was not legally due and which could not have been enforced; the mistake is in thinking that the money paid was due when, in fact, it was not due. There is nothing inconsistent in enacting on the one hand that if parties enter into a contract under a mistake in law that contract must stand and is enforceable, but, on the

other hand, that if one party acting under mistake of law pays to another party money which is not due by contract or otherwise, that money must be repaid. Moreover, if the argument based on inconsistency with Section 21 were valid, a similar argument based on inconsistency with Section 22 would be valid and would lead to the conclusion that Section 72 does not even apply to mistake of fact. The argument submitted to their Lordships was that Section 72 only applies if there is no subsisting contract between the person making the payment and the payee, and that the Indian Contract Act does not deal with the case where there is a subsisting contract but the payment was not due under it. But there appears to their Lordships to be no good reason for so limiting the scope of the Act. Once it is established that the payment in question was not due, it appears to their Lordships to be irrelevant to consider whether or not there was a contract between the parties under which some other sum was due.

5. Bhagwati, J., dealing with the observations of the Privy Council, stated at pages 756 and 759 :

There is no conflict between the provisions of Section 72 on the one hand and Sections 21 and 22 of the Indian Contract Act on the other and the true principle enunciated is that if one party under a mistake, whether of fact or law, pays to another party money which is not due by contract or otherwise that money must be repaid. The mistake lies in thinking that the money paid was due when in fact it was not due and that mistake, if established, entitles the party paying the money to recover it back from the party receiving the same....If mistake either of law or of fact is established, he is entitled to recover the moneys and the party receiving the same is bound to repay or return them irrespective of any consideration whether the moneys had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like.

6. Dealing with the observations of Kaushalendra Rao, J., in *Nagorao v. Governor-General in Council*, AIR 1951 Nag. 372 that "if the reason for the rule that a person paying money under mistake is entitled to recover it is that it is against conscience for the receiver to retain it, then when the receiver has no longer the money with him or cannot be considered as still having it as in a case where he has spent it on his own purposes-which is not the case here different considerations must necessarily arise", their Lordships of the Supreme Court said that no equitable considerations can be imported when the terms of Section 72 of the Indian Contract Act are clear and unambiguous.

7. In *State of Madhya Pradesh v. Bhailal Bhai*, 1964 15 S.T.C. 450 the respondents (petitioners before the High Court of Madhya Pradesh) were carrying on business in Madhya Bharat which subsequently became the State of Madhya Pradesh, in tobacco. In accordance with the notification issued by the State Government in exercise of the powers u/s 5 of the State Sales Tax Act, large amounts were collected from them by the Government. The petitioners before the High Court had contended that the taxing provision under which tax was assessed and collected from them was unconstitutional as it infringed Article 301

of the Constitution and did not come within the special provisions of Article 304(a) and consequently prayed for refund of the tax collected. One of the grounds on which the State of Madhya Pradesh contested the prayer for refund was that even if the taxing provision was unconstitutional and the assessment and collection of taxes had been without any legal authority, the petitioners were not entitled to the order for refund prayed for. The High Court, however, held that the notification under which the tax was assessed imposed a tax only on imported tobacco and not on home-grown tobacco and so it did not come within the special provisions of Article 304(a) of the Constitution and consequently the infringement of Article 301 of the Constitution which resulted from the imposition of a tax on import of goods made the provisions void in law. The prayer for refund was allowed. Against that decision the State of Madhya Pradesh filed an appeal and their Lordships of the Supreme Court also, agreeing with the view taken by the Madhya Pradesh High Court, held that the notification imposing tax contravenes Article 301 and is not saved by Article 304(a); the assessment of tax was thus invalid in law. Then came the question as to whether refund of tax collected under a mistake of law could be ordered in a writ petition as it could have been decreed in a civil suit u/s 72 of the Indian Contract Act. The important question to which their Lordships were addressing their mind was posed by Das Gupta, at page 457 as follows:

The question is : whether the relief of repayment has to be sought by the taxpayer by an action in a civil court or whether such an order can be made by the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

8. It is obvious from the manner in which the question has been posed, that where a suit will lie for recovery of moneys paid under a mistake of law should the petitioners be driven to a suit or could the High Court or the Supreme Court under Article 226 of the Constitution direct payment of the amount in similar circumstances as the court could give on a civil suit being filed. No doubt the jurisdiction under Article 226 is a very wide jurisdiction and a writ of mandamus could be used for directing repayment of money paid to the Government under a mistake of law. Their Lordships of the Supreme Court referred to the case of *Firm Mehtab Majid and Co. v. State of Madras* 1963 14 S.T.C. 355 where they had in a petition under Article 32 ordered refund of tax illegally collected from the petitioner under Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, but whether the court has the power to do so was not specifically raised. In another case, *Sales Tax Officer, Banaras v. Kanhaiya Lal Makund Lal Saraf* 1958 9 S.T.C. 747 also, an order for repayment made by the Allahabad High Court was confirmed by the Supreme Court. After referring to these two cases Das Gupta, J., who delivered the judgment of their Lordships, while holding that the High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law, sounded a note of caution in these words at pages 458 and 459 :

At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay, the Government or the statutory authority against whom the consequential relief is prayed for raises a prima, facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.

9. On a question as to what is the period of limitation within which a petition for directing writ of mandamus could be filed, their Lordships recognised that the provisions of the Limitation Act do not as such apply to the grant of relief under Article 226 but none the less, they observed :

The maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this 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 is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956, the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue,

the mistake was discovered much later, this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained.

10. In the 7 writ petitions in which the prayer for refund was not entertained by the Supreme Court, the petitions for refund were made in September, 1959, while the judgment which declared the provisions under which the tax was assessed and paid was pronounced on January 17, 1956, i.e., about 3 years and 8 months thereafter.

11. In *State of Kerala v. Aluminium Industries Ltd.* 1965 16 S.T.C. 689 also, a Bench of 7 Judges of the Supreme Court confirmed the view taken in both *Sales Tax Officer v. Kanhaiya Lal Makund Lal Saraf* 1958 9 S.T.C. 747 and *State of Madhya Pradesh v. Bhailal Bhai* 1964 15 S.T.C. 450. In the *Aluminium Industries* case 1965 16 S.T.C. 689 the respondent submitted returns for the period from May 30, 1950 to March 31, 1951, showing a net turnover of Rs. 23,02,776-1-9 and deposited necessary sales tax. There appears to have been no assessment as such. But before that could be done, the respondent discovered its mistake in not claiming an exemption in connection with sales made to the State of Punjab and had paid Rs. 71,000 in excess of sales tax due from it. It addressed a letter to the Sales Tax Officer on August 29, 1951, for repayment of this amount and thereafter pursued the matter by correspondence, when eventually, the Sales Tax Officer on October 1, 1952, asked the company to move the Government directly detailing all the facts. The respondent then appears to have moved the Government and asked for refund, but received no reply. It had therefore to file the writ petition on May 30, 1954. In view of these facts, the Supreme Court thought it better to call for a report from the Sales Tax Officer on the question whether the sales with respect to which sales tax amounting to Rs. 54,375-5-0 was levied were outside the State and were therefore exempt under Article 286(i) (a) of the Constitution, as it then was, and whether the writ petition was within three years of the date on which the mistake first became known to the respondent so that a suit on that date for refund would not be barred under Article 96 of the Limitation Act, 1908.

12. What, in our view, emerges from these cases is that (1) where a suit u/s 72 of the Indian Contract Act will lie to recover moneys paid under mistake, a writ petition for refund of tax within the period of limitation prescribed under Article 96 of the Limitation Act, 1908, i.e., within 3 years, would also lie. But for filing of a writ petition to recover the money, unlike in a suit, the Supreme Court has restricted the starting point of limitation of 3 years to be from the date on which the judgment, declaring as void the particular law under which the tax was collected was rendered, and if any writ petition was filed beyond 3 years after that date, it will, the Supreme Court said, almost always be proper for the court to consider that it is unreasonable to entertain that petition for refund, though, even in cases where it was filed within 3 years, the court has a discretion, having

regard to the facts and circumstances of each case, not to entertain such application; and (2) in all the cases in which their Lordships of the Supreme Court had given relief the levy, assessment and collection had been made either under a law which was made without legislative competence or that there was some constitutional inhibition or certain terms specified in the Constitution for levying the tax had not been complied with. In both these cases, it will be observed that the orders levying the tax themselves being void, the money paid thereunder would be money paid under a mistake of law, because both the parties did not know until the final decision was given that the tax was not recoverable or payable. In such cases, civil suits were not barred to recover moneys and consequently writ petitions also could be filed to recover them.

13. It is obvious that where a law or an order imposing a tax has been declared to be void, the collection of tax comes within the inhibition of Article 265 of the Constitution as no tax can be collected without the authority of law. There is no need in such circumstances to set aside the assessment order under which the tax was collected, because by virtue of the judgment, the collection of tax is ab initio void, and a suit can be filed for recovery of the same. But the question is where a tax is collected under the orders which the taxing officer would legitimately pass in exercise of the powers vested in him, even though his interpretation of a particular provision is ultimately found to be wrong, will the same principles be applicable for entertaining a writ petition to quash those orders long after the tax has been collected, on the ground that a different view has been taken by a higher court in some other case ? In other words, the question is, in cases where an order under which sales tax is levied is not void, but was made in exercise of his jurisdiction, even on an erroneous interpretation of law, which order has not been challenged or even if challenged had been confirmed, or where the order made by the sales tax authority is in accord with the view taken by the High Court of that State, can the same principles upon which refund has been directed by the Supreme Court be made applicable to entertain a writ of certiorari to quash those orders, which would be lawful until they are so quashed, filed within the same period of limitation as that prescribed for a suit, contrary to the established practice of rejecting those petitions if filed beyond six months, unless it be that there were extraordinary circumstances ?

14. It may at the outset be stated that unlike in the case of an assessment made under a law which is unconstitutional, ultra vires or void where a suit can be filed to recover the moneys paid thereunder, no suit can be filed u/s 36 of the Andhra Pradesh General Sales Tax Act to set aside or modify or question the validity of any assessment, order or decision made or passed by any officer or authority under the Act or any rules made thereunder, or in respect of any other matter falling within its or his scope. On an analogous provision of Section 18-A of the Madras General Sales Tax Act, their Lordships of the Supreme Court in *Firm of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh* 1963 14 S.T.C. 680 interpreted the expression "any assessment made under this Act" as wide enough to cover all assessments made by the appropriate authorities under the

Act whether the said assessments are correct or not. It was observed :

It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment, that clearly falls within the scope of Section 18-A.

15. It was further held that the fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect the position that in law, the said order has been passed by an appropriate authority and the assessment made by it must be treated as made under the Act. In a subsequent case in *Venkataraman and Co. (P.) Ltd. v. State of Madras*, 1966 17 S.T.C. 418 Subba Rao, Wanchoo and Sikri, JJ., Shah and Ramaswami, JJ., dissenting, held that if a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability; that a statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a civil court in that regard; but an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions, that it must act under the Act and not outside it, that if it acts on the basis of a provision of the statute which is ultra vires, to that extent it would be acting outside the Act and that in that event, a suit to question the validity of such an order made outside the Act would lie in a civil court. It was further held that the expression "under this Act" in Section 18-A of the Madras General Sales Tax Act, 1939, refers both to procedural and substantive provisions of the Act, that, therefore, any assessment made under an ultra vires provision of the Act cannot be said to be made under the Act and Section 18-A would not be a bar to the maintainability of a suit for refund of the amounts paid in respect of such an assessment, and that the procedural machinery under the Act can be utilised only to decide disputes that arise under the substantive provisions of the Act, which are not ultra vires.

16. It is, therefore, evident that where an order is passed by the sales tax authorities in exercise of the jurisdiction vested in them under the Act, no suit can be filed; but if an order is passed under the provisions which are ultra vires, illegal or void, the sales tax authorities not having jurisdiction to determine the question of vires, a civil suit will lie. It is only in respect of such matters that a suit to recover tax paid under a mistake of law can be filed; and because a suit can be filed, their Lordships of the Supreme Court have held that a writ of mandamus in like circumstances, to direct refund of the money paid under a mistake of law, can be filed ordinarily within a period of 3 years from the date of declaration of the provisions to be ultra vires. It follows that if no suit can be filed, a writ of mandamus cannot be filed to recover money within the period of 3 years, analogous to the period fixed in Article 96 of the Limitation Act, 1908. As long as the order of assessment stands, the amount paid cannot be said to be an

amount paid under a mistake of law. The only remedy is to have that order set aside or quashed either by the ordinary procedure prescribed in the statute itself, or by recourse to a petition under Article 226, to quash it by a writ of certiorari.

17. The limits of jurisdiction of the High Court in issuing writs of certiorari under Article 226 of the Constitution which have often been considered not only by the High Courts but also by their Lordships of the Supreme Court, have been stated by Gajendragadkar, J., (as he then was) for the majority, viz., himself, Wanchoo, Shah and Raghubar Dayal, JJ., in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, at pp. 479-480 :

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction....There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court...An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be...It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

18. These observations leave a great deal of scope for contending either pro or contra, that the order is liable to be quashed as there is an error apparent on the face of the record. It may be contended for example, that every interpretation of a statute by an authority made in exercise of jurisdiction vested in it, which ultimately may be found to be wrong by a supervisory authority, where that very order is challenged or in some other unconnected case is an error apparent on the face of the record. But the safe course appears to us to be that where the tribunal by applying a law as declared by the High Court has assessed and levied tax under the provisions of the particular taxing statute or the interpretation given by them is a possible interpretation and it cannot be said that only one view is possible or to take that view would be an unreasonable one, it cannot be said to have committed an error apparent on the face of the record, justifying interference by a writ of certiorari.

19. As we have pointed out earlier, the decision of a Bench of this court in *Surya Trading Firm's case* [1963] 14 S.T.C. 720 had taken a view which ultimately turned out to be contrary to the view that their Lordships have taken in *State of Mysore v. Lakshminarasimhiah Setty and Sons*. 1965 16 S.T.C. 231 Even their Lordships of the Supreme Court have recognised that there has been a considerable difference of opinion among the High Courts about the true construction of Section 9(2) and the construction which they were giving was to avoid anomalies. There is also a forceful dissent by Shah, J. In these circumstances, can it be said that an order levying a tax on an interpretation which is in consonance with the view adopted by the High Court, and perhaps with some of the other High Courts, is such as would justify us in holding that such an error of law is apparent on the face of the record ? In other words, can it be said that the impugned collection of taxes was so plainly inconsistent with the relevant statutory provisions that no difficulty was experienced by the High Court in holding that such an error of law was apparent on the face of the record ? In our view, it cannot be so said.

20. In some of the writ petitions in which collections of taxes have been made pursuant to the orders made subsequent to the judgment of their Lordships of the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty and Sons* 1965 16 S.T.C. 231 it cannot be said, if the principles of that judgment govern all these cases, that there is no error apparent on the face of the record. But it is contended that that case does not govern all these writ petitions. We shall however deal with this aspect a little later, but for the present, if that decision applies, and writ petitions have been filed within a reasonable period thereafter, those errors will have to be corrected and the orders set aside and refund of the tax paid directed, notwithstanding that ordinary remedies were available for the assessee to have those orders set aside. But in regard to cases which have been decided long prior to the decision of the Supreme Court, we do not think there is any justification for entertaining those petitions.

21. Even in the cases which have been decided subsequent to the decision of the

Supreme Court, some of them have been contested before the sales tax authorities and their orders have also become final as no further steps were taken. Even in such cases, what we have to see is whether the writ petitions have been filed within a reasonable time to quash those orders. What is a reasonable period for filing such petitions was considered by a Bench of this court consisting of Subba Rao, C.J., and Manohar Pershad, J., in *Venkata Subba Rao v. D.T.S., Vijayawada* 1957 A.L.T. 785. Subba Rao, C.J., after referring to the decisions of the Madras High Court in *Rao Bahadur A. Nathamooni Chetti Vs. M.R. Viswanatha Sastry and Another*, and *O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax*, and a decision of the Andhra High Court in *Annamalai v. The State* 1955 A.L.T. 831 observed at page 787

Even in England, the period fixed for filing a writ of certiorari is six months, though under Order 64, Rule 7, R.S.C., there is power vested in the court to extend the "time and excuse the delay in filing a writ of certiorari. There is no reason why this High Court should follow a different rule. In our view, applications under Article 226 of the Constitution will be entertained only if they are filed within a reasonable time from the date of the making of the order. Ordinarily, a period of six months may be considered reasonable; but in extraordinary circumstances, this court may, in its discretion, excuse delay. Otherwise, while periods of limitation are fixed for every form of remedy available to a party, there will not be any time-limit for the exercise of the extraordinary jurisdiction of this court. The exercise of power under Article 226 by a court irrespective of any time lag will introduce complications and unsettle rights finally decided by authorities empowered to do so.

22. In that case, the Bench refused to consider a petition filed after 4 years after the final orders. Nor did they think the explanation of the petitioner for the delay that he was pursuing a remedy by way of memorials to the Government justified condonation of the delay-see also *Lakshmanammal v. State of Andhra Pradesh*, (1967)2 An.W.R. 406.

23. It cannot be denied that the judgment of the Supreme Court in the Mysore case was pronounced on November 10, 1964, and a copious extract and a full note of this decision appeared in the Supreme Court Notes five days thereafter on November 15, 1964, as Case No. 340 at page 238. Even if we were to accept the contention that the first time it was fully reported in 16 S.T.C. 231, on March 15, 1965, and that date has to be taken into account, even then, though the orders of assessment were made on the basis of the law as understood prior to the Supreme Court decision, no steps were taken either to appeal to the higher authorities, nor were any petitions filed before this court within a reasonable period, namely within 6 months thereafter. The explanation that they only discovered their mistake after the Sales Tax Tribunal's order on August 1, 1966, or the judgment of this court confirming that order on March 31, 1967, in respect of rice, in *State of A.P. v. O. Venkateswarlu and Bros* 1967 20 S.T.C. 340, does not in any way condone the delay in filing the petitions. The basis of all these

decisions is the application of the principle enunciated by their Lordships of the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty* 1965 16 S.T.C. 231. In the cases in which either the Tribunal had given relief, which have come up to the High Court in tax revision cases, a contest had been raised at the earliest and those assesseees had recourse to the ordinary remedies; if so there was nothing to stop the assesseees after the decision of the Supreme Court to object to the levy contrary to the decision and agitate the matter before the sales tax authorities, or immediately to come before this court to have the orders quashed. It is true that there was no decision in respect of sale of rice, but it is not necessary that the mistake could be said to be discovered if there is a decision only in respect of the particular commodity. If that was so, the Supreme Court in the Mysore case dealt only with the sale of handloom and powerloom cloth and did not deal with any of the commodities which are subject-matter of these writ petitions. On that account, can it be said that the mistake is discovered only as and when cases arise in the courts dealing with the particular commodities, albeit the principle upon which the decision rests is traceable only to the Supreme Court decision? We think not.

24. On our request, the learned Advocates for the respective batches of writ petitions have furnished us with particulars of the date of the assessment order, the date of discovery of mistake and the date of filing of the petition, which we append as an annexure¹ as part of this judgment. In none of these cases have the petitions for quashing the orders been filed within 6 months or even a year from the date of the judgment of the Supreme Court. It will also be seen that some of the cases have been decided in 1960 or 1961 and the petitions have been filed in this court on January 31, 1968, nearly 7 years after. There is also, in our view, no justifiable reason for considering a long delay of two years or more, which has occurred in all these cases-and in some cases, as we have said, there has been delay of over three years-as reasonable. Nor could there be said to be any hardship on the dealers, as the tax that they have paid had been collected from the consumers and passed on to the State and there is hardly any likelihood of their refunding this money to the customers. On being asked, the learned Advocates stated that most of the dealers have to pay Income Tax, as the department treats this as their income. We do not however, on this score, consider that they would not be entitled, if they had come within a reasonable time to have the orders quashed. We are only referring to this in order to consider whether there are any extraordinary circumstances to condone the long and inordinate delay, in entertaining these petitions.

25. Apart from this, Sri Ramachandra Reddy contends that the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty and Sons* 1965 16 S.T.C. 231 was concerned with the assessment for the year 1957-58 under the Central Sales Tax Act, 1956, as it stood prior to the amendments in 1958 and therefore it has no application to the present cases and the relative provisions of the law governing them. We find that except for W.P. 3708 of 1967, 3717 of 1967 and 3742 of 1967 where the orders of assessments related to 1957-58 and were made respectively

on October 15, 1959, August 15, 1964, and October 18, 1961, in all the other writ petitions assessments were made after the amendment of the Central Act and, therefore, the question squarely arises in all these petitions as to whether the Supreme Court decision is applicable to assessments made in respect of the assessment year 1958-59 onwards. The Supreme Court decision was rendered in a case which was governed by Section 15 as it stood prior to the amendment in 1958. That section, prior to the amendment by Act 16 of 1957, ran thus :

Notwithstanding anything contained in the sales tax law of any State, the tax payable by any dealer under that law in respect of any sale or purchase of declared goods made by him inside the State shall not exceed two per cent, of the sale price thereof, and such tax shall not be levied at more than one stage in a State.

26. This section was applicable for the assessment year 1957-58. It will be observed that in regard to declared goods, the normal power of the State to tax in regard to the sales or purchases of all commodities within their respective territories was circumscribed by the introduction of certain restrictions.

27. Section 15 after the amendment in 1958 reads as follows :

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent, of the sale or purchase price thereof, and, such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

28. This provision, it appears, is directed to give effect to the levy imposed by the Central Sales Tax Act in respect of declared goods which have been taxed both under the State law as inside sales and also by the Centre as inter-State sales. In such a case, the Central tax should prevail and the State tax will have to be refunded to the person entitled to it as provided by or under the State law. A comparison between the provisions of Section 15 before and after the amendment would show that under the old section there was no indication that the State as well as Centre can levy tax on a particular commodity. Nor is there any provision that in such a case the Central tax should prevail and the State tax should be refunded. This aspect of the matter was not at all considered, and could not have fallen for consideration, by the Supreme Court in the Mysore case. That case therefore cannot govern the assessment for the year of assessment 1957-58 in respect of declared goods. A similar question came to be

considered by the Madras High Court in *Khader and Co. v. State of Madras* 1966 17 S.T.C. 396 where a Bench of that court consisting of Veeraswami and Kailasam, JJ., after referring to the decision of the Supreme Court in the Mysore case as also the amendments to Section 15 and the provisions of the Madras General Sales Tax Act, held that the Supreme Court in that case was concerned with an assessment for the year 1957-58 under the Central Sales Tax Act, 1956, as it stood prior to the amendment in 1958 and that therefore the principle of that decision does not apply to a case concerning assessment year 1958-59 onwards. At page 403 Veeraswami, J., speaking for the Bench observed :

Section 15, as it now stands, clearly visualises that where sales of declared goods are to be taxed only at a single point under the legislative policy of the State, the levy at the stage of inter-State sales should prevail and the levy at the earlier stage should be refunded. Section 15 is a restriction on the scope of the State law to that effect. The levy under the State law is made by Section 15 subject to the restriction and condition of refund in a particular contingency, namely, the same goods being also the subject-matter of inter-State sales charged to tax.

29. After referring to Sections 3, 4 and 6 and the proviso to Section 4 of the Madras General Sales Tax Act, prior to its amendment in 1963, which was re-enacted as Section 4-A(1) in identical terms, the learned Judge pointed out that the scheme of those Sections in the context of that case was "so far as the goods mentioned in Schedule I are concerned, their sales are liable to levy both under the State Act as well as the Central Act. But in the case of declared goods mentioned in Schedule II, though levies may be made under both the Acts, the levy under the State Act is liable to be refunded." The learned Judge proceeded to state : "Having regard to this scheme, therefore, the charging provisions in the State Act read with the other provisions we have referred to themselves make it clear that in the case of declared goods the Central charge will prevail and the State tax should be refunded. This result is inherent in the provisions of the State Act itself. In this respect, the Mysore Sales Tax Act as it stood prior to 1958 was entirely different. That Act as it was before the Supreme Court in the *State of Mysore v. Lakshminarasimhiah Setty and Sons* 1965 16 S.T.C. 231 as far as we are able to see, did not make provisions like the proviso to Section 4 and Section 6. We are of the view, therefore, that taking that "levied" in Section 9(1) and (2) of the Central Act is related to the levy under the State Act, the levy under the State Act, in the light of the provisions we have read, is subject to the limitation that it is liable to be refunded in case there is a levy of Central tax on inter-State sales of the same goods. The result is, that applying the interpretation which found favour with the Supreme Court, we hold that, having regard to the special provisions under the Madras General Sales Tax Act, 1959, and Section 15 as it is in force today in the Central Act, the charge under the Central Sales Tax Act is valid and the tax paid pursuant to it is not liable to be refunded."

30. With great respect, we are in entire agreement with the conclusions of the Bench arrived at on the reasoning given by the learned Judge. The Andhra Pradesh General Sales Tax Act also has analogous provisions in Section 5 and Section 6 which contains a similar proviso. Sub-section (1) of Section 5, which is the charging section, levies tax on every dealer whose total turnover for a year is not less than Rs. 10,000. Sub-section (2)(a) and (b) however direct that sales of goods mentioned in the First or Second Schedule as the case may be shall be taxed only at the rates and at the point of the sale specified as applicable thereto, effected in the State by the dealer purchasing them, on his turnover of purchase in each year relating to such goods irrespective of the quantum of turnover. Section 6 is as follows:

Notwithstanding anything contained in Section 5, the sales or purchases of declared goods by a dealer shall be liable to tax at the rate, and only at the point of sale or purchase, specified against each in the Third Schedule on his turnover of such sales or purchases for each year irrespective of the quantum of his turnover in such goods; and the tax shall be assessed, levied and collected in such manner as may be prescribed :

Provided that where any such goods on which a tax has been so levied are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded, to such person in such manner and subject to such conditions as may be prescribed.

31. In our view also, the decision of the Supreme Court in the Mysore case does not make the levy of tax after the amendment an illegal or void levy. Nor is there any mistake of law apparent on the face of the record or otherwise.

32. In so far as non-declared goods are concerned, the scheme of tax, as was observed by the Madras High Court in *Khader and Co. v. State of Madras* 1966 17 S.T.C. 396 has to be looked into. As has been pointed out by Veeraswami, J. :

The single point scheme of taxation cannot be taken in the abstract but has to be understood in the light of the statutory provisions both in the Central Act as well as the State Act.

33. At any rate, the Supreme Court in the Mysore case was laying down a principle of interpretation of the Central Act which is applicable in dealing with the determination of the rate also. This matter came up for consideration before a Bench of this court in *State of Andhra Pradesh v. Oruganti Venkateswarlu and Bros* 1967 20 S.T.C. 340 in which the assessee contended that inter-State sale of rice was leviable at the rate of 1 per cent, only, but the department was of the view that as rice was subject to tax generally at 4 per cent, under the Andhra Pradesh Act, the proper rate on interState sales of rice was 2 per cent. The Tribunal accepted the plea of the assessee and remanded the appeals to the assessing authority to determine whether the rice turnover was the yield from paddy that had already suffered tax or not. The Bench, to which one of us, (the Chief Justice) was a party, held that the rice from paddy which has not been

subjected to tax and rice from paddy which had already been subjected to tax had to be taxed at different rates and with respect to each category tax could be said to be generally at that rate; that the word "subject to tax generally" in Section 8(2-A) of the Central Act did not exclude from the purview rice obtained from paddy that had already been subjected to tax at 3 per cent, under the Andhra Pradesh Act, and hence, by virtue of Section 8(2-A) of the Central Act read with item 66(b) of Schedule I of the Andhra Pradesh Act, inter-State sales of rice obtained from paddy that had already suffered tax at 3 per cent, was exigible to tax at 1 per cent, and not at two per cent. In respect of non-declared goods, therefore, though the principle in *State of Mysore v. Lakshminarasimhiah Setty and Sons* 1965 16 S.T.C. 231 will apply, it cannot be said that the petitioners got knowledge of the mistake of law only after the decision of this court in *State of Andhra Pradesh v. Oruganti Venkateswarlu and Bros* 1967 20 S.T.C. 340 on 31st March, 1967. The question whether paddy had been subjected to tax or not and rice was shelled out of such paddy will be a matter in controversy between the department and the assessee, and until that is decided, which can only be done by the hierarchy of tribunals under the Act, it cannot be said that the tax levied was levied under a mistake of law, entitling the petitioners to a refund in these petitions. This principle will be applicable to the other non-declared goods also. Both for this reason, as also for the reason, in respect of all the petitions including the three petitions dealing with assessments of 1957-58 as there has been a long and unreasonable delay without there being any exceptional circumstances, to condone it, we dismiss these writ petitions with costs. Advocate's fee Rs. 25 in each petition.

1. Annexure omitted.-Ed.