

(1978) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil MiscWrit Petition No. 1961 of 1970

Prem Cables Pvt. Ltd.

APPELLANT

Vs

Assistant Collector (Principal Appraiser) Customs and Others

RESPONDENT

Date of Decision : 06-09-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 21
Constitution (Fifteenth Amendment) Act, 1963 — Section 8
Constitution of India, 1950 — Article 136, 19, 226, 226(1A), 32
Contract Act, 1872 — Section 72
Customs Act, 1962 — Section 12(1), 128, 131, 2, 25
Evidence Act, 1872 — Section 106
Finance Act, 1964 — Section 57(1)
Finance Act, 1965 — Section 26(1), 76(1), 77
Limitation Act, 1908 — Article 24, 62, 96
Limitation Act, 1963 — Section 17(1)
Sea Customs Act, 1878 — Section 23
Tariff Act, 1936 — Section 2, 2A, 2A(1), 2A(2)

Citation : (1981) 8 ELT 440 : (1978) 11 WLN 481

Hon'ble Judges : S.K. Mal Lodha, J;M.L. Joshi, J

Bench : Division Bench

Advocate : H.M. Parakh, for the Appellant; R.N. Munshi, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—These are eight writ petitions under Article 226 of the Constitution of India and can be conveniently disposed of by a single judgment as they have been heard together and the questions involved in all of them are the same.

2. It will suffice to state the facts in Writ Petition No. 1961 of 1970. The petitioner in connection with its business of manufacture of Aluminium Conductor Steel Reinforced and all Aluminium Conductors, imported Electrolytic Grade Aluminium Wire Rods which were not extruded from outside India. One such consignment was imported under Bill of Entry No. 2431, dated July 7, 1965. The

consignment consisted of 9.165 M. T. of Electrolytic Grade Aluminium Wire of 90% to 99.5% purity and 3" diameter. These goods were cleared from the Customs at Bombay and at the time of clearance, the Assistant Collector (Principal Appraiser) Customs, Bombay levied duties as under,-

Customs Duty 16 1/2% Countervailing Duty Rs. 396 per M.T.

3. The petitioner paid the above duties. The petitioner has no grievance so far as the payment of customs duty at 16 1/2% on the above consignment is concerned but according to the petitioner, the countervailing duty at Rs. 396 per M.T. was levied and collected by the Assistant Collector (Principal Appraiser) Customs, Bombay on a mistaken impression that it was leviable u/s 2A of the Indian Tariff Act, 1936 (hereinafter to be referred to as "the Act") in respect of these goods and this being a bilateral mistake, neither the department nor the petitioner disputed this levy. The petitioner has submitted Bill of Entry dated July 7, 1965 with the writ petition and that has been marked Ex. 1. The petitioner further states that the Collector of Customs issued a public notice No. 170/67, dated October 15, 1967 containing the decision of the Central Board of Excise and Customs with regard to the levy of countervailing duty on Electrolytic Grade Aluminium Wire Rods and clarified that Electrolytic Grade Aluminium Wire Rods other than extruded are not covered by any of the items in the Central Excise Tariff and as such, they are not on import, leviable to additional duty u/s 2A of the Act. The public notice relied upon by the petitioner runs as follows : -

"Public Notice No. 170/67:-

Sub : No. 3 countervailing duty-E.C. Grade Aluminium wire rods, other than extruded levy of additional duty u/s 2A of the Indian Tariff Act.

The decision of the Central Board of Excise and Customs on the above subject is reproduced below for information of Importer, Clearing Agents and the Public : -

"E. C. Grade Aluminium Wire Rods, other than extruded are not covered by any of the items in the Central Excise Tariff and accordingly they are not, on import, liable to additional duty u/s 2A of the Indian Tariff Act."

[Letter No. F. 16/16/67-Cus. I(pt) dated 15th September, 1967 from Central Board of Excise and Customs, New Delhi.]

Sd/- B. Sen Collector of Customs. C.II/402/67-A Customs House Madras dated 15-10-67 Sd/- K.J. Raman Assistant Collector of Customs."

4. As soon as, and immediately after the petitioner became aware of the aforesaid public notice, it preferred its claim on December 25, 1967 before the Principal Appraiser of Customs for the refund of the countervailing duty at Rs. 396/- per-M.T. in respect of 9-165 M.T. which was collected by the Assistant Collector (Principal Appraiser) Customs, Bombay and paid by the petitioner under a mistake as no such duty was leviable in law. The Principal Appraiser of Customs considered the claim of the petitioner and by his order dated January 30, 1968,

despatched on January 31, 1968 and received by the petitioner on February 3, 1968 rejected the claim holding that the application for the refund of duty was time barred u/s 27(1) of the Customs Act, 1962 (for short, "the Customs Act") as the same was not received within six months from the date of payment i.e. July 7, 1965. The order of the Principal Appraiser of Customs has been submitted by the petitioner along with the writ petition and has been marked Ex. 2. It bears the endorsement "Copy forwarded for information to M/s. Prem Cables Private Limited, Post Office Pipalia Kalan via Beawar, Rajasthan with reference to their letter No. PCPL PIP (84)/67/2915, dated 25-12-67 with nil enclosures". This order was received at Pipalia Kalan, District Pali, Rajasthan, on February 3, 1968. After the receipt of the order of Principal Appraiser of Customs, the petitioner preferred an appeal against that order before the Appellate Collector of Customs on April 2, 1968. The Appellate Collector, Customs, Bombay (respondent No. 2) rejected the appeal holding that the provisions of Section 27(1) of the Customs Act are mandatory and could not be relaxed and in this view of the matter, he confirmed the order of the Principal Appraiser of Customs and rejected the appeal on April 26, 1968. The copy of the order of the Appellate Collector, Customs, Bombay has been placed on record by the petitioner and has been marked Ex. "3. The copy of the order was forwarded for information to the petitioner at Pipalia Kalan via Beawar, Rajasthan, which was received on May 4, 1968. Thereafter, the petitioner filed a revision application against the order of the Appellate Collector, Customs, Bombay before the Joint Secretary to the Government, Ministry of Finance, Department of Revenue, New Delhi. By a consolidated order dated November 28, 1969 reproduced in Schedule A appended to the writ petition, the Government of India rejected the revision application. As the issue involved in the five revision applications preferred by the petitioner was the same, it was mentioned that the levy of Rs. 360/- or 396/- per M.T. does not represent any countervailing duty but was, in fact, part of the basic customs duty in terms of the exempt notifications mentioned in the order. In this view of the matter, it was observed that the petitioner's grievance was misconceived and no refund is due to the petitioner even on merits. It may be stated here that specific finding in regard to the objection that the application for refund was time-barred was not given. The copy of the order passed in revision was also forwarded to the petitioner at Pipalia Kalan via Beawar, Rajasthan. The petitioner has challenged the orders Ex. 2, Ex. 3 and the order reproduced in Schedule "A" on the ground that the orders suffered from error apparent on the face of the record inasmuch as the duty of Rs. 396/- per M.T. levied is only a countervailing duty u/s 2A of the Act and it is not basic duty as held by the Commissioner, Revision Applications, Government of India. According to the petitioner, this statement is erroneous and not based on the correct legal position as none of the notifications relied on by the Revisional Authority lends support to the conclusion to which the Revisional Authority has arrived at inasmuch as neither of these notifications provide that the duty of Rs. 396/- per M.T. is a basic duty nor is there any exemption provided in respect of the duty leviable u/s 2-A of the Act. As regards the question of limitation, the contention of the petitioner

is that Section 27 of the Customs Act has no application to its case, for, the levy and recovery of duty of Rs. 396/- per M.T. was not under the provisions of any Act and as such, it was illegal and the Customs authorities were not entitled to retain illegal collection. The bar of making a claim for refund within six months from the date of collection is not applicable in this case. The case of the petitioner further is that Section 27 of the Customs Act is ultra vires of the provisions of Article 19(f) of the Constitution of India.

5. In these circumstances, the petitioner has prayed that an order direction or writ including the writ in the nature of certiorari or mandamus be issued and the orders of (i) Principal Appraiser of Customs, Bombay dated January 30, 1968 (Ex.2) (ii) the Appellate Collector of Customs, dated April 4, 1968 (Ex. 3) and (iii) the Commissioner, (Revision Applications), Government of India, dated November 28, 1969 (reproduced in Schedule "A") be quashed and the respondents be ordered to allow the claim of the petitioner. In the alternative, it has been prayed that respondent No. 3 be directed to determine the question of limitation u/s 27 of the Customs Act and thereafter to decide the revision application preferred by the petitioner afresh. This writ petition was presented in this Court on July 14, 1970.

6. The respondents have contested this writ petition by filing a reply to it, the copy of which was delivered to the learned counsel for the petitioner on January 10, 1978. It was denied that any countervailing duty (S Rs 396/- per M.T. was charged from the petitioner. The following customs duty was levied by the Assistant Collector on the consignment of Electrolytic Grade Aluminium Wire consisting of 9.165 M.Ts. :-

16i%(15%+10% ad valorem)

10% regulaory duty and

Rs. 396 (Rs. 360+10% of Rs. 360 i.e. Rs. 36 per M.T.).

Thus, the aforesaid entire amount charged was Customs duty and not countervailing duty. Section 2A of the Act was not invoked in the levy of Customs duty on the aforesaid consignment. Reliance was placed on Notification No. 89-Customs, dated July 7, 1962, No. 82-Customs, dated March 1, 1963, No. 171-Customs, dated July 27, 1963 and No. 136-Customs dated October 3, 1964. In the said Notifications so amended, Aluminium" Rods Electrolytic Aluminium Wires and Electrolytic Aluminium Ingots were imported" for the manufacture of Aluminium Conductors, Steel Reinforced or hard drawn Standard Aluminium Conductors for overhead power transmission purposes are exempt from the payment of so much of the Customs duty levied thereon under the Act as in excess of 15% ad valorem and Rs. 360 per M.T. Besides this the goods were further chargeable to regulatory duty of 10% then in force levied u/s 77 of the Finance Act, 1965. The duty @ Rs. 360 per M.T. was levied by the Central Government in exercise of the powers u/s 25 of the Customs Act as Customs duty. The respondent denied that the provisions of Section 27 of the Customs Act

are ultra vires of the provisions of Article 19(f) of the Constitution of India. It was contended that the provisions of Section 27 of the Customs Act are mandatory and the claim petition which the petitioner had filed with the Principal Appraiser of Customs, Bombay, was barred by time and it was rightly rejected by the authorities concerned. In the additional pleas four grounds were taken by the respondents. They are, (1) that the petitioner has claimed the refund of the additional Customs duty at Rs 396 per MT in regard to the goods imported by it from outside and received by it at Bombay. The aforesaid duty was levied vide Ex. 1 by the Principal Appraiser of Customs Bombay, and as such, the cause of action, if any, arose in favour of the petitioner at Bombay and for that reason, the Bombay High Court can only entertain and decide the matter involved in this writ petition. In other words, the case of the respondents is that no cause of action of any kind whatsoever in the present matter arose within the jurisdiction of this Court and hence, this court has got no jurisdiction to hear and decide the present writ petition; (2) that the petitioner paid the Customs duty of Rs. 3629.34 on the goods imported by it to the Customs Department at Bombay in regard to which, he preferred the refund claim on July 7, 1965. The present writ petition was submitted on July 14, 1970 (the amended writ petition was filed on January 11, 1971) when the limitation for claiming the refund under the ordinary law of limitation had expired. Thus, on this ground also, the writ petition deserves to be dismissed; (3) that the petitioner has challenged the vires of the provisions of Section 27 of the Customs Act. Since the Act is a central law and under the amended provisions of the Constitution, it is only the Supreme Court which is empowered to hear and decide such matters, therefore, the writ petition for this reason is not maintainable in this Court; and (4) that the petitioner had an alternative remedy of suit for claiming the refund. If he is aggrieved by the decisions of the Customs Authorities, he should have pursued his remedy by instituting a suit. It was, therefore, prayed that the writ petition should be dismissed.

7. Mr. R.N. Munshi learned counsel for the respondents, in the first instance, argued that no cause of action on any count in this case arose within the territory of Rajasthan and hence, this Court has got no jurisdiction to hear and decide the writ petition. His contention is that duty was paid by the petitioner at Bombay and that the application for refund was also submitted at Bombay and, therefore, in these circumstances, it cannot be said that any part of cause of action has arisen in Rajasthan. He referred to the prayer made by the petitioner in the writ petition to the effect that the orders of respondents Nos. 1, 2 and 3 be quashed, that the respondents may be ordered to allow the claim in respect of the refund of the petitioner and argued that in view of the two reliefs which have been prayed for by the petitioner, the writ petition cannot be heard and decided by this Court. He also submitted that the mere use of Electrolytic Grade Aluminium Rods at Pipalia Kalan in Rajasthan, which were imported from outside India could not give rise to any part of cause of action within Rajasthan as averred by the petitioner in para 12 of the writ petition. He supported the

aforesaid preliminary objection by referring to the decision in Surjuprasad Gumasta and Another Vs. State of Madhya Pradesh and Others, , wherein the Full Bench of the Bombay High Court held that under Article 226 of the Constitution, the jurisdiction of the Bombay High Court to issue writs is confined to the issuing writs on those persons and authorities which are within the territorial jurisdiction of that court. It may be mentioned here that this decision was given prior to the Constitution (Fifteenth Amendment) Act, 1963. He further invited our attention to Lt. Col. Khajoor Singh Vs. The Union of India and Another, , in which their Lordships of the Supreme Court observed that Articles 226 as-it stood then, did not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending upon the place where the cause of action accrued being within its territorial jurisdiction. It was further observed that the proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and live powers of correction to the High Court over persons and authorities and that these special powers have to be exercised with the limits set for them. In these circumstances, it was held by their Lordships of the Supreme Court that the High Court cannot issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories. This decision was also rendered prior to the Constitution (Fifteenth Amendment) Act, 1963, Mr. Munshi also supported the preliminary objection by referring to the judgment of the learned Single Judge of Punjab and Haryana High Court in Hukam Chand Jagan Nath v. Union of India and Ors. ILR (1968) 2 P & H 456, wherein a question arose as to whether an order of confiscation made by the Collector, Howrah can be challenged in the High Court of Punjab and Haryana. The learned Single Judge took the view that the action of the Collector, Howrah cannot be challenged in the proceedings before the High Court of Punjab and Haryana, as, according to him, if the goods are seized at Howrah and were taken possession of by the Collector, the export of foodgrains alone having taken place from the State of Haryana, the Punjab and Haryana High Court had no jurisdiction to quash the orders of confiscation made by the Collector of Howrah. Mr. Munshi further submitted that the matter came to be considered by a Division Bench of the Delhi High Court in Shiv Shankar Lal Gupta v. The Commissioner of Income Tax, Bombay and Ors. AIR 1968 Delhi 295. In that case, cause of action arose in Bombay which is outside jurisdiction of the Delhi High Court where the writ was asked for. The learned Judges took the view that even appropriation of seized money towards tax in Delhi did not give jurisdiction to Delhi High Court. Mr. Munshi drew our attention to Samrendra Nath Roy v. State of West Bengal (1968) 71 C. W.N. 592. Para 24 of the report as under :-

"But even though the concept of "cause of action" has been adopted by the Amendment of 1963, notwithstanding that the Government or authority is located outside the territories of the State, I am of the opinion that the amendment has not done away with the first limitation enunciated in the Election Commission case and has not done away with the inherent limitation of the writ

that it cannot be enforced against a person or authority who is not amenable to its jurisdiction-not being physically present within the territorial jurisdiction of the High Court...."

8. For the purpose of showing whether there has been change in respect of the territorial jurisdiction after the amendment of Article 226 by the Constitution (Fifteenth Amendment) Act, 1963, learned counsel for the respondents referred to Shankar Jayaram and Anr. v. State of Maharashtra AIR 1970 Bern. 295 wherein it was held that the High Court of Bombay could not grant any claim against the State of Madhya Pradesh even after the amendment of Article 226 by Constitution (Fifteenth Amendment) Act inasmuch as no cause of action to claim increase given by M.P. State arose in any part of State of Maharashtra.

8A. Mr. Parakh, on the other hand, submitted that the respondents should not be permitted to take the objection regarding the jurisdiction inasmuch as the respondents have raised their objection after a period of 7 years. The writ petition was filed on July 14, 1970; the respondents were served in 1971 and the reply to the writ petition in which the objection regarding the jurisdiction has been taken, was filed in January, 1978. They may be deemed to have acquiesced and as the objection was not taken at the earliest possible opportunity and there is no allegation of consequent failure of justice, the objection is inconsequential. He placed reliance upon a judgment of this Court in Champalal v. Saligram 1962 RLW 513, wherein while considering the provisions of Section 21, C.P.C., it was held that the objection regarding jurisdiction should be taken at the earliest possible opportunity and if there is no consequent failure of justice, mere taking of objection is inconsequential. Our attention was drawn to Surjit Singh Atwel v. Union of India AIR 1965 Cal. 181, in which it was held that invalid contract cannot be relied upon as constituting part of cause of action. Reference was also made by Mr. Parakh to Shree Bihariji Mills Ltd. Vs. Union of India (UOI), , where the provisions of Section 20, Civil Procedure Code, came up for consideration. It was held therein that the cause of action in that case arose in the district S and no part of cause of action with respect to the stolen bags and bags from which certain quantities were pilfered arose within the jurisdiction of the court at P. In these circumstances, the learned Judges concluded that the court at P had no jurisdiction to try the suit. The learned Single Judge of the Allahabad High Court in The Purtabpore Co. Ltd. Vs. Cane Commissioner, Bihar, New Secretariat, Patna in the State of Bihar and Others, considered the expression, "cause of action, wholly or in part, arises" used in Article 226(1A) of the Constitution. The learned Single Judge was of the opinion that under Article 226(1A) of the Constitution of India, a High Court is competent to issue a writ, direction or order against any government, authority or person situated or residing outside its territorial jurisdiction provided it is established before it that cause of action for the relief claimed arose wholly or partly within its territorial jurisdiction. In that case, it was found that no part of the cause of action for the reliefs claimed arose within the territories of Uttar Pradesh and, therefore, the Allahabad High Court could not entertain the petition. It was also contended before the learned Single

Judge that the communication of the order to the petitioner in that case in U.P. gave rise to a part of cause of action for setting aside that order. In that connection, it was observed that even assuming that the communication of the order in U.P. gave rise to a part of cause of action for setting aside that order, no cause of action in relation to the order passed in favour of R arose in U.P. and even if the order superseding the earlier one is set aside, the order in favour of R would remain in operation and in these circumstances, that by itself would constitute modification of the earlier order and without setting aside the order passed in favour of R, no effective relief could be granted to the petitioner.

9. Article 226 of the Constitution was amended by Constitution (Fifteenth Amendment) Act, 1963. Material portion of amended Article 226 runs as under, -

"...the power conferred by Clause (1) to issue certain writs to any Government, authority or person, may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises...."

While considering the provisions of Section 20, C.P.C., the learned Single Judge of the Calcutta High Court in *Borakar Engineering and Foundry Works Vs. State of Bihar*, held that payment of tax by cheque constitutes a cause of action for a suit for the refund of the same, and that the court of the place where the payment by cheque was made has jurisdiction to try the suit for refund, though under the Statute, the payment to be valid payment has to be made elsewhere by some other mode. The learned Single Judge was of the opinion that in that case there was no reason as to why the plaintiff could not invoke the applicability of the doctrine of part of the cause of action. Mr. Parakh submitted that *Samrendra Nath Roy's case*, (1968) 71 Cal. W.N. 592 was overruled on appeal in *F.M. A. 497 and 363 of 1967* by a Bench decision dated April 30, 1970 of the Calcutta High Court. It was held in *Serajuddin and Co. Vs. The State of Orissa and Others*, that where the orders as to grant and revocation of a mining lease were served within the territorial jurisdiction of a High Court and a part of cause of action arose within its jurisdiction that High Court would have writ jurisdiction with respect to the order (sic) revocation even though the authority revoking the lease and the authority communicating revocation were beyond the jurisdiction of the High Court. Mr. Parakh on the basis of the decision of the learned Single Judge of the Delhi High Court reported in *S.S. Light Rly. Co. Ltd. Vs. The Industrial Tribunal (Central) and Others*, also argued that when the orders under challenge were served on the petitioner at Pipalia Kalan, in Rajasthan, a part of cause of action arose in Rajasthan and, therefore, this Court has jurisdiction to entertain and decide the writ petition. In the Delhi case, some of the hearings of the Industrial Tribunal at Lucknow, on reference made at Delhi, took place in Delhi, and a number of workmen concerned were working in Delhi suburb and the Tribunal's award enforceable by the Central Government was published in Delhi. It was held that a part of cause of action arose in Delhi and as such, the writ petition in the Delhi High Court against that award was

maintainable. In doing so, the learned Single Judge relied on the decision reported in *W.W. Joshi and Others Vs. State of Bombay and Others*, , and *Damomal Kausomal Raisinghani Vs. Union of India and Others*, . Learned counsel for the petitioner invited our attention to the decision in *Dr. P.S. Rao v. The Union Government and Ors.* AIR 1974 Mys. 39, and submitted that cause of action means a bundle of essential facts, which it is necessary for the party seeking relief to prove if traversed by the opposite party, in order to secure the relief prayed for and, therefore, if the petitioner is able to show that at least one of such essential facts required to be proved to secure an order in his favour has arisen within the territory of this Court, it will have jurisdiction to entertain the writ petition. In the Mysore case, AIR 1974 Mys. 39, the petitioner was required to prove in order to secure relief in the writ petition that he was holding the post of Head of Utilisation Research at the Forest Research Laboratory, Bangalore, which was an essential fact, and, therefore, it was held that the cause of action has partly arisen within the territory in respect of which that High Court exercises jurisdiction. The prayer of the petitioner in that case was for a direction to the Union Government to promote him to the post of Director of Biological Research. A preliminary objection was raised on behalf of the Union of India regarding the maintainability of the writ petition in Mysore High Court on the ground that that court had no jurisdiction to entertain the writ petition for issuing any direction to the Union Government as the cause of action has not arisen wholly or in part within the territories in relation to which that High Court exercises jurisdiction.

10. The expression "cause of action" came to be considered by their Lordships of the Supreme Court in *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, , while considering paras 7 and 14 of the Union Provinces High Court (Amalgamation) Order, 1948. Para 36 of the judgment of their Lordships reads as under,-

"...the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order of the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum Covenantes. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have

arisenr partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action."

This came to be considered by the Allahabad High Court in Jagat Nath Wahal and Others Vs. The U.P. State Road Transport Corporation and Others, . It was observed that even if it is possible to hold that a part of the cause of action arose at Lucknow, it did not deprive the Allahabad High Court for entertaining the petition at Allahabad as on the facts and in the circumstances, the respondent No. 1 in that case had the choice to institute proceedings either at Allahabad or at Lucknow. Reliance was placed on the following paragraph which has been quoted in this decision,-

"Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad Fifth, a criminal case...."

11. Mr. Parakh further arguea that the matter pertains to the recovery of illegal tax and refund thereof and, therefore, the common law principle of "debtor must seek the creditor" applies. Since the refund is to be made to the petitioner whose head office is at Pipalia Kalan in Rajasthan, this court has jurisdiction to entertain and decide the writ petition. In Union of India (UOI) Vs. Bhagwan Industries Ltd., it was held that where the deposit is made in advance, there is evidently an implied agreement that the amount deposited would be refundable, if not appropriated, and the depositee becomes a debtor for the purpose of repayment of the money to the person entitled to get back the deposit and as such, under the circumstances, the depositee is liable to made the refund at the place where the depositor resides. Reliance was also placed upon AIR 1927 156 (Privy Council) , Firm Bilasrai Mannalal Vs. Frim Purshottam Dass Sanwaldass and Another, . Balloram and Anr. v. Firm Seth Uttamchand Bishamdas ILR (1960) Raj. 1123 and Ram Bhagat Somani v. Kanhaiyalal Jainarain Tambi 1973 RLW 142. We may, in passing observe here that Mr. Munshi, learned counsel for the respondents submitted that the common law principle that debtor should find the creditor does not apply in the facts and circum tances of this case as the Notification No. GSR..., dated February 9, 1963 specifically lays down as to before whom the application for refund is to be made.

12. We have given our anxious and thoughtful consideration to the rival contentions of the learned counsel for the parties relating to the question of

jurisdiction. In this case, it is not necessary to examine these contentions in detail, for, we are of the opinion that the orders of (i) Principal Appraiser of Customs, Bombay dated January 30, 1968 (Ex. 2), (ii) The Appellate Collector of Customs dated April 4, 1968 (Ex. 3) and (iii) the Commissioner (Revision Applications), Government of India dated February 28, 1969 (reproduced in Schedule "A") were all forwarded to the petitioner at Pipalia Kalan in Rajasthan and they were received by the petitioner at Pipalia Kalan in Rajasthan. A Division Bench of the Madras High Court in *L.V. Veeri Chettiar v. Sales Tax Officer, Bombay* AIR 1971 Mad 155, after taking note of Article 226(1A) of the Constitution of India, observed as follows,-

" Cause of action" has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place which is a seat of the High Court, then such High Court has the power to exercise all the powers conferred on it under Article 226(1A) notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose act has created a cause of action as a whole or in part, is situate outside its territorial limits. The person primarily affected by the respondent issuing the notices from time to time to the petitioners and calling upon them to produce the accounts of their business carried on in the State of Tamil Nadu and again by proposing to assess them to the best of his judgment on the assumption of certain jurisdictional facts is the addressee of such notice and such affection relates to the bundle of facts in the totality of the list or proceeding concerned, and such impact necessarily gives rise to a cause of action, though it may be in part. It is established that in fiscal laws a proposal to assess forms part and parcel of the machinery of assessment and thus understood, the service of notice to assess and calling upon the petitioner to explain has given rise to a cause of action as is popularly and legally understood and the machinery of assessment has been set in motion and the impact of that motion is felt by the petitioners within the territorial limits of this State. We have therefore no hesitation in holding that a part of the cause of action has arisen in the State of Tamil Nadu."

13. A special Bench of the Bombay High Court in *Gopal Vinayak Godse Vs. The Union of India and Others*, , also examined the expression "cause of action wholly or in part arises" used in Article 226(1A) of the Constitution. In that case, the order of forfeiture was passed by the Delhi Administration but the learned Judges were of the view that it could make no difference because under Cl. (1-A) which was inserted in Article 226 by Section 8 of the Constitution (Fifteenth Amendment) Act, 1963, the power conferred on the High Court by Cl. (1) can be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of the Government to which a direction, order or writ is to be issued is not within those territories. In that case, the copies of the book were seized in Poona in pursuance of the order of forfeiture passed by the Delhi Administration and, therefore, it was held that a part of the

cause of action had arisen in the territory in relation to which the Bombay High Court exercises jurisdiction. A matter, somewhat similar to the present case, came up for consideration before the Orissa High Court in *The Orissa Mining Corporation Ltd. and Another Vs. The Joint Secretary (Revision Application) Ministry of Finance and Others*, . In that case, the petitioners represented against Anxs. 4 and 4B on June 28, 1972 by two letters Nos. 19253 and 19208 about the assessment of duty under Indian Customs Tariff and also in respect of extra duty for loading. They claimed assessment under item 72(18) of Indian Customs Tariff and objected to assessment under item 72A. Respondent No. 4, however, by his letter dated January 10, 1973 (Anx. 6) rejected the representations and confirmed his demand for repayment of extra duty and revision of reassessment under item 72(18), I.C.T. Aggrieved by Anx. 6, the petitioners preferred two appeals to the Appellate Collector of Customs, respondent No. 2, u/s 128 of the Customs Act, 1962. The Appellate Collector of Customs by his orders dated October 9, 1973 held that designing fees was not chargeable to Customs duty and allowed portion of the appeal but in respect of the other portion of appeal for reassessment @ 10% ad valorem under item 72(18) of the First Schedule to Indian Tariff Act, he confirmed the decision of the Assistant Collector of Customs (respondent No. 4). The rejection of the latter part of the appeal was based on the ground that the petitioners having once opted for reassessment under item 72A, had forfeited the right to claim reassessment under item 72(18) of the First Schedule to the Indian Tariff Act. Thereupon, the petitioner filed two revision applications u/s 131 of the Customs Act before the Joint Secretary (Revision Application), Ministry of Finance, Government of India. The Revisional Authority rejected the revision application by one order holding that the machineries in question are not mining machinery within the meaning of item 72(18) of the First Schedule to Indian Tariff Act but he, however, conceded that the ground of the first appellate authority that the petitioners having once opted for assessment under Item 72A could not claim reassessment under Item 72(18) was erroneous and, therefore, the petitioners could claim reassessment of the entire consignments against contracts under item 72(18) provided the consignments were "mining machineries". Being aggrieved, the petitioners filed writ petitions under Article 226 of the Constitution for (a) issuance of a writ in the nature of mandamus, (b) issuance of a writ of certiorati for quashing those orders and (c) issuance of the writ of mandamus directing the respondents to grant refund of Rs. 26,85,460/- realised in excess from petitioner No. 1 and, if necessary, for ascertainment of the amount of refund by the reassessment in accordance with law. A preliminary objection was raised about the lack of jurisdiction of Orissa High Court on the ground that since duty was assessed at Calcutta, contracts were registered at Calcutta, orders of the Customs authorities were passed at Calcutta and Central Government order was passed at New Delhi, no part of cause of action arose within the jurisdiction of that Court. While dealing with this preliminary objection about jurisdiction of the Orissa High Court to hear the writ petition, the learned Judges were of the view that as the application seek to quash the demand notices of the appellate

and the revisional orders by which the claim for refund of excess customs duty paid has been rejected, such excess customs duty was refundable to the petitioner No. 1 in that writ petition, who paid it under a misconception and when the excess customs duty is not refunded, it becomes an amount payable and in case of dispute, converts the parties i.e. the customs authorities and the petitioner into debtor and creditor. They, therefore, held that by operation of the rule "the debtor must find his creditor" as there is no place appointed for payment, the obligation of the debtor to pay the creditor involves the further obligation to find the creditor so as to pay him and in these circumstances, the creditor's known place of residence would be the place at which payment has to be made. The learned Judge also held that as the registered office of the petitioner No. 1 was situated at Bhubaneswar, it may be deemed to reside there where the refund of the excess customs duty was to be made. Therefore, they reached the conclusion that a part of the cause of action arose within the local limits of jurisdiction of the Orissa High Court. They took note of the fact that the disputed demand notices were served on petitioner No. 1 in that writ petition at Bhubaneswar and the appellate orders as also the revisional orders were communicated to the petitioner No. 1, there. They further observed that the appellate and revisional orders, therefore, become effective and binding on the petitioner No. 1 with effect from the date of their communication to it at its head office at Bhubaneswar and furnishes a further cause of action within the local limits of jurisdiction of that court. For these reasons, the learned Judges overruled the preliminary point regarding jurisdiction. We respectfully agree with the view taken by the learned Judges of the Orissa High Court. In the writ petition before us, the orders of (1) the Principal Appraiser of Customs, Bombay, dated January 30, 1968 (Ex. 2); (2) the Appellate Collector of Customs, dated April 4, 1968 (Ex. 3) and (3) the Commissioner (Revision Applications) Government of India, dated November 28, 1969 (reproduced in Schedule A) were forwarded for communication to the petitioner at Pipalia Kalan in Rajasthan where the registered office of the petitioner company is located. In these circumstances, part of the cause of action arose at Pipalia Kalan in Rajasthan which is within the local limits of the jurisdiction of this Court and therefore, this Court has jurisdiction to entertain this writ petition. The first preliminary objection raised, by the learned counsel for the respondents regarding the lack of jurisdiction of this Court to entertain and decide the writ petition is, therefore, overruled.

14. For the purpose of appreciating the other objections raised by the learned counsel for the respondents, it will be useful to examine the merits of the case at this juncture. Mr. Munshi, learned counsel for the respondents submitted that the levy of Rs. 396/- per M. T. does not represent any countervailing duty but was, in fact part of the basic customs duty in terms of the Notification No. 30-Cus., dated March 10, 1962 as amended by Notification No. 126-Cusr, read with Notification No. 144-Cus., dated August 31, 1965 and Notification No. 105-Cus., dated June 6, 1966. The above mentioned notifications relied upon by the

learned counsel for the respondents are extracted below :

"Notification No. 30-Cus., dated 10-3-62 :-

In exercise of the powers conferred by Section 23 of the Sea Customs Act, 1878 (8 of 1878), as in force in India and as applied to the State of Pondicherry, the Central Government hereby exempts electrolytic aluminium ingots when imported into India or the State of Pondicherry for the manufacture of aluminium conductors steel reinforced or all aluminium conductors, from so much of the duty of customs leviable thereon as is in excess of the duty of 15 per cent ad valorem plus the excise duty for the time being leviable on like articles if produced or manufactured in India, and where such duty is leviable at different rates, the highest duty :

Provided.... "

"Notification No. 126-Cus., dated 20-8-65 :-

GSR 1206.-In exercise of the powers.... and in supersession of the

Government of India, Ministry of Finance (Deptt. of Revenue) Notification No. 30-Customs, dated 10th March, 1962, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts electrolytic aluminium billets and electrolytic aluminium ingots when imported into India for the manufacture of aluminium conductors steels reinforced, or hard-drawn stranded aluminium conductors for overhead power transmission purposes, from so much of that portion of duty of customs leviable thereon which is specified in the First Schedule in the Indian Tariff Act, 1934 (32 of 1934) as is in excess of 35 percent ad valorem :

Provided.... "

"Notification No. 144-Cus., dated 31-8-65 :-

GSR 1295.-In exercise of the powers...the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Deptt. of Revenue) No. 126-Customs, dated the 20th August, 1965, namely :-

In the said Notification, for the portion beginning with the words "hereby exempts electrolytic aluminium rods" and ending with the words and figures "as is in excess of 35 per cent ad valorem" the following shall be substituted, namely :-

"hereby exempts the goods specified in column (2) of the Table below when imported into India for the manufacture of aluminium conductors steel reinforced, or hard drawn stranded aluminium conductors for overhead power transmission purposes, from so much of that portion of the duty of Schedule to the Indian Tariff Act, 1934 (32 of 1934) entry in column (3) of the said Table :-

TABLE

S.No. Description of Goods Rate of duty 1. Electrolytic aluminium rods (extruded) 35 per cent ad valorem electrolytic aluminium wire bard, electrolytic aluminium billets, or electrolytic aluminium ingots.

2. Electrolytic aluminium rods 35 per cent ad (other than extruded) valorem plus Rs. 360 P.T."

"Notification No. 105-Cus., dated June 6, 1966 :-

GSR 875.-In exercise of the powers...the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that in the notifications of the Government of India, Ministry of Finance (Revenue Divn.) or in the Ministry of Finance (Department of Revenue) or in the Ministry of Finance...as the case maybe, specified in column (2) of the Table annexed hereto and relating to the articles specified in column (3) thereon, for the entries specified in columns (4) and (5) of the said Table, the entries specified in the corresponding entries in columns (6) and (7) of the said Table shall be substituted :-

S. No. Customs Name of Amendment Notification & Articles For the entry Substitute the following date Standard Preferential Standard Preferntial rate of duty rate of duty rate of duty rate of duty 1 2 3 4 5 6 7 39. 126 dt. Electrolytic alu- 35 per- 15 20.8.65 minium rods cent per (extruded) elect- ad va- cent rolytic alumi- lorem ad va- nium wire, bars, lorem Electrolytic alu- minium billets, or electrolytic aluminium ingots. Electrolytic alu- 35 per 15 per minium rods cent ad cent ad (other than valorem valorem extruded) plus plus Rs. 360 Rs. 306 per Tonne per Tonne 15. Mr. Parakh on the other hand urges that neither these notfications provide that the duty of Rs. 396/- per M.T. is a basic duty nor is there an exemption provided in respect of the duty leviable u/s 2A of the Act. To test the correctness of the submission made by Mr. Parakh, it is necessary to examine various provisions of the Act and the Customs Act. Section 12(1) of the Customs Act is the charging section. It provides as under,-

"12. (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934 (32 of 1934), or any other law for the time being in force, on goods imported into, or exported from, India."

Reference in this section inter alia has been made to the Act. Section 2 of the Act runs as follows :

"2. Duties specified in the Schedule to be levied.-The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules."

The relevant item in the First Schedule to the Act is item No. 66 which is

asunder:-

"THE FIRST SCHEDULE Import Tariff Item No. Name of the Article Nature of duty Standard rate of duty 1 2 3 4 5 6 7

66 Aluminium manufactures of the following, namely :

(a) Plates, sheets, Revenue 40 per cent circles, strips and valorem foil, including foil in any form or size ordinarily used as parts and fittings of tea chests.

(b) other manufactures, Revenue 60 per cent not otherwise ad valorem specified. Item 66(b) is a residuary item. There is no dispute between the parties that it applies to the goods mentioned in the Bill of Entry (Ex. 1) dated July 7, 1965. Section 2A of the Act was inserted by Act No. III of 1963 and it came into force on February 2, 1963. Therefore, on July 7, 1965, Section 2A of the Act was in force. Sub-section (1) thereof provide as under,-

"Any article which is imported into India shall be liable to customs duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India, and if such excise duty on a like article is leviable at any percentage of its value, the customs duty to which imported article shall be so liable shall be calculated at that percentage of the value of that imported article."

This additional duty which is levied by Section 2A of the Act is also known as the countervailing duty. Sub-sec. (2) of Section 2A of the Act provides for its own measure of computing the countervailing duty payable by a person who imports. This duty is equal to excise duty for the time being leviable on a like article if produced or manufactured in India. What is the meaning of the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" is contained in the explanation to Sub-Section (1) of Section 2A of the Act in the following terms,-

"Explanation.-In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs and where such duty is leviable at different rates, the highest duty."

As reference has been made to the excise duty, it is necessary to examine the law relating thereto. Schedule I to the Central Excises and Salt Act, 1944 (hereinafter to be referred to as "the Excise Act") as amended by the Finance Act, 1960 contained item No. 33. Item No. 33(a) mentioned aluminium in any form including ingots, bars, blocks, slabs, billets, sheets and pellets. Item 33(b) mentioned the following aluminium manufactures-blade-sheets, circles, strips and foils in any form or size. In the last column of item 33, the excise duty payable on these goods produced in India was specified. This item 33 was

subsequently modified as item 27 by the Central Excise (Conversion to Metric Units) Act, 1968 but the contents thereof remained the same. Item 27 mentions the following commodities for the purpose of levying the excise duty,

"27. ALUMINIUM-

(a) In any crude form including ingots, Nine hundred and fifty bars, blocks, slabs, billets, shots and rupees per metric tonne pellets.

(b) Manufactures of the following, One thousand four hundred namely plates, sheets, circles and and fifty rupees per metric strips in any form of size, not other- tonne wise specified.

(bb) Foils, that is a product of thickness Two thousand rupees per excluding any backing not exceeding metric tonne 0.15 milimetres.

(c) Pipes and tubes, other than extruded Twenty per cent ad valorem pipes and tubes.

(d) Extruded shapes and sections in- Twenty per cent ad valorem. cluding extruded pipes and tubes.

16. It is clear that none of these sub-items of item 27 mentions the electrolytic grade aluminium rods other than extruded. These sub-items did not apply to the goods mentioned in the Bill of Entry Ex. 1 dated July 7, 1965As such, at the relevant time, the Excise Act did not levy any excise duty upon the goods in question. This is further clear from the fact that for the first time by the Finance Act, 1969, sub-item (aa) was added to item No. 27 in the First Schedule to the Excise Act and it mentions the following articles.-

"Wire bars, wire rods and casting, not otherwise specified."

The excise duty was levied upon them at the rate mentioned against the said sub-items. Therefore, from 1960 until the Finance Act, 1969 came into force, it is clear that the Legislature did not levy any excise duty upon the goods in question. Hence it is only with effect from the date on which the Finance Act, 1969 came into force that the goods of the kind mentioned in the Bill of Entry (Ex. 1) dated July 7, 1965, produced and manufactured in India became liable to payment of Excise Duty and imported goods of all kinds also became liable to payment of additional duty (countervailing duty) u/s 2A of the Act. Though Section 2A of the Act was there the importers of the goods in question were not liable to pay any countervailing duty because there was no excise duty leviable on the goods of that kind manufactured or produced in India under the Excise Act. It is, therefore, clear that during the period when given question were imported by the petitioner in India, there was no countervailing duty leviable on them. This was also realised by the Central Board of Excise and Customs and that is why on October 15, 1967, the public notice was issued which has been reproduced above. The relevant portion of this public notice is as under: -

"Electrolytic grade aluminium wire rods, other than extruded are not covered by

any of the items in the Central Excise Tariff and accordingly, they are not of import leviable to additional duty u/s 2A of the Indian Tariff Act."

17. We therefore, hold that during the relevant period, the goods in question were not liable to the countervailing duty u/s 2A of the Act and as such, it should not have been recovered from the petitioner.

18. The next question that arises for our consideration is as to find out what was recovered from the petitioner. The Bill of Entry (Ex. 1) dated July 7, 1965 not only shows that petitioner had paid the Customs duty u/s 2 of the Customs Act but also the countervailing duty u/s 2A of the Act, Column 9 of the Bill of Entry (Ex. 1) dated July 7, 1965 shows that 16/1/2+10% +Rs. 396/- per M.T. has been charged and thereafter what became payable by the petitioner in this behalf has been mentioned. In this case, the rate mentioned is at Rs. 396/- per M.T. So, from the very face of this bill, it appears that what the customs authorities recovered from the petitioner under this bill was the countervailing duty u/s 2A of the Act, in addition to the customs duty payable u/s 2 of the Customs Act. Mr. Munshi however contends that the assessment made in the Bill of Entry Ex. 1 dated July 7, 1965 does not contain any countervailing duty. Duty charged is ad valorem as prescribed under the Act. It has, therefore, become necessary for us to examine the scheme of exemption granted in respect of certain aluminium goods from time to time. Sub-S Section (1) of Section 25 of the Customs Act provides as follows : -

"25. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the official gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon "

The Customs Act came into force on December 13, 1962. Before that, Sea Customs Act of 1878 was in vogue. Notification No. 30 of 1962, dated March 10, 1962 was issued under that Act by the Government of India granting exemption on electrolytic aluminium ingots when imported into India or the State of Pondicherry for the manufacture of aluminium conductors steel reinforced or all aluminium conductors from so much of the duty of customs leviable thereon as is in excess of the duty of 15% ad valorem plus the Excise duty for the time being leviable on the like item if produced or manufactured in India. This Notification has already been reproduced above. From this Notification, it is clear beyond all manner of doubt that it exempted certain aluminium goods from the customs duty leviable thereon as was in excess of 15% ad valorem and also from the Excise duty for the time being leviable on them! Notification No. 125 of 1965 issued by the Central Government granted exemption to certain aluminium goods from the customs duty as was in excess of 35% ad valorem but did not grant any exemption in respect of countervailing duty computed in terms of excise duty if the latter was leviable on goods manufactured or produced in India. On August 31, 1965, Notification No. 144 of 1965 was issued by the Central Government

by which Notification No. 126 of 1965, dated August 20, 1965 was amended. It granted exemption on Electrolytic All minium Rods other than extruded, from 35% ad valorem plus Rs. 360/-per tonne. The Government of India issued Notification No. 105 of 1966, dated June 6, 1966 by which, amongst others, it maintained the exemption granted on Electrolytic Aluminium Rods (other thau extruded) in the same terms in which it was granted by the Notification No. 126 of 1965, as amended. All these Notifications have been reproduced above.

19. The two duties specified in Section 2 of the Customs Act and Section 2A of the Act are distinct and they have different characteristics. The distinction which has been made in Section 2 of the Customs Act and Section 2A of the Act has to be kept in view while construing the Notifications issued under the Statute. As stated above, the Notifications referred to above were issued from time to time to grant exemption and not to charge any import duty. It is therefore, clear that there was no levy of Excise duty on the goods in question at the relevant time under the relevant provisions of the Excise Act read in the light of the provisions of the Act and, therefore, the amount of Rs. 3629.34 which was charged from the petitioner was nothing but the countervailing duty u/s 2A of the Act which the Assistant Collector (Principal Appraiser) of Customs, Bombay, was not entitled to recover. Venkatdri, J. of the Madras High Court in a batch of writ petitions Nos. 1575 to 1577 of 1965 has observed as under,-

"Though the countervailing duty was originally introduced on the advice of the Tariff Commission, subsequently it was made a statutory duty by introduction of Section 2A of the Indian Tariff Act. But this duty is kept distinct from the customs duty and this would be clearly seen if we look into the proviso to Section 26 (1) of the Finance Act, 1965 and subsequently incorporated in Section 57(1) of the 1964 Act and Section 76(1) of the 1965 Act. These sections by their provisos clearly exempt the countervailing duty u/s 2A of the Tariff Act from the surcharge."

The learned Judge in that judgment further said,-

"...Since I hold that the surcharge of 10% in countervailing duty is not maintainable, the petitioners who have paid the sum under protest when demanded on the ground of short levy are entitled to a refund of the same."

Ismail, J. of the Madras High Court in writ petition No. 1575 of 1967 agreed with the view taken by Venkatdri, J. and held that the surcharge is payable only at 15% ad valorem and not on the sum of Rs. 380/- per tonne which is nothing other than countervailing duty payable by the petitioner u/s 2A of the Tariff Act. A similar view was taken by a Division Bench of the Gujarat High Court in Special Civil Applications Nos. 909 to 911 of 1971 Prem Conductors: Pvt. Ltd. v. The Assistant Collector of Customs, decided on 17/18 March, 1972 wherein it was held that the amount recovered by the Revenue from the petitioners, a refund of which was sought in the writ petitions, cannot be justified. This view was followed by Ram, J. of the Madras High Court in Premraj Gampatraj and Co. v.

The Assistant Collector of Customs, Madras decided on September 14, 1972. We respectfully adopt the reasoning given by the Madras and the Gujarat High Courts in the decisions referred to above and hold that the countervailing duty recovered from the petitioner is not justified as no such duty was leviable in law.

Having held so, we again revert to the other preliminary objections.

20. The next objection raised by Mr. Munshi before us is with regard to the limitation. He has relied in this connection on Section 27(1) of the Customs Act. We may read here the material portion of Section 27(1) of the Customs Act,-

"27. (1) Any person claiming refund of any duty paid by him in pursuance of an order of assessment made by an officer of customs lower in rank than an Assistant Collector of Customs may make an application for refund of such duty to the Assistant Collector of Customs before the expiry of six months from the date of payment of duty :

Provided that the limitation of six months shall not apply where any duty has been paid under protest."

It is not in dispute that when the petitioner preferred its claim on December 25, 1967 before the Principal Appraiser of Customs for the refund of the countervailing duty at Rs. 396/- per M.T. in respect of 9.165 Mts., collected by the Assistant Collector (Principal Appraiser) Customs, Bombay and paid by the petitioner under a mistake, it was beyond a period of six months within the meaning of Section 27(1) of the Customs Act. The Bill of Entry (Ex. 1) dated July 7, 1965 which has been produced with the writ petition shows that following customs duty was levied on the consignment of Electrolytic Grade Aluminium Wire consisting of 9.165 Mts. :-16 1/2 %, 10% regulatory duty and Rs. 396/- per M.T. Rs. 396/- per M.T. was levied u/s 2A of the Act. This levy and collection in that behalf were not justified under any provisions of the Customs Act or the Act or the Excise Act. A reading of Section 27(1) clearly shows that it contemplates payment of duty amongst others by an importer in pursuance of order of assessment made by an officer of Customs. The words "order of assessment" in the context, in our opinion, mean an order of assessment made under the charging statute. u/s 2A of the Act, any countervailing duty could not be levied and, therefore, there could not have been an order of assessment under that Statute. The countervailing duty in the Bill of Entry (Ex. 1) dated July, 7 1965 was *dehors* and *ultra vires* the Statute. The same conclusion is arrived at from the point of view of the Customs Act. When Section 2 is read with item 66(b) of the Act and in the light of the notification issued u/s 25 of the Customs Act, this excess levy is *ultra vires* the Customs Act. In this connection, we may refer to Prem Conductors Pvt. Ltd.'s case (*supra*) in which it was observed, -

"If such an excess amount has been levied and collected, and if it is *ultra vires* the Act, no provisions of the Statute can be marshalled to the aid of the revenue for the purpose of negating the claim of the petitioners and though the petitioners purported to make an application for refund to the Assistant Collector

of Customs and then having been aggrieved by the order they went in appeal and revision to the higher authorities, what they really did was to move the appropriate authorities one after another to get back what was recovered from them without any authority of law. These requests of the petitioner having failed, the petitioner filed this petition here. Since the orders of assessment in any view of the matter were ultra vires and de hors the Statute, in our opinion, the provisions of Statute were not attracted to them. The levy and collection of countervailing duty could not be said to have been made "in pursuance of an order of assessment made by an officer of customs...."

In these circumstances, it was not incumbent on the petitioner to make an application for refund to such duty before the expiry of six months from the date of payment of duty. We, therefore, hold that the provisions of Sub-section (1) of Section 27 of the Customs Act have no application to the instant case.

21. The other objection argued by the learned counsel for the respondents is that the petitioner paid the Customs duty of Rs. 3629.34 on the goods imported by it to the Customs Department at Bombay in regard to which, he preferred the refund claim on July 7, 1965 and the present writ petition was submitted on July 14, 1970 when the limitation for claiming the refund under the ordinary law of limitation had expired and, therefore, on this ground, the writ petition should be dismissed. He further argued that the customs duty was levied and collected on July 7, 1965 vide Ex. 1 and according to the petitioner, it was an illegal recovery and, therefore, the suit for its refund could not be filed after three years from July 7, 1965. As such, the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. In this connection, he referred to a Division Bench decision of this Court in Mubarak Hussain Vs. State of Rajasthan, . Our attention was drawn to para 13 of the report wherein it has been observed,-

"...the point of time when the plaintiff came to know of the mistake under which he had made the disputed payments must be a matter within his special knowledge and u/s 106 of the Evidence Act, it would be for the plaintiff to establish a point like this, rather than for the defendant for whom it would be hardly possible to read the mind of the plaintiff with any precision. Again, as we look at the matter, the plaintiff in enjoyment of his monopoly rights, rightly or wrongly until the 31st of March, 1951 or a few days thereafter and admittedly his monopoly was terminated early in the month of April 1951. We have no doubt therefore, that he should have certainly discovered soon after that the payments made by him upto the 31st of March, 1951 were under a mistake and we cannot possibly accept the view that this realisation came to him as late as the 11th February, 1954. Counting from the date of the discovery of the mistake, thus deductible, the suit would again be clearly barred by time."

22. Mr. Munshi further submitted that as per submissions made in the writ petition, the petitioner became aware of the levy of countervailing duty when the Collector of Customs issued a public notice No. 170/67, dated October 15, 1967

containing the decision of the Central Board of Excise and Customs with regard to the levy of countervailing duty of Electrolytic Grade Aluminium Wire Rods and clarified that the Electrolytic Grade Aluminium Wire Rods other than extruded are not covered by any of the items in the Central Excise Tariff and as such, they are not of import leviable to additional duty u/s 2A of the Act and so the petitioner should have filed writ at the earliest soon after he became aware of the aforesaid public notice but instead, he preferred claim petition for the refund specifically mentioning therein that Section 27 of the Customs Act does not apply to his case. He, therefore, urged that as the present writ petition was submitted on July 14, 1970, it is belated and the petitioner is guilty of laches and lapses and, therefore, it is not entitled to any relief. Our attention was drawn to A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, , in which it was observed that if a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the court dealing with his petition under Article 226 of the Constitution to exercise its discretion in his favour. In this case, it was held by majority that on the whole and taking into account the peculiar circumstances of the case, the High Court did not exercise its jurisdiction improperly in entertaining the writ application or granting the relief prayed for by the respondent and, therefore, no case for interference in the appeal under Article 16 of the Constitution was made out. Reference was made to P.S. Sadasivaswamy v. State of Tamil Nadu 1974 Unreported Judgments (Supreme Court) 654. It was observed therein that,-

"...it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters."

That was a case where a person was aggrieved by an order of promoting a junior over his head and in that connection, their Lordships were of the opinion that a person aggrieved by an order of promoting a junior over his head should approach the court atleast within six months or at the most a year of such promotion. We are tempted to spots the following extract from this judgment,-

"..."...It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of certain length of time...."

Mr. Munshi also placed reliance upon the observations made in para 13 in Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others, ,-

"...Article 226 is not a blanket power, regardless of temporal and discretionary restraints. If a party is inexplicably insouciant and unduly belated due to laches, the court may ordinarily deny redress. And if the High Court has exercised its

discretion to refuse, this Court declines to disturb such exercise unless the ground is too untenable. To awaken this Court's special power gross injustice and grievous departure from well-established criteria in this jurisdiction, have to be made out. In the present case, long years have elapsed not only after the impugned orders but even after the High Court held the taxed income agricultural. The reason for the inaction is stated to be illusory expectation of suo motu modification of assessment orders on representation by the party. The High Court has examined and dismissed the plea and consequently refused relief. We do not think that in so refusing relief on ground of laches the High Court exercised its discretion arbitrarily or improperly...."

23. On the other hand, Mr. Parakh, learned counsel for the petitioner contended that the petitioner is not guilty of laches and delay as he was pursuing the remedies which are provided by the Customs Act and he filed the writ petitions within reasonable time after the rejection of the revision application by the Commissioner (Revision Application), Government of India, New Delhi, as the revisional order reproduced in Schedule A was passed on November 28, 1969. He further submitted that the petitioner became aware of the mistake when he got knowledge of the public notice dated October 15, 1967 incorporating the clarification that EC Grade Aluminium Wire Rods other than extruded were not covered by any of the items in the Tariff and accordingly they are not on import liable to additional duty u/s 2A of the Act, It came to know of the mistake then and thereafter, within three years, the writ petition under Article 226 of the Constitution was submitted to this Court on July 14, 1970. The period prescribed under the Limitation Act, 1963, is three years from the date when the mistake becomes known to the plaintiff and even applying this rule of limitation to the writ petition, it cannot be said that the suit would have become barred on that date. Mr. Parakh referred to Section 17(1)(c) of the Limitation Act, 1963 which will, for the sake of brevity, hereinafter be referred to as the Limitation Act. Section 17(1)(c) of the Limitation Act provides that in the case of a suit for relief from the consequence of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered it. In this connection, he also referred to us to Jain Brothers and Company, Bundi Vs. The State of Rajasthan, , wherein a Division Bench of this Court held that Article 62 of the Limitation Act, 1908 governs suit for money had and received, not only where the defendant may have actually received money for the use of the plaintiff as his agent or in a like capacity, but it also governs suits for money where in it can be rightly postulated that the defendant had received money which he had no right to receive and the receipt whereof by the defendant therefore amounts in law or by a legal fiction to a receipt by him for the plaintiff's use. It may be mentioned here that, that case related to the action for refund of a definite sum of money which was recovered by the defendant State from the plaintiff-appellant by way of Sales-tax and the recovery of which was without any authority of law. It was observed that it can be rightly predicted of such a case that money which was exacted by the defendant from the plaintiff

was immediately returnable to him, that is, at the time of receipt and, therefore, the defendant should be held to have received it in law for the plaintiff's use. Article 62 of the Limitation Act, 1908 was applied. This matter was also considered in Mubarak Hussain's case (Supra). There again, Article 62 was applied. Article 96 of the Limitation Act, 1908 was considered in that case. It was found that the payments made by the plaintiff-appellant from January 26, 1950 upto March 31, 1951 were payment which the defendant State had no right to receive in law and in these circumstances the question arose whether the plaintiff-appellant could avoid the application of Article 62 of the Limitation Act, 1908 or not. The learned Judges agreed with the view expressed in Jain Brothers and Company case (Supra) and held that the suit was rightly held to have been governed by Article 62 of the Limitation Act, 1908. The petitioner made the payment of the countervailing duty at Rs. 396/- per M.T, amounting to Rs. 3629.34 p. on July 7, 1965. The mistake that no countervailing duty could be levied and collected became known to it when the public notice dated October 15, 1967 came to its knowledge, and thereafter it preferred claim on December 25, 1967 before the Principal Appraiser, Customs, Bombay. This claim for refund was reflected on January 20, 1968 vide Ex. 2. The Appellate Collector of Customs, Bombay, rejected the appeal on April 26, 1968 by means of the order Ex. 3 and the revision against the appellate order was rejected by the Commissioner (Revision Applications), Government of India on November 28, 1969 (reproduced in Schedule "A") and thereafter, the present writ petition under Article 226 was filed on July 14, 1970. As held by us above that the payment which the petitioner was called upon to make was the payment by it under a mistake of law with which was intermixed the misconception of law on the part of the customs authorities, the correct position can be realised by the Central Board of Excise and Customs as well as by the petitioner when the public notice dated October 15, 1967 was published. In these circumstances, the question that arises for our consideration is as to whether the claim of the petitioner would be barred by limitation if it were the subject matter of a suit on July 14, 1970 when the writ petition was filed. It was not disputed before us that subject to the question of limitation, money paid under a mistake or coercion may be recovered u/s 72 of the Indian Contract Act. The right to relief for the return of money u/s 72 of the Contract Act extends to money paid under mistake of law, that is, mistake in thinking that the money paid was due when in fact it was not due. This view has been taken in AIR 1949 297 (Privy Council) and Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, . The same view was reiterated by their Lordships of the Supreme Court in the State of Kerala v. Aluminium Industries Ltd. (1965) S.T.C. 689(ker), wherein it was observed,-

"Money paid under a mistake of law comes within the word "mistake" in Section 72 of the Contract Act and there is no question of estoppel when the mistake of law is common to both the assessee and the taxing authority."

In the Limitation Act, 1908, Article 96 provided that in a claim for relief on the

ground of mistake, time began to run from the date when the mistake became known to the plaintiff. In the State of Madhya Pradesh Vs. Bhailal Bhai and Others, and in the State of Kerala's case (1965) S.T.C. 689(ker), it was held that Article 96 applies to a suit for recovery of money paid under a mistake of law. Section 17(1)(c) of the Limitation Act provides that in the case of a suit from the consequences of mistake, the period of limitation shall not begin to run until the plaintiff has discovered the mistake or could with reasonable diligence have discovered it. Article 24 of the Limitation Act provides the limitation for three years for money payable by the defendant to the plaintiff for money received and by defendant for the plaintiff's use and period of limitation commences when the money is received by the defendant. Article 24 is the same as that of Article 62 of the Limitation Act, 1908. Article 24 of the Limitation Act has to be read with Section 17 of the Limitation Act and the result would be the same as that provided in the Limitation Act, 1908 in which Article 96 was there which applied to a suit for recovery of money paid under a mistake of law. We may add that Article 96 was not retained in the Limitation Act, for, a provision was made u/s 17.

24. The petitioner acquired knowledge about the wrong levy and collection of the countervailing duty paid by it when the clarification was published in the public notice No. 170 of 1967 on October 15, 1967. He could institute the suit for the refund of the amount within three years from the date he acquired knowledge. The writ petitions have been filed within three years from the date when the petitioner acquired knowledge that the payment has been made under a mistake of law. Paras 17 and 21 from the State of Madhya Pradesh Vs. Bhailal Bhai and Others, may usefully be quoted,-

"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 action. 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 Court 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 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.

"....Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that 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. This 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...."

25. The same view was taken by their Lordships in *State of Kerala's case*, (1965) S.T.C. 689 and *Gill & Co. Private Ltd. v. Commercial Tax Officer, Hyderabad III*, (1968) 22 S.T.C. 524. Mr. Munshi learned counsel for the respondents, however, referred to the decision in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, , in which the majority view is that even an application under Article 32 of the Constitution should be dismissed on the ground of delay. In the cases before us, this question really does not arise at all as it cannot be disputed that the remedy under Article 226 is discretionary which only means that where there is avoidable delay in a case and the delay affects the merits of the claim the High Court may hold "the party to be disentitled to invoke its extraordinary jurisdiction. We are fortified in our conclusion by *Caltex (India) Ltd., Indore Vs. Assistant Commissioner of Sales Tax, Indore Region, Indore and Another*, . The same which has been taken by us was taken by the Gujarat High Court in the decision referred to above. The petitioner, after acquiring knowledge that the countervailing duty has been paid under a mistake, submitted their claim for refund of the amount on December 25, 1967 before the Principal Appraiser, who rejected it by his order dated January 30, 1968. Thereafter, an appeal was preferred which was rejected on April 26 1968. Against the order of the Appellate Collector, revision was preferred and that revision was rejected vide order dated November 28, 1969. The petitioner was vigilant in exploring all possible avenues to get back the money recovered from it without any authority of law and it exhausted all the remedies but did not get any relief. We, therefore, hold that the writ petition cannot be dismissed merely on the ground of laches and delay. In

Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, , it has been ruled that under an invalid law or arbitrarily without the sanction of law the action has been taken, it is open to the High Court to interfere to avoid hardship to a party and permit him to invoke the extraordinary jurisdiction envisaged by Article 226.

26. Learned counsel for the respondent made reference to para 15 of the writ petition and argued that the petitioner has prayed for issuance of direction or writ including a writ in the nature of certiorari or mandamus for quashing the orders of respondents Nos. 1 to 3, that is, orders Ex. 2, Ex. 3 and the one reproduced in Schedule A and no specific prayer for quashing the Bill of Entry (Ex. 1) which contains the assessment of the duty levied has been made and in the absence of that no writ or direction as prayed by the petitioner can be issued. His contention is that the assessment contained in the Bill of Entry (Ex. 1) will hold good for all purposes and, therefore, in the absence of the prayer for setting aside it, no relief for quashing the three impugned orders can be granted. We regret that this contention of the learned counsel for the respondents cannot be accepted. The petitioner preferred the claim for refunding the amount on December 25, 1967. This refund claim was rejected on January 30, 1968 vide Ex. 2 by the Principal Appraiser, Customs, Bombay. Thereafter, an appeal was filed and the Appellate Collector, vide his order Ex. 3 dated April 26, 1968 rejected the appeal holding that the provisions of Section 27 of the Customs Act are mandatory and hence the order of the Principal Appraiser, Customs, was correct in law. Against the appellate order, a revision was filed and the Commissioner (Revision Applications) rejected the revision application holding that no refund is due to the petitioner. Therefore, the main relief which the petitioner has asked for in the writ petition is for quashing the aforesaid three orders and as such, it has rightly prayed that an order, direction or writ including a writ in the nature of certiorari be issued for quashing the orders.

27. It was next argued by Mr. Munshi, learned counsel for the respondents, that refund of the amount recovered from the petitioner as countervailing duty is the main relief as is clear from para 15 of the writ petition and as such, writ of mandamus cannot be issued. In support of his argument, he has relied on *Suganmal Vs. State of Madhya Pradesh and Others*, . *Mohan Meakin Breweries Limited Vs. Union of India and Others*, , *Daulatram Triloknath v. The State of Punjab and Ors.* AIR 1976 Punjab 304 *State of Punjab v. Amrit Banaspati Co., Ltd.* AIR 1977 Punjab 268 and *Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Patna v. State of Bihar and Ors.* AIR 1978 Patna 126. We have carefully examined these decisions and we have no hesitation in saying that they are not applicable to the cases in hand. The Supreme Court in *Suganmal's* case (*Supra*) has laid down inter alia as under in paragraphs 6 and 9 on which the learned counsel for the respondents laid considerable emphasis,-

"...We are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the

Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is 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 has illegally collected the money as a tax...."

"We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved Party has the right of going to the civil court for claiming the amount and it is 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."

28. in this case, the Supreme Court has distinguished cases in which orders have been issued directing the State to refund taxes illegally collected, pointing out that all such cases had been those in which the petitioners challenged the validity of the assessment and prayed for consequential relief for the return of the tax illegally collected. The Supreme Court observed that they had not been referred to any case in which the courts were moved by a petition under Article 226 of the Constitution simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions, that they did not find any good reason to extend the principle and that they would hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right. In Mohan Meakin's case (Supra), the petitioner challenged the recovery of adjustment of the damages claimed by the respondents out of the amounts due to the petitioner under other pending bills and it was held that the respondents had no power or right to so recover or adjust under the contract. In these facts, it was observed by the Full Bench that the further relief sought by the petitioner by way of payment of the amount due under the pending bills is a definite and independent relief and is not consequential upon aforesaid recovery or adjustment to be held to be without power or right. The observations made in M/s. Daulatram's case (Supra) the "petitioner wherein, the learned Judges observed as under,-

"There is no dispute (...) that the Courts under Article 226 of the Constitution whilst quashing a taxing statute or setting aside an illegal order can grant as a consequential relief the refund of illegally collected taxes or direct the payment of a specific amount of money. The particular issue, therefore, is whether in the absence of any challenge to a statutory provision or order, the relief for the payment of a sum of money simplicitor can be claimed."

29. In the State of Punjab's case (Supra), the learned Judges constituting the Division Bench considered Suganmal's case (Supra) And Daulatram's case (Supra) and after that, made the following observations-

"...There can be no dispute that a relief for refund of tax simplicitor will not be granted by the High Court in the exercise of its discretion under Article 226 of

the Constitution. But a High Court" may order refund of tax as a consequential relief in a proceeding Under the Article 226 of the Constitution in which the validity of the assessment itself is challenged. Sukan Mal's case itself recognises this position. Again where the statute provides for grant of refund of tax under certain circumstances and subject to certain conditions, but the taxing authority evades dealing with the application for refund, we do not see any legal impediment in the way of the High Court issuing a direction to the authority to consider the application for refund and to grant the refund to which the applicant may be found to be entitled."

In the Patna case (Supra), the sole relief asked for by the petitioner was for a writ of mandamus directing the State to refund the duty illegally collected and in that connection, the learned Judges, while relying on Sukanmal's case (supra), observed that when the sole relief asked for is about refund of the duty illegally collected, the ordinarily a petition under Article 226 of the Constitution is not maintainable for the simple reason that such a claim can always be made in a suit and in such a suit it is open to State to raise all possible defences including that of limitation. The learned Judges in the Patna case (Supra) referred to Commissioner of Police, Bombay Vs. Gordhandas Bhanji, wherein it has been held that a writ could be issued for refund of money even if the petitioner's right to refund did not arise under any statutory law but arose under any law. In the present case, the main relief is for quashing the three impugned orders and the consequential relief is for a direction for refund. In *Burmah Construction Co. Vs. The State of Orissa and Others*, , an application was filed before the Orissa Sales High Court amongst others declaring the provisions of Section 14 of the Orissa Sales Tax Act as ultra vires and for quashing the assessment made by the authorities which resulted in illegal realisation of tax as an ancillary relief, the petitioner prayed for direction to the State of Orissa to refund the illegally collected amount of Sales Tax. The writ petition was allowed by the Orissa High Court and a direction to refund the collected tax was also made subject to the rule of limitation mentioned in Section 4 of the Orissa Sales Tax Act. The decision was affirmed by the Supreme Court and it was held that the petitioner's application for refund was founded on the statutory duty to refund as mentioned in Section 19. In *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, , a direction for refund of tax illegally collected was given by way of consequential relief. In *State of Madhya Pradesh and Anr. v. Bhailal Bhai* (Supra) a question arose before their Lordships whether the relief of repayment has to be sought by the tax-payer 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. The following weighty observations were made by their Lordships in that case,-

"This Article empowers the High Court to give relief by way of enforcement of fundamental rights and other rights by issuing directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. According to the petitioners a writ in the nature of

mandamus can be appropriately used where money has been paid to the Government by mistake to give relief by commanding repayment of the same. That in a number of cases the High Courts have used the writ of mandamus to enforce such repayment is not disputed...."

30. Reference may also be made to the Sales Tax Officers Banaras v. Kanhaiyalal Makundlal Saraf (Supra). In that case, the appellant disputed the correctness of the High Court's order made on an application under Article 226 of the Constitution directing refund of tax that had been paid under the Uttar Pradesh Sales Tax Act on the respondents' formal transactions in silver bullion. After the levy of sales tax on such transactions was held to be ultra vires by the High Court of Allahabad, the respondents asked for refund of the tax paid and when he was refused, he applied to the High Court under Article 226 of the Constitution for a writ of certiorari for quashing the assessment orders and a writ of mandamus requiring the appellants to refund the amount illegally collected. The order made in this case by the High Court for refund was affirmed by the Supreme Court in appeal. It is correct that in Firm 4. T. B.'s case (Supra) and the Sales Tax Officer, Banaras case (Supra), the power of the High Court to order such refund was not challenged before the Supreme Court but in State of M.P. v. Bhailal Bhai (Supra), it was clearly laid down that the High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering the repayment of money realised by the Government without the authority of law. As held by us above, the directions for refund of the amount realised by the petitioners is a consequential relief and while quashing the orders Ex. 2, Ex. 3 and that of the Commissioner (Revision Applications), a direction for refund of the amount illegally realised can be given. Such directions were made in the Madhya Pradesh case (Supra) and the Gujarat and Madras cases (Supra). The Madhya Pradesh, Gujarat and Madras High Courts in the aforementioned cases, followed State of M.P. v. Bhailal Bhai (Supra). We, therefore, hold that the consequential relief for the refund of the illegally collected amount should be granted to the petitioner.

31. On consideration of the authorities referred to above and the circumstances of the case before us, we have no hesitation in holding that these are not the cases in which it should be insisted that the petitioner should seek the relief of refund of the amount paid by it by instituting the suits. We are, therefore, clearly of the opinion that the amount of Rs. 3629-34 is being withheld from the petitioner without any authority of law and as the writ petition was filed within three years of the date when the mistake became known to the petitioner, there is no ground for refusing relief to it.

No other point was argued by the learned counsel for the parties for our consideration.

32. The result is that these petitions succeed. We allow these petitions and quash the impugned orders. So far as the amounts claimed by the petitioners in all these eight petitions are concerned, there is no dispute about the quantum. We

also direct the respondents to refund the amounts. The particulars of the impugned orders and the details of the amounts are mentioned in the Schedule appended to this judgment. We, however, leave the parties to bear their own costs.