PETITIONER:
MAHABIR KISHORE & ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT31/07/1989

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
OZA, G.L. (J)

CITATION:
1990 AIR 313 1989 SCR (3) 596
1989 SCC (4) 1 JT 1989 (3) 327
1989 SCALE (2)276

ACT:
Indian Contract Act--Section 72--Suit for refund of money paid by mistake of law----Period of limitation-three years.
Limitation Act 1968--Section 17(1) (c) and Schedule Article 113 Suit for refund of money paid under mistake of law--Period of limitation-Three years--Date of knowledge of particular law being declared void--Date of judgment of the competent court declaring that law void.
Words and phrases: 'Nul ne doit senrichir aux depens des autres' --'Indebitatus assumpsit'--'Aequum et bonum '--Meaning of.

HEADNOTE:
The appellant firm was allotted contracts for manufacture and sale of liquor for the year 1959 and for the subsequent periods from 1.1. 1960 to 31.3.1961 for Rs.2,56,200 and Rs.4,71,900 respectively by the M.P. Govt. who also charged 7-1/2% over the auction money as mahua and fuel cess. As writ petitions challenging the government's right to charge this 7-1/2% were pending in the M.P. High Court, the Govt. announced that it would continue to charge it and the question of stopping it was under consideration of Govt. whose decision would be binding on the contractors. The appellant firm paid for the above contracts a total extra sum of Rs.54,606.00. On 24.4.1959 the M.P. High Court in Surajdin v. State of M.P., [1960] MPLJ 39 declared the collection of 7-1/2% as illegal. Even after this decision the Govt. continue to charge 7-1/2% extra money. Again on 31.8.1961, the High Court of Madhya Pradesh in N.K. Doongaji v. Collector, Surguja, [1962] MPLJ. 130 decided that charging of 7-1/2% by the Govt. above the auction money was illegal. Appellants came to know of this decision only in or about September, 1962.
On 17.10.1964 the appellants gave a notice under section 80 C.P.C. to the Govt. of Madhya Pradesh requesting for the refund of Rs.54,606.00. failing which a suit for recovery would be filed and later they instituted a civil suit in the court of additional District Judge, Jabalpur on 24.12.1964. The Govt. resisted the suit inter alia on the ground of limitation. The Trial Court held that the suit was barred by

597
limitation and dismissed it. The High Court also dismissed the appeal. The appellants then came up in appeal by special leave. While allowing the appeal and remanding the suit to the Trial Court for decision on merits. This Court,

HELD: 'Nul ne doit senrichir aux depens des autres' No one ought to enrich himself at the expense of others. This doctrine at one stage of English common Law was remedied by 'indebitatus assumpsit' which action lay for money' had and received to the use of the plaintiff'. It lay to recover money paid under a mistake or extorted from the plaintiff by duress of his goods, or paid to the defendant on a consideration which totally failed. On abolition of 'indebitatus assumpsit', courts used to imply a promise to pay which, however, in course of time was held to be purely fictitious. [601G-602A]

Courts is England have since been trying to formulate a juridical basis of this obligation. Idealistic formulations as 'aequum et bonum' and 'natural justice' were considered to be inadequate and the more legalistic basis of unjust enrichment is formulated. The doctrine of 'unjust enrichment' is that in certain situations it would be 'unjust' to allow the defendant to retain a benefit at the plaintiff's expense. The relatively modern principle of restitution is of the nature of quasi contract. But the English law has not yet recognised any generalised right to restriction in every case of unjust enrichment. [602H-603B]

The principle of unjust enrichment requires; first, that the defendant has been 'enriched' by the receipt of a "benefit"; secondly. that this enrichment is "at the expense of the plaintiff" and thirdly, that the retention of the enrichment be unjust. This justified restitution. Enrichment may take the form of direct advantage to the recipient wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved. [603C-603D]

There is no doubt that the suit in the instant case, is for refund of money paid by mistake and refusal to refund may result in unjust enrichment depending on the facts and circumstances of the case. [604D]

Though there is no constitutionally provided period of limitation for petitions under Article 226, the limitation prescribed for such suits has been accepted as the guideline, though little more latitude is available in the former. [604F]

For filing a writ petition to recover the money paid under a mis-
598
take of law the starting point of limitation is three years is prescribed by Article 113 of the Schedule to the Indian Limitation Act, 1963 and the provisions of S. 17(1)(c) of the Act will be applicable so that the period will begin to run from the date of knowledge of the particular law, whereunder the money was paid, being declared void and this could be the date of the judgment of a competent court declaring that law void. [609B]

Moses v. Macferlan, [1760] 2 Burr. 1005 at 1012; Sinclair v. Brougham, [1914] AC 398; Fibrosa Spolka v. Fairbairn Lawson, [1943] AC 32 = (1942) 2 All E.R. 122; Sales Tax Officer v. Kanhaiya Lal, [1959] SCR 1350; M/s Budh Prakash Jai Prakash v. Sales Tax Officer, Kanpur, [1952] ALJ 332; Kiriri Cotton Co. Ltd. v. Ranchhoddas Keshavji Dewani, [1960] AC 192; D. Cawasji & Co. v. The State of Mysore & Anr., [1975] 2 SCR 511; Madras Port 7rust v. Hymanshu International, [1979] 4 SCC 176; Shri Vallabh Glass Works Lid. v.

Union of India, [1984] 3 SCR 180; Commissioner of Sales Tax, U.P.v. M/s. Auriaya Chamber of Commerce Allahabad, [1986] 3 SCC 50; Sales Tax Officer v. Budh Prakash Jai Prakash, [1954] 5 STC 193; Salonah Tea Co. Ltd. & Ors. v. Superintendent of Taxes, Nowgong & Ors., [1988] 1 SCC 401; Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232; Khyerbari Tea Co. Ltd. v. State of Assam, [1964] 5 SCR 975; Loong Soong Tea Estate's, case decided on July 10, 1973; Suganmal v. State of M.P., AIR 1965 SC 1740; Tilokchand Motichand v. H.B. Munshi, [1969] 2 SCR 824, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1826 (N) of 1974.

From the Judgment and Order dated 6.4.1972 of the Madhya Pradesh High Court in F.A. No. 23 of 1966.

M.V. Goswami for the Appellants.

U.A. Rana and S.K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

SAIKIA, J. This plaintiffs' appeal by special leave is from the appellate Judgment of the Madhya Pradesh High Court dismissing the appeal upholding the Judgment of the trial court dismissing the plaintiffs' suit on the ground of limitation.

A registered firm Rai Saheb Nandkishore Rai Saheb Jugalki-
599
shore (Appellants) was allotted contracts for manufacture and sale of liquor for the calendar year 1959 and for the subsequent period from 1.1. 1960 to 31.3. 1961 for Rs.2,56,200.00 and Rs.4,71,900.00, respectively, by the Government of Madhya Pradesh who also charged 7-1/2 per cent over the auction money as mahua and fuel cess. As writ petitions challenging the Government's right to charge this 7-1/2 per cent were pending in the Madhya Pradesh High Court, the Government announced that it would continue to charge it and the question of stopping it was under consideration of the Government whose decision would be binding on the contractors. The firm (appellants) thus paid for the above contracts a total extra sum of Rs.54,606.00.

On 17.10.1961 the Under Secretary to Government, M.P., Forest Department, Bhopal wrote the following letter No. 10 130-X/61 (Exhibit D-23) to the Chief Conservator of Forests, Madhya Pradesh, Rewa:

> "Subject: Levy of cess on liquor contractors. Under former M.P. Government (Forest Department) memo No. 4595-CR-73-XI dated 25th July, 1953, a royalty at 7-1/2 per cent of the license fee for liquor shops was imposed on liquor contractors to cover the value of mahua & fuel extracted from the reserved or protected forests by the contractors for their still.
>
> 2. The M.P. High Court has since decided that the levy of the aforesaid cess is illegal and the cess cannot be recovered from the liquor contractors. In pursuance of this decision, Government desires that all processes whenever issued or proceedings instituted against liquor contractors for recovery of the mahua or fuel cess should forthwith be withdrawn and no revenue recovery certificates should be issued in respect of this cess.
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> 3. Simultaneously no free supply of

mahua or fuel should be permitted by virtue of the imposition mentioned above.
Immediate compliance is requested.
No ..... X/61 Dt. Bhopal the 661
Copy forwarded for immediate compliance to:
600
1. --Conservator of Forests, Bilaspur.
2. All Divisional Forest Officers, Bilaspur Circle.
3. Copy to C.F. Raipur Circle for similar auction in this cess levied in any division of his Circle."

On 24.4.1959 the Madhya Pradesh High Court's Judgment in Surajdin v. State of M.P., declaring the collection of 7-1/2 per cent illegal was reported in 1960 MPLJ--39. Even after this decision Government continued to charge 7-1/2 per cent extra money. Again on 31.8. 1961 the High Court of Madhya Pradesh in N.K. Doongaji v. Collector, Surguja, decided that the charging of 7-1/2 per cent by the Government above the auction money was illegal. This Judgment was reported in 1962 MPLI-- 130. It is the appellants' case that they came to know about this decision only in or about September 1962. On 17.10. 1964 they served a notice on Government of Madhya Pradesh under s. 80 of the Code of Civil Procedure requesting the refund of Rs.54,606.00, failing which, a suit for recovery would be filed; and later they instituted Civil Suit No. of 1964 in the court of Additional District Judge, Jabalpur on 24.12.1964. The Government resisted the suit on, inter alia, ground of limitation. The trial court taking the view that Articles 62 and 96 of the First Schedule to the Limitation Act, 1908 were applicable and the period of limitation began to run from the dates the payments were made to the Government, held the suit to be barred by limitation and dismissed it. In appeal, the High Court took the view that Article 113 read with s. 17, and not Article 24, of the Schedule to the Limitation Act 1963, was applicable; and held that the limitation began to run from 17.10. 1961 on which date the Government decided not to charge extra 7-1/2 per cent on the auction money, and as such, the suit was barred on 17.12. 1964 taking into consideration the period of two months prescribed by s. 80 of the Code of Civil Procedure. Consequently, the appeal was dismissed. The appellants' petition for leave to appeal to this Court was also rejected observing, "it was unfortunate that the petitioners filed their suit on 24.12. 1964 and as such the suit was barred by time by seven days."

Mr. M.V. Goswami, learned counsel for the appellants, submits, inter alia, that the High Court erred in holding that the limitation started running from 17.16.1961 being the date of the letter, Exhibit D-23, which was not communicated to the appellants or any other contractor and therefore the appellants had no opportunity to know
601
about it on that very date with reasonable diligence under s. 17 and the High Court ought to allow atleast a week for knowledge of it by the appellants in which case the suit would be within time. Counsel further submits that the High Court while rightly discussing that s. 17 of the Limitation Act, 1963 was applicable, erred in not applying that section to the facts of the instant case, wherefore, the impugned Judgment is liable to be set aside.

Mr. Ujjwal A. Rana, the learned counsel for the respondent, submits, inter alia, that 17.10.2961 having been the date on which the Government finally decided not to recover

extra 7-1/2 per cent above the auction .money, the High Court rightly held that the limitation started from that date and the suit was clearly barred under Article 24 or 113 of the Schedule to the Limitation Act, 1963; and that though the records did not show that the Government decision was communicated to the appellants, there was no reason why they, with reasonable diligence, could not have known about it on the same date-

The only question to be decided, therefore, is whether the decision of the High Court is correct. To decide that question it was necessary to know what was the suit for. There is no dispute that 7-1/2 per cent above the auction money was charged by the Government of Madhya Pradesh as mahua and fuel cess, and the High Court subsequently held that it had no power to do so. In view of those writ petitions challenging that power, Government asked the contractors to continue to pay the same pending Government's decision on the question; and the appellants accordingly paid. Ultimately on 17.10.1961 Government decided not to recover the extra amount any more but did not yet decide the fate of the amounts already realised. There is no denial that the liquor contracts were performed by the appellants. There is no escape from the conclusion that the extra 7-1/2 per cent was charged by the Government believing that it had power, but the High Court in two cases held that the power was not there. The money realised was under a mistake and without authority of law. The appellants also while paying suffered from the same mistake. There is therefore no doubt that the suit was for refund of money paid under mistake of law.

The question is what was the law applicable to the case. 'Nul ne doit senrichir aux depens des autres'--No one ought to enrich himself at the expense of others. This doctrine at one stage of English common law was remedied by 'indebitatus assumpsit' which action lay for money "had and received to the use of the plaintiff". It lay to recover

602

money paid under a mistake, or extorted from the plaintiff by duress of his goods, or paid to the defendant on a consideration which totally tailed. On abolition of 'indebitatus assumpsit', courts used to imply a promise to pay which, however, in course of time was held to be purely fictitious. Lord Manslied in Moses v. Macferlan, [1760] 2 Burr. 1005 at 10 12 explained the juridical basis of the action for money "had and received" thus:

> "This kind of equitable action, to recover back money, which ought not in justice to be kept, is very beneficial, and therefore much encouraged. It lies only for money which, 'ex aequo et bono', the defendant ought to refund; it does not lie for money paid by the plaintiff, which is claimed of him as payable in point of honour and honesty, although it could not have been recovered from him by any course of law; as-in payment of a debt barred by the Statute of Limitations, or contracted during his infancy, or to the extent of principal and legal interest upon a usurious contract, or, for money fairly lost at play; because in all these cases, the defendant may retain it with a safe conscience, though by positive law he was barred from recovering. But it lies for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition, (express or implied); or extortion; or oppression; or an undue advan-

> tage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."

In that case Moses received from Jacob four promissory notes of cash each. He endorsed these to Macferlan who, by a written agreement, contracted that he would not hold Moses liable on the endorsement. Subsequently, however, Macferlan sued Moses on the notes in a Court of Conscience. The Court refused to recognise the agreement, and Moses was forced to pay. Moses then brought an action against Macferlan in the king's Bench for money "had and received" to his use. Lord Manslied allowed him to recover observing as above.

Courts in England have since been trying to formulate a juridicial basis of this obligation. Idealistic formulations as 'aequum et bonum' and 'natural justice' were considered to be inadequate and the

603

more legalistic basis of unjust enrichment is formulated. The doctrine of 'unjust enrichment' is that in certain situation it would be 'unjust' to allow the defendant to retain a benefit at the plaintiff's expense. The relatively modern principle of Restitution is of the nature of quasi contract. But the English law has not yet recognised any generalised right to restitution in every case of unjust enrichment. As Lord Diplock has said, "there is no general doctrine of "unjust enrichment" recognised in English law. What it does is to provide specific remedies in particular cases of what might be classed as unjust enrichment in a legal system i.e. based upon the civil law." In Sinclair v. Brougham, [1914] AC 398 Lord Haldane said that law could 'de jure' impute promises to repay whether for money "had and received" otherwise, which may, if made defacto, it would inexorably avoid.

The principle of unjust enrichment requires: first, that the defendant has been 'enriched' by the receipt of a "benefit"; secondly, that this enrichment is "at the expense of the plaintiff"; and thirdly, that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved.

Another analysis of the obligation is of quasi contract. It was said; "if the defendant be under an obligation from the ties of natural justice, to refund; the law implies a debt, and give this action rounded in the equity of the plaintiff's case, as it were, upon a contract (quasi ex contracts) as the Roman law expresses it." As Lord Wright in Fibrosa Spolka v. Fairbairn Lawson, [1943] AC 32--1942 2 All E.R. 122 pointed out, "the obligation is as efficacious as if it were upon a contract. Such remedies are quasi contract or restitution and theory of unjust enrichment has not been closed in English law."

Section 72 of the Indian Contract Act deals with liability of person to whom money is paid or thing delivered, by mistake or under coercion. It says:

> "A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."
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> Illustration (b) to the section is:
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> "A Railway Company refuses to deliver up certain goods to the consignee, except upon

> the payment of an illegal
> 604
> charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive."

Our law having been codified, we have to apply the law. It is true, as Pollock wrote in 1905 in the preface to the first Edition of Pollock and Mulla's Indian Contract and Specific Relief Acts:

> "The Indian Contract Act is in effect ..... a code of English law. Like all codes based on an existing authoritative doctrine, it assumes a certain knowledge of the principles and habits of thought which are embodied in that doctrine."

It is, therefore, helpful to know "those fundamental notions in the common law which are concisely declared, with or, without modification by the text."

There is no doubt that the instant suit is for refund of money paid by mistake and refusal to refund may result in unjust enrichment depending on the facts and circumstances of the case. It may be said that this court has referred to unjust enrichment in cases under s. 72 of the Contract Act. See AIR 1980 SC 1037; AIR 1985 SC 883 and AIR 1985 SC 901.

The next question is whether, and if so, which provision of the Limitation Act will apply to such a suit. On this question we find two lines of decisions of this Court, one in respect of civil sulks and the other in respect of petitions under Article 226 of the Constitution of India. Though there is no constitutionally provided period of limitation for petitions under Article 226, the limitation prescribed for such suits has been accepted as the guideline, though little more latitude is available in the former.

A tax paid under mistake of law is refundable under s. 72 of the Indian Contract Act, 1872. In Sales Tax Officer v. Kanhaiya Lal, [1959] SCR 1350 where the respondent, a registered firm, paid sales tax in respect of the forward transactions in pursuance of the assessment orders passed by the Sales Tax Officer for the year 1949-51; in 1952 the Allahabad High Court held in M/s Budh Prakash Jai Prakash v. Sales Tax Officer, Kanpur, [1952] ALJ 332 that the levy of sales tax on forward transactions was ultra vires. The respondent asked for a refund of the mounts paid, filing a writ petition under Article 226 of
605
the Constitution. It was contended for the Sales Tax Authorities that the respondent was not entitled to a refund because (1) the amounts in dispute were paid by the respondent under a mistake of law and were, therefore, irrecoverable, (2) the payments were in discharge of the liability under the Sales Tax Act and were voluntary payments without protest, and (3) inasmuch as the monies which had been received by the Government had not been retained but had been spent away by it and the respondent was disentitled to recover the said amounts. This Court held that the term "mistake" in s. 72 of the Indian Contract Act comprised within its scope a mistake of law as well as a mistake of fact and that, under that section a party is entitled to recover money paid by mistake or under coercion, and if it is established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the party receiving the money is bound to repay or return it though it might have been paid voluntarily, subject, however, to questions of estoppel, waiver, limitation or the

like. On the question of limitation, it was held that s. 17(1)(c) of the Limitation Act, 1963 would be applicable and that where a suit will be to recover "monies paid under a mistake of law, a writ petition within the period of limitation prescribed, i.e., within 3 years' of the knowledge of the mistake, would also lie." It was also accepted that the period of limitation does not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered it.

The money may not be recoverable if in paying and receiving it the parties were in pan delicto. In Kiriri Cotton Co. Ltd. v. Ranchhoddas Keshavji Dewani, [1960] AC 192, where the appellant company, in consideration of granting to the respondent a sub-lease asked for and received from him a premium of Sh. 10,000 and the latter.claimed refund thereof, the Privy Council held that the duty of observing the law was firmly placed by the Ordinance on the shoulders of the landlord for the protection of the tenant, and the appellant company and the respondent were not therefore in pari delicto in receiving and paying respectively the illegal premium, which, therefore, in accordance with established common law principles, the respondent was entitled to recover from the landlord and that the omission of a statutory remedy did not in cases of this kind exclude the remedy by money had and received. In the instant case also the parties could not be said to be in pari delicto in paying and receiving the extra 7-1/2% per cent. Had the appellants not paid this amount, they would not have been given the contracts.

In D. Cawasji &. Co. v. The State of Mysore & Anr., [1975] 2 SCR 511, the appellants paid certain amount to the Government as
606
excise duty and education cess for the years 195 1-52 to 1965-66 in one case and from 1951-52 to 1961-62 in the other. The High Court struck down the provisions of the relevant Acts as unconstitutional. In Writ Petitions before the High Court claiming refund, the appellants contended that the payments in question were made by them under mistake of law; that the mistake was discovered when the High Court struck down the provisions as unconstitutional and the petitions were, therefore, in time but the High Court dismissed them on the ground of inordinate delay. Dismissing the appeals, this Court held that where a suit would lie to recover monies paid under a mistake of law, a writ petition for refund of tax within the period of limitation would lie. For filing a writ petition to recover the money paid under a mistake of law the starting point of limitation is from the date on which the judgment declaring as void the particular law under which the tax was paid was rendered. It was held in D. Cawasji (supra) that although s. 72 of the Contract Act has been held to cover cases of payment of money under a mistake of law, as the State stands in a peculiar position in respect of taxes paid to it, there are perhaps practical reasons for the law according different treatment both in the matter of the heads under which they could be recovered and the period of limitation for recovery. P.N. Bhagwati, J., as he then was, in Madras Port Trust v. Hymanshu International, [1979] 4 SCC 176, deprecated any resort to plea of limitation by public authority to defeat just claim of citizens observing that though permissible under law, such technical plea should only be taken when claim is not well founded.

Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief of the ground of mistake, the period of limitation does not begin to run

until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.

E.S. Venkataramiah, J., as his Lordship then was, in Shri Vallabh Glass Works Ltd. v. Union of India, [1984] 3 SCR 180, where the appellants claimed refund of excess duty paid under Central Excise and Salt Act, 1944, laid down that the excess amount paid by the appellants would have become refundable by virtue of s. 72 of the
607
Indian Contract Act if the appellants had filed a suit within the period of limitation; and that s. 17(1)(c) and Article 113 of the Limitation Act, 1963 would be applicable.

In Commissioner of Sales Tax, U.P.v. M/s Auriaya Chamber of Commerce Allahabad, [1986] 3 SCC 50, the Supreme Court in its decision dated May 3, 1954 in Sales Tax Officer v. Budh Prakash Jai Prakash, [1954] 5 STC 193 having held tax on forward contracts to be illegal and ultra vires the U.P. Sales Tax Act, and that the decision was applicable to the assessee's case, the assessee filed several revisions for quashing the assessment order for the year 1949-50 and for subsequent years which were all dismissed on ground of limitation. In appeal to this Court Sabyasachi Mukharji, J. while dismissing the appeal held that money paid under a mistake of law comes within mistake in s. 72 of the Contract Act; there is no question of any estoppel when the mistake of law is common to both the assessee and taxing authority. His Lordship observed that s. 5 of the Limitation Act, 1908 and Article 96 of its First Schedule which prescribed a period of 3 years were applicable to suits for refund of illegally collected tax.

In Salonah Tea Co. Ltd. & Ors. v. Superintendent of Taxes, Nowgong and Ors., [1988] 1 SCC 401, the Assam Taxation (on Goods carried by Road or Inland Waterways) Act, 1954 was declared ultra vies the Constitution by the Supreme Court in Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232. A subsequent Act was also declared ultra vires by High Court on August 1, 1963 against which the State of Assam and other respondents preferred appeals to Supreme Court. Meanwhile the Supreme Court in a writ petition Khyerbari Tea Co. Ltd. v. State of Assam, [1964] 5 SCR 975, declared on December 13, 1963 the Act to be intra vires. Consequently the above appeals were allowed. Notices were, therefore, issued requiring the appellant under s. 7(2) of the Act to submit returns. Returns were duly filed and assessment orders passed thereon. On July 10, 1973, the Gauhati High Court in its Judgment in Loong Soong Tea Estate's case, Civil Rule No. 1005 of 1969, decided on July 10, 1973, declared the assessment to be without jurisdiction. In November, 1973 the appellant filed writ petition in the High Court contending that in view of the decision in Loong Soong Tea Estate's case he came to know about the mistake in paying tax as per assessment order and also that he became entitled to refund of the amount paid. The High Court set aside the order and the notice of demand for tax under the Act but declined to order refund of the taxes paid by the appellant on the ground of delay and laches as in view of the High Court it was possible for the appellant to

know about
608
the illegality of the tax sought to be imposed as early as in 1963, when the Act in question was declared ultra vires. Allowing the assessee's appeal, Mukharji, J. speaking for this Court held:

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

The question there was whether in the application under Art. 226 of the Constitution, the Court should have refused refund on ground of laches and delay, the case of the appellant having been that it was after the Judgment in the case of Loong Soong tea Estate, the cause of action arose. That judgment was passed in July, 1973. The High Court was, therefore, held to have been in error in refusing to order refund on the ground that it was possible for the appellant to know about the legality of the tax sought to be imposed as early as 1973 when the Act in question was declared ultra vires. The Court observed:

> "Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally, as a corollary of the said statement of law it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realised from citizens without the authority of law."

On the question of limitation referring to Suganmal v. State of M.P., AIR 1965 SC 1740, and Tilokchand Motichand v. H.B. Munshi, [1969] 2 SCR 824, his Lordship observed that the period of limitation prescribed for recovery of money paid by mistake started from the date when the mistake was known. In that case knowledge was attributable from the date of the Judgment in Loong Soong Tea Estate's case on July 10, 1973. There had been statement that the appellant came to know of that matter in October, 1973 and there was no denial of the averment made. On that ground, the High Court was held to be in
609
error. It was accordingly held that the writ petition filed by the appellants were within the period of limitation prescribed under Art. 113 of the Schedule read with s. 23 of the Limitation Act, 1963.

It is thus a settled law that in suit for refund of money paid by mistake of law, s. 72 of the Contract Act is applicable and the period of limitation is three years as prescribed by Article 113 of the Schedule to the Indian Limitation Act, 1963 and the provisions of s. 17(1)(c) of that Act will be applicable so that the period will begin to run from the date of knowledge of the particular law, whereunder the money was paid, being declared void; and this court be the date of judgment of a competent court declaring that law void.

In the instant case, though the Madhya Pradesh High

Court in Surajdin v. State of M.P., declared the collection on 7-1/2% per cent illegal and that decision was reported in 1960 MPLJ 39, the Government was still charging it saying that the matter was under consideration of the Government. The final decision of the Government as stated in the letter dated 17.10. 1961 was purely an internal communication of the Government copy whereof was never communicated to the appellants or other liquor contractors. There could, therefore, be no question of the limitation starting from that date. Even with reasonable diligence, as envisaged in s. 17(1)(c) of the Limitation Act, the appellants would have taken at least week to know about it. Mr. Rana has fairly stated that there was nothing on record to show that the appellants knew about this letter on 17.10. 1961 itself or within a reasonable time thereafter. We are inclined to allow at least a week to the appellants under the above provision. Again Mr. Rana has not been in a position to show that the statement of the appellants that they knew about the mistake only after the judgment in Doongaji's case reported in 1962 MPLJ 130, in or about September, 1962, whereafter they issued the notice under s. 80 C.P.C. was untrue. This statement has not been shown to be false. In either of the above cases, namely, of knowledge one week after the letter dated 17.10. 1961 or in or about September, 1962, the suit would be within the period of limitation under Article 113 of the Schedule to the Limitation Act, 1963.

In the result, we set aside the Judgment of the High Court, allow the appeal and remand the suit. The records will be sent down forthwith to the trial court to decide the suit on merit in accordance with law, expeditiously. The appellants shall be entitled to the costs of this appeal.

R.N .J. Appeal allowed.

610