
(1963) 08 KL CK 0033
In the High Court Of Kerala

A.A. Beeravoo

APPELLANT

Vs

Collector of Central Excise and Customs

RESPONDENT

Date of Decision : 13-08-1963

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12, 18

Citation : (1965) CriLJ 279

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Naik, J.—The question arising for determination in this writ application is whether Ext. P-1, an order passed by the respondent, the Collector of Central Excise and Customs, Cochin reading-

I accordingly demand from Sri A. A. Beeravoo, L. 5 No. 1/60 Alwaye, duty as well as additional duty on. 8425 lbs. of tobacco illicitly removed from the warehouse at the rate of Rs. 1.20 per lb. under Rule 160 of the Central Excise Rules, 1944. I also impose on Sri A. A. Beeravoo a personal penalty of Rs. 1000/- (Rs. One Thousand only) under Rule 151 ibid. I order the confiscation of the 79 bags of rawa to the Central Government under the same rule. The goods will however be released and made over to the party on payment of a fine of Rs. 800/- (Rs. Eight Hundred only) in lieu of confiscation within one month from the date of receipt of this order" is liable to be quashed.

2. This order came to be passed in the following circumstances. On the 26th of August 1960, the Deputy Superintendent of Central Excise (P and I) Trivandrum accompanied by the Inspector and the Range Officer entered the godown of the petitioner and after inspection prepared a report and mahazar, I said "inspection" because that is the stand taken up by the respondent. According to counsel for the petitioner, this amounted to a "search and seizure" and was not warranted by the Act and/or the Rules. I shall discuss this presently. But to continue the narration, the Deputy Superintendent reported that he found 79 bags containing, what is called tobacco rawa, and 15 bags containing pathi tobacco (which is

unprocessed tobacco) and another 5 lbs. of pathi tobacco on the sieve. He, the Deputy Superintendent, conducted an experiment with 50 lbs. of tobacco taken from the 15 bags containing pathi tobacco with a view to find out what would be the percentage of pathi residue left on processing the pathi tobacco.

According to his report, he came to the conclusion that the processing should yield 18 per cent of pathi residue. After having completed this experiment, he seized the 79-15 bags of tobacco, and took into custody the 5 lbs. residue and locked up all these in a room in the go-down. The petitioner complained about the method adopted and in accordance with the order passed by the Assistant Collector of Customs, Trivandrum, the Superintendent of Excise, Moovattupuzha, was deputed to further investigate the matter. This Superintendent visited the godown of the petitioner on the 16th, 17th and 27th of September 1960. He also submitted a report,

3. It must be mentioned here that both the Deputy Superintendent and the Superintendent from Moovattupussha had determined the weights of the 79 bags of rawa tobacco and the 15 bags of pathi tobacco. The weights recorded by the Deputy Superintendent totalled 10083 lbs. and those recorded by the Superintendent came to 0774 lbs. a difference of over 300 lbs. for which there is no satisfactory explanation.

4. On the basis of these reports, a notice dated 18-3-1961 was issued to the petitioner to show cause why action should not be taken against him under Rule 151 of the Central Excise Rules, 1944. He filed his explanation on 31-5-1961 and the order, Ext. P1, was passed on 27-9-1961, imposing the penalty, ordering the confiscation and charging the petitioner with excise duty at the rate of Rs. 1-20 nP. per Ita. on the 8425 lbs. of tobacco.

5. Counsel for the petitioner has challenged this order, Ext. P-1, on various grounds. He invited my attention to Rule 201 of the Central Excise Rules 1944 and Section 18 of the Central Excises and Salt Act, 1944, and contended that what was done by the Deputy Superintendent amounted to a search and seizure and that in view of Section 18 of the Central Excises and Salt Act, 1944, reading:

18. All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating respectively to searches and arrests made under that Code

the procedure prescribed u/s 163 of the Code of Criminal Procedure, 1898 (Act V of 1898) should, have been followed and said that this had admittedly not been done. Counsel for the respondent relied on Rule 197 and contended that what was done was only inspection, coming within the purview of that rule. He also invited my attention to a notification issued u/s 12 of the Central Excises and Salt Act by which Section 178 of the Sea Customs Act, 1878, had been made applicable to proceedings under the Central Excises and Salt Act, 1944 and went to the extent of submitting that the seizure, if what has been done in this case

amounted to one such, is warranted by the provisions of Section 178 of the Sea Customs Act because the goods that were confiscated were liable to be confiscated. I do not think I am called upon to express any opinion on these contentions in view of the decision of the Supreme Court in Radhakishan Vs. State of U.P., . The Supreme Court said:

So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165, Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that Because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues. The High Court has chosen to accept the evidence of the prosecution with regard to the fact of seizure and that being a question to be decided only by the court of fact, this Court would not re-examine the evidence for satisfying Itself as to the correctness or otherwise of the conclusions reached by the High Court.

Assuming, therefore, that the search and the seizure in this case are illegal, it does not necessarily follow that the material collected as a result of that search and seizure cannot afford evidence for the conclusions reached in Ext. P1 order. And the decision relied on by counsel for the petitioner in The State of Rajasthan Vs. Rehman, has laid down nothing more than that a person whose premises are sought to be searched without the authority of law can resist and even use force in so resisting such a search.

6. The only question, therefore that can arise in this writ application is as to whether there was material before the Collector of Customs, the respondent, for coming to the conclusion that he did. This has to be examined. If the search and seizure are illegal there must be a clearer scrutiny. The Supreme Court in Radhakishan Vs. State of U.P., observed:

If may also be that because of the illegality of the search the court may be inclined to examine carefully the evidence regarding seizure.

This is not a court of fact, and I am not entitled to draw inferences or to assess the evidence or to sit in judgment on the finding of fact entered by the respondent. Nonetheless this Court certainly can scan the material which is supposed to exist and on which reliance has been placed by the respondent to come to the conclusion which he did, with a view to ascertaining whether there was any material or evidence at all before the authority for coming to that conclusion. Before dealing with this aspect, it is necessary to extract Rules 151 and 160 of the Central Excise Rules, 1944. These are the rules that have been relied on in Ext. P-1.

151. Offences with respect to warehousing : If the owner of goods ware-housed, or the ware-house-Keeper, by himself or by any person in his employ or with his

connivance, commits any of the following offences, namely:

(a) opens any of the locks or doors of a ware-house which is required by these Rules, or by any general or special order of the Central Board of Revenue or the Collector, to be locked or makes or obtains access into such a ware-house except in the presence of an officer acting in his duty as such; or

(b) after the approval of a ware-house, makes any alteration therein or addition thereto without the previous consent of the Collector; or

(c) ware-houses goods in, or removes goods from, a warehouse otherwise than as provided by these Rules; or

(d) privately removes or conceals any goods either before or after they are warehoused;

he shall be liable to a penalty which may extend, to two thousand rupees and all the goods ware-housed, removed, or concealed in contravention of this rule shall be liable to confiscation.

"160. If goods are improperly removed from warehouse or allowed to remain beyond time fixed, or lost or destroyed, Collector may demand duty etc.-If any goods are removed from the warehouse without permission, or if any goods are not removed from the warehouse within the period during which such goods can be left or are permitted to remain in a warehouse under Rule 145, or if any goods are lost or destroyed otherwise than as provided in Rules 143, 147 or 149, or are not accounted for to the satisfaction of the pro-per officer, that officer may thereupon demand, and the owner of the goods shall forthwith pay, the full amount of duty chargeable thereon, together with all rent, penalties, interest and other charges payable on account of the goods.

Sub-rules (c) and (d) of Rule 151 have been relied on and a perusal of those sub-rules clearly shows that these sub-rules will be attracted on the facts and in the circumstances of this case only if a removal of the goods from the warehouse is established. Rule 160 enables the respondent to impose the duty that would have been imposed on the goods if they were removed from the warehouse without permission.

7. It is clear from Ext. P1, that the ground on which penalty, and excise duty have been imposed and confiscation ordered is that there had been removal of 79 bags (how 79 bags is not clear) from the warehouse. This is what the 1st respondent said in Ext. P-1:

In view of the above irregularities it has to be accepted that the tobacco in the 79 bags was not processed, at all and some other tobacco was substituted in its place.

What is termed "the above irregularities" is stated in the two paragraphs preceding the one in which the statement I have extracted is contained. It is necessary to extract in extenso the two previous paragraphs which read as

follows:

As regards the charge of substitution of 8553 lbs. of higher-rated (Pathi) tobacco in 79 bags of tobacco, there is strong evidence to establish, the offence. During the personal hearing on. 13-6-1961, it was represented that the 15 bags contained residue of flakes tobacco which required further processing. In the written explanation also it was mentioned that the larger flakes which were not subjected to final crushing were filled in the 15 bags to their maximum capacity. In his statement dated 10-9-60, before the Superintendent, Moovattupuzha, he however stated that larger flakes obtained during processing operations were put back in the unprocessed bags and stitched. The 15 bags containing large flakes are found to contain their original marks and their weight to correspond with the original weights subject to normal marginal variations. If the bags were filled with processed flakes tobacco, the "weight of the bags could not be uniform vis-a-vis their original weights especially when they were packed at random. Besides, it is admitted by the party that some bags at least contained, original unprocessed tobacco. Obviously there could be no reason to mix the original unprocessed tobacco and "processed flake residues" by taking all the troubles of opening, restituting the bags etc. the bags were of ordinary size and could contain usual contents only. In the circumstances mentioned above It has to be taken that the 15 bags, did not contain processed residue of tobacco at all. On the basis of the Deputy Superintendent's test processing (18 per cent patti) there should have been a residue flake of 1512 lbs. independent of flakes in the 15 bags. There should have been 1092 lbs. flakes according to Superintendent's test (at 13 per cent.). Further even if it is accepted that the 15 bags contained a mixture of residual and original flakes, there should have been 1289 1/2 lbs. flakes but actually 1444 lbs. flakes were found in the 15 bags. The rawa obtained on processing 50 lbs. taken from the above 15 bags by the Deputy Superintendent was different in "colour from the rawa in 79 bags. If as alleged the 15 bags contained pathi left after processing the 96 bags, there could be no change in the colour. The licensee has however admitted the difference in colour in his statement dated 26-8-60. This conclusively proves that the 15 bags were unopened and unprocessed.

8. A perusal of these paragraphs clearly shows that the conclusion reached by the respondent on the basis of the difference in colour is that the 15 bags were unopened and unprocessed. This requires an explanation. The Deputy Superintendent had opined in his report dated 26-8-1960 that the rawa contained in the 79 bags were different in size and colour from the rawa that he obtained on processing the 50 lbs. of pathi tobacco taken from the 15 bags of unprocessed tobacco that was found inside the godown. He suggested that this difference in colour indicated that the 79 bags of tobacco rawa were not those obtained by processing the 81 bags of pathi tobacco which along with the 15 bags were issued for processing on the 11th of August 1960 but must be those that have been brought in by the petitioner after removing the 31 bags of pathi tobacco.

Regarding this, the petitioner has alleged in his statement dated 16-9-1960 that the pathi tobacco itself can be of different colour and the difference in colour is due to that fact. The Customs Collector has not mentioned anything about the size of the rawa found in the 79 bags being different from the size of the rawa that has been obtained as a result of experiments carried on by the Deputy Superintendent. He has adverted to the difference in colour and this, as I said earlier, has been relied on only for the purpose of concluding that there has been no processing of the 15 bags of pathi tobacco that was seen in the godown. This was in answer to a contention, apparently suggested at the time of arguments, that the entire 96 bags were processed and what was - found in the 15 bags inside the godown were the pathi tobacco obtained before final crushing of the 06 bags.

This may be a false version and it may be that the conclusion reached by the Customs Collector that there has been no processing of the 96 bags is correct. In any way, it is not for me to sit in judgment on that finding. But from that finding, how the conclusion can be reached that 79 bags of pathi tobacco have been removed and the 79 bags found inside the godown substituted, I am not able to follow. I find no nexus, no link, no connection between the conclusion and the reasonings in the two previous paragraphs. There is no other material in the case to show that 31 bags or even 79 bags of pathi tobacco were removed and none has been relied on by the respondent.

9. The petitioner might have removed the pathi residue obtained by processing. Even his accounts indicate that when tobacco is processed, it must leave behind about 8% residue of pathi tobacco. On this basis there must have been 600 to 700 lbs. of residue left. This was not available in the godown. If we go by the results of the experiment conducted by the Deputy Superintendent and the Superintendent from Moovattupuzha, the quantum would be between 1092 or 1512.

All these may indicate that there has been removal of some pathi residue - the exact amount it is not for me to determine - for no reliance can be placed on the results of the two weighments conducted one by the Deputy Superintendent and the other by the Superintendent since they materially varied and there was no explanation for the same and it may be, that excise duty on that quantity can be imposed and penalty for removal of such quantity may be imposed under Rule 151. What will be the quantum of the penalty and what will be the quantum of the excise duty that should be imposed as well as the quantity of pathi residue that must have been obtained will have to be determined afresh by the appropriate authority, the respondent, after considering the evidence available. Suffice it to say, that the order, Ext. P-1, is groundless and cannot be sustained on the materials on which it was passed. Neither can it be supported by the reasoning contained in the para-graphs which precede the conclusion. I therefore quash Ext. P-1 and direct a fresh evaluation of the materials, available in the light of what is stated above. The respondent may pass fresh orders in

accordance with law. I do not make any order as to costs in this writ application.