

(1974) 06 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3084/73

Ramakrishna Trading Company	Vs	APPELLANT
Collector of Central Excise		RESPONDENT

Date of Decision : 20-06-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 140
Constitution of India, 1950 — Article 19(1)

Citation : (1987) 28 ELT 32

Hon'ble Judges : Alladi Kuppaswami, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alladi Kuppaswami, J.—The petitioner is a tobacco merchant having a L.5 Licence. The petitioner applied for issuing a licence for a private bonded warehouse to keep his stock. He was directed to furnish a bond in Form B4, with sureties for a sum calculated at Re. 1/- per square foot with a maximum of Rs. 20,000/-. This was complied with and he was issued a licence for a private bonded warehouse and this was renewed from time to time.

2. On 21.3.1973, the Collector of Central Excise issued a notification in exercise of his powers under Rule 140 of the Central Excise Rules, 1944. Under this notification, the amount for which the bond should be executed in respect of a private warehouse could be normally 25% of the duty involved. Clause (ii) provides that the amount of B4 bond shall not exceed Rs. 50,000/- and shall not be less than Rs. 2,000/-. The bond may be executed either with a surety or after depositing security. Clause (iii) provides that those who wish to execute the bond in form B4 (surety) have to be solvent themselves for the bond amount and should also name the surety/security of sufficient financial standing for endorsing the bond. The surety may be any person, firm or bank whose financial stability and solvency are not in question. The officer competent to issue the licence shall verify the financial standing and solvency of the applicant and the surety. It is

unnecessary to set out the other clauses of this notification.

3. The petitioner contends that this notification is in excess of the powers conferred on the Collector under Rule 140. It is also contended that if Rule 140 is so interpreted as to confer upon the Collector the power to issue a notification containing the above conditions, Rule 140 as well as the notification would amount to an unreasonable restriction on the right of the tobacco traders like the petitioner on their right to carry on their trade and would therefore infringe Article 19(1)(g) of the Constitution.

4. The petitioner has therefore filed this Writ Petition praying for the issue of a writ of mandamus directing the respondents to forbear from calling upon the petitioner to furnish a solvency certificate as per the notification dated 21.3.1973 and direct them to renew the L.5 Licence as usual.

5. The first contention is based upon the terms of Rule 140 of the Central Excise Rules. Omitting the portions which are not relevant, the Rule provides that the collector shall licence private warehouses for the storage of excisable goods on which duty has not been paid and may require the licensee to furnish a bond in the proper form with such surety or sufficient security in such amount and under such conditions as the Collector approves, binding himself to pay the duty due on the goods deposited therein, or for the due and safe removal of such goods from one part or division of any warehouse to any other part or division of the same warehouse, or to any other warehouse and for the due observance of the terms, conditions and requirements of the Act, Rules and any orders made hereunder in respect thereof. It is seen from this rule that the Collector while granting a licence in respect of a private warehouse may require the licensee to furnish a bond in the proper form with such surety or sufficient security in such amount and under such conditions as the Collector approves. He is therefore entitled to impose such conditions as he may approve. I am of the view that this clause is wide enough to empower the Collector to impose a condition that the trader himself be solvent for the bond amount.

6. It is contended by Sri Mohan Rao that as anyhow the trader is executing a bond with a surety it will serve the purposes of the revenue if they are satisfied about the solvency of the surety and there is no need further to require that the trader himself should be solvent and a certificate to that effect should be produced. It is not for this Court to consider the wisdom or otherwise of the authorities in imposing such a condition. All that the Court is concerned is to see whether the Rule authorises the concerned authorities to impose the conditions. As I have observed already, the expression "under such conditions as the Collector approves" is wide enough to empower him to impose a condition that the trader himself should be solvent and should produce a solvency certificate.

7. Shri G.V.R. Mohan Rao relied upon my decision in W.P. 345 of 1972 dated 23.8.1972. In that petition, the petitioner and others challenged the validity of a notice issued by the Assistant Collector to them directing them to produce the

necessary solvency certificate. In that case, the Collector acting under Rule 140 had issued a notification dated 23.12.1970 which required only that the surety should be solvent. There was no requirement that the solvency certificate should be obtained from the obligor also. It was in those circumstances that this Court held that the Assistant Collector was wrong in requiring the obligors also to produce solvency certificate in addition to solvency certificate for surety, when the Collector's notification did not provide for the same. In this case, however, under the notification issued by the Collector, it is expressly stipulated that the obligor also should be solvent. It is pointed out in the counter affidavit that the subsequent notification was issued in order to rectify the omission in the previous notification which was responsible for my decision in the writ petition No. 345 of 1972. I am therefore of the opinion that this decision has no application to the facts of the present case. Mr. G.V.R. Mohan Rao, however, pointed out that in the said decision there are observations which would indicate that under the proviso to this Rule, the Collector has no power to ask the obligor to file a solvency certificate. The learned counsel for the Central Government sought to contend in that case that under the proviso to the Rule where the amount of the bond is inadequate, the Collector may in his discretion, demand a fresh bond; and may, if the security furnished for a bond is not adequate, demand additional security. He, therefore, argued that it was open to the Collector to ask the Obligor also to produce a solvency certificate if he found that the certificate of the surety was not sufficient. This argument was not accepted. It was further observed that even if the Collector had power to ask the Obligor to file a solvency certificate under the proviso, the Collector had not exercised that power as the order dated 23.12.1970 did not require that solvency certificate should be filed by the Obligor. Further, this court did not address itself to the question whether the Collector could ask for a solvency certificate from the obligor in view of the powers conferred under Rule 140 which provides that the Collector may impose such conditions as he approves.

8. I am therefore, of the view that on a proper construction of Rule 140, it is open to the Collector to issue a Notification requiring that this obligor also should be a solvent and must produce a certificate to that effect.

9. It was then contended that if such an interpretation is based on Rule 140, the Rule would be repugnant to Article 19(1)(g) of the Constitution as it would be an unreasonable restriction on the right of the petitioner and others to carry on their trade. I am unable to agree. It is not unreasonable to require that a trader who apply for a licence for a private warehouse for a stock in excisable commodity should himself be a solvent. It is argued that it is not possible for every person to possess immovable property worth Rs. 50,000/- and to insist upon such a condition would be practically preventing persons who do not possess property to that extent from carrying on an honest trade. It is seen that the requirement is as that the amount of the bond should not exceed Rs. 50,000/- and should not be less than Rs. 2,000/-. The bond is only for 25% of the duty involved. This cannot be considered as an excessive amount. The notification also does not

require that the obligor should possess immovable property. It is for the officer concerned to verify and satisfy himself about the financial standing and solvency of the applicant. This he can do even if the applicant has no immovable property provided he is satisfied that he is otherwise solvent.

10. The learned counsel for the Central Government drew my attention to T. Ramasesham Raju Vs. Union of India (UOI), where certain Rules framed under the Central Excise Act were held not to be unreasonable restrictions on the right to carry on trade. This decision does not deal with Rule 140. In Chaturbhai M. Patel Vs. Union of India (UOI) and Others, no doubt Rule 140 is one of the Rules considered by the Supreme Court. But those Rules were attacked on the ground that there is no procedure laid down for reviewing penalties nor any provision made for notice or the taking of evidence and power of confiscation was given to persons who could not be termed unbiased. The argument that these were unreasonable was negatived. The Supreme Court had no occasion to deal with the particular contention raised before me.

11. For the reasons stated above, the writ petition is dismissed with costs. Advocate's fee Rs. 100/-.