(1959) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7 of 1957

T. Ramasesham Raju APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-11-1959

Acts Referred:

Central Excise Rules, 1944 — Rule 15, 18, 21, 22, 23
Constitution of India, 1950 — Article 19(1)

Citation : AIR 1960 AP 498

Hon'ble Judges : Srinivasachari, J;Manohar Pershad, J

Bench : Division Bench

Advocate : E. Kalyan Ram and D. Venkata Reddy, for the Appellant; 2nd Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Manohar Pershad, J.—This is a petition under Article 226 of the Constitution of India to issue a writ of mandamus or other appropriate writ, direction or order directing the respondent to forbear from enforcing against of otherwise demanding compliance with from the petitioner of any of the provisions of the Central Excises and Salt Act, 1944 or the Rules framed thereunder.

2. The petitioner is a grower and dealer in Virginia Tobacco. He challenges the Central Excise Rules framed by the Government as imposing severe restrictions on the gtower and curer and as unwarranted having regard to the purpose of the legislation. Though the writ petitioner in this petition had challenged all the rules, during the course of the arguments, the learned counsel for the writ petitioner confined his arguments only to Rules 15, 18(2), 21, 22, 23, 34 and 36 and contended that they offend Article 19(1)(g) of the Constitution of India.

3. In order to appreciate the contention of the learned counsel, a reference to the relevant provisions of the Rules is necessary. It may be stated here that these rules have been framed in exercise of the powers conferred by Section 37 of the Act. Chapter I of the rules relates to the definitions. Chapter II refers to

the appointment and powers of officers. Chapter III deals with the levy and exemption from duty. Rule 7 in this Chapter indicates the person from whom the excise duty is recoverable, viz., producer, curer, manufacturer or person who stores excisable goods. Chanter IV deals with unmanufactured products. Rule 15, which is now challenged, by the petitioner heads this chapter and it runs thus:

"Every grower of unmanufactured products shall in each year before making use of any land for growing such products make a true declaration in the proper form in respect of all land upon which the products are to be grown, giving the particulars specified in the form and stating whether he intends to cure the whole or part of the products when harvested. He shall sign the declaration and deliver it to the proper officer:

Provided that where the grower intends to cultivate less than ten acres of such products he may furnish these particulars orally to the officer who visits him for this purpose and such officer shall record the particulars in his Survey Book in the proper form, and the grower shall attest the relative entry in the hook in token of his having given a declaration."

This rule requires the furnishing of particulars of cultivation. This has been enacted with a view to ensure that as far as possible no tobacco grown and cured escapes the duty payable under the Act. It may be stated that at this stage no duty is levied and no liability is imposed on the farmer beyond making it obligatory upon him to furnish the required particulars. The particulars required are also limited in scope. If the grower intends to cultivate less than ten acres of such products, he is only required to inform the officer orally; but if the grower intends to cultivate more than 10 acres he has to give that intimation in writing. The furnishing of particulars in the form of writing or orally does not in any way, in our opinion, hamper the growth or curing of the tobacco.

What is urged is that if the petitioner does not give such a declaration, he is subjected to penalty, as provided in Rule 210. The fact that owing to the non-furnishing of certain particulars or committing the breach of the Rules, the petitioner would he subjected to penalty does not go to show that his trade has been in any way hampered with or his growing the tobacco has been affected.

(4) The next Rule challenged is 18 (2). It runs thus:

Rule 18(1).

"The Collector may require that a curer before receiving unmanufactured products for curing shall give security that he will observe and comply with all the provisions of the Act, these Rules and any instructions issued hereunder in relation to such products and the curer shall give security in such sum and in such form as the Collector may require".

(2) Security may in like manner be required of the grower for the due removal of all unmanufactured products grown by him to the premises of a curer or for otherwise accounting for them". The demand of the security also, in our opinion,

does not in any way hamper the growth of the tobacco. Rule 19 indicates the point at which excise duty shall become chargeable. It is to the following effect:

"Duty shall become chargeable as soon as the products have been cured and are in a fit state for sale, or where manufacture precedes sale, for manufature and the curer shall be liable for the payment thereof and shall remain so liable until the liability is to the knowledge and satisfaction of the proper officer, transferred as provided in rule 29 to another person duly licensed to carry on-business in such products."

This Rule, however, is not challenged by the petitioner.

5. The next rule that is challenged is Rule 21. It reads;

"The proper officer shall deliver, free of charge, to every grower who cultivates or tends to cultivate ten, or more than ten, acres of unmanufactured products, and to every curer who intends to cure one hundred, or more than one hundred, standard maunds of unmanufactured products in the following year an Entry Book in the proper form and the grower or curer shall, when the book is filled up, return it to the proper officer."

This rule imposes an obligation on large growers and curers to maintain an Entry Book. The requirement regarding maintenance of an Entry Book is not only for the purpose of enabling the Department to ascertain the quantities of tobacco actually grown and cured, but also for facilitating the grower and curer to render a satisfactory account of the quantity grown and cured for the purpose of assessment. This rule also, in our opinion, does not in any way come in the way of the growth of the tobacco.

6. Rule 22 relates to the manner of keeping Tobacco Entry Book. It reads thus:

"The Entry Book maintained by growers and curers of tobacco in accordance with rule 21 shall be kept in the following manner;

(a) Grower --(i) A grower shall enter separately, on the day of sowing any tobacco seed or planting any tobacco'', the day of the sowing and the variety of the tobacco sown., or the date of the planting, and the variety of the tobacco planted, and if more than one variety is sown or planted the area of the land sown or planted with each variety.

(ii) He shall, on the day of the receipt from or the removal to, the premises of another grower of any tobacco plants, enter the name and address of the grower from whom the plants are received or to whom the plants are removed, the varieties of the tobacco, the number of plants of each variety and the date upon which the plants are received or removed.

(iii) He shall enter similar particulars in respect of any tobacco other than tobacco plants which he receives from another grower.

(iv) He shall at least 48 hours before commencing to cut or gather tobacco, enter the date when it is intended to commence the operation, and the place or places to which it is intended to remove the goods for drying.

(v) He shall at least 48 hours before the removal of any tobacco to the curer''s premises, enter the date of the intended removal and the name and ''address of the curer to whose premises the tobacco is to be removed, and on the removal of the tobacco shall enter the actual date of removal and if the tobacco is in a green state, the estimated weight of the tobacco removed, or if actual weighment is practicable, its ascertained weight.

(b) Curers -- A curer shall enter in his entry book the date on which any tobacco, whether grown by some other person or by himself, is received in his premises for curing, the condition of the tobacco when received, the name and address of the grower, and the weight of the tobacco, and shall make the entry before the expiration of the day upon which the tobacco is received; and shall enter similar particulars in respect of all cured tobacco removed from his premises,"

The contention is that all these impose a restriction, which has no relation to the object in view. As stated earlier, the object is to control the evasion of the payment of tax and this provision which enables the department to ascertain the quantity of the tobacco grown and facilitates the grower and curer to render a satisfactory account of the quantity grown and cured for the purpose of assessment, is only the means to attain that object. It cannot therefore be said that it has no relation to the object in view.

7. Rule 23 imposes a liability on the grower and curer to report the receipt of unmanufactured products. It is to the following effect:

"Every grower and every curer who received from another grower or curer any unmanufactured products other than plants for replanting shall forthwith report the fact to the proper officer, stating the quantity of each variety so received and the name and address of the person from whom he received them."

This rule only provides for control over the movement of tobacco, so that all tobacco in respect of which duty has not been paid may be traced to the ultimate purchaser thereof and the demand and realisation of duty from such ultimate purchaser may be facilitated. This also, in our opinion, does not in any way hamper the growth of the tobacco.

8. The next Rule challenged is Rule 34. It reads:

"Every transport permit granted under these rules shall be in force only for the period specified thereon by the officer by whom it is granted, every transport certificate shall be valid only until sunset of the fourth day following that on which it is prepared or for Such shorter period as the Central Board of Revenue may, by order in writing, direct in any particular area or in respect of any particular commodity, and every sale-note shall for the purpose of Rule 32, be valid only for the day of issue.''"

There is nothing in this rule which hampers the growth of tobacco.

9. Rule 30 relates to a declaration by the grower annually of unmanufactured products. It is to the following effect:

"Every grower shall declare to the officer, who visits him at the end of the harvesting season, the area and situation of the land planted by him with unmanufactured products, the variety or varieties grown, the area of the land used for each variety and the net weight of products of each variety produced and such Officer shall record the particulars in his Survey Book in the proper form and the grower shall attest the relative entry in the Book in token of his having given a true declaration; and every grower who in any year cultivates ten or more that ten acres of unmanufactured products shall, within seven days after the final weighing of products of any year''s growing, make a written return of these particulars in the proper Form which he shall date and sign and deliver to the proper officer."

10. These rules have been framed to control the evasion of the payment of tax. Tax is only levied as soon as the tobacco has been cured. The declaration by the grower under Rule 15, the provision for the maintenance of Entry Book by the grower and curer under Rule 21, the declaration by the grower and curer under Rule 23 of the receipt of unmanufactured products and the declaration by the grower of unmanufactured products -- are all meant for the purpose of preventing evasion of excise duty. If it is not known as to how much the grower had grown, it may be that the grower may grow large quantities and sent only small quantities for curing knowing that only tax is leviable on the tobacco cured. That would give the grower, an opportunity to evade the payment of the taxes.

The contention that unless tobacco is cured, no tax is leviable and therefore there is no necessity to make the grower maintain an account showing the extent of the land on which tobacco was grown, the quantity of tobacco grown etc., does not help the contention of the petitioner, for the object is assessment of excise duty on the tobacco cured and the assessment cannot be made unless it is known as to how much quantity was grown and cured and an account is kept of that. Further there is the other aspect that the grower may grow more quantities and send to the curer only a small portion thereof and fraudulently dispose of the uncured material; or secretly send the undeclared stock for curing to the curer. For the purpose of preventing all these, it is necessary that there should be some check both on the grower and the curer and without that, the object cannot obviously be achieved,

The obligation imposed on the grower by the Central Excise Rules are designed solely to secure statistical data, namely, to ascertain at the beginning of the crop year and in respect of each clearly defined region the area to be planted with the tobacco and the yield expected, and at the end of the year the area actually planted and the yield actually realised. These rules only confer powers which are necessary for the ascertainment of the tobacco produced, cured and disposed of so that the excise duty under the Act may be levied and collected. It does not, in our opinion, in any way, hamper the production or trade in tobacoo or cause any loss to the grower and trader.

11. It is lastly urged that these rules are unnecessary. In this connection, the learned counsel drew our attention to certain other provisions and contended that in view of those provisions, these rates are unwarranted. We may at the outset say that it is not within our province to say whether those rules are necessary or not. As discussed above, the rules have got relation to the object in view and they do not in any way offend Article 19(1)(g) of the Constitution of India.

12. In the result, we do not see any force in this petition. It is dismissed. Advocate''s fee Rs. 100/-.