

(1980) 01 MAD CK 0044
In the Madras High Court

V.A. Ramraj and Others

APPELLANT

Vs

Collector of Central Excise, Madras and Others

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 144, 151, 223A, 56
Central Excises and Salt Act, 1944 — Section 12, 13, 13(1), 3, 37
Customs Act, 1962 — Section 110

Citation : (1980) CENCUS 469 : (1980) 6 ELT 459

Hon'ble Judges : Ramaprasad Rao, J;Natarajan, J

Bench : Division Bench

Judgement

Chief Justice

1. These three writs are directed against the judgment of Koshal J who refused to issue a rule the nature of a writ of prohibition as against the respondent from the taking any further action in the pursuance of the samples of tobacco taken by the Excise Officials from the appellant warehouse. W. A. 501 of 1976 is against W. P. 4328 of 1975 W.A. 30 of 1977 is against W. P. 4327 of 1975 and W. A. 31 of 1977 is against W. P., 4698 of 1975. the facts relevant for our purposes and which are almost similar in all the appeals can be referred to Each of the appellant is a person holding a L-5 licence under the Central Excises and Salt Act 1944 read with the rules made thereunder. Under this licence the petitioner were entitled to keep a bonded warehouse and store tobacco therein, maintain stock registers and be bound by the various rules and regulations in the matter of storage of the tobacco which is admittedly excisable and for removal of such excisable commodity from the bonded warehouse. We are narrating the relevant facts in W.P. 4328 of 1975. The stock in the

warehousing of the above petitioner was checked and weighted on 17-6-1975. The stock in the warehouse of the above petitioner was checked and weighted on 17-6-1975. Though the entries in the stock books and the accounts were found to be in order on physical verification an apprehension was entertained in the minds of the Excise Officials that in the certain lots, the variety of the tobacco found at the time of the check may not correspond to those that should have been actually in stock and other documents. Entertaining a suspicion that there has been an illicit removal and a clandestine replacement of an inferior quality of tobacco, samples were drawn from the stock in the warehouse on the date of inspection and as is the common practice, the samples were examined by a trade panel for ascertaining whether or not the tobacco found in these lots were the same as the ones that should have been in stock as per the earlier description. Apprehending a further process of such investigation undertaken by the respondent each of the writ petitioner has come to this court for the issue of Writ of Prohibition from arresting or prosecuting the petitioner in furtherance of the analytical report on the samples taken and to the prevent them from the making such inspection as according to the petitioner they are not authorised by law.

2. The main contention of the appellants is that there is no express power to take samples from the unmanufactured tobacco in a bonded warehouse and if a suspicion is entertained that there is a difference in quality of the tobacco found at the time of check with reference to the tobacco admittedly warehoused by a lawful permit there is no authority or a specific rule which would empower the Excise authorities to take samples therefrom, to take action against the warehouses. As it is the omitted case that an endorsement has been made on the date of check, that there are no discrepancies in the stock registers, no further action is possible merely because the Excise authorities are subjectively satisfied that there is a difference in quality of the tobacco as compared to the stock found entered therein and action u/s 13 of the Central Excises and Salt Act, 1944 is not possible in law. It is also stated that, even if the power to take samples is traceable to any provision of the main enactment of the rules made thereunder, it is an uncanalised power vested in the respondents and it is therefore unreasonable and has to be struck down.

3. If the counter affidavit it is stated that the action of the department in having taken samples from the bonded warehouse is justified on the ground that, though duty is leviable on tobacco on its quantity removed from the warehouse, the Department is interested in ensuring that the tobacco received into the warehouse is properly accounted for and does not escape revenues and that no tobacco is illicitly removed or substituted by an inferior quality which it brought into the warehouse in order to keep the weight as disclosed. It is contended that the Department is enjoined to ensure that tobacco received into the warehouse is not illicitly removed by evading payment of duty and inferior quality of tobacco is brought into the warehouse in its place. It is said that they have the power u/s 13 of the Central Excises and Salt Act, read with Rules 144 and 151 to take such action as is necessary in a particular case and according to circumstances and therefore it is said that the taking of samples is to achieve the object of the Act and in pursuance of the rules made thereunder and such a provision not being unreasonable but in the interests of the revenue of the State is sustainable in law and the writ of prohibition sought for by each of the appellants is without any justification whatsoever.

4. Before considering the objections of the writ petitioners, it is necessary to refer succinctly to the Central Excises and Salt Act, 1944 and the Rules made thereunder. The Central Excises and Salt Act and the Customs Act of 1962 are twin enactments subserving similar objectives, the primary intentment of both being to check evasion of excise duty or customs duty. These enactments being quasi-fiscal and quasi-penal in nature have to be interpreted strictly. u/s 12 of the Central Excises and Salt Act, the Central Government may by a notification in the official Gazette declare that any of the provisions of the Customs Act relating to the levy of Customs duty, warehousing, offences, confiscation procedure relating to offences, etc., shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by Section 3 of the Act. Under Section 3 of the Central Excises and Salt Act, authority is given for the levy and collection in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India at the rates specified in the First Schedule. Column 4 of the First Schedule to the

Central Excises and Salt Act, refers to tobacco. Tobacco is explained as a commodity, which means any form of tobacco whether cured or

uncured or whether manufactured or not and includes the leaf, stalks and stems of the tobacco plant. A different scale of duty is prescribed for

various varieties of unmanufactured tobacco. For example, for unmanufactured tobacco, if flue cured and used for the manufacture of smoking

mixtures for pipes and cigarettes the duty is Rs. 40. If it is other than flue cured and used for the same purposes, there is no tax at all. We have

referred to the above only to notice the variation in the rates of excise duty according to the quality of the tobacco. The Central

Government has admittedly issued a Notification u/s 12 of the Central Excises and Salt, Act declaring Section 110 Customs Act of 1962 to be

applicable to the levy of duty and exemption from duties etc. as adaptable to the Excise Act also but invocable according to the circumstances of

each case. Section 110 of the Customs Act provides that if the proper officer has reason to believe that any goods are liable to confiscation under

the Act, he may seize such goods. Section 13 of the Act confers a power on any Central Excise Officer fully empowered by the Central

Government to arrest any person whom he has reason to believe to be liable to be punished under the Act. Section 37 touching upon the rule

making power of the Central Government enables it to make any rules generally to carry into effect the purpose of the Act and in particular

authorise and regulate inspection of factories and provide for the taking of samples and for the making of tests of any substance produced therein

and for the inspection or search of place or for the proper levy and collection of duties imposed by this Act on any excisable goods.

Rule 144 of the Central Excise Rules 1944, imposes a ban on the warehouse keeper not to take any goods out of the warehouse unless so

permitted by the statutory authorities.

Rule 151 provides for offences with respect to warehousing. says -

151. Offences with respect to warehousing :- It the owner of goods warehoused, or the warehouse keeper, by himself or by any person in his

employ or with his connivance, commits any of the following offences,- (a).....

(b).....(c) warehouses goods in, or removes goods from, a

warehouse otherwise than as provided by these rules.....(d).....

he is said to have committed an offence and he shall be liable to a penalty besides all the goods warehoused, removed or concealed in

contravention of this rule shall be liable to confiscation.

Rule 223-A enables the Collector to take an account of goods in a warehouse at least once in every year. No doubt, this rule lays an accent on

the quantity warehoused but does not expressly refer to the quality of the goods.

5. It may be necessary also to refer to rule 56 which has been relied upon by the learned counsel for the petitioners. Rule 56 of the Central Excise

Rule, 1944, provides for taking of samples for excise purposes. This rule is referable to goods which are manufactured or partly manufactured and

taking of samples of any such goods. It permits the officer to take samples of such goods and test them for purposes of ascertaining any

infringement of the excise rules.

6. It is thus seen from an analysis of the provisions which are relevant for purposes of this case that throughout the texture of the Central Excise

Act, runs a warp in the nature of lynx eyed supervision by the authorities over the licence holders and in particular the keepers of a bonded

warehouse-against removing dutiable goods without authority or warehouse goods in the bonded warehouse equally without such authority. In the

context of the scheme of the Central Excise Act read with the Customs Act, as set out hereinbefore it appears that the primary objective of the

Excise Act hereinafter referred to as the Act, is to ensure that no loss of revenue is sustained by the State by reason of any activity irregularly or

illegally committed by the warehouse keeper. These irregularities and illegalities may occur in myriad ways. It is no doubt true that excise duty is

levied on the weight of tobacco. But so long as it is not in dispute that there are varieties of tobaccos which are susceptible to varied rates of duty,

it is impossible to conceive that, if the warehouse keeper dexterously manages to keep the weight but substitutes the quality of tobacco to ensure

such weight that operation also might result in a loss of revenue to the State. In order, therefore, to ensure that there is no such loss to the State, in

Excise Officials functioning under the Act are enabled to inspect the warehouse from time to time. It may be that the stock register might not

disclose any discrepancy in weight. But if in the course of inspection it is found

that the quality of the tobacco found in the warehouse is different from the quality which went into the warehouse under a lawful permit, then also the Central Excise authorities do have the power to act in accordance with law. We have already seen that Section 13 of the Act enables the Central Excise Officer to arrest any person whom he has reason to believe to be liable to punishment under this Act. The punishment referred to in Section 13 of the Act, has to be read in conjunction with the intention of the Legislature to penalise the licence holder for any of the contraventions of the provisions of the Act or the Rule made thereunder.

Rule 144 of the Rules lays an embargo on the warehouse keeper from removing the goods from any warehouse except on payment of duty.

Rule 151 of the Rules provides for the imposition of a penalty as also confiscation, if it is found that the warehouse keeper or his agent

warehousees goods in or removes goods from a warehouse otherwise than as provided for by these rules.

Rule 223-A is a processual provision which envisages the levy of a penalty where it is found that there is a deficiency in the weight of the

commodity. The cumulative effect of this enforcement provision which are quasi-penal in nature read with the object of the enactment which is

to consolidate the law relating to Central Excise duties and which is factually a statutory instrument preventing evasion of tax, is that these runs in

the vein of this state a power in the Excise authorities to take such actions as the circumstances of a case demands, in order to avoid evasion of

tax. If, as in the instant case, suspicion is entertained that the goods found at the time of the check are not the same as the goods which were

warehouseed in at the time of the issuance of the lawful permit to house the goods, that the natural inference is that there has been a removal of the

goods which were warehoused and a letting in of the goods which were not permitted. In order to satisfy whether there has been such an illegal

removal and a consequential unauthorised substitution, the excise official in the course of his check under Rule 223-A would be right in taking a

samples from the suspected substituted goods in order to satisfy himself whether there has been a violation of rule 151(c) read with rule 144 of

the Rules. The excise official is exercising powers under a fiscal enactment. He

may not, therefore, be expected to have the necessary expertise to render his opinion whether the alleged substituted goods are of the same quality as those goods which entered into the warehouse on a lawful permit. In order to secure an analytical report, the practice appears to be to call a committee of experts in the same trade to render an opinion thereon. This is neither an unreasonable method of ascertaining the quality of the goods in the warehouse, nor could it be said to be an illegal exercise of power in the Central Excise Officer who is acting in the course of his investigation to detect an irregularity or illegality committed by the warehouse keeper. Therefore, it follows that notwithstanding the fact that there is no discrepancy in the weight as shown in the stock register, if a bona fide suspicion is entertained that there is a difference in quality in the goods found at the time of entry is found in the stock register then it appears to us that the statutory officials have the right to take samples.

7. We have already referred to the fact that the officer has the power to confiscate goods if they entered into the warehouse without a lawful permit. The learned counsel, while conceding that the power of confiscation is vested in the statutory officials, would say that there is no power to take samples. The power to take samples is only a means to an end. It gives also an additional opportunity to the alleged delinquent to prove otherwise and establish that there has been no substitution of the goods. We are unable to agree that an Officer, who has the power to confiscate goods which has found an illegal entry into the warehouse, cannot seize a much smaller quantity for purposes of substantiating that there has been a substitution in the goods. The substitution might result in evasion of tax because there are varied rates of duties according to the quality of tobacco. Weight of course is one of the incidents for consideration but quality, having regard to the nature and variety of duties according to the quality of the tobacco, is also equally an essential ingredient to detect unauthorised substitution. It is in this context that reliance is placed upon Rule 56. Rule 56 is a special rule touching upon the taking of samples of any manufactured or partly manufactured goods. The sense behind this rule is easily understandable. In the case of manufacturer, he may claim that certain excisable commodities have been used. In order to satisfy

themselves that there has been a sale of the authorised percentage of excised goods in the manufactured commodity, a specific provision is made

for a sample of those goods. This would not, however, imply that the excise authorities in the course of their investigation who detect the

commission of any offence, are precluded from taking samples of excise goods other than the manufactured goods.

8. We agree with Koshal J. when he says -

In fact, it is not Rule 56 which confers on the excise authorities the power to take samples. That rule only regulates such power, which is

conferred by the 1944 Act read with the 1952 Act, and that power is the power of seizure which, as already stated by me, would include the

lesser power of taking samples.

We have already referred to the fact that the Central excise officials have the right to confiscate or seize the goods if, in their opinion, an offence

has been committed by the warehouse keeper. Such a larger power would certainly include a lesser power of taking samples.

The decision referred to by the learned single Judge as well as referred to before us reported in *Ramalinga Choodambikai Mills Ltd. Vs. The*

Government of India and Others, does not apply to the act of this case. In fact, *Ramanujam J.* in that case, should be understood to have said

that, when the taking of samples is admittedly provided for in Rule 56, then undoubtedly the excise authorities are competent to have the samples

tested in order to subserve the purpose of taking of such samples. We are able to hold that the decision is apposite for purposes of our case. We

are concerned with a case where the excise officials, instead of confiscating the entire suspected substituted goods, adopted a step in aid

thereto, by taking samples in order to investigate further to find whether there has been such an improper substitution. We are therefore,

satisfied that the taking of samples in the peculiar circumstances of this case is authorised under the Act and the said power is neither

unreasonable or untrammelled.

9. The next point urged is whether the excise officials could arrest a person. This power is expressly provided for in Section 13(1) of the Act.

If the excise official has reason to believe that the petitioner had substituted goods lying in their warehouse without the permission of the excise

authorities and if, according to their belief they differ from the goods which was earlier permitted, then the excise officials are duly empowered to

arrest the person involved in such an activity. The apprehensions entertained by the appellants are that there was a threatened arrest. So long as

the power of arrest is comprehensible under the provisions of the Act and is expressly provided for, then we are unable to accept the contention

of the appellants that no threat of arrest could be extended to them.

10. The last but feeble contention of the learned counsel for the appellants was that analysis of the samples by a panel of traders, who are in fact

competitors in the profession is unauthorised. As pointed out by Kishan J. it is for the authorities to determine as to what sort of evidence

would be sufficient to support the intended prosecution or further statutory action. If the prosecution is laid on the basis of the opinion of the

Panel and if the Court accepts it, then the appellants can have no complaint. The methodology to be adopted by the investigating agency in order

to sustain their conviction and belief that an offence has been committed under the Central Excise Act cannot be challenged in these proceedings.

11. The writ of prohibition is an extraordinary writ which could be asked for only in cases where there is a total absence of jurisdiction in the

authority to take action or where there is an open excessive exercise of such jurisdiction; neither of these two primordial conditions which

would prevent an authority from taking action under the appropriate acts of the legislature are present here. In fact, we have found that the Central

excise officials have the right to confiscate the goods, if they suspect any unauthorised entry of subarrest the delinquent, if they have a

reasonable belief that an offence under the Act has been committed and, therefore, the writ of prohibition as sought for was rightly refused by

the learned Judge.

12. These writ appeals fail and they are dismissed. There will be no order as to costs.

13. Learned counsel for the appellant seeks for leave to appeal to the Supreme Court against our judgment. In our judgment, we have dealt with

the provisions of the Central Excise Act and the Customs Act, which are self explanatory, and our decision is based on the interpretation of those

provisions. The subject matter, in our opinion, does not raise any substantial

question of law of general importance, which has to be decided by the Supreme Court. Accordingly, we see no reason to grant leave.