Andhra High Court
Kandimalla Raghvaiah And Ors. vs Government Of India And Ors. on 26 July, 1973
Equivalent citations: 1985 (21) ELT 693 AP
Author: A Kuppuswami
Bench: A Kuppuswami
JUDGMENT Alladi Kuppuswami, J.

1. The petitioner is a firm doing business in tobacco having its licenced premise* at Chilakalurpet L. 5 No. 1/51. While obtaining licence for this premises which contained also a thatched shed, the petitioner, gave an undertaking on 15-11-1965 to the following effect:

"We are aware that no remission of Central Excise duty will be allowed in case of fire accident in respect of all the tobacco stored or handled in our thatched sheds which have been included in our Central Excise warehouse licence." On 10-5-1966, there was a major fire accident in the borders of the premises of the petitioner. The fire spread to the petitioner's premises and destroyed some tobacco scrap belonging to the petitioner.

2. Under Rule 160 of the Central Excise Rules, if any goods are lost or destroyed otherwise than as provided in Rule 143, 147 or 149 the other 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 the account of the goods. In view of this provision the Deputy Superintendent, M.O.R.I. Chilakalurpet issued a notice to the petitioner stating that under Rule 160 the petitioner was to pay duty on 82,839 kgs. of tobacco scrap. The amount of duty was calculated at Rs. 2,60,114.46P. It was also stated in the notice that the existence of damaged VFC tobacco in these sheds were accepted by the petitioner in the statement dated 23-6-1966 given by the managing partner. It was further stated, that as these two sheds were not approved premises for storage of tobacco the question of remission of any duty on the quantity demaged or destroyed in these sheds cannot be considered. The petitioners gave a reply dated 30-7-1966. They stated that they never stored or deposited any tobacco in the thatched sheds. They objected to the estimate of the quantity of tobacco made in the order. They pointed out that the nature of the accident was so sudden that it was beyond the control of the licensee to stop the fire. They requested the remission may be given and the demand notice may be withdrawn. On 18-3-1969 a show cause notice was issued to the petitioner by the Collector of Central Excise asking them to show cause why duty should not be demanded on 82,839 kgs. of scraps. It was stated in the notice that the petitioner had contravened Rule 140 of the Excise Rules as they stored 82,839 kgs. of scrap in the thatched shed which was alleged to have been involved in the fire accident.

3. Under Rule 140 the Collector may license private warehouses for the storage of excisable goods and may direct in what parts or divisions of such warehouses and in what manner and on what terms such goods may be stored and how and in what manner such warehouse, or parts or divisions thereof, shall be secured by locks, fastenings or otherwise. The Collector may revoke his approval of a warehouse and upon such revocation all goods warehoused therein must be removed as the Collector directs, and no abatement of duty or allowance shall be made in respect of any such goods for deficiency of quantity, strength or quality after notice of the revocation has been given to the

proprietor or occupier of the warehouse. The petitioner replied on 31-3-1969 to the communication that the tobacco gutted was not stored in the rest shed that were gutted. They also stated that the fire accident could not be averted even after best efforts and that with all human efforts they could only save 32,791 kgs. of scarp and the rest of the tobacco scrap weighing 82,839 kgs. was gutted. They, therefore, prayed that the proceedings may be dropped. They requested personal hearing before further action was taken in the matter. A personal hearing was granted. After hearing the petitioner the Collector passed an order dated 29-11-1969. By this order the Collector held that permission to store tobacco in a thatched shed was an extra legal concession. In terms of the undertaking given by the petitioner the balance of 50,048 kgs. of VFC scrap (82,839 kgs. minus 32,791 kgs.) is liable to excise duty. He, however, demanded under Rule 160 of the Rules, excise duty on half of 50,048 kgs. which was destroyed in the outbreak of fire while under storage in thatched shed. The duty so estimated came to Rs. 78,575.36P.

4. The petitioner appealed to the Central Board of Excise and Customs against the order of the Collector. The Board by its order dated 12-8-1970 observed that the appellants had themselves admitted that scrap of tabacco weighing 82,839 kgs. were gutted and the Board did not find any justification for interfering with the order passed by the Collector. The appeal was accordingly rejected. As against this order, the petitioner preferred a revision petition to the Government of India. By an order dated 23-11-1971 the Government of India dismissed the revision petition. It was contended before them that the Collector's estimate of the scrap which was destroyed by fire was not correct and was not based upon any reasonable basis. This contention was rejected and the Government of India held that Collector's method was not unreasonable as it was based on the records and the petitioner's did not originally contest the figure. The petitioners also contended before the Government of India that they should be granted remission under Rule 147 which authorised the Collector to estimate the duty due to his discretion, if any goods lodged in a werehouse and lost or destroyed by unavoidable accident. The petitioners contended that the Collector ought to have granted remission in full and not merely on half. The Government of India observed that the rule vests the Collector with powers to remit the duty according to his discretion and it is not necessary that remission to the extent of 50 % already allowed was reasonable.

5. The petitioner herein has filed this writ petition praying for the issue of a writ of certiorari or any other appropriate order or direction calling for the records relating to the orders of the Collector dated 29-11-1969 as confirmed by the Central Board of Excise and Customs by its order dated 12-8-1970 and by the Government of India by its order dated 23-11-1971 and to quash the same.

6. Sri P.A. Choudary learned Counsel for the petitioners contended that under Rule 147, the Collector may in his discretion remit the duty in the case of unavoidable accident. In this case, he did not exercise his discretion under Rule 147 at all and hence the order is liable to be quashed. He drew my attention to the order of the Collector in which no reference is made to Rule 147. On the other hand, Sri Subrahmanya Reddy, learned Counsel for the Central Government contended that though no reference is made to Rule 147. The remission of half duty granted by the Collector could only be under Rule 147 as there was no other provision under which he could grant remission in the circumstances of the case. I am inclined to agree with the submission of the learned Counsel for the Central Government. The Collector pointed out that under Rule 160 the entire duty was payable but

at the same time he demanded only half the duty. In fact he granted remission of half duty. But for Rule 147 there was no other provision enabling the Collector to grant remission in the circumstances of the case. It is therefore reasonable to conclude that he did grant remission acting only under Rule 147. Sri Choudary then contended that though Rule 147 says that the Collector may in his discretion remit duty, it is not absolute discretion which has to be exercised in a proper manner taking into account all the circumstances of the case. He also contended that once the Collector is satisfied that the goods were destroyed by unavoidable accident, he was bound to grant remission of the entire duty payable and not restrict the remission to a part of it. I am unable to agree with the second part of the argument. The very fact that the Collector has discretion to remit the duty, would mean that he is entitled to remit the duty either in whole or in part according to the circumstances of the case. It is true, in the case there is no dispute that the accident was unavoidable, but merely because the accident was unavoidable, it does not automatically follow that the Collector is bound to grant remission of the whole duty payable. If that argument were to be accepted then there is no discretion left in the Collector at all. As in every case of unavoidable accident, he is bound to remit the entire duty. Sri Choudary endeavoured to argue that under Rule 147 the discretion was only in coming to the conclusion whether the accident was unavoidable or not. This submission is contrary to the language of Rule 147.' Under that rule, the occasion for remission arise only when the goods are lost or destroyed by unavoidable accident. The discretion cannot have any reference to the nature of the accident. The discretion has only reference to the remission of the duty. The Collector must first come to the conclusion that there was unavoidable accident and then exercise his discretion with regard to the duty to be remitted.

7. It was further contended by Sri Choudary that Rule 160 applies only in cases where Rule 147 has no application as under Rule 160 the owners of the goods shall pay the full amount of duty chargeable on the goods, if any goods are lost or destroyed otherwise than as provided in Rule 143, 147 or 149. In this case the goods were destroyed by unavoidable accident and hence Rule 147 has application. But I am unable to see how this argument helps the petitioner in any way, for under Rule 147 the remission of duty is at the discretion of the Collector and as stated above it is for the Collector to exercise his discretion and grant remission in whole or in part according to the circumstances of the case.

8. It was then argued that the discretion conferred on the Collector under Rule 147 is not an absolute discretion, but one which must be exercised reasonably taking into consideration all the circumstances. There cannot be. any quarrel with this submission. Even in cases where the expression absolute discretion has been used, it has been held by the Supreme Court in State of Gujarat v. Krishna Cinema, 1971-11 SCJP 25 that it is not intended to invest the officer with arbitrary power. As Justice Dugles of the Supreme Court has remarked absolute discretion is a ruthless master. Absolute discretion means the end of liberty. Hence, even though the rule says that the Collector may in his discretion remit the duty, it is always implied that this discretion has to be exercised reasonably for the purpose of the Act and having regard to the circumstances of the case and not arbitrarily. The question for consideration is whether the Collector did not exercise his discretion at all in remitting half the duty or whether he exercised his discretion arbitrarily.

9. As has already been observed the Collector did not refer to Rule 147. From this it is sought to be argued that he did not apply his mind and did not exercise the discretion vested in him under Rule 147. I do not agree with this contention. The mere fact that the Collector did not refer to Rule 147 does not mean that he did not apply his mind, to the circumstances of the case in exercisuig his discretion in remitting the duty.

10. It was then submitted that the main circumstances that weighed with the Collector in not remitting the duty entirely is that the petitioner according to the Collector gave an undertaking that in case of accidental fire he would pay the duty on tobacco lost due to such accidental fire. It was submitted, firstly, that there was no such undertaking it does not stand in the way of the Collector granting remission of the duty, if the conditions laid down in Rule 147 are satisfied. The undertaking given by the petitioners has been set out already and in that undertaking to the petitioners stated that they were aware that no remission of Central Excise duty will be allowed in case of fire accident in respect of all the tobacco stored or handed in their thatched sheds. It is argued that this is not an undertaking not to claim remission, but only a statement that they were aware that no remission will be allowed. Even assuming that is the proper interpretation of this document, I do not think the Collector was not justified in taking this as one of the circumstances in considering the question of remission. If a person with open eyes applied for a licence for a premises which includes thatched sheds and says that he is aware that no remission of Central Excise duty will be allowed in case of fire accident, it is not unreasonable for the Collector to take that circumstance into consideration in deciding whether remission should be granted in full or in part. It is true that the mere fact of giving an understanding will not prevent the petitioner from claiming remission under Rule 147 in case of unavoidable accident. But that does not mean that the Collector while granting remission is wrong in taking into consideration the fact that the petitioner had applied for and obtained licence for a premises with thatched sheds and also stated that he was aware that no remission would be allowed in a case of fire accident.

11. In this connection it is also to be noted that the petitioner stated in his reply to the show cause notice of the Collector that the total quantity of the scrap destroyed was 82,839 kgs. They stated that they could save only 32,79' kgs. and rest of the tobacco namely 82,839 kgs. was gutted. The Collector proceeded only on the footing that only 50,048 kgs. were gutted and he granted remission for half the duty on the said goods. If the petitioners own statement, namely 82,839 kgs. were destroyed, is taken into consideration, the Collector's order in effect, amount to granting remission of duty in respect of 25,024 kgs, out of 82,839 kgs. which would mean 2/3rd of the duty payable by the petitioner in respect of the goods destroyed. Sri Choudary also contended that the Collector had not given any reasons and it is not apparent from the order as to how and on what basis he exercised the discretion and for that reason also, the order deserves to be quashed. He refers in this connection to a decision in Padfield v. Minister of Agriculture, Fisheries and Food, 1968-2 WLR 924. Where it was held dealing with the provisions of the Agricultural Marketing Act authorising the Minister of Agriculture to appoint a committee of investigation, if he thinks fit to do so, that the Parliament conferred a discretion on the Minister so that it could be used to promote the policy and objects of the Act which were to be determined by the construction of the Act. Though there might be reasons which would justify the Minister in refusing to refer a complaint, his discretion was not unlimited Lord Morris of Berthy-Gest in his judgment which though a dismissing judgment, summarised the

position in the following terms :

"A Court could make an order if it were shown (a) that the Minister failed or refused to apply his mind to or to consider the question whether to refer to a complaint or (b) that he misinterpreted the law or proceeded on an erroneous view of the law or (c) that he based his decision on some wholly extraneous consideration or (d) that he failed to have regard to matters which he should have taken into account."

12. At page 969 Lord Upjohn observed that if the Minister does not give any reason for his decision it may be, if circumstances warrant it, that a Court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly. I am not satisfied in this case that the exercise of discretion by the Collector is vitiated by any of the circumstances referred to in the above case. It is to be remembered that in this case the exercise of discretion is in respect of remission of a duty and not in respect of confirmation of a right, privilege or licence which often comes up before Courts. In this case, primarily the goods were liable to duty under Rule 160 but the petitioner could ask for remission in case of unavoidable accident. There is no right in the petitioner to claim remission. The Collector has to exercise discretion and consider whether a case for remission of duty was made out. The approach to the exercise of discretion in the case of remission of duty is entirely different from the approach in the case of granting licence or conferring a right and so on. It is not necessary in the former case to give detailed reasons as to why the Collector is granting remission and how he arrived at the quantum of remission. This is not a case where the Collector has refused to exercise his discretion. This is a case where the Collector has, in fact, exercised his discretion. But it is argued that the discretion has not been exercised by applying his mind and that he has not given adequate reasons for exercising the discretion in that manner he did. I am satisfied that there are sufficient indications to show that the discretion was not arbitrary and I am not willing to interfere with the exercise of that discretion.

13. The Writ Petition is, therefore, dismissed but in the circumstances without costs.