M.R.O. 1—77,000—3-6-37.

(1) Number of pages 20

(2) Date of repair 2/5/40

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 34. Press Mis.

51-52.

Dated 9—1— 1874.

11/12

Not to be folded or roughly handled

Read again letter from the Controller of Military Accounts, dated 29th October and recorded in the Proceedings of 12th November 1873, No. 1676.

No. 51. Read also letter from E. BARCLAY, Esq., Acting Government Solicitor, Madras, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 2nd December 1873, No. 659, forwarding the following opinion of the Advocate-General :—

OPINION.

It appears to me that carriages and cattle in charge of the Commissariat Department at Madras would in most cases be exempt from toll, under Section 51 of the Act, either as "military stores and equipages on their march," or as "property in the custody of military officers on duty."

2. With regard to cases which did not fall within either of these categories, it is clear that "carriages, carts, horses, mules, or bullocks belonging to Government" cannot be taxed under Section 36, nor consequently licensed under Section 38.

3. The exemption in Section 45 as to registration is less widely worded, and the Section may be read to mean that, except "ordnance carts or waggons, the property of Government," all other springless carts, although the property of Government, are liable to registration.

4. It was probably not the intention of the framers of the Act, nor is now the wish of Government, that Commissariat carriages or cattle should pay toll, or that the Commissariat carts should be registered. In that case, the President of the Municipal Commission might be informed that the exemption contained in Section 51 is deemed by the Government to extend to Commissariat equipages and cattle. If the Municipality refuse to give way, an appeal must be had under Section 83, and, if the result of this be unfavourable, a Bill can be introduced to amend the wording of Section 51.

5. The above remarks are made subject to the doubt which I have on a former occasion brought to the notice of the Government, whether under the Indian Councils Act the Local Legislatures have any power to tax Government property at all. The Bombay Government considers that they have not, and the wording of the Act leaves the matter, at any rate, in some degree of doubt.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

1*st December* 1873.

No. 52. ORDER THEREON, 9th January 1874, No. 34.

On a careful consideration of the provisions of Madras Act IX. of 1867, the Governor in Council is of opinion that exemption from registration under Section 45 being confined to gun carriages, ordnance carts or waggons, the property of Government, all other springless carts belonging to Government are liable to registration under that Section, and carts so registered will be exempt from tolls under Section 49.

2. The Commissary-General will, therefore, be instructed to have carts of the above description duly registered on payment of the prescribed fee to the Municipality.

Proceedings of the Madras Government, Financial Department,
9th January 1874.

3. The Governor in Council, however, considers that the Government vehicles and animals which under the Act are exempt from liability to license and tax, or registration and tax, are thereby placed on the same footing as if licensed and registered under the Act, and are entitled to exemption from tolls under Section 49.

(True Extract.)

Chief Secretary.

To the President of the Municipal Commission, Madras, } with No. 1676.
,, Military Department.
,, Government Solicitor

Exd· J. H. Burns.

Govt. of Madras 1874

FINANCIAL.

To

THE PRESIDENT OF THE MUNICIPAL COMMISSION, Madras

&c., &c., &c.

Dated January, 9th.

Rcvd. Read.

G.O., 9th January 1874, No. 34.

JANUARY.
Nos. 51-52.

Madras Municipality—Opinion of Government stated that all springless carts belonging to Government other than gun carriages, ordnance carts or waggons should be registered under Section 45 of the Municipal Act, to exempt them from tolls under Section 49; Government vehicles and animals, however, considered exempt from tolls under the latter Section.

5

No. 659

Madras 2d. December 1873.

From

Ernest Barclay
Acting Government Solicitor
Madras.

To

The Honorable W. Hudleston
Chief Secretary to Government.
Fort Saint George.

Sir,

I have the honor to acknowledge receipt of the order of Government dated 12th November 1873 No. 1676. Financial Department, requesting the opinion of the advocate General on the question as to whether Government stores and equipages are exempt from tolls in the Madras Municipality under section 51 of Act IX of 1867.

2. I submitted the matter for the consideration of the Advocate General and I now forward herewith a copy of his opinion.-

I have the honor to be,
Sir,
your most obedient Servant.

Ernest Barclay

Acting Government Solicitor

Opinion.- 2

It appears to me that Carriages and Cattle, in charge of the Commissariat Department at Madras, would in most cases be exempt from toll, under S. 51 of the Act, either as "Military Stores and equipages on their march," or as "property in the custody of Military Officers on duty."

With regard to cases, which did not fall within either of these categories, it is clear that "Carriages, Carts, horses, mules or bullocks belonging to Government" cannot be taxed under section 36, nor consequently licensed under section 38.

The exemption in section 45, as to registration, is less widely worded, and the section may be read to mean, that, except "ordnance carts or wagons, the property of Government", all other springless carts, although the property of Government, are liable to registration.

It was probably not the intention of the framers of the Act, nor is now the wish of Government that Commissariat carriages or cattle should pay toll, or that the Commissariat carts should be registered. In that case the President of the Municipal Commission might be informed that the exemption contained in section 51 is deemed by the Government to extend to Commissariat equipages and cattle. If the Municipality refuse to give way, an appeal must be had under Section 83 - and if the result of this be unfavorable

Financial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again letter from the Com: Mily Acct

Read the following ~~letter~~ dated 29 Octr

Recorded in the Proceedings of Govt Fin Dept dated 12th November 1873 No 1676

Read again

Letter from the Govt Solicitor, Madras, dated 2d December 1873 No 659.

Order thereon 9 January 74 No 34

On a careful consideration of the provisions of Madras Act IX of 1867 the Governor in Council is of opinion that Exemption from Registration under Section 43 being confined to Gun Carriages, Ordnance Carts or wagons the property of Government, all other Springless Carts belonging to Govt are liable to Registration under that Section, and Carts so registered will be Exempt from Tolls under Section 49.

The Commissary Genl will therefore be instructed

to

Enclosure in Letter from the Govt Solicitor Madras to the Chief Secretary to Government, Madras, dated 2 December 1873 No 659

Recd 9 Jany 74 No 57

Fin 22/1/74

to have cards of the above description duly registered on payment of the prescribed fee to the Municipality.

The Governor in Council, however, considers that the Govt. Vehicles and Animals which under the Act are exempt from liability to license and tax or registration and tax are thereby placed on the same footing as if licensed and registered under the Act, and are entitled to Exemption from Tolls under Section 49.

To The Pres.t Board of Comm.rs Trade
" Military Department
" Government Solicitor

551 - 1870

Judl DEPARTMENT. 15

No. 2234.

From The Ag. Government Solicitor, Madras.

Dated 2d December 1873.

FOR ORDERS.

Registered conveyances are on that account exempted from Toll - and there can be no doubt the Registering in Assembly just Conveyances from Toll - fit to also intended also to exempt them from Tolls - which are a heavier tax than

the registration. At the
same time I consider it
unjust that pat. conveyances
which take the Municipal
Roads should not bear for
that use. And I would
have all Debts & Encumbrances
thus in justice by Registering

I. D.S.

I seems respectfully clear that "carriages,
cattle horses, mules, or bullocks"
should be struck out as in most
cases exempted by the Act from
the payment of Toll
but that all "principal carts"
which are not "ordinary Hackney
carts & waggons the property of
farmers" are liable to Toll as the
Act now stands. I agree with Lord Sudeley on the
Equity of the case: but under
our present Act the
Act

Municipals cannot demand, as the Govt. pay, any other regulation fee except - after the "principles" last mentioned.

It runs better to follow exactly the terms of the Act, and register them last as drafted.

See next sheet
24/12 DCL

C5/12 C13/12.
R5—
C8—
R12—

The Law exempts Government and Municipal Carriages &c from the necessity of registering (Sec. 45) or taking out licence (Sec. 56) and I doubt whether the Government of India would tolerate a military charge (however equitable) which the Law does not recognize. In this respect things must stand as they are. They use the roads within the Towns free of charge.

Government Equipages on their march with their Escort alone are free in respect to Tolls.

I

I would pay them wherever this Special Condition is not fulfilled. E.g. Market and Bakery Carts between Madras & the Mount &c &c

I would leave the nice question raised on the Extent of Exemption under Section 45 ~~until~~ to be raised by the Municipal Commissioners.

14/12

with No 1676
10

Govt. of {1874} Madras.

Financial.

To

The Pres^{t}. Mund. Comm^{rs}.
Madras
Sea

Dated Jan^{y} 9 }
Recd. 1 } 1874, No. 34

Nos. 37-52.

Madras Mun^{y}. Opinion of Gov^{t}. stated that all Springless Carts belonging to Gov^{t}. other than Gun Carriages & Ordnance Carts or Wagons Sh^{d}. be registered under Sec. 45 of the Mund. Act No. 14 Exempt them from Tolls under Sec. 49. Gov^{t}. Vehicles & Animals however considered Exempt from Tolls under the latter Section.

✓

C 21/6- 8/1/74
245-
C 23
Rec'd 1/1/74