L. & M.
2,500—12-8-98.

Local & Munl. (1898) Department.

MISCELLANEOUS.

2151 M. Pr.

G.O., No. 2152 M. Pr.

DATED 15—12—98.

RECEIVED. DESPATCHED

[Despatch Abstract.]

Tax

Forwarding for the information of the Government of India a copy of the resolution of the Municipal Commissioners of Madras, stating that in the face of the expressed provisions of the City of Madras Municipal Act, they are unable to see their way to exempt from tax Government tin or and bamboos passed into the Madras Arsenal and Gun Carriage Factory for manufacture.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Circ 24th/97							

LOCAL AND MUNICIPAL DEPARTMENT.

[L. & M.] 500 -16-3-95.

Levy of license fee on prof. tanks
Maras Municipality

Papers to be read in Proceedings :—

Again G.O., No. dated 189 ,

Again G.O., No. dated 189 ,

Current No. 2830 M of 1898, dated 31st Aug. 1898, from the Presd. Mun. Commrs., Madras

" " " 189 , " " "

" " " 189 , " " "

Misc

ORDER. No. 2151 Misc 15/12/98

Hon
H E the Gov. 2,34
13.12.98

The following letter will be addressed to the Government of India :—
(From Orders)

Letter No. 2152 Misc 15/12/98

To

The Secretary to the Government of India
Military Department.

MA 7.12.98.

Sir,

X

A.G.H.

In continuation of my letter No. 1035 dated 10th June 1898, forwarding a copy of the opinion of the Advocate-General, Madras, on the question whether the Madras Municipality has any legal power under Section 341 of Act I of 1884, as amended by Act VII of 1884 and Act II of 1892, to tax Government timber and bamboos passed into the Madras Arsenal and Gun Carriage Factory for manufacture, and stating that

th reference to that opinion, the
unicipal Commissioners of Madras
ave been requested to cease to
vy the license fees in question,
am directed to forward for the in-
rmation of His Excellency the Gov-
-General
nor in Council, a copy of the
esolution of the Municipal Commis-
ioners, stating that in the face
f the expressed provisions of the
ity of Madras Municipal Act,
hey are unable to see their way to
xempt Government timber from
he payment of the fee in question.

I have &c.,

V.R
30/11/98

H T
5 12 98

Desp.

Send copy of Papers under
Speech along with Copy of
Resolu-

Dispatched 16/12/98

H
14

[G. 26]
250—18-2-98.

LOCAL AND MUNICIPAL DEPARTMENT.

C. No. 2830 M of 1898.

SUBJECT.

Levy of license fees on Govern-
ment timber - Madras Municipal

FOR ORDERS.

vide his letter in P.O 50. M 16-1-97

In November 1896, the Inspector-
General of Ordnance, Madras Com-
mand, brought to notice that the
Municipality of Madras had, u
Section 341 of the City of Madras
Municipal Act of 1884, been levy-
ing license fees on timber and
bamboos consigned by the Forest
Department from out-stations and
ports to the Gun Carriage a
Factory and the Arsenal at
Madras, that the scope of
Act did not, and in any case
should not, include, Government
stores consigned by a Govern-
ment official outside the limits
of the Municipality to one within
its jurisdiction, and that he
had ascertained from the
Inspector

17 11 98

Inspectors-General of Ordnance
of other Commands that such
Charges were not imposed by
municipalities in their respective
Commands, and he accordingly re-
quested that the Municipality
might be directed to discontinue
such claims in future and to
refund the sum of Rs 1,665 which
had been paid since 1st April
1895. The Government was how-
ever then of opinion that Section
xciv of the Madras Act I of 1884,
authorized the levy of the duty in
question and made no exception
in favour of Government stores.
Vide G.O. No 50 M., dated 16th
January 1897.

P

2. In July 1897, the Govern-
ment of India, in the Military
Department, while forwarding certain
correspondence from the Director
General of Ordnance in India,
and the Quarter-Master-General
in India, regarding the levy of
the license fees in question by the
Madras Municipality, pointed out
that as there was no provision
in the City of Madras Municipal
Act

Q

Vide letters No 2244 & 2245
14-10-97

Act 1884, for the exemption
of Government stores from
license fees levied under Section
341 thereof, the Madras Munici-
pality was, so far as the Act
was concerned, competent to levy
the fees on the Government
timber in question, but that
under the rules laid down in
the letter from the Government
of India, in the Department
of Revenue, Agriculture and
Commerce, No 2/98-103, dated 22nd
December 1875 communicated to
the Madras Government, with
Military Department No 466,
dated 19th February 1876, the levy
of octroi on goods, the property
in which was vested in
Government at the time they
passed a municipal barrier,
was prohibited, and that al-
though the impost which the
Municipality was

R

G.O. 309. Jud.
14.2.76

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852. Military
18.2.76.

17 11 98

Inspectors-General of Ordnance

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be held to apply to the licensee fees in question. The Government of India therefore requested to be informed whether the Municipality of Madras would agree to exempt from such taxation Government timber and bamboos consigned by the Forest and other Government Departments from outstations and ports to the Madras Arsenal and Gun Carriage Factory, Madras. The Municipal Commissioners to whom a reference was made in the matter, having expressed their inability to exempt Government timber under the provisions of Section 341 of the Act, this resolution was Communicated to the Government of India - Vide Ad. 2244 M., dated 14th October 1897.

Q

T

vide the resolution in P. 224 / 1897

3. On this, the Government of India, requested that the opi... of the Advocate General that as there was no provision in the City of Madras Municipal Act

U

V

vide the letter from the Govt. in P. 1034.M / 18.6.98

implication, the Madras Municipality has the legal power to tax Government timber and bamboos passed into the Madras Arsenal and Gun Carriage Factory for manufacture." The Advocate General who was there upon asked to give his opinion in the matter, stated that the General principle that the Crown is not bound by any statute unless it is expressly named, did not apply to such a case as this, but that reading Sections 338 and 341 of the Act together, he was of opinion that the Madras Municipality had no legal power to impose license fees in respect of timber and bamboos, the property of Government, consigned by Government Departments to the Madras Arsenal and Gun Carriage Factory and that "bamboos" were neither "timber," nor "firewood."

W

para 6 of his opinion in P.O. 1034.M / 8-6-98

This seems clear from Act XI of 1881. W.

I think this doubtful whether the Adv. G's opinion is sound, but it is a difficult question. In ~~it~~ certainly is not ~~sound~~ if the origin of Sec 341 could be looked to — but that cannot be done in law. As I framed ~~Sec.~~ Sec. 341 when as Rest. of the M.C. I know that Sec it was not ancillary to Sec 338, but was ... by and solely for purposes Govt. use, and the ... in the Statute is

of Madras with the request that they would cease to levy license fees under Section 341 of Act I of 1884 on Government timber and bamboos consigned by the Forest and other Government Departments from outstations and ports to the Madras Arsenal and Gun Carriage Factory and the Government of India was informed of the action taken in the matter vide G.O. No 1034 M., dated 8th June 1898.

4. With the letter read above, the President of the Municipal Commission, Madras, forwards a resolution of the Commissioners stating that they regret that in the face of the expressed provisions of the City of Madras Municipal Act, they are unable to see their way to exempt Government timber from the payment of the fee in question and that they see no reasons that as there was no provision in the City of Madras Municipal Act

it was understood the Govt of India wd object

As to bamboos not being timber – there is no definition in the Munl act., but in the Forest act bamboos are trees, and trees fallen or felled are timber

X

A.G.H.

Y

Z

in the speech of M.R.Ry Pragasa Mudaliyar, one of the Commissioners, copy of which has been submitted with the President's letter.

It does not appear that the Government has the power to compel the Municipal Commissioners to discontinue the levy of the fees in question. The only course open to the Inspector General of Ordnance therefore seems to be to go to the Civil Courts for a refund of the tax. In the meantime, it is submitted that Section 341 of the Act may be amended so as to provide expressly for the exemption from liability to license fees of timber, the property in which vests in Government.

V.R
4/11/98 H.M.

H
17/11/98

S.433. Six months have expired. If the Commissioners again, he might sue them.

For orders.
H.I.

We had better inform Govt what has passed & let them propose legislation if they desire it. This Govt will not legislate motu as it has

Municipal Act.

Mr. R. N. Pragasa Mudaliar in moving the following resolution "that with reference to G. O. No. 1034 M. Mis., dated 8th June 1898, requesting the Commissioners that they will cease to levy license fee on Government timber and bamboos, the Commissioners regret that in the face of the expressed provisions of the City of Madras Municipal Act they are unable to see their way to exempt Government timber from the payment of the fee in question and that they see no reasons to alter their original decision as expressed in their resolution of 27th September 1897," said:— You must be aware, that fees collected on timber and firewood imported into the town, is one of the sources of our revenue, and the Municipality has been collecting this revenue, ever since the Act came into force. I may inform you for the sake of information, that the revenue derived under this source for 1896-97 was Rs. 97,500, of which Rs. 4,100 was the fee derived on the import of timber consigned to the Military Department of Government. In 1897-98 the collection under this head from the Military Department was 2,480 Rs. In the years previous, the collection was very small amounting in the average to about 200 Rs. or so.

Before going to the main question I shall give you a brief history of the present dispute. For the first time in November 1896, the Inspector-General of Ordnance, protested against the collection of this license fee, but the Government in G. O. No: 50 M. Mis., dated 16th January 1897, informed the Inspector-General of Ordnance "that Sec. 341 Act 1 of '84 authorizes the levy of the duty and makes no exemption in favour of Government Stores." On this Government of India was moved, to address the local Government on the subject. The following is the Indian Government order:—

"There is no provision," says Dy. Secy. to the Government of India, "in the City of Madras Municipal Act 84 for the exemption of Government Stores from license fees levied under Section 341 thereof, and the Madras Municipality so far as the Act is concerned is competent to levy the fees on Government timber in question. I am however to invite attention to the letter from the Government of India No. 464, dated 19th February 1896. This letter laid down revised rules prohibiting the levy of octroi on goods, the property in which is vested in Government and I am to state that although the impost which Sec. 341 of the Act authorizes is not an octroi, but a license fee, the Government of India consider, that the two taxes though called by different names, are identical and that the order of 1876 should be held to apply to license fees." The Government of India however wish to be informed whether the Municipality agreed to exempt the license fee on Government timber. The question came before the Commissioners at the General Meeting held on the 27th September 1897, when it was resolved "that the Commissioners do not see their way to exempt Government timber from payment of license tax, under the provision of Section 341." On this resolution being communicated to Government of India, the local Government was requested to obtain the opinion of the Hon. the Advocate General of Madras upon the question, whether on the general principle that the Government is not bound by any statute, unless it is expressly named therein, or by any necessary implication, the Madras Municipality has any legal power to tax Government timber and bamboos passed into the Madras Arsenal and Gun Carriage Factory for Manufacture."

In the G. O. before us, Government request the Commissioners "that they will cease to levy license fees under Section 341 of the Act on Government timber and bamboos consigned by the Forest and Government Departments from outstations and ports, to the Madras Arsenal and Gun Carriage Factory." This request of Government, you must be aware, is based on the opinion of the Advocate General which has been circulated. It is for us to decide now, whether on the face of this opinion, we are prepared to alter the decision we arrived at, at the meeting of the 27th September 1897 and whether we are further prepared to forego the revenue which we have been collecting since the Act came into force. Section 341 lays down that "no timber or firewood shall be brought within the city, without a license specifying the place and conditions of storing to be issued by the President," and further "whoever without such license * * * brings or causes to be brought within the city, any timber or firewood shall be liable to fine." "It must be noted that there is nothing in this Section either directly or impliedly authorizing the Municipality to exempt the license

fees on timber and bamboo brought into the city by whomsoever it may be, I use the word *whomsoever*, because this Section makes no distinction of any kind. Now let us see on what grounds Government claims this exemption. The question raised by the Military Department for the opinion of the Advocate General is whether on the general principle that the Crown is not bound by any statute unless it is expressly named therein, the Madras Municipality has any legal power to tax Government timber. The Advocate General very correctly answers this question in para 8 of his opinion. He says that he does not think—I lay much stress upon it, "that the general principle, that the crown is not bound by any statute, unless it is expressly named, applies to such a case as this, and that even assuming that the rule in the case of the crown applies to *Government*, the inference to be drawn from the fact that *Government* is expressly mentioned in several of the other Sections of the Act would be, that the legislature did intend *Government* to be bound by Section 341." This observation of the Advocate General is a great point in our favour. To impress it upon you I would repeat what the Advocate General has said. He says "that the inference to be drawn from the fact that *Government* is expressly mentioned in several of the other Sections of the Act would be, that the legislature did intend *Government* to be bound by the provisions of Section 341". After committing himself to this opinion which is the very ground on which we stand, the Advocate General concludes by saying "however, in *my view*, for the reasons which I have already stated, the provisions of Section 341 do not apply to Government timber." With every deference, it strikes my humble mind, that the opinion is inconsistent, for I do not know how to reconcile both. If from the reading of the various sections of the Act he draws the inference "that the legislature did intend *Government* to be bound by Section 341," I do not understand how in *his view* he considered that "the provisions of Section 341 do not apply to *Government* timber." However, let us see what reasons the Advocate General adduces in para 6 of his opinion, for concluding that the "Municipality has no legal power to impose license fees in respect of timber and bamboos, the property of *Government*

In starting with his opinion, the Advocate General assumes, that "there can be no doubt, that as a matter of fact, the Legislature never contemplated the application of the provisions of Section 341, to the case of Government timber, consigned by a Government Department, to the Arsenal or Gun Carriage Factory; and the reasons upon which such inference is drawn are set forth in para 5 of the opinion which runs thus:—

"It seems to me that for the purpose of construing Section 341 with reference to the point in question, Section 341, should be read by the light of Section 338. Now under Sec: 338 a license is not necessary in the case of places used for the storage of wood, firewood or other inflammable material, if the place in question is in the occupation or under the control of Government. If Government are not exempt from the provision of Section 341, the state of the law would be this:— Government may occupy any place for the sale or storage of wood, firewood, &c., without a license, but they cannot bring their own timber or firewood into the city for the purpose of conveying it to their own premises without a license specifying, the place and conditions of storing. This seems to me a legislative absurdity." The argument simply comes to this—that as in Sec. 338 no restrictions or regulations could be imposed regarding the storage of Government timber in a Government Depôt, no restrictions or regulations could be necessary in the case of timber imported by Government because such a license only goes to specify the place and condition of storing, and that as the Municipality could not control the storage of Government timber in a Government Depôt, it is a legislative absurdity to say, that Sec. 341 intended the issue of a license for the import of Government timber. Let us try and apply this argument, to the case of a private individual importing timber for sale or otherwise. Sec. 341 requires that a license should be taken, for importing timber into the city (on payment of a certain fee), such license specifying the place and conditions of storing. In the usual course a party takes this timber and stores it in the very place mentioned in the import license (Section 341). Can it be argued that as a license had been taken, in which the place and other conditions of storing are duly entered, no separate license need be taken by him, for storing the timber (Section 338) he had imported under Section 341? I am sure you would all say, that although a license had been taken for import under Section 341, he is still bound to take a license also under Sec. 338, because the law requires separate licenses being taken. There is not the slightest doubt that the Act comtemplates two distinct classes of licences, namely, one under Sec. 338 and another under Sec. 341. The former is quite independent of the latter. Therefore

Sec. 338 authorizes exemption in any case, it does not follow, as a matter of course, that that exemption extends also to Sec. 341. The very express mention of the exemption of the storage of Government timber under Section 338 and the express omission of an exemption under Section 341, in the case of Government timber imported into the city, is certainly a powerful argument in our favor. Moreover it is clear beyond doubt that the framers of the Act intended that these two Sections, namely, 338 and 341, should be treated independent of each other. For, we see from Section 420 that, when licenses are issued under certain Sections of the Act, (amongst which appear, Sections 338 and 341) license fees are authorized to be charged for each of them.

Let us follow the argument of the Advocate General a little further. He argues that as "under Section 338, a license is not necessary in the case of a place used for the storage of wood, firewood, &c., if the place is in the occupation or under the control of Government," no restrictions could have been intended for the import of Government timber under Section 341. Now, instead of reading Section 341 by the light of Section 338, as the Advocate General wishes us to do, let us read Section 119, which empowers the Commissioners to tax "lands and buildings," with the light of Section 338 and see how far the inference of the Advocate General will hold good. Supposing that because a place—be it land or building, is used as a Timber Depôt and is in the occupation or under the control of Government, it is entitled to an exemption of some kind or other under Section 341, I would ask whether by analogy an exemption should not also lie under Section 119 (exemption from building tax), because the place is in the occupation and under the control of Government and is used solely for the storage of its timber? If there is any reason why we should not read Section 119 with the light of Section 338 for the purpose of claiming an exemption, there could be no reason why we should read Section 341 with the light of Section 338. If for the purpose of Section 119 a place used by the Military Department as a Timber Depôt is not intended to be exempted from Municipal interference, there appears to be no reasonable grounds for exempting the import of Government timber from the operation of Section 341. Looking at the question, I am disposed to think that there appears greater reason for exempting a Government timber yard from the operation of Section 119 than under Section 341. I have simply made an allusion to Section 119, because a tax of Rs. 102 per annum is collected on the premises used on the Poonamallee Road as a Timber Depôt by the Military Department, and nobody has thought of claiming an exemption from this tax also. There is one other point in para 3 of the Advocate General's opinion, to which I would draw your attention. He says that the object of Sections 338 to 341 may be stated to be the protection of the public against fire, that the necessity for these precautions is obvious in the case of timber and firewood brought into the city by private individuals to be stored in private Depôts, and that no such necessity exists in the case of Government timber, conveyed by Government to the Government Depôts. There is no doubt that greater precautions are taken in Government Depôts, just as much as the Madras Railway Company does with its store of timber, but that is no reason why an exemption should be claimed by the Military Department any more than by the Madras Railway Company, who take as much care as the Military Department.

Reading through the Act carefully any one would be convinced that it is not the intention of the Act to exempt timber imported into the city by the Military Department from the operation of Section 341. The Act expressly provides cases in which the regulations which are to be enforced as against private individuals, shall not apply to Government. For instance, Section 151 which deals with lighting tax, Sections 154 and 164 which deal with Government vehicles and animals, Section 174 which deals with the passage of troops, Government stores, &c., Section 332 which deals with places used for any of the trades mentioned in that Section; Section 335 which deals with stables, &c., and Section 338 which deals with license for places used for the storage of timber and firewood. Besides these cases that I have just mentioned, the Act does not make an exemption, in any other case, and it is but natural to infer, that the legislators did not intend any exemption under Section 341. The express mention of exemptions under various Sections, implies negation in others. I would therefore repeat once more, in the Advocate General's own words, that "the inference to be drawn from the fact that exemption is specially provided for in several of the other Sections of the Act would be, that the legislature *did intend* Government to be bound by the provisions of Section 341." This expression of opinion is enough, I should think, to induce us to adhere to the

decision we arrived at in September 1897. We cannot go beyond the plain provisions of the Act. The opinion of the Advocate General ought not to prevail against the expressed provisions of the Act, if we are to follow the maxim "Expression precludes implication". I hope the Commissioners will rely on the Act until there is a judicial ruling on the subject, or until Section 341 is amended, exempting Government timber.

THOMPSON AND CO., PRINTERS, MADRAS.

Local & Munl. (1898) Department.

CURRENT No. 2830 M

From

THE PRESIDENT,

Municipal Commission,
Madras.

Order

G. No. 260

Dated 31 August 1898

Received 1-SEP 1898

Registered

Enclosures Two—

Spare copies

SUBJECT.

Forwarding an extract from the proceedings of a General meeting of the Commissioners held on 29 August 1898 together with a copy of Mr. R. N. Prayasa Mudaliar's Speech at the meeting held on 29 July last re exemption of license fee on Government timber and bamboos consigned to the Madras Arsenal and the Gun Carriage Factory.

BACK PAPERS.

G.O.	No.	Department.	Date.
fo	1034	dm	8698

FURTHER PAPERS.

G.O.	No.	Department.	Date.

MUNICIPALITY OF MADRAS,

General Department,

G. No. 260

Madras, 31 August 1898

From R.E.Ellis,Esq, M.Inst.C.E.
~~Lieut.-Col. SIR GEORGE MOORE, Kt., C. I. E.,~~
Ag: *President, Municipal Commission.*

LOCAL & [illegible]
CURRENT 2830.96

To

The Secretary to Government,
Local and Municipal Department,
Fort Saint George.

Sir,

Enclosures 2

With reference to G.O.No. 1034 M.Mis., dated
June 1898, I have the honor to forward herewith an ex
from the Proceedings of a General Meeting of the Comm
sioners held on 29th August 1898 together with a copy
R.N. Pragasa Mudaliar's speech at the meeting held o
July last on the subject referred to therein.

I have the honor to b

Sir,

Your most obedient ser

R.E.Ellis.
Ag: President,

Encl: (1) to G.No: 260.

Extract referred to.

Resolution No.3 of the Commissioners at their Meeting held on 29th July 1898, deferring consideration of the question of - ceasing the levy of license fee on Government timber and bamboos consigned to the Madras Arsenal and the Gun Carriage Factory.

The original proposition — moved by M.R.Ry.R.N.Pragasa Mudaliar Avargal on 29th July 1898 and seconded by M.R.Ry.M.Ven-kataramiah Chetty garu, Viz: " That with reference to G.O.No. 1034 M.Mis., dated 8th June 1898, requesting the Commissioners that they will cease to levy license fee on Government timber and bamboos, the Commissioners regret that in the face of the expressed provisions of the City of Madras Municipal Act they are unable to see their way to exempt Government timber from the payment of the fee in question and that they see no reasons to alter their original decision as expressed in their resolution of the 27th September 1897" was resumed.

Carried.

2
2830/m/98

n given for copying
he copies
ha examined
hen signed 15/8/1 189 .

READ AGAIN G.O., No. , DATED
189 .

CURRENT No.

ENCLOSURES TO C. No.

OF GOVERNMENT	A	A	A	A	A	A	A		
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N.B.—

A = Copy in full.
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