Marine 1572/98

~~Public Works~~ (1899) Department.

G.O., No. 83 Marine

DATED 26th Jan. '99

R F 384 Mar 3-5-99

[Despatch Abstract.]

Measurement of the tonnage of "Native Craft"

Stating that the Presidency Port Officer will be guided by the opinion of the Advocate General regarding the interpretation of the rules for the ——, and directing him to submit a draft — of the amendments suggested by the Advocate General in connection therewith.

[P. W. 26.
1,000—12-2-98.]

Indexed. 27/1/99

## BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
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## FURTHER PAPERS.

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| R 321 L 99 | | | | | | | |
| | 384 | Marine | 3.5.99 | | | | |

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# Government (1899) of Madras.

## MARINE.

*Recd.* } 1899. *Enclosures*

*Regd.* } 1899. *Spare copies*

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## G.O., No. 83, 26th January 1899.

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## JANUARY.

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### Measurement of the Tonnage of "Native Craft"

Stating that the Presidency Port Officer will be guided by the opinion of the Advocate-General regarding the interpretation of the rules for the —, and directing him to submit a draft of the amendment suggested by the Advocate-General in connection therewith.

## GOVERNMENT OF MADRAS.

## MARINE DEPARTMENT.

**Read**—the following papers:—

From Commander W. AVES, R.I.M., Acting Presidency Port Officer, Madras, to the Secretary to Government, Marine Department, dated Madras, 10th September 1898, No. 337/314 G.

An instance was lately brought to my notice where a schooner named *Mahomed Mohidin Meeran Sahib Hydrose*, which was registered at Tuticorin on 22nd December 1897 under Act X of 1841 and certified by the surveyor of shipping at that port to be of the burthen of 210·18 tons, was remeasured at Colombo in June last by the master attendant there and the certified tonnage altered to 181 $\frac{99}{100}$ tons. On enquiry I am informed that the tonnage given at Colombo is the registered tonnage after deducting from the gross tonnage space for crew and vessel's equipment.

2. Section 9 of Act X of 1841 lays down that the tonnage of vessels requiring registration shall be ascertained according to the rules in force under the Merchant Shipping Act, 1854 (now 1894), and section 79 of the English Act of 1894 does provide for deduction on account of space for crew as well as, in the case of ships propelled by sails, space for the storage of sails; but in regard to the measurement of vessels for registration under Act X of 1841, surveyors of shipping at ports in the Madras Presidency are guided by special rules issued by the Local Government and contained in the orders quoted in the margin. These rules do not provide for any deduction on account of space for crews and vessel's equipment, and consequently no such deduction is allowed at ports in this Presidency, nor does it appear necessary to allow such deduction in the case of the class of vessels (country craft) which generally obtain registration in this Presidency under Act X of 1841.

No. 2, Marine, dated 3rd January 1878.
No. 41, „ „ 1st February 1894.

3. Under the circumstances, I would suggest that the Ceylon Government be addressed with a view to the tonnage of vessels registered at ports in this Presidency being accepted by the Ceylon authorities as it stands in the registry certificates issued at these ports, as otherwise some confusion will arise in the matter of the levy of port dues.

4. In the case now under reference, dues were collected at Cuddalore on 182 tons, at Negapatam on 210 tons, and at Kulasekarapatam on 182 tons; and the Customs officer at the last-named port, on hearing of the amount collected at Negapatam, has since recovered dues on the difference of 28 tons, and enquires whether the amount, rupees two and annas ten (2–10–0), is to be credited to Government or returned to the tindal. I refer this point for the views of Government.

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Un-official reference to the Presidency Port Officer, dated 21st Sept. 1898, No. 483 E.

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*Opinion of the Advocate-General, Madras.*

The question for consideration in this case is whether the rules for the measurement of the tonnage of "native craft" for the purpose of registration, which have been in use for a considerable period in this Presidency, are lawful rules, having

regard to the provisions of the Merchant Shipping Act, 1894. The rules in question purport to be made under the authority of section 3 of Act XI of 1850, and they are contained in two Government orders, dated respectively January 3rd, 1878, and February 1st, 1894. The earlier rules relate to "the measurement for tonnage of native craft." The later rules relate to the measurement of "*open* native craft." It appears to have been the practice in this Presidency since 1877 to measure vessels of European build, which are owned and manned by natives of India, in a similar manner to native craft.

2. The history of the legislation on the subject is shortly as follows:—

Sections 8—12 of Act X of 1841 provided for an elaborate system of measurement which was obviously unsuitable in the case of small native coasting vessels, and Act XI of 1850 was passed to provide for a simpler system of measurement in the case of vessels to which section 3 of that Act was applicable. It is under the powers conferred by this section that the rules now in use in the case of native craft have been issued by Government. The Act of 1841 contained no provision requiring a deduction on account of crew space. By section 3 of Act VII of 1891 a new enactment was substituted for the original section 9 of Act X of 1841 to the effect that, subject to the provisions of certain Indian enactments (which are immaterial for the purposes of the present question), the tonnage of a ship required by law to be registered should be ascertained according to the rules in force under the Merchant Shipping Act, 1854, as amended by subsequent Acts. On January 1st, 1895, the Merchant Shipping Act, 1894, which consolidated the existing British enactments, came into operation. Section 2 enacts that every British ship shall, unless exempted from registry, be registered under that Act. So far as British India is concerned, the only exemption is in the case of ships not exceeding 15 tons burden employed solely in navigation on the rivers or coast of British India. The rules for the measurement of ship and tonnage are contained in Part I of the Merchant Shipping Act, 1894 (see sections 77–82 and the second schedule), whilst section 91 of the Act, which reproduces section 17 of the Act of 1854, expressly provides that Part I shall apply to the whole of Her Majesty's dominions. Section 79 provides that, in measuring a ship for the purpose of ascertaining her register tonnage, a deduction shall be made *inter alia* for "any space occupied by seamen or apprentices and appropriated to their use which is certified under the regulations scheduled to this Act with regard thereto."

3. The Acts passed by the Indian Legislature are of course subordinate to, and controlled by the enactments of the British Parliament, and in the case of inconsistency between the enactments of the Indian Legislature and of the British Parliament, the latter must prevail. Consequently, if the rules issued under the authority of section 3 of Act XI of 1850 are inconsistent with the provisions of the Merchant Shipping Act, 1894, relating to the measuring of a ship for the purpose of ascertaining her register tonnage, they ought to be amended. Having regard to the structure of the native craft to which the Government orders of January 3rd, 1878, and February 1st, 1894, respectively apply, it seems to me that section 79 of the Merchant Shipping Act, 1894, is only applicable in so far as it requires a deduction in respect of "any space used exclusively for the accommodation of the master." In other respects, as I understand the structure of the "native craft" in question, the section is inapplicable. It seems to me, therefore, that the only amendment necessary in the existing rules, so far as "native craft" are concerned, is to provide for a deduction in respect of "any
(1) space used exclusively for the accommodation of the master." It may be necessary also to provide for deductions in respect of the spaces referred to in sub-section I,
(2) clause (*a*) (ii) and clause (*b*) of section 79. This would depend upon whether or not, in the case of "native craft," there are spaces used exclusively for the purposes therein mentioned.

4. The foregoing observations are only intended to apply to the case of "native craft." In the case of vessels of European build, owned and manned by natives of India *who are British subjects*, it seems to me that the local rules are inapplicable, and that the system of measurement of vessels of this character should be that laid down in the Merchant Shipping Act, 1894. The test is *not*, is the vessel owned by a

European British subject or by an Indian British subject? but, having regard to the structure of the vessel, are the provisions of the Merchant Shipping Act, 1894, with reference to deductions for ascertaining tonnage for the purpose of registration in fact applicable?

MADRAS,
14th December 1898.

(Signed) ARNOLD WHITE,
Advocate-General.

Un-official reply from the Presidency Port Officer, dated 17th Dec. 1898, No. 337/460 G.

ORDER—No. 83, Marine, dated 26th January 1899.

The Presidency Port Officer will be guided by the opinion of the Advocate-General and issue the requisite notice to all Port officers; the rules framed under section 3 of Act XI of 1850 being amended accordingly.

A draft of the proposed amendment should be submitted for approval.

(True Extract.)

Under Secretary to Government.

To the Presidency Port Officer.
„ Government Solicitor.

Exd. T. K. Narayana Aiyangar.

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Marine DEPARTMENT. 3

READ the following :—

Letter from the Presidency Port Officer, Madras, No. 337/314 G., dated 10th September 1898

Unofficial reference to the Presidency Port Officer, No. 483 E., d/21st September 1898.

Opinion of the Advocate General, Madras, dated 14th December 1898

Unofficial reply from the Presidency Port Officer, No. 337/460 G., dated 17th December 1898.

Circulated to

His Excellency the Governor

ORDER. No: 83 Marine, 26.1.99.

The Presidency Port Officer will be guided by the opinion of the Advocate General and issue the requisite notice to all Port Officers; the rules framed under Section 3 of Act XI of 1850 being amended accordingly.

A draft of the proposed amendment should be submitted for approval.

A.G.H.
25.1.99

To
The Presidency Port Officer.
„ Government Solicitor.

Note

The question is as to the correct measurement for tonnage of "Native craft" at the ports of this Presidency. It will be seen that the provisions of the English Act, 1894, which allow certain

P. W. 4
1,000—14-11-98.

16.1.99 | 26.1.99

certain deductions from the gross tonnage should be applied, and that the local rules, which are defective in this particular, require amendment.

C.S.

14-1-98

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# Marine (1898) Department.

CURRENT No. 1572

*Order*

*From*
the Presidency Port officer

*No.* 337/460 G.

*Dated* 17th December
*Received* 19 do —
*Enclosures* 2
*Spare copies*

SUBJECT.

Measurement of Vessels

Forwarding the opinion of the Advocate General on the question whether the rules for the measurement of the Tonnage of native craft for the purpose of registration, are lawful rules.

[M 4. / 1,000—8-8-96.]

## BACK PAPERS.

| G.O. | No. | Department. | Date. |
|---|---|---|---|

4832 of 21-9-98
5041 of 1-2-1894
2 of 3.1-1878
224 of 22-6-1876
Merchant Shipping Act 1854
Act X of 1841 + XI of 1850

## FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
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# OPINION

I. The question for consideration in this case is whether the rules for the measurement of the tonnage of "native craft", for the purpose of registration, which have been in use for a considerable period in this Presidency, are lawful rules, having regard to the provisions of the Merchant Shipping Act, 1894. The rules in question purport to be made under the authority of Section 3 of Act XI of 1850, and they are contained in two Government orders dated respectively January 3rd, 1878, and February 1st 1894. The earlier rules relate to "the measurement for tonnage of native craft". The later rules relate to the measurement of "*open* native craft". It appears to have been the practice in this Presidency since 1877 to measure vessels of European build, which are owned and manned by natives of India, in a similar manner to native craft.

2. The history of the legislation on the subject is shortly as follows :-

Sections 8-12 of Act X of 1841 provided for an elaborate system of measurement which was obviously unsuitable in the case of small native coasting vessels, and Act XI of 1850 was passed to provide for a simpler system of measurement in the case of vessels to which Section 3 of that Act was applicable. It is under the powers conferred by this Section that the rules now in use in the case of native craft have been issued by Government. The Act of 1841 contained no provision requiring a deduction on account of crew space. By Section 3 of Act VII of 1891 a new enactment was substituted for the original Section 9 of Act X of 18$\overset{4}{5}$1 to the effect that subject to the provisions of certain Indian enactments (which are immaterial for the purposes of the present question) the tonnage of a ship required by law to be registered should be ascertained according to the rules in force under the Merchant Shipping Act 1854 as amended by subsequent Acts. On January 1st 1895 the Merchant Shipping Act 1894, which consolidated the existing British enactments, came into operation. Section 2 enacts that every British ship shall, unless exempted from registry, be registered under that Act. So far as British India is concerned, the

1841

only exemption is in the case of ships not exceeding 15 tons burden employed solely in navigation on the rivers or coast of British India. The rules for the measurement of ship and Tonnage are contained in Part I of the Merchant Shipping Act 1894 (See Sections 77-82 and the second schedule) whilst Section 91 of the Act, which reproduces Section 17 of the Act of 1854, expressly provides that Part I shall apply to the whole of Her Majesty's dominions. Sections 79 provides that in measuring a ship for the purpose of ascertaining her register tonnage, a deduction shall be made *inter alia* for "any space occupied by seamen or apprentices and appropriated to their use which is certified under the regulations scheduled to this Act with regard thereto".

3. The Acts passed by the Indian Legislature are, of course subordinate to, and controlled by the enactments of the British Parliament, and in the case of inconsistency between the enactments of the Indian Legislature and of the British Parliament, the latter must prevail. Consequently, if the rules issued under the authority of Section 3 of Act XI of 1850 are inconsistent with the provisions of the Merchant Shipping Act, 1894, relating to the measuring of a ship for the purpose of ascertaining her register tonnage, they ought to be amended. Having regard to the structure of the native craft to which the Government orders of January 3rd 1878 and February 1st 1894 respectively apply, it seems to me that Section 79 of the Merchant Shipping Act, 1894, is only applicable in so far as it requires a deduction in respect of "any space used exclusively for the accommodation of the Master". In other respects, as I understand the structure of the "native craft" in question, the section is inapplicable. It seems to me, therefore, that the only amendment necessary in the existing rules, so far as "native craft" are concerned, is to provide for a deduction in respect of "any space used exclusively for the accommodation of the Master". It may be necessary also to provide for deductions in respect of the spaces referred to in Sub-section I clause (a) ii and Clause (b) of section 79. This would depend upon whether or not, in the case of "native

craft" there are spaces used exclusively for the purposes therein mentioned.

4. The foregoing observations are only intended to apply to the case of "native craft". In the case of vessels of European build, owned and manned by natives of India *who are British subjects* it seems to me that the local rules are inapplicable, and that the system of measurement of vessels of this character should be that laid down in the Merchant Shipping Act, 1894. The test is *not*, is the vessel owned by a European British subject or by an Indian British subject, but, having regard to the structure of the vessel, are the provisions of the Merchant Shipping Act, 1894, with reference to deductions for ascertaining tonnage for the purpose of registration, in fact applicable?

C. Arnold White
Advocate General.

Madras )
)
14th December 1898)

(True Copy)

Ernest Barclay
Government Solicitor.

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PRESIDENCY
26 SEP 98

E/

Current No. 1158

Marine Department.

No. 483E, d/ 21st September 1898

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To

The Presidency Port Officer,
(Unofficially).

It is observed that Section 79 included in Part I of the ---- English Merchant Shipping Act, 1894, which applies to the whole of Her Majesty's dominions, provides, inter alia, that deductions shall be made on account of space for crew and ---- vessels equipment; and Section 9 of Act X of 1841 contains a similar provision. If therefore the rules published under the Indian enactment preclude such deductions, it would seem, prima facie, that the rules are wrong, and require amendment. The question is, however, one of law, and should ~~[illegible]~~ be --- referred to the law officers of -- Government. Please, therefore, request the Government Solicitor to submit the case for the opinion of the Advocate General.

R.S.

Secretary to Government,
Marine Department.

with Current No. 1158 to be returned.

7 quote

No. 337/460 G

Herewith a copy of the Advocate General's opinion in the matter. Under the circumstances as stated by him it will be necessary to accept the measurement of the Ceylon authorities in the case of the schooner "Mahomed Mohidin Meera Saib Hydrose", and to issue a notice to all Port Officers in accordance with the views taken by the Advocate General. This I purpose doing should Government have no objection.

Madras,
7 December 1898

H. A. Street
Commander R.I.M.
Presy Port Officer

To
The Secretary to Govt.,
Marine Dept.
(Unofficially)

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# Marine (1898) Department.

CURRENT No. 1158

83

From
The Presidency Port Officer,
Madras

~~Order~~
To G. 483 E of 21st September 1898
The P. P. O.
(U.O.)

No. 337/314 G

Dated 10th September 1898
Received 12-9-98
Enclosures "
Spare copies -

It is observed that section 79 included in Part I of the English Merchant Shipping Act, 1894, which applies to the whole of Her Majesty's dominions, provides, inter alia that deductions shall be made on account of space for crew and vessels equipment, and section 9 of Act X of 1841 contains a similar provision. If therefore the rules published under the Indian Enactment preclude such deductions, it would seem, prima facie, that the rules are wrong, and require amendment. The question is, however, one of law and should be referred to the law officers of Govt. Please therefore, request the Government solicitor to submit the case for the opinion of the Advocate General.

(Sd) W. B. de Winton
Secy to Govt. Mar: Deptt.

SUBJECT.

Pointing out differences in the measurement of Vessels adopted at Ports in the Madras Presy and Ceylon and asking the views of Government in the matter.

To
The P. P. O.
with C. No. 1158 to be returned.

BACK PAPERS.

| No. | Date. |
|---|---|
| G.O. 41 | 1-2-94. copy |
| „ 2 | 3-1-78. do. |
| „ 224 | 22-6-76. do. |

FURTHER PAPERS.

| No. | Date. |
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18

No. 337/314 G.

**Presidency Port Office,**

Madras, 10 September 1898.

Heading

From

Commander W. Aves, R.I.M.,
Ag. Presidency Port Officer,
Madras,

To

THE SECRETARY TO GOVERNMENT,
MARINE DEPARTMENT,
CHEPAK.

Sir,

An instance was lately brought to my notice where a Schooner named "Mahomed Mohidin Meeran Saib Hydrose" which was registered at Tuticorin on 22d December 1897 under Act X of 1841 and certified by the Surveyor of Shipping at that port to be of the burthen of 210.18 tons was remeasured at Colombo in June last by the

Master

Master Attendant there and the certified tonnage altered to 181 99/100 tons. On enquiry I am informed that the tonnage given at Colombo is the registered tonnage after deducting from the gross tonnage space for crew and vessel's equipment.

2. Section 9 of Act X of 1841 lays down that the tonnage of vessels requiring registration shall be ascertained according to the rules in force under the Merchant Shipping Act 1854 (now 1894), and Section 79 of the English Act of 1894 does provide for deduction on account of space for, crew as well as, in the case of ships propelled

by

by sails, space for the storage of sails, but in regard to the measurement of vessels for registration under Act X of 1841 Surveyors of Shipping at ports in the Madras Presidency are guided by special Rules issued by the local Government and contained in the orders quoted in the margin. These rules do not provide for any deduction on account of space for crews and vessels' equipment, and consequently no such deduction is allowed at ports in this Presidency, nor does it appear necessary to allow such deduction in the case of the class of vessels (Country

No. 2, Marine, dated 3rd January 1878.
" 41, Marine, dated 1st February 1894.

Craft)

Craft) which generally obtain Registration in this Presidency under Act X of 1841.

3. Under the circumstances, I would suggest that the Ceylon Government be addressed with a view to the tonnage of vessels registered at ports in this Presidency being accepted by the Ceylon authorities as it stands in the Registry Certificates issued at these ports, as otherwise some confusion will arise in the matter of the levy of Port dues.

4. In the case now under reference, dues were collected at Cuddalore on 182 tons, at Negapatam on 210 tons, and at Kulasekarapatam in Tinnevelly Dt. on 182 tons; and the Customs Officer

at

at the last named port, on hearing of the amount, collected at Negapatam, has since recovered dues on the difference of 28 tons, and enquires whether the amount, Rupees (2. 10. ") two and annas ten is to be, credited to Government or returned to the Tindal. I refer this point for the views of Government.

I have the honour to be,
Sir,
Your obdt: servant,
H Aves
Commander, R.I.M.,
Ag. Presy: Port Officer

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