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MADRAS RECORD OFFICE.

Government of Madras.

Public works **DEPARTMENT.**

G.O. No. 3387	Press ~~Mis.~~
420-21	
Dated 21. 10	18/29.

Not to be folded or roughly handled

P. 12/11/44

19

*Proceedings of the Madras Government, Public Works Department,
21st October 1869.*

No. 420. Read the following Proceedings of the Madras Government in the
Revenue Department :—

License tax paid by Irrigation Company. } (Here enter 13th October 1869, No. 2,787.)
—Its refund, sanctioned.

No. 421. ORDER THEREON, 21st October 1869, No. 3,387.

IRRIGATION, No. 15.

ORDERED to be recorded.]

(True Extract.)

(Signed) H. TULLOCH, Captain, R.E.,
Acting Under Secretary to Government.

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*Proceedings of the Madras Government, Revenue Department,
13th October 1869.*

Read again the following letters from the Consulting Engineer for Irrigation and Canal Company, dated 5th and 10th June 1869, Nos. 19 and 32, recorded in G. O., 12th June 1869, No. 1,692.

No. 176. Read also the following Proceedings of the Board of Revenue, dated 2nd August 1869, No. 5,618:—

Read the following Proceedings of the Madras Government, dated 12th June 1869, No. 1,692, Revenue Department.

ABSTRACT.—Forwarding for early report Endorsement of Public Works Department on correspondence from Consulting Engineer, Irrigation Company, regarding License-tax levied on Company in 1867, and refund of Rupees 1,000 improperly retained under cover of Profession-tax of 1868.

WITH the foregoing Proceedings, Government forward, for the Board's report, a correspondence which has passed between the Agent of the Madras Irrigation and Canal Company and the Collector of License-tax, relative to the liability of the Company to pay assessment under Acts XXI. of 1867 and IX. of 1868.

2. It will be seen from the following outline of the circumstances (in which, for the sake of clearness, the correspondence relating to the tax for 1867 and that for 1868 are, as far as possible, kept distinct) that the Agent of the Irrigation Company denies its liability to assessment under either Act, on the ground of its being as yet in receipt of no profits. This is the original cause of the dispute, which, owing to various circumstances, has become somewhat complicated.

3. In June 1867 the Company was assessed, under Schedule B. of Act XXI. of that year, to the amount of Rupees 2,000, as a Company with paid-up capital exceeding ten lacs of Rupees.

4. The Agent claimed exemption and a free license under Section 4 of Act XXIX. of 1867, the profits from the Company's operations in India having been as yet *nil*.

5. The Collector refused to withdraw his assessment, on the ground that the Company were paying a dividend on the paid-up capital, and the amount of the tax (Rupees 2,000) was paid by the Agent (under protest) on the 25th July 1867, and a Petition of Objection was presented on the 7th August, showing, first, that the Company's expenses had exceeded their receipts; and, second, that the guaranteed dividend is merely money lent on the security of anticipated revenue, and re-payable from future earnings.

6. No day was fixed for hearing these objections, pending a reference, made by the Collector, to Calcutta, with a view to learn the practice there followed in respect to guaranteed Companies. Mr. Winscom offered to hear the Agent's appeal at once, but the latter agreed to await the result of the reference to Calcutta, and the hearing was accordingly postponed.

7. On the 30th of October 1868 the Agent called the Collector's attention to the still pending appeal. Mr. Winscom stated in reply that his reference to Calcutta had not been answered, and that the appeal had been consequently overlooked. He also observed that the Act, under which the assessment for 1867 had

*Proceedings of the Madras Government, Revenue Department,
13th October 1869.*

been made, had expired, and that the accounts were closed, and suggested that as another appeal from the Agent (against the assessment for 1868 under Act IX. of that year) was pending, the decision in that case should be awaited, before soliciting the instructions of Government on the unheard petition regarding the assessment for 1867.

8. In the course of the correspondence regarding the assessment for 1868, Mr. Henslow (in letter dated 7th May 1869,) again requested a decision on his previous appeal against the assessment of 1867, and a refund of the amount (Rupees 2,000) paid by him under protest.

9. He was informed that the appeal against the assessment for 1868 had been decided against him, and that nothing further could be done in either case, as the decision in principle governed both cases. Mr. Winscom offered to return the petition (regarding the assessment for 1867) with the endorsement that the case had been disposed of by the decision regarding the assessment for 1868.

10. Mr. Henslow objected that the two assessments were made under different Acts, and must be dealt with individually; whereupon Mr. Winscom appointed the 22nd of May 1868 for the hearing of the objections to the assessment of 1867.

11. The Agent, however, declined to prosecute the appeal before the Collector (pointing out that the Act under which the tax had been imposed had ceased to exist), and addressed the Consulting Engineer,* requesting him to lay the case before Government.

* Letter dated 12th June 1867.

12. Mr. Henslow's objections to the taxation of the Company under the Act of 1867 are therefore—

First, that no profits had been realized; and, second, that his appeal had never been heard; and as the Act under which the taxation was made had ceased to exist, could not now be considered, the delay being, as he states, through no fault of his.

13. The Agent's appeal against assessment of the Company under the Act of 1868 has been also referred to Government through the Consulting Engineer.

14. The grounds for this appeal are, as in the former case, the realization of no profits, and further the assessment of the Company as possessing two agencies, namely, Madras and Kurnool; Mr. Henslow contending that the Company has but one place of business, namely, Madras.

15. With regard to the first point, the Board consider that the Agent is right, and that as it is certain that the Company have made no profits, they are not liable to taxation. Under Section 20 of Act IX. of 1868, the Manager of a Company may, at his option, either pay Rupees 500 for a Certificate, with a further sum of Rupees 500 for each branch and agency, or pay one per cent on the dividend declared by the Company during the year ending on the 31st March, in the year of assessment. In that year the Irrigation Company could certainly declare no real dividend, for they had no profits.

16. With regard to the question concerning the number of agencies for which the Company should be taxed, the Board observe that Government may probably decline to pass orders, pending the result of the reference made on this subject to the Government of India, in Proceedings of Government, dated 14th

*Proceedings of the Madras Government, Revenue Department,
13th October 1869.*

December 1868, No. 3,111. The Board are of opinion, however, that Madras is the sole place of business of the Company under Section 33 of Act IX. of 1868, and therefore they consider that if the Company is held to be taxable at all, a refund of the amount (Rupees 500) paid on account of Kurnool, should be made.

17. With regard to Mr. Henslow's claim to refund of the assessment paid for 1867, on the ground that his appeal against the Collector's decision has never been heard, the Board do not consider that, after due notice had been given to Mr. Henslow, and a date fixed for hearing his appeal, it was competent for him to refuse to appear. As he did not appear, his appeal has fallen to the ground.

18. The Board regret that they are unable to conclude without remarking both on what appears to them to have been neglect on the part of Mr. Winscom in leaving Mr. Henslow's first appeal unnoticed for so long a time, and also on the unusual and, as they consider, improper tone of some of Mr. Henslow's letters, especially that dated 9th May 1869.

No. 177. ORDER THEREON, 13th October 1869, No. 2,787.

Miscellaneous.

WITH reference to the assessment of the Irrigation Company under Act XXI. of 1867, the Government consider

that, under the circumstances detailed by the Board, Mr. Winscom was wrong in not deciding Mr. Henslow's appeal in due course. They therefore resolve to direct him to hear and dispose of it now. From Mr. Winscom's decision, a further appeal will lie to the Commissioner as laid down in the Act.

2. As regards the operation of Act IX. of 1868, the Government observe that Mr. Henslow's appeal appears to have been already settled strictly according to law, as the enactment gives no power either to the Board or Government to revise the decision of the Commissioner; but they resolve, as an act of grace, to sanction the refund of Rupees 500 to the Company.

(True Extract.)

W. A. Lyell

Acting Secretary to Government.

To the Board of Revenue.

.. the Consulting Engineer for Irrigation and Canal Company

.. the Public Works Department.

.. the Accountant-General.

Exd. F. R. Bantleman.

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Wm. H. H. H. H. H.
Bort. of 1869 *Wm. H. H. H. H. H.*
1869
REVENUE.

THE BOARD OF REVENUE,

Ac, Ac,

ated, October, 1868.

red.

18

Emt.

G. O., 10th October 1869, No. 2787.

OCTOBER.

Nos. 176-177.

1-8387-2125-22143
Five copies paid by Irrigation Compt.
is refund is attached.

3387
1869
1869

Ordered to be recorded.

48

10th Oct 1869
2125-22143

With an order

Cue 4336

Govt. of 1869; Madras.

PUBLIC WORKS.

To

Dated

Recd.

G. O. 21st Oct 1869. No. 3387

West 420-421

Apportionment (M. S. 1869) Pass.

Clears up the propriety of the
proposals relative to the liability
of the M. S. 1869. Copy of the
report under Act XXI of 1867
and IX of 1868. Recorded.