

Public Works (1899) Department.

RAILWAY BRANCH.

G.O., No. 811. Ry.

DATED 25th July 1899.

[Despatch Abstract.]

Sanction of Ry. Advs. by Municipal Councils

Coming: to the Cons. Engr & the Secy. Ed. Ry. Advs.
Pros in the Lt. Secy. Engr. Stating that Municipal Councils
cannot levy on Ry. Advs. the taxes on buildings
& lands at the enhanced rates provided in the
Dist. Municipalities Act, Amendment Act III of
1897, without the sanction of the Govt. of India, Con-
sidering that the Govt. should be addressed
in view to according such sanction, & requesting
the Ry. Advs. concerned to submit their views
on the matter.

Indexed.

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

Enclosures

1899.

Spare copies

G.O., No. 893 M., 26th June 1899.

JUNE.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers:—

From Captain A. D. G. SHELLEY, R.E., Agent, South Indian Railway, to the Consulting Engineer for Railways, dated Trichinopoly, 3rd December 1897, No. 1138.

I have the honour to request that you will kindly solicit the orders of the Government of India on the three following questions regarding railway taxation which have arisen under the Madras District Municipalities Act Amendment Act No. III of 1897:—

- (i) Whether a railway administration is liable for profession tax in more than one District Municipality?
- (ii) Whether a District Municipality can require a railway administration to pay buildings and land taxes in excess of the limit of $7\frac{1}{2}$ per centum on the annual value of its lands and buildings [*vide* section 47 (ii), The Madras District Municipalities Act No. IV of 1884]?
- (iii) Whether a railway administration can be required to pay a water and drainage tax to a limit of 8 per centum on the value of its lands and buildings?

2. The liability of a railway administration to taxation by a local authority is limited by Government of India Notification No. 136, dated 5th April 1893, to "the same taxes and at similar rates of taxation as were actually levied from such administration by such authority" during any part of the year ended on the 30th April 1890. On a reference from the Government of Madras, the Government of India ruled in its letter No. 123, dated 31st December 1891 that the amount of the taxes levied from railways might be altered or increased according to the law in force. It is submitted that the expression "law in force" means the law in force on the 31st December 1891, that is the Madras District Municipalities Act No. IV of 1884, and not to Acts which might be subsequently legalized by the Governor-General in Council. Even if this view is not sustainable it is maintained that the later notification of 5th April 1893 clearly limits the rates of taxation to the maximum limits enforceable by law during the year ended on the 30th April 1890.

3. On the 30th April 1890 the South Indian Railway was liable to the following taxation:—

- (i) A yearly profession tax of Rs. 100 payable half-yearly in one District Municipality [Act IV of 1884, section 47 (i)].
- (ii) A yearly tax on lands and buildings payable half-yearly not exceeding $7\frac{1}{2}$ per centum on the annual value of such lands and buildings [Act IV of 1884, section 47 (ii)].
- (iii) A yearly water tax on lands and buildings payable half-yearly not exceeding 4 per centum on the annual value of such lands and buildings [Act IV of 1884, section 47 (iii)].

The Madras District Municipalities Act Amendment Act No. III of 1897 provides, that—

- (i) the profession tax shall be leviable in each District Municipality (section 60);

- (ii) the tax on lands and buildings shall be leviable at a rate not exceeding $8\frac{1}{2}$ per centum on the annual value of the lands and buildings or both upon which it is imposed [section 63 (2)];
- (iii) the water and drainage tax shall be leviable at a rate not exceeding 8 per centum on the annual value of buildings or lands or both upon which the tax is imposed [section 75 (1)].

4. Liability to the profession tax in each District Municipality traversed by the railway is of the nature of a new and additional tax, and one, which from the remarks of Sir A. Scoble recorded in the Abstract of Proceedings, Governor-General in Council, 1890, page 83, it would appear that it is the express intention of the Government of India should not be levied on railways. The increase in the limit of $7\frac{1}{2}$ in the case of the tax on buildings and lands would seem barred by the condition "at similar rates of taxation as were actually levied from such administration by such authority during such year" imposed in Government of India Notification No. 136, dated 5th April 1893. I admit railway liability to any increase in this tax up to the former limit of $7\frac{1}{2}$ per cent., but I cannot think that any excess over this percentage can be legally imposed without the express sanction of the Imperial Government. The conversion of the former water tax into a combined water and drainage tax at an enhanced limit of 8 per cent. appears to be both a new tax and an increase in the rate of taxation, and consequently to be doubly barred. I would here remark that the imposition of water tax bears with great severity on this Administration since under the ruling in G.O., Mis. No. 1605 M., dated 19th September 1896, the tax has to be paid even in cases where the railway having previously arranged for its own requirements derives no benefit from the municipal water-supply.

5. Pending receipt of the orders of the Government of India, I am declining to accept the demands of Municipalities to the additional and new taxation they seek to impose under Act III of 1897.

From Captain A. D. G. SHELLEY, R.E., Agent, South Indian Railway, to the Consulting Engineer for Railways, dated Trichinopoly, 24th February 1898, No. 155.

With reference to your letter No. 3787, dated 11th December 1897, I have the honour to enclose a copy of Mr. Robert Grant's opinion on the liability of this railway to the fresh taxation sought to be imposed under the new Madras District Municipalities Act Amendment Act. I may mention in this connection that the claims preferred by Municipalities are entirely based on this Act and that therefore no further reference to Mr. Grant appears necessary. I shall be obliged if you will now kindly refer the question for the orders of the Government of India.

ENCLOSURE.

COPY of a letter from R. F. GRANT, Esq., Barrister-at-law, Madras, to the Agent, South Indian Railway, dated 1st February 1898.

Section 135 of the Indian Railways Act vests in the Governor-General in Council the power to regulate taxation by any local authority, and the two notifications of importance appear to be those of 12th June 1890 and 5th April 1893, the latter having an immediate bearing on the points raised which I am bound to confess are not free from doubt.

I am disposed, however, after a consideration of the matter, to agree with you, in the position contended for in yours under reply. The notification of 5th April 1893 has not, so far as I can see, been varied or revoked under the provisions of section 135 of the Railway Act, and until this is done, it must, I think, regulate the liability of your Company to taxation.

I am not aware whether your Company has yet disputed its liability; if it has, and you are in possession of the views urged by any local authority in favour of the taxation sought to be imposed, I shall be glad to have copies of letters for further consideration.

I regret very much the delay that has occurred in submitting my views, but I have not been able owing to pressure of work to do so earlier.

The book of Government notifications has been forwarded by book post.

Memo. No. 121-R.M.

Transferred to the Local and Municipal Department with reference to paragraph 5 of this office No. 57-R.M., dated 16th December 1897.

(Signed) F. D. FOWLER,
Under Secretary.

12th March 1898.

No. 547.

Referred to the Advocate-General for favour of opinion on questions (ii) and (iii) raised by the Agent of the South Indian Railway Company in paragraph 1 of his letter No. 1138, dated 3rd December 1897.

2. The correspondence relating to the question of railway taxation has already been furnished to the Advocate-General with G.O., No. 2851 M., dated 18th December 1897.

(Signed) H. TREMENHEERE,
Ag. Secretary to Government.

7th May 1898.

From M.R.Ry. M. PARTHASARADHI NAYUDU Garu, Chairman-Delegate, Municipal Council, Nellore, to the Secretary to Government, Local and Municipal Department (through the Collector of Nellore), dated 14th March 1898, Ref. No. 1526-Munl.

I have the honour to submit the following and to request that you will be good enough to obtain the orders of Government thereon at your earliest convenience.

2. A statement showing the house tax (Rs. 300-8-0) due on the several railway buildings within the municipal limits for the first-half of 1897-98 was forwarded to the Agent, South Indian Railway, with this office letter, dated 15th July 1897, with the request that the amount might be paid. Thereupon he wished to know why there has been an increase over that paid for the second-half of 1896-97 and he was informed that the tax for 1897-98 had been assessed at $8\frac{1}{2}$ per cent. the maximum provided in the District Municipalities Act Amendment Act.

3. The Agent wrote on the 20th August 1897 that according to the Government of India Notification* No. 136, dated 5th April 1893, the Railway Administrations should only pay the same taxes and at similar rates of taxation as were actually levied from such administrations during the year ending on 30th April 1890 and that he would not accept the demand inasmuch as during the year ending on 30th April 1890, the said railway was only liable to pay a maximum tax of $7\frac{1}{2}$ per cent.

4. On the 28th September 1897 he was told in reply that the tax demanded was one which the Company had been paying during the year ending on the 30th April 1890; that the Municipal Council could revise the same and that if he was not satisfied with the assessment, the matter could be referred to the Collector under G.O., No. 1917 L., dated 27th September 1894, but he did not accept the above and chose to refer the matter to the Government of India for orders.

5. On the 2nd February 1898, another letter was written to the Agent enquiring if any orders had been passed on his reference, if not to remit Rs. 601, the tax for two half-years. He was further informed that if the enhancement were found illegal the difference would be refunded; but he has not condescended even to reply the above.

6. The matter having been placed before the Collector for orders, he was pleased to observe that he was not prepared to advise the Chairman what action should be taken to recover any taxes claimed.

No. 320-Eng.

Forwarded.

(Signed) E. SCOTT,
Acting Collector.

17th March 1898.

No. 383.

Referred to the Public Works (Railway) Department for remarks.

(Signed) S. G. ROBERTS,
Ag. Assistant Secretary.

31st March 1898.

No. 6-R.M.—O.

Referred back again to Local and Municipal Department for consideration in connection with the papers forwarded to them with this Department's Memo. No. 121-R.M., dated 10th March 1898.

(Signed) F. J. E. SPRING,
Joint Secretary to Government, P.W.D.

15th April 1898.

From Captain A. D. G. SHELLEY, R.E., Agent, South Indian Railway, to the Consulting Engineer for Railways, dated Trichinopoly, 1st July 1898, No. 630.

With reference to correspondence ending with my letter No. 155 of 24th February 1898, regarding the liability of this Railway to Municipal taxation, I have the honour to forward, for information, a copy of my letter No. H. 1161-7-2554 of to-day to the Special Deputy Tahsildar for revision of the house tax in Chidambaram Municipality (with an extract of his letter), and beg that the orders of the Government of India may be obtained on my letter No. 1138 of 3rd December 1897.

No. 66-R.M.—O.

Transferred to the Local and Municipal Department in continuation of No. 6-R.M.—O., dated the 15th April 1898.

OOTACAMUND,
23rd July 1898.

(Signed) F. J. E. SPRING,
Joint Secretary to Government, P.W.D.

From M.R.Ry. M. RAMASWAMI IYER, Chairman, Municipal Council, Chidambaram, to the Secretary to Government, Local and Municipal Department (through the Head Assistant Collector and Collector of South Arcot), dated 7th August 1898, No. 355.

With reference to the marginally-noted correspondence, herewith submitted, between myself and the Agent, South Indian Railway, I respectfully beg to state that house-tax was being levied in this Municipality at the rate of $7\frac{1}{2}$ per cent. on the annual value of the buildings from the year 1880-81. This rate was raised to 8 per cent. in 1897-98 (vide G.O., Mis. No. 1520 M., dated 3rd July 1897) and applied generally to all buildings liable to assessment.

2. On bills amounting to Rs. 65-1-8 being sent to the Agent, South Indian Railway, for the tax payable on account of railway buildings here for 1897-98 calculated at the enhanced rate, he has paid only Rs. 61-0-3, calculating at the former

rate of $7\frac{1}{2}$ per cent., and objects to pay the difference, viz., Rs. 4-1-0, stating that the Government of India, in Notification No. 136, dated 5th April 1893, has ruled that an Indian railway administration shall only pay such taxes and at similar rates as were actually levied during the year ended 30th April 1890, that he is therefore unable to accept the increased rate of assessment and that the whole question of the legality of Municipalities to demand taxation in excess of that in force during the year ended 30th April 1880, has been referred to Government.

3. Having waited for nearly four months, I wrote to him on 17th July last and requested him to remit the balance of the tax informing him at the same time that the amount will be refunded if it is ruled by Government that the general enhancement of the rate of taxation cannot be applied to the railway buildings. In his reply, dated 21st July 1898, he states that he considers the enhancement illegal and that he cannot pay the balance until the orders of Government are received on his reference.

4. The balance (Rs. 4-1-0) objected to by him being included in the outstanding arrears, I beg to solicit the favour of orders on the subject.

No. 1243.

Forwarded.

(Signed) E. H. WALLACE,
Ag. Head Assistant Collector.

11th August 1898.

Forwarded.

(Signed) L. M. WYNCH,
Acting Collector.

17th August 1898.

From the Government Solicitor, Madras, dated 11th November 1898, No. 523.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 11th November 1898:—

OPINION.

1. Under section 135 of the Indian Railways Act, 1890, a railway administration is not liable to pay any tax in aid of the funds of any local authority unless the Governor-General in Council has, by notification, declared the administration to be liable to pay the tax.

The following notifications have been issued under this section:—

(a) Notification, dated June 12th, 1890, declaring every railway administration to be liable from May 1st, 1890, to pay every tax which it was lawfully required by any local authority to pay during the year ending April 30th, 1890. The scope of this notification was explained in Home Department letter, dated December 31st, 1891, to be "to continue till further orders the liability to certain taxes which as to their amount might be altered or increased according to the law in force."

(b) Notification, dated April 5th, 1893, restricting the liability to taxation of railways already open on April 30th, 1890, to the same taxes and to similar rates of taxation as were actually levied from the railway administration by the local authority during any part of the year ending April 30th, 1890.

By resolution, dated August 17th, 1894, the Government of India directed that "when it is sought to impose any new tax on a railway, application should be made through the Local Government concerned for the sanction of the Governor-General in Council."

2. From 1884 to 1897 the tax leviable on lands and buildings for the purposes of Act IV of 1884 was a yearly tax not exceeding $7\frac{1}{2}$ per cent. on the annual value of such lands and buildings. There was also leviable a yearly water tax on lands and buildings not exceeding 4 per cent. on the annual value of such lands and buildings [Act IV of 1884, section 47 (ii) and (iii)]. Since 1897 the taxes leviable in lieu of the taxes above mentioned are, subject to a power in certain cases to impose and levy the tax with reference to area, a yearly tax on buildings or lands or both at a rate not exceeding $8\frac{1}{2}$ per cent. on the annual value [Act IV of 1884, as amended by Act III of 1897, sections 47 (ii) and 63 (21)]; and a yearly water and drainage tax on buildings or lands or both at a rate not exceeding $8\frac{1}{2}$ per cent. on the annual value [Act IV of 1884, as amended by Act III of 1897, sections 47 (iii) and 75].

3. The question has risen whether having regard to section 135 of the Indian Railways Act, 1890, and the notifications issued thereunder, it is competent for a District Municipality to avail themselves of the provisions of Act IV of 1884 as amended, in the case of a railway open on April 30th, 1890, or whether in such a case they are governed by the provisions of the Act as they stood prior to 1897.

4. As regards the notification, dated June 12th, 1890, as explained in the Home Department letter, dated December 31st, 1891, I think the words "according to the law in force" do not mean according to the law in force as to the amount of the taxes at the date of the notification, but according to the law in force at any time. If, therefore, this question were governed by the notification, dated June 12th, 1890, and the explanation thereof, I think that, at any rate as regards the lands and buildings tax, it would be competent for a District Municipality to levy a tax up to $8\frac{1}{2}$ per cent. on the annual value of the lands and buildings of a railway open in April 1890. But it seems to me that this question is not governed by the notification, dated June 12th, 1890, but by the later notification, dated April 5th, 1893, which, in the case of railways open on April 30th, 1890, expressly restricts their liability to the same taxes and to similar rates of taxation as were actually levied by the local authority during the year ending April 1890. Having regard to this express restriction as to rates of taxation, it seems to me that it cannot have been the intention of the Government of India that the explanation of December 31st, 1891, with reference to the notification of June 12th, 1890, should be read into the notification of April 5th, 1893.

5. I am of opinion, therefore, that it is not competent for a local authority to levy any tax on lands and buildings at a higher rate than the rates authorized by Act IV of 1884 without the sanction of the Government of India.

6. I base my opinion entirely on the ground that the question is governed by the terms of the notification of April 5th, 1893. I observe that Mr. Bhashyam Aiyangar's opinion, dated January 25th, 1898, with reference to the imposition of profession tax on the Southern Mahratta Railway at Anantapur contains the following statement:—"The question of the liability of the said Company to the profession tax under Madras Act IV of 1884, as amended by Madras Act III of 1897, is governed not by the notification of the Government of India, Public Works Department, No. 136, dated 5th of April 1893, but solely by notification, No. 270, dated 12th of June 1890, as explained by the Government of India in Home Department letter, No. 123, dated 31st December 1891." Although I agree with Mr. Bhashyam Aiyangar in the conclusions at which he arrives, I do not understand the grounds for his statement that the question before him was governed by the terms of the earlier and not of the later notification.

(Signed) C. ARNOLD WHITE,
Advocate-General.

Replies from certain Municipal Councils to Government memorandum, No. 125, dated 9th February 1899, requesting them to report whether the railway companies were assessed by them to the house and land taxes during the year ended on the 30th April 1890.

ORDER—No. 893 M., dated 26th June 1899.

Under section 135 of the Indian Railways Act IX of 1890, a railway administration cannot be taxed under the District Municipalities or the Local Boards Acts, save under the orders of the Government of India.

2. In its notification, No. 270, dated 12th June 1890, the Government of India declared every railway administration liable to pay only such of the taxes as were lawfully demanded of them by the local bodies during the year ended 30th April 1890. The scope of this notification was explained by the Government of India to be to continue, until further orders, the liability to certain taxes which as to their amount might be altered or increased according to the law in force, and in notification, dated 5th April 1893, the liability to taxation of railways already open on the 30th April 1890, was restricted to the same taxes and to similar rates of taxation as were actually levied from the railway administration by the local authority during any part of the year ended 30th April 1890.

3. In 1890, the Madras District Municipalities Act IV of 1884 regulated municipal taxation. Section 47 of that Act authorized the levy of a tax on arts and professions, a tax on buildings and lands at a rate not exceeding $7\frac{1}{2}$ per cent. of their annual value and a water tax at the rate of 4 per cent., while under section 60, the tax on arts and professions was leviable in only one of the several municipalities through which the railways passed. The amending Act III of 1897, however, makes the railway administration liable to the profession tax in each of such municipalities, while the maximum rate of the tax on buildings and lands has been raised from $7\frac{1}{2}$ to $8\frac{1}{2}$ per cent. of their annual value, and a water and drainage tax of 8 per cent. has been substituted for a water tax of 4 per cent.

4. In the first of the letters read above, the Agent of the South Indian Railway Company enquires:

(1) Whether a railway administration is liable to the profession tax in more than one municipality?

(2) Whether a District Municipality can require a railway administration to pay buildings and lands taxes in excess of the limit of $7\frac{1}{2}$ per cent. on their annual value, prescribed by section 47 (ii) of the District Municipalities Act IV of 1884? and

(3) Whether a railway administration can be required to pay water and drainage tax to a limit of 8 per cent. on the annual value of its buildings and lands?

The Agent points out that the liability to payment of the profession tax in each District Municipality traversed by the railway is of the nature of a new and additional tax and that the increase of the rates of the taxes on buildings and lands and the conversion of the water tax into a water and drainage tax and the increase in its rate from 4 to 8 per cent. constitute new and additional taxation, within the meaning of the Resolution of the Government of India, No. 434-R.T., dated 17th August 1894, embodied in G.O., No. 1917 L., dated 27th September 1894.

5. As regards the first of the questions raised by the Agent, it is observed that, under section 60 of Act IV of 1884, as amended by Act III of 1897, a railway administration is liable to the profession tax in all the municipalities where it carries on business, but in its Proceedings, No. 1201 M., dated 6th July 1898, the Government has held that the tax could not be newly imposed on any railway administration without the previous sanction of the Government of India, and has expressed the opinion that it was undesirable to apply to the Government of India for sanction to levy the tax, as it is under contemplation to abandon schedule A of the Madras Act IV of 1884, as amended by Act III of 1897, in favour of the schedule annexed to Act IV of 1884.

6. With reference to the other two questions raised by the Agent, the Government considers that, having regard to the express restriction as to the rates of taxation contained in the Government of India notification, dated 5th April 1893, it is not competent for a local authority to levy any tax on buildings and lands at higher rates than those authorized by Act IV of 1884 without the sanction of the Government of India.

The second and fifth letters read above are applications from the Municipal Councils of Nellore and Chidambaram requesting that the sanction of the Government of India may be obtained to the levy of these taxes at the rates prescribed in Act III of 1897.

7. The rates of the house, land and water taxes were increased in the amending Act III of 1897, with a view only to increasing the resources of the mufassal municipalities and thus to enable them to provide sufficient funds for water and drainage works and for other measures of sanitary importance. It will therefore be necessary in any municipality undertaking extensive schemes of water-supply or drainage to levy these taxes at the enhanced rates, and it would be not only anomalous but improper that the buildings and lands belonging to railway administrations alone should be taxed at the rates specified in Act IV of 1884, while the other buildings and lands in the town are subjected to the enhanced rates of taxation provided in Act III of 1897. Moreover, except in so far as it may be right to exempt from water tax those railways which have made their own arrangements for the supply of water, there does not seem to be any reason why they should not pay the enhanced rates of taxes that fall on other persons. As the question is thus one of general importance, affecting as it does all the mufassal municipalities in the Presidency in which there are railway stations, the Government is of opinion that the Government of India should be addressed in view to sanctioning the levy on railway administrations of these taxes at the enhanced rates provided in the amending Act; but before doing so, the Government would be glad to have the views of the railway administrations concerned on the matter, which it is requested may be submitted within a month from the date of receipt of this order.

(True Extract.)

[Signature]
for Ag. Secretary to Government.

To the Agent, South Indian Railway.
" Agent and Manager, Madras Railway.
" Agent, Southern Mahratta Railway.
" Manager, East Coast Railway.
" Public Works Department (Railway Branch).

18/7/99 No. 893 M. dated 25/7/99

*Communicated to the
Consulting Engineer for Ry. & to
the Examiner of Ry. Acts for
information.*

[Signature]
Sd. A. F. Koolston.

30/7/99
Despatched on 26/7/99

24.7.99
To E.R.V. 3 then to
CR ✓