

④
Revenue Department

Minutes of Consultations

2nd June 1857

Back Numbers 15-18

Order No 512 dated 29th May 1857

Read the following papers.

No. 15. Extract from the Proceedings of the Board of Revenue; dated 7th April 1857, No. 1086.

In. Cons. 7th April 1857. 1856.
Read letter from the Collector of Sea Customs dated 26th July

(Here enter No. 317.)

†In. Cons. 7th July 1853. In his letter dated 4th June 1853† Mr. Underwood brought to the notice of the Board the refusal of the Commissary General to pay duty on certain articles imported for his Department.

2. The Board in reply called for further information as to the particular articles which the Commissary General claimed to import free of duty.

3. In his letter above recorded, Mr. Underwood replies to this call and the Board will state briefly the opinion at which they have arrived after a very careful consideration of Mr. Underwood's arguments.

4. Mr. Underwood divides the subject into "two heads, the general question of duty on all articles, and the particular question of the payment of duty on spirits under Act VI. of 1844."

5. The Board will first notice the latter subject.

6. Previous to the enactment of Act VI. of 1844, spirits were liable on importation into Madras to a General duty of 8 per cent., and a further "particular import duty not exceeding 150 Pagodas per leagner," but "all liquors intended for the use of Her Majesty's Navy, or purchased for or belonging to the Honorable Company" were exempt from the latter import, remaining subject to the general 8 per cent. duty (Regulation I. of 1813, Section II. Clause I. and Section IV.)

7. By Act VI. of 1844, spirits (of London proof) were made liable to an import duty of 9 annas per Imperial Gallon, which rate was increased by Act IX. of 1845, to 1½ Rupees per Imperial Gallon the existing duty. The special exemption accorded to Government stores under Regulation I. of 1813, was withdrawn and a general power of exempting goods from duty vested in the Governor in Council by Section XVII.

8. On the 25th June 1844, No. 607, Revenue Department, the Government directed that all Arrack purchased on their account by the Commissary General should be exempt so much of the duty, leviable under Act VI. of 1844, as exceeded the former rate, in other words that such liquors should continue subject to the old duty of 8 per cent.

9. Mr. Underwood questions the legality of this order and the power of Government to modify the rates of duty leviable under a legislative enactment without reference to the Supreme Government.

10. In this view the Board are unable to concur. The power of wholly exempting goods from duty is expressly vested in "the Governor in Council of the Presidency of Fort St. George" (Section XVII. of Act VI. of 1844,) without the necessity of any reference to higher authority. The rates of duty leviable under that enactment have indeed been modified by Act IX. of 1845; but this power of exempting from duty has not been withdrawn by any subsequent law, and if the Governor in Council can thus wholly exempt an article from duty there can be no question in the Board's view of his competency to exempt goods partially, or, as in this case, to direct that certain articles shall pay 8 per cent. advalorem instead of the higher rate leviable on them under ordinary circumstances.

11. On a recent occasion indeed the Supreme Government notified their desire that this power should not be exercised without a previous reference, and expressed their opinion that a special order was required on each case. This however does not affect Mr. Underwood's line of argument, for the legality of the Act under a special order is admitted. Further, the cases are not analogous, in

Ext. Mins. Cons. 31st July 1856,
No. 792, Rev. Dept.
Do. 7th Oct. 1856, No. 1086

பாதுகாப்புப்பிரிவு-1

செப்பனிடுபவர் பெயர்

.. ரா. சிவாமிசுவம்

செப்பனிடுவதற்காக

எடுத்துக்கொள்ளப்பட்ட நாள்

.. 07/2006

செப்பனிட்டு முடித்த நாள்

.. 09/2006

செப்பனிட்டு

முதல் கு.நி.பா.எ.
கையெழுப்பம்

செப்பனிட்டு
இரண்டாம் கு.நி.பா.எ.
கையெழுப்பம்

செப்பனிட்டு

தூதரின் உதவியுடன்
கையெழுப்பம்

that referred to by the Supreme Government, revenue derived from ordinary trade was given up, while in this the revenues are not affected. Government in different departments being the payer and receiver of the duty. But even supposing that the Governor in Council had in the order referred to, exceeded his authority, Mr. Underwood's case would not be benefited as it by no means follows that the Supreme Government would object to the course pursued.

12. For these reasons, the Board entertain no doubt of the perfect legality of the order in question.

13. Setting aside Mr. Underwood's view of the case in this respect as untenable, the Board concur with him in holding that all dutiable articles should pay duty, notwithstanding the fact of their being Government property. The payment would of course be merely nominal, but the returns of customs revenue would then be, nearly truthful. There would be still a petty amount omitted, viz. duty on articles exempted by orders specially passed on each case; but the accounts would not be incorrect by upwards of a lac of Rupees annually, and that on a single article.

14. As regards the Commissariat Department, the effect of such an arrangement would be that much of what is now regarded as profit or saving would appear in the customs accounts as Import duty and be credited to its proper head. While Government would have the means of testing the management of the Department by comparison with ordinary market prices. Under such a system moreover the practices mentioned in Para. 6 of the Collector's letter dated 4th June 1853* could not obtain. The principle as Mr. Underwood remarks is recognized in other Departments; as for instance in that of salt at Madras where Canal dues are paid, though both the salt and the Canal are Government property.

15. The Board are therefore of opinion that the rule of charging duty in account should be adopted in regard to all Commissariat stores, and the practice in Madras be assimilated to that in Calcutta and Bombay. The Board would moreover extend the rule to all Government imports and exports as the demand is merely nominal.

The Board would not propose however to give the rule, retrospective effect.

16. The Board do not deem it necessary to remark particularly on the refusal of the Commissariat Department to pay duty. The question should have been submitted at an earlier date for the orders of Government when specific instructions could have been laid down, so as to obviate all difficulty or discussion thereafter.

17. The Board will now proceed to notice Mr. Underwood's claim to commission on the duty which would have been leviable on such stores, if they had not been passed as already remarked.

18. After very careful consideration, the Board regret that they are unable to support the claim advanced.

19. The Board are of opinion that the exemption of Government stores from duty is perfectly legal and therefore do not consider that the Collector and his subordinates can expect to draw commission on the duty which would have been leviable on them if they had not been Government property. Even if it be determined, as the Board have proposed, that duty shall be levied in account, this will merely be a nominal demand. The duty would be entered in the accounts proforma, in order to secure greater accuracy in statistical returns; but would add nothing to the public Treasury. It would be in fact similar to the duty returned as drawback on which the Collector does not draw commission though the system of drawback adds to his labors.

20. The Board do not think that the estimate or expectation on which the emoluments of his office were fixed affects the question, for that consideration has neither prevented Government from abolishing and reducing the duty on various articles, nor induced them to grant compensation for losses sustained in consequence of such measures by the Collector and his subordinates. Moreover, the emoluments of the Collector are still more lucrative than those of Collectors generally and considerably more than his successor is likely to receive, and the Board could not sup-

port Mr. Underwood's claim even on the ground that his allowances were disproportionate to the duties and responsibilities of the office he holds.

21. The Board feel it incumbent on them to bring under the consideration of Government the objectionable system now pursued of remunerating the Collector of Sea Customs in part by per centage on his collections.

22. This mode of payment will cease on his retirement, but it appears to the Board very desirable that it should be discontinued at once, and a commuted allowance calculated on an average of the last three years, be substituted for it.

23. Under the present system the Collector does not occupy the independent and impartial position which he should do between Government and the mercantile community, and his proceedings however correct and just are liable to be attributed to his personal interest in their issue.

24. That such imputations are not now made is extremely creditable to Mr. Underwood; but this does not render it less desirable that a public officer in his position should be placed beyond the possibility of having his official conduct imputed to interested motives.

Ordered that a copy of these Proceedings be sent to Government for their consideration and for orders, as to the rule to be adopted in regard to the import of stores on account of Government, a copy will also be forwarded to the Collector of Sea Customs Madras for his information.

(A true Extract.)

(Signed) J. D. SIM, Acting Secretary.

No. 16. From W. E. UNDERWOOD, Esq., Collector of Sea Customs, Madras; to H. FORBES, Esq., Acting Secretary to Government, Revenue Department, Fort St. George; dated Madras 2d May 1857, No. 131.

SIR,

I have the honor to forward a Memorial addressed to the Right Honorable the Governor in Council.

2. I respectfully solicit that his Lordship in Council will direct that this my humble Memorial may be taken into consideration together with the Proceedings of the Revenue Board No. 1086, dated 7th April 1857, and that no order in Council may be passed thereon until the Memorial now transmitted shall have been brought under the review of Government.

3. I have the honor to state that I have forwarded copy of the Memorial this day to the Board of Revenue, but have taken the liberty of forwarding it direct to Government, fearing his Lordship in Council might pass a decision on the merits of the case before the Memorial had been submitted to Government by the Board of Revenue.

To the Right Honorable GEORGE FRANCIS ROBERT LORD HARRIS, Governor in Council; Fort St. George.

The humble Memorial of W. E. Underwood, Collector of Sea Customs.

SHEWETH,

That on the 7th April 1857, the Board of Revenue passed a decision on a letter from

* From Board to Govt. dated 2d July 1821. your Memorialist dated 26th July 1856, which
Do. 4th April 1825, No. 19. your Memorialist submits is contrary to law and
Do. 28th July 1825, No. 380. usage and to the opinions and views hitherto set
Do. 1st December 1831, No. 39. forth by the Board of Revenue in matters connected with the salary of the Collector as noted in the margin,* exhibiting that on all previous occasions the Board of Revenue have invariably recommended that the emoluments sought for should be granted especially in the case here cited.

"The Board* are not disposed to think that Mr. M. Ashton and the Deputy Collector Mr. Underwood should be allowed Commission on the large importation which took place during the period that grain was exempted from duty."

* Letter from Board of Revenue to Govt. dated 5th June 1834, No. 18. "The average commission for the 4 years is only Rupees 993-9-7, but as the Department had additional labor and responsibility during the period of grain having been exempted from duty from the investigation of claims to bounty and the issue of Certificates on that account and to Commanders of ships to obtain salt, the Board think it reasonable that compensation should be allowed to the Collector and the Deputy Collector to the extent of commission drawn in 1830-31, being the highest amount within the last four years as exhibited above."

Extract from a letter from Mr. Blane, Acting Collector Sea Customs to Board of Revenue dated 30th June 1845. "There can be no doubt that a very considerable increase to the Establishment of this office is urgently required. The amount of labor may be fairly said to have nearly doubled since the passing of Act VI. of 1844. The Collections alone have increased in one year by about 61 per cent., and with the higher rate of Import duties lately imposed by Act IX. of present year will in all probability be doubled within no distant period."

Your Memorialist is grieved to find that on the present occasion the Board have sought to deprive your Memorialist of his emoluments, on the ground that they should have been before brought forward, when in fact and in truth as will appear from the list of Bills† now enclosed that the Commissary General illegally, forcibly, contrary to precedent and to order of Government on his own authority set such orders at defiance and refused to pay Bills which are now lying in your Memorialist's office unpaid and unadjusted in his books, so that when your Memorialist with a view to prevent the public interest being compromised yielded to the illegal act of the Commissary General. The Board of Revenue far from appreciating such a procedure have turned it against your Memorialist as a ground for disallowing his claim.

Your Memorialist further observes that the Board of Revenue contend that an order of Government is a valid order and that therefore the Commissary General should only pay 8 per cent. on arrack, while at the same time they deny any validity to the other order of Government 10th April 1812 and decline to recommend that under this order the Commissary General shall continue to pay duty until it is repealed. Thus the Board of Revenue construe all the orders of Government against your Memorialist, declare one valid to deprive him of his commission and the other invalid for the same purpose, and your Memorialist further observes the Board of Revenue have altogether failed to notice that the Commissary General has imported arrack on his own account from Ceylon and paid no duty thereon. Your Memorialist submits that these views so propounded by the Board of Revenue are as inconsistent one with the other as with Law or Equity.

† In office as Collector and D. V. since 1832. Your Memorialist solicits attention to the facts as here under set out. For many years previous to the appointment of the present Collector of Sea Customs his predecessors in office had been allowed a commission of three per cent. on all duties leviable by Government on goods which passed through, or became liable to duty in his office; and this commission was divided between the Collector and Deputy Collector, and when there was one, the Assistant Collector for the time being.

The order of Government under which the commission was sanctioned is dated the 29th November 1819, and is in the following words. "Resolves that a commission of 5 per cent. on the net collections shall be divided amongst them in the proportion of 3 per cent. to the Collector, one and a half per cent. to the Deputy, and one half per cent. to the Assistant. The Governor in Council also fixes their salaries at the rates of 1,800 Rupees per mensem to the Collector, 1000 Rupees per mensem to the Deputy, and 525 Rupees per mensem to the Assistant. These allowances with the addition of the casual emoluments derived from the issue of Port clearances, from confiscated goods, &c. which will be appropriated as heretofore, though fixed with a due regard to moderation, will it is hoped, prove sufficiently liberal to ensure

"the zealous exertions of able and experienced officers in improving this branch of revenue, and promoting the general interests connected with it. If such a result be realized, the Governor in Council feels assured that the Honorable the Court of Directors, will not withhold its sanction from the new arrangement. This arrangement will take effect from the 1st Instant."

The Rule of the Supreme Government is as follows and is dated the 7th July 1820.

Article 16th.

Articles purchased by or provided for the Commissariat Department not being Ordnance, Magazine and Hospital stores shall pay duties in the same manner as Ordinary Articles of Merchandize, and the same forms shall be observed as in respect to goods the PROPERTY OF INDIVIDUALS.

Provided however that in cases of emergency certified by the Commissary General, Deputy Commissary General, or one of the Assistant or Sub Assistant Commissaries General, the Collector of customs shall pass the goods in the manner directed in the Fifteenth Rule.

(True Extract.)

(Signed) A. R. YOUNG,
Offs. Junior Secretary.

Custom House Calcutta.
The 16th September 1854.

(A true Copy.)

(Signed) W. BRACKEN,
Collector of Customs.

putting forth a claim which Government had decided was not valid.

Your memorialist was appointed Collector of Sea Customs on the 12th day of February 1841, on the same salary and emoluments as had hitherto been paid to his predecessors in office and confirmed by a Despatch from the Honorable Court dated 29th November 1843, No. 22, directing that these emoluments, viz. commission and fees should be paid to your memorialist, but cease and determine on his vacating the office, and the fees and emoluments carried to the credit of Government.

Previous to the year 1844 the duty on arrack had been 8 per cent. under Regulation 1 of 1813 and which had been paid by the Commissary General by all contractors and all who furnished supplies to the Troops (from time immemorial) as on all other articles supplied to the Commissary General. In 1844 an Act was passed by the Legislative Council of India No. VI. of 1844 for the abolition of inland duties and for revising the Import and Export duties by sea, by the 4th Section of which it is enacted that duties of customs shall be levied on all goods imported by sea into any places within the territories subordinate to the Government of Fort St. George according to the rates specified in the schedule A annexed thereto with the exception specified therein.

By the said schedule A arrack is made liable to a duty of 9 Annas per imperial Gallon when "IMPORTED" on British Bottoms and 1 Rupee when imported on foreign Bottoms.

By the Act IX. of 1845, which extended to all the Presidencies the duties on spirits were increased to 1½ Rupees per Imperial Gallon.

By the 17th Section of Act VI. of 1844, it is enacted that no goods whatever entered in either of the schedules of that Act as liable to duty shall be exempted from payment of that duty, or if any part thereof except under special order of the Government of Fort Saint George.

Sometime after the passing Act VI. of 1844 the Commissary General claimed to be exempted from payment of the duty on arrack purchased by him for the use of his office on spirits then

Fort Saint George, Revenue Consultation of 2d June 1857.

in Bond and assessed for duty under Section 3 Act XXV. of 1836 and has since continued to assert that claims upon an order of Government of which the following is a copy, and which was passed on the 8th July 1844 and before the duty had been changed from 9 annas to 1½ Rupees per Imperial Gallon. "The most Noble the Governor in Council having had under consideration the foregoing letter, resolves to direct in conformity with the suggestions offered by the Commissary General that supplies of arrack for the Government should be obtained as usual through the Commissariat Department on precisely the same footing as before, the promulgation of Act No. VI. of 1844, under this Resolution all arrack purchased on account of Government by the Commissary General will be exempted from such portion of duty now payable as will leave the amount to be paid per Gallon equal to the General Import duty of 8 per cent. heretofore levied."

(A true Extract.)

(Signed) G. D. DRURY,
Chief Secretary.

(True Copies.)

(Signed) E. C. LEVEY,
Acting Secretary.

Your Memorialist submits he has not at any period abandoned or forfeited his claim to commission on the arrack purchased for the use of the Commissariat.

In fact in consequence of a reference made by him to Government on the subject in the report of the customs revenue, for the year ending 30th April 1846 the duty on arrack "purchased" by the Commissariat has been charged ever since in your Memorialist's accounts in red ink, although not actually collected by order of Government in Minutes of Consultation dated 12th January 1848, No. 46, which is as follows.

"The Reporter of External Commerce will bring the subject *Ex. Mins. Con. No. 46.* "of the concluding para. of his report before Government in a Dated 12th January 1848. "separate communication, stating the system which prevailed prior to 1812 when it was ruled that Commissariat supplies should be charged with the established duties and under what circumstances the present practice of not collecting those duties as obtained. He will state further whether it will not be sufficient for all purposes to specify as he has done in the margin of the paragraph just referred to, the amount actually collected and that which it is intended to be nominally in account."

Your Memorialist maintains that on his appointment he became by mutual contract between him and his Honorable masters entitled as of right to the salary and emoluments payable to his predecessors, and which if right, ought to be continued to him during his tenure of office, unless it can be shewn that they have been legally forfeited.

Now he submits that the commission of 3 per cent. on the duty leviable on Arrack "purchased" by the Commissariat does not fall within that category.

In the first place Section 17 of Act. VI. of 1844 provides that no goods whatsoever entered in either of the schedules annexed to that Act shall be exempted from payment of duty except under special order from the Governor in Council of Fort St. George. Now the schedule A of that Act applies to goods "imported" by Sea into any Port of Madras. The word "IMPORTATION" having reference to the arrival at the Port of destination, therefore he contends that the exemption must take place previous to or on the importation of such articles and he is justified in this assumption by an opinion of the late Advocate General of Bombay communicated to him in Extract Minutes Consultation dated 15th November 1845, No. 1329, which is to the following effect.

What is the meaning of the term *imported* here used in this schedule. "For all purposes of the Revenue Customs Smuggling, and the Navigation laws, an importation of goods is considered

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"as complete when brought within the limits of any Port for the purpose of being landed though they may not have been landed." This is further supported by Advocate General Norton who observes.* "Immediately on Importation, not only the

* Communicated in order of Government dated 20th September 1844, No. 966.

"general duty which was leviable immediately, attached, but also the other two duties contingently, and subject to a drawback of the particular import duty in case of re-exportation. These duties were not the less due before the 1st April, because they were not immediately and absolutely leviable. They fell under the legal maxim debita in presenti solvenda in futuro."

† So the Arrack.

The Arrack in respect of which the Commissary General claims exemption and which exemption your Memorialist seeks to rebut has been "IMPORTED" into the Port of Madras by Natives and not by the Commissary General.

It is manifested by Natives and landed by them, passed through the Custom House and the duty paid by them and it is only purchased by the Commissariat when the "IMPORTATION" is complete, and consequently your Memorialist contends that the order of Government referred to and relied on by the Commissary General is not one within the scope and meaning of the Act.

Secondly. Your Memorialist maintains that the Act requires that a special order of exemption should be given that is an order in each particular case which it is clear has never been given and your Memorialist submits the duty payable by the Act cannot be exempted by the general indefinite order to the purchaser relied on.

Thirdly. Your Memorialist submits that Government had no authority to change the rate of duty, they might have remitted the duty payable on any particular quantity of Arrack or any part of such duty, but your Memorialist respectfully contends that Government had no power to usurp (so to say) the functions of the legislative and change the duty from 9 annas a

† Extract Mins. Con. dated 31st July 1856, No. 792, R. D.
"7th October 1856, No. 1066, R. D.

gallon to 8 per cent. on its value, and your Memorialist maintains that such are the instructions conveyed to the Madras Government by the Government† of India; and fourthly, you Memorialist contends that Act IX. of 1845 having absolutely increased the rate of duty on spirits from 9 annas to 1 Rupee 8 annas per Imperial Gallon, and Government not having issued any order if they had the power of reducing that duty. The order relied on by the Commissary General must be considered even if it ever had any effect to have fallen to the ground, and become absolutely inoperative and ineffectual. Under the foregoing circumstances, your Memorialist respectfully prays that your Lordship in Council will take his claim for the commission due on arrack and other goods purchased by the Commissary General into your favorable consideration and desire the same to be paid to your Memorialist, and for that purpose will give the necessary directions for ascertaining the amount which if called upon your Memorialist will be at once able to substantiate.

And your Memorialist as in duty bound—will ever pray.

Jc. Custom House, Madras,
2d May 1857.

W. E. UNDERWOOD,
Collector Sea Customs.

Fort Saint George, Revenue Consultation of 2d June 1857.

		Value.			
		C.	Rs.	A	P
Captain E. Elphinstone per "Lady Clarke" from London.					
To Government Sea Customs.					
100 Tierces Salt Pork and Beef,		7,225			
Sea Custom House, Madras, } 5th December 1848.		361	4		
Import duty at 5 per cent.....					
E. E. pr...					

(Signed) R. H. WILLIAMSON,
Deputy Collector Sea Customs.

(True Copy.)
(Signed) W. E. UNDERWOOD,
Collector Sea Customs.

The Commissary General per "Advance" from Columbo.
To Government Sea Customs.

		Value.			
		C.	Rs.	A	P
78 Casks Arrack 12,733 I. Gallons,					
Sea Custom House, Madras, } 8th September 1855.		810	13	4	
Import duty at 8 per cent. or 1 A. 22 cent. 817 3/4 per Gallon...					
E. E. pr...					

(Signed) W. E. UNDERWOOD,
Collector Sea Customs.

(True Copy.)
(Signed) W. E. UNDERWOOD,
Collector Sea Customs.

The Commissary General per "Margaret Connel" from Columbo.
To Government Sea Customs.

		Value.			
		C.	Rs.	A	P
60 Leaguers Arrack 9,873 I. Gallons,					
Sea Custom House, Madras, } 29th September 1855.		628	11	4	
Import duty at 8 per cent. or 1 A. 22 cent. 637 3/4 per Gallon...					
E. E. pr...					

(Signed) W. E. UNDERWOOD,
Collector Sea Customs.

(True Copy.)
(Signed) W. E. UNDERWOOD,
Collector Sea Customs.

Fort Saint George, Revenue Consultation of 2d June 1857.

Memorandum of Bills due by the Commissary General Rupees 3,925-14-3.

Month and date.	Bill No.	Imports.	Amount of Import and Export duty.			Total.		
			Rs.	A	P	Rs.	A	P
5th December 1848,...	58	Salt provisions, ...	361	4				
6th Do. " " " "	76	Do. " " " "	361	4				
1st September 1849,...	4	Iron hoops, ...	133	12	11			
Do. " " " "	11	Salt provisions &c., ...	308	7				
Do. " " " "	12							
24th Do. " " " "	422	Do. " " " "	300					
18th October " " " "	368	Gutta Percha, ...	2	6	10			
5th March 1850,...	115	Vat cocks, ...	36	3	7			
1st August " " " "	3	Timber, ...	195	1	7			
Do. " " " "	4	Do. " " " "	27	11	1			
27th September " " " "	404	Hydrometers, ...	18	6				
10th March 1851,...	193	Gutta Percha, ...	2	12	4			
22d September " " " "	480	Staves &c., of empty casks, ...	2	4				
1st July 1852,...	3	Sago, ...	24	8	6			
6th January 1853,...	200	Worsted socks, flannels, &c., &c.,	280	6	11			
8th September 1855,...	179	Arrack, ...	810	13	4			
29th Do. " " " "	632	Do. " " " "	628	11	4			
						3,494	1	5
			Exports.					
13th November 1848,...	15	Salt provisions, ...	115	9	7			
6th July 1849,...	51	Do. Copper boiler, lamps &c., &c.,	75	11	2			
27th December " " " "	78	Sandals, ...	3					
28th January 1850,...	166	Ghee and Turmeric, ...	167	3	3			
Do. " " " "		Dholl, ...	18	9	7			
10th January 1851,...	24	Lamp oil, ...	7	11	10			
11th Do. " " " "	26	Cotton ropes and lanterns, ...	4	14	2			
24th April " " " "	171	Cumbly Jhools, ...	4	14	3			
6th June " " " "	34	Foot oil and cumblies, ...	2	6	10			
26th October 1850,...	299	Bandage cloth, cumblies &c., &c.,	10	0	5			
26th July 1852,...	221	Hospital clothing &c., ...	3	6	7			
27th September 1851,...	248	Do. " " " "	9	9	6			
21st January 1853,...	180	Do. " " " "	8	11	8			
						431	12	10
			Rupees...			3,925	14	3

NOTE.—Bills have not been made out since 1853.

(Signed) W. E. UNDERWOOD,
Collector Sea Customs.

No. 17. Extract from the Proceedings of the Board of Revenue; dated 11th May 1857, No. 1507.

Read letter from the Collector Sea Customs dated 2d May 1857,*
*In Cons. 11th May 1857. transmitting a Memorial addressed to the Governor in Council, and soliciting that the same be laid before that authority.

(Here enter No. 132.)

Resolved that the above letter and its enclosures be laid before Government, with reference to the Board's Proceedings dated 7th April 1857, No. 1086.

2. The Board do not consider it necessary to offer any further remarks on Mr. Underwood's claims, their views being fully set forth in their Proceedings now before Government.

(A true Extract.)

(Signed) J. D. SIM, Acting Secretary.

Fort Saint George, Revenue Consultation of 2d June 1857.

No. 18.

ORDER THEREON, No. 512; dated 29th May 1857.

1. The subject discussed in the papers above recorded comprise three questions, viz.
1st. The liability of the Commissariat Department to pay duty on all articles imported for its use.

2nd. Its liability to duty on spirits under Act VI. of 1844; and

3rd. The validity of Mr. Underwood's claim to commission on the duty which would have been payable on arrack, if it had not been admitted on a lower rate.

2. The second of these questions is first noticed by the Board, and the circumstances under which it is brought under discussion are briefly these. Previous to the year 1854, spirits were liable, on importation, to a general duty of 8 per cent.,* and to a further particular duty of 150 Pagodas per leaguer; liquors purchased for, or belonging to, the Honorable Company, being exempted from the latter impost. By Act VI. of 1844, spirits were made liable to an import duty of 9 annas per imperial gallon, the special exemption in favor of Government stores was withdrawn, and a general power of exempting goods from duty was vested in the Governor in Council, by Section XVII. In 1845, the duty on spirits was raised by Act IX. of that year, from 9 annas to 1½ Rupees the imperial gallon, the rate at present in force.

3. Shortly after the promulgation of Act VI. of 1844, the Government were pleased to direct,† on an application from the Commissary General, that all arrack purchased by that officer on account of Government, should be exempted from so much of the duty leviable under that Act, as would leave the amount to be paid equal to the general import duty of 8 per cent., which had previously been in force. Mr. Underwood questions the legality of this order, on the ground that Government had no power to modify the rates of duty fixed by a Legislative enactment, without previous reference to the Government of India. The Board express their dissent from the Collector's opinion, and contend that, although the rates of duty leviable under Act VI. of 1844, have been modified by Act IX. of 1845, the power of wholly exempting goods from duty, vested in the Governor in Council by Section XVII. of the former Act, has not been withdrawn by any subsequent law; and they argue that if the Government can thus wholly exempt an article from duty, there can be no question that they can partially do so, or, as in the case under reference, lower the duty on arrack leviable under ordinary circumstances. The Board, in the course of their argument, advert to a recent order of the Government of India, desiring that this exemption should not be exercised without previous reference to that Government; but they notice that the order in question, does not affect Mr. Underwood's reasoning, since it admits the power of this Government to remit customs duty, under a special order, in particular cases. The Board further point out that, in the case referred to by the Government of India, revenue derived from ordinary trade was remitted; while in that under discussion, the revenues are in no way affected, Government being the payer and receiver of the duty. On these grounds, the Board conclude that the order of Government, lowering the duty on spirits, was perfectly legal; and the Governor in Council, having carefully considered Mr. Underwood's objections, has no doubt of the soundness of this conclusion.

4. With regard to the question of the liability of the Commissariat Department to pay duty on all articles imported for its use, the Board concur with the Collector in maintaining that all dutiable articles should be charged with duty, notwithstanding their being the property of Government. The payment, they remark, would be merely nominal, but the returns of Customs revenue would then be nearly truthful, as embracing the duty on all articles, save on those which have been specially exempted. The effect of the arrangement on the Commissariat Department, they add, would be, that much of what is now regarded as profit or saving, would appear in the accounts as Import duty, and be credited to its proper head; while Government would have the means of comparing the expense at which supplies are procured through that Department, with the expense at which they might otherwise be procured. Under such a system too, the Board state, the practices mentioned by the Collector in para. 6 of his letter of the 4th June 1853,

Fort Saint George, Revenue Consultation of 2d June 1857.

could not obtain; while the Department would be placed in this respect, on the same footing as other Departments, such as that of salt in Madras, where canal dues are paid, though both the salt and the canal are the property of Government.

5. The Right Honorable the Governor in Council is satisfied as to the propriety of the course recommended by the Board, and he accordingly resolves to direct that duty be charged on all Government stores, imported or exported, and be carried to credit in account; and that the duty remitted on articles which have been, or may hereafter be, exempted by a special order, be written off as a debit, in order that the Sea Customs returns may be kept in a complete and correct form. This arrangement will be carried into effect from the commencement of the current official year.

6. With regard to Mr. Underwood's claim to commission on the duty which would have been leviable on Government stores, if they had not been passed free, or admitted on a lower rate, the Board express an opinion adverse to it. They observe that the exemption of Government stores from duty being perfectly legal, neither the Collector, nor his subordinates, can claim commission on the duty which would have been leviable on them if they had not been Government property. "Even if it be determined," add the Board, "that duty shall be levied in account, as proposed by them, this will merely be a nominal demand. The duty would be entered in the accounts *pro forma*, in order to secure greater accuracy in statistical returns, but would add nothing to the Public Treasury. It would be in fact similar to the duty returned as draw-back, on which the Collector does not draw commission, though the system of drawback adds to his labors." As regards Mr. Underwood's argument, based on the estimate or expectation on which the emoluments of his office were fixed, the Board observe that that circumstance does not affect the question, "inasmuch as it has neither prevented Government from abolishing and reducing the duty on various articles, nor induced them to grant compensation for losses sustained, in consequence of such measures, by the Collector and his subordinates. Moreover, the emoluments of the Collector are still more lucrative than those of Collectors generally, and considerably more than his successor is likely to receive, and the Board could not support Mr. Underwood's claim, even on the ground that his allowances were disproportionate to the duties and responsibilities of the office he holds."

7. With his letter of the 2d instant, Mr. Underwood submits a Memorial, appealing against the opinion thus expressed by the Board on his claim, and begs that no order may be passed on his case until his Memorial has been considered in connection with the Board's Proceedings to which he objects. The Right Honorable the Governor in Council has accordingly read Mr. Underwood's Memorial with care, and regrets that he is unable to arrive at any other decision on his claim, than that to which the Board have come. In addition to the arguments adduced by the Board, it may be observed that the allowance of commission would be inconsistent with the object for which commission was granted. It was given under the idea that it would increase the activity of the Collector, and afford him an inducement to prevent smuggling for his own sake; but there is no danger of Government stores being smuggled, because the duty being paid by Government, no one would derive any benefit; the Commissary General will import exactly what he wants, and no act of the Collectors can increase or decrease his imports. Mr. Underwood's claim to commission is therefore, in the opinion of Government, barred by the very grounds on which commission is given, and as regards the trouble he may have in the matter, he receives his fixed salary as a remuneration.

8. In paras. 21 to 24 of their Proceedings,* the Board point out objections to the present system of remunerating the Collector of Sea Customs, in part, by a percentage on his collections, and suggest the desirableness of commuting his commission for a fixed sum, calculated on an average of three years' receipts. In this suggestion, the Government entirely concur, and they request that the Board will prepare a Statement of the average commission received by the Collector in 1854-55 and 56, and ascertain if he has any objection to urge to his commission being commuted accordingly.

9. Ordered that this resolution be communicated to the Board of Revenue, with the request that they will furnish a copy thereof to Mr. Underwood, with reference to his Memorial to the address of Government dated the 2d instant.

(Signed) H. FORBES,
Acting Secretary to Government.

1855-1856 (Papers)
 1086

Extract from the Proceedings of the Board
 of Revenue, dated 7th April, 1857. 11086

Read letter from the Collector of
 Indus 7th April 1857. Ina Customs dated 26th July 1856.
 (See entry N^o 317)

In his letter dated 4th June 1853.
 Indus 7th July 1853.

M^r Underwood brought to the notice of the
 Board the refusal of the Commissary General
 to pay duty on certain articles imported for
 his Department.

Proceedings 7th July 1853. 2

The Board in reply called for fur-
 ther information as to the particular arti-
 cles which the Commissary General claimed
 to import free of duty.

In his letter above recorded M^r
 Underwood replies to this call and the
 Board will state briefly the opinion at
 which they have arrived after a very care-
 ful consideration of M^r Underwood's argu-
 ments.

M^r Underwood divides the
 subject into two heads, the general question
 of

of duty on all articles and the particular
question of the payment of duty on spirits
under Act VI of 1844.

The Board will first state the
facts of the subject.

Previous to the enactment of Act
VI of 1844, spirits were liable on importation
into Madras to a general duty of 8 per cent
and a further particular import duty not
exceeding 100 Pagodas per league: but all li-
quors intended for the use of the Army or
Navy or purchased for or belonging to the
Honorable Company were exempt from the
latter impost, remaining subject to the
general 8 per cent duty (Regulation I of 1813
Section II Clause I and Section IV).

By Act VII of 1844, Spirits (of
London proof) were made liable to an im-
port duty of 9 Annas per Imperial Gallon,
which rate was increased by Act IX of 1845
to 1½ Rupees per Imperial Gallon the existing
duty. The special exemption accorded to
Government stores under Regulation I of 1813
was withdrawn and a general power of
exempting goods from duty vested in the
Governor

Madras

Governor in Council by Section XVII - 9/5/2

3

On the 25th June 1845 No. 557-Reg.
Revenue Department the Government de-
cided that all Arrack purchased on their
account by the Commissary General should
be exempt, so much of the duty, leviable
under Act VI of 1844 as exceeded the former
rate. in other words that such liquors
should continue subject to the old duty
of 8 per cent.

9

Mr. Underwood questions the
legality of this order and the power of
Government to modify the rates of duty
leviable under a legislative enactment
without reference to the Supreme Govern-
ment.

10

In this view the Board are
unable to concur. The power of wholly ex-
empting goods from duty is expressly vested
in the Governor in Council of the Presidency
of Fort St. George Section XVIII of Act VI of 1844
without the necessity of any reference to
higher authority. The rates of duty levi-
able under that enactment have indeed
been modified by Act IX of 1845, but this power
of

of exempting from duty has not been with-
drawn by any subsequent law, and if the
Governor in Council can thus wholly exempt
an article from duty there can be no question
in the Board's view of his competency to exempt
goods partially, or, as in this case, to direct
that certain articles shall pay 8 per cent
ad valorem instead of the higher rate lev-
iable on them under ordinary circumstances.

On a recent occasion indeed the
Supreme Government notified their desire
that this power should not be exercised
without a previous reference, and expressed
their opinion that a special order was re-
quired on each case. This however does not
affect Mr. Underwood's line of argument, for
the legality of the Act under a special order
is admitted. Further the cases are not ana-
logous, in that referred to by the Supreme
Government, revenue derived from ordinary
trade was given up while in this the re-
venues are not affected. Government in dif-
ferent departments being the payer and
receiver of the duty. But even supposing
that the Governor in Council had in the

Extract from the
1st July 1852
27 July 1852
28 July 1852

order referred to, exceeded his authority, Mr.
Underwood's case would not be benefitted
as it by no means follows that the Supreme
Government would object to the course pro-
posed.

For these reasons the Board
entertain no doubt of the perfect legality
of the order in question.

Setting aside Mr. Underwood's
view of the case in this respect as untenable
the Board concur with him in holding that
all dutiable articles should pay duty, notwith-
standing the fact of their being Government
property. The payment would of course
be merely nominal, but the Returns of
Customs Revenue would then be, nearly
truthful. There would be still a petty
amount omitted, viz. duty on articles exempt-
ed by orders specially passed on each case,
but the accounts would not be incorrect
by upwards of a Lac of Rupees annually,
and that on a single article.

As regards the Commisariat
Department the effect of such an arrange-
ment would be that much of what is now
regarded

regarded as profit or saving would appear in the Customs accounts as Import duty and be credited to its proper head. While Government would have the means of testing the management of the Department by comparison with ordinary market prices. Under such a system moreover the practices mentioned in Para D of the Collector's letter dated 4th June 1853 could not obtain. The principle as Mr Underwood remarks is recognized in other Departments as for instance in that of Salt at Madras, where Canal dues are paid, though both the salt and the Canal are Government property.

Calcutta July 1853.

The Board are therefore of opinion that the rule of charging duty in accounts should be adopted in regard to all Commissariat stores and the practice in Madras be assimilated to that in Calcutta and Bombay. The Board would moreover extend the rule to all Government imports and exports as the demand is merely nominal.

The Board would not propose however to give the rule, retrospective effect.

The Board do not deem it necessary to

to remark particularly on the refusal of the Commissariat Department to pay duty. The question should have been submitted at an earlier date for the orders of Government when specific instructions could have been laid down, so as to obviate all difficulty or discussion thereafter.

17. The Board will now proceed to notice Mr Underwood's claim to Commission on the duty which would have been leviable on such stores, if they had not been passed as already remarked.

18. After very careful consideration the Board regret that they are unable to support the claim advanced.

19. The Board are of opinion that the exemption of Government Stores from duty is perfectly legal and therefore do not consider that the Collector and his subordinates can expect to draw Commission on the duty which would have been leviable on them if they had not been Government property. Even if it be determined, as the Board have proposed, that duty shall be levied in account, this will merely be a nominal

nominal demand. The duty would be entered in the accounts for funds, in order to secure greater accuracy in statistical returns, but would add nothing to the public Treasury. It would be in fact similar to the duty returned as drawback on which the Collector does not draw commission though the system of drawback adds to his labors.

20 The Board do not think that the estimate or expectation on which the emoluments of his office were fixed affects the question, for that consideration has neither prevented Government from abolishing and reducing the duty on various articles, nor induced them to grant compensation for losses sustained in consequence of such measures by the Collector and his subordinates. Moreover the emoluments of the Collector are still more lucrative than those of Collectors generally and considerably more than his successor is likely to receive, and the Board could not support Mr. Underwood's claim even on the ground that his allowances were disproportionate to the duties and responsibilities of the office he holds.

holds.

21

W. J. L. 11
12/5/2
The Board feel it incumbent on them to bring under the consideration of Government the objectionable system now pursued of remunerating the Collector of Sea Customs in part by a percentage on his collections.

22

This mode of payment will cease on his retirement but it appears to the Board very desirable that it should be discontinued at once, and a commuted allowance calculated on an average of the last three years, be substituted for it.

23

Under the present system the Collector does not occupy the independent and impartial position which he should do between Government and the mercantile community - and his proceedings however correct and just are liable to be attributed to his personal interest in their issue.

24

That such imputations are not now made is extremely creditable to Mr. Underwood; but this does not render it less desirable that a public officer in his

his position should be placed beyond the possibility of having his official conduct imputed to interested motives.

Ordered that a copy of these Proceedings be sent to Government for their consideration and for orders, as to the rules to be adopted in regard to the import of stores on account of Government or copies will also be forwarded the Collector of Sea Customs made as for his information.

(True Extract)

[Signature]

By Secretary

A. Forbes Esq.

By Secretary to Government
Revenue Department.

[Signature]

13/52

10/5

13/10/1851

Statement concerning
from the Office of the Customs
relative to the payment of
of the Company, secured
the pay duty on certain
articles imported for
the Department and
during the year of the
Board on the question.

10/5/52

10/5/52

10/5/52

10/5/52

10/5/52

Correspondence have passed between the
Commissary General and himself on this
subject, the Board would wish to be fur-
nished with a Copy. They also desire to
have a Copy of the reply, if any was
received, to the Collector's letter of 15th January
1853 N^o 8.

2 The Minutes of Consultation
of 20th December 1848, N^o 1392, quoted in
Para 4 do not appear to have been com-
municated to this Office. Mr. Underwood
will be so good as to furnish the Board
with a Copy.

(True Extract)

Signed B. Cuthbert.
Secretary.

To, H. C. Underwood Esq.
Collector of Sea Customs.
Madras.

(True Copy)

John
Acting Secretary.

C. W. L.

In an Extract from the
Min. of the B. of Madras
to the Acting Secy to Govt.
Revenue Department
dated 7th April 1857.
C. W. L.

To the Collector of Sea Customs
dated 7th July 1853.

B. 390/57

Collected
10/10/53

5/2
15

No.

Extract from the Proceedings of the Board of Revenue, dated 7th July, 1853.

Read letter from the Collector of Sea Customs at Madras, dated 1st June 1853.
(Here enter No. 110.)

In Part of the foregoing letter the Collector of Sea Customs states that "at present the Commissary General consents to pay duty upon certain articles, but refuses to do so upon others." Mr. Underwood will be so good as to state upon what articles the Commissary General agrees to pay duty, and upon what articles he claims exemption, and the reasons he urges in support of his views. The course observed as to payment of duty previous to 1848 should also be stated. Should any

Comptroller

16 1/2

Sea Custom House

Madras 2 May 1857.

N^o 16

N^o 131

From W. E. Underwood Esq^r

Collector Sea Customs
Madras

To H. Forbes Esq^r

Sp. Secy to Govt. Rev. Depart.

Sir, Fort St George

I have the honor to forward
a Memorial addressed to the Right
Honorable the Governor in Council

2 I respectfully solicit that
His Lordship in Council will direct that
this my humble Memorial may be taken
into consideration together with the Proceedings
of the Revenue Board N^o 1086 dated
7th April 1857, and that no order in
Council may be passed thereon until the
Memorial now transmitted shall have
been brought under the review of Government.

3 I have the honor to state that
I have forwarded copy of the Memorial,
this day, to the Board of Revenue, but
have

have taken the liberty of forwarding it
 direct to Government fearing His Lordship
 in Council might pass a decision on the
 merits of the case before the Memorial
 had been submitted to Government by the
 Board of Revenue.

I have the honor to be,
 Sir,
 Your Most Obedt Servant
 W. Ellendone Underwood
 Collector Sea Customs

Copy sent to L. H. 1. E.
 2/25 copy 1880. 1881.

Revenue 1579 Report
 2/25 copy 1880. 1881.

From the Collector of Sea Customs
 to the Board of Revenue

The Hon. Secy to the Govt
 The Hon. Secy to the Govt

Dated 2nd May 1854.

Received 2nd May 1854.

2 Encls.

Encls. 2
 No. 512. 79. 1 May

Forwarding a Memorial
 addressed to the Right Honorable
 the Governor in Council and
 soliciting that His Lordship in
 Council may take it into
 consideration together with the
 Memorial of the 14th April 1854
 that no order in Council
 be passed thereon until the
 Memorial shall have been
 brought under the perusal of
 Government.

No. 6.

2nd May 1854.

My opinion - On the subject
 has been already given.

2nd May 1854.

2nd May 1854.

18
512
Revenue Department

No 1507.

N^o 17
Extract from the Proceedings of the
Board of Revenue dated 11th May 1857.

Read letter from the Collector
of Sea Customs dated 2nd May 1857, trans-
mitting a Memorial addressed to the
Governor in Council, and soliciting that
the same be laid before that authority.

(Here Enter No 132.)

Resolved that the above
letter and its enclosures be laid before
Government, with reference to the Board's
Proceedings dated 4th April 1857, No 1086.

2. The Board do not consider
it necessary to offer any further remarks
on Mr. Underwood's claims. Their views being
fully set forth in their Proceedings now
before Government.

(A True Extract)

J. P. Linn
ag Secretary.

To H. Forbes Esq.
ag Secretary to Government,
Revenue Department.

E. M. W. L. L. L.

Revenue 1857 Sept.
20 to Com 20 Sept

L^o 574

Extract from the
Proceedings of the
Board of Revenue.

Dated 11th
Dec^r 12th May 1857
3 Encls. Returned.

S. E. No. 512. 29th May 1857.

Submitting a memorial
addressed to the folks of the
Customs to the Governor in
Council a petition against the
Proceedings of the Board of
1st April 1857, and claiming a
refund of certain monies
of office, and stating that
the Board will not offer
any further remarks on
the views set forth in their
Mem^o of the above date.

9 19
 Capt. C. Edphinstone Per *Lady 20/512* from *London* Dr.
 To Government Sea Customs.

Value		
C. Rupee.	A.	P.
7225	.	.
361	4	.

100 Tierces Salt Pork & Beef

Import duty at 5 per Cent

Sea Custom House,
 Madras, 5th Decr 1843
 End. No. 58

E. E. pr.

/ Signed / *E. H. Williamson*
 Collector Sea Customs

/ True Copy /
W H
 Collector Sea Customs

The Commissary General Per Margaret Connel from Columbus Dr.
To Government Sea Customs. Value

22/5

60 Leaguers track 973 ^{2 hrs}

Sea Custom House,

Madras, 29th Sept 1854

End. No. 632.

Import duty at 8 per Cent
 8 Cent 6394
 or 1-22 9873 1/2 Grs

E. E. pr.

C. Rups.	A.	P.
629	11	4

Long Capt.

44

Collector's signature

1. Signed of W. E. Underwood

Collector Sea Customs.

23
512

To

The Right Honorable George Francis Robert Lord Harris
Governor in Council
Fort St. Georges.

The humble Memorial of
W. C. Underwood Collector of
Customs.

Sheweth;

That on the 7th April 1857 The Board
of Revenue passed a decision on a letter from
your Memorialist dated 26th July 1856. which
your Memorialist submits is contrary to Law,
and usage and to the opinions and views
hitherto set forth by the Boards of Revenue in
matters connected with the salary of the Collector.
as noted in the margin exhibiting that on all
previous occasions the Boards of Revenue have
invariably recommended that the emoluments
sought for should be granted especially in
the case here cited.

"The Board are not disposed to
think that Mr. Ashton and the Deputy Collector
Mr. Underwood should be allowed Commission
on the large importation which took place
during the period that grain was exempted
from duty."

"The Average Commission for the 4 years
is only Rupees 993-9-7. but as the Department
has

had additional labor and responsibility during the period of Grain having been exempted from duty from the investigation of claims to bounty made the issue of Certificates on that account made to Commanders of Ships to obtain Salt. The Board think it reasonable that Compensation should be allowed to the Collector and the Deputy Collector to the extent of Commission drawn in 1849 or being the highest amount within the last four years as exhibited above.

Your Memorialist is grieved to find that on the present occasion the Board have sought to depose Your Memorialist of his emoluments on the ground that they should have been before brought forward when in fact and in truth as will appear from the list of Bills now enclosed that the Commissary General is totally forcibly contrary to precedent and to order of Government on his own authority set such orders at defiance and refused to pay Bills which are now lying in Your Memorialist's hands unpaid and unadjusted in his Books so that when Your Memorialist with a view to prevent the public interest being compromised yielded up the illegal act of the Commissary General the Board of Revenue far from appreciating such a procedure have turned it against Your Memorialist as a ground for disallowing his claims.

Your Memorialist further observes that the Board of Revenue contends that an order is a valid order and that therefore

Memorandum of Bills due by the Commissary General Rupees 3925. 14. 3

Month and Date	Bill No	Imports	Amount Import duty Rs. & P	Total
5 th December 1848	58	Salt Provisions	361 4.	
6 th " "	76	"	361 4.	
1 st September 1849	4	Iron Hoops	133 12 11	
" "	11	"		
" "	12	Salt Provisions	308 7.	
24 th " "	422	"	300 .	
18 th October "	368	Gutta Percha	2 6 10	
5 th March 1850	115	Val. Books	36 3 7	
1 st August "	3	Timber	195 1 7	
" "	4	"	27 11 1	
27 th September "	404	Hydrometers	18 6.	
10 th March 1851	193	Gutta Percha	2 12 4	
22 nd September "	480	Staves & Empty Casks	2 4.	
1 st July 1852	3	Sago	24 8 6	
6 th January 1853	200	Washed locks Hammels & Co	280 6 11	
8 th September 1855	179	Arrack	870 13 4	
27 th " "	632	"	628 11 4	3496 1
15 th November 1848	15	Exports Salt Provisions	115 9 7	
6 th July 1849	51	" Copper Bells Lamps & Co	75 11 2	
27 th December "	78	Sandals	3 .	
28 th January 1850	166	Ghee & Turmeric	167 3 3	
" "	"	Shall	18 9 7	
10 th January 1851	24	Lamp Oil	7 4 10	
" " "	26	Cotton Ropes & Lanterns	4 14 2	
24 th April "	171	Cumblis Shells	4 14 3	
6 th June "	34	Foot Oil & Cumblis	2 6 10	
26 th October 1850	299	Bandages Cloth Cumblis & Co	10 . 5	
26 th July 1852	221	Hospital Clothing	3 6 7	
27 th September 1851	248	"	9 2 6	
21 st January 1853	180	"	8 4 8	

g.m.

3

16
 We

Rupees 3925 14.

3 11 3 1

Prof.

Conclusions A
 Your movement from
 the Editor of the Nation
 to the Right Honourable
 the Governor in Council
 dated 29. August 1841
 commencing in p. 20
 improved by the Committee
 distinct and Capable of
 3. With some money
 at least the Committee
 cannot ultimately agree
 to day -
 Rem. exp. May/57 & 1/4

collections shall be divided amongst them in the proportion of 3 per cent to the Collector, one and a half per cent to the Deputy, and one half per cent to the Assistant. The Governor in Council also fixes their salaries at the rates of 1800 Rupees per mensem to the Collector, 1000 Rupees per mensem to the Deputy, and 625 Rupees per mensem to the Assistant. These allowances with the addition of the casual emoluments derived from the issue of Port Clearances, from Confiscated goods &c. which will be appropriated as heretofore though fixed with due regard to moderation, will it is hoped, prove sufficiently liberal to ensure the zealous exertions of able and experienced officers in improving this branch of Revenue, and promoting the general interests connected with it. If such a result be realized, the Governor in Council feels assured that the Honorable the Court of Directors, will not withhold its sanction from the new arrangement. This arrangement will take effect from the 1st instant.

This duty was leviable on all goods of every description and it mattered not whether they were imported for the use of Commissariat or Private individuals. In particular the articles supplied for the use of the Commissary General were not exempted for by a Resolution of Government dated 10th April 1812 it was resolved that the Commissary General should be chargeable with the duty on all supplies of every description which he should be chargeable with as from 1812. The established duties for

provided for the Commissary General's Department and also for the Magazine and the same shall pay duties in the same manner as the same shall be chargeable in the same manner.

provided for the Commissary General's Department and also for the Magazine and the same shall pay duties in the same manner as the same shall be chargeable in the same manner.

provided for the Commissary General's Department and also for the Magazine and the same shall pay duties in the same manner as the same shall be chargeable in the same manner.

reasons therein particularly referred to and under this resolution the Commissary General was so chargeable in all articles which passed through or were chargeable with duty in the office of the Collector of sea Customs from the year 1812 until the year 1849. when the Commissary General suddenly refused to pay such duty on the alleged grounds that public Officers were exempted from the demands of duty, althe the said order of 1812 as he then had never been rescinded or revoked and that in that order Govern-

ment had decided that the Commissary General should not be included in the list of Officers who were to be paid gross duty free and he therefore then he was putting forth a claim which Government had decided was not valid.

Your Memorialist was appointed Collector of sea Customs on the 12th day of February 1841 on the same salary and emoluments as had hitherto been paid to his predecessors in office and

Confirmed

Confirmed by a Despatch from the Honorable
Court dated 29th November 1842 directing that
these Emoluments viz. Commission and fees should
be paid to your Memorialist but leave and
determine on his vacating the office and the fees
and emoluments carried to the credit of Government.

Previous to the year 1844 the duty on Arrack
had been 8 per cent under Regulation of 1813 and
which had been paid by the Commissary General by
all contractors and all who furnished supplies to the Impe-
rial (from time immemorial) as in all other articles sup-
plied to the Commissary General. In 1844 an Act
was passed by the Legislative Council of India Act VI
of 1844 for the abolition of all duties and for re-
viving the Import and Export duties by Act VI of 1844
of which it is enacted that duties of Customs shall
be levied on all goods imported by sea into any place
within the territories subordinate to the Government
of Fort St. George according to the rates specified in
the Schedule A annexed thereto with the exceptions
specified therein.

By the said Schedule A Arrack is made
liable to a duty of 9 Annas per Imperial Gallon when
"imported" as British Bottoms and 1 Rupee when
imported on foreign Bottoms.

By the Act IX of 1845 which extended
to all the Presidencies the duties on spirits were
increased to 1st Rupee per Imperial Gallon.

By the 1st Section of Act VI of 1844 it
is enacted that no goods whatever entered in either
of the Schedules of that Act as liable to duty shall
be exempted from payment of that duty or of any
part thereof except under special order of the Govern-
ment of Fort Saint George.

Done

27/5/44
Some time after the passing Act VI of 1844 the
Commissary General claimed to be exempted from pay-
ment of the duty on Arrack purchased by him for the
use of his office on spirits then in Bond and assessed
for duty under section 3 Act XXV of 1836 and has
since continued to assert that claim upon an order
of Government of which the following is a copy and
which was passed on the 8th July 1844 and before the
duty had been changed from 9 Annas to 1st Rupee
per Imperial Gallon. "The Most Noble the Governor
in Council having had under consideration the foregoing
letter resolves to direct in conformity with the suggestion
offered by the Commissary General that supplies of Arrack
for the Government should be obtained as usual
through the Commissariat Department on precisely
the same footing as before, the promulgation of Act
VI of 1844. Under this Resolution all Arrack purchased
on account of Government by the Commissary General
will be exempted from such portion of any now
payable as will leave the amount to be paid per
Gallon equal to the General Import duty of 8 per
cent heretofore levied."

(A true Extract)

Signed J. D. Durney
Chief Secretary

(True Copies)

Signed C. C. Lovell
Acting Secretary

Your Memorialist submits he has
not at any period abandoned or forfeited
his claim to Commission on the Arrack
purchased for the use of the Commissariat.

In fact in consequence of a reference
made by him to Government on the subject
in the report of the Customs Revenue for the year
ending

on being 31st April 1846 the duty on arrack
"purchased" by the Commissariat has been charged
ever since in your Memorials Accounts in red ink,
although not actually collected by order of Government
in Minutes of Consultation dated 12 January 1848.
which is as follows:-

The Reporter of External Commerce will
bring the subject of the concluding para of his
Report before Government in a separate Communi-
cation stating the system which prevailed prior
to 1812 when it was ruled that Commissariat dep-
uties should be charged with the established duties
and under what circumstances the present prac-
tice of not collecting those duties as obtained.
He will state further whether it will not be suf-
ficient for all purposes to specify as he has
done in the margin of the paragraph just
referred to, the amount actually collected, and
that which it is intended to be normally in
"account".

Your Memorials maintain that
on his appointment he became by mutual
contract between him and his Honorable
Master entitled as of right to the salary
and emoluments payable to his predecessors, and
which if right, ought to be continued to him during
his tenure of office, unless it can be shown that
they have been legally forfeited.

Now he submits that the Commission
of 3 per cent on the duty leviable on Arrack
"purchased" by the Commissariat does not fall
within that Category.

VI of 1844 provided that no goods what-
soever entered in either of the schedules
annexed to that act shall be exempted
from payment of duty except under
special order from the Governor in
Council of Port St. George. Now the
Schedule A of that act applies to
goods "imported" by sea into any
Port of Madras. The word
"Importation" having reference to the
arrival at the Port of destination, and
therefore he contends that the
exemption must take place previous
to or on the importation of such articles
and he is justified in this assumption
by an opinion of the late Advocate
General of Bombay communicated
to him in Extract Mins. Cons. dated
15th November 1845 No. 1329
which is to the following effect:-

What is the meaning of the
term imported here used in the Schedule

For

For all purposes of the Revenue Customs
Duties, and the Navigation Laws,
an importation of Goods is considered
as complete when brought within
the limits of any Port for the purpose
of being landed though they may not
have been landed. This is further
supported by Advocate General
Trotter who observes "Immediately on
Importation, not only the general duty
which was leviable immediately,
attached, but also the other two duties
contingently, and subject to a Drawback
of the particular import duty in
case of re-exportation. These
duties were not the case before
the 1st April because they were
not immediately and absolutely
leviable. They fell under the legal
maxim debita in praesenti solvenda
in futuro."

The Attack in respect

28/5/2
of which the Commissary General
claims exemption and which
exemption your Memorialist
seeks to rebut has been "imported"
into the Port of Madras by
Natives and not by the Commissary
General.

It is manifested by Natives
and landed by them, passed through
the Custom House and the duty paid
by them and it is only purchased by
the Commissariat when the
"importation" is complete and
consequently your Memorialist contends
that the order of Government referred
to and relied on by the Commissary
General is not one within the scope
and meaning of the Act.

Secondly - Your Memorialist
maintains that the Act requires
that a special order of exemption
should be given that is an order in
each

each particular case which it is
clear has never happened and as
your Memorialist submits the
duty payable by the Act cannot be
ascertained by the general indefinite
order to the purchaser relied on -

Thirdly Your Memorialist submits
that Government has no authority to
change the rate of duty they might
have permitted the duty payable
on any particular quantity of
Arrack or any part of such duty
but your Memorialist respectfully
contends that Government had no
power to exempt it to say of the functions
of the Legislature and change the
duty from 9 Annas a gallon to
8 per cent on its value and your
Memorialist maintains that such
are the instructions conveyed to the
Madras Government by the Government

of

of India and Fourthly your Memorialist
contends that Act IX of 1845 having ab-
solutely increased the rate of duty on
spirits from 9 Annas to 1 Rupee 8 Annas
per Imperial Gallon and Government
not having issued any order if they had
the power of reducing that duty. The
order relied on by the Commissary General
must be considered even if it ever had
any effect to have fallen to the
ground and become absolutely in-
operative and ineffectual. Under the
foregoing circumstances your Memorialist
respectfully prays that your Lordship
in Council will take his claim for the
Commission due on Arrack and other
goods purchased by the Commissary
General into your favorable
consideration and desire the same
to be paid to your Memorialist and
for that purpose will give the
necessary directions for ascertaining the
amount

amount which if called upon your
Memorialist will be at once able
to substantiate.

And your Memorialist
as in duty bound

Will Ever Pray

Sea Custom House
Marine

W. S. Anderson
Collector Sea Customs

3rd May 1857

Memorial

In a letter from the Collector
of Sea Customs to the Secretary
to the Hon. Secy. of the Department dated
3 May 1857 No. 131.

Enclosed

Enclosed by 1st 1857

Memorial of the Hon. Secy. of the
Department of the Interior
against the decision of the Hon. Secy.
of Revenue in the Proceedings of
the B. of Rev. B. 12000 dated
7 April 1857 on the subject of
the demands of the Sea Customs
Department in the Commis-
sionary General for the duty
in arrears. B. 12000
and proposing the illegal
proceedings of that officer
contrary to the orders of
Government.

Copy in L. H. 17. 6
1/25 dated 1850. No. 3

18

32
512
Mum 28 June 1857

It is requested that a copy
of the order of Court dated 29 May 1857 No 512
relating to charging of duty on Court Stairs
may be forwarded to this Office, for as it
is required for reference in consequence of the
case of Sir A. C. having alluded to it
in a letter addressed to this Office.

To the Secy in the Secy
Dept of the Govt Office.

Yours
Wm. D. N. A. P.

Rev: Mr
390

$\frac{33}{52}$

No 390

I beg to inform the Board of
Trusts in the two questions
of the liability of Corp.
to the payment of
debt in import and
on the Collector's com.
mission being com.
mitted to a sum
equal to the li. on old
receipts under the
head in the last year.
I have called an
examination to be
made in the account.

any, it must have
been the result of some
discovery - The right
to deny the power of
the Government to
alter the law is the
power of the Government
to make the law.

I think I
have been
on the subject
of the
Government
and the
law.

There can be no question
whether they be imported for the
service of Govt: - by a Govt Department
or not.

With respect to the power of the
Madras Govt: to lower the rates of
duties - there can be no question
as regards all articles mentioned
in the schedule referred to in the 17th
of the Act of 1844 - but the Act of 1845
gave no such power respecting the

interest mentioned in it. I am disposed
to think that the full duty has been
kindly performed by the paper.

2. Preserved in the perpetual receipt of
the collector of Customs. I think - therefore
as no good - can the collector claim
annuity.

To the payment must be withdrawn
to be a nominal one as ~~the~~ before
for the more correct keeping of cash
& moreover - that it is only now
ordered after the objection of Mr. Auld's
~~this~~ has been continued - ordered to be

abolished.

Southey the suggestion of the
making a communication with
the present system - a communication
might be made to the
the name of a proposal to that effect.
but I did not be disposed to force it on
an old officer. if he manifested any
disposition to accept of the
affairs of the
and I think

I have been generally in the above remarks. I think the
Gov. have power legally to grant exemptions, or duty when they see occasion
but I think that he duty on all articles whatever should be credited
to the revenue & the revenue broken off as a debt. This is the principle
I am for.
I am of opinion that the Gov. that it is highly desirable to
have the Commission of the Customs to be fixed upon a permanent basis
average of the Gov. I am for no hardship or injustice in the Gov. I am for
substantially in the general case of the Commission of the Customs

R D 36

N. 512

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512

N. 505

Extract from the Minutes of Consultation
Under date the 29th May 1857.

Read the following Paper.

Extract from the Proceedings of
the Board of Revenue.

(Here enter 7th April 1857 N. 1080)

From W. E. Underwood Esq.

(Here enter 2nd May - - - 131.)

Extract from the Proceedings of
the Board of Revenue.

(Here enter 11th - - - - 1507.)

A

Cl

M. O.

The subjects discussed
in the papers above recorded
comprise three questions, vizt:
1st The liability of the
Commissionariat Department
to pay duty on all articles
imported for its use.

2nd Its liability to duty on
spirits under act VI of 1844, and

314 The validity of Mr. Underwood's claim to commission on the duty which would have been payable on arrack, if it had not been admitted on a lower rate.

The second of these questions is first noticed by the Board, and the circumstances under which it is brought under discussion are briefly these. Previous to the year 1854, Spirits were liable, on importation, to a general duty of 8 per cent, and to a further particular duty of 150 Pagodas per langues, liquors purchased for, or belonging to, the Honorable Company, being exempted from the latter impost. By act VI of 1844, Spirits were made

Reg. I of 1813, Section II
Clause I and Section IV

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512
made liable to an import duty of 9 annas per Imperial gallon, the special exemption in favor of Government stores was withdrawn, and a general power of exempting goods from duty was vested in the Governor in Council, by Section XVII. In 1845, the duty on Spirits was raised, by act IX of that year, from 9 annas, to 1½ Rupees the imperial gallon, the rate at present in force.

Shortly after the promulgation of act VI of 1844, the Government were pleased to direct, on an application from the Commissary General, that all arrack purchased by that officer on account of Government, should be exempted from so much

Ex. M. C. 25 June 1844 No. 607.

of the duty leviable under
that act, as would leave the
amount to be paid equal to
the general import duty of
8 per cent, which had previ-
ously been in force. Mr
Underwood questions the
legality of this order, on the
ground that Government
had no power to modify
the rates of duty fixed by a
Legislative enactment, with-
out previous reference to the
Government of India. The
Board express their dissent
from the collector's opinion,
and contend that, although
the rates of duty leviable
under Act VII of 1844, have
been modified by Act IX of
1845, the power of wholly or
exempting goods from duty,
vested in the Governor in
Council by Sect. XVII of the
former

Ex: Dec. 31st July 1856 No 792.
In 7th October 1866

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3
former Act, has not been with-
drawn by any subsequent law,
and they argue that if the
Government can thus wholly
exempt an article from duty,
there can be no question that
they can partially do so, or as
in the case under reference,
lower the duty on articles
leviable under ordinary cir-
cumstances. The Board, in
the course of their argument,
advert to a recent order of
the Government of India,
desiring that this exemption
should not be exercised
without previous reference to
that Government, but they
notice that the order in question
does not affect Mr Underwood's
reasoning, since it admits
the power of this Government
to remit customs duty, under
a special order, in particular
cases.

cases. The Board further points out that, in the case referred to by the Government of India, revenue derived from ordinary trade was remitted, while in that under discussion, the revenues are in no way affected. Governments in different Departments being the payer and receiver of the duty. On these grounds, the Board concludes that the order of Government, lowering the duty on spirits, was perfectly legal, and the Governor in Council, having carefully considered Mr. Underwood's objections, has no doubt of the soundness of this conclusion.

With regard to the question of the liability of the Commissariat Department to pay duty on all articles imported

imported for its use, the Board concurs with the Collector in maintaining, that all dutiable articles should be charged with duty, notwithstanding their being the property of Government. The payment they remark, would be merely nominal, but the returns of Customs revenue would then be nearly truthful, as embracing the duty on all articles, save on those which have been specially exempted. The effect of the arrangement on the Commissariat Department, they add, would be, that much of what is now regarded as profit or saving, would appear in the Customs accounts as Import duty, and be credited to its proper head, while Government would have

case have the means of comparison
fixing the expense at which
supplies are procured so
through that Department,
with the expense at which
they might otherwise be
procured. Under such a
system too, the Board state,
the practices mentioned by
the Collector in para 6 of his
letter of the 1st June 1853,
could not obtain, while
the Department would
be placed in this respect,
on the same footing, as
other Departments, such
as that of Salt in Madras,
where Canal dues are paid,
though both the salt and
the canal are the property
of Government.

The Right Honorable
the Governor in Council is

satisfied as to the propriety
of the course recommended
by the Board, and he accordingly resolved
and he accordingly resolved
to direct that duty be charged
on all Government stores,
imported or exported, and
be carried to credit in
account; and that the duty
remitted on articles which
have been, or may hereafter
be, exempted by a special
order, be written off as a debit
in order that the Sea Customs
returns may be kept in a
complete and correct form.
This arrangement will be
carried into effect from the
commencement of the current
official year.

With

With regard to Mr.

Underwoods claim to Com-

mission on the duty which

would have been leviable

on Government stores, if

they had not been passed

free, or admitted on a lower

rate, the Board express an

opinion adverse to it. They

observe that the exemption

of Government stores from

duty being perfectly legal,

neither the collector, nor his

subordinates, can claim a

commission on the duty

which would have been

leviable on them if they

had not been Government

property. "Even if it be

determined," add the Board,

that duty shall be levied

in account, as proposed by

them,

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"them, this will merely be a

"nominal demand. The duty

"would be entered in the account

"pro forma, in order to secure

"greater accuracy in statistical

"returns, but would add nothing

"to the Public Treasury. It

"would be in fact similar

"to the duty returned as draw-

"back, on which the collector

"does not draw commission,

"though the system of draw-

"back adds to his labors." In

regards Mr. Underwoods argu-

ment, based on the estimate

or expectation on which the

emoluments of his office

were fixed, the Board

observe that that circum-

stance does not affect the

question, in as much as it

has neither prevented nor

Government from abolishing

and reducing the duty on

various articles, nor induced
them to grant compensation
for losses sustained, in the
consequence of such measures,
by the collector and his
subordinates. More over, the
emoluments of the collector
are still more lucrative than
those of collectors gene-
rally, and considerably more
than his successor is likely
to receive, and the Board
could not support Mr Under-
wood's claim, even on the
ground that his allowances
were disproportionate to the
duties and responsibilities
of the office he holds."

With his letter of
the 2^d instant Mr Underwood
submits a Memorial, appeal-
ing against the opinion
thus expressed by the Board.

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13/52
on his claim, and begs that
no order may be passed on
this case until his Memorial
has been considered in connec-
tion with the Board's Proceed-
ings to which he objects.
The Right Honorable the
Governor in Council has
accordingly read Mr Underwood's
Memorial with care, and regrets
that he is unable to arrive at
any other decision on his
claim, than that to which the
Board have come. In addition
to the arguments adduced by
the Board, it may be observed
that the allowance of Commis-
sion would be inconsistent
with the object for which
Commission was granted.
It was given under the idea
that it would increase the
activity of the collector, and
afford him an inducement
to

to prevent smuggling for
his own sake, but there
is no danger of Government
stores being smuggled, be-
cause the duty being paid
by Government, no one
would derive any benefit.
The Commissary General
will import exactly what
he wants, and no act of
the Collector can increase
or decrease his imports. Mr.
Underwood's claim to com-
mission is therefore, in
the opinion of Government,
based by the very grounds
on which ^{commissions} are given and as
regards the trouble he
may have in the matter,
he receives his fixed salary
as a remuneration.

See paras 21 to 24 of
their

7th April 1857.

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44
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their Proceedings, the Board
point out objections to the
present system of remunerating
the collector of Sea Customs,
in part, by a percentage on
his collections, and suggest the
desirability of commuting
his commission for a fixed
sum, calculated on an average
of three years' ^{receipts}. In this sugges-
tion the Government so-
entirely concur, and they
request that the Board
will prepare a statement
of the average commission
received by the collector in
1854-55 and 56, and ascertain
if he has any objection to
urge to his commission
being commuted accord-
-ingly-

Ordered that this
Resolution be communicated
to

the Board of Revenue.
with the request that they
will furnish a copy thereof to
Mr Underwood, with reference
to his Memorial to the
address of Government dated
the 2nd instant.

R.D.

Copies to the Board of Revenue
with 11 Encls
Dip^o 30

2 - Acct Genl
Dip^o 29 June 52.

From 5 August /56 to 7 Aug
to 10 October - 38-39
From 1/44 - 2 22.

15
52

Revenue 1857 Report
No 2 2 lines.

10512

Extract Memo. of Com.
of 29th May 57.

Ex from the No. of the B of R
of 17th June 1857
Case 7 July
Do 22 June 1857
7th Dec 1857

Observing that the Bd
of R point out objections to
the present system of remunerating
the Coll of Salt Customs in
part by a per Centage on
his Collections & suggesting
the desirability of Com-
muting his Commission for
a fixed sum, calculated on
an average of 3 years pre-
ceding in which the Govt
actually concurs & request
the Bd to prepare a State-
ment of the average Com-
mission received by the Coll
in 1855-56.

No 15 at 18