

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 239

Press
~~Mis.~~

23-34

Dated

4-2-1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th February 1863.*

No. 33. Read the following Proceedings of the Madras Government in the Financial Revenue Department, dated 6th January 1863, No. 6 :—

Read the following observations by Captain P. P. O'CONNELL, Acting Consulting Engineer for Railways, dated Madras, 22nd December 1862, No. 69, on letter from the Agent of the Great Southern of India Railway, No. 647, dated 17th December 1862.

1. With Order No. 657 of the 1st instant, was communicated the Proceedings of Government in the Revenue Department, No. 2,459, dated 21st November, embodying a letter from the Secretary to the Government of India in the Home Department.

* Paragraphs 5, 6 and 7. Extract* from this letter was forwarded to the Agent of the Great Southern of India Railway, and he was informed that the Collector of Tanjore would be directed by the Board of Revenue to call upon him to revise his account for the refund claimed by him.

2. In the letter now forwarded, the Agent endeavours to show that a certain statement made by the Collector of Tanjore is virtually an admission, with reference to Schedule A of Act No. VII of 1859, that certain articles imported from England shall be admitted free of duty, and he enquires whether Order No. 2,459 of the 21st November 1862, Revenue Department, is to apply to articles imported since 23rd June 1860, or if it only has reference to articles imported prior to that date.

3. As the materials for constructing the Railway, as sleepers, chairs, rails, &c., were imported free of duty on the Madras Railway, and as it is only proposed to levy the duty on such materials in future, I would recommend that the Great Southern of India Railway Company be dealt with similarly.

To the Chief Secretary to Government, Fort Saint George.

From W. S. BETTS, Esq., Agent Great Southern of India Railway, to the Consulting Engineer for Railways, Madras, dated Negapatam, 17th December 1862, No. 647.

Sir,

1. I beg to acknowledge receipt of your letter No. 291 of the 3rd instant, relative to the claim for the refund of Customs duty.

2. Schedule A of Act No. VII of 1859, says that the Collector of Customs, subject to the general orders of the Local Executive Government, shall decide what articles of machinery for the improvement of the communications and for development of the resources of the country shall be admitted duty free, and that "such decision shall be final in law."

3. In accordance with this authority the Local Government of Madras has admitted articles free of duty, since 1st July 1860, all permanent way materials, engines, machinery and carriage waggon iron work imported by the Madras Railway Company.

4. By some oversight however duty on similar articles was levied from the Great Southern of India Railway Company, and I applied for its refundment.

5. On 3rd April last the Collector of Tanjore informed me that the Local Government had decided to allow the refund claimed on articles landed by the Great Southern Company since 23rd June 1860, and asked me to send in an account for the same. The account was received, and the Collector has since (3rd October), in reply to enquiry, stated the delay in paying the amount "is not owing to any doubt as to whether the Railway Company are entitled to it, but simply because no provision has been made in the Budget for the current year."

6. As this is a most important subject to my Directors, to whom I have reported the previous decision, I have the honor to request that you will submit this letter to Government, and with the facts I have given before them, viz., after the Collector of Customs for this District, acting under the orders of the Local Executive Government, has informed me the articles shall be admitted duty free; and after it has been declared final in law for the Madras Railway Company to import certain articles duty free since a certain date,—ask them if their

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No. 2,459 of the 21st November 1862, is to apply to articles imported since 23rd June 1860, or if it only has reference to articles imported prior to that date. I can hardly think Government wish to apply different rules to the two Presidency Railways, or treat one less liberally than the other.

7. I wish respectfully to remark that the decision arrived at by the Local Government in admitting the Madras Railway Company's permanent way materials, &c., duty free, appears to me the only true way of rendering effect to the Secretary of State's wish that a "liberal construction" should be placed upon the term "machinery." You cannot make a locomotive engine available for the purpose for which it is intended, without the aid of such stores or fittings as rails, sleepers, points and crossings, &c., If a "turn-table" is necessary, as stated by the Governor General in Council, how can the engine get on or off the turn-table without rails? Besides there are many "turn-tables" on a Railway which the engine never crosses.

Referred to the Revenue Department for consideration.

(True Extract.)

(Signed.) A. J. ARBUTHNOT, *Chief Secretary.*

No. 34.

ORDER THEREON, 4th February 1863, No. 239.

1. The letter from the Acting Consulting Engineer for Railways, dated 22nd December 1862, No. 69, and transferred to this Department by the Order in the Financial Railway Department above recorded, gives cover to one from the Agent of the Great Southern of India Railway Company, dated 17th idem, No. 647, regarding a claim made in behalf of that Company for the refund of a large amount (Rupees 1,67,956-2-9) of Customs duty collected between 30th April 1860 and 5th August 1861, upon Railway materials imported by them at Negapatam.

2. The Government of India having, with reference to this claim, specified in their Secretary Mr. Bayley's letter dated 31st October last, No. 6,153, certain articles which alone come under Act VII of 1859, and the Despatch from the Secretary of State to the Government of Bombay dated 16th May 1860, and should be exempted from duty, this Government directed the Collector of Tanjore to call upon Mr. Betts to revise the account of the refund claimed according to those instructions. Mr. Betts wishes to be informed of the date from which effect is to be given to the Order of the Government of India alluded to.

3. The Government have in paragraphs 2 and 3 of their letter to the Government of India, dated 13th September 1862, stated their opinion that no refunds of duty paid prior to the date of promulgation of the Despatch (23rd June 1860) could be allowed, and they see no reason whatever to change it. As regards duty levied subsequent to the Despatch, it is equally clear that so far as the letter of the law goes, the claim is untenable, for the decision of the Collector is final "subject to the general orders of the Government of India." As far as the Collector is concerned the actual levy of duty is undoubtedly a "decision," and the Government of India to whom a special reference for instructions was made by this Government have, as already stated, specified the particular articles imported which, guided by the Despatch in question, they held to be exempt from duty. It follows, therefore, that the Railway Company are entitled legally to no refund of duty levied prior to June 1860, and to a refund of the duty levied after that date only on the articles specified by the Government of India.

4. There are two other points in the letter of the Agent, Mr. Betts, which need notice. In paragraph 3 he states that the Madras Railway Company has since 1st July 1860 been allowed to import "all permanent way materials, engines, machinery and carriage and waggon iron fittings" free of duty. The Acting Consulting Engineer in paragraph 3 of his letter alluded to in paragraph 1 confirms this statement, and adds that duty on such materials is only to be levied hereafter. There can be no doubt that the Collector of Customs at Madras erred in passing general Railway stores free of duty, but as the goods have been so passed, the duty cannot now be recovered. But the fact that Government by an error in one Office has lost revenue, is no

*Proceedings of the Madras Government, Revenue Department,
4th February 1863.*

reason why it should give up revenue which it has rightly realized in another. The orders conveyed in the letter of the Supreme Government must be carried out.

5. In paragraph 5 of his letter Mr. Betts states, that the Collector of Tanjore informed him on the 3rd April 1862 that Government had decided on granting the refund claimed on articles landed after the 30th June 1860, and that this statement was repeated by the same Officer on the 3rd October last. It is not clear on what grounds the first statement was made, but its confirmation on the 3rd October was clearly unwarranted, for in their Order of the 24th July 1862 the Government expressly reserved their decision on the claim, and in that of 13th September 1862 they submitted the whole case "for the consideration and orders of the Government of India," with whom by law the decision rested.

(Signed.) J. D. SIM,

Secretary to Government.

Memorandum

The G. S. of I
Railway Co. claimed the refund
of Rs. 167,956 - 2 - 9 paid
by them as Import duty on
various articles, which as
they consider should be exempt
from duty as "Machinery."

By art. 9 Schedule
A of Act VII of 1859 "Machin-
: very for the improvement
of the communications and
for development of the re-
: sources of the country" was
exempted from Import duty.
And "the Collector of Customs
subject to the general orders
of the ^{local} Executive Govt." was to
decide

"decide what articles
of Machinery" comes
"within the above de-
: finition, and such deci-
: sion" was to "be final in
law".

The law remained
unchanged until March
1860 when Act X of
1860 was passed.

By this Act
"Machinery of all in
kinds" was exempted
from duty, and the
Collector of Customs in
"subject to the general
orders of the govern-
: ment of India in the
Revenue Department"
was to decide what
articles should be in
considered "Machinery"
such

Such decision again
being "final in law".

On the 20th June
following, this govern-
: ment communicated
to the Board of Reve-
: nue for "information
and guidance" copy
of a Despatch from H. M.
Secretary of State dated
London 16th May 1860
desiring that the term
Machinery as used in
Act VII of 1859 should
be "literally construed".
The Act to which
this Despatch in
referred, had ceased
to be Law before the
Despatch was issued.
but

but maintaining all
questions of this
nature, it is clear,
that the instructions
it conveyed could not
affect decisions
"final in law" al-
ready made and ob-
viously the reali-
zation of Import
duty on an article
is such a "decision"
as the Law contem-
plates.

It seems to
me therefore that the
ruling ^{of fact,} contained in paras
2 & 3 of their letter to
the Supreme Gov^t 2/13th Sept^r
1862, viz that no refunds
of

of duty paid prior to the
promulgation of the des-
patches could be allowed
was perfectly correct -

As regards duty
levied subsequent to the
despatch, it is equally evi-
dent that so far as the
letter of the law goes, the
claim is untenable, for
the decision of the collector
is final "subject to the
general orders of the Gov^t
of India" - As far as the
collector is concerned the ac-
tual levy of duty is undoubt-
edly a "decision" and the
Gov^t of India to whom a
special reference ^{for instructions} was made
by this Gov^t - have specified the par-
ticular articles imported
which, guided by the des-
patches in question, they
held to be exempt from
duty -

It follows therefore
that the Railway Company
are entitled legally to no
refund

refund of duty levied
prior to June 1860 - and
to a refund of the duty le-
-vied after that date only
on the articles specified
by the Govt of India -

There are two other
points in the letter of the
Agent Mr. Bells which
need notice -

In para 3 he states
that the Madras Railway
Company has since 1st
July 1860 been allowed to
import "all Permanent
way Materials, Engines,
Machinery and Carriage
and Waggon Iron fittings"
free of duty. The Acting
Consulting Engineer in para
3 of his letter recorded at
the head of this memo, con-
-firms this statement and
adds that duty on such
materials is only to be le-
-vied hereafter. There
can be no doubt that
collectors of Customs at
Madras have erred in
passing

I see no necessity for
any reference to the Railway
Dept. The Supreme Govt
have issued their orders;
the matter has been carried out
and the matter done
with. As observed in
the memo the fault of our
having lost revenue at
Madras, is no reason
why we should forego
revenue rightly realized
at present.

passing general railway
stores free of duty but
as the goods have been
so passed, the duty cannot
now be recovered. But even
whether because Govt, by
an error in one office has
lost Revenue, it should
give up Revenue, which
it has rightly realized in
another, is another story -
Such a concession can only
be an act of grace and
I apprehend that after the
orders conveyed in the
letter of the Supreme Govt
dated 31st October last
a reference must be
made to that Govt for
sanction by the Railway
Department.

In para 5 of his
letter Mr. Bells states that
the Collector of Lajpore in-
-formed him on the 3rd
April 1862 that Govt had
decided on granting the
refund claimed on articles
landed after the 30th June
1860,

1860, and that this state - The fact are not bound
- ment was repeated by the by unauthorized mis-
same officer, on the 3^d October. Statements made by
Capt. It is not clear, on Collection
what grounds the first
statement was made but
its confirmation on the
3^d October was charged
unwarranted for in
their order of the 24th July
1862 the Court expressly re-
- served their decision on
the claim, and in that of
13th September 1862 they
submitted the whole case,
"for the consideration &
orders of the Court of India"
with whom by law the de-
- cision rested. In their
letter to the Supreme Court
this Court stated that in
their opinion the company
were entitled to the refund
"if the articles entered
in the lists are such as
are allowed in Calcutta
to be imported free of duty
under the despatch of 16th
May 1860." The reply of
the

the Supreme Court to this
reference was, as already
stated, a list of the ar-
- ticles entitled to free
entry.

orders requested -

J. P. S.

N^o. 239.

Proceedings of the Madras Government
under date the 11th ^{July} ~~January~~ 1863.

Read the follow-
ing Proceedings of the
Madras Govt in the Fi-
nancial Railway Dept.

Referring for con-
sideration in the Revenue Department the re-
commendation of the Con-
sulting Engineer for Rail-
way to exempt from duty
the sleepers, chairs, and co-
rails &c. belonging to the
Great Southern of India
Railway Company.

(Here enters 6th Jan
1863 No. 6)

The letter from
the Acting Consulting En-
gineer for Railways dated
22nd December 1862, No. 69 and
transferred to this Depart-
ment by the order in the
Financial Railway Depart-
ment above records & given
over to me from the Agent
of the Great Southern of
India Railway Company
dated 17th Idem No. 647
regarding

regarding a claim made
in behalf of that Com-
pany for the refund of
a large amount (Ru-
pees 1,64,956-2-9) of cus-
toms duty collected between
30th April 1860 & 5th Au-
gust 1861 upon Railway
materials imported by
them at Nagapatnam.

2. The Govt of India
having with reference to
this claim specified in
their Secretary, Mr. Bayley's
letter dated 31st October
last No. 6,153 certain arti-
cles, which alone come
under Act VIII of 1859 and
the despatch from the
Secretary of State to the
Govt of Bombay dated 16th
May 1860, should be ex-
empted from duty, this
Govt directed the collector
of Bangalore to call upon
Mr. Betts to advise the
account of ^{the} refund claim-
ed according to those in-
structions. Mr. Betts wishes
to

to be informed of the date
from which effect is to be
given to the order of the
Govt of India alluded to-

3. The Govt have in
paras 2 and 3 of their letter
to the Govt of India dated
13th September 1862. Stated
their opinion that no re-
-funds of duty paid prior
to the date of promulga-
-tion of the despatch (23rd
June 1860) could be allow-
-ed and they see no reason
whatever to change it. As
regards duty levied subse-
-quent to the despatch, it is
equally clear that so far as
the letter of the Law goes,
the claim is untenable, for
the decision of the collector
is final "subject to the ge-
-neral orders of the Govt
of India". As far as the
Collector is concerned the ac-
-tual levy of duty is undoubt-
-edly a "decision" and the
Govt of India to whom a
special reference for in-
-structions was made by
this Govt have as already
stated

stated specified the partic-
-ular articles imported on
which, guided by the des-
-patch in question, they held
to be exempt from duty. It
follows therefore that the
Railway Company are entitled
legally to no refund of duty
levied prior to June 1860 and
to a refund of the duty levied
after that date only on the
articles specified by the
Govt of India.

4 There are two other points
in the letter of the Agent Mr.
Betts which need notice. In
para 3 he states that the
Madras Railway Company had
since 1st July 1860 been al-
-lowed to import "all ter-
-minal way materials, in-
-gines, machinery and car-
-riage and wagon iron
fittings" free of duty. The
Acting Consulting Engineer
in para 3 of his letter alludes
to in para 1 confirms this
statement and adds that
duty on such materials
is only to be levied hereafter.
There can be no doubt
that the collectors of Customs
at Madras ~~have~~ erred in
passing

passing general railway ma-
terials free of duty, but as the
goods have been so passed, the
duty cannot now be recovered.
But the fact that Govt.
by an error in one office has
lost Revenue ^{is no reason why} it should give
up Revenue, which it has rightly
realized in another, is a different
question. Such a concession can
only be an act of grace, but
after the orders conveyed in
the letter of the Supreme Gov-
-ernment, His Excellency the
Governor in Council is unable
to take any favorable view of
the claim. Their orders cannot
must be carried out.

5 In para 5 of his letter Mr.
Betts states that the Collector
of Tanjore informed him on
the 3rd April 1862 that Govt. had
decided on granting the refund
claimed

claimed on articles landed...
after the 30th June 1860, and
that this statement was repeated
by the same officer on the 3rd
October last. It is not clear
on what grounds the first
statement was made but
its confirmation on the 3rd
October was clearly unwarranted. For in their order of
the 24th July 1862 the Government expressly reserved their
decision on the claim and in
that of 13th September 1862 when
they submitted the whole case
for the consideration and order
of the Gov^t of India" with whom
by law the decision
rested. ~~The Gov^t are not bound
by unauthorized misstatements
made by the Collector.~~

J. S.

11 - Board of Revenue Sec.
5 Financial Railway Dept.

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257-260

Revenue Deptt.
Pro: of Govt. for February.

N^o 239.

Pro: of the Madras Govt.
D^y 14th February 63.

From the Under Secy to the Govt.
of India d^y 28th March 63 No 821
in Pro.

Pro: Financial Rail-
way Deptt. regarding a
claim made by the Agent
of the Great Southern of
India Railway Company
for refund of Customs duty
on Railway materials
imported at Negapatam,
with orders thereon.

N^o 33 + 34.

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