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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

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Dated

4. 5. 1874

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*Proceedings of the Madras Government, Political Department,
16th April 1874.*

No. 12. Read the following letter from C. U. AITCHISON, Esq., c.s.i., Secretary to the Government of India, Foreign Department (Political), to Messrs. NICOL AND CO., Bombay, dated Fort William, 2nd April 1874, No. 780-P. :—

In acknowledging receipt of your letters, dated respectively the 7th October and 14th November last, relative to the question of remission of duty on goods landed at the Masulipatam Port, for consumption in Hyderabad, I am directed to state that His Excellency the Viceroy and Governor-General in Council having referred to the original correspondence relating to the negotiation of the Treaty with the Hyderabad Government, sees no reason to alter the decision conveyed in this office letter, No. 1716-P., dated 31st July last.

From Messrs. W. NICOL AND CO., Bombay, to C. U. AITCHISON, Esq., c.s.i., Secretary to the Government of India, Foreign Department, dated Bombay, 7th October 1873.

We have the honour to acknowledge, with thanks, the receipt of your letter, No. 1716-P., dated 31st July, and we desire respectfully to offer the following observations for the consideration of Government :—

2nd.—In reply to the statement contained in the first paragraph of your letter, we have, after careful inquiry, ascertained that, as far as is known, no imports of goods direct from England for consumption in the Hyderabad State have ever been made at Masulipatam from the date of the Treaty of 1802 up to the time when we landed a small shipment in March last. That this should have been so is not surprising, when it is borne in mind that, excepting our recently-established agency, there are no merchants in Hyderabad who trade direct with England, and also that, until the opening of the Suez Canal and the introduction into the trade of steam vessels, the port of Masulipatam was comparatively difficult to utilize for direct imports from Europe. Under these circumstances, we submit that it cannot be said that “the constant and undisputed course of practice from the date of the Treaty down to the present time” has been to levy a duty at Masulipatam on English goods bound for Hyderabad, seeing that our payment in March last, which was made under protest, was the first recorded instance of such a payment taking place.

3rd.—With regard to the language and meaning of the first Article of the Treaty itself, you remark, “the free use of the seaport of Masulipatam is granted to the Nizam, who is, under regulations as the British Government may require, at liberty to establish there a commercial factory and agents. This concession, however, does not constitute Masulipatam a free port, nor does it apply to commercial companies or private individuals.” This passage, as read by us, seems to imply that the “free use of the seaport” conferred on the Nizam is not viewed by Government as conveying immunity from British duties thereat either to the Nizam himself or to subjects of or merchants in his State.

4th.—We would desire to premise that our sole interest lies in the latter part of the question, which is of great importance to the success of our commercial agency in Hyderabad, viz., whether or no, as traders in the Nizam's State, we have the right of getting direct imports of goods from England, brought to Hyderabad *via* Masulipatam, without British duty being levied on them during their transit across the intervening 90 miles of Madras territory.

5th.—If, however, the Nizam himself possesses this right under the Treaty of 1802, we venture to observe that there seems sufficient warrant for believing that the traders under his Government do so also, for not only is the Treaty of 1802 a *Commercial Treaty*, every other provision of which applies to the merchants and Traders under both Governments, but further the preamble expressly states that the Treaty is designed to provide “a well-regulated commerce” as “essential to the opulence and prosperity of the people,” and that the contracting parties are “anxious to extend the benefits of their union to their respective subjects.” This being so, and as it, therefore, seems impossible to suppose that a clause in a *Commercial Treaty*, fraught with such

important benefits to an inland population as that which provides for free import from beyond seas, could, if conferred on the Nizam, have been intended to be arbitrarily restricted to himself, to the exclusion of the merchants under his Government, we trust that we may be allowed a few remarks as to whether the concession granted to the Nizam by Article 1st does or does not include freedom from import duties at the port of Masulipatam.

6th.—If this concession does not mean freedom from duties, palpably the only alternative meaning that could be attached to it is freedom of access or resort. But we submit that against this alternative acceptation there are, alike in the context and from historical evidence of the intentions of the contracting parties, objections of such a cogent nature as render it incumbent on us to submit them for the consideration of Government.

7th.—In the first place, this “free use” was conferred on the Nizam as a real and weighty concession, whereas, as we hope to show below, free resort only would have been no concession at all. The clause containing this right takes the premier place in the Treaty, and it is couched in studiously marked and impressive language, “as the testimony of firm friendship, union, and attachment.” Nor are we left in any doubt as to why such solemn language was employed. The Governor-General who framed this Treaty, writing of this very clause, has plainly recorded his sense of the full value and magnitude of the concession which he was about to make. Writing to the Resident of Hyderabad, under date 15th June 1800, the Marquis of Wellesley lauds this clause conceding the free use of the port as the salient advantage of the Treaty, which he desires the Resident to hold out as the inducement whereby the Nizam’s admitted repugnance to the whole negotiation might be broken through. For facility of reference we transcribe the passage from the Marquis of Wellesley’s letter:—

“I shall transmit to you, with all practical despatch, a draft of a Treaty of commerce to be proposed to the Court of Hyderabad. The unaccountable indisposition manifested by that Court to entertain this subject has suggested to me the expediency of separating it entirely from the Treaty of alliance and of opening a distinct commercial negotiation. The repugnance of the Nizam to this measure may, I trust, be overcome, since my propositions will not only secure to His Highness a perfect reciprocity of advantages, but also the free use of a seaport and the protection of the British flag. To these concessions it is my intention to add, as a present from the Company to His Highness, a vessel of considerable burden completely equipped.”

8th.—Thus, we humbly submit, the free use of the seaport of Masulipatam, to the granting of which the whole of Article 1st is specially devoted, can only be construed as conferring some sort of free use which would amount to a real and substantial “concession” to the Nizam. This condition is fulfilled only by construing the phrase “free use of the seaport” in its complete and, as it seems to us, its natural sense, viz., absolute and untaxed freedom to use it for the direct supply of his dominions with English imports, which are elsewhere expressly named, and which were, therefore, clearly contemplated at the time when the Treaty was made.

9th.—On the other hand, if freedom from British duty be held as *not* intended, freedom of resort to that single port would have been no concession at all. The history of those times shows that vessels of all friendly nations had freedom of resort to all Indian ports. To put this beyond question we cannot do better than again quote the language of the framer of this Treaty. In the Marquis of Wellesley’s despatch to the Honourable the Court of Directors, dated 30th September 1800, just 3½ months after his holding out the free use of this port as a valuable concession, India—“A large proportion of this valuable trade is already in the possession of foreign nations,” and again—“From the accompanying statements your Honourable Court will observe that the trade of America and Portugal with Calcutta alone in 1799 and 1800 amounted to in imports 81,81,005. Sicca Rupees, in exports 71,30,572 Sicca Rupees.” And again—“Of the trade carried on in foreign bottoms with the other parts in India from Europe and America I possess no sufficiently accurate information. It is, however, known to be conducted on a very extensive scale;” and yet once more—“It is impossible to check the resort of the ships of foreign nations to India by any other regulation than by rendering the trade unprofitable to foreign adventure.

This effect cannot be accomplished otherwise than by enabling the British merchants in India to undersell foreigners in the markets of Europe.”

10th.—Thus as freedom of resort existed for vessels of all friendly nations to all Indian ports (Masulipatam included), such freedom of resort to Masulipatam, being already in fact possessed by the Nizam himself in common with others, would have been quite meaningless as a concession to him, and therefore would have been quite unworthy of being made the subject of such solemn language as is used, or of being held out as a temptation to induce him to sign the Treaty.

11th.—But fortunately there exists direct evidence in the text of the Treaty itself, which renders it unnecessary to rely on general considerations, drawn from the state of the times, for proof that the “free use of the seaport,” specially granted with regard to Masulipatam, is not mere free admission. This evidence consists in the fact that the very next article in the Treaty, the second, separately secures to the Nizam free admission for his ships into every port in India (Masulipatam of course included) on the footing of the most favoured nations. We respectfully submit that this evidence demonstrates that the proviso of “free use” with reference to Masulipatam individually, to which Article 1 is wholly and separately devoted, is a free use quite additional to free resort, and must, therefore, embrace freedom from British duties, seeing that free resort to this and all other ports, together with all ordinary privileges thereat, is distinctly provided for in Article 2.

12th.—It cannot, we apprehend, be held that the concession of “free use of the seaport merely” means the liberty superadded thereto, viz., to establish a commercial factory in the town of Masulipatam. The two concessions are clearly distinct, and are separated by a semicolon, the first being a solemn “grant,” and the second a “liberty” given in order to render the said grant capable of being thoroughly utilized. Had the former not been separately intended, the latter could have been given by itself, and would then not have included the free use of the seaport at all. But instead of this we find the free use of the seaport plainly granted; and that it was granted as no mere formality, but with an intention on the part of the Governor-General that the right should be practically utilized, is demonstrated by his declared intention to present to the Nizam “a vessel of considerable burden completely equipped,” the clear object being to encourage the Nizam to use the right, and to lead him to comprehend its value.

13th.—It must further be observed that “use” and not “free use” is the term employed in Treaties of the Government of India, where freedom of resort alone, and not freedom from duties, is intended. Thus, in the Commercial Treaty of 1833 with the Bhawalpore State, the Honourable Company attain the “use of the rivers Indus and Sutlej,” but not their free use; and, so far from the duties to be charged being left to mere inference, that Treaty goes on expressly to lay down a certain tariff of transit duties as applicable to such use. In like manner, or rather *à fortiori*, had freedom from duties not have been intended by the much stronger expression “free use” in the case under consideration, the duty chargeable must surely have been named. Indeed, such duty not having been expressly named is excluded by Article 11 of the Treaty itself, which distinctly lays down that “no duties shall be levied (within the territories of the contracting parties) in any other manner than according to the stipulations of this Treaty.”

14th.—Did any doubt arise as to the plain meaning intended by the Marquis of Wellesley to be put upon the words of any Treaty of his framing, his sentiments on this topic are found recorded in another part of the same despatch in which, as first above quoted, this “free use of the seaport” is held out by him as intended to be understood as a weighty concession. In paragraph 10 he says—“To introduce ambiguous phrases into formal instruments, designed to constitute the basis of public obligations between great States, is a practice repugnant to the policy, honour, and dignity of the British nation. The perspicuity of our expressions in all acts of obligation upon our national faith should be as manifest as the superiority of our power.”

15th.—The remark at the close of the second paragraph of our letter of 14th February regarding “free transit” has no reference to the mere passage of goods from the one State into the other, i.e., imports and exports between the two States; and therefore the fact which you adduced, viz., that by the 5th and 7th Articles duties are undoubtedly ordained to be levied on such imports and exports from the one State into the other, does not, we venture to

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16th April 1874.

think, affect the point at issue, which is the very different one, viz., are not articles coming from Her Majesty's dominions external to British India entitled to transit to Hyderabad free of duty across intervening British Indian territory? If any duty is levied on such passage is the same not in point of fact a *transit duty*, and as such is it not struck at by the Treaty, as it already stands interpreted by the Government of India itself? We hope to be able to show that in support of this view there exists evidence quite independent of the question of the interpretation placed on the wording of Article 3.

16th.—It is a well-known fact that by an authoritative interpretation of the Treaty of 1802, made by the Government of India, goods of all descriptions *proceeding across the Nizam's territory* from any quarter outside the said territory, and bound for any district of British India, are held entitled to a free transit across the intervening length and breadth of the Nizam's State, in the sense not only of freedom from other impediments, but also of freedom from any duties whatever payable to the Native State across which they pass. This ruling is in daily operation, and is a great convenience and source of commercial advantage to traders in British districts adjacent to the Nizam's territory, and still more so to those residing in British districts which are situated within the ring fence of the Nizam's boundary who otherwise would have to pay the Nizam's customs duty on all goods passing across intervening native territory to them.

17th.—This being so, and bearing in mind that the provisions of the Treaty of 1802 regarding all such duties are laid down in the clearest terms as equally binding on both States, we respectfully submit that whatever clause in the said Treaty is held by the Government of India as ruling that the traders of British districts are entitled to get their goods carried free of duty across intervening Nizam's territory must *ipso facto* be held as providing that traders in the Nizam's districts are entitled to the entirely analogous right of getting their goods (e.g., our present imports from England to Hyderabad *via* Masulipatam) carried free of duty across intervening British territory.

18th.—We were certainly of opinion that the above-mentioned ruling of the Government of India, which is, as above stated, in active daily operation, had been made on the strength of the expression "a free transit" which occurs in the 3rd Article. If we are correct in this supposition, the statement in your letter under reply, that the expression "a free transit" does not refer to freedom from duties, but only to freedom from other impediments, seems to us hardly in accordance with the previous ruling of Government. But it is not of importance in deciding the point at issue whether the said existing right of transit free of duty across the Hyderabad State is held to be provided for under the "free transit" mentioned in Article 3, or alternatively, under the stipulations for the abolition of all *Rahdanny* or transit duties in Article 4. It is, we submit, obvious that a duty levied, say at Masulipatam, by the Government of India on goods shipped direct from England to Hyderabad, and in actual transit thereto across the intervening strip of Madras territory, is as much a transit duty as a duty levied by the Nizam on goods in transit across his State. Whichever of the above-mentioned two clauses may be fixed upon as rendering such a duty contrary to Treaty right, such clause is incontestibly of equal force as affecting both States, and it, therefore, follows that an obligation to allow transit free of duty across his State, having been imposed on the Nizam by the Government of India, and being in daily operation to the great diminishment of his revenue and to the great gain of traders in adjacent British districts, traders resident in Hyderabad are entitled to ask from the British Government, on their part, the fulfilment of an obligation which, under this reciprocal Treaty, is the exact counterpart of that imposed on the Nizam for the benefit of British traders, viz., the transit free of duty across intervening (Madras) British territory of direct shipments of goods from England to Hyderabad (e.g., our present imports *via* Masulipatam).

19th.—In further support of the above positive argument drawn from the Government of India's express prohibition of all transit duty in the Nizam's State, and therefore, as we hold, *ipso facto* in its own, we venture to adduce the negative argument already alluded to, drawn from the 11th Article, viz., that no duty can be levied within the territories of either of the contracting parties on goods belonging to the other, except such is found expressly stipulated for in the text of the Treaty. No transit duty on goods crossing British territory to Hyderabad is thus

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named or stipulated for; and the conclusion, therefore, we would with all deference observe, follows that on this ground alone no duty should be imposed, even were the imposition of such a duty not, as we read the Treaty, expressly barred.

20th.—To summarize. Even leaving out of account the negative argument just stated, there exist two grounds, wholly distinct and independent of each other, on a consideration of either of which we believe that the Government of India will admit the justice of our claim to import English goods direct to Hyderabad free of any duty payable within the British territory across which they have to pass. The first ground is the clause in the Treaty of 1802, which specially and in marked language grants "the free use of the seaport of Masulipatam;" and the second is that which abolishes transit duties in both States, and which is, under a ruling of the Government of India itself, already in full operation in the territory of the Nizam, who is one of the contracting parties.

21st.—If the latter of these grounds be assumed, it confers, we think, on traders in the Nizam's State the right of free import of English products for consumption within its limits through any port in British India, apart altogether from the special concession regarding the port of Masulipatam granted in Article 1st. But this point we do not desire to raise. We wish merely to put forward our claim to be allowed the free import of goods through Masulipatam, basing this claim on the concession in Article 1st of the Treaty of 1802, if this be now admitted, or constructively on both clauses, viz., that which grants the free use of the seaport of Masulipatam, and that which abolishes transit duties in both States.

22nd.—We trust we may be pardoned the length of this communication, our aim having been to state, as fully as possible, the reasons which induced us to ask in our letter of 14th February last, that we be allowed to exercise the rights granted under the Treaty; and we respectfully venture to request that His Excellency the Viceroy and Governor-General in Council will reconsider the decision communicated to us in your letter under reply.

From Messrs. W. NICOL AND CO., to C. U. AITCHISON, Esq., C.S.I., Secretary to the Government of India, Foreign Department, Calcutta, dated Bombay, 14th November 1873.

Our letter to you, dated 7th October last, being somewhat lengthy, we have, for convenience sake, caused it to be printed, and have now the honour to hand you two copies herewith.

2. In paragraphs 18 and 21 some trifling alterations on the original have been corrected in red ink.

No. 782-P.

Copy of the above, and of the letters to which it is a reply, forwarded to the Government of Fort St. George, for information, in continuation of docket No. 1718-P., dated the 31st July 1873.

(By order, &c.)

FOREIGN DEPT. (POLITICAL),
FORT WILLIAM, 2nd April 1874.

(Signed) P. D. HENDERSON, Captain,
Under Secy. to the Govt. of India.

No. 13. ORDER THEREON, 16th April 1874, No. 154.

Communicated to the Board of Revenue, and to the Collector of the Kistna District.

(True Extract)

[Signature]
Acting Chief Secretary.

To the Board of Revenue.
" Collector of the Kistna District.
" Revenue Department.

Ed. J. Wright.

Revenue Dept
Obt. of 11874 Hyderabad.

POLITICAL.

76 THE BOARD OF REVENUE.

Secy

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Accy

Dated April, 1874.

Recd. 1 May 1874.

Encl.

G.O., 15th April 1874, No. 154.

to Mr

APRIL

Nos. 12-13.

Hyderabad.—Correspondence forwarded by the Government of India held with Messrs. W. Nicolson and Co., Bombay, relative to the question of exemption of duty on goods landed at the port of Manipal for consumption in Hyderabad, communicated to the Board of Revenue and to the Collector of the Krishna District.

22.30

Sd/-

4 May 74