

(1) Number of pages 26 pages (13 Sheets)

(2) Date of repair 7-4-1984

(3) Initials of the Referencer J.C. J.

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue

DEPARTMENT

G.O. No.	1102, Revenue	Press.
B.P. No.		Mis.
Dated	19-7-1878.	197

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Archives I-5,806-24-2-78.

J.C. J.

1102
1

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

19th July 1878, No. 1,102.

Read the following paper:—

No. 202. Proceedings of the Board of Revenue, dated 24th June 1878, No. 1,748.

Read the following letter from R. J. MELVILLE, Esq., Collector of Madras, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 14th June 1878, No. 172:—

I HAVE the honor to submit, for the orders of the Board of Revenue, copy of letter, No. 94, dated 10th instant, from the President of the Madras Municipal Commission, raising certain questions regarding the License Act III of 1878.

2. With regard to the question, whether members of a firm are individually assessable under the Act, I note that such is not the intention of the legislature, from paragraph 4 of the Honorable W. Huddleston's speech published in page 37 of the *Fort St. George Gazette*, dated 19th March 1878. This is also the opinion of the Board—*vide* paragraph 6, Clause (a) of their letter to Government, No. 252, dated 30th January 1878.

3. As regards Joint Stock Companies, I think they are assessable under Act III of 1878. Under the Bengal License Act and the Northern India License Act, which the Madras Act has closely followed, they are taxable—*vide* paragraph 5 of the speech referred to above.

4. Referring to paragraph 3 of Mr. Burrows' letter, I consider that a Company having its head office out of the Madras Presidency, but carrying on its business at Madras through an agency, is taxable under Act III of 1878. Section 5 of the Act lays down that every person who carries on, whether on behalf of himself or any other person, any trade, dealing, or industry shall apply for and take out a license.

ENCLOSURE No. 1.

From L. R. BURROWS, Esq., Acting President of the Municipal Commission, Madras, to R. J. MELVILLE, Esq., Collector of Madras, dated 10th June 1878, R. No. 94.

In going through Madras Act III of 1878 for the purpose of preparing the returns required to be furnished under Section 24 doubts have arisen as to—

- (1.) Whether firms and undivided Hindu families jointly carrying on business chargeable under the Act are assessable as such, or whether the tax is to be collected from the individual partners or members thereof respectively;
- (2.) Whether Joint Stock Companies, registered or otherwise, are assessable; and if so
- (3.) Whether European and other Joint Stock Companies having their head offices in Europe or elsewhere without this Presidency possessing no special offices or establishments here and conducting their business through an agent or agency firm are assessable.

2. With regard to the second of the above points you will observe that the whole tenor of the Act points to *individuals* excepting Section 18, which, alluding as it does to firms and undivided Hindu families, seems to apply more to recovery than to assessment of the fees. I assume, however, that it is not intended to tax the firm or family as well as the partners and members thereof respectively. In the preparation of the return I shall confine myself to the assessment of firms and families as such, unless I hear from you to the contrary. There is no interpretation in the Act of the word "person" including or meaning Joint Stock Companies of any description.

3. I may as well give an instance involving the third point: Suppose Z and Co., a firm carrying on business here as Merchants and Agents to represent Y, an Insurance Company of Glasgow or Calcutta as their agents for the purpose of accepting risks, settling claims, &c., and to transact business in their capacity of General Merchants and Agents in their (Z and Co.'s) own office and by their own establishment on terms of a commission or other allowance, is Y liable to be assessed independently of Z and Co.?

4. I may mention that under the circumstances, Y would be liable to be assessed to the Madras Municipal Profession Tax by virtue of Madras Act IX of 1867, and it has been so ruled by our Original and Appellate High Courts in the case of the British India Steam Navigation Company, Limited, represented here by Binny and Co., the Municipal Act providing specially for the assessment of Joint Stock Companies, which Act III of 1878 does not.

5. Begging to be favored, at an early date, with your opinion on the above points, I have, &c.

(True Copy).

(Signed) R. J. MELVILLE,
Collector of Madras.

SUBMITTED for the orders of Government.

2. The Board agree with the Collector in the opinions expressed by him except that in the case of Joint Stock Companies having their head offices out of the Presidency, it is not the Companies which ought to be taxed but their agents. The agents however need not take out separate licenses, one for their dealing as agents generally, another as representatives of the Company having its head office without the Presidency. They are required to take out but one license for the trade and dealings carried on by them on behalf of themselves and other persons.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

No. 203.

ORDER THEREON, 19th July 1878, No. 1,102.

Miscellaneous.

On the questions raised by the President of the Madras Municipal Commission the Revenue Board have rightly interpreted the Act.

2. As regards the case of Joint Stock Companies, the Government see no difference between the case of Companies in, or out of, India. In either case, the Agent is required to take out the license; and if his agency for the Company is his exclusive business, then he takes it out in that sole capacity: while if it is only part of his business, the license covers the whole of his business; but in assessing him to the tax, the Company's profits, earned through him as Agent, have to be estimated, either as the sole business, or as part of a joint business.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
„ the Financial Department.

Ed. F. R. Bantleman.

15/5/51
3/7/51
31-10-53 II

15/5/51

License Tax Act III of 1878. - Passing observations on Proceedings of the Board of Revenue submitting opinion on certain questions raised by the President of the Madras Municipal Commission regarding the -



JULY.
Nos. 202-203.

G.O., 19th July 1878, No. 1102.

Recd. 20th July 1904.

to, Secy, Secy

THE BOARD OF REVENUE,

To

REVENUE.

Govt. of (1878) Madras.

Original

16/6/78
Municipal Commission Office
Madras 10th June 1878.

No. 94.

From.

L. R. Burrows
Ag President, Municipal
Commission, Madras.

To.

R. J. Melville Esq.
Collector of Madras.

Sir,

In going through Madras
Act III of 1878 for the purpose of pre-
paring the returns required to be
furnished under Section 24, doubts
have arisen as to 1st Whether firms
and undivided Hindu Families,
jointly carrying on business charge-
able under the Act, are assessable
as such or whether the tax is to be
collected from the individual
partners or members thereof respec-
tively.

2^{dly} Whether Joint Stock Companies, registered or otherwise, are assessable, and if so 3^{dly} whether European and other Joint Stock Companies having their head offices in Europe or elsewhere without their Presidency possessing no special Offices or Establishments here, and conducting their business through an Agent or agency firm, are assessable.

2. With regard to the second of the above points, you will observe that the whole tenor of the Act points to individuals excepting Section 18, which, alluding, as it does, to Firms, and undivided Hindu families, seems to apply more to recovery than to assessment of the Teco. I assume, however, that it is not intended to tax the firm or family as well

as the partners and members thereof respectively. In the preparation of the return I shall confine myself to the assessment of firms and families as such, unless I hear from you to the contrary. There is no interpretation in the Act of the word 'person' including or meaning Joint Stock Companies of any description.

3. I may as well give an instance involving the third point. Suppose Z & Co. a firm carrying on business here as Merchants and Agents to represent an Insurance Company of Glasgow or Calcutta as their Agents for the purpose of accepting risks, settling claims &c and to transact business in their capacity of General Merchants and Agents in their (Z & Co's) own office and by their own establishment on terms of

of a ^{commission} ~~conspicuous~~ or other allowance;
is Y liable to be assessed inde-
pendently of Z and Co.?

4. I may mention that under
the circumstances Y would be
liable to be assessed to the
Madras Municipal Professions Tax
by virtue of Madras Act IX of 1867
and it has been so ruled by our
original and Appellate High
Courts, in the case of the British
India Steam Navigation Company
Limited, represented here by Bisson
& Co. the Municipal Act providing
specially for the assessment of
Joint Stock Companies, which
Act III of 1878 does not.

5. Begging to be favoured at
an early date with your
opinions

1102/1
opinions on the above points.

Shave &
Sd. R. Barrow.

Ag. Resident Municipal
Commissioner

(True copy)

Sd. R. J. Melville
Collector of Madras.

(True copy)

Calcutta
Ag. Secretary

Shave

No. 1748

Proceedings of the Board of Revenue
Dated 24th June 1878

Read the following;

No. 172

From

R. I. Melville Esq.
Collector of Madras

To

C. A. Galton Esq.
Ag Secretary to the
Board of Revenue

Sir,

I have the honor to submit for
the orders of the Board of Revenue copy
of letter No. 94 dated 10th Instant from
the President of the Madras Municipal
Commission raising certain questions
regarding the License Act III of 1878.

2. With regard to the question whether
Members of a Firm are individually
assessable under the Act, I note that
such is not the intention of the Legislature
from

Enclosure in 188

No. dated 24th June

1878 No. 1748 L. 1160

Secretary to the Board

29/3/78

from para 4 of the Hon. W. H. Muddleston
speech published in page 37 of the
Fort Saint George Gazette dated 17
March 1878. This is also the opinion
of the Board, vide para 6, clause (c).
of this letter to Government, No. 252
dated 30 January 1878.

C.O. 2626
1878 No 45
Regis. Office

3. As regards Joint Stock Companies,
I think they are assessable under
Act III of 1878. Under the Bengal
License Act and the Northern India
License Act, which the Madras Act
has closely followed, they are tax-
able vide para 6 of the speech referred
to above.

4. Referring to para 3 of Mr. Burnes's
letter, I consider that a Company
having its head office out of the Madras
Presidency but carrying on its business
at Madras through an Agency is taxable

under Act III of 1878. Section 5 of the
Act lays down that every person
who carries on, whether on behalf of
himself or any other person, any trade,
dealing or industry shall apply for
and take out a license.

I have re-
Madras Collis } 15th / R. J. Melville
Office 16 June 1878 } Collector of
Madras

Submitted for the orders of
Government.

2. The Board agree with the Collector
in the opinions expressed by him
except that in the case of Joint
Stock Companies having their head
offices out of the Presidency, it is not
the companies which ought to be
taxed but their agents; the agents
however need not take out separate
licenses, one for their dealing as
agents

agents generally, another as repre-
sentatives of the Company having
its head Office without the Presidency.
They are required to take out but one
license for the trade and dealings
carried on by them on behalf of
themselves and other persons.

/True Copy & Extract/

W. H. C. C.
Ag. Secretary

To
The Secretary to Govt. R. D.
with copy of enclosure.

W. H. C. C.
J.

New Dept.

A Memo for Order.
On Proceedings of the Board of
Revenue, dated 24th June 1878.

Income Tax Act III of 1878.

The questions put

are:-

1. "Whether firms and individ-
ual Hindu families jointly car-
rying on business chargeable un-
der the Act are assessable as one
or whether the tax is to be collect-
ed from the individual partners
or members thereof respectively?"
Mr. Melville points out
that the Honorable Mr. Audleston
in introducing the Bill said it
was not the intention to make
each member of a trading firm
pay individually. Under the
Bill as drafted the firm would
pay

I think the Rev. Mr. Lums-
den is in fact in the
Act. As regards the
case of J.S. Co. practically
the same as in the case
of J.S. Co. in or out
of India. In the case
the Agent is required to
take out the license &
if his agency for the Co.

Page 27 Fort St. George Gazette
Supplement dated 19th March 78.

is his exclusive business
then he takes it out in
his sole capacity. But
if it is only part of his

1053.73 n. 5982

Revenue 1878 Deptt

1053.734

Proceedings of the

Board of Revenue

1053.734 - 19 July 1878

Noted 24th June 1878

26

21

Revenue June Act III of 1878

Submitting to Govt

letter from Col. J. J. J. J.

forwarding me from the

Proceedings of the Revenue

and Commission

raising certain questions

under the

228-6-78 Re. 11-7-78
11-7-78. 11-7-78
11-7-78

"pay the license tax... such indi-
vidual member of the firm would
not be liable to pay it, so that
"one payment of the tax by a
firm, would cover the charges of
"all its partners."

Section 18 Act III of 1878.
(Madras) also distinctly says
"In the case of any firm, or un-
divided Hindu family jointly
"carrying on business, chargeable
"under this Act, payment in re-
spect of the business of the firm
"or family by any one of the
"partners in such firm or by
"one of the members of such fa-
mily shall, for the purposes of
"this Act, be considered payment
"by such firm or family."

The Board agree that
the intention of the Legislature
is clear.

2. "Whether joint stock
Companies

business
The license covers the
business of the firm
but in assessing
him of the tax the
profits earned by
him as agent, have
to be estimated like
as the sole business
was partnership
firm business of

M. M. M.
1878

15/10
"Companies, registered or otherwise,
"are assessable?"

Mr. Kinnear points out
that the general tenor of the
Act points to taxation of indi-
viduals. Mr. Melville thinks
it clear that, as in other Presi-
dencies, reference is here made
to the remarks in the Honorable
Mr. Audleston's speech of 37 &
38/ such companies are as-
sessable and the Board agree.

3. "Whether European and
"other joint stock companies
"having their head offices in
"Europe or elsewhere without
"this Presidency possessing no
"special offices or establishments
"here and conducting their busi-
ness through an Agent or Agency
"Firm, are assessable?"

Mr. Kinnear points out
that the under the rulings of
the Courts such companies would
be assessable under the Madras
Municipal

Charles M.

Municipal Act of 1878 (Madras)
there is in the Income Act no
special provision, as in the
Municipal Act, for the assess-
ment of joint stock companies.

Mr. Melville observes that as
section 5 Act III of 1878 (Madras)
lays down that "every person
who... carries on whether on
behalf of himself or any other
person any trade, dealing
or industry" shall apply for
and take out a license, it is
plain that such companies
working thro' an Agent are
taxable.

The Board adopt the
view that it is not the
Companies which should
be taxed but their Agents
and that if those Agents
have taken out licenses for
their dealings generally
they

* Schedule C.

Joint stock companies whether
registered under any English or
Indian Act or Acts and other
companies whether incorporated
by Royal Charter, Act of Parliament
or Act of the Council of the Governor
General or of the Governor or Agent
Governor of any of the Provinces
and carrying on any trade or
business having gain for its
object.

110/11
they and not take out separate
licenses for such companies.

QUL

Memorandum for the
License Tax
III of 1878

No. 2794

Clr

Better for
Mr. Huddleston
first - 1st 1916

C 28-6-78. R 11-7-78. R 15-7-78
R 11-7-78. R 15-7-78. R 19-7-78

No. 1102
Proceedings of the Madras Government,
Under date the 11 July 1878.

Read the follow-
ing Proceedings of the Board
of Revenue dated the 24th
June 1878, No 1748. submit-
ting to Government letter
from the Collector of Madras
with one from the President
of the Madras Municipal
Commission, raising certain
questions regarding the
License Tax Act III of 1878.

On the questions raised
by the President of the Madras
Municipal Commission the Revenue
Board have rightly
interpreted the Act.

2. As regards
the case of Joint Stock
Companies, ~~particularly~~
the Government see
no difference between
the

M
19/7

the case of companies
in, or out of, India.
In either case, the
Agent is required to
take out the license,
and if his agency for
the Company is his
exclusive business, then
he takes it out in that
sole capacity, while if
it is only part of his
business, the license
covers the whole of his
business - but in assess-
ing him to the tax,
the Company's profits,
earned through him
as Agent, have to be
estimated

1102/131
Estimated, either as
the sole business,
or as part of a joint
business -

W

Ind. Co. File D. 2. and off. Dec 20, 20 July
The Financial Dept. and Ind. Co.

11/11

CCD

Special
G.O.

License Tax Act III
of 1878

10/19

Super
Sri W. Ho Gm

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R19-7-78