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Regular
Miscellaneous No. 1787 of 1897.

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1787

DATED 2nd April '97

[Despatch Abstract.]

Despatching to interfere on behalf of Abdul Koorani
Jemaj^{deo} in the matter of his petition regarding the
fine imposed ^{on them} by the Collector of Sea Customs, Madras,
on account of a false trade mark.

FOR WHAT CURRENT.

No.

Year.

To whom given.

When taken out.

P. 2

2-12-97

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
					4537		13/11/96

FURTHER PAPERS.

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

Revenue (1897) Department.

CURRENT No.

Order

From

Abul Hossain Jewellers
Co.
Merchants
Madras

No.

Dated 20th

Received 23rd

Registered 24th

Enclosures 6

Spare copies

Feb-1897

SUBJECT.

Requesting to order the
refund of the fine imposed
upon them by the Collr. of
Sea Customs on account
of a false Trade Mark.

BACK PAPERS

G.O.	No.	Department.	Date.

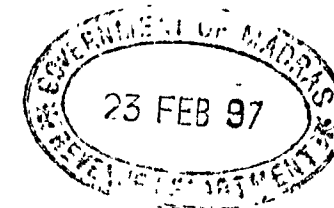
FURTHER PAPERS.

G.O.	No.	Department.	Date.

MOOL BOOSCAIR JEEVAIR & Co.
MERCHANTS,
4, LINGI CHETTY STREET,
MADRAS.

Madras 20th February 1897

PETITION



To

The Secretary to Government,
Revenue Department,

Revenue Department,

MADRAS.

SIR,

We have the honor to submit the following case for orders of Government under Section 191 of the Sea Customs Act VIII of 1878.

2. In May last, we imported 101 Drums of Mineral oil known as 'bloomless oil' with the trade description "bloomless oil raw" stencilled on the drums. The Collector of Sea Customs, Madras characterized the above trade description as a false one and imposed upon us a fine of Rs. 125. He released the consignment however causing the words "raw" and "bloomless" to be obliterated and the word "mineral" substituted on the drums. The Collector's argument was that the expression "bloomless" is a term usually applied to "linseed oil" and that the application of that term to "mineral oil" is a false trade description (Vide Collector's letter ³¹⁷⁴ ~~3144~~ G. dated 15th June 1896 enclosed).

3. In appealing, we pointed out to the Board that the expression "bloomless oil" is a term *usually applied to "mineral oil"* and that the Collector was wrong in thinking that it is so applied to linseed oil. In support of our contention, we enclosed the accompanying advertisement of the manufacturers of the oils in question. (Vide copy of our appeal petition to the Board dated 9th Sept. 1896 enclosed).

4. The Board could no longer uphold the Collector's contention. It let slip his argument and substituted its own. The Board's argument was that although "bloomless oil" does not mean linseed oil, the use of the word "raw" on the drums along with the expression "bloomless oil," was improper. (Vide Board's Prgs. No. 3031 Routine dated 3rd October 1896 enclosed).

5. We pointed out that the word "raw" was stencilled on the drums to denote that the mineral oil contained in them is an "unfinished" variety in contradistinction to finished ones which are known as "sweet amber bloomless oil," "sweet pale bloomless oil" &c. as will be seen in the advertisement sheet and that the use of the word "raw" is therefore proper even according to the Merchandise Marks Act. (Vide copy of our letter dated 3th November 1896 enclosed).

6. The Board says in reply as follows:—

"The word raw was inscribed on the drums with the deliberate intention of leading purchasers to believe that their contents were an oil capable of having its drying properties improved by the process technically known as boiling i. e., heating with a proportion of litharge which has the effect of destroying the vegetable albumen and mucilage which the linseed oil contains. The use of the words 'raw' and 'boiled'

in connection with oil fit for painting is so universal that the use of the one at once suggests the possibility of the other. A mineral oil is incapable of being put through this process and that the application of one term to it is as improper as the other. The petitioner's suggestion that "raw" meant "unfinished" is in the Board's opinion an attempt to deceive it &c." (Vide Board's Progs No. 3613 dated 1st December 1896 enclosed).

7. In the first place, we beg to observe that the word "raw" was not stencilled by us on the drums. It was done by the manufacturers of the oil "J. and T. Seddon" a respectable English Firm in Hull, England, in which country a Merchandise Marks Act similar to ours is in force. If it is a false trade description it could never have been stencilled by that Firm. Further, intention is not an ingredient of any offence under the Merchandise Marks Act. When once a trade description is put on an article and it is found to be false in respect of that article, an offence has been committed. A Court need not go into evidence as to whether such description was applied with "deliberate intention" or otherwise, except as to the mitigation of punishment. We request the Govt. therefore to dispel from its mind all about the so called "deliberate intention" of ours, on which the Board seems to rely so much to justify the fine imposed upon us.

8. The gist of the whole argument of the Board, is that the presence of the word "raw" along with the expression "bloomless oil" would lead the purchasers to believe that that oil can be improved in its drying property by the technical process known as "boiling." The Board maintains this argument on the analogy of linseed and other paint oils. It is true that in connection with linseed oil, the word "boiled" implies a technical process. It is true also that "raw" in connection with that oil would suggest the possibility of the other process *i. e.*, "boiling." All this may be true, also in the case of paint oils other than linseed oil. It is unreasonable, nay, absurd on that ground, to suppose that the word "boiled" in connection with *other articles* would also imply the same technical process and that the word "raw" would suggest the possibility of that process. For instance, we take the case of rice. The use of the pair of words "raw" and "boiled" in connection with rice is as universal as it is with paint oils. Who will think that these words would express in the case of rice a meaning same as that which they would express in connection with linseed and other paint oils? Further, the Board cannot for one moment maintain, that the words "raw" and "boiled" have no other meaning in the English language than that which they express in connection with paint oils. The word "raw" especially has on the other hand so many uses and meanings in the English language that it is impossible to restrict its use with any *one substance*. While in the case of linseed and other paint oils, the word "raw" suggests the possibility of the *technical* process of "boiling," the same word suggests the *ordinary* process of "boiling" in the case of rice. In the case of skin, "raw" would suggest the possibility of "tanning"; in the case of "cotton," it would suggest the possibility of "cleaning"; in the case of meat, "roasting;" so also in the case of *mineral oil*, it would suggest the possibility of "*refining*" or "*finishing*" and not the technical process of "boiling" peculiar to paint oils. Whether the word "raw" has these meanings in the English language is a question of fact. "Raw" means, crude, unwrought, unfinished, in natural state, unboiled &c. A reference to

Webster's Dictionary might have convinced the Board, of the truth of our statement. We do not understand on what grounds, the Board thought, that in giving such a meaning, we attempted to deceive it. When a word has several meanings, people gather the right meaning from the context and other features. So also, a purchaser, when he sees the word "raw" used along with linseed and other paint oils, will believe that the oil has not already been and is capable of being subjected to the technical process of boiling; when he sees the same word used in connection with *mineral oil*, he will think that the oil has not been already finished or refined to a form to which it can be finished or refined and it is capable of being so finished. No purchaser however foolish, would think, because of the presence of the word "raw" that bloomless oil, a mineral oil, can contain vegetable albumen and mucilage and can be removed by boiling with litharge? In the trade description "bloomless oil" which was applied by us to the mineral oil in question, the expression "bloomless oil" being so well known as mineral oil, would preclude the word "raw" used along with it, from conveying the meaning which it would convey when used in connection with linseed or other paint oils. Hence it is not a false trade description. The case would have been different, had we described the oil as "paint oil" simply and added the word "raw" to it.

9. If the whole case is viewed according to the terms of the Merchandise Marks Act, it will be observed that, the Collector preferred one kind of charge against us and fined us, and the Board justified the fine by an altogether different charge. The Collector's charge was that we applied a false trade description as to the *material* of which the oil is composed *i. e.*, that we described "mineral oil" as "linseed oil." The Board's charge was that we applied a false trade description as to the *quality* of the oil *i. e.*, that by using the word "raw," we described mineral oil as possessing drying properties capable of being improved by the technical process known as boiling which it does not possess. A fine that has been imposed upon us by the Collector on a charge of *false trade description as to the material*, was justified by the Board by a charge of false trade description as to *quality*. In our petition to Government *re* "double boiled oil" case we brought to the notice of Government the unsatisfactory procedure adopted by the Collector and the Board in Merchandise Marks cases but the Government took no notice of it. We again bring the procedure of those two authorities in this case to the notice of Government. We respectfully protest against this procedure of fining first for one kind of charge and when confronted with a satisfactory answer, amending or modifying it, or even substituting a new charge as the exigencies of the case call for it in the various stages of the case.

10. The fact is that until we pointed out, neither the Board nor the Collector knew what is meant by "bloomless oil." The Collector was all along thinking that bloomless oil is another name for linseed oil, and he imposed a fine upon us with that wrong idea. As soon as we pointed out that bloomless oil is mineral oil so refined as to blend with vegetable and fish oils perfectly, the Board tried to uphold the Collector by taking exception to the word "raw." The Board asserts with a peculiar logic of its own, that because the word "boiled" implies a technical process and the word "raw" the possibility of that process, in the case of paint oils, they would imply the same in every case with every substance. We need not

C No. 1693

From Abdul Moossain Jaffer and Co

Dated 20th February 1897.

FOR ORDERS.

point out how absurd the Board's view is. The Board forgets that the words "raw" and "boiled" have other meanings in the English language. Are there not expressions such as "raw cotton," "raw silk," "raw meat," "raw rice," "boiled rice" "a raw man" &c? Who will say that in these cases "raw" and "boiled" convey no other meaning than that which they convey when used with linseed oils? When an expression such as "mineral oil raw" or "bloomless oil raw" occurs, the natural interpretation that will be put upon it is, that the mineral oil has not been refined or finished. Who will conclude from it contrary to common sense and experience, that a mineral oil can contain vegetable albumen and mucilage and can be removed by heating it with litharge? Yet the Board seriously maintains that argument. We leave it to Government to judge.

11. In these circumstances, we request the Government to order the refund of fine imposed upon us.

We beg to remain
Sir

Your obedient servants.

Abdul Moossain Jaffer & Co.

ABDOOL MOOSSAIN JAFFER & CO.

3, LINGI CHETTY STREET,
MADRAS.

The Hon. Mr. Miss C. J. E.

What "bloomless" oil means, there is no idea - But "raw" is certainly word calculated to deceive. I should uphold the Rs. 25 - Col.

*Rs
3/3/97*

"Raw oil" means refined oil which has not been refined. and also every one

understand that Bloomless was merely a descriptive addition & not that "Bloomless oil raw" means a particular brand of raw refined oil. It seems to me that the description comes within the definition of "False Trade Description."

The petitioners request that the fine of Rs 125 imposed upon them by the Collector of Sea Customs, Madras, under the following circumstances may be refunded.

2. The petitioners imported 101 drums of mineral oil declared in their Bill of Entry to be "Bloomless oil". The drums bore the description of "Bloomless oil raw" and as the Collector was of opinion that the above description was usually applied to linseed oil, he confiscated the goods under the Merchandise Mark Act and imposed a fine of Rs 100 on the importers under Section 167 clause 8 of the Sea Customs Act and gave the importers the option of redeeming the goods by paying a further penalty of Rs 25 if the words "Raw" and "Bloomless"

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were obliterated and the word "Mineral" substituted in its place.

3. The petitioners then appealed to the Board of Revenue and pointed out that the word "Bloomless oil" was applied in England to "Mineral oils" and supported their contention by an advertisement by J. and T. Seldon of Hull.

The Board declined to interfere with the Collector's order as it was of opinion that the use of the word "Raw" which was not found in the manufacturers' advertisement was sufficient evidence of its improper usage.

4. Thereupon the petitioners pointed out that the word "Bloomless oil" was a generic term and could be applied to several varieties of it and that the addition of the word "Raw" was intended to show that the oil imported was "unfinished mineral oil" while in the advertisement only two specimens of mineral oils were ^{mentioned} ~~advertised~~. The Board however, in declining to interfere on behalf of the petitioners

FOR ORDERS.

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REVENUE DEPARTMENT.

No.

From

Dated

189

FOR ORDERS.

petitioners pointed out that the word "Raw" was used to make ^{hypocrites} believe that its drying properties could be improved by "boiling" and that its application was so objectionable as the use of the word "boiled" and that the petitioners' explanation that "Raw" meant unfinished could not be accepted. ~~The Board~~

5. The petitioners now appeal against this decision and point out that the word "Raw" was stencilled by a respectable English firm in Hull that if it is a false trade description the English firm would not have stencilled it that the intention of the petitioners is not the ingredient in the offence but whether the description was a false one, that the word "Raw"

FOR ORDERS.

No

From

Dated

189

FOR ORDERS.

cannot make any difference. Any how "blowless oil raw" will be understood by the public as a mineral oil and no mistake can be made as to its being a substitute for linseed or paint oils.

Submitted that the Govt. may direct the refund of the fine imposed on the petitioners.

AIR
29.5.97

has several meanings and should be taken to ^{convey the} meaning unrefined when applied to a mineral oil and that as "blowless oil" being a mineral oil ^{it is} unrefined ^{incapable of being put through the process typically known as boiling,} which the Board has admitted. The addition of the word "raw" ^{petitioners contend,} cannot lead to any misunderstanding by the public seeing that ^{of the oil} drying properties cannot be ^{by the boiling process} unrefined. The petitioners also point out that the Collector of Customs imposed the fine for one charge while the Board has upheld the Collector's decision on a different point when it found that the collector's contention could not stand.

6. The question for consideration is whether the words "blowless oil raw" are applied to mineral oils; if so, the petitioners would seem to be justified in joining the description they require. It will be seen from the advertisement that the term "blowless oil" is applied to "mineral oils" and as pointed out by the petitioners the use of the word "raw" in addition

FOR ORDERS.

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C. No 1693

G.O. No. 1787 of 2nd April 97

The Govt. agrees with the Board in considering that the addition of the word "raw" to "blowholes out" ^{was} calculated to deceive the public and accordingly declines to interfere on the petitioner's behalf.

1/2/1897

(Sent from orders)

ack.
4/4/97

2
The petition through the
B. of Revenue
with enclos.

16.4.97
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When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

1-10-68 DEPT OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
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