Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 2818-19

DATED 4 June 1897

[Despatch Abstract.]

Letter. Submitting for the favorable consideration of the Government of India the request of the Ootacamund Club that the debentures issued by it may be exempted from stamp duty.

Order. Ordering that a letter be despatched to Government

BACK PAPERS.

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

FURTHER PAPERS.

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

...nue (1897) Department.

CURRENT No. 3370.

GOVERNMENT OF MADRAS
28 APR 97

From The Secretary to the Commissione
Salt, abkari and Separate Revenue
Madras.

Order No. 1375

Dated 5th April 1897.

Received 28-4-97

Registered 26-4-97

Enclosures 2

Spare copies

SUBJECT.

Reporting to Government
on the letter from the Secret
to the Cocanada Club, re
questing that the deben
issued by the Club may
exempted from Stamp

BACK PAPERS.

G.O.	No.	Department.	D.
—	511	Rev. —	2
—	5-8 —	—	7-1-

FURTHER PAPERS.

G.O.	No.	Department.	Date.

1st Shelf. Book No 180 of 1893 of Book 1

M Sankaralingam

Regn Asst

THE OOTACAMUND CLUB.

REGISTERED UNDER THE INDIAN COMPANIES ACT 1882.

Issue of 812 *Debentures of Rs.* 100 *each carrying interest at the rate of* 6 *per cent. per annum.*

SERIES **A.**

No. 67

Debenture Rs. 100.

The Ootacamund Club (hereinafter called "The Club") will on the day on which this Debenture shall be redeemed in accordance with the conditions hereinafter referred to pay to Lieut. Colonel Henry Montagu Dale, Madras Army ___ his executors, administrators or assigns at the registered office of the Club the sum of Rs. 100 and will in the meantime pay to the said Lieut. Colonel Henry Montagu Dale ___ his executors, administrators or assigns interest at the rate of 6 per cent. per annum on the said sum of Rs. 100 by yearly payments on the first day of August in each year.

And the Club doth hereby charge with such payments the immoveable property of the Club described in the schedule hereto and all the moveable property to which the Club is now or shall at any time hereafter become entitled.

1. This debenture is one of an issue of 484 debentures of Rs. 100 each made by the Club.

2. The said debentures are divided into four Series called respectively Series **A**, Series **B**, Series **C** and Series **D**. Series **A** to which this debenture belongs consists of 484 debentures, Series **B** consists of 120 debentures, Series **C** consists of 65 debentures and Series **D** consists of 143 debentures.

3. The debentures of Series **A** shall rank *pari passu* as a first charge upon the property hereby charged and without any preference or priority over one another and the debentures of Series **B**, **C** and **D** shall in like manner respectively rank as 2nd, 3rd and 4th charges on the said property.

4. The debenture of Series **A** shall be redeemed before the debentures of Series **B** and the debentures of Series **B** before the debentures of Series **C** and the debentures of Series **C** before the debentures of Series **D**.

5. One half of the net annual profits of the Club will be applied by the Club in the redemption of debentures of the said issue until the whole of the said debentures shall have been redeemed or paid off.

6. The particular debentures to be redeemed on each occasion will be determined by annual drawings which the Club will cause to be made at its registered office for the time being.

7. Such drawings will be made in the presence of 3 Members of the Committee not less than seven or more than fourteen days before the first day of May in each year.

8. Notice of the day and time fixed for each drawing will be given by the Club at least ten days previously by advertisement in a Madras daily newspaper and the said Lieut-Colonel Henry Montagu Dale his executors, administrators or assigns will be entitled to attend at any such drawing.

9. The numbers of the debentures from time to time drawn will be recorded in a book to be kept for that purpose by the Club and to be open for inspection by the said Lieut-Colonel Henry Montagu Dale his executors, administrators or assigns.

10. Nothing hereinbefore contained shall be deemed to preclude the Club from redeeming this debenture at any date earlier than that hereinbefore provided upon giving three calendar months previous notice to the said Lieut-Colonel Henry Montagu Dale his executors, administrators or assigns.

11. Every transferee of this debenture shall cause a notice in writing of the transfer to him under the hand of the transferor to be sent to the Secretary of the Club for the time being and no such transfer will be recognised by the Club unless and until such notice shall have been so given.

THE SCHEDULE ABOVE REFERRED TO.

Registration District.	Registration Sub-District.	Name, Boundaries, &c.	Extent.
Nilgiris.	Nilgiris.	NAME.—Ootacamund Club. BOUNDARIES. NORTH—in part by the North supply channel Reserve and in part by settlement No. C. 171 EAST—in part by settlement No. C. 171 and in part by settlement No. C. 166 (Woodside House). SOUTH—by the road leading from St. Stephen's Church to Sylk's Hotel. WEST—by settlement No. C. 154 A. (Hanteville and Rose Mount).	Acres fifteen decimal eighteen (15·18) or thereabouts.

Given under the common seal of the Club this thirty first day of December 1892.

The common seal of the Club was affixed hereto in the presence of

THE COMMON SEAL OF THE OOTACAMUND CLUB.

Committee
H. Dunsterville
} Members of the Committee.

Countersigned,

H. E. Cummins *Secretary.*

180

Presented at 1.30 P. M. on the 4th March 1893 in the office of the Registrar of the Nilgiris by

H. E. Cummins

M. Sankaralingam
Registrar

4th March 1893.

Execution admitted by

H. E. Cummins Club Secretary. & Atty

Known personally to the Registrar.

M. Sankaralingam
Registrar

4th March 1893.

Registered as No 180 of Book I Volume 52 Pages 159 & 160.

14th March 1893

Fee paid one rupee Stamp annas 8 by Registrar

Transferred to Colonel F. F. Cummins, D.S.O.

H. Dor. Dale, by his Attorneys

FOR THE AGRI-HORTICULTURAL SOCIETY LIMITED

MANAGER, MADRAS

by

1897
REVENUE DEPARTMENT.
Enclosure No. 1
To Number 3276

Ootacamund Club
Ootacamund 4th January 1897.

From,

The Secretary
Ootacamund Club.

To,

The Secretary
to the Government of Madras
Revenue Department
Madras.

Sir,

On the 1st May 1889 the Ootacamund Club was registered and incorporated under Part VII of the Companies Act (No VI of 1882) as a Company Limited by Guarantee.

Between the dates 31st December 1892 and 23rd February 1894, Eight hundred and twelve debentures of Rs 100. each were issued, to secure certain previous debts, and some new loans which were raised by the Club.

The form of debenture to be adopted was under consideration for some time, the execution of a Trust Deed being part of one of the proposals. The Club was informed, that under the trust plan neither debentures, nor interest coupons, required

either registration or stamps.

Eventually the present form of debenture bond (Specimen enclosed) without any Trust Deed was adopted. The debentures were stamped and registered at the time of issue.

Since January 1894, debenture bonds have been from time to time transferred by their original holders. The transfers have been effected by simple endorsement, and have not been stamped, under the impression that this procedure, which would have been correct if the debentures had been issued unstamped in pursuance of the terms of a Trust Deed, was also correct in the case of debentures which had themselves been stamped.

In April 1896 however the question of the liability of each transfer to a stamp duty was first raised; and in May a pro formâ transfer was submitted to the Collector of the Nilgiris for adjudication as to its liability to stamp duty. He ruled that every transfer should bear an 8 annas stamp, under Article 60 (b) of Schedule I of the Stamp Act.

Since May the subject of rectifying the omission to stamp the transfers which have been effected, has been under the consideration of the Committee of the Club. Three hundred and twenty debentures have been transferred, some of them twice, so that a large number of persons are interested in remedying the defect.

The Committee of the Club has resolved to place the matter in your hands with the prayer that you will be good enough to lay it before H. E. the Governor General in Council, and move him to the exercise in their favour of the power conferred on him by Section 8 (a) of the Stamp Act (I of 1879), to exempt "ab Initio" the transfers of debentures of the Ootacamund Club from the stamp duty to which they are liable.

The grounds on which the Committee of the Club make this appeal are—

1. The large number of persons affected by the imperfection of the transfers, to whom the Club is naturally anxious to secure the full benefit of their bonds.
2. The entire absence of any evil intention on the part of those who have transferred debentures without stamps, they having been probably misled by legal opinions given in

accordance

in respect of debentures issued in connection with a Trust Deed, which was at one time the form proposed for adoption, and which would have been subject to no stamp duty on transfer.

3. The exceeding difficulty of rectifying the defect by any other method, the persons who have transferred, and those who now hold the debentures, being scattered over the world.

4. The fact that by the issue of the debentures each singly stamped, instead of by the preparation of a stamped Trust Deed, under which the debentures could have been issued unstamped; there has been no loss of revenue to the Government but rather the contrary.

I have the honor to be
Sir
Your most Obedient Servant

Secretary Otacamund Club.

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue

(Separate Revenue.)

Dated 5th April 1897.

Iris No. 1375

Read Government Orders Iris No 611 Revenue dated 2nd February 1897. and Board's reference thereon to the Collector of the Nilgiris dated 19th February 1897.

Read also letter from the Collector of the Nilgiris Dis No 502/97 dated 18th March 1897; replying to the reference made to him.

Resolution

With reference to Government Orders Iris No 611 Revenue dated 2nd February (97) in which a certain letter from the Secretary to the Cotacamund club was referred to the Board for remarks, it appears from a reference made to the Collector of the Nilgiris that the statements made

therein

therein are substantially correct and that the debentures of the club have not been stamped, as they should have been, on the occasion of their transfer from one member to another purely through a misconception of the law. The Collector is of opinion that in these circumstances the club is entitled to special consideration at the hands of Government and suggests either that the holders of the transferred debentures should constitute the Secretary of the Club their attorney so that, on presentation of the debentures by the latter before the Collector under section 33 of the Stamp Act, the stamp duties and penalties due thereon may be adjudicated and collected, the latter being afterwards refunded by the Board under section 42, or else that, as requested by the Committee, the Governor General in Council may be moved under section 8 (a) of the Act to remit the duties with which the transfers were chargeable altogether. The second of these alternatives he considers to be the best as the debenture holders are now scattered all over the world and the difficulty of obtaining powers of attorney from all those who are or have been interested in the transfers would be very great and the expense considerable.

2. There can be no doubt that the transfers are properly chargeable with Stamp duty and although the omission to do this has taken place merely through inadvertence the Board does not consider that there is any reason for treating the club more leniently than an individual. The simplest course would be for the club to call in all the existing debentures and issue fresh ones, the transfers which have already taken place being dealt with in the usual way.

may when necessary. If the club executes a deed mortgaging its property to the trustees of the debenture holders or a trust deed, the new debentures need not be stamped, under the provisions of the Government of India Resolution Communicated in Government Order No 58 dated 7th January, 1885.

(True Extract)

Commissioner

Assistant Secretary

To the Secretary to Government, Revenue Department, with 2 enclosures.

15/4/97

Draft submitted 27/5/97

Draft letter to India & Memo to H.E.

22/5/97

Mr Hon. Mr Bliss C.S.I.

I have no doubt that the transfers of the debentures should have been stamped. Indeed, I was the first person who formed this opinion and issued debentures, some of general & impressed the transfers & some not stamped, so that the current holder had no legal title to convey them, and had therefore to forego the purchase. But there is equally no doubt that if the Board acted in G. of I. Res. No. 1945 4.12.84 had been followed, the unstamped transfers would have been valid. It is also clear that, as far as the revenue is concerned, the effect of the separate stamping of each debenture was better than if the Board's letter to the G. of I. Res. had been adopted. The debentures might be called in & reissued, but this would cost a good deal & cause a great deal of trouble to holders by transfer who are many of them, about pure Indians. I think that as no loss of revenue has been caused by the mistake which was made in complying with an appeal to India

BS
20/5/97

Cus. 3370 of 1897

For orders.

The Ootacamund Club has issued 812 debentures of Rs 100 each, all of which were stamped and registered at the time of issue. 320 of them have since been transferred by their original holders, but the transfers were not stamped through a misconception of the law on the point. When the question came up for adjudication, the Collector of the Nilgiris ruled that every transfer, like the original deed, should bear an 8 annas stamp under Article 60(4) of Schedule I of the Stamp act. The club now prays that the Govt of India may be moved to exempt "ab initio" the transfers of the debentures from the stamp duty to which they are liable. The following are the

the grounds on which exemption is sought:—

(1) That the number of persons interested in the transaction is large.

(2) That there was no evil intention on the part of those who have transferred the debentures without Stamps.

(3) That it would be extremely difficult to remedy the defect in any other manner, as the transferors and transferees are scattered over the world.

(4) That there was no loss of revenue to Govt, but rather the contrary, for, if the Club issued the debentures on the trust plan, no Stamp duty would, under the Govt of India Resolution embodied in Go. 58 § 7-1-85, have been payable on the original debentures themselves.

2. The Collector proposes one of two courses for remedying the defect-ing.

(1) That the holders of the transferred debentures should constitute the Secretary of the Club their attorney so that, on presentation of the debentures by the latter before the Collector under Sec 33 of the Stamp Act, the Stamp duties and penalties due thereon may be adjudicated and collected, the latter being afterwards refunded by the Board under Sec 42.

(2) That the Govt of India may be moved as requested by the club.

As, however, the debenture holders are now scattered all over the world and the difficulty of obtaining powers of attorney from all those who are, or who have been, interested in the transfers would be very great and the expense considerable, the Collector

Collector prefers the latter course.

3. The Board sees no reason for treating the Club more leniently than an individual. It considers that the simplest course would be for the club to call in all the existing debentures and issue fresh ones on the trust plan by executing a deed mortgaging its property to the trustees of the debenture holders, the transfers which have already taken place being dealt with in the usual way when necessary. Under the course suggested by the Board the new debentures would not be liable to stamp duty; but it is not known whether it can be easily managed by the club. It appears to have been originally considered and abandoned. But it is clear that in that case the club will have to undergo the expense of preparing the trust deed and paying the stamp duty thereon, as also the expense and trouble of getting back the old debentures from their holders and issuing fresh ones to them, especially in cases where such holders are out of India.

4. Orders are requested as to whether in the above circumstances, the Govt. should express concurrence in the Board's remarks and ~~inform~~ the club should be informed accordingly, or whether, as requested by the club, the Govt of India should be moved to sanction exemption under Sec 8 (a) of the Stamp Act I of 1879.

Office
[illegible] Pat[?] [illegible]
R.
4 May

There can be no question that the transfers of the Club debentures sh^d have been stamped. The simple question is whether Govt. will move

India to exempt them much because the case is one of a club. It will cause the Club much trouble to retrieve it - Error but that is the case always.

18/5/97.

2nd note on C.No. 3370/97

Note for the Secretary

In reply to the Secretary's query on the last page of the Note for orders on C.No. 3370, it is submitted that the case of the Ootacamund Club differs from that of the Palghat Municipality as shown below.

In the latter case, the Municipal Council issued 18 debentures bonds of the aggregate value of Rs 17,000 with a one anna receipt stamp affixed to each of them, and the total amount of the Stamp duty paid in respect of the bonds was thus only Rs 1/2/0 whereas the amount chargeable thereon under Art. 13 of Schedule I of the Stamp Act was Rs 85. The Municipality was therefore called upon either to have such of the debentures as were outstanding fully stamped

Q.S. 4009 d 17-10-96
flagged B
Q.S. 1288 d 16.8.97
flagged C

stamped or to pay the requisite amount at ½% as Composition for the Stamp duty chargeable thereon in view to the debentures being exempted from Stamp duty under the Govt. of India Resolution embodied in G.O. 2278 dated 7-12-80. But it will be seen from this Resolution that the Concessions therein allowed can be granted only to

(1) the Presidency Municipalities

(2) the trustees of the Port of Bombay

(3) the Commissioners for making improvements in the Port of Calcutta, and

(4) the Local Authorities as defined in the Local Authorities Loans Act.

As the Ootacamund Club is not such already as is contemplated in the Govt. of

The municipality elected the latter course.

vide Bill in G.O. 1373 flagged E 11-3-97

This bill is in Excise Law (vide bill in E.E. G.O. flagged D.)

of India Resolution quoted above, the procedure adopted in the case of the Palghat Municipality cannot be followed in the case of the Ootacamund Club.

2. The amendment in the Stamp law now proposed is to the effect that the bonds or debentures issued by a local authority need not be separately stamped either in the first instance or on renewal, subdivision, consolidation or otherwise, provided the local authority concerned pays once for all the ad-valorem Stamp duty (Eight annas per cent) chargeable on the total amount covered by the bonds or debentures. The Amendment embodies in effect, in the Act, the Concession which the Govt of India Resolution of 1880 offered, and does not therefore apply to the

the case of the Dolcamund Club.

3. The only possible ways in which the "transfers" of the Club's debentures can be exempted from Stamp duty are by adopting the trust plan referred to in the Govt of India Resolution in fo. 3301 18-12-84 F.D. or by obtaining the Special Sanction of the Supreme Govt, under Sec. 8 (a) of the Stamp act. Though the Resolution last quoted above would seem to exempt from Stamp duty "transfers" of debentures issued under the trust plan, yet, it is stated to be opposed to the intention of the Supreme Govt. It has accordingly proposed an amendment to the Stamp Act to provide for the levy of duty on "transfers" of debentures issued by Joint Stock Companies

flagged Cy

Companies regardless of the fact of exemption from such duty of the original debentures themselves under the trust plan. (vide proposal no. 18 on page 7 of fo. 425 28-8-96 flagged F.) But this point is not included in the recent Bill to amend the Stamp act which has since become Act XIII of 1897

P.
14 May 97

Read Cuo. 3370 of 1897

G.O. Mis N°. 2818 94.6-97

Ordered that the following letter be despatched to the Govt of India.

11/11/97.

Letter N°. 2819.

To

The Secy to the Govt of India
Fin & Comm^ce Dept.

Sir,

I am directed to submit the following case for the orders of the Govt of India.

2. The Rotaracumud Club which has been registered and incorporated under Part VII of the Indian Companies Act, 1882, as a Company Limited by ~~Guarantee~~ Shares, issued between the ~~dates~~ 31st Decr 1892 and 23rd February 1894, Eight-hundred and Twelve debentures of Rs 100 each, all of which were

Recd 12/6/97

The Hon. Mr Bliss, C.I.E
H.E. the Governor.

R.C. 3/5/97

were duly stamped and registered at the time of issue. 320 of them have since been transferred by their original holders, some of them twice; but the transfers which are equally liable to stamp duty under Art. 60(b) of Schedule I of the Indian Stamp Act, 1879, have not been stamped, through a misconception of the law on the point. The Club having recently discovered the mistake is anxious to have it rectified and after a careful deliberation it requests that H.E. the Governor-General in Council may be moved to exercise in its favor the power conferred on him by Sec. 8(a) of the Indian Stamp Act, and to exempt ab initio the transfers of the debentures, from the stamp duty to which they are liable. The grounds on which the Committee of the Club make this request are stated as follows:—

(a) The large number of persons affected by the imperfection of the transfers, to whom the Club is naturally anxious to secure the full benefit of their bonds.

(b) The entire absence of any evil intention on the part of those who have transferred debentures without stamping them. They have probably misled by legal opinions given in respect of debentures issued in connection with a Trust Deed, which was at one time the form proposed for adoption, and which would have been subject to no stamp duty on transfer.

(c) The exceeding difficulty of rectifying the defect by any other method, the

the persons who have transferred, and those who now hold the debentures, being scattered over the world.

(d) The fact that by the issue of the debentures each singly stamped, instead of by the preparation of a Stamped Trust Deed, under which the debentures could have been issued unstamped, there has been no loss of revenue to the Govt, but rather the contrary.

The Govt of Madras is aware that

3. ~~It~~ is still open to the Club to call in all the outstanding debentures and to reissue them on the plan sanctioned in the Govt of India Resoln No. 1945 dated 4-12-84, in which case the debentures to be newly issued, and therefore their subsequent transfers, would not be liable to stamp duty; but such a course would

(61)

the. would be expensive and would cause a great deal of trouble to holders ~~by transfer~~, who are, many of them, absent from India. I am to add that no loss of revenue has been caused to the State by the mistake which the Club made in issuing in the first instance separately stamped debentures instead of adopting the plan indicated in the Govt of India Resolution quoted above, and that on the other hand the effect of issuing such debentures has been rather favorable to the Stamp revenue than otherwise. I am accordingly to submit the case for the favorable consideration of the Govt of India and to express the hope that H.E. the Governor-General in Council will be pleased to issue a notification as

as prayed for by the Club.

31/5/89

When given for copying ——
When copied ——
When examined ——
When signed ——
} 189

READ AGAIN G.O., No. 189 , DATED

OUR LET. No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT.	Q							
STATEMENT WITH DITTO.								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

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A = Copy in full.
B = Not to be copied
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Q = Copy heading only

27 May 89