

British East Africa Corporation, Limited.

439

35327

GRESHAM HOUSE,

LONDON, July 15th, 1921.

16 JUL 21

The Under Secretary of State for the Colonies,
Colonial Office,
S.W.1.

CUSTOMS DUTY AT BOMBASA.

We have the honour to bring before you, for the favour of your assistance, and as a matter of urgency, the matter of certain action by the Customs Authorities at Bombasa, which we respectfully submit to be illegal and harsh.

The Customs Ordinance in force for many years has levied an ad valorem import duty on general dutiable goods at the rate of 10 per cent. The same Ordinance expressly allowed the duty to be paid "in kind", and directed that goods taken by way of "duty in kind" should be sold by the Customs Dept., and that the whole proceeds of sale should accrue to the revenue of the Protectorate.

For easy reference, we attach a typed copy of that Ordinance.

From time immemorial the clause regarding "duty in kind" has been interpreted and acted upon by the Customs Authorities by their taking one in ten of each article, from any parcel of similar articles, and giving a customs clearance, free of further payment in cash or kind, to cover the entry of the remaining nine articles. What was done with the "duty in kind" articles was regarded by the Authorities and the Public as of no concern to the importer. These articles were presumably sold by the Customs Dept., which at no time and in no case that we can trace, ever rendered any account to the importer, to show whether the eventual

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From time immemorial the clause regarding "duty in kind" has been interpreted and acted upon by the Customs Authorities by their taking one in ten of each article, from any parcel of similar articles, and giving a customs clearance, free of further payment in cash or kind, to cover the entry of the remaining nine-tenths articles. What was done with the "duty in kind" articles was regarded by the Authorities and the Public as of no concern to the importer. These articles were presumably sold by the Customs Dept., which at no time and in no case that we can trace, ever rendered any account to the importer, to show whether the eventual

cash proceeds of sale, of the "duty in kind" articles, realised more or less money than would have been assessed upon the parcel as a whole for duty payable in cash. If the Customs Dept. realised on the sale more cash than would have sufficed to pay 10% ad valorem on the whole parcel, it made no refund of surplus cash to the importer of the goods. If it realised less, no claim was made on the importer to pay the difference in cash.

It will be noticed that if the goods taken as "duty in kind" realised precisely the same amount of money as would have been payable on the whole parcel for "duty in cash", the result would be that the 90 per cent of the shipment, thus "duty paid", had in reality borne duty at a rate of $11\frac{1}{3}\%$ per cent ad valorem, i.e., $1\frac{1}{3}\%$ per cent in excess of the 10 per cent ad valorem rate legally assessable for duty to cash.

In the early months of the present year, the Mombasa Customs appear to have found that as a result of the general fall in the selling value of merchandise, the moneys that they were realising on sale of "duty in kind" goods were falling short of the cash that the Customs would have received had import duties been levied in cash only, at the legal rate of 10 per cent ad valorem. The Kenya Colony Government thereupon enacted an Amending Ordinance, depriving the importer of his previous option to pay import duty "in kind". Against the right of the local Government to amend the law no objection can, of course, be sustained, nor is any such objection advanced.

But the Customs Dept., as an administrative matter, went further than to procure the alteration of the Law, and served upon various importers, including this Corporation, demand notes in respect of goods that had previously been imported and cleared through Customs prior to the alteration of the Law, these demands being for payment in cash of the difference between the moneys that the Customs had realised on sale of goods previously accepted (under the old Law) for "duty in kind", and the moneys that

cash proceeds of sale, of the "duty in kind" articles, realised more or less money than would have been assessed upon the parcel as a whole for duty payable in cash. If the Customs Dept. realised on the sale more cash than would have sufficed to pay 10% ad valorem on the whole parcel, it made no refund of surplus cash to the importer of the goods. If it realised less, no claim was made on the importer to pay the difference in cash.

It will be noticed that if the goods taken as "duty in kind" realised precisely the same amount of money as would have been assessable on the whole parcel for "duty in cash", the result would be that the 90 per cent of the shipment, thus "duty paid", had in reality borne duty at a rate of $11\frac{1}{9}$ per cent ad valorem, i.e., $\frac{1}{9}$ th per cent in excess of the 10 per cent ad valorem rate legally assessable for duty in cash.

In the early months of the present year, the Bombay Customs appear to have found that as a result of the general fall in the selling value of merchandise, the moneys that they were realising on sale of "duty in kind" goods were falling short of the cash that the Customs would have received had import duties been levied in cash only, at the legal rate of 10 per cent ad valorem. The Kenya Colony Government thereupon enacted an Amending Ordinance, depriving the importer of his previous option to pay import duty "in kind". Against the right of the local Government to amend the law no objection can, of course, be sustained, nor is any such objection advanced.

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would have been payable on the relative shipments for "duty in kind".

This action, as it appears to us, is tantamount to giving retrospective effect to the new Law, and is, in effect, a claim by the local Government to destroy, for as many years in retrospect as it pleases, the facility of "duty in kind" conferred upon importers by the old Law.

It is clear that in most instances, merchandise that had already paid customs duty "in kind", and that is several months later assessed to an additional payment in cash, has generally already passed into consumption. The buyers, re-buyers, and ultimate consumers, cannot be followed up by the importers to retrieve these extra assessments. Thus the entire burden of the extra assessments must fall upon the original importers.

We are informed of an instance in which the original importer paid his "duty in kind" on import of a parcel of goods in September 1920. The Customs accepted one tenth of his goods and cleared the remaining nine tenths. The Customs held the one tenth part - i. e., the "duty in kind" goods, for three or four months, (presumably hoping for a rise in selling price) and then sold the goods on a greatly reduced market level. After another month or two, the Customs assessed the original importer with a demand for a heavy cash difference. We are informed that the arrear assessments made against that particular importer amount to as much as £2,000, yet he was given no inkling whatever, when he imported and paid his "duty in kind", that any such claims would be made.

In our own case, several of these arrear claims have been made against us. We attach copy of Customs Dept. letter of 6th April 1921 for illustration. On receipt of this, our General Manager at Novorosa asked for time to be given while the legality of the proceeding could be enquired into. The general matter, we understand, was brought to your notice by the London Chamber of Commerce some months ago.

We are now in receipt of cable from our General Manager

at London (7th July) reporting that the Customs authorities demand immediate payment of these retrospective claims, coupled with threat that if not paid, they will refuse entry of our further merchandise under the present arrangements.

We accordingly beg to call for your protection, and venture to hope that you may see your way to deal with the matter by cable. We would also wish to be informed, at earliest possible moment, of your decision in the matter.

We have the honour to be,

Sir,

Your obedient servants,

ROYAL MAIL AIRMAIL ASSOCIATION, LIMITED.

J. P. Gaskell
Secretary.

H/M

at London (Vib. July) reporting that the Customs Authorities demand immediate payment of these retrospective claims, coupled with threat that if not paid, they will reduce duty of our further merchandise entering into the country.

On 10/11/33 we had the your protection, and venture to suggest you may see your way to deal with the matter by cable. You will also wish to be informed, at earliest possible moment, of your duties in the matter.

We have the honor to be,

Sir,

Your obedient servants,

BEVIN EAST AFRICA CORPORATION, LIMITED.

J. Pressland
Secretary.

W. H.

Memorandum (7th. July) reporting that the customs authorities demand immediate payment of these retrospective claims, coupled with threat that if not paid, they will refuse entry of our further merchandise shipments into the country.

We confidently beg to ask for your protection, and venture to hope that you may see your way to deal with the matter by cable. May we also ask to be informed, at earliest possible moment, of your decision in the matter.

We have the honour to be,

Sir,

Your obedient servants,

BRITISH EAST AFRICA CORPORATION, LIMITED.

J. Prussland
Secretary.

EAST AFRICA PROTECTORATE
AN ORDINANCE.

443

No. 1 of 1910.

To amend the Customs Ordinance 1904.

Title

(January 20th. 1910).

Date.

BE it enacted by the Governor of the East Africa Protectorate
with the advice and consent of the Legislative Council thereof:-

1. This Ordinance may be cited as "The Customs Tariff
Ordinance 1909.

Short
Title.

2. On and after the publication of this Ordinance there
shall be raised, levied, collected and paid unto His Majesty,
his heirs and successors for the use of the Government of the
East Africa Protectorate upon goods imported into and exported
from the East Africa Protectorate, the several duties of
customs as the same are respectively inserted, described and
set forth in the 1st. and 2nd. Tables of duties of customs to
this Ordinance annexed.

Customs
duties
levi-
able.

Provided that

Proviso.

(1) It shall be lawful for the importer or exporter
if he so desire to pay the import or export duty
leviable on goods imported or exported by him in
kind, if the nature of such goods permit of such
payment.

(2) Goods received in payment of duty shall be sold
by public auction or otherwise disposed of as
the Chief of Customs shall direct and the sum re-
ceived therefor credited to the revenue of the
Protectorate.

3. The goods enumerated and described in the 3rd. table to Goods
this Ordinance annexed shall and may be imported free of duty. exempt
from
import
duty.

4. (1) The value of goods upon which duty is leviable
ad valorem shall, for the purposes of this
Ordinance, be deemed to be the cash price for
which the goods are capable of being sold in
the Customs House without profit or loss to
the importer or exporter at the time and place
of importation or exportation, as the case
may be, without any abatement or deduction
whatever, except (in the case of goods im-
ported) of the amount of duties payable on
the importation thereof.

Defi-
nition

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Customs duties leviable.

Provided that

Provided.

(1) It shall be lawful for the importer or exporter if he so desire to pay the import or export duty leviable on goods imported or exported by him in kind, if the nature of such goods permit of such payment.

(2) Goods received in payment of duty shall be sold by public auction or otherwise disposed of as the Chief of Customs shall direct and the sum received therefor credited to the revenue of the Protectorate.

3. The goods enumerated and described in the 3rd. table to this Ordinance annexed shall and may be imported free of duty.

Goods exempt from import duty.

4. (1) The value of goods upon which duty is leviable ad valorem shall, for the purposes of this Ordinance, be deemed to be the cash price for which the goods are capable of being sold in the Customs House without profit or loss to the importer or exporter at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of duties payable on the importation thereof.

Definition

(2) The Chief of Customs may, with the approval of the Governor fix a scale or scales of percentages to be added to the first cost of goods to be valued to cover any charges which should be taken into consideration in estimating the cost at which such goods can be delivered at the place of importation and which are difficult to ascertain.

444

5. Section 2 and Schedules A and B of the Customs Ordinance 1904, Section 9 of the Customs Regulations 1890, and sections 6 and 7 of the East Africa Liquor Ordinance 1902, are hereby repealed.

Repeal

TABLE I.

Table of Import Duties.

On distilled liquors (other than drugs and medicines imported for bona fide medical purposes) Eau de Cologne and lavender water, per gallon at 50 degrees of the Gay Lussac alcoholometer at a temperature of 15 degrees centigrade Rs. 5.
the duty to be augmented proportionately for each degree above 50 degrees and diminished proportionately for each degree below 50 degrees.

On all other goods of every description not being specially exempted in the 3rd. table to this Ordinance an ad valorem duty at the rate of ten per cent.

TABLE II.

Table of Export Duties.

TABLE III.

Table of Exemptions from Import Duties.

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The Chief of Customs may, with the approval of the Governor, issue orders for the detention of goods to be valued for duty and for which should be taken into consideration in arriving the cost at which such goods can be delivered at the place of importation and which are liable to drawback.

Regal

Section 2 and Schedule 2 and 3 of the Customs

Amendment Act, 1904, Section 2 of the Customs Amendment Act, 1900

and sections 7 and 7 of the Chief Justice's Ordinance

1905, the Customs Act, 1905

Table of Import Duties

of various goods (of all kinds) and medicines imported for home use (medical purposes) from the Colonies and foreign waters, per gallon or 100 degrees of the 60° standard alcoholometer at a temperature of 15 degrees centigrade. The duty to be levied is proportional to the duty to be levied on unadmitted spirits for each degree below 60 degrees.

In all cases goods of every description not herein specially exempted in the said Table of Import Duties shall be liable to duty at the rate of 10 per cent.

TABLE II

Table of Import Duties

TABLE III

Table of Exemption from Import Duties

COPY.

R.N. Customs,
Mombasa, P.O. Box 61,

445

6th. APRIL, 1921.

Dear Sirs,

S.S. "Students" & Europe 21.1.21. Import Duty
Entry No. 214 of 3.2.21.

440 packages Oil etc.

I am directed by the Commissioner of Customs to acknowledge the receipt of your letter of the 30th. ultimo, covering invoices in respect of the above entry, and to call upon you to forward to this office the sum of £12.1.60 being the difference between the amount of duty to which the goods were liable, and the amount realized at public auction by the sale of the goods delivered by you as duty in kind.

Particulars are shown below -

Goods.	Value C.I.F. C	Duty.	Duty in Kind.	Amount realized ed by sale.
400 drums Lined Oil	£2020.0.00	£202.0.00	42 drums	£202.0.00
20 drums reduced Turpentine	£42.4.42	£4.2.44	2 drums	£4.0.00
20 drums Turpentine substitute	£31.0.75	<u>£3.1.07</u>	2 drums	<u>£4.0.00</u>
Total		£108.3.60		£96.2.00
Deduct amt. realized.		<u>96.2.00</u>		
Balance of duty due		<u>£12.1.60</u>		

I am, dear Sirs,
Your obedient Servant,

(Sgd) G. D. Kirsopp,

Collector of Customs.

Messrs. The E. R. A. Corporation Ltd.,
MOMBASA.

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18 July

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Mr. W. W. W.

- Mr. G. G.
- U. Lambert
- Mr. H. Road
- Mr. G. Fisher
- Col. Bury
- Lord Palmer

2 sheets

Roughlee

