

RAJA OF
RAMNAD
v.
KAMID
ROWTHEN.
LORD
DUNEDIN.

in India. They will humbly advise His Majesty to issue an order in accordance with these views.

Solicitors for appellant: *Chapman-Walker and Shephard.*

Solicitor for respondent: *H. S. L. Polak.*

A.M.T.

PRIVY COUNCIL. *

1906,
January 28.

HAJEE SHAKOOR GANI, SINCE DECEASED (DEFENDANT)

v.

T. S. SABAPATHI PILLAI (PLAINTIFF).

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE
AT MADRAS.]

Indian Tariff Act (VIII of 1894), sec. 10, amended by Act IV of 1916—Sale of imported sugar—Subsequent decrease of tariff value—"Duty of customs."

The notification under Act IV of 1916, section 3, sub-section (2) of a decrease in the "tariff value" of an article is not a decrease in the "duty of customs" within the meaning of section 10 of Act VIII of 1894 so as to entitle the buyer under that section to a reduction of an equivalent part from the price which he has contracted to pay. *Probhudas v. Ganidada*, (1925) I.L.R., 52 Calc., 644 (P.C.); 52 I.A., 196, followed.

Judgment of the High Court (I.L.R., 47 Mad., 222) reversed.

APPEAL (No. 118 of 1924) from a decree of the High Court in its Appellate Jurisdiction (September 12, 1923) affirming a decree of that Court in its Original Jurisdiction (August 14, 1923). Between December 14 and 19, 1922, the respondent under five written contracts bought from the appellant, since deceased, a large

* Present: VISCOUNT DUNEDIN, Mr AMEER AGI and Sir ARTHUR CHANNELL.

quantity of Java sugar out of a consignment then shortly expected to arrive in Madras, at certain rates for delivery in Madras "ex-godown." On December 22, 1922, a notification was issued by the Governor-General in Council under Act IV of 1916 whereby the tariff value of sugar was reduced from Rs. 26-4-0 to Rs. 16-4-0 per cwt. The ship did not arrive at Madras until December 31, 1922. The effect of the notification was that the appellant paid for duty upon the sugar sold to the respondent Rs. 10,625 less than he would have had to pay if the delivery had taken place before the alteration of tariff value. The respondent claimed to deduct that amount from the contract price, as being a reduction in the "duty of customs" within the meaning of section 10 of the Indian Tariff Act (VIII of 1894). Having to pay the full price in order to obtain delivery he brought a suit in the High Court to recover Rs. 10,625.

The trial Judge (COURTS TROTTER, J.) made a decree in favour of the plaintiff, and that decree was affirmed on appeal by SCHWABE, C.J., and KRISHNAN, J. The appeal is reported in I.L.R., 47 Mad., 222.

Sir G. Lowndes, K.C., and *E. B. Raikes* for the appellant.—The decision of the Judicial Committee in *Probhudas v. Ganidada*(1) is conclusive in the appellant's favour. Upon the argument of that appeal, the decision now under appeal was cited to the Board.

E. L. Thornton for the respondent.—The decision in *Probhudas v. Ganidada*(1) is distinguishable. The judgment there was based upon the fact that both parties to the contract knew that there would be a decrease of tariff which would affect the sum payable for duty. In the present case it was anticipated that

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the ship would arrive before the notification was made, and the parties contracted on that basis.

Sir G. Lowndes, K.C., in reply.—In *Probhudas's* case (1) it was held in terms that a change in tariff value was not a change in the duty within section 10 of Act VIII of 1894. In the absence therefore of an express provision in the contract the respondent was entitled to no deduction.

VISCOUNT
DUNEDIN.

The JUDGMENT of their Lordships was delivered by VISCOUNT DUNEDIN.—Their Lordships are of opinion that this case is clearly governed by the judgment of their Lordships' Board in *Probhudas v. Ganidada*(1).

They will, therefore, humbly advise His Majesty that the appeal should be allowed, the decrees of both Courts below set aside, and judgment entered for the appellant with costs here and in the Courts below.

Solicitors for appellant: *T. U. Wilson & Co.*

Solicitors for respondent: *B. A. Newton.*

A M.T.

(1) (1925) I.L.R., 52 Calc., 644 (P.C.); 52 I.A., 196.