

*Privy Council Appeal No. 168 of 1924.*

Probhudas - - - - - *Appellant*

*v.*

Ganidada - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 27TH MARCH, 1925.

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*Present at the Hearing :*

LORD SHAW.

LORD CARSON.

LORD BLANESBURGH.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

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The Courts below agreed. The question which arises has reference to the taxation upon sugar and the point involved is represented to be of very great general importance to all mercantile communities in India which deal with that article.

Their Lordships are satisfied that both the Courts below have come to a just conclusion.

From the documents produced with the stated case it is clear that the subject of sugar taxation, and particularly the methods of its imposition, have been for some time a matter of concern to the dealers in the article and of communication with the Government of India.

It is to be noted that in 1911 a letter was addressed by the Under Secretary to the Indian Government Department of Commerce and Industry to the Secretary of the Bengal Chamber of Commerce at Calcutta. The letter noted previous correspondence and in particular that it had been represented by the Karachi Chamber of Commerce supported by the Bengal and Bombay

Chambers of Commerce that reconsideration should be given to the then existing system. "It was represented" says Mr. Irwin's letter, "that, in the opinion of the Bengal Chamber of Commerce, the present system of fixing the tariff valuation of sugar, under which merchants have to make forward contracts in ignorance of the tariff value, was unsatisfactory, and that there was a strong and unanimous feeling amongst importers that the present system should be changed."

This request was acceded to. It was intimated that the Government of India had decided to fix the tariff valuation of sugar on the average price of one year from 1st October to 30th September. It was added that the necessary instructions would be issued to the Director-General of Commercial Intelligence to publish as early as possible a statement giving the information already available for the current year. In result, accordingly, monthly statements of average value per maund were issued and published in the Gazette and the definite Government value of sugar struck on the average prices calculated on the monthly returns as there described was to be fixed and officially intimated.

On the 21st October, 1922, the supplement to the Gazette of India contained the notification, the effect of which is in question in this case. It notified that "returns have been received from October, 1921, and the average value of Java 23 Dutch Standard and above for the 12 months October, 1921, to September, 1922, is notified below." The average nett value per cwt. is stated as Rs. 16 annas 4. There is then added the following:—

"The tariff valuation of sugar for each calendar year is fixed on the average nett market price ruling during the previous 12 months ending September. The above statistics are published in order to enable merchants to determine the probable tariff valuation of the next calendar year."

From that date forward accordingly merchants were notified of the probable tariff valuation, and the object aimed at by the Chamber of Commerce in providing the convenience to merchants in making forward contracts was thus secured. There had been great variations of prices and the intimated tariff valuation of Rs. 16 annas 4 was a reduction by Rs. 10 from its former figure of Rs. 26 annas 4. By a notification dated 23rd December, 1922, issued by the Government of India the reduction—which had thus been in October anticipated as probable—took place; the tariff valuation of imported sugar was reduced as stated with effect from the 1st January, 1923. It was admitted in the High Court by counsel for the appellant that the appellant must have had information of the notification of the previous October, and it seems out of the question to suggest that the contracts for sugar made in the succeeding December were not made by both well-known merchants in view of that published fact.

These contracts were made on the 15th and 18th December, 1922, the former for 237½ tons of white Java sugar and the latter for 225 tons of the same article, the goods to be delivered ex

Godown S.S "Calcutta." The goods arrived in January under the first contract, and in January, February and March under the second, and they were settled and paid for between the parties. A question possible in the case was as to whether the transactions were not thereby definitely closed; but the point has not been raised in view of the importance of the other matter now to be alluded to.

The buyer claims, in this litigation, a right to deduct, as against the seller, from the prices paid by him, the equivalent of a decrease of duty. The Government duty as such has not been decreased, but the buyer claims that it has constructively been decreased because, as the duty was fixed upon the basis of a tariff valuation and that tariff valuation has been reduced, therefore—such is the argument—he must take the same duty applied to a smaller tariff valuation, and so constructively reckon that there is a decreased duty upon the goods sold.

Their Lordships agree with the Courts below in holding that there is no justification for such an operation.

The contention depends upon the provisions of Section 10 of the Indian Tariff Act VII of 1894. The material part thereof, as amended by subsequent Acts, is as follows:—

"In the event of any duty of customs on any article being decreased after the making of any contract . . . for the sale of such article duty paid where duty was chargeable at that time—

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(b) if such decrease so takes effect that the decreased duty only is paid the purchaser may deduct as much from the contract price as will be equivalent to the decrease of duty and he shall not be liable to pay or be sued for or in respect of such deduction."

So far in regard to "duty."

With regard to the other topic as to tariff valuation, that is dealt with by the Indian Tariff Amendment Act IV of 1916, in the following terms:—

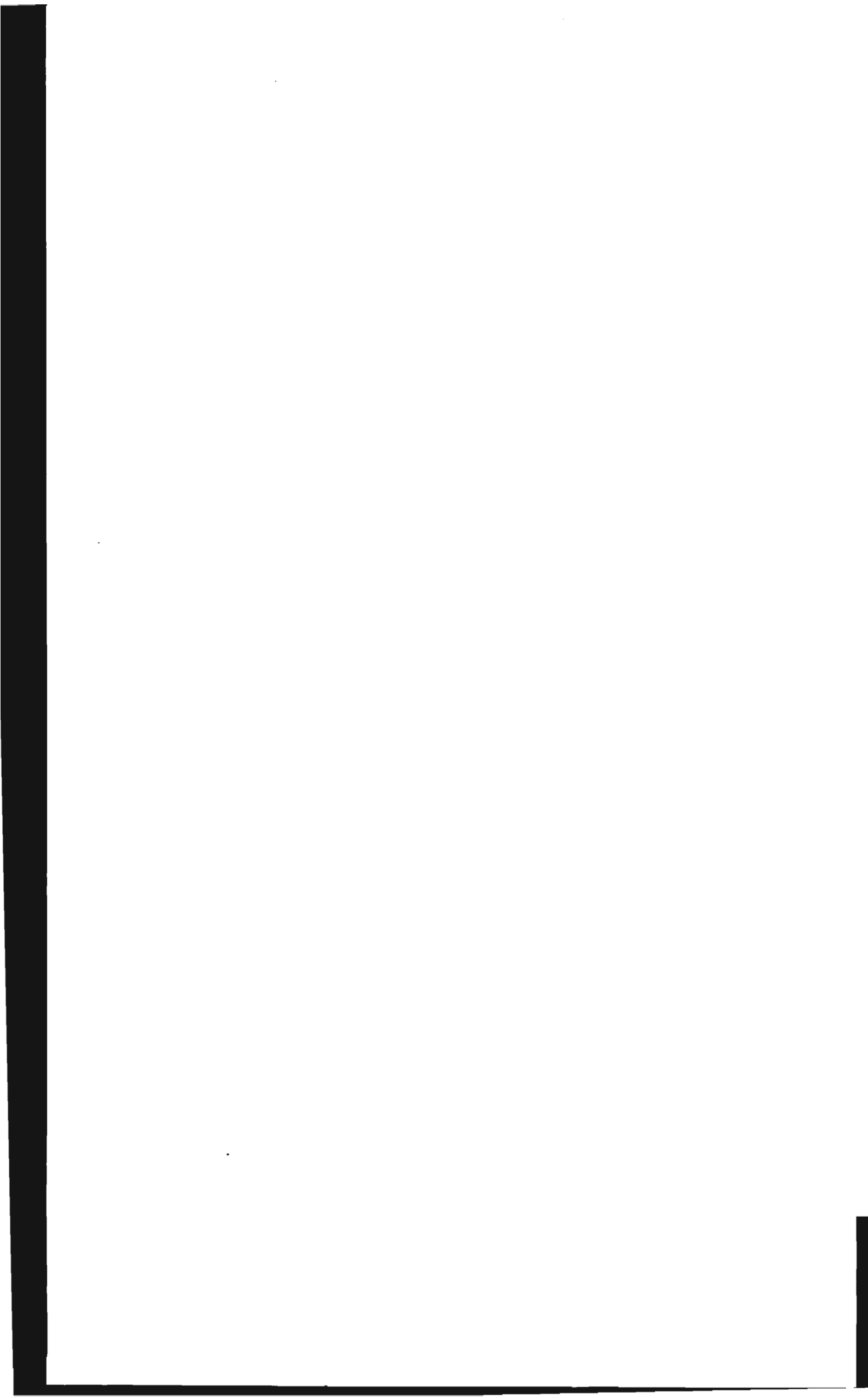
"3. (2) The Governor-General in Council may by notification in the Gazette of India fix for the purpose of levying the said duties, tariff values of any articles enumerated either specifically or under general headings in the said schedules as chargeable with duty *ad valorem* and may alter any tariff values for the time being in force."

These citations are made in order to show that the tariff values and their taxation are, of course, totally different from the duties and their levying. The former is matter of intelligent anticipation, based upon such knowledge of price variations as was available, and the desire for this knowledge was acquiesced in by the Government of India for the convenience of merchants. Their Lordships do not doubt that that convenience occurred in the present instance. The tariff value basis being thus anticipated, contracts are made; and, when the duty is not changed, these contracts take stock of the position with complete accuracy and there is no occasion in reason for any subsequent re-adjustment as between buyer and seller. But "duties" are in a

different position. Their rate remains the subject of Government and administrative action. The parties who make forward contracts are not apprised of such changes, but have to wait for budget announcements. It is in this latter case that the Indian Act comes in to declare (to keep to the case in hand) that a change in the duty by decrease, the duty having been imposed between the making of the contract and the delivery of the goods, may be the ground of a claim by the buyer.

A change of duty means a change in the rate of duty. Their Lordships are of opinion that, there having been no change whatsoever in the rate of duty in the present case, the contention that a change of tariff values of sugar is constructively a change in the sugar duty is without justification. The rate of duty was not reduced. But suppose—to test the matter—suppose that the rate of duty had been reduced, and that the tariff values had also been reduced, the buyer would, then, be claiming two different reductions, one in respect of actual duty and a second in respect of a constructively reckoned duty. The Act could not mean that. To bring in tariff values into the question of increase or reduction of sugar duties, is to introduce an improper and confusing element into the construction of the taxing Act.

Their Lordships will humbly advise His Majesty that the appeal should be disallowed with costs.



In the Privy Council.

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PROBHUDAS

vs.

GANIDADA.

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DELIVERED BY LORD SHAW.

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