

1963
Febr. 12,
1964
Oct. 15

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDIS, MUNIR AND
JOSEPHIDES, JJ.]

—
THE DIRECTOR
OF THE
DEPARTMENT
OF CUSTOMS
AND EXCISE
v.
CHRISTOS A.
KERAVNOS

IN THE MATTER OF ARTICLE 144 OF THE CONSTITUTION

and

IN THE MATTER OF A REFERENCE BY THE DISTRICT
COURT OF FAMAGUSTA IN CRIMINAL CASE No.
3626/62, ENTITLED :

THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS
AND EXCISE,

v.

CHRISTOS A. KERAVNOS,

Accused.

(Case No. 5/63)

Constitutional Law—Customs Management Law, Cap. 315—Not a “ law imposing duties or taxes ” in the sense of Article 188.2 of the Constitution—Application of section 155 (1) of Cap. 315 (supra) not amounting, in the circumstances, to imposition of retrospective taxation, and, therefore, not contrary to Article 24 of the Constitution.

This is a reference under Article 144 of the Constitution made by the District Court of Famagusta in Criminal Case No. 3626/62, instituted by the Director of Customs and Excise against the accused for failing to pay customs duty, which had been shortlevied upon the importation of goods, contrary to sections 155 (1), 211 and 220 of the Customs Management Law, Cap. 315.

The prosecution was instituted on the 13th July, 1962, and when the matter came up before the District Court, counsel for the accused raised the question of the constitutionality of the sections referred to in the charge-sheet, namely sections 211, 220 and 155 (1) of the Customs Management Law, Cap. 315.

The Articles of the Constitution which are referred to in the reference made to the Court are Articles 24, 78, 179 and 188 of the Constitution.

Article 24.3 provides : “ No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect :
Provided . . . ”

By the proviso to paragraph 2 of Article 188 of the Constitution "...any law imposing duties or taxes may continue to be in force until the 31st day of December 1960." The laws referred to in that proviso are laws in force on the date of the coming into operation of the Constitution (*i.e.* 16th August, 1960).

Held, (1) on examination of Articles 24, 78, 179 and 188 of the Constitution, it will be seen that the only relevant Article, in other words, the article of substance, is Article 24 of the Constitution.

(2) We fail to see how Articles 78, 179 and 188 can be directly material to the constitutionality of section 155 (1) of Cap. 315 so as to require consideration by this Court in this case.

(3) The Customs Management Law, Cap. 315, which, as its short title implies and as is clear from the contents of the Law and the wording of the long-title, "is a law relating to the management and regulation of customs", and is not in the opinion of this Court "a law imposing duties or taxes" in the sense of the proviso to paragraph 2 of Article 188 of the Constitution.

(4) The application of section 155 (1) does not impose retrospective taxation in the sense of Article 24 of the Constitution, paragraph 3 of which states—"No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect". Section 155 (1) merely enables the subsequent re-adjustment of a liability which accrued on the date of importation.

(5) Section 155 (1) of the Customs Management Law, Cap. 315 does not contravene Article 24 of the Constitution.

Order in terms.

Reference.

Reference under Article 144 of the Constitution of the question whether having regard to articles 24, 78, 179 and 188 of the Constitution sections 211, 220 and 155 (1) of the Customs Management Law, Cap. 315, are unconstitutional, made by the District Court of Famagusta, in Criminal Case No. 3626/62, instituted by the Director of Customs and Excise against the above accused for failing

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to pay customs duty short-levied contrary to sections 155 (1), 211 and 220 of the aforesaid Law Cap. 315.

No appearance for the accused.

K. C. Talarides, Counsel of the Republic, for the applicant.

The Judgment of the Court was delivered by :

MUNIR, J. : The decision of this Court is that section 155 (1) of the Customs Management Law, Cap. 315, is not unconstitutional, for the following reasons :

This reference has been made to this Court in proceedings in Criminal Case No. 3626/62, which was instituted in the District Court of Famagusta, whereby the accused was charged with the offence that, between the 4th May, 1961, and the 27th March, 1962, he failed to pay the demand made by the Comptroller of Customs, Famagusta, namely the sum of £69 as customs duty, shown on the charge-sheet of the case, which had been short-levied on the 20th March, 1960, upon the importation of the goods in question.

The prosecution was instituted on the 13th July, 1962, and when the matter came up before the District Court, Counsel for the accused raised the question of the constitutionality of the sections referred to in the charge-sheet, namely sections 211, 220 and 155 (1) of the Customs Management Law, Cap. 315. As has been stated, the only section which in the opinion of this Court is relevant to the determination of the issue before it, is section 155 (1). Sections 211 and 220 are such that no question of their constitutionality could arise by reference to the articles of the Constitution relied upon.

The articles of the Constitution which are referred to in the reference made to the Court are articles 24, 78, 179 and 188 of the Constitution.

On examination of these articles, it will be seen that the only relevant Article, in other words, the article of substance, is Article 24 of the Constitution. We fail to see how articles 78, 179 and 188 can be directly material to the constitutionality of section 155 (1) of Cap. 315 so as to require consideration by this Court in this case.

The Court has not had the benefit of hearing argument by counsel for the accused, who has informed the Registrar

for the first time this morning, that he is withdrawing from the case. On the other hand the Court was assisted by the argument of the learned Counsel for the Republic.

In the opinion of the Court, the Customs Management Law, Cap. 315, which, as its short title implies and as is clear from the contents of the Law and the wording of the long-title, "is a law relating to the management and regulation of customs", and is not in the opinion of this Court "a law imposing duties or taxes" in the sense of the proviso to paragraph 2 of Article 188 of the Constitution.

Counsel for the Republic has pointed out that this Law, was, in fact, amended by the House of Representatives during the period in which it was alleged, that other taxation legislation had expired by virtue of the proviso to paragraph 2 of Article 188. This fact is not, of course, conclusive but is, at any rate, an indication that the legislative organ of the Republic regarded the Customs Management Law as being in force at the relevant time for the reason that it was not "a law imposing duties or taxes." The legal position, as this Court sees it, is really quite clear. When the goods in question were imported on the 20th March, 1960, the liability to pay customs duty, which became due in accordance with the law in force on the 20th March, 1960, accrued and was crystallized on that date. Whatever the legal position was on that date continues to be the same on any subsequent date and to-day. In the view of this Court, as the position crystallized as on the date of importation and as section 155 (1) authorizes a revision of the assessment and the collection of the amount short-levied, the Court is of the opinion that the application of section 155 (1) does not impose retrospective taxation in the sense of Article 24 of the Constitution, paragraph 3 of which states—"No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect." Section 155 (1) merely enables the subsequent readjustment of a liability which accrued on the date of importation.

For these reasons, the Court is of the opinion that section 155 (1) of the Customs Management Law, Cap. 315 does not contravene Article 24 of the Constitution.

Order accordingly.

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