

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

PETROLINA CO. LTD.,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

(Case No. 116/63).

1965  
June 10, 28

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PETROLINA  
CO. LTD.  
*and*  
THE REPUBLIC  
OF CYPRUS,  
THROUGH THE  
MINISTER OF  
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*Administrative Law—Revenue—Import duty—Import duty on benzine drawn from bonded tanks—Payment of import duty of benzine drawn from bonded tanks of Applicants—Import duty, on quantities of benzine withdrawn from the bonded tanks of Applicants, should be calculated on the basis of the tariff prevailing when such quantities are actually withdrawn from the said bonded tanks and not on the basis of the tariff prevailing when they are stored therein—The Customs Management Law, Cap. 315 (Part V) and section 133(2) thereof, the Customs Tariff (Amendment) Law, 1963 and the Customs Management Regulations 1954-1959 (part V).*

On the 24th January, 1961, Applicants addressed a letter to the Minister of Finance asking that two of their tanks at Larnaca should be declared to be bonded warehouses for the purpose of enabling them to import benzine in larger quantities, place them in such tanks and then draw it from time to time in needed quantities which they would store in smaller tanks. It was stated therein that import duty would be payable at once on drawing the benzine from the tanks.

On the 12th January, 1962, the Ministry of Finance wrote to the Applicants a letter confirming that it was prepared to grant the permission for the establishment of private bonded warehouses, on certain conditions set out therein, including the following:

“Custom duty is paid in full as and when petrol is withdrawn from bonded tanks”.

At the end of December, 1962, Applicants imported

two quantities of benzine totalling about 2,000 tons and they stored them in these tanks which had been designated as bonded warehouses. At the time, the duty to be collected in respect of these two importations was written in separately on each entry for warehousing; it was calculated to amount in all to about £69,000.

On the 29th January, 1963, the Director of Customs informed Applicants that as on the 17th January, 1963, a Bill has been introduced in the House of Representatives, which eventually became Law, increasing the import duty on benzine, any duty payable in respect of benzine drawn, from the 18th January, 1963, from the bonded tanks of Applicants would have to be calculated on the new tariff in view of the provisions of section 133(2) of the Customs Management Law, Cap. 315, of Article 24(3) of the Constitution and the provisions of the new Customs Tariff Law in question (Law 12/63).

On the 5th February, 1963, Applicants replied that, as shown by the relevant entries which were made when the benzine was imported in bulk and stored in the bonded tanks, the duty payable had already been assessed and that, therefore, such duty could not be affected by any subsequent alteration of the tariff.

On the 8th February, 1963, the Director of Customs replied to Applicants that the assessments of duty originally made on importation were only made for the purpose of finding the accurate quantity of benzine warehoused in the bonded tanks, with a view to proper collection of duty at the time of clearance for home consumption and should not be taken as referring to the actual payments of duty to be made when benzine was to be withdrawn from the bonded tanks.

Counsel for Applicants has submitted that the arrangement reached in this Case amounts to an arrangement for deferring the payment of import duty, which fell due on the importation and storing of each quantity of benzine in the bonded tanks of Applicants and that, therefore, the rate of duty remained unaffected by any subsequent increase in the relevant tariff.

Counsel for Respondent on the contrary has argued that, as in the case of other goods placed in bonded warehouses,

the time for payment of the import duty, and the calculation thereof, is the time when benzine is drawn from the bonded tanks of Applicants for home consumption.

*Held*, 1. From the provisions of Cap. 315 (Part V) relating to licensed warehouses—and bonded warehouses are licensed warehouses—as well as from the relevant provisions of the Customs Management Regulations 1954-1959 (Part V) it is clear that goods in licensed warehouses are under customs control and, therefore, they are still to be used for home consumption as and when necessary; they may never be so used because they may be re-exported, and in such an eventuality no customs duty is payable in respect of the goods concerned.

2. As goods in licensed warehouses remain under customs control they are not deemed to have been “cleared” in the sense of Cap. 315 so long as they remain in such warehouses. In this respect the definition of “clearance” in section 2 of Cap. 315 is to be noted; it appears, therefore, that one of the main consequence of clearance is the removal of the goods concerned from customs control.

3. As under subsection (1) of section 133 the import duty is to be paid before “clearance” it follows that no import duty is due so long as goods are in licensed warehouses under customs control and not yet cleared, and, therefore, no question of finally assessing such duty for purposes of payment thereof arises. This takes place only before clearance and then, according to subsection (2) of section 133, the relevant Customs tariff is the one prevailing at the time.

4. What was made by means of the letter of the Ministry of Finance of the 12th January, 1962, was an arrangement through which—in accordance with the nature of bonded warehousing—no duty fell to be paid in respect of benzine imported in bulk by Applicants until and unless it was to be cleared for home consumption when withdrawn in smaller quantities for the purpose, from the bonded tanks in question. Then such duty became payable on the basis of the at the time prevailing Customs tariff.

*The Order :*

Respondent's sub judice decision should be confirmed

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and that this recourse should fail with costs which I assess at £20.- to be awarded against Applicants and in favour of Respondent.

*Recourse dismissed.*

### **Recourse.**

Recourse against the decision of Respondent in relation to the payment of import duty by applicants on Benzine drawn from bonded tanks as from the 18th January, 1963.

*G. Tornaritis* for the applicants.

*M. Spanos, counsel of the Republic,* for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this recourse the Applicants claim a declaration that the decision of Respondent, contained in a letter dated the 8th May, 1963, in relation to the payment of import duty on benzine drawn from bonded tanks as from the 18th January, 1963 is *null* and *void*.

The relevant facts are as follows:—

On the 24th January, 1961, Applicants addressed a letter to the Minister of Finance asking that two of their tanks at Larnaca should be declared to be bonded warehouses for the purpose of enabling them to import benzine in larger quantities, place them in such tanks and then draw it from time to time in needed quantities which they would store in smaller tanks. It was stated therein, (see paragraph 2) that import duty would be payable at once on drawing the benzine from the tanks. It was also added that what was really requested was the same arrangement as that which was being made in respect of other goods such as cigarettes, matches, coffee etc.

On the 12th January, 1962, the Ministry of Finance wrote to the Applicants a letter confirming that it was prepared to grant the permission for the establishment of private bonded warehouses, on certain conditions set out therein, including a paragraph (e) which reads as follows:—

“Custom duty is paid in full as and when petrol is with-

drawn from bonded tanks”.

At the end of December, 1962, Applicants imported two quantities of benzine totalling about 2,000 tons and they stored them in these tanks which had been designated as bonded warehouses. At the time, the duty to be collected in respect of these two importations was written in separately on each entry for warehousing; it was calculated to amount in all to about £69,000.

On the 29th January, 1963, the Director of Customs informed Applicants that as on the 17th January, 1963, a Bill had been introduced in the House of Representatives, which eventually became Law, increasing the import duty on benzine, any duty payable in respect of benzine drawn, from the 18th January, 1963, from the bonded tanks of Applicants would have to be calculated on the new tariff in view of the provisions of section 133(2) of the Customs Management Law, Cap. 315, of Article 24(3) of the Constitution and the provisions of the new Customs Tariff Law in question (Law 12/63).

On the 5th February, 1963, Applicants replied that, as shown by the relevant entries which were made when the benzine was imported in bulk and stored in the bonded tanks, the duty payable had already been assessed and that, therefore, such duty could not be affected by any subsequent alteration of the tariff. They referred in particular to paragraph (f) of the letter of the Ministry of Finance of the 12th January, 1962, which reads as follows—

“When the bonded tanks are completely emptied, Customs duty is calculated and finally paid on the value of the total quantity originally imported as ascertained at the time of the first assessment of Customs duty immediately after discharge, without making any other allowance for evaporation except those at present in force covering handling losses and evaporation...”.

On the 8th February, 1963, the Director of Customs replied to Applicants that the assessments of duty originally made on importation were only made for the purpose of finding the accurate quantity of benzine warehoused in the bonded tanks, with a view to proper collection of duty at the time of clearance for home consumption and should not be taken as referring to the actual payments of duty to be made when

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benzine was to be withdrawn from the bonded tanks.

There followed further correspondence during which the matter was put by counsel for Applicants before the Minister of Finance himself who eventually replied that he had come to the conclusion that the Department of Customs had acted properly in the matter.

Counsel for Applicants has submitted that the arrangement reached in this Case amounts to an arrangement for deferring the payment of import duty, which fell due on the importation and storing of each quantity of benzine in the bonded tanks of Applicants and that, therefore, the rate of duty remained unaffected by any subsequent increase in the relevant tariff.

Counsel for Respondent on the contrary has argued that, as in the case of other goods placed in bonded warehouses, the time for payment of the import duty, and the calculation thereof, is the time when benzine is drawn from the bonded tanks of Applicants for home consumption.

The basic document, in which the nature of the arrangement reached in this matter between Respondent and Applicants is to be sought, is the letter of the Ministry of Finance dated the 12th January, 1962, where are set out the conditions laid down in acceding to Applicants' request as contained in their own letter of the 24th January, 1961.

It is at once apparent that the tanks of the Applicants were licensed to be private bonded warehouses.

It is clear from paragraph (e) of such document, which has already been referred to, that customs duty is payable in full as and when petrol is withdrawn from the bonded tanks.

In my opinion such paragraph (e), when viewed in the whole context of the said letter of the 12th January, 1962, and in the light of the provisions of section 133(2) of the Customs Management Law, Cap. 315—which provides that duty is paid in accordance with the tariff in force at the time of its payment—leaves no room for doubt that the import duty on quantities of benzine withdrawn from the bonded tanks of Applicants should be calculated on the basis of the tariff prevailing when such quantities are actually withdrawn from the said bonded tanks and not on the basis of the tariff prevailing when they are stored therein.

Paragraph (f) of the aforesaid letter which has been relied

upon by Applicants in support of their case, does not in my opinion bear out their contention. In my opinion it was not meant at all to define the *time* of the payment and calculation of import duty but to lay down the basis on which duty will be paid, from the *quantity* point of view, on the benzine placed in the bonded tanks and withdrawn gradually. And once paragraph (f) is read in its true light then it becomes at once understandable why at the time of original importation of each bulk quantity the amount of import duty relating to the total of such quantity has been calculated and marked on the entry for warehousing; as envisaged in such paragraph (f) at the time of the importation a "first assessment" of duty is made on the total quantity imported. But in my opinion this is not meant to lay down, contrary to the clear effect of paragraph (e) of the said letter and of the relevant legislation—including section 133(2) of Cap. 315—that a subsequent decrease or increase in the relevant tariff is not to affect such assessment.

The view I have taken of the exact effect and meaning of the letter of the Ministry of Finance dated the 12th January, 1962, is fully consonant with the letter of Applicants dated the 24th January, 1961, by which they requested the arrangement in question. As already stated, in paragraph 2 of such letter it was recorded clearly that the import duty would be paid immediately on withdrawal from the tanks and it was explained that what was required was an arrangement of bonded warehousing enabling Applicants to import larger quantities of benzine by each shipment.

The arrangement confirmed by the letter of the Ministry of Finance of the 12th January, 1962, could only have been made and should, in any case, be applied in conformity with the existing legislation. Actually this is expressly mentioned in paragraph (i) of such letter; also by paragraph (1) thereof it is provided that compliance should be made with the provisions of the Customs Management Regulations relating to licensed warehouses.

Section 133 of Cap. 315 which has already been referred to in this judgment reads as follows:—

"133 (1). Save as provided in section 144, all Customs duties and charges shall be paid before clearance of the goods.

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(2). Subject to section 132, all Customs duties shall be paid in accordance with the tariff in force at the time such duties are paid to the proper officer.

Provided that in the case of all goods imported through the parcel post, Customs duties shall be paid in accordance with the tariff in force at the time when assessment of such duties is made by the proper officer at the Post Office.

(3). Cash deposits in respect of Customs duties payable on goods cleared for home consumption shall be regarded as Customs duty, subject to such final adjustment as each individual case may require.

(4). Notwithstanding the provisions of sub-section (2) if it shall be ascertained that the amount of the original cash deposit was insufficient to meet the charge of Customs duty, payment of the short charge so occurring shall be made in accordance with the tariff in force at the time of payment of the cash deposit, and any repayment to a depositor shall be similarly calculated".

Section 144, referred to in subsection (1), above, is not relevant to this Case at all

Counsel for Applicants has tried to rely rather on section 132 which reads as follows —

"132. The Governor in Council"—now the Government of the Republic—"may, at any time by Order, admit free of Customs duty, or at reduced rates of import duty, such goods as may be specified and under the conditions stated in such Order"

In my opinion, however, the letter of the Ministry of Finance, dated the 12th January, 1962, which embodies the arrangement in issue in this Case, cannot, because of its very nature and contents, be regarded as coming under section 132, above

As already indicated in this judgment, the combined effect of subsection (2) of section 133, which provides that the relevant tariff is the one prevailing at the time of payment of import duty, and of the express terms, contained in both the letter of Applicants of the 24th January, 1961, and the letter of the Ministry of Finance of the 12th January, 1962, to the effect that duty shall be paid when withdrawals are



made from the bonded tanks, leaves, in my opinion, no room for doubt that no question of deferring payment of duty, which had been *finally* assessed on importation, could arise in this Case, but that, as it is clear from both the said letters, this is an instance of bonded warehousing which postpones the payment and assessment of duty on imports until they are to be cleared for home consumption.

From the provisions of Cap. 315 (Part V) relating to licensed warehouses—and bonded warehouses are licensed warehouses—as well as from the relevant provisions of the Customs Management Regulations 1954-1959 (Part V) it is clear that goods in licensed warehouses are under customs control and, therefore, they are still to be used for home consumption as and when necessary; they may never be so used because they may be re-exported, and in such an eventuality no customs duty is payable in respect of the goods concerned.

As goods in licensed warehouses remain under customs control they are not deemed to have been “cleared” in the sense of Cap. 315 so long as they remain in such warehouses. In this respect the definition of “clearance” in section 2 of Cap. 315 is to be noted; it appears, therefrom, that one of the main consequence of clearance is the removal of the goods concerned from customs control.

As under subsection (1) of section 133 the import duty is to be paid before “clearance” it follows that no import duty is due so long as goods are in licensed warehouses under customs control and not yet cleared, and, therefore, no question of finally assessing such duty for purposes of payment thereof arises. This takes place only before clearance and then, according to subsection (2) of section 133, the relevant Customs tariff is the one prevailing at the time.

With all the above in mind it becomes even more obvious that what was made by means of the letter of the Ministry of Finance of the 12th January, 1962, was an arrangement through which—in accordance with the nature of bonded warehousing—no duty fell to be paid in respect of benzine imported in bulk by Applicants until and unless it was to be cleared for home consumption when withdrawn in smaller quantities, for the purpose, from the bonded tanks in question. Then such duty became payable on the basis of the at the time prevailing Customs tariff.

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In the light of all the foregoing I have reached the conclusion that Respondent's sub judice decision should be confirmed and that this recourse should fail with costs which I assess at £20.- to be awarded against Applicants and in favour of Respondent.

*Recourse dismissed with  
costs, assessed at £20.-.*