

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHR. DEMETRIADES & CO. LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE DIRECTOR
OF THE DEPARTMENT OF CUSTOMS AND EXCISE,

Respondent.

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& CO. LTD.

v.

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(DIRECTOR OF
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OF CUSTOMS
AND EXCISE)

(Case No. 50/67).

Customs—Customs duty—Classification of goods (infra) for purposes of customs duty—Relevant decision of the Respondent annulled on the grounds: (a) that the classification complained of was wrong by the very test applied by the Respondent; (b) that no attempt was made to apply section 140 (2) of the Customs Management Law, Cap. 315; and (c) that the reasons given for the aforesaid classification are not clear—See also infra.

Customs Duty—Classification of two delivery vans as passengers' cars under customs tariff item No. 732-01 and 732-04 (attracting 55% duty), instead of under item 732-03 (attracting 30% duty) in Part 1 of Schedule 2 to the Customs Tariff Law, 1961 (as amended by the Customs Tariff (Amendment) Law, 1963)—Sections 140 and 141(1) of the Customs Management Law, Cap. 315 (as amended by section 3 of the Customs Management Law, 1961)—See also supra.

The facts sufficiently appear in the judgment of the Court annulling the decision complained of. All relevant statutory provisions are fully set out post in the judgment.

Recourse.

Recourse against the decision of the Respondent to classify six Daihatsu Compagno delivery vans of Applicants as passengers' cars under customs tariff No. 732-01 and 732-04(c), instead of under customs tariff No. 732-03(b) of the Customs Tariff Law, Cap. 316.

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Ch. Loizou, for the Applicants.

Cl. Antoniadis, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:

STAVRINIDES, J.: By this application a company importing Japanese—made Daihatsu motor vehicles sought

“(a) declaration of the Honourable Court that the decision of the Respondent dated September 7, 1966, and reaffirmed on February 10, 1967, to classify four Daihatsu Compagno delivery vans DVF30 of the Applicants as passengers’ cars under customs tariff item No. 732-01 and 732-04(c) of Cap. 316 instead of customs tariff item No. 732-03(b) of Cap. 316 and collect from the Applicants import duty at the rate of 55% instead of 30% on their invoiced value is *null* and *void* and against the provisions of the Customs Laws;

(b) declaration of the Honourable Court that the decision of the Respondent dated February 2, 1967, to classify two Daihatsu Compagno delivery vans DVF30 of the Applicants as passengers’ cars under customs tariff item No. 732-01 and 732-04(c) of Cap. 316 instead of customs tariff item No. 732-03(b) of Cap. 316 and collect from the Applicants on February 2, 1967, import duty at the rate of 55% instead of 30% on their invoiced value is *null* and *void* and against the provisions of the Customs Laws”.

The application states that it is based on two grounds of law, viz. (i) that the above decisions “are wrong and against the provisions of Schedule 1 of the Customs Tariff Law, Cap. 316, items 732-01, 732-04(c) and 732-03(b)”; and (ii) that they amount to discrimination against the Applicants in view of the fact that Respondents classify similar cars of different other importers under customs tariff item No. 732-03(b) of Cap. 316 and collect from them import duty at the rate of 30% only on their “invoiced value”. When the decisions were taken “Cap. 316” was not in force, having been repealed and replaced by the Customs Tariff Law, 1961; and it is clear that the customs tariff items to which reference was intended

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are items 732-01/732-04 and 732-03 in Part I of Schedule 2 to the 1961 Law, as amended in respect of the former by the Customs Tariff (Amendment) Law, 3 of 1963. These items read:

“732-01/732-04 Passengers road motor vehicles, complete or chassis with engine mounted, other than buses or motor-cycles, as follows:

- (a) Vehicles specially designed for use as taxis, admitted as such by the Director of the Department of Customs.....
- (b) ‘Jeeps’, ‘land rovers’ and similar vehicles, admitted as such by the Director of the Department of Customs.....
- (c) Other.....

732-03 Buses, goods vehicles, transport vehicles, road motor tractors of the types intended for transport, motor vehicles of the ‘van’ type and other road motor vehicles, complete, not elsewhere specified, as follows:

- (a) Ambulances, Breakdown lorries, Fire-engines, Hearses, Road-sweeping vehicles, snow-ploughs, road-spraying vehicles, scavenging and similar public utility vehicles, Goods vehicles and vehicles of the ‘van’ type fitted with a body specially designed for the refrigerated carriage of foodstuffs, Battery-driven motor vehicles of the ‘van’ type, Dumper or tipper vehicles of a capacity not less than six cubic yards or, if of less capacity, having two-way steering or similar device for off-road haulage, New passenger buses with more than twelve places specially designed as such, admitted as such by the (Director of the Department of Customs).....
- (b) Other.....

The opposition also states that it is based on two grounds of law. The first was that in so far as para. (a) of the prayer for relief (hereafter “the prayer”) was concerned the application was out of time; the second was that “the decisions attacked were rightly and lawfully taken under s. 141(1) of the Customs

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Management Law, Cap. 315, and tariff item 732-01-04(c)". In the course of the hearing counsel for the Applicants admitted the validity of the first of these grounds; and taking, as I do, the same view of that ground, I confine myself to stating the fact and proceed to consider para. (b) of the prayer, involving the decision of February 2, 1967 (hereafter "the subject decision"), which relates to two vehicles (hereafter "the subject vehicles").

The Daihatsu company makes several models of motor vehicles, one being known as "the Compagno delivery van DVF30" (hereafter "the Compagno van") and another "the Compagno station wagon F30VD". It is common ground that the subject vehicles are identical, and at the commencement of the hearing I inspected a Daihatsu vehicle brought into the yard of the Court for the purpose by the Applicants and agreed by the parties to be one of those vehicles.

The subject decision was taken by Mr. Takis Christou, a Collector of Customs, who gave evidence for the Respondent (r.w.4) explaining it. On his chief examination he said:

" I inspected the (subject) vehicles and classified them as 'passenger motor vehicles' falling within (c) ('Other') of item 732-01/732-04 of Schedule 2 to the 1961 Law, as amended by Laws 3 of 1963, 12 of 1963, 37 of 1963, 80 of 1963, 69 of 1966. I did so because the inspection revealed that the vehicles could be readily converted into estate cars (another term for 'station wagon'): First, on each side there was a detachable metal panel, on removal of which a square gap with grooves for the fitting of glass panes was left; secondly, the vehicles were fully upholstered (roof and sides); thirdly, on the floor of these vehicles there was a channel for the fixing of seats. The channel would be inconvenient if the vehicles were intended for the carrying of goods, as it would interfere with the dragging of goods along the floor. An estate car is one which is used for the carrying of passengers and for the carrying of goods. I considered whether the vehicles should be regarded as estate cars 'in an un-assembled condition' within s. 141(1) of c. 315 or under s. 140 (2) (c). The roof of delivery vans is so high that a man may stand on their floor erect. Also the floor is higher from the ground than that of the vehicles in question, so that goods may be loaded and unloaded

more easily. Although, the vehicles could possibly be classified under item 732-03(b) because they are sometimes used as vans (all estate cars can be, and sometimes are, used as vans), yet they could be regarded more appropriately as estate cars 'in an unassembled condition' within s. 141(1) of c. 315. At any rate s. 140(3) was applicable and accordingly it was right to classify them under item 732-01/732-04(c). The future or possible use of the vehicles is irrelevant. In my view what matters is their 'condition' and the use for which the vehicles are fit. That is the test I apply".

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In answer to Mr. Loizou for the Applicants he said:

"In the condition in which (the Compagno van) is imported I regard it as a disguised estate car. It may, without any alteration, be used as a van, but it is not as fit for that purpose as a vehicle specially constructed and fitted for such use. An estate car may be used for the carriage of goods..... Without alteration neither of the subject vehicles could be used for the carriage of passengers unless they were to sit on the floor".

Later Mr. Loizou showed him a Daihatsu company folder (*exhibit 1A*) bearing, on a page marked by me "Page 1", three photographs, each depicting a motor vehicle, and asked him whether those vehicles "were not different from (the Compagno vans)", to which he replied:

"I agree the vehicles at p. 1 are estate cars. But I see no difference between them and the Compagno (vans) as converted by the fitting of panes and seats. In carrying out my classification I did not know whether the Compagno (van) was convertible as above. What I did have in mind was a letter from the police stating that it had come to their notice that motor vehicles were converted soon after their registration".

The third sentence of the last-quoted passage compares with Mr. Christou's statement on his chief examination that the reason why he classified the vehicles which he inspected on February 2, 1967, as "passenger motor vehicles falling within (c) ('Other') of items 732-01/732-04 of Schedule 2 to the 1961 Law as amended....." was "because the inspection revealed that the vehicles could be readily converted into estate cars" in the way that he went on to explain. This is a contradiction

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which, on careful consideration, appears to be merely verbal and not real. On his chief examination the witness was referring to an inspection and classification of the subject vehicles that he made on February 2, 1967. But it is common ground that four other Compagno vans had previously, on September 7, 1966, been classified for purposes of customs duty; and “my classification” in the passage from the witness’s examination by Mr. Loizou must be a reference to the classification of those other vehicles, which it appears Mr. Christou made without previously inspecting them but on the basis of the police letter to which he referred. The witness impressed me as a truthful one, and I rule out any intention on his part to mislead.

At the time of the subject decision ss. 140 and 141(1) of c. 315, having been amended by s. 3 of the Customs Management Law, 1961, ran as follows:

“ 140. (1) Goods shall, prima facie, be classified for the purposes of Customs duty in accordance with the classification set out in Part I of the Second Schedule to the Customs Tariff Law, or any Law amending or substituted for the same.

(2) Where for any reason, it is, in the opinion of the Principal Customs Officer, not clear under what item in Part I of the Second Schedule to the Customs Tariff Law any goods fall, such goods shall, subject to the provisions of this Law be classified by reference to the appropriate item in the Item Index to the Standard International Trade Classification and where it is not clear under which item thereof such goods shall be classified classification shall shall be effected as follows:—

- (a) the item of the Item Index aforesaid which provides the most specific description shall be preferred to items providing a more general description;
- (b) mixtures and composite goods which consist of different materials or are made up of different components and which cannot be classified in the manner specified in paragraph (a) of this subsection shall be classified as if they consisted of the material or component which gives the goods their essential character, in so far as this criterion is applicable;

- (c) goods not falling clearly within any item in accordance with paragraph (a) or (b) of this subsection shall be classified under the item which the Principal Customs Officer considers appropriate to the goods to which they are most akin.

(3) Where any goods cannot be classified in accordance with subsection (1) or subsection (2) of this section by virtue of the fact that they are or can be classified under two or more items of the Item Index to the Standard International Trade Classification with a resulting difference as to Customs duty, Customs duty shall be charged when it is a difference between liability to or freedom from duty, and the higher or highest of the Customs duties applicable shall be charged when it is a difference as to two or more Customs duties.

(4) In this section the expression 'Item Index to the Standard International Trade Classification' means the item index contained at pages 31 to 274 of the indexed edition of the Standard International Trade Classification, Series M. No. 10, published at New York in April, 1953, by the Statistical Office of the United Nations Organization and available for inspection at the offices of the Principal Customs Officer and the Director of Commerce and Industry, or any index amending or substituted for the same which the Principal Customs Officer may, by Order published in the Gazette, declare to be the 'Item Index to the Standard International Trade Classification' for the purpose of this Law.

141. (1) Where goods are imported in an unassembled condition then, notwithstanding that the parts thereof may be separately liable to, or be free from, customs duty, such goods shall, unless otherwise specified in the Customs Tariff Law, or any other law amending or substituted for the same, be chargeable with Customs duty at the rate applicable to the corresponding complete goods as if they had been imported in a fully assembled condition. The Principal Customs Officer may in his discretion apply the provisions of this section to any such parts imported separately".

Subsection 2 of the latter section is not quoted because it has no relevance to this case and has not been mentioned in the

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proceedings. From sub-s. (1) of the earlier section it follows that the reference in sub-s. (2) thereof and in s. 141(1) to “the Customs Tariff Law” must be construed as a reference to the Customs Tariff Law, 1961, as amended by Law 3 of 1963; and the reference to “Part 2 of the Second Schedule” as a reference to Part 2 of Schedule 2 to the former Law as amended by the latter.

Putting, as far as possible, Mr. Christou’s evidence explaining the subject decision in terms of ss. 140 and 141(1) of c. 315, it may be reduced to three propositions as follows:

1. The subject vehicles “could possibly be classified under item 732-03(b), because they are some times used as vans”.
2. But “they could be regarded more appropriately as estate cars ‘in an unassembled condition’ within s. 141(1)”.
3. “At any rate s. 140(3) was applicable, and accordingly it was right to classify them under item 732-01/732-04(c)”, and he so classified them.

Incidentally, no reference is made in the opposition—whether in the grounds of law or in the indorsement—to sub-s. (3) of s. 140; in both only sub-s. (1) is mentioned. However nothing need be made of that. Reverting now to Mr. Christou’s propositions, the first one implies that he proceeded beyond sub-s. (1) of s. 140 because in his opinion “it was not clear under what item of Part 2 of the Second Schedule” to c. 316, as amended, the subject vehicles fell. But once he was of that opinion the next thing for him to do was that directed by sub-s. (2), viz., “subject to the provisions” of c. 315 to classify the subject vehicles “by reference to the appropriate item in the Item Index to the Standard International Trade Classification”, and “where it was not clear under which item thereof such goods should be classified” to proceed as further directed by that subsection. Clearly para. (b) of that subsection was inapplicable, but the same is not true of either of the other paragraphs, and no reason has been given why neither of these has been applied. Nor is it clear how the application of sub-s. (3) led Mr. Christou to prefer item 732-01/732-04(c). As appears from the foregoing, on his chief examination he first said that he classified the subject vehicles under that item “because the inspection

revealed that (they) could be readily converted into estate cars”, but later he said that “the test he was applying” was the “condition” of the goods to be classified “and the use for which (they) are fit”, their “future or possible use being irrelevant”; then, in answer to Mr. Loizou, he said “In the condition in which (the Compagno van) is imported I regard it as a disguised estate car”. Further, since, on his own showing, the Compagno van, without alteration, could not be used as an estate car, but could be used as a van (although “it was not as fit for the (latter) purpose as a vehicle specially constructed and fitted for such use”), by his very test his classification was wrong.

For the reason just given the subject decision must be annulled. But, as appears from the foregoing, there are two more reasons for its annulment: (a) It does not appear that any attempt was made by Mr. Christou to apply sub-s. (2) of s. 140 and (b) because the reasons given for the subject decision are not, as they must be, clear.

In the circumstances, regarding the second of the grounds of law relied upon in the application it is enough to say that there is nothing in the evidence to support it.

For the Respondent it was sought to show that, with a view to evading payment of the import duty applicable to estate cars, which was higher than that payable in respect of “motor vehicles of the ‘van’ type”, the Applicants had adopted a practice whereby Daihatsu motor vehicles sold or intended to be sold by them for use (after conversion) as estate cars were imported by them in the shape of Compagno vans. On the other hand the Applicants put in, without objection, a certificate from the Daihatsu company (*exhibit 7*) which reads:

“ This is to certify that we manufacture (the Compagno van) as well as the Daihatsu Compagno (estate car)..... since 1963 and both above models are exported and circulated throughout the world, in exactly the same condition that are exported to Cyprus.

(The Compagno van) is manufactured and is intended to be used for the carriage of goods and not passengers. The fact that inside is covered with upholstery instead of any other material is due to economical and mass production reasons and it is common to many other types of vans manufactured by other factories”.

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Since there is undisputed evidence (given by a.w. 8 O. Demetriades) that the subject vehicles had been bought from the Applicants ex stock for use as delivery vans, and throughout the intervening period had always been so used, evidence relating to the other vehicles does not avail the Respondent.

In consequence of the annulment the customs authorities are to reconsider the classification of the subject vehicles in the light of this judgment.

The Respondent to pay the Applicants £20 costs.

*Sub judice decision annulled;
order for costs as above.*