1975
Dec. 8

ATTORNEY-GENERAL OF THE REPUBLIC (No. 2)

v.

ADAMSA LTD. THROUGH ITS TRUSTEE PHANOS IONIDES

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC (No. 2),

Appellant-Defendant,

v.

ADAMSA LTD., THROUGH ITS TRUSTEE PHANOS IONIDES,

Respondent-Plaintiff.

(Civil Appeal No. 5144).

Tobacco Law, Cap. 147 (as amended) sections 42(1) and 43 —Excise duty—Is levied, and is payable, at the time of the manufacture of the tobacco and not at the time of its removal for consumption—In the instant case such duty became due and payable, and it was so paid, under the said sections, when the banderoles were affixed on the boxes of cigarettes, which were the product of the manufacture of tobacco—Destruction or looting of such cigarettes whilst still in the factory due to intercommunal troubles—Republic has not enriched itself unduly and is under no obligation to refund the excise duty paid, as aforesaid.

Statutes—Taxing statute—Construction—Principles applicable —Construction of sections 42(1) and 43 of the Tobacco Law, Cap. 147 (as amended).

Words and Phrases—Excise duty—Meaning of.

Excise Duty—Manufacture of tobacco—When due and payable—Sections 42(1) and 43 of the Tobacco Law, Cap. 147 (as amended).

In the morning of December 21, 1963, 3252 okes of tobacco, which had been manufactured into cigarettes for local consumption, and which had been placed in boxes with the excise duty banderoles already affixed thereon, were stored in the factory of the respondent (plaintiff). The value of the banderoles was C£14.650.725 mils. Due to the intercommunal troubles the whole quantity of this tobacco was either destroyed or looted. In proceedings by the respondents, against the Republic,

for the refund of the value of the banderoles the trial Court proceeded to find that, as the excise duty, of which the payment was evidenced by the affixing of the banderoles on the boxes of cigarettes, was levied and paid before the removal of the manufactured tobacco from the factory, and as before such renewal the aforesaid quantity of manufactured tobacco had been destroyed or looted, the Republic had, in effect, collected the excise duty concerned before it had become due, and had, thus, enriched itself unduly, with the result that it had to refund the value of the banderoles, minus 5% in respect of the cost of printing them; consequently, judgment was given for C£13,956.195 mils in favour of the respondent. Hence the present appeal.

The outcome of this appeal depended mainly on the correct construction of section 42(1) of the Tobacco Law, Cap. 147, as amended by the Tobacco (Amendment) Law, 1961 (Law 2/61), re-enacted by the Taxation Laws (Re-enactment No. 1) Law, 1961 (Law 33/61), and amended by the Tobacco (Amendment) Law, 1963 (Law 49/63). The said section reads as follows:

"42(1) Subject to sub-section 2 there shall be levied and paid upon every oke of manufactured tobacco, manufactured for consumption in the Republic, an excise duty at the rate of four pounds, four hundred and forty-five mils".

The Court after reviewing the legislative history of the above Law which dates back to 1899 and after stating that section 42 has to be construed in accordance with the general principles of construction of statutes, as part of Cap. 147 as a whole, and in particular, in relation to the provisions most related thereto, namely sections 43 to 47 thereof, and having in mind the approach to the question of construction of a taxing statute as explained in, *inter alia, Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64 at p. 71,

Held, (1) In our view a correct construction of s. 42(1) of Cap. 147, in conjunction, in particular, with s. 43 of the same Law, in the form in which such provisions were applicable after the enactment of Laws 2/61, 33/61 and 49/63, requires us to find (notwith-

standing what has been described by counsel for the respondent as the moral aspect of the case) that excise duty was levied, and was payable, at the time of the manufacture of the tobacco, and not at the time of its removal from the factory for consumption.

(2) Thus, in the present case, such duty became due and payable, and it was so paid, under sections 42 and 43, when the banderoles were affixed on the boxes of cigarettes, which were the product of the manufacture of tobacco.

(3) In view of the above conclusion of ours it is inevitable to hold that there did not arise any question of the appellant Republic having enriched itself unduly, and being under an obligation to refund the excise duty paid by the respondent.

Appeal allowed.

Cases referred to:

Cape Brandy Syndicate v. *Inland Revenue Commissioners* [1921] 1 K.B. 64 at p. 71;

Canadian Eagle Oil Company, Ltd. v. *R. Selection Trust Ltd.*, v. *Devitt (Inspector of Taxes)* [1945] 2 All E.R. 499, 507;

Dianellos & Vergopoulos v. *The King's Advocate,* 13 C.L.R. 102 at pp. 102 - 104;

Goldsmiths' Company v. *Wyatt* [1904 - 1907] All E.R. Rep. 542 at pp. 545 - 546;

Littlewoods Mail Order Stores Ltd. v. *Inland Revenue Commissioners* [1961] Ch. 597 at pp. 632, 633.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannides, P.D.C. and Stylianides, Ag. P.D.C.) dated the 30th November, 1972 (Action No. 225/67) ordering the Republic to refund to the plaintiff company the sum of £13,956.195 mils received in the form of banderoles in respect of excise duty.

A. Frangos, Senior Counsel of the Republic, with *G. Constantinou, (Miss),* for the appellant.

G. Ladas, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : This is an appeal from the judgment of a Full District Court in Nicosia by means of which the Republic was ordered to refund to the respondent company, who is the successor in title of "Dianellos & Vergopoulos Ltd.", the amount of C£13, 956.195 mils, received in the form of payment for banderoles in respect of excise duty.

The salient admitted facts are that in the morning of December 21, 1963, 3252 okes of tobacco, which had been manufactured into cigarettes for local consumption, and which had been placed in boxes with the excise duty banderoles already affixed thereon, were stored in the factory of the respondent. The value of the banderoles was C£14,650.725 mils. Due to intercommunal troubles the whole quantity of this tobacco was either destroyed or looted; and the trial court proceeded to find (in determining an action brought in the matter by the respondent) that, as the excise duty, of which the payment was evidenced by the affixing of the banderoles on the boxes of cigarettes, was levied and paid before the removal of the manufactured tobacco from the factory, and as before such removal the aforesaid quantity of manufactured tobacco had been destroyed or looted, the Republic had, in effect, collected the excise duty concerned before it had become due, and had, thus, enriched itself unduly, with the result that it had to refund the value of the banderoles, minus 5% in respect of the cost of printing them; consequently, judgment was given for C£13,956. 195 mils in favour of the respondent.

The outcome of this appeal depends mainly on the correct construction of section 42 of the Tobacco Law, Cap. 147, as amended by the Tobacco (Amendment) Law, 1961 (Law 2/61), re-enacted by the Taxation Laws (Re-enactment No. 1) Law, 1961 (Law 33/61), and amended by the Tobacco (Amendment) Law, 1963, (Law 49/63).

We have, of course, not lost sight of the fact that section 42 has to be construed, in accordance with the general principles of construction of statutes, as part of Cap. 147 as a whole, and, in particular, in relation to the provisions most related thereto, namely sections 43 to 47 of Cap. 147.

There is no doubt that we are dealing with the construction of a taxing statute; and the approach to such a task has been explained in, *inter alia,* the case of *Cape Brandy Syndicate* v. *Inland Revenue Commissioners,* [1921] 1 K.B. 64, where Rowlatt J. stated the following (at p. 71) :-

> ".... It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The above view was approved by the House of Lords, in England, in *Canadian Eagle Oil Company, Ltd.* v. *R. Selection Trust, Ltd.* v. *Devitt (Inspector of Taxes),* [1945] 2 All E.R. 499, 507, and has been followed by our Supreme Court on more than one occasion.

It is useful to refer, at this stage, to section 42(1) as it was at the material time (because it is no longer in force now, having been repealed in the meantime); it read as follows :-

> "42(1) Subject to subsection 2"—(which is immaterial in this case)—"there shall be levied and paid upon every oke of manufactured tobacco, manufactured for consumption in the Republic, an excise duty at the rate of four pounds, four hundred and forty-five mils".

In 1899 the corresponding provision was section 23

of the Customs, Excise and Revenue Law, 1899 (Law 22/1899), which provided that:-

"23. Subject to the other provisions of this Law, in addition to the import duty or transport duty, there shall be levied and taken an excise duty of three shillings and six and a half copper piastres on every oke of tobacco manufactured in Cyprus whether manufactured into cigarettes or otherwise".

This provision was considered in *Dianellos & Vergopoulos* v. *The King's Advocate,* 13 C.L.R. 102, where it was stated (at pp. 102 - 104), that:-

"Before there was any special Cyprus legislation on the subject of tobacco excise, the defendants established a tobacco factory in Nicosia under the provisions of the Turkish Law 29 Safer, 1292. Under that law, several provisions of which are set out in the printed form of tobacco manufacture licence as issued to appellants' predecessor on 13th March, 1907, duty was paid by means of the purchase of banderolles to be affixed to the packages of manufactured tobacco (in the form of loose pipe tobacco or made up into cigarettes). The duty payable under that law was paid, it is argued, once and for all when the banderolles were bought. The issue, on sale, of a banderolle was a definite licence to put out from the factory so much manufactured tobacco as the banderolle (by the weight indicated on it) was good for, and all the manufacturer had to do was to see that the tobacco bore the banderolle before it left his factory. That is to say, although the Government might raise the rate of duty, the old banderolle would still be good for the same quantity of tobacco as formerly; the sale of banderolle being thus the issue for cash of an irrevocable licence with respect to the amount of tobacco it was expressed to cover.

The sale of the banderolle may have been the vital point of liability to duty under the Law of 12 Safer, but if it was, that is not the case now, for though the use of banderolle to denote duty is preserved in practice, the wording of Section 23 of Law 22 of 1899 (which, apart from alterations in rate of duty, is what we have to deal with) shows plainly

that, in the view I take of the nature of the duty now in force, any payment for banderolles could only be a general payment on account of what duty might thereafter become payable on manufacture, a payment made in the same way as but in respect of a different kind of liability from, that which was the case under the Turkish law, many of the provisions of which are kept alive by the current practice. Even if Government by its form of receipt on payment for banderolles purported to divest itself in advance of a right which might by virtue of an alteration in the law, accrue in the future, i.e., a right to duty at a higher rate, that would at best be a moral obligation only, and it is enough to say that I do not think any such moral obligation is implicit in the procedure followed, which is simply one of obvious convenience. The cardinal fact to be kept in mind in this case (it is perhaps covered by the issue framed on 15th June, 1923), is that what is now collected is a duty on the manufacture of tobacco, not a charge for the sale of licences. What attracts the duty is the fact of manufacture, and sub-section (3) shows when it is that that point is reached, namely when the tobacco has become capable of consumption. At this stage I may say (for a reason which will appear later) that the members of this Court, having visited the factory in question, consider that manufacture is complete at latest when the tobacco has left the drying room. Now if this is a duty on manufacture, as clearly from the wording the law it is, it does not become payable until manufacture takes place, and when manufacture does take place, the rate of duty to be paid is the rate in force at the time of manufacture, a rate which the Cyprus Legislature may and does alter from time to time. It is not necessary to decide how far the Law of 12 Safer is still in force; no one has suggested that the old charge for banderolles is payable as well as the new duty."

So, it was at that time clearly understood that the relevant excise duty was payable in relation to the manufacture of tobacco.

Then, there followed the enactment of the Tobacco

Law, 1932 (Law 40/32); sections 38 and 39 of this Law read as follows :-

"38. There shall be paid in the manner hereinafter provided upon every oke of manufactured tobacco consumption duty at the rate of eleven shillings.

39.(1) Consumption duty upon manufactured tobacco shall be paid by affixing thereon in the manner in this Law prescribed banderoles to be provided by the Collector of Customs upon the payment of the consumption duty represented thereby.

(2) The banderoles shall be in such form as the Comptroller may from time to time prescribe."

The above two sections were reproduced, in substantially identical terms, as sections 41 and 42 of the Tobacco Law, Cap. 170, in the 1949 Revised Edition of the Laws of Cyprus.

Cap. 170 was amended by the Tobacco (Amendment) Law, 1953 (Law 41/53); as a result two new sections, 41 and 42, replaced the till then existing sections 41 and 42; the new sections read as follows :-

"41. There shall be levied and paid upon every oke of manufactured tobacco, manufactured for consumption in the Colony, an excise duty at the rate of three pounds, two shillings and eight piastres.

42.(1) The evidence that excise duty has been paid upon tobacco manufactured in the Colony shall be the application thereto, in the manner prescribed, of banderoles provided by the Collector of Customs upon payment of the excise duty represented thereby.

(2) Banderoles shall be in such form as the Comptroller may from time to time prescribe."

Such sections became, eventually, sections 42 and 43, respectively, of the Tobacco Law, Cap. 147, in the 1959 Revised Edition of the Laws of Cyprus.

It is to be noted that, unlike the position in other similar statutes, there is no provision in Cap. 147, as regards the time at which the relevant excise duty is payable.

In interpreting section 42(1) of Cap. 147 (with which we are mainly concerned in this case) it is necessary to bear in mind the nature of "excise duty"; useful reference, in this respect, may be made to Jowitt's Dictionary of English Law (1959) p. 751, where it is stated that excise duty is a duty on certain commodities (such as spirits, malt, tobacco, etc.) charged in most cases on the manufacturer.

The trial court found that before the enactment of Law 41/53 excise duty was payable in respect of the manufacture of tobacco into cigarettes or other manufactured tobacco products, but that since 1953 stress was laid on *both manufacture and consumption*. It is in relation to this finding, on which the judgment of the trial court has been based, that the appellant mostly complains.

In reaching its conclusion the trial court found guidance in what it considered to be two statutes in *pari materia*, namely the Breweries Law, Cap. 129 (the relevant sections of which were sections 13 and 14) and the Intoxicating Liquor (Manufacture) Licensing Law, Cap. 140 (the relevant sections of which were sections 13 and 14).

What is a statute in *pari materia* is described in Odger's Construction of Deeds and Statutes, 5th ed. (at p. 332) as follows :-

> "In order to be available as a guide the prior statute must be in *pari materia—i.e.*, have relation to the same subject-matter as the Act under discussion. So we have to consider when is a statute said to be in *pari materia* with another? It is obviously wrong to say that a Customs Act stands in this relation, without more, to an Income Tax Act because they are both concerned with the collection of taxes or levies. 'Par' means not 'similar' or 'like' but 'identical' of 'the same'. The answer seems to be: Can the statutes alleged to be in *pari materia* with the statute in question fairly be said to form one system of legislation with it? A learned American judge has said that stautes are in *pari materia* which relate to the same person or thing, or to the same class of persons or things. When statutes are thus

connected (as in the case of the Rent Acts) or form a code (as in the case of a consolidation Act) they are 'to be taken together as forming one system and as interpreting and enforcing each other'. For instance, the Finance Acts of 1915 and 1916 were to be regarded as one Act."

and in Maxwell's Interpretation of Statutes, 12th ed. (at pp. 66, 67) as follows :-

"Statutes are said to be in *pari materia* when they deal with the same person or thing or class : it is not enough that they deal with a similar subject-matter. Section 1 of the Foreign Tribunals Evidence Act 1856 is in *pari materia* with section 5 of the Evidence by Commission Act 1843, for both deal with the obtaining of testimony, one for courts in the United Kingdom and the other for foreign courts. The Leasehold Property Repairs Act 1938 is in *pari materia* with that part of the Law of Property Act 1925 which deals with breaches of covenants to repair, but the 1925 property legislation is not in *pari materia* with the Rent Acts. The Town and Country Planning Act 1959 should be read in conjunction with the Town and Country Planning Act 1947, but not with the Housing Act 1957."

The trial court in deriving assistance from the corresponding provisions of Cap. 129 and Cap. 140 for the purpose of interpreting sections 42 and 43 of Cap. 147 relied on *Goldsmiths' Company* v. *Wyatt*, [1904-1907] All E.R. Rep. 542 where (at pp. 545 - 546) Farwell L.J. stated the following :-

".... The construction of this Act is important because, in our opinion, the principle laid down by Lord Mansfield in 1758 in *R.* v. *Loxdale* (1) is as sound now as it was then, and has often been acted upon by the courts—e.g., in *Smith* v. *Brown* (2) Lord Mansfield says (1 Burr. at p. 447) :-

(1) 97 E.R. 394.
(2) 24 L.T 808.

'Where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other'."

Counsel for the appellant has challenged the finding that Cap. 147, Cap. 129 and Cap. 140 are statutes in *pari materia;* but we do not think that for the purposes of this appeal we have to decide this issue; we are prepared to assume in favour of the respondent—without so deciding—that they are statutes in *pari materia*; in our view the correct legal position, in this respect, is that which was stated in *Littlewoods Mail Order Stores Ltd.* v. *Inland Revenue Commissioners,* [1961] Ch. 597, by Harman L.J. who, after having referred to the above dictum of Farwell L.J. in the *Goldsmiths'* case, said (at pp. 632, 633):-

> "Nevertheless, this must not be carried too far, and a reminder of that was given by Lord Simonds in his speech in *Fendoch Investment Trust Co.* v. *Inland Revenue Commissioners.* That was, it is true, an income tax case, but the words I think are general. Lord Simonds said: 'My Lords, I do no not doubt that, in construing the latest of a series of Acts dealing with the specific subject-matter, particularly where all such Acts are to be read as one, great weight should be attached to any scheme which can be seen in clear outline, and amendments in later Acts should, if possible, be construed consistently with that scheme. But this is a principle which can easily be pressed too far in the consideration of a body of legislation such as that now under review...'."

We, indeed, do not think that any safe guidance could be derived, in this case, from the contents of Caps. 127 and 140, even assuming that they could be somehow regarded as statutes in *pari materia* with Cap. 147; because in both of them there are to be found express provisions as regards the time when the relevant duty is payable, whereas no such provision exists in Cap. 147.

In our view a correct construction of section 42(1) of Cap. 147, in conjunction, in particular, with section 43 of the same Law in the form in which such provi-

sions were applicable after the enactment of Laws 2/61, 33/61 and 49/63, requires us to find (notwithstanding what has been described by counsel for the respondent as the moral aspect of the case) that excise duty was levied, and was payable, at the time of the manufacture of the tobacco, and not at the time of its removal from the factory for consumption; thus, in the present case, such duty became due and payable, and it was so paid, under sections 42 and 43, when the banderoles were affixed on the boxes of cigarettes, which were the product of the manufacture of tobacco.

In view of the above conclusion of ours it is inevitable to hold that there did not arise any question of the appellant Republic having enriched itself unduly, and being under an obligation to refund the excise duty paid, as aforesaid, by the respondent. Having found so, and having heard no arguments, in this case, as regards the doctrine of unjust enrichment, we are not prepared to decide, in these proceedings, to what extent, if at all, such doctrine is part of the law of Cyprus.

For all the above reasons we have to allow this appeal and set aside the judgment appealed from; but, in view of the particularly special nature of this case, we make no order as to the costs either of the trial or of this appeal.

Appeal allowed.
No order as to costs.