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[A. LOIZOU, J.]

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UNITED SEA
TRANSPORT
COMPANY LTD.
(No. 1)
v.
REPUBLIC
(MINISTER
OF FINANCE
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

UNITED SEA TRANSPORT COMPANY LTD., (NO. 1),
Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE SENIOR COLLECTOR OF CUSTOMS,

Respondents.

(Case Nos. 602/73, 603/73 & 612/73).

Customs (Wharfage Dues) Law, Cap. 317—Wharfage dues—Exemption from—Goods declared to be destined for foreign port—Stored in “bonded” warehouses due to congestion at customs warehouses—Not exempted from wharfage dues—Exemption 2(c) of the Schedule to the Law.

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“Bonded”— Meaning of.

Wharfage Dues—Exemption from.

The point in issue in these recourses was whether wharfage dues are payable in respect of goods destined for a foreign port and which were stored in “private bonded warehouses”, at the request of applicants, due to congestion at the Customs warehouses.

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Applicants contended that the decision to charge them wharfage dues was contrary to the provisions of Exemption 2 of the Schedule to the Customs (Wharfage Dues) Law, Cap. 317 which runs as follows:

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“ 2 (a) All goods landed at any port in the Republic and declared at the time of landing to be destined for a foreign port shall on being shipped be exempt from the wharfage dues for import and shall be liable only to one-fifth of the rates levied as wharfage dues for export hereunder.

20

(b)

(c) Nothing in this paragraph contained shall apply to bonded goods”.

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5 Counsel for applicants argued that once the goods were declared at the time of landing to be destined for foreign ports, they were, on being shipped, exempt from the wharfage dues for imports and liable only to one-fifth of the rates levied as wharfage dues for exports.

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Held, (after dealing with the meaning of the word “ Bonded” at p. 218 of the judgment post).

10 Once the goods in question became bonded goods, according to the clear wording of sub-paragraph (c) the exemption provided by sub-paragraph (a) of paragraph 2 of the Schedule to Cap. 317, did not apply to them.

Applications dismissed.

15 Cases referred to:

Partington v. Attorney-General [1869] L.R. 4 (H.L.) 100.

Recourses.

20 Recourses against the decision of respondent No. 2 to charge import wharfage dues and full export wharfage dues on goods stored in “private bonded warehouses” and declared at the time of landing to be destined for a foreign port.

E. Psillaki (Mrs.), for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondents.

25 *Cur. adv. vult.*

The facts sufficiently appear in the judgment* of the Court delivered by:—

30 A. LOIZOU, J.: The applicant Companies in these three recourses—tried together as presenting a common question of law—acted, in October, 1973, as agents of three ships carrying cargoes for the ports of Haifa, Beirut and Latakia. In consequence of the hostilities prevailing at the time in the Eastern Mediterranean, they requested respondent 2 to allow the dis-

* For final judgment on appeal see p. 438 in this Part, *post*.

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charge of the aforesaid cargoes at the ports of Limassol and Famagusta, in transit to their original ports of destination, and due to the congestion existing at the Customs' warehouses, to store same at "private bonded warehouses".

Respondent No. 2, the Senior Collector of Customs, by almost identical letters (*exhibit 2*, the two of them dated the 9th October and the third one the 15th October, 1973), acceded to the applicant Companies' request and allowed them, as a special facility, to discharge the cargo on a number of conditions which are in effect the following:—

- " (a) The goods will be stored in an approved Bonded Warehouse;
- (b) Report inwards is lodged at the Customs House well in advance of discharging operations;
- (c) Warehousing to be documented on Form C.3—Entry for Warehousing—and if full particulars cannot be given it should at least give the required particulars for the computation of Wharfage Dues at the time of presentation of the Entry and final Entry shall be made within a period of two (2) months failing which the goods may be removed to the Republic's Warehouse under section 25 (2) of the Customs and Excise Law;
- (d) Import Wharfage dues shall be paid on Warehousing and no shipment will be allowed before remission of all other charges and dues;
- (e) As an exceptional facility heavy lifts, which cannot be accommodated in the Bonded Warehouse may remain in the Customs Area in the open space that may be available".

The applicant Companies paid the import wharfage dues and full export wharfage dues under protest and in due course filed the present recourses claiming, in each one, a declaration that the *sub judice* decision of respondent 2 to charge import wharfage dues and full export wharfage dues on goods declared at the time of landing to be destined for a foreign port, is *null* and *void* and of no effect whatsoever.

The only ground relied upon in the present recourses is that the decision complained of was contrary to the provisions of

Exemption 2(a) of the Schedule to the Customs (Wharfage Dues) Law, Cap. 317.

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The imposition of wharfage dues is regulated by section 3 of the aforesaid Law, which reads as follows:-

5 “ 3. There shall be levied and collected upon all goods landed or shipped at any port in the Colony wharfage dues at the rates set forth in the Schedule, and there shall be allowed the exemptions set forth in the said Schedule”.

10 It will be helpful to set out in full paragraph 2 of the Exemptions to the Schedule, as the determination of the issue in these recourses turns on its interpretation.

15 “ 2 (a) All goods landed at any port in the Colony and declared at the time of landing to be destined for a foreign port shall on being shipped be exempt from the wharfage dues for import and shall be liable only to one-fifth of the rates levied as wharfage dues for export hereunder.

20 (b) All goods landed in error at any port in the Colony shall on being shipped be exempt from the wharfage dues for imports and shall be liable only to the wharfage dues for exports levied hereunder.

(c) Nothing in this paragraph contained shall apply to bonded goods”.

25 It has been argued on behalf of the applicant Companies that once the goods landed at the ports in question were declared at the time of landing to be destined for foreign ports, were, on being shipped, exempt from the wharfage dues for imports and liable only to one-fifth of the rates levied as wharfage dues for exports. This was, particularly so, independent of the provision of sub-paragraph (c) of paragraph 2 hereof, which is to the effect that paragraph 2 does not apply to bonded goods,
30 as the goods in question were bonded because of the congestion that existed at the time in the Cyprus ports. The determination therefore of the question whether sub-paragraph (c) of paragraph 2 applies to the present case or not, depends on the
35 meaning of the words “bonded goods” and if the goods in respect of which the exemption of wharfage dues is claimed, are such goods.

There is no definition of the words “bonded goods” either in the Customs (Wharfage Dues) Law or the Customs and

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Excise Law, 1967, Law 82/67 to which one might turn for such definition by virtue of the provisions of section 2 of the first Law, as well as section 13 of the Interpretation Law, Cap. 1. Therefore, one has to consider the provisions of the Customs and Excise Law and draw an inference as to what is meant and generally understood by “approved bonded warehouses” and “bonded goods”.

The applicant Companies applied for permission to remove the goods in question to private bonded warehouses, which, should be taken to mean that they were asking to be allowed to warehouse same without payment of duty under sections 33 and 34 of the Customs and Excise Law, 1967. In neither law the words “bonded warehouses” or “approved bonded warehouses” appear. The use of these words by the applicants, as well as respondent 2 should be taken to be a reference to warehouses approved under section 71 of the Customs and Excise Law, 1967.

The word “bonded” is a generally accepted term used in respect of such warehouses and as a description of the goods warehoused in such places, because of the bond that is normally required to be given as a security for the observance of any condition in connection with customs and excise under section 179 of the Customs and Excise Law. That this is so, is borne out by the aggregate effect of the provisions of the Customs and Excise Law to which I need not refer in extenso.

It may be mentioned here that in the English Customs and Excise Act of 1952, section 80 of which corresponds to section 71, no reference is made to the word “bonded”, either in relation to goods or to warehouses. In the Dictionary of English Law by Earl Jowitt, 1959, at p. 262, the meaning ascribed to bonded goods is “dutiabie goods in respect of which a bond for the payment of the duty has been given to the Commissioners of Customs and Excise. Until the customs duty is paid the goods are said to be ‘in bond’. The goods may be exported to another country from bond without the payment of duty”. The meaning ascribed to bonded warehouse is “a warehouse licensed by the Commissioners of Customs and Excise for the storing of dutiabie goods without payment of the duty until they are ‘cleared’, *i.e.* taken away; so called owing to the bond into which it is necessary to enter in order to secure that the Crown does not lose the duty by the goods being removed without payment. Goods in such a warehouse are said to be in bond”.

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In the present case it is not disputed that the goods were bonded until exported to the countries of their destination. What is claimed is that they were so bonded because of the congestion at the customs stores, but the reason why these goods became bonded, cannot change the legal meaning and effect of sub-paragraph (c) of paragraph 2 of the Exemptions to the Schedule. If anything, the condition for placing them in approved bonded warehouses, was one of the factors that influenced respondent 2 in exercising his discretion to allow the goods to be landed at all in Cyprus ports, as the ports of Cyprus are intended to serve primarily the Cyprus imports and exports and the congestion existing at the time obviously called for such arrangements, as the landing of the goods of the applicants would not interfere with the Cyprus imports and exports. Consequently, once the goods in question became bonded goods, according to the clear wording of sub-paragraph (c) the exemption provided by sub-paragraph (a) of paragraph 2, did not apply to them. Although this may appear on the face of it to be harsh on the applicant Companies as involving an additional expense, yet, we must see it as the interpretation of clear words in a statute in which nothing is to be read and nothing is to be implied. As pointed out in Maxwell on Interpretation of Statutes, 12th Ed. p. 256, quoting from the judgment of Lord Cairns in *Partington v. Attorney-General* [1869] L.R. 4 H.L. 100—"The strictness of interpretation may not always enure to the subject's benefit, for 'if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be'".

For all the above reasons, these three recourses fail, but in the circumstances I make no order as to costs.

Application dismissed.
No order as to costs.