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[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU,
MALACHTOS, JJ.]

UNITED SEA
TRANSPORT
COMPANY LTD.
AND OTHERS
(No. 2)
v.
REPUBLIC
(MINISTER OF
FINANCE
AND ANOTHER)

UNITED SEA TRANSPORT COMPANY LTD.,
AND OTHERS (NO. 2),

Appellants,

and

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

Respondents.

(*Revisional Jurisdiction Appeals Nos. 162–164.*)

Customs (Wharfage Dues) Law, Cap. 317—Wharfage dues—Exemption from—Goods declared to be destined for foreign port—Stored in “bonded” warehouses—Not because they were intended to become “bonded goods” in the true sense of such term, but because they had to be stored there due to lack of space at the customs warehouses—Are exempted from wharfage dues to the extent stated in Paragraph 2 (a) of the “Exemptions” in the Schedule to the Law.

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Wharfage Dues—Exemption from.

Goods belonging to the appellants were landed in Cyprus, in transit, having been declared to be destined for foreign ports; and they were stored in private bonded warehouses due to congestion at the warehouses at the Customs. The question for consideration being whether such goods are exempted from payment of wharfage dues, the outcome of these proceedings depended on the correct application to the facts of these cases of the provisions of paragraph 2 under the heading “Exemptions” in the Schedule to the Customs (Wharfage Dues) Law, Cap. 317 (quoted in full at p. 440 of the judgment *post*).

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Held, (1) Looking at the totality of the circumstances of the cases before us, from the point of view of the substance, and not only of the form, of the matter, we have reached the conclusion that the goods landed by the appellants were stored in bonded warehouses not because they were intended to become “bonded goods”, in the true sense of such term, but because

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they *had* to be stored there, as there were not available other storage facilities at the customs warehouses.

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5 (2) In our opinion the object of sub-paragraph (c), of para-
graph 2 in the Schedule to Cap. 317, when viewed in the context
of paragraph 2 as a whole, is to ensure that goods which have
should not be relieved from the payment in full of wharfage
dues, even if they were declared at the time of landing to be
destined for a foreign port or they were landed in error at a
10 Cyprus port; in other words, because of sub-paragraph (c),
nobody can, in normal circumstances, place in bond goods
which are in transit and, none the less, enjoy the benefits, as
regards wharfage dues, under sub-paragraph (a) of paragraph
2; sub-paragraph (c) aims at preventing anyone from enjoying
15 all the special facilities and advantages involved in storing
goods in bond—(for up to a period of two years, in accordance
with the established practice referred to in this respect by counsel
for the respondent)—and having, also, all along the option to
place them in the local market here, after payment of import
20 duty, or export them elsewhere, without being bound to pay in
full the wharfage dues.

25 (3) In the present cases, however, in view of the already
referred to special circumstances in which the goods landed by
the appellants were stored in bonded warehouses, the mischief
against which sub-paragraph (c) is intended to guard was
non-existent, because, as pointed out earlier in this judgment,
it was never intended to store the goods landed by the appellants
as bonded goods in the true sense of such term; therefore, we
are in the view that sub-paragraph (c) was not applicable in
30 the present instance. (See *Maxwell on Interpretation of Statutes*,
12th ed. p. 256 and *Inland Revenue Commissioners v. Wolfson*
[1949] 1 All E.R. 865 at p. 868).

Appeals allowed.

Cases referred to:

35 *Inland Revenue Commissioners v. Wolfson* [1949] 1 All E.R. 865
at p. 868.

Appeals.

Appeals from the judgment of a Judge of the Supreme Court
(A. Loizou, J.) given on the 31st May, 1975, (Case Nos. 602/73,

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603/73 and 612/73) whereby applicant's recourses against the decision of the respondent Senior Collector of Customs 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, were dismissed.

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*Chr. Demetriades with E. Psyllaki (Mrs.), for the appellants.
V. Aristodemou, Counsel of the Republic, for the respondents.*

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court which was delivered by:

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TRIANTAFYLLIDES, P.: The outcome of these three consolidated appeals depends on the correct application to the facts of these cases of the provisions of paragraph 2 under the heading "Exemptions" in the Schedule to the Customs (Wharfage Dues) Law, Cap. 317.

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The matter was considered, at first instance,* by a Judge of this Court, who held that the particular situation was covered by the provisions of sub-paragraph (c) of the said paragraph 2 and that, therefore, the appellants were not exempted, to the extent stated in sub-paragraph (a), from the payment of wharfage dues.

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Paragraph 2, as modified under Article 188.3 of the Constitution, reads as follows:—

"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 imports and shall be liable only to one-fifth of the rates levied as wharfage dues for exports hereunder.

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(b) All goods landed in error at any port in the Republic shall on being shipped be exempt from the wharfage dues for exports levied hereunder.

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

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* Reported in this Part at p. 214, *ante*.

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The learned trial Judge, in describing in his judgment what are known as “bonded goods”, referred to the relevant definitions in Jowitt’s Dictionary of English Law:—

5 “ In the Dictionary of English Law by Earl Jowitt, 1959,
at p. 262, the meaning ascribed to bonded goods is ‘duti-
able 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
10 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 dutiable goods without payment of the duty
until they are cleared, i.e. taken away; so called owing to
15 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 ware-
house are said to be in bond’ ”.

20 The undisputed salient facts of these cases are that all the
goods concerned were landed in Cyprus, by all three appellants,
in transit, having been declared to be destined for foreign ports;
they were stored in private bonded warehouses due to congestion
at the warehouses at the customs.

25 Certain relevant circumstances appear from two letters which
are part of the record and read as follows:—

“ The Collector of Customs,
Famagusta,
Dear Sir,

8th October, 1973*

Re: m. s. ‘IOS’ at Limassol 8-9.10.1973.

30 Owing to hostilities prevailing in the Eastern Mediter-
ranean, we request you to allow us to discharge at Limassol
in transit to Haifa via Famagusta 74 tons of cargo, as per
list attached.

35 We undertake to pay your supervision and overtime
charges.—

As you make your agreement conditional to our under-
taking to pay full import and export wharfages, we under-
take to pay same under protest on all cargo to be for-
warded to private bonded warehouses.

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The cargo will be transported by overland transport to private bonded warehouses of Nautilus Navigation Co. Ltd., and vessel will start discharging as from tomorrow morning.

Your immediate confirmation is requested and thanking you, we remain.” 5

“ Messrs. United Sea Transport Co. Ltd.,
Famagusta. 9th October, 1973.
Dar Sirs,

I refer to your letter No C/6 of 8th October, 1973 in which you request authority to transport in bond from Limassol goods ex s.s. ‘IOS’ intended for Haifa, and enter them for Warehousing in an approved Bonded Warehouse and to inform you that as a special facility your request may be granted provided:— 10 15

- (a) The goods will be stored in an approved Bonded Warehouse;
- (b) Report inwards is lodged at the Custom 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 Warehouse under section 25 (2) of the Customs and Excise Law; 20 25
- (d) Import Wharfage dues shall be paid on Warehousing and no shipment will be allowed before remission of all other charges and dues; 30
- (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”. 35

These two letters were written in relation to the goods landed by the appellant in appeal No. 162; and substantially identical

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letters were exchanged in relation to the landing of goods by the other two appellants.

Looking at the totality of the circumstances of the cases before us, from the point of view of the substance, and not only of the form, of the matter, we have reached the conclusion that the goods landed by the appellants were stored in bonded warehouses not because they were intended to become “bonded goods”, in the true sense of such term, but because they *had* to be stored there, as there were not available other storage facilities at the customs warehouses.

In our opinion the object of sub-paragraph (c), when viewed in the context of paragraph 2 as a whole, is to ensure that goods which have been stored as bonded goods, in the true sense of such term, should not be relieved from the payment in full of wharfage dues, even if they were declared at the time of landing to be destined for a foreign port or they were landed in error at a Cyprus port; in other words, because of sub-paragraph (c), nobody can, in normal circumstances, place in bond goods which are in transit and, none the less, enjoy the benefits, as regards wharfage dues, under sub-paragraph (a) of paragraph 2; sub-paragraph (c) aims at preventing anyone from enjoying all the special facilities and advantages involved in storing goods in bond—for up to a period of two years, in accordance with the established practice referred to in this respect by counsel for the respondent)—and having, also, all along the option to place them in the local market here, after payment of import duty, or export them elsewhere, without being bound to pay in full the wharfage dues.

In the present cases, however, in view of the already referred to special circumstances in which the goods landed by the appellants were stored in bonded warehouses, the mischief against which sub-paragraph (c) is intended to guard was non-existent, because, as pointed out earlier in this judgment, it was never intended to store the goods landed by the appellants as bonded goods in the true sense of such term; therefore, we are of the view that sub-paragraph (c) was not applicable in the present instance.

In considering the applicability of sub-paragraph (c) to a situation such as the present one we have borne in mind, too, the statement in Maxwell on Interpretation of Statutes, 12th ed., p. 256, that “the subject is not to be taxed unless the langu-

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age of the statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words" (see, also, *Inland Revenue Commissioners v. Wolfson* [1949] 1 All E.R. 865, 868).

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For all the foregoing reasons these appeals are allowed and the administrative action complained of by the appellants is annulled.

In view of the special circumstances of these case we do not think that we should make any order as to the costs of the proceedings on appeal.

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*Appeals allowed. No order
as to costs.*