

1980 February 29

[A. LOIZOU, SAVVIDES AND DEMETRIADES, JJ.]

KERAMION LEMESOU LTD.,

*Appellants,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 4078).

5 *Control commodity—Bricks—Selling bricks at a price higher than that allowed for wholesale sales—Supplies and Services (Prices Control and Regulation of Sales of Goods) Orders of 1974 and 1976—Finding of trial Court that sale was on a wholesale basis duly warranted by the totality of the evidence—Decorative bricks not excluded from above Orders.*

*Words and phrases—“Wholesale”, “wholesale price”, “wholesaler”, “retail price”, “retailer” and “consumer”.*

10 The appellants, who were manufacturers of bricks, were convicted of the offence of selling at their factory in Limassol, to a building contractor 800 bricks at a price higher than that allowed for wholesale sales i.e. at the rate of C£65 instead of C£50 per thousand, contrary to the Supplies and Services (Prices Control and Regulation of Sales of Goods Orders of 15 1974 and 1976 (“the Order”).

20 The trial Judge, relying on the evidence of a defence witness and employee of the appellants who said that by “wholesale” he meant a sale relating to “the sale of items exceeding the 500 in number” and bearing in mind that the bricks in question were purchased from the people who manufacture same and from their premises, concluded that the sale in question was made on a wholesale basis.

Upon appeal against conviction counsel for the appellants challenged the above finding and argued that the nature of a

transaction must be such as to bring same within the definition\* of the word "wholesale" which the legislator thought fit to include in the Order.

*Held*, (1) that this Court is not prepared to interfere with the above finding of fact of the trial Court which was duly warranted by the totality of the evidence in addition to the admission of the employee of the appellants that the transaction in question was made on a wholesale basis; that this transaction comes within the definition of the word "wholesale" to be found in the 1974 Order; that the contractor in question bought these bricks for a purpose which comes within the term "industry" or "sale" appearing in the definition of the word "consumer"; that, therefore, this was, as the parties clearly intended to be, a transaction on a wholesale basis and for a wholesale price; and that, accordingly, the appeal must fail.

(2) (*On the question whether decorative bricks were excluded from the Order*) that in the 1976 Order which made bricks a controlled commodity, same are described as such with a specification as to their dimension and no distinction is made between ordinary bricks and decorative bricks; and that, therefore, decorative bricks were not excluded from the Order.

*Appeal dismissed.*

#### **Appeal against conviction.**

Appeal against conviction by Keramion Lemesou Ltd. who were convicted on the 14th September, 1979, at the District Court of Limassol (Criminal Case No. 1137/78) on one count of the offence of selling building bricks at a price higher than that allowed for wholesale sales, contrary to the Supplies and Services (Prices Control and Regulation of Sales of Goods) Order of 1974, the Supplies and Services (Prices Control and Regulation of Sales of Goods) (Amendment No. 13) Order of 1976 and regulations 61 and 94 of the Defence Regulations, 1946; and was sentenced by Eleftheriou, D.J. to pay £15.—fine.

*A. Triantafyllides*, with *A.S. Angelides*, for the appellants.

*A. M. Angelides*, Counsel of the Republic, for the respondents.

A. LOIZOU J. gave the following judgment of the Court. The appellant Company was found guilty and convicted on a

\* The definition of the words "wholesale", "wholesale price", "wholesaler" "retail price", "retailer" and "consumer" appears at pp. 94-95 *post*.

charge that on the 11th July, 1977, at Limassol, being manufacturers did sell building bricks at a price higher than that allowed for wholesale sales, i.e. at the rate of C£65.—instead of C£50.—per thousand, contrary to the Supplies and Services (Prices Control and Regulation of Sales of Goods) Order of 1974, published under Notification No. 52 in Supplement No. 3, (Part I), to the Official Gazette of the 18th February, 1974, and the Supplies and Services (Prices Control and Regulation of Sales of Goods) (Amendment No. 13) Order of 1976, published under Notification No. 122 in Supplement No. 3, (Part I), to the Official Gazette of the 25.6.1976 and regulations 61 and 94 of the Defence Regulations 1946 which continue to be in force by virtue of section 6, sub-section 3, of the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 95A.

15 The facts of the case, as found by the trial Court, are as follows:—

The appellants are manufacturers carrying on business in Limassol and among other products, they manufacture bricks. On the 11th July, 1977, at their factory in Limassol, they sold to a building contractor 800 such bricks at the rate of C£65.—per thousand, i.e. at the price of C£52.—and issued for the purpose the relevant invoice and the seller made on it the following entry: “800 bricks ‘A’, 30x20x10, decorative, at C£65.—= C£52.—”. The bricks in question were loaded at the factory on their lorry and delivered to the purchaser at his place of work where they were to be used for the completion of the walls of a building under construction and not for resale, as he put it, to other people.

With regard to the nature of this sale, Efthymios Papaioannou, a defence witness and employee of the appellants in charge of their sales Section at the factory, for the last 20 years, stated in cross-examination that at the factory they sell both on wholesale and on retail basis. With regard to the sale, subject-matter of these proceedings, he said that it was a wholesale one. In re-examination, when asked “what was the kind of sale in relation to the sale made to Prosecution Witness No. 1, a wholesale or a sale by retail”, he said: “When I say sale by wholesale, I mean a sale it relates to the sale of items exceeding the 500 in number”. The learned trial Judge relying on this evidence and “bearing always in mind”, as he said, “that the bricks in question

were purchased from the people who manufacture same and from their premises”, concluded that, “there is no doubt at all that such sale was made on a wholesale basis”.

This finding of fact by the trial Court on the basis of which he answered in the affirmative the question as to whether such sale, 5  
subject of the charge, was made on a wholesale basis or not, has been challenged on appeal.

It was argued that the nature of a transaction must be such as to bring same within the definition of the word “wholesale” 10  
which the legislator thought fit to include in the relevant Order.

We are not prepared to interfere with this finding of fact which is duly warranted by the totality of the evidence in addition to the admission of the employee of the appellants that the transaction in question was made on a wholesale basis. This was, as 15  
the parties clearly intended to be, a transaction on a wholesale basis and for a wholesale price.

Furthermore this transaction comes within the definition of the word “wholesale” to be found in the original Order under Notification 52 of the 18th February, 1974. “Wholesale price” 20  
is defined therein as meaning “the price at which a wholesaler sells controlled goods”; and “wholesaler” means “the person whose business or part of it consists in the sale of controlled goods at a wholesale price”. These two definitions have to be compared and examined with other definitions in the said Order.

“Retail price” is defined as meaning “the price at which a 25  
consumer purchases or otherwise obtains controlled goods from a retailer”; “retailer” is defined as meaning “a person whose business or part of it consists in the sale of controlled goods to the consumer”; and “consumer” means “a person 30  
which purchases or otherwise obtains controlled goods for any other purpose except for ‘industry’ (βιομηχανία) or sale.”

The combined effect of the definitions of a “wholesaler” and a “retailer” is that a person may partly sell at wholesale and partly at retail prices, which is the case of the appellants as testified by defence witness Papaioannou. 35

Looking further at the definition of “a consumer” we have seen that he is “a person who purchases controlled goods for

any other purpose in respect of industry or sale.” In the case under examination it was an undisputed fact that such contractor bought these bricks for a purpose which in our view comes within the term of “industry” (βιομηχανία) or “sale”, because a  
5 building contractor who gets a supply of building materials for use in his business, obtains them clearly for the purpose of the construction industry as this field of business activity is generally described. Moreover there is nothing in the Order to preclude  
10 merchants from selling at a wholesale price to anyone and this has been the case. The appellants openly sold their bricks at their wholesale price and issued a voucher to that effect, labouring obviously under the impression that being decorative bricks were not covered as such by the Order controlling the prices of these commodities.

15 Whilst on this point we would like to say that in the 1976 Order which made bricks a controlled commodity, same is described as such with a specification as to their dimension; no distinction is made between ordinary bricks and decorative bricks, as they are all bricks. We hold that decorative bricks  
20 were not excluded from the said Order.

The fact that in the Order under Notification No. 66 published in Supplement No. 3 to the Official Gazette of the 10th April, 1978, the legislator added the words “of every type (that is ordinary bricks decorative or other)” to the word “bricks” does  
25 not change the position as regards the generality of the term “brick” in the 1976 Order. This further qualification cannot be taken as capable of suggesting that the reference to bricks in the first Order with which we have been concerned in this appeal meant certain categories of bricks and not of bricks of whatever  
30 design, quality, or kind. The only limitation to the term bricks placed in that Order were their dimension and not their design.

For all the above reasons this appeal is dismissed.

*Appeal dismissed.*