

1980 November 17

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CYPRIAN SEAWAYS AGENCIES LIMITED
AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTER OF FINANCE AND ANOTHER,

Respondents.

(Cases Nos. 131/78, 351/78, 504/78).

*Import duty—"Dutiable goods"—"Goods chargeable with duty"—
Distinction—Dutiable goods in transit short landed—Their absence
not accounted for to the satisfaction of Collector—Can be charged
with import duty—Section 30(2) of the Customs and Excise
Law, 1967 (Law 82/67) and section 3(1) of the Customs and
Excise Duties Law, 1977 (Law 42/77)—Section 34 of Law 82/67
applies to goods which are present.* 5

The applicants, who were shipping agents, were representing
ships calling at Limassol port. The customs' officers at the
said port on checking the cargo landed by such ships against 10
the inward ship's Report, which was prepared under section
23 of the Customs and Excise Law, 1967 (Law 82/67) ("the
Law"), and under the Ship's Report (Importation and Exportation
by Sea) Regulations, 1968, ascertained that a quantity
of goods described in each case declared "in transit" were not 15
landed. Thereupon the applicants were requested by the
Collector of Customs, under section 30(2)* of the Law and

* Section 30(2) provides as follows:-

"(2) If any dutiable goods which are included in the report of any aircraft or vessel shall not be accounted for to the satisfaction of the collector, the master or owner of the aircraft or vessel or the agent thereof, shall on demand by the collector pay the duty thereon, as estimated by the collector, at the rate in force when such goods were reported".

section 3(1)(b) of the Customs and Excise Duties Law, 1977 (Law 42/77), to account for the goods being short of report within three months failing which the applicants would be answerable for import duty on the said goods on demand. The applicants failed to furnish the Collector with a satisfactory explanation and thereupon he forwarded to them demand notes with the list of short-landed goods set out therein demanding payment of the import duty involved in each case. Hence these recourses.

Counsel for applicant mainly contended that the imposition of import duty was contrary to section 34 of the Law which provides as follows:

“34. Where any goods are entered for transit or transshipment, the Director may allow the goods to be removed for that purpose, subject to such conditions and restrictions as he sees fit, without payment of duty”.

Held, dismissing the recourses, that under section 3(1)* of Law 42/67 duties are imposed and collected both on goods imported in the Republic and cleared from customs and on goods which are not imported but come under section 30 of the Law; that goods in transit, even if dutiable, will not be charged with duty if they are re-exported or transhipped; that they can be charged with duty, under section 30(2) of the Law, if the prerequisites of this section are satisfied; that the said goods were dutiable goods, they were not landed and they were not accounted for to the satisfaction of the Collector; that therefore the prerequisites of section 30(2) were satisfied; and accordingly the *sub judice* decisions will be upheld.

Held, further, that section 34 of the Law relied upon by the applicants, applies to goods that are entered for transit or transshipment, but not to goods that are non-existent and which are included in a Ship's Report but their absence cannot be accounted for to the satisfaction of the collector; and that it provides relief from import duty for goods entered for transit or transshipment, which entry presupposes the presence of such goods.

Applications dismissed.

* Quoted at pp. 596-97 *post*.

Recourses.

Recourses against the decision of the respondents to demand payment of import duty in respect of short-landed goods.

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

A. Evangelou, Counsel of the Republic, for the respondents. 5

Cur. adv. vult.

A. LOIZOU J. read the following judgment. These three recourses have been heard together as they present common questions of Law and fact. With regard to five other recourses, namely 132/78, 133/78, 134/78, 232/78, 68/78, the respondents have undertaken to reconsider their decisions challenged thereby in the light of the determination of the legal issues in the present recourses. 10

The facts in all three cases are not in dispute and I intend to avoid reference to the individual differences especially with regard to the short-landed goods and the amount of import duty demanded thereon in each of them. 15

The applicants are shipping agents carrying on business in Cyprus. On the respective dates set out in the applications three ships they represented called at Limassol port. The customs' officers at the port on checking the cargo landed against the inward Ship's Report, which was made in accordance with section 23 of the Customs and Excise Law 1967, Law No. 82 of 1967, (hereinafter to be referred to as "the Law") and The Ship's Report, (Importation and Exportation by Sea), Regulations of 1968, ascertained that a quantity of goods described in each case declared "in transit" were not landed. 20 25

The Collector of Customs, Limassol, forwarded then the prescribed form "C. 168" known as "The ship's outturn report and discrepancies list", to the applicants in respect of the ships they represented by which they were requested under section 30 subsection 2 of the Law and section 3(1)(b) of the Customs and Excise Duties Law 1977, (Law No. 42 of 1977), to account for the goods being short of report within three months failing which the applicants would be answerable for import duty on the said goods on demand. 30 35

The applicants failed to furnish the Collector with a satisfactory explanation and thereupon the Senior Collector of

Customs, Limassol, forwarded to them demand notes (Form C. 30), with the list of short-landed goods set out therein demanding the payment of the import duty involved in each case.

Section 30 subsections 1 and 2 of the Law read as follows:

5 “30.—(1) Save as permitted by or under this Law or any
other enactment relating to customs, no imported goods
shall be delivered or removed on importation until the
importer has paid to the proper officer any duty charge-
10 able thereon, and that duty shall, in the case of goods
of which entry is made, be paid on making the entry.

 (2) If any dutiable goods which are included in the report
of any aircraft or vessel shall not be accounted for to
the satisfaction of the collector, the master or owner of
the aircraft or vessel or the agent thereof, shall on demand
15 by the collector pay the duty thereon, as estimated by the
collector, at the rate in force when such goods were reported.

(3) _____

(4) _____

(5) _____ ”

It is the case of the applicants that in imposing such duty,
respondent No. 2 acted in abuse and/or excess of his powers
and that same is contrary to Law, namely to section 34 of the
20 Law, which provides as follows:

“34. Where any goods are entered for transit or tranship-
ment, the Director may allow the goods to be removed
for that purpose, subject to such conditions and restrictions
as he sees fit, without payment of duty”.

25 It was urged that goods entered for transit or transhipment
come within the class of goods which are absolutely relieved
from duty and that under the aforesaid section the discretionary
powers of respondent 2 in respect of such goods do not include
the power to impose the payment of duty even upon the master,
30 owner or agent of a vessel failing to account to the satisfaction
of the collector after a demand made for that purpose.

It was argued that the general obligation to pay import duty
referred to in subsection 1 of section 30 is expressly reserved
for cases other than those for which other provisions exist

in the law or any other law and that there could be no doubt that the aforesaid section 34 which refers to goods “entered for transit or transhipment” constitutes such other provisions as envisaged by this subsection; subsection 2 thereof being a consequence to subsection 1 must be taken to apply also to those goods, for which this other provision exists in the law. 5

The express reference therein to “dutiabale goods”, counsel for the applicants said, shows that they are the only goods for which the collector may demand explanations and impose import duty if they are not accounted for to his satisfaction, and that goods in transit or transshipment are goods expressly relieved from duty and cannot be taken to be included among “dutiabale goods” to which subsection 2 applies. 10

“Dutiabale goods” are defined in section 2 of the Law as meaning “goods of a class or description subject to any duty of customs or excise, whether or not those goods are in fact chargeable with that duty, and whether or not that duty has been paid thereon”. 15

It is the submission of counsel for the respondents that the subject goods are “dutiabale goods” within the meaning of section 30(2) of the Law inasmuch as they attract duty under the tariff being among those enumerated in the Schedule to the Customs and Excise Duties Law, 1977 (Law No. 42 of 1977) in force at the material time; it was further said that, that they are duti-able goods, it is also born out by section 3 subsection 1 of the said Law, which to the extent that it is relevant to this point reads as follows: 20

“Unless otherwise provided in this or any other Law there shall be charged, levied, collected, and paid for the general benefit of the Republic, upon all goods specified in the Second Schedule— 30

- (a) which, after importation into the Republic are cleared for home use therein; or
- (b) which, being included in the report of any vessel or aircraft are not produced to the officer as in section 30 of the Customs and Excise Laws 1967–1977, 35

the several duties (hereinafter referred to as ‘customs duties’) appearing in the said Schedule and set opposite

each item respectively in the column of the same Schedule which under section 4 or 5 is applicable to such goods”

5 This section clearly distinguishes between imported goods cleared from customs for home use in the Republic and those goods, which though included in a ship’s report are not produced to the collector as provided in section 30 of the Law.

10 Under section 3 duties are imposed and collected on both categories of goods, those under paragraph (a) which are imported in the Republic and cleared from customs and those under paragraph (b) which are not imported in the Republic but come under section 30 of the Law. The combined effect of this section with section 30 subsection 2 of the Law bear out the proposition that there exists, a distinction between dutiable goods which are all those enumerated in the tariffs and goods which are in fact chargeable with such duty. Goods on transit or transshipment, if they are of the kinds set out in the Schedule are dutiable goods though duty will not be charged if they are re-exported or transhipped, but duty can be charged on them under section 30 subsection 2 of the Law, if the other prerequisites of this section are as in the present case satisfied. The definition of dutiable goods adds to the distinction between dutiable goods and goods chargeable with duty.

25 There can be no doubt that the subject goods should have been included in the Inward Ship’s Report under section 23 of the Law which imposed an obligation in the preparation and delivery of inward reports by ships arriving at a port in a Republic from any place outside the Republic or carrying any goods in such ship from a place outside the Republic and not yet cleared on importation. These goods must also be included in an entry of goods on importation as provided for by section 24 (1) (c) of the Law which covers the cases of goods “for transit or transshipment”. I do not agree with the submission of counsel for the applicants that these two sections are irrelevant.

55 In the present case the subject goods were dutiable goods and they were included in the Inward Ships’ Reports as they had to be so included under sections 23 and 24, though they were not chargeable with duty. They were not landed and they were not accounted for to the satisfaction of the collector

when a demand was made to the agents of the respective ships for the payment thereof of the duty at the rate in force, when such goods were reported. This in my view was done in accordance with the Law as explained in this judgment and therefore the *sub judice* decisions are upheld as good in Law and not taken in excess or abuse of power as claimed by the applicants. Section 34 of the Law relied upon by the applicants, applies in my judgment, to goods that are entered for transit or transshipment, but not to goods that are nonexistent and which are included in a Ship's Report but their absence cannot be accounted for to the satisfaction of the collector. It provides relief from Import Duty for goods entered for transit or transshipment, which entry presupposes the presence of such goods. If they are not present this section cannot apply as obviously section 30 subsection 2 is intended to safeguard the revenue by imposing on the carriers duty to account for goods which have been loaded on their ships and are declared to the customs in the report but are not produced.

Consequently the whole matter turns on the interpretation of section 30 subsection 2 of the Law alone and independently of subsection 1 thereof, as there is no connection between these two subsections. It is clear that subsection 1 prohibits the delivery or removal on importation of imported goods until the importer has paid the duty chargeable thereon, whereas subsection 2 speaks of dutiable goods which are included in the report, but which do not exist and their absence has not been accounted for to the satisfaction of the collector.

For all the above reasons these recourses fail and are dismissed but in the circumstances and in view of the novelty of the legal point raised, I make no order as to costs.

Applications dismissed. No order as to costs.