

1985 August 30

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

M. CHR. PLATANIS & CO. LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
(a) THE DEPARTMENT OF CUSTOMS AND EXCISE
—MINISTRY OF FINANCE,
(b) THE DIRECTOR OF THE DEPARTMENT OF
CUSTOMS AND EXCISE,

Respondents.

(Case No. 558/84).

Excise Duty—Refusal to allow clearance of beer stored under the control of the Collector of Customs and Excise—Excise duty payable increased on day following the refusal—Whether the Collector had the right to refuse clearance.

Constitutional Law—Article 24.3 of the Constitution.

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Excise Duty—Cannot be imposed with retrospective effect.

The applicants are manufacturers of beer which, after it is kegged, is stored under lock and key in a room under the custody and control of the Collector of Customs and Excise.

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On 8.12.1983 the applicants, having complied with all the requirements of the Customs and Excise Duties Law, 18/78, applied for delivery to them of a quantity of beer for home use. The customs officer in charge refused to allow the clearance, alleging that he had instructions not to open the said room on that day.

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On 9.12.1983 the Customs and Excise Duties (Amendment) (No. 2) Law 82/83 came into force. As a result the duty payable in respect of the beer was increased from 450 mils to 575 mils per gallon.

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When on 9.12.83 the applicants demanded to withdraw the said quantity of beer, the excise officer asked them to pay the new duty of 575 mils per gallon. The applicants, having paid the increased amount under protest, filed the present recourse.

Held, annulling the sub judice decision -

Article 24.3 of the Constitution provides that no tax, duty or rate of any kind shall be imposed with retrospective effect, except import duties, which may only be imposed as from the date of the introduction of the relevant bill.

In the present case the type of duty imposed was not an import duty, but an excise duty; and as such duty cannot be imposed with retrospective effect, the Collector of Customs and Excise had no right to instruct the customs officer in charge to refuse the clearance of the beer.

*Sub judice decision annulled.
Order for costs against respondents.*

20 **Recourse.**

Recourse against the refusal of the respondents to allow the clearance of the quantity of beer requested by the applicants on the 8th December, 1983.

Chr. Clerides, for the applicants.

25 No appearance for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicants are manufacturers of beer which, after it is kegged, is stored in a room at the brewery known as "the duty room" which is under the custody and control of the Collector of Customs and Excise. This room is kept under lock and key by the Department of Customs and Excise and it is always guarded by a customs officer. If the applicants want to take out of this room a quantity of beer, they are obliged, by virtue of the provisions of the Customs and Excise Duties Law, 1978 (Law 18/78) as amended, to

apply to the Customs and Excise Department by handing to the customs officer on duty at the brewery Form C93A, which is entitled "Home Use Warrant for goods liable to Excise Duty", duly filled in and signed and pay excise duty at the rate provided by the said Law.

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On the 8th December, 1983, the applicants duly applied to the officer of the Customs and Excise, Nicosia, for delivery for home use of a quantity of beer by handing to the customs officer on duty at the brewery Form C93A duly filled in and signed. On that day an amount of £4,870.570 mils was standing to the credit of the applicants with the Department which was approximately £10.- more than the duty payable for the quantity of beer they intended to take out of the duty room. The customs officer, however, despite the fact that the applicants had complied with the provisions of the relevant Law, refused to allow the clearance of the quantity of beer requested by the applicants, alleging that he had instructions from his superiors not to open the duty room on that day.

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The excise duty payable on the 8th December, 1983, was 450 mils per gallon.

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On the following day, when the applicants demanded to withdraw the said quantity of beer from the room, the excise officer asked them to pay 575 mils per gallon instead of 450 mils, because, in the meantime, there was enacted the Customs and Excise Duties (Amendment) (No. 2) Law, 1983 (Law 82/83), by means of which the excise duty payable on beer was increased. The applicants paid the increased amount under protest.

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Correspondence was exchanged between the applicants and the Senior Collector of Customs and Excise regarding the matter but the latter refused to refund to the applicants the sum of £1,350.223 mils which they considered as excess duty. As a result the applicants filed this recourse by means of which they pray that the decision of the respondents is null and void and of no effect as it offends the Law and the Constitution, the principles of administrative Law and was taken in abuse and/or excess of power.

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The respondents did not oppose the recourse.

Law 82/83, above, by means of which the excise duty on beer was increased, came into force on the 9th December, 1983, that is, on the day it was published in the official Gazette of the Republic.

5 From the evidence adduced and the documents produced, it appears that the applicants, on the 8th December, 1983, complied with all the requirements of Law 18/78 for the clearance of the beer, in that they had filled in the necessary forms and they had paid the duty payable for the
10 quantity of beer they wanted to clear.

Article 24.3 of the Constitution provides that no tax, duty or rate of any kind shall be imposed with retrospective effect, except import duties, which may only be imposed as from the date of the introduction of the relevant bill.

15 In the present case we are not concerned with import duties, but with excise duties and as this type of duty is not exempted by the provisions of our Constitution, the Collector of Customs and Excise had no right to instruct the customs officer on duty at the brewery of the appli-
20 cants to refuse the clearance of the beer.

In the result the sub judice decision is annulled.

As regards now the costs, I feel that the respondents must pay them.

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*Sub judice decision annulled.
Respondents to pay the costs.*