

1986 March 5

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

VARNAVAS NICOLAOU AND SONS LTD.,

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF COMMERCE AND  
INDUSTRY,

*Respondent.*

(Case No. 363/82).

*The Imports (Regulation) Law 49/62, as amended by Law 7/67, ss. 3 and 4—Objects and spirit of said Law—Goods belonging to foreigner warehoused in transit in a bonded warehouse—Refusal to grant an import licence to a Cypriot merchant in respect of the said goods on the ground that "... the policy... is that such goods should be re-exported or sold by public auction...."—Reasons given for refusal outside the spirit and objects of said law.*

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On 1.7.82 the applicant company applied for an import licence for 556 cubic meters of swedish timber, which were stored in transit in a bonded warehouse in Limassol. It should be noted that the importation of the said kind of timber is restricted and regulated by order of the Minister of Commerce and Industry, dated 7.8.72 and that the applicant had accepted an offer to purchase it.

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The applicant's said application was turned down on the ground that "the policy of the Ministry for goods which belong to foreigners (not Cypriot merchants) and are in transit must be re-exported or sold by public

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auction which is carried out by the Department of Customs".

5 Hence the present recourse. Applicant's counsel submitted that the respondents failed to exercise their discretionary powers within the objects of ss. 3 and 4\* of Law 49/62 as amended, by Law 7/67, and that in the present case there exists an obvious misconception of law, and the reason given for refusing such a licence is contrary to law.

10 Counsel for the respondents agreed with the above submissions.

15 *Held.* annulling the sub-judice decision, that the reasons given for the refusal to grant the import licence in question are not within the spirit and objects of Law 49/62 (as amended by Law 7/67), which was enacted in order to protect the interests of Cypriot Producers and Manufacturers of goods in the Republic.

*Sub-judice decision annulled.*  
*£30.- costs against respondents.*

20 **Recourse.**

Recourse against the refusal of the respondent to grant applicants a licence to import timber.

*P. Ioannides*, for the applicants.

*St. Ioannidou (Mrs.)*, for the respondent.

25 *Cur. adv. vult.*

30 MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent, dated 2.7.1982, by which they rejected its application dated 1.7.1982, for importation of timber and/or by which decision they refused and/or omitted to grant the import licence applied for, is null and void and of no legal effect whatsoever and everything which was omitted should have been performed.

\* Both sections are quoted at pp. 576-577 post.

The relevant facts of the case are the following:

The applicant is a company formed and incorporated in Cyprus with limited liability and its main business is the importation, elaboration and sale of timber. The applicant company on 1.7.1982 applied to the respondent authority for an import licence for 556 cubic metres of swedish timber, which was stored in transit in a bonded ware house in Limassol. It should be noted here that the importation of this kind of timber is restricted and is regulated by Order of the Minister of Commerce and Industry dated 7th August, 1972, and that the applicant had accepted an offer to purchase it.

The respondent did not approve the application of the applicant and on 2.7.1982 gave the following reasons in writing:-

“Unfortunately, the relevant import licence cannot be issued because the policy of the Ministry for goods which belong to foreigners (not Cypriot merchants), and are in transit must be reexported or be sold by public auction, which is carried out by the Department of Customs.”

In support of his case counsel for applicant submitted that the respondents in issuing the decision complained of, acted in abuse and in excess of power as they failed to exercise their discretionary power within the objects of section 3 and 4 of the Imports Regulation Law 1962, (Law 49/1962), as amended by the Imports Regulation (Amendment) Law, 1967 (Law 7/1967). These sections read as follows:-

“3. (1) The Minister may, whenever it becomes necessary, in the public interest, to restrict and regulate the importation of goods for the encouragement of local production and manufacture, the improvement of the balance of Trade, compliance with international obligations or the development of the economy of the Republic, by Order published in the Official Gazette of the Republic, restrict and regulate the importation of the goods specified in the Order.

(2) Any Order may contain such incidental, consequential and supplementary provisions as the Minister may consider necessary or expedient for the carrying into effect of the Order and, without prejudice to the generality of the aforesaid provision, any Order may require prior licence from the Minister for the importation of any such goods.

4. (1) Where under the provisions of any Order a licence is required, the licence shall be in the prescribed form.

(2) The Minister may in his discretion:-

- (a) grant or refuse such licence;
- (b) make such licence subject to such conditions as he may deem fit;
- (c) cancel, suspend or vary any such licence or any conditions thereof;

Provided that where under the conditions of a licence a confirmed credit has been opened or a contractual obligation created, the licence and any condition thereof shall not be cancelled, suspended or varied, unless and until such confirmed credit has expired or such contractual obligation has been fulfilled or has been cancelled or otherwise has ceased to exist or can reasonably be deemed to have been fulfilled, cancelled or to have otherwise ceased to exist."

Counsel for applicant further submitted that the respondents refused to grant the licence applied for relying on an alleged policy of the Ministry not to grant import licences for goods in transit and that these goods should be re-exported and re-imported or sold by public auction by the Customs authorities. He also submitted that even if this policy exists, is manifestly illegal and arbitrary and amounts to abuse of power as the timber in question cannot be considered in law as imported and that is the reason why the import licence is required. The other reasoning, he alleged, is even more illogical. When there are goods

unclaimed or burdened with heavy storages and charges, can be sold through the Customs by auction, and the Ministry says "Let the goods in the stores be burdened with heavy charges and expenses and then there is no difficulty in selling them and if you are interested buy them at the public auction as the higher bidder". 5

Finally, counsel for applicant submitted that the law says that certain conditions may be imposed in granting such a licence to protect the public interest but this does not arise in the present case. In the present case there exists an obvious misconception of the law and a manifest abuse and excess of power and the reason given for refusing such a licence is contrary to law. 10

Counsel for the respondents, both in the opposition and in her address to the Court, agreed with the submissions of counsel for applicant and stated that the decision complained of should be declared by the Court as null and void. 15

I have considered the arguments of counsel for applicant and I must say that I fully agree with him that the reasons given for the refusal of the respondent authority to grant the import licence in question are not within the spirit and objects of the Import (Regulation) Law of 1962, as amended by Law 7/67, which law was enacted in order to protect the interests of the Cypriot Producers and Manufacturers of goods in the Republic; and, therefore, render the decision complained of not duly reasoned. 20 25

Consequently, the recourse succeeds and the decision complained of is hereby annulled.

The respondents are adjudged to pay £30.- against the costs of the applicants. 30

*Sub judice decision annulled.  
Respondents to pay £30.-  
against costs.*