

1986 January 25

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HJIKYRIACOS & SONS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF FINANCE,
2. THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS,

Respondents.

(Case No. 270/81).

Customs and excise duties — Import duty paid without being due — Refund of — Section 161 of the Customs and Excise Laws 1967-77 not applicable, but reasonably open to the respondent to apply its time-limit to present case — There does not exist a provision governing the question of refund.

By means of this recourse the applicants challenged the validity of the refusal to refund to them import duty, which was paid by them in the past without being due. The reason of the refusal was that under section 161 of the Customs and Excise Laws 1967-77 there could be examined only applications for the refund of import duty which had been made within three months from the payment of such duty. 5
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Held, dismissing the recourse: Though section 161 is applicable only to a case where a dispute arises before the goods are cleared from the customs, it was reasonably open to respondent 2 to act on this occasion by analogy to the three months' time-limit laid down for the purposes of the said section 161

3) There does not appear to exist any legislative provision entitling the applicants to be refunded with import duty which was paid without being due and so this recourse cannot succeed. 15

*Recourse dismissed.
No order as to costs.*

Cases referred to.

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Demetriou Dairy Products Ltd. v. The Republic (1985) 3 C.L.R. 758.

Recourse.

Recourse against the refusal of the respondents to refund to applicants import duty which was paid by them in respect of gas cookers for industrial purposes.

5 *N. Pelides, for the applicants.*

M. Photiou, for the respondents.

Cur. adv. vult.

10 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicants are, in effect, complaining against the refusal of respondent 2, the Director of Customs, to refund to them import duty which was paid by them in respect of gas cookers for industrial purposes.

15 On 29 September 1979 the applicants asked respondent 2 to inform them about the tariff classification for import duty purposes of gas cookers for industrial purposes and respondent 2 by his letter dated 4 October 1979 informed them that such cookers, being cookers not normally used in households, were free from duty.

20 Then the applicants, on 27 October 1979, asked to be informed what were the prerequisites for the refund to them of import duty which they had already paid in the past for similar cookers which were imported by them during the years 1975 to 1979.

25 They were asked on 13 November 1979 to submit a detailed statement of the imports concerned and the applicants did so on 21 December 1979.

30 Respondent 2 sought the advice of the Attorney-General of the Republic on the matter and, acting on such advice, he refused to refund the import duty paid by the applicants, except in respect of two imports effected on 18 September 1979 and on 21 September 1979.

35 The sub judice decision of respondent 2 was communicated to the applicants by his letter dated 13 June 1981 in which it was stated that, in accordance with the advice of the Attorney-General, there could be examined only applications for the refund of import duty which had been made within three months from the payment of such duty.

As it appears from the text of the advice of the Attorney-General, which is dated 5 May 1981, it was based on the provisions of section 161 of the Customs and Excise Laws, 1967-1977.

Strictly speaking the said section 161 is applicable only to a case where a dispute arises before the goods are cleared from the customs (see, in this respect, *Demetriou Dairy Products Ltd. v. The Republic*, (1985) 3 C.L.R. 758, 764) and, therefore, the applicants could not avail themselves of its provisions in the present instance, but it was reasonably open to respondent 2 to act on this occasion by analogy to the three months' time-limit laid down for the purposes of the said section 161.

There does not appear to exist any legislative provision entitling the applicants to be refunded with import duty which was paid without being due and so, this recourse cannot succeed. But it is, of course, up to the applicant to pursue any other remedy which may be open to them.

In the result this recourse fails and is dismissed, but there will be no order as to costs.

Recourse dismissed.
No order as to costs.