[TRIANTAFYLLIDES, J.]

1965
Jan. 18
Feb. 5,
April 9,
Dec. 22

A. & S. ANTONIADES & Co.
and
THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

A. & S. ANTONIADES & Co.,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(Case No. 237/63).

Administrative Law—Revenue—Customs duty—Customs Management Law, Cap. 315, section 155(1)(2)—Recourse against decision of Respondent to demand from Applicant, under section 155(1) of the Law, payment of balance of customs duty short-levied through wrong classification of goods imported by Applicant—Decision based on subsequent classification, revoking the original one, in respect of the said goods —Subsequent classification properly open to Respondent in the light of all relevant provisions of law and facts—Court's interference unwarranted.

Administrative Law—Revocation of administrative acts—Revocation of original classification of goods imported by Applicant made in this case, a matter expressly regulated by particular legislation (section 155(1) of Cap. 315), and not governed by the general principles of Administrative Law governing such a matter in cases where the revocation is not based on a Law but is made on the basis of such general principles.

Applicant seeks the annulment of the decision of the Director of the Department of Customs and Excise—who comes under the Respondent Minister—to demand from Applicant, under section 155(1) of the Customs Management Law, Cap. 315, payment of an amount of £80.920 mils by way of balance of customs duty short-levied.

The history of events in this Case is as follows:-

On the 13th February, 1962, the Applicant cleared at Famagusta, a quantity of woollen materials which were imported by the steamship "Bernina" from Italy. Such goods were classified under tariff-item 653-02 of the Se-

cond Schedule to the Customs Tariff Law, 1961 (32/61)—later amended by Customs Tariff (Amendment) Law 1963 (3/63)—and customs duty was, therefore, collected at the rate of 30% on the value of such goods.

Later on, in July, 1962, a further quantity of similar woollen materials, imported by Applicant, was cleared at Limassol and on this occasion such materials were classified under tariff - item 841-19(b), carrying a higher rate of duty. As a result, counsel for Applicant wrote, on the 10th August, 1962, a letter claiming a refund of the difference of customs duty, over and above the rate of 30%. By paragraph 4 of such letter, counsel for Applicant expressly referred to previous importations, as above, at Famagusta.

By a reply of the Customs authorities, dated the 24th September, 1962, the claim of Applicant was turned down and it was, also, stated therein that in relation to the goods cleared at Famagusta on the 13th February, 1962, the question of the collection of the difference in customs duty, resulting through wrong classification of such goods, would be dealt with separately.

In November, 1962, the Customs authorities prosecuted Applicant on three charges, under section 209 of Cap. 315, as amended by the Customs Management (Amendment) Law 1961 (26/61), in relation to alleged evasion of customs duty and collateral offences, in connection with the importation made, as aforesaid at Famagusta on the 13th February, 1962, under criminal case 6393/62 of the D.C. Famagusta.

In the meantime, on the 2nd October, 1962, Applicant had filed recourse 229/62 against the decision relating to the importation made at Limassol in July, 1962. On the 5th June, 1963, recourse 229/62 was withdrawn, after an agreement reached between the parties. It was part of such agreement that the aforesaid criminal case 6393/62 would be withdrawn.

On the 21st October, 1963, counsel for Applicant wrote to Respondent complaining that the terms of the said settlement had not been fully complied with and that, *inter alia,* the aforesaid criminal case 6393/62 had not been withdrawn.

Then followed the demand for the payment of duty short-levied, on the 8th November, 1963, which has givem rise to these proceedings. Such demand has been challenged by Applicant on the following two main grounds:-

1. That it is the original classification of the goods in question which is the correct one, and not the subsequent ones on which the demand has been based.

2. That even if the original classification was erroneous, the revocation of such classification in the circumstances in which it has been made is contrary to well established principles of Administrative Law.

Held, I. On ground 1:

(a) The classifications contained in the decision complained of were properly open to Respondent, in the light of both all relevant provisions of law and facts, and this Court should not interfere therewith.

(b) I do find that sufficient grounds existed leading with certainty to the classifications contained in the decision in question.

II. On ground 2:

(a) This is a Case where revocation of earlier administrative action is expressly regulated by the particular legislation, section 155(1), and therefore, it might well be said that it is not governed by the general principles of Administrative Law which govern such a matter in cases where the revocation is not based on a law but is made on the basis of such general principles.

(b) Even if I were, however, to hold that to the extent to which no express provision is made in the said section 155(1) the aforesaid general principles are applicable, I would again not have found in favour of Applicant in this Case.

(c) It cannot be said that the period which elapsed until the revocation effected by means of the letter dated the 8th November 1963, is so unreasonable as to render invalid such revocation—assuming always that it were to be found that though such revocation is expressly governed by statutory provision, viz. section 155(1) of Cap. 315, nevertheless, it is governed also by the general pri-

nciples of Administrative Law and it could not be validly made except within reasonable time.

The Order: This recourse has to be dismissed.

III. As regards costs.

I have decided to make no order in this matter because this was a case which came before the Court for the determination of a dispute which had arisen in all good faith and which properly called for determination.

Application dismissed.
No order as to costs.

Cases referred to:

Decisions of the Council of State of Greece No. 479/1938, 564/1949.

Recourse.

Recourse against the decision of the Respondent to demand from Applicant, under section 155(1) of the Customs Management Law, Cap. 315, payment of an amount of £80.920 mils by way of balance of customs duty short-levied.

Fr. Markides with Chr. Ioannou for the Applicant.

L.G. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicant applies for a declaration that the decision of the Director of the Department of Customs and Excise—who comes under the Respondent Minister—to demand from Applicant, under section 155(1) of the Customs Management Law, Cap.315, payment of an amount of £80.920 mils, by way of balance of customs duty short-levied, is *null* and *void* and of no effect whatsoever.

Such decision was communicated to Applicant by letter dated the 8th November, 1963, (vide *exhibit* 2).

A further claim of Applicant against the Director's declared intention to apply the provisions of sub-section (2)

of section 155, has not been pressed in these proceedings and so it does not call for determination, at present, by this judgment. Actually it appears that paragraph 3 of *exhibit* 2, which gave rise to such claim, was not put into effect eventually.

The history of events in this Case is as follows:—

On the 13th February, 1962, the Applicant cleared at Famagusta, (vide relevant documents, *exhibit* 1), a quantity of woollen materials which were imported by the steamship "Bernina" from Italy. Such goods were classified under tariff-item 653-02 of the Second Schedule to the Customs Tariff Law, 1961 (32/61)—later amended by Customs Tariff (Amendment) Law 1963 (3/63)—and customs duty was, therefore, collected at the rate of 30% on the value of such goods.

Later on, in July, 1962, a further quantity of similar woollen materials, imported by Applicant, was cleared at Limassol and on this occasion such materials were classified under tariff-item 841-19(*b*), carrying a higher rate of duty. As a result, counsel for Applicant wrote, on the 10th August, 1962, a letter (vide *exhibit* 8) claiming a refund of the difference of customs duty, over and above the rate of 30%. By paragraph 4 of such letter, counsel for Applicant expressly referred to previous importations, as above, at Famagusta.

By a reply of the Customs authorities, dated the 24th September, 1962, (vide *exhibit* 7), the claim of Applicant was turned down and it was, also, stated therein that in relation to the goods cleared at Famagusta on the 13th February, 1962, the question of the collection of the difference in customs duty, resulting through wrong classification of such goods, would be dealt with separately.

In November, 1962, the Customs authorities prosecuted Applicant on three charges, under section 209 of Cap. 315, as amended by the Customs Management (Amendment) Law 1961 (26/61), in relation to alleged evasion of customs duty and collateral offences, in connection with the importation made, as aforesaid, at Famagusta on the 13th February, 1962, (vide criminal case D.C. Famagusta 6393/62, *exhibit* 9).

In the meantime, on the 2nd October, 1962, Applicant had filed recourse 229/62 against the decision contained in *exhibit* 7, above, and relating to the importation made, as already

stated, at Limassol in July, 1962. On the 5th June, 1963, recourse 229/62 was withdrawn, after an agreement reached between the parties, the terms of which are recorded in the relevant Court record (vide *exhibit* 3). It was part of such agreement that the aforesaid criminal case 6393/62 would be withdrawn.

Such criminal case has not, in fact, been withdrawn and it is still pending—presumably because in connection with the importation to which it relates i.e. that of the 13th February, 1962, at Famagusta, the present recourse has been filedsubsequently.

As it will be seen later on in this judgment the terms of settlement of case 229/62 (*exhibit* 3) are factors which I have found to be very relevant to the outcome of the present proceedings.

On the 21st October, 1963, counsel for Applicant wrote to Respondent complaining that the terms of the said settlement had not been fully complied with and that, *inter alia*, the aforesaid criminal case 6393/62 had not been withdrawn, (vide *exhibit* 4).

Then followed the demand for the payment of duty short-levied, *exhibit* 2, on the 8th November, 1963, which has given rise to these proceedings.

There is no doubt that *exhibit* 2 is a revocation of the originally made classification of the goods in question, when such goods were cleared on the 13th February, 1962, (vide *exhibit* 1).

Such revocation has been based on sub-section (1) of section 155 of Cap. 315, which reads as follows:—

> "When any customs duty has been short-levied or erroneously refunded, the person who should have paid the amount short-levied or to whom the refund has erroneously been made shall pay the amount short-levied or repay the amount erroneously refunded, on demand being made by a collector".

The action taken under the above sub-section (1) has been challenged by Applicant on the following two main grounds:-

1. That it is the original classification of the goods in question which is the correct one, and not the subsequent

ones on which *exhibit* 2 has been based.

2. That even if the original classification was erroneous, the revocation of such classification in the circumstances in which it has been made is contrary to well established principles of Administrative Law.

The nature of the goods imported at Famagusta on the 13th February, 1962, is not really in dispute (vide paragraph (1) of the facts in support of the Application in which it is stated that the goods in question were those mentioned in the letter of the 8th November, 1963, *exhibit* 2).

From the evidence of Mr. Takis Christou, Collector of Customs—which I do accept as reliable—it appears that the woollen materials concerned belong to two types: The first type is woollen material which at regular intervals, along its length, has perpendicular lines or strips of lighter texture. If such material is cut accordingly, along such lines or strips, the thus resulting pieces of a predetermined size, become, *inter alia*, coverlets. (Of this type is *exhibit* 10 in these proceedings). This is the type of material which was classified in *exhibit* 2 under tariff-item 656-03 (*a*). The second type of material is similar but in addition to the perpendicular lines or strips it has also a similar parallel line or strip of lighter texture all along its length. So if it is cut accordingly the thus resulting pieces of a predetermined size become shawls or scarves. This is the type of material which was classified in *exhibit* 2 under tariff-item 841-19(*b*). The first type of material is usually white in colour and the other type is available in quite a number of other colours.

Furthermore, it is clear from the letter of counsel for Applicant, *exhibit* 8, that the woollen materials imported through Famagusta on the 13th February, 1962, are quite similar to the woollen materials imported through Limassol, later, in July, 1962, and in relation to which recourse 229/62 was filed.

Coming to the tariff-items with which we are concerned:

The descriptive part of tariff-item 653-02 (vide 2nd Schedule to Law 32/61) reads—

«Ὑφάσματα μάλλινα (κασμήρια)»

It is under this tariff-item that, as already stated, the original classification of the goods in question has been made

at Famagusta on the 13th February, 1962.

The descriptive part of tariff-item 656-03(*a*) (vide 2nd Schedule to Law 32/61), under which materials of the first type were classified by means of *exhibit* 2, reads—

«Κλινοσκεπάσματα, κιλίμια ταξειδίου καὶ κουβέρται, ὡς ἀκολούθως:-

(α) Ὧν ἡ ἐπικρατεστέρα ὕλη εἶναι ἔριον

»

The descriptive part of tariff item 841-19(*b*) (vide 2nd Schedule to Law 32/61 as amended by Law 3/63) under which materials of the second type were classified by means of *exhibit* 2, reads—

«Ρινόμακτρα (μανδήλια), περιβραχιόνια, λαιμοδέται (γραβάται), μανδήλια λαιμοῦ, ἐπώμια (σάλια, ἐσάρπαι), περιλαίμια (κολλάρα), κορσέδες, τιράντες, κολανάκια ὡρολογίων, καὶ ἕτερα εἴδη ἱματισμοῦ, μὴ ἀλλαχοῦ κατονομαζόμενα, ὡς ἀκολούθως:-

. . . . . .

(β) Λοιπὰ »

In matters of classification of goods, such as the present Case, an Administrative Court has no competence to substitute its own discretion in the place of the discretion of the proper authorities (vide Decisions of the Council of State in Greece 479/1938, 564/1949); but, of course, as in every other case of recourse under Article 146 the Court has to examine the legality of the *sub judice* decision, and also whether it was reached through any misconception and cognate matters.

Having carefully considered the evidence of Mr. Christou, as well as all other relevant considerations of law or fact, I have reached the conclusion that the classifications contained in *exhibit* 2 were properly open to Respondent, in the light of both all relevant provisions of law and facts, and this Court should not interfere therewith.

Even if I were to decide the substance of the matter myself, I would have decided it in the same way as the Customs authorities have done, because there is no doubt that the most obvious use of a material, such as *exhibit* 10, is to cut it into its predetermined parts and use such parts as travelling rugs, coverlets, blankets and the like. Likewise, the most

obvious use of the other type of material, is to have it cut into its predetermined parts and use such parts as scarves or shawls. Moreover, both such materials are quite unsuitable for sale as piece-goods, by the yard or pic, because of the existing lines of lighter texture.

The mere fact that from these materials baby overcoats, cardigans and other clothing, (vide *exhibits* 5 *and* 6) may be made, does not detract from the validity of the classifications made in *exhibit* 2, because even from finished articles such as blankets, travelling rugs, shawls or scarves, the above clothing articles could also easily be made, but that would not be a good enough reason for not classifying properly such articles. In any case, it is useful to note that in *exhibit* 5, it is expressly stated that such materials are suitable for such things as "scarves" and "pram blankets".

Apart from all the above considerations, on which I would have in any case based my decision not to interfere with the classifications made in *exhibit* 2, I would add that such classifications appear to have been agreed upon as the proper ones—in relation to at least, *inter alia*, the importation made on the 13th February, 1962—by means of the settlement in case 229/62 (*exhibit* 3).

As stated earlier, such case related to quite similar materials, imported later, in July 1962, (vide *exhibit* 8). This appears, also, to be so from the description of the materials in question in the opening paragraph of such settlement; the "fringes" mentioned there are apparently the strips of lighter texture, (vide also *exhibit* 7).

The classifications agreed for the respective types of materials by the said settlement correspond exactly to those made in *exhibit* 2.

Bearing in mind the above and also the significant fact that in the third paragraph of such settlement it was stated that criminal case 6393/62 (vide *exhibit* 9)—relating to the importation of the 13th February, 1962—would be withdrawn, one may conclude that no further dispute existed about the classification of the materials imported on such date and that they would be classified as agreed in *exhibit* 3.

It may be added that whether the goods concerned are to be described as blankets, travelling rugs, coverlets, scarves or shawls, "semi-manufactured" (as they appear described

in *exhibit* 2) or as the said articles "joined together" (in accordance with the views of Mr. Christou in evidence) would make no difference, because I agree with Mr. Christou that from a perusal of the relevant provisions it follows that semi-manufactured articles bear the same customs duty as manufactured articles, unless there is provision to the contrary in a particular case, which is not so in relation to the aforesaid goods.

Fully bearing in mind, therefore, that the action taken by means of *exhibit* 2, under sub-section (1) of section 155, would have to be justified on proper grounds, I do find that sufficient grounds existed leading with certainty to the classifications contained in *exhibit* 2, because of the reasons already given in this judgment.

This concludes the part of this judgment dealing with the first contention of Applicant.

Regarding the second contention of Applicant viz. that in the circumstances of this Case it was not proper to revoke, by means of *exhibit* 2, the original classification, contained in *exhibit* 1, it is to be observed first that this is a Case where revocation of earlier administrative action is expressly regulated by the particular legislation, section 155(1), and, therefore, it might well be said that it is not governed by the general principles of Administrative Law which govern such a matter in cases where the revocation is not based on a Law but is made on the basis of such general principles, (vide Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 199).

Even if I were, however, to hold that to the extent to which no express provision is made in the said section 155(1) the aforesaid general principles are applicable, I would again not have found in favour of Applicant in this Case, for the following reasons, *inter alia*:—

It is Applicant's submission that it was too late in the day to revoke, on the 8th November, 1963, by means of *exhibit* 2, the original classification of the goods in question made on the 13th February, 1962, (vide *exhibit* 1). Applicant also refutes Respondent's contention that the original classification was induced by Applicant's misrepresentation about the nature of the goods.

I am of the opinion that though possibly Respondent was

misled to a certain extent by the description of the goods at the time of their importation, it is clear that, later on, by *exhibit* 8 Applicant made a full disclosure of the exact position regarding the nature of the goods in question; this was on the 10th August, 1962, and any misrepresentation prior to then would not by itself justify the delay in revoking the original classification.

I do find, however, that in the light of all circumstances of this Case the period which intervened between *exhibit* 1 and *exhibit* 2 was not an unreasonably long period for purposes of revocation of the classification in *exhibit* 1 by means of the classifications in *exhibit* 2.

I say this, in spite of the length of such period, because the issue regarding the classification of the goods in question arose really after *exhibits* 7 *and* 8 were exchanged between the parties in August and September 1962; until then I accept that, in accordance with the evidence of Mr. Christou, the Customs authorities had not appreciated the exact nature of the goods imported on the 13th February, 1962, though I do not agree that this was due to any deliberate attempt on Applicant's part to hide such nature. Then after *exhibits* 7-8 were exchanged, the issue was brought before the Court by judicial proceedings, the earliest of which was case 229/62 which was filed on the 2nd October, 1962. It was natural, pending such proceedings, for the question of the classification made on the 13th February, 1962, to remain in abeyance, because though such classification was not directly involved in such proceedings it would be affected by their outcome. Moreover, in November, 1962, criminal case 6393/62, (vide *exhibit* 9), directly relating to such classification was filed against Applicant.

As already stated, on the 5th June, 1963, case 229/62 was settled by means of *exhibit* 3 and such settlement, as I have said, related also to the importation of similar goods on the 13th February, 1962, with which we are concerned in the present proceedings. It appears that after that settlement the Customs authorities reverted back, on the basis thereof, to the said importation and eventually wrote *exhibit* 2 on the 8th November, 1963.

For all these reasons I do find that it cannot be said that the period which elapsed until the revocation effected by means of *exhibit* 2 is so unreasonable as to render invalid

such revocation—assuming always that it were to be found that though such revocation is expressly governed by statutory provision, viz. section 155(1) of Cap. 315, nevertheless, it is governed also by the general principles of Administrative Law and it could not be validly made except within reasonable time (vide Kyriakopoulos on Greek Administrative Law, 4th edition, volume II, p. 414).

It is correct that after the settlement, *exhibit* 3, there followed a period of apparent inaction on the part of Respondent and *exhibit* 2, the letter of the 8th November, 1963, was written by Respondent after Applicant had complained by letter of the 21st October, 1963, that the said settlement had not been fully implemented by Respondent; I do not think, however, that it can be safely concluded from this that, had it not been for such letter of Applicant, Respondent would not have proceeded to take action in any case, as done eventually by means of *exhibit* 2. It is, also, true that Respondent after the aforesaid settlement did delay somewhat in dealing with the pending matter of the classification of the goods imported on the 13th February, 1962—and that is why criminal case 6393/62 which was to be withdrawn by virtue of the settlement, *exhibit* 3, was not so withdrawn pending final action in relation to the said importation—but in my view such delay was not such as to affect the validity of *exhibit* 2. After all we must bear in mind that after the settlement, *exhibit* 3, Applicant ought to have known all along that Respondent would revert in due course on the pending matter of the importation of the 13th February, 1962, in view of the fact that, as I found already, it was clearly implied in such settlement that such importation would be covered by the said settlement.

The essence of the general principle excluding revocation of an administrative decision after a considerable length of time is that, in the meantime, a person affected thereby may have altered his position by relying on such decision; there should be certainty in administration. In this connection—in addition to all the other views I have already expressed on this point—I would point out that since September, 1962, when *exhibit* 7 was written by Respondent and the dispute arose as to the classification of goods of the nature in question, Applicant had ample notice that eventually he might have to pay further duty and had, therefore, to plan

his course of conduct accordingly in dealing with such goods.

On the basis of all the foregoing I find that Applicant's second contention fails also and, therefore, it follows that this recourse has to be dismissed, for all the reasons set out in this judgment.

As regards costs I have decided to make no order in this matter because this was a case which came before the Court for the determination of a dispute which had arisen in all good faith and which properly called for determination.

Application dismissed.
No order as to costs.