1965
Nov. 26
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May 31
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HAGOP OUZOUNIAN
and
THE REPUBLIC OF CYPRUS, THROUGH
1. THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS AND EXCISE
2. THE MINISTER OF FINANCE

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HAGOP OUZOUNIAN,

Applicant

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS AND EXCISE,
2. THE MINISTER OF FINANCE,

Respondent.

(*Cases Nos. 66/33, 130/63*).

Customs—Recourse against imposition of customs (or import) duty on two lots of identical imported goods—Preliminary legal issues—No parallel legal remedy exists by way of action under section 159 (2) of the Customs Management Law, Cap. 315—Raising of a technical issue in proceedings such as these cannot oust the competence of Court—Though Court can pronounce upon such an issue only within the limits laid down by Article 146.

Constitutional and Administrative Law—Article 146 of the Constitution of Cyprus—Pre-existing judicial competences in administrative matters—Ceased being in force as contrary to the Constitution in view of the "exclusive jurisdiction" created under Article 146—"Parallel remedy"—Theory of, in Greece—Has no application in Cyprus in view of the element of exclusivity in Article 146.

In this recourse whereby the applicant challenged the imposition of customs (or import) duty on two lots of identical goods imported in April and June, 1963, respectively, counsel appearing on behalf of the Respondents raised the following two preliminary objections when the case came up for hearing.

(1) That a parallel legal remedy exists, by way of action under section 159 (2) of the Customs Management Law, Cap. 315, and that, therefore, these recourses could not be made, and that remedy ought to have been resorted to and

(2) that the main issue raised in these proceedings is

a technical matter relating to the classification of the goods in question, and such an issue cannot be decided under Article 146 of the Constitution.

Held, (1) regarding the first objection, I am of the view that the said section 159 (2) provides, in effect, for a remedy against acts or decisions amounting to the exercise of executive or administrative authority against which a recourse lies under Article 146; such section 159 (2) must be deemed, therefore, to have ceased to be in force, by virtue of Article 188 of the Constitution, when the Constitution came into effect in August, 1960. This question of pre-existing competences, in administrative matters, which have ceased being in force, as contrary to the Constitution in view of the "exclusive jurisdiction" created under Article 146, has been gone into in quite a number of past cases; it is sufficient to refer, *inter alia*, to *Mikrommatis and the Republic* (2 R.S.C.C. p. 125).

So, in my opinion, no question of an existing parallel legal remedy does arise.

(2) Regarding the second objection of counsel for respondent, in my opinion the raising of a technical issue in proceedings such as these cannot oust the competence of this Court though, of course, the Court can pronounce upon such an issue only within the limits laid down by Article 146 ; this Court will, thus, not proceed to determine a technical issue, as such, for its own sake, but will only deal with it to the extent to which this may be relevant and necessary in relation to a question of constitutionality, legality or excess or abuse of powers arising in the proceedings before it.

(3) For all the above reasons, I find that the hearing of these recourses before this Court should be proceeded with.

Order in terms.

Cases referred to :

Mikrommatis and the Republic, 2 R.S.C.C. 125;

Kyriakides and the Republic, 1 R.S.C.C. 66;

Pelides and the Republic, 3 R.S.C.C. 13.

Recourse.

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HAGOP OUZOUNIAN
and
THE REPUBLIC OF CYPRUS, THROUGH
1. THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS AND EXCISE
2. THE MINISTER OF FINANCE

Recourse against the decision of the Respondent concerning the imposition of customs (or import) duty on two lots of identical goods imported respectively in April and June, 1963.

Chr. Mitsides, for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Decision was delivered by:–

TRIANTAFYLLIDES, J.: By means of these two recourses, which have been consolidated at an earlier stage of the proceedings, the Applicant challenges the imposition of customs (or import) duty on two lots of identical goods imported respectively in April and June 1963.

When these Cases came up for hearing, counsel for Respondent took two preliminary objections:–

First, that a parallel legal remedy exists, by way of action under section 159(2) of the Customs Management Law, Cap. 315, and that, therefore, these recourses could not be made, and that remedy ought to have been resorted to.

Secondly, that the main issue raised in these proceedings is a techical matter, it relates to the classification of the goods in question, and such an issue cannot be decided under Article 146 of the Constitution.

Regarding the first objection, above, I am of the view that the said section 159(2) provides, in effect, for a remedy against acts or decisions amounting to the excercise of executive or administrative authority against which a recourse lies under Article 146; such section 159(2) must be deemed, therefore, to have ceased to be in force, by virtue of Article 188 of the Constitution, when the Constitution came into effect in August, 1960. This question of pre-existing competences, in administrative matters, which have ceased being in force, as contrary to the Constitution, in view of the "exclusive jurisdiction" created under Article 146, has been gone into in quite a number of past cases; it is sufficient to refer, inter alia, to *Mikrommatis and The Republic* (2 R.S.C.C. p. 125).

So, in my opinion, no question of an existing parallel legal remedy does arise.

Actually, with the wording of Article 146(1), as it is, and particularly in view of the use therein of the expression "exclusive"—coupled also with the similar provision to be found in Article 136 of the Constitution—I do not think that it is ever possible for a case of a legal remedy parallel to that in Article 146 to occur in Cyprus; because any legislation, providing for such a remedy in a matter which falls within the competence created by Article 146 would have to be pronounced unconstitutional as being in conflict with such Article. The exclusive nature of the competence under Article 146 has been discussed already in past cases, such as *Kyriakides and The Republic* (1 R.S.C.C. p. 66); it may, however, be pointed out that such exclusive competence does not prevent the making of provision for administrative review by higher authority or even specially set up organs (see *Pelides and The Republic*, 3 R.S.C.C. p. 13); thus, an organ, such as, in Greece, the Supreme Committee on Customs Disputes, might possibly be set up and function here, for the purpose of reviewing administratively customs matters like the sub judice one, and this would not, in my opinion, offend against Article 146.

On the other hand in countries, such as Greece, where the principle that a parallel legal remedy excludes the remedy by way of recourse for annulment has been propounded, it will be seen, from a perusal of provisions relating to the competence which corresponds to the competence under Article 146, that the position there is quite different, in that such provisions do not contain the element of exclusivity to be found in our Article 146; actually, in Greece, the relevant provision, section 46 of Law 3713/1928, expressly envisages the possible existence of a parallel legal remedy.

Regarding the second objection of counsel for Respondent, in my opinion the raising of a technical issue in proceedings such as these cannot oust the competence of this Court, though, of course, the Court can pronounce upon such an issue only within the limits laid down by Article 146; this Court will, thus, not proceed to determine a technical issue, as such, for its own sake, but will only deal with it to the extent to which this may be relevant and necessary in relation to a question of constitutionality, legality or excess or abuse of powers arising in the proceedings before it.

For all the above reasons, I find that the hearing of these recourses before this Court should be proceeded with.

Order in terms.