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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ESPERIA TOWER
HOTEL, AND/OR
TOWER INTER-
CYPRIAN HOTELS
LTD. AND/OR
TOWER HOTELS
MANAGEMENT
LTD.

ESPERIA TOWER HOTEL, AND/OR TOWER
INTERCYPRIAN HOTELS LTD. AND/OR TOWER
HOTELS MANAGEMENT LTD.,

Applicant's,

v.

and

REPUBLIC
(DIRECTOR OF
THE
DEPARTMENT
OF CUSTOMS
AND EXCISE
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF THE DEPARTMENT
OF CUSTOMS AND EXCISE AND ANOTHER,

Respondents.

(Case No. 24/72).

Customs and Excise—Import duty—Relief from—Goods conditionally relieved from import duty—Respondent Director entitled to require importers to sign bond for observation of conditions imposed—And to claim the duty payable on the goods when conditions under which the goods were relieved from import duty were not observed—Proviso to item 12 of the Fourth Schedule to the Customs and Excise (Duties and Drawbacks) Law, 1967 (Law No. 81 of 1967)—See further immediately herebelow.

Import duty—Relief from—Goods conditionally relieved from import duty—“Goods for use in Hotels in the Republic” in item 12(h) of the Fourth Schedule to section 12 of the said Law—Construction of the words “goods for use in hotels in the Republic”.

Statutes—Construction of—Principles applicable—Schedule to a Law—It is considered as part and parcel of the Law.

Words and Phrases—“Goods for use in hotels in the Republic (supra). («Ἐμπορεύματα πρὸς χρῆσιν ἐν ξενοδοχείοις ἐν τῇ Δημοκρατίᾳ»).

The facts sufficiently appear in the judgment of the learned Judge of the Supreme Court dismissing the present recourse under Article 146 of the Constitution.

Cases referred to .

Becke v Smith [1836] 2 M and W 191 at page 195,

The Attorney-General v Lamplough [1877 - 78] 3 Ex D 214. at p. 229.

Recourse

Recourse against the decision of the respondents that the duty involved on a photo-copying machine became payable forthwith and against the imposition and collection of £109 370 mils import duty on the said photo-copying machine

L. Papaphilippou, for the applicant.

V. Aristodemou, Counsel of the Republic.
for the respondent

Cur ad vult

The following judgment was delivered by :-

MALACHTOS, J The applicants in this recourse are the owners of Esperia Tower Hotel of Franklin Roosevelt Avenue, Famagusta, and on 20th October, 1970, they cleared through the Customs under Import Entry No B1539 one photo-copying machine, and they claimed relief from duty under section 12 item 12(h) of the 4th Schedule to the Customs and Excise (Duties and Drawbacks) Law, (81/67).

Section 12 reads as follows

“12(1) Without prejudice to the provisions of any other enactment whereunder specified goods may be imported free of import duty for use by certain privileged persons, bodies, authorities and organisations, goods of the description specified in the Fourth Schedule shall in the circumstances and subject to compliance with the conditions set out therein, be relieved to the extent stated in the third column of the said Schedule, from any import duty which would be otherwise chargeable on them by virtue of this Law, provided that relief from the payment of such import duty is claimed by or on behalf of the importer before the goods are released from customs control save as is otherwise expressly provided for herein.

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(2) The Council of Ministers, by Order published in the Official Gazette of the Republic, may add to, delete from, vary or otherwise amend the items, or any of them, as set out in the Fourth Schedule hereto."

The Fourth Schedule reads as follows :

"Goods of specified descriptions conditionally eligible for relief from duty	Scope of, and conditions governing, relief :
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Particulars of Exemption	(h) cash registers, type-
Item 12 : Goods for use in Hotels in the Republic	writers, duplicating machines, and similar office machines."

The application for relief from customs duty in respect of the machine in question, *exhibit 3*, dated 19/10/70, contains an undertaking on behalf of the applicants to comply with all conditions governing the duty-free admission of the said machine and to provide such security for the observance of those conditions as the Director of the Department of Customs and Excise may require. Clearance was allowed under the above relief item by the applicants signing an ordinary bond dated 19th October, 1970, (*exhibit 4*) for goods conditionally relieved from import duty by which they bound themselves to pay to the Republic of Cyprus on demand made by the Director of the Department of Customs and Excise, such an amount not exceeding the sum of £120.- as may be due in respect of the duty penalties on or in connection with the imported photo-copying machine. The said bond, as stated therein, should be void if the applicants complied with the provisions of the law, otherwise it should remain in full force.

On the 22nd October, 1971, on a post clearance investigation, it was found out that the said photo-copying machine was not installed in the premises of the Esperia Tower Hotel but in the office of Messrs. Francoudi & Stephanou, Co. Ltd., a Shipping Company of Famagusta.

On the 19th November, 1971, the Director of Customs and Excise addressed to the applicants the following letter, (*exhibit 1*) :

"I refer to the recent visit by an officer of this Department for verification of goods imported free of duty under item 12 of the 4th Schedule for use in your hotel, and would observe that as one photo-copying machine, model roytax 1700 was found to be installed at the premises of Messrs. Francoudi & Stephanou, Shipping Co. of Famagusta, contrary to the conditions of the relief the duty involved becomes forthwith payable.

2. The above action constitutes, *prima facie*, an offence under sections 158 and 188 of the Customs & Excise Law 82/67. Nevertheless, I propose to take no action against you if payment of the duty involved amounting to £109.370 mils is made to the Senior Collector of Customs, Famagusta, within fifteen days. Failure to do so within this period will lead to litigation without any further notice."

The applicants paid by cheque the sum of £109.370 mils, as requested by the second paragraph of the letter of the Director, under protest. This cheque was enclosed in the letter of their advocate dated 1st December, 1971, addressed to the Director and reads as follows :

"On the instructions of our clients Messrs. Esperia Tower Hotel, we acknowledge receipt of your letter dated the 19th November, 1971 contents of which are not admitted.

We enclose a cheque No. 023186 on National & Grindleys Bank Ltd. for £109.370 mils as requested by the 2nd paragraph of your letter under reply. This sum is paid to you under protest and we fully reserve return of the sum in question or to refer the matter before the proper Court."

The applicants by their present recourse claim —

(a) A declaration that the decision or act of the respondents that the duty involved on the photo-copying machine became forthwith payable by the applicants, is null and void and of no legal effect whatsoever;

(b) A declaration that the imposition and collection of £109.370 mils import duty on the said machine ought not to have been imposed and collected.

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The application, as stated therein, is based on the following grounds of law :

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1. The respondents acted on misconception of facts that is to say, erroneously they found that the said machine was installed at the premises of Francoudi & Stephanou Shipping Co. Ltd., and that the use thereof, was for other purposes than those of the applicants.

2. The respondents erroneously acted as if there was a breach of condition or undertaking upon which the said machine was released from import duty.

3. The respondents acted in excess or abuse of powers and/or *ultra vires* in that they cannot avail and act on the powers conferred by Law 82/67 with regard to their functions under Law 81/67.

4. The procedure followed by the respondents was wrong in that they did not adopt the procedure provided by Law 81/67.

5. The respondents failed to give the chance to the applicants to defend themselves and/or did not hear at all the applicants and/or they failed to afford them an opportunity to be heard; and

6. The respondents failed to carry out a proper enquiry as to the use of the said machine and other material facts.

It has been argued on behalf of the applicants that the respondents acted on a misconception of fact in that by finding the machine in the premises of Francoudi & Stephanou Co. Ltd., they took it for granted that it was not used for the hotel in question. However, one of the objects of the said Shipping Co. is the management of hotels, including the Esperia Tower Hotel, the present applicants. At all material times this machine was used exclusively for the Esperia Tower Hotel.

The misconception on behalf of the respondents consists in the interpretation of item 12 of the 4th Schedule of Law 81/67. The term «Ἐμπορεύματα πρὸς χρῆσιν ἐν ξενοδοχείοις ἐν τῇ Δημοκρατίᾳ» (goods for use in hotels in the Republic) does not necessarily mean that the said goods should be installed in the hotel. Due to the fact that hotels may be administered from a central

office the words "in hotels" should not be given a literal meaning but a wide meaning and that is "for hotels". Since the machine in question is exclusively used for the Esperia Tower Hotel the place where it is installed is immaterial.

It was also argued that the respondents by insisting to have the import duty paid out, acted in excess or abuse of power by relying on the Customs and Excise Law, 1967 (82/67) instead of relying on the provisions of The Customs and Excise (Duties and Drawbacks) Law, 1967 (81/67).

Finally, it was argued, that the respondents erroneously acted as if there was a breach of condition or undertaking on the part of the applicants upon which the said machine was released from import duty.

Now, the main issue to be decided in this case is the interpretation of item 12 of the Fourth Schedule of Law 81/67. It is a fundamental principle in the construction of a statute that the words must be given their literal meaning. If language is clear and explicit the Court must give effect to it. It is a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used and to the grammatical construction unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid any such inconvenience but no further. (*Becke v. Smith* [1836] 2 M. & W. 191 at page 195).

In the present case the term «Εμπορεύματα προς χρήση εν Ξενοδοχείοις εν τη Δημοκρατία» (goods for use in hotels within the Republic) in my view means that not only the goods must be used for an hotel but also must be used within the premises of the hotel in order to be exempted from duty. This view is strengthened by the first paragraph of the proviso in the third column of the Fourth Schedule of item 12 which speaks clearly about the imported goods by or on behalf of the proprietor of the hotel in which they are to be used. Had it been otherwise, the wording of item 12 of the Fourth

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Schedule would read -'Εμπορεύματα προς χρήση δια ξενοδοχεία εν τη Δημοκρατία» (goods for use for hotels within the Republic).

The intention of the legislature is obvious. The goods relieved from duty under the said item are conditionally relieved under the Schedule for use in the premises of the hotels so that the Director of Customs and Excise should be in a position to check and verify that the object for which the said goods were relieved is observed.

As to the other argument of counsel for applicants that the respondents acted in excess or abuse of powers by availing themselves of the powers conferred by Law 82/67 and that erroneously acted as if there was a breach of condition or undertaking upon which the said machine was released from import duty, I find no merit. It is clear from the proviso to item 12 of the Fourth Schedule of Law 81/67 that the Director of Customs and Excise for the protection of the revenue in respect of all goods admitted for exemption, is entitled to require the importers to sign a bond in terms approved by him. This proviso reads as follows :

“Provided that the Director is satisfied that the following conditions have been complied with :

- (i) Every specified article is imported by or on behalf of the proprietor of the hotel in which it is to be used and is marked to the satisfaction of the Director.
- (ii) Prior to removal from Customs control a bond, in terms approved by the Director for the protection of the revenue in respect of all goods admitted under this exemption is entered into by the proprietor of the hotel.”

The Schedule in a law is considered as part and parcel of it.

In Halsbury's Laws of England, 3rd edition, volume 36, page 374 paragraph 551, it is stated that—“To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a

matter of arrangement, and a schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced."

In the *Attorney-General v. Lamplough* [1877 - 78] 3 Ex. D. 214, at page 229, the following was stated by Brett L.J.: "With respect to calling it a schedule, a schedule in an act of parliament is a mere question of drafting—a mere question of words. The schedule is as much a part of the statute, and is as much an enactment as any other part."

So, it is clear from the above that the Director of Customs and Excise was empowered under the Fourth Schedule and, consequently, under the law, to require the applicants to sign the bond, *exhibit 4*, and to impose the conditions appearing therein. He was, therefore, entitled, *inter alia*, to claim the duty payable on the photo-copying machine in question from the applicants in view of the fact that the conditions under which the said machine was relieved from import duty were not observed.

For the reasons stated above this recourse fails.

In the circumstances of this case I make no order as to costs.

Application dismissed.
No order as to costs.

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