

1983 June 29

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

SIX STAR MOTORS AGENCY LTD..

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF COMMUNICATIONS AND WORKS.
2. THE REGISTRAR OF MOTOR CARS.
3. THE OFFICER-IN-CHARGE OF MOTOR CARS INSPECTION SERVICE,

Respondents.

(Case No. 63/83).

Motor Vehicles and Road Traffic Regulations, 1973—“Goods vehicle”—“Light goods vehicle”—Registration—Saloon vehicles manufactured in Japan and exported to Hong Kong where they were converted into goods vehicles—On their importation in Cyprus they could be registered as “light goods vehicles” notwithstanding the provisions of regulation 6(3) of the above Regulations—“Constructed or adapted” in the definition of “goods vehicle” in regulation 2—Meaning—“Adapted” in regulation 6(3).

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Words and phrases—“Goods Vehicle”—“Light goods vehicle”—“Constructed or adapted” in the definition of “goods vehicle” in regulation 2 of the Motor Vehicles and Road Traffic Regulations, 1973—“Adapted” in regulation 6(3).

10

The applicants imported from Hong Kong 43 Subaru motor vehicles. They applied for registration of same as light goods vehicles. The respondents refused registration on the ground that such registration contravenes regulation 6(3)* of the Motor Vehicles and Road Traffic Regulations, 1973; and hence this recourse.

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* Regulation 6(3) provides as follows:

“The Registrar shall not register a motor vehicle—

(a) which has been adapted locally, or has undergone locally such changes, adaptations or alterations as to convert the type or class of the vehicle into a type or class different from the type or class for which it was constructed or intended by its makers”.

The 43 Subaru vehicles were manufactured by Fuji Heavy Industries Ltd. of Japan as saloon cars and were exported to Eastern Motors Ltd. of Hong Kong. The Hong Kong Company kept as brand new the aforesaid vehicles and after making changes and adaptations to them by removing the rear seats and replacing the rear side glass windows with sheet metal, it shipped them to the applicants. On arrival at Limassol they were all cleared as light goods vehicles after covering up the empty spaces left from the removal of the seats and fitting a grille or screen behind the driver's seat.

Held, that "Constructed" in the context of the definition of "goods vehicle" in regulation 2 of the Motor Vehicles and Road Traffic Regulations, 1973 refers to the time of manufacture; "adapted" refers to a time after construction and before registration. "Adapted" ("διασκευασμένον") is used disjunctively and as an alternative to the term "constructed" ("κατασκευασμένον") and means physically altered later so as to make the vehicle apt for the particular use, that the removal of the seats and the replacement of the glass sheet panels on the rear side windows at Hong Kong made them apt for goods vehicles; that nothing was done locally which amounts to adaptation or conversion into another type or class because it is not the placing of the screen that makes the adaptation for use as a goods vehicle or the conversion into another type or class other than the one for which it was constructed or intended by its makers; accordingly the decision of the respondents is contrary to Law and it is hereby declared null and void and of no effect.

Sub judice decision annulled.

Cases referred to:

- Voyiazianos v. Republic* (1967) 3 C.L.R. 239;
Koniotis v. Republic (1967) 3 C.L.R. 376;
Ioannides v. Republic (1973) 3 C.L.R. 117;
Shamassian v. Republic (1973) 3 C.L.R. 341;
Karayianni and Others v. The Educational Service Committee (1979) 3 C.L.R. 371;
Mylonas v. Republic (1982) 3 C.L.R. 880;
Maddox v. Storer [1962] 1 All E.R. 831;
Hubbard v. Messenger [1938] 1 K.B. 300;

Minty v. Glew [1913] 110 L.T. 340;

Flower Freight Co. Ltd. v. Hammond [1962] 3 All E.R. 950 at p.952.

Recourse.

Recourse against the refusal of the respondents to register 43 Subaru motor vehicles imported by the applicants from Hong Kong. 5

St. McBride, for the applicants.

M. Cleopa (Mrs.), for the respondents.

Cur. adv. vult. 10

STYLIANIDES J. read the following judgment. The applicants imported from Hong Kong 43 Subaru motor vehicles. They applied for registration of same as light goods vehicles. The respondents refused registration on the ground that such registration contravenes regulation 6(3) of the Motor Vehicles and Road Traffic Regulations, 1973. This decision was communicated to the applicants by letter dated 2.12.82 attached to the recourse that runs as follows:- 15

“Έχω όδηγίες νά αναφερθώ στην έπιστολή σας ήμερ. 29.11.1982, σχετικά μέ την έγγραφή σαραντατριών (43) όχημάτων σαν έλαφρών φορτηγών (βάν). 20

2. Σας πληροφορώ πως τυχόν έγγραφή τους σαν έλαφρών φορτηγών όχημάτων θα προσκρούει στον Κανονισμό 6(3) των Περί Μηχαν. Όχημάτων και Τροχαίας Κίνησης Κανονισμών άρ. 159 του 1973, ό όποϊος αναφέρει: 25

“Ο Έφορος δέν έγγράφει μηχανοκίνητον όχημα—

(α) όπερ δισκευάσθη έπιτοπίως ή ύπέστη έπιτοπίως τοιαύτας άλλαγάς, προσαρμογάς ή μετατροπάς ώστε ό τύπος ή ή κατηγορία του όχήματος νά μετετρέπη εις τύπον ή κατηγοριαν έτέραν ή του τύπου ή τής κατηγορίας δι' ήν τοϋτο κατεσκευάσθη ή προωρίζετο υπό τών κατασκευαστών αύτου” 30

(“I am instructed to refer to your letter dated 29.11.1982, in respect of the registration of forty-three (43) vehicles as light goods vehicles (van). 35

2. I inform you that their registration as light goods vehicles will contravene regulation 6(3) of the Motor

Vehicles and Road Traffic Regulations No. 159 of 1973 which reads:

The Registrar shall not register a motor vehicle—

- 5 (a) which has been adapted locally, or has undergone locally such changes, adaptations or alterations as to convert the type or class of the vehicle into a type or class different from the type or class for which it was constructed or intended by its makers”).

10 The applicants by this recourse seek a declaration of this Court that the refusal of the respondents or of any of them, conveyed to applicants by letter dated 2.12.82, to register as vans the 43 motor vehicles is null and void and of no effect, being contrary to Law and/or the Constitution and/or as having been made in excess or in abuse of the powers vested in respondents or in
15 any of them.

One of the grounds, on which this recourse rests, is that previously motor vehicles imported under similar circumstances by others were duly registered by the Registrar of Motor Cars and the refusal to register applicants' motor vehicles as light goods
20 vehicles amounts to discrimination, unequal treatment and is contrary to the principle of equality enshrined in Article 28.1 of the Constitution.

The short answer to this is that if the registration of those cars as goods vehicles was contrary to Law, it cannot be regarded as
25 precedent entitling the applicants to equal treatment. No question of discrimination against the applicants could arise in the present case, as an illegal act of the Administration does not create an obligation on the Administration to repeat it in another instance; because in an earlier case an administrative organ
30 took a mistaken view of the Law, one cannot be held to be entitled to the same mistake on the part of the Administration. (See, inter alia, *Praxitelis Voyiazianos v. The Republic of Cyprus*, (1967) 3 C.L.R. 239; *George Koniotis v. The Republic of Cyprus*, (1967) 3 C.L.R. 376; *Ioannides v. The Republic*, (1973) 3 C.L.R. 117; *Bedros Shamassian v. The Republic*, (1973) 3 C.L.R. 341; *Ecaterini Karayianni and Others v. The Educational Service Committee*, (1979) 3 C.L.R. 371; *Mylonas v. The Republic*, (1982) 3
35 C.L.R. 880). This ground is untenable in Law.

The facts of the case, as emerging from the recourse, the opposition, the written addresses and the evidence adduced, are as follows:-

The applicants are dealers and importers of motor vehicles. Fuji Heavy Industries Ltd., of Japan, are manufacturers of Subaru motor cars. Eastern Motors Ltd., of Hong Kong, are importers of motor vehicles; they run factories and they are also exporters of motor vehicles. The 43 Subaru vehicles were manufactured by Fuji Heavy Industries Ltd. as saloon cars. They were shipped late in 1981 from Japan to the buyers thereof, Eastern Motors Ltd., of Hong Kong.

In packing list "A" from Fuji Heavy Industries Ltd. to Eastern Motors Ltd. the said motor vehicles are described as saloon cars. The applicants were desirous to buy and import from Hong Kong light goods vehicles. P.W.1 inquired of R.W.1 about the requirements for importation and registration of motor vehicles as goods vehicles. Eastern Motors Ltd., of Hong Kong, kept as brand new the aforesaid vehicles and made changes and adaptations to them to suit the requirements of their new buyers - the applicants. Eastern Motors Ltd. shipped the said vehicles to the applicants on board the vessel "AMADO". In packing list "B", an export declaration form, with exporters Eastern Motors Ltd. and consignees the applicants, they are described as follows: "13 units Brand New Subaru 1600 SRX Hatchback Commercial Van (1595 c.c.)" and "30 units Brand New Subaru 1600 GL Hatchback Commercial Van (1595 c.c.)".

On arrival at Limassol port all of them were entered as vans and they were removed into the warehouse as such. Fifteen of them were cleared from Customs in the state they were on importation as vans (light goods vehicles).

It is common ground that all 43 vehicles had no rear seats and the rear side windows were of sheet metal and not glass.

With regard to goods vehicles all custom stations acted on instructions that were later embodied in paragraph 4 of a circular, exhibit "A", attached to the written address in reply by the respondents, that reads as follows:-

"It has been decided to accept such vehicles for classification as vans provided that, before clearance, such vehicles will

5 be removed to a bonded warehouse and operations conducted therein so as to give the rear part a level floor by covering up the empty spaces left from the removal of the seats, and fitting a grille or screen behind the driver's seat".

This is what was actually done on the advice of R.W.2, Petrou, an Assistant Collector of Customs, posted at Customs Headquarters, with regard to the 28 of the said vehicles. Thus all 43 cars were cleared as light goods vehicles.

10 The Collector of Customs & Excise in Form C.72A - Advice to the Deputy Registrar of Motor Vehicles - described the said motor vehicles as "Subaru 1600 GL Commercial Van 1595 cc". This establishes that at the Customs they were classified as "goods vehicles" and import duty was paid for that class.
 15 Whatever the condition at the time of shipment from Japan, on arrival at Limassol - in this country - none of the 43 cars had rear seats and the rear side windows were not of glass but of sheet metal.

20 A certain Kattamis, of Nicosia, whose interest was not disclosed in these proceedings, furnished the Registrar of Motor Cars with a telex from Fuji Heavy Industries Ltd., addressed to him, the contents of which are: "RE: 1600 SRX C. VAN - HAVE NEITHER PRODUCED THIS MODEL BEFORE OR
 25 HAVE NO PLAN TO INTRODUCE THIS MODEL IN FUTURE".

The Ministry of Communications and Works applied later to Fuji Heavy Industries Ltd., inquiring about the specific differences between Subaru 1300 HB DL Panel Van, 1600 HB SRX and 1600 HB GL, besides engine capacity. (See exhibit "D").
 30 By telex (exhibit "E") the Japanese manufactureres quoted the differences relevant for the determination of this case as follows:-

DIFFERENT ITEMS	1300 HB DL PANEL VAN	1600 HB GL	1600 HB SRX
REAR SEAT	NILL	YES	YES
REAR SIDE WINDOW	SHEET METAL	GLASS	GLASS

In this telex it is stated: "AS TO YR QUESTION FOR WHETHER ABOVE DIFFERENCES EXCLUDE 1600 HB SRX AND 1600 HB GL OF BEING CONVERTED TO PANEL VAN WE REGRET WE ARE NOT IN A POSITION TO COMMENT ANYTHING TO YOU SINCE WE HAVE NEITHER PRODUCED PANEL VAN OF 1600 HB SRX AND 1600 HB GL OR CONVERTED 1600 HB SRX AND 1600 HB GL TO PANEL VAN UP TO NOW".

The conversion positively took place in Hong Kong by Eastern Motors Ltd. who sold and shipped them to the applicants as brand new Subaru commercial vans.

Mr. Kokkinis (R.W.2), Chief Inspector, Motor Vehicle Centre, Inland Transport Department, and Assistant Registrar of Motor Vehicles, stated that the reason the respondents rejected the application of the applicants was not only because a screen or grille behind the driver's seat was placed at the bonded warehouse in Limassol and a piece of wood was placed to level the floor, but mainly - and he stressed this more than once in his evidence - because the vehicles in question were neither manufactured nor intended by the manufacturers to be used as commercial vehicles. (See pp. 8, 9, 10 and 15 of the evidence).

At p.8 he said: "Vehicles are registered in Cyprus as commercial vans which were manufactured or were intended by the manufacturers to be used as commercial vehicles". At p.9 he further said: "In this case the manufacturer strictly refused to accept that his vehicles were constructed or designed to be registered as commercial vehicles". And at p.10 he said: "And also to be designed and constructed by its manufacturers for this purpose" (as a commercial vehicle).

The intention of the Japanese manufacturers weighed heavily on the mind of the respondents in arriving at the sub judice decision.

Applicants' counsel canvassed that the vehicles, in the condition of their importation, were goods vehicles whereas respondents' counsel argued on the line of Kokkinis's version.

" 'Φορτηγόν μηχανοκίνητον ὄχημα' σημαίνει ὄχημα κατασκευασμένον ἢ διεσκευασμένον κατὰ τρόπον ὥστε νὰ χρησιμοποιῆται διὰ τὴν μεταφορὰν ἢ ρυμούλκῃσιν πάσης φύσεως

ἀγαθῶν ἢ φορτίου ἢ ρυμουλκούμενον ὄχημα, οὕτω κατασκευασμένον ἢ διεσκευασμένον· ἐκτὸς ἐάν ἄλλως ρητῶς προνοῆται ἐν τοῖς παροῦσι Κανονισμοῖς, ὁ ὅρος 'φορτηγὸν μηχανοκίνητον ὄχημα' περιλαμβάνει τόσο ἐλαφρὰ μηχανοκίνητα ὀχήματα ὅσον καὶ φορτηγὰ μηχανοκίνητα ὀχήματα βαρέος τύπου".

'Ἐλαφρὸν φορτηγὸν μηχανοκίνητον ὄχημα' σημαίνει φορτηγὸν μηχανοκίνητον ὄχημα ὁ κυβισμὸς τῆς μηχανῆς τοῦ ὁποίου δὲν ὑπερβαίνει τὰς 3,000 κυβικά ἐκατοστὰ ἢ τὸ ἀπόβαρον τοῦ ὁποίου δὲν ὑπερβαίνει τοὺς δύο τόνους".

("Goods vehicle' means a vehicle which is so constructed or adapted to be capable of being used for the carriage or haulage of goods or load of any description and includes a trailer so constructed or adapted; and unless otherwise expressly provided in these Regulations the term 'goods vehicle' includes light goods vehicles as well as heavy goods vehicles".

'Light goods vehicle' means a goods vehicle the engine of which does not exceed 3,000 cubic centimetres or the weight of which unladen does not exceed two tons").

"Constructed" or "adapted" are past participles. "Constructed", in the context of the aforesaid definition, refers to the time of manufacture; "adapted" refers to a time after construction and before registration. "Adapted" ("διεσκευασμένον") is used disjunctively and as an alternative to the term "constructed" ("κατεσκευασμένον") and means physically altered later so as to make the vehicle apt for the particular use. (*Maddox v. Storer*, [1962] 1 All E.R. 831; *Hubbard v. Messenger*, [1938] 1 K.B. 300; *Minty v. Glew*, [1913] 110 L.T. 340).

In *Minty v. Glew* (supra), Atkin, J., at p.343 said:—

"But some meaning must be given to the words 'constructed or adapted for use solely for the conveyance', and, inasmuch as this vehicle, when it was originally constructed, was an ordinary waggonette, it is plain, I think, that the respondent would have to rely upon the words that it was adapted for use. I assume, for the purposes of this case, that that word involves, at any rate, that there should be some amount of alteration of the original construction if the original con-

struction was not solely for the conveyance of goods or burden in the course of trade or husbandry; that there was some alteration of the construction so as to make it fit for that purpose, and to make it fit for that as the main and substantial purpose for which it was to be used, though not excluding the possibility that it might be used for other purposes. I think that that must be the law". 5

Rowlatt, J., said at p.344:-

"'Adapted' means altered so as to make it apt. In this case, in one part of the case they use the word 'adapted' in its ordinary sense, merely as equivalent to suitable; but it obviously means, in the case of a vehicle which is not constructed for the purpose indicated, that it must be adapted - that is to say, it must be altered, so as to be apt for the purpose indicated. It need not be apt for that purpose to the exclusion of every other purpose, but if, as Coleridge, J., said, it is constructed for agricultural purposes. the fact that it is so constructed does not exclude other uses - that is to say, if people can ride in it that does not make it cease to be constructed solely for agricultural purposes. The question is, Was this vehicle constructed or adapted for agricultural purposes? If it was constructed or adapted so as to be a farm cart it is within the exemption, although people may ride in it, and there may be seats for people to ride in it with the farm goods that are being carried". 20 25

If vehicles are constructed or adapted for use for the conveyance of goods or burden of any description, it matters not that they are not solely constructed or adapted for that use. The words mean "originally constructed", or, notwithstanding the original construction, subsequently adapted for use for the conveyance of goods or burden of any description. (*Hubbard v. Messenger* (supra), at p.307). The intention with which a particular vehicle is constructed or adapted can only be a relevant consideration. The question whether adaptation is such as to make a passenger's vehicle into a goods vehicle is resolved by assuming that it had originally been constructed in its altered condition and then deciding whether as such it would be a goods vehicle. In this connection, it may well be that the manufacturers' advertisements, etc., can be looked at, not to ascertain the intention or purpose of the manufacturer or purchaser in re- 30 35 40

lation to the particular vehicle, but as some evidence of the use to which vehicles of the same type are ordinarily put. (Per Lord Parker, C.J., in *Flower Freight Co. Ltd. v. Hammond* [1962] 3 All E.R. 950, 952).

5 The relevant part of regulation 6(3)(a) reads:-

“ ‘Ο Έφορος δέν έγγράφει μηχανοκίνητον όχημα—

(α) όπερ διεσκευάσθη έπιτοπίως ή ύπέστη έπιτοπίως
 10 τοιαύτας άλλαγάς, προσαρμογάς ή μετατροπάς ώστε
 ό τύπος ή ή κατηγορία του όχήματος νά μετετρέπη
 είς τύπον ή κατηγορίαν έτέραν ή του τύπου ή τής κατη-
 γορίας δι' ήν τούτο κατεσκευάσθη ή προωρίζετο ύπό
 τών κατασκευαστών αύτου”.

(“The Registrar shall not register a motor vehicle --

(a) which has been adapted locally, or has undergone
 15 locally such changes, adaptations or alterations as to
 convert the type or class of the vehicle into a type or
 class different from the type or class for which it was
 constructed or intended by its makers”).

The overriding word is “locally” (“έπιτοπίως”). There
 20 are two legs: either “adapted” (“διεσκευάσθη”) or “the
 type or class converted into another type or class”. Irrespective of the type or class for which it was constructed or
 intended by its makers, if the motor vehicle was converted into
 another type or class not locally, then this regulation would not
 25 be applicable. The “types or classes” of motor vehicles are set
 out in regulation 17(7).

There is no doubt that the motor vehicles in question, as it
 appears from the packing list “A”, the telex “E” and the pho-
 tograph in the literature produced, were intended by the manu-
 30 facturers - Fuji Heavy Industries Ltd. - to be used for the carry-
 ing of passengers as a private motor vehicle other than a goods
 vehicle. Eastern Motors Ltd. at Hong Kong did such work on
 the motor vehicles in question that removed the differences
 mentioned in the telex of Fuji Heavy Industries Ltd. (exhibit
 35 “E”) between saloon cars and goods vehicles. The removal of
 the seats and the replacement of the glass by sheet panels on the
 rear side windows at Hong Kong made them apt for goods
 vehicles.

It is an admitted fact that the construction, with the aforesaid exceptions, of Subaru 1300 goods vehicles and the subject cars is not different at all. Colt vehicles and Kadett Opel vehicles made by their manufacturers for dual use were imported and registered and the screen was placed locally. This is no more than an indication that the screen is not a characteristic of a goods vehicle. It is not the placing of the screen that makes the adaptation for use as a goods vehicle or the conversion into another type or class other than the one for which it was constructed or intended by its makers. 5 10

Nothing was done locally which amounts to adaptation or conversion into another type or class.

In view of the foregoing the decision of the respondents is contrary to Law and it is hereby declared null and void and of no effect. 15

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

Sub judice decision annulled. No order as to costs.