

1984 June 30

[TRIANTAFYLIDIS. P.]

IN THE MATTER OF AN APPLICATION  
BY E. PHILIPPOU LTD.,

*Applicants.*

*(Customs Application No. 1/83).*

*Customs and Excise Law, 1967 (Law 82/67)—Dispute as to whether any or what duty of customs is payable—Reference of, to arbitrator—Under section 161(1)(a) of the Law—When procedure regarding arbitration can be resorted to.*

5           When the Director of the Department of Customs and Excise was asked by the applicants to value goods, imported by them, at a price less than that which was shown on the relevant invoice he refused to do so; and hence this application by the importers under section 161(1)(a)\* of the Customs and Excise  
10 Law, 1967 (Law 82/67), for the appointment of an arbitrator to whom there will be referred the dispute which has arisen, as between the applicants and the director of Customs and Excise, regarding the customs duty payable in respect of such goods.

15           *Held*, that the procedure regarding arbitration, envisaged by section 161(1)(a) of Law 82/67, can only be resorted to when there is a dispute as to the actual value of imported goods and not where the Director of the Department of Customs and Excise refuses to accept as correct a lower value of the goods concerned  
20 than that which is shown on the invoice in relation to which their import into Cyprus has taken place, as is the situation in the present case; and that, consequently, section 161(1)(a) is inapplicable to the dispute which has arisen on the present occasion; accordingly the application must fail.

25           *Held*, further, that the decision of the Director in a matter of this nature could conceivably be challenged only under

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\* Section 161(1)(a) is quoted at pp. 758–759 post.

paragraph (b) of section 161(1) of Law 82/67 which has to be read in conjunction with Article 146 of the Constitution.

*Application dismissed.*

### Application.

Application under section 161(1)(a) of the Customs and Excise Law, 1967 (Law No. 82/67) for the appointment of an arbitrator to whom there will be referred a dispute as between applicants and the Director of Customs and Excise, regarding the customs duty payable in respect of imported goods. 5

*Th. Ioannides*, for the applicants. 10

*M. Photiou*, for the Director of Customs and Excise.

*Cur. adv. vult.*

TRIANTAFYLIDIS P. read the following judgment. This is an application under section 161(1)(a) of the Customs and Excise Law, 1967 (Law 82/67), for the appointment, in accordance with the said legislative provision, of an arbitrator to whom there will be referred a dispute which has arisen, as between the applicants and the Director of Customs and Excise, regarding the customs duty payable in respect of imported goods. 15

It is useful to quote in full subsection (1) of section 161 of Law 82/67, which reads as follows: 20

“161.—(1) Ἐάν, πρὶν ἢ εἰσαχθέντα ἔμπορεύματα παραδοθῶσιν ἐκ τοῦ τελωνειακοῦ ἐλέγχου, ἀναφυῆ οἰαδῆποτε διαφορὰ καθ’ ὅσον ἀφορᾷ εἰς τὸ ἐάν ὀφείλεται ἐπ’ αὐτῶν οἰοσδῆποτε δασμός ἢ τὸ ποσόν τούτου, ὁ εἰσαγωγεὺς ὀφείλει νὰ καταβάλλῃ τὸ αἰτούμενον ὑπὸ τοῦ ἀρμοδίου λειτουργοῦ ποσόν, δύναται ὁμως ἐντὸς τριῶν μηνῶν τὸ βραδύτερον ἀπὸ τῆς πληρωμῆς— 25

(α) ἐάν μὲν ἡ διαφορὰ ἀφορᾷ εἰς τὴν ἀξίαν τῶν ἔμπορευμάτων, νὰ ἀπαιτήσῃ ὅπως τὸ ζήτημα παραπεμφθῆ εἰς τὴν διαιτησίαν προσώπου, διοριζομένου ὑπὸ Δικαστοῦ τοῦ Ἀνωτάτου Δικαστηρίου, καὶ μὴ τελούντος ἐν τῇ ὑπηρεσίᾳ οἰουδῆποτε Κυβερνητικοῦ Τμήματος, οὔτινος ἢ ἀπόφασις εἶναι τελειωτικὴ καὶ ἀνέκκλητος· ἢ 30

(β) ἐν πάσῃ ἑτέρᾳ περιπτώσει νὰ ὑποβάλλῃ αἴτησιν τῶν ἀρμοδίων δικαστηρίων δι’ ἀπόφασιν αὐτοῦ περὶ τὸ ποσόν 35

τοῦ τυχόν κατὰ νόμον πληρωτέου ἐπὶ τῶν ἐμπορευμάτων  
 δασμοῦ”.

5 (161.-(1) If, before the delivery of any imported goods from customs charge, any dispute arises as to whether any or what duty of customs is payable on those goods, the importer shall pay the amount demanded by the proper officer but may, not later than three months after the date of the payment--

10 (a) if the dispute is in relation to the value of the goods require the question to be referred to the arbitration of a referee appointed by a Judge of the Supreme Court, not being an official of any Government Department, whose decision shall be final and conclusive: or

15 (b) in any other case, apply to a competent Court for a declaration as to the amount of duty if any, properly payable on the goods).

20 In my view the procedure regarding arbitration, envisaged by section 161(1)(a) of Law 82/67, can only be resorted to when there is a dispute as to the actual value of imported goods and not where the Director of the Department of Customs and Excise refuses to accept as correct a lower value of the goods concerned than that which is shown on the invoice in relation to which their import into Cyprus has taken place, as is the situation in the present case.

25 Consequently, I find that section 161(1)(a) is inapplicable to the dispute which has arisen on the present occasion, when, in effect, the Director is being asked, by the applicants, to value goods, imported by them, at a price less than that which is shown on the relevant invoice; and the adoption by him of such a course involves the exercise of discretionary powers on his part. I am of the view that the decision of the Director in a matter of this nature could conceivably be challenged only under paragraph (b) of section 161(1) of Law 82/67 which has to be read in conjunction with Article 146 of the Constitution.

35 In the light of the foregoing this application is dismissed; but, in view of the novelty of the legal issue which has arisen in it, I will not make any order as to its costs.

*Application dismissed. No order  
 as to costs.*