

1984 July 12

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

AMBROSIA OILS (1976) LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF CUSTOMS OFFICE,

Respondent.

(Case No. 51/78).

*Special Refugee Charge (Imported Goods) Law, 1977 (Law 14/77)—
Section 4(1) not contrary to Articles 23, 24, 25 and 28 of the Con-
stitution—"Home consumption" in the said section—Not confined
only to the sale of goods—But includes their use, disposition,
5 destruction and waste—Chemical substances imported for utili-
zation in the industrial processing and purification of edible seed
oil—They are goods imported for "home consumption" within
the meaning of the said s.4(1).*

*Constitutional Law—Special Refugee Charge (Imported Goods) Law,
10 1977 (Law 14/77)—Not contrary to Articles 23, 24, 25 and 28 of
the Constitution—Article 25 protects from direct and not indirect
interference with the rights safeguarded thereunder.*

The applicant company owns and operates an industrial unit
for the purification and filtration of edible seed oil and the pro-
15 duction of margarine and cooking fats. In December, 1977
they imported 10 tons of sodium hydroxide and 50 drams of
phosphoric acid which they intended to utilize in the industrial
processing of purification and filtration of their above products.
The respondents acting under section 4* of the Special Refugee
20 Charge (Imported Goods) Law, 1977 (Law 14/1977) charged the
applicant with 2% on the dutiable value of the above goods and
hence this recourse.

* Section 4 is quoted at pp. 946-947 post.

Counsel for the applicants mainly contended:

- (a) That the decision for the imposition and collection of the additional 2% charge was unconstitutional as being contrary to Articles 23, 24, 25 and 28 of the Constitution. 5
- (b) That the expression "imported goods cleared through Customs for home consumption" in section 4(1) of Law 14/77 does not cover goods which are not intended to be sold to the public.

Held, (1) that Article 23 does not come into play, in any event as regards the imposition by or under the authority of a law of a tax, duty or rate of any kind whatsoever and otherwise justified by the provisions of Article 24 of the Constitution; that the special refugee charge of 2% on the dutiable value of goods imported for home consumption is neither destructive nor prohibitive in nature - treating it for the purposes of this case as a tax other than customs duties - and it is imposed for a public burden, such burden being the relief of the displaced and stricken persons, hence the payment of every amount collected into the said Fund; that Article 25 of the Constitution protects from direct and not indirect interference with the rights safeguarded thereunder; that as regards the issue of discrimination, the said charges are based on the principle of equality between all persons before the law and the equal distribution of the financial burdens as every person who imports into the Republic such dutiable goods is treated in the same way; and that, therefore, the issue of unconstitutionality must fail. 10
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(2) That the expression "imported goods cleared through Customs for home consumption" in section 4(1) of Law 14/77 is not confined only to the sale of goods, but it includes their use disposition, destruction, waste, amount consumed, etc.; and that the argument, therefore, of counsel for the applicant Company that "ἐπιτόπιος κατανάλωσις" (home consumption) in the said section refers to goods imported only for home sale or local sale, cannot stand. 30
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Application dismissed.

Cases referred to:

Apostolou v. Republic (1984) 3 C.L.R. 509.

Recourse.

Recourse against the decision of the respondent imposing on applicants by virtue of the Special Refugee Charge (Imported Goods) Law, 1977 (Law No. 14/77) a special charge of 2% on the dutiable value of goods imported by them.

A. S. Angelides, for the applicants.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

10 A. LOIZOU J. read the following judgment. By the present recourse the applicant company seeks a Declaration:

(a) that the decisions of the respondents, dated 6th December, 1977 and 15th December, 1977, as well as every consequential act by which they imposed on them, by
15 virtue of the Special Refugee Charge (Imported Goods) Law, 1977 (Law No. 14 of 1977) the amount of C£14.420 mils and C£21.920 mils as a special charge of 2% on the dutiable value of ten tons of sodium hydroxide and 50 drams of phosphoric acid, imported by
20 them, is null and void and of no effect whatsoever, and

(b) that the act and/or decision of the respondents contained in their letter of the 11th January, 1978, and/or their decision after re-examination of the whole case of the parties is null and void and of no effect.

25 The applicant company is registered as such under the Companies Law, Cap. 113, with limited liability and owns and operates an industrial unit for the purification and filtration of edible seed oil and the production of margarine and cooking fats. For the purposes of their industrial production they imported
30 through Limassol port on the 7th December, 1977 with the ship "TANIA" and on the 13th December, 1977, with the ship "WILHELMINA", 10 tons of sodium hydroxide and 50 drams of phosphoric acid as per Import Declarations Nos. 2837/77 and 2862/77.

35 The said chemical substances were charged upon clearance by virtue of the Limassol Customs Clearance Declarations Nos. 908 and 2441 with 2% special refugee charge which amounted to C£14.420 mils and C£21.920 mils respectively, which the

applicant company paid under protest and with reservation of their rights. By letter dated the 3rd January, 1978, the applicant company, through their counsel, questioned the said charge levied on them and expressed the view that the legislation by virtue of which same was imposed did not apply to items which were intended for use in industries as they would not be sold to the public of Cyprus. The respondents by their letter of the 11th January, 1978 informed them that the said goods come within the ambit of the Special Refugee Charge (Imported Goods) Law, 1977 and that by virtue of the said law the charge of 2% on the dutiable value of every imported goods cleared for local consumption, as same is specified in the Customs Laws, is imposed whether such goods are intended for use by an industry or for sale to the general purchasing public of Cyprus. He further informed them that the said charge is not imposed only and by way of exception to the restrictively referred instances of section 5, paras. (a) to (e) of the same Law.

Section 4, as it stood at the material to these proceedings time, reads as follows:-

“4.(1) Ἀπὸ τῆς ἡμερομηνίας δημοσιεύσεως τοῦ παρόντος Νόμου ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας καὶ ἐν ὅσῳ διαρκεῖ ἡ ἔκρυθμος κατάστασις ἐπιβάλλεται καὶ εἰσπράττεται, συμφώνως πρὸς τὴν τελωνειακὴν νομοθεσίαν, ἐπιβάρυνσις δύο τοῖς ἑκατὸν (2%) ἐπὶ τῆς δασμολογητέας ἀξίας παντὸς εἰσαγομένου ἐμπορεύματος τελωνιζομένου πρὸς ἐπιτόπιον κατανάλωσιν, ὡς αὕτη καθορίζεται εἰς τὴν τελωνειακὴν νομοθεσίαν, ἢ ὅποια ἐν οὐδεμίᾳ περιπτώσει ὑπολογίζεται κατὰ τὸν καθορισμὸν τῆς τιμῆς πωλήσεως τοῦ ἐμπορεύματος εἰμὴ κατόπιον ἐιδικῆς ἐπὶ τούτῳ ἐγκρίσεως τοῦ Ὑπουργοῦ Ἐμπορίου καὶ Βιομηχανίας ἢ τοῦ ὑπ’ αὐτοῦ ὀριζομένου Λειτουργοῦ τοῦ Ὑπουργείου του.

(2) Τὸ εἰσπραττόμενον ποσὸν ἐκ τῆς προσθέτου ἐπιβαρύνσεως καταβάλλεται πρὸς τὸ Ταμεῖον Ἀνακουφίσεως Ἐκτοπισθέντων καὶ Παθόντων, τὸ ὁποῖον τελεῖ ὑπὸ τὸν ἔλεγχον τοῦ Γενικοῦ Λογιστοῦ”.

In English it reads:-

“(4.(1) From the date of the publication of this Law in the Official Gazette of the Republic and so long as the abnormal situation continues, a charge of 2% is levied and collected,

in accordance with the Customs Laws, on the dutiable value of every imported goods cleared through Customs for home consumption as same is prescribed in the Customs Laws, which in no case is taken into account at the fixing of the sale price of the goods except, with the special, for the purpose, approval of the Minister of Commerce and Industry or the Officer of the Ministry, designated by him.

(2) The amount collected from the additional charge is paid to the Relief Fund for Displaced and Stricken Persons which is under the control of the Accountant-General”.

The “Customs Laws” referred to in the aforesaid provision are defined in section 2 of the same law as meaning the Customs & Excise Law, of 1967 to 1977 and the Customs and Excise Duties Laws of 1975 to 1977 and all Laws and Regulations relating to Customs and Excise for the time being in force in the Republic.

The grounds of law relied upon by the applicant Company are the following:-

- (1) The decision for the imposition and collection of the additional and/or special charge is unconstitutional and contrary to Articles 24 and 28 of the Constitution as it creates unequal treatment between the citizens of the Republic regarding the public burdens and/or treatment not proportionate to their financial means. In general the solution set out in Law 14/77 is contrary to Articles 24 and 28 of the Constitution, the Law itself considered as unconstitutional as introducing inequality in the allocation of the public burdens to the citizens of the Republic as it is not imposed impersonally.
- (2) If it was found that the decision of the respondents does not offend the Constitution, the same was reached as a result of a misconception of law and fact as they did not construe correctly the meaning of “goods cleared through Customs for local consumption”, having treated the goods imported by the applicants as such.
- (3) The respondents reached the sub judice decision without due or any inquiry.
- (4) The respondents acted in excess of power and under a

misconception of law as they ignored that by Law 14/77 we have a special legislation as compared with the general Customs Laws and as such prevailing over the special legislation.

- (5) The respondents failed at the re-examination of the case of the applicants to take into consideration the real facts and/or interpret correctly the relevant legislation". 5

I need hardly say anything about the grounds of law relating to lack of due inquiry, misconception of fact and abuse of power, as nothing of the kind transpires from the relevant material. On the contrary, the matter was duly inquired into by the respondents and a clear and reasoned reply was given to them in response to their application made for the purpose. 10

As regards the unconstitutionality issue, it may be pointed out here that in the written address of the learned counsel for the applicants, the unconstitutionality of section 4(1) of Law 14/77 was urged as offending also Articles 23 and 25 of the Constitution or their provisions were used in support of the main unconstitutionality issues raised on behalf of the applicants. This Court had the occasion to deal in numerous cases with the issues raised and I need not repeat them here. It is sufficient to reiterate that Article 25 of the Constitution protects from direct and not indirect interference with the rights safeguarded thereunder (see *Costakis P. Apostolou v. The Republic*, Cases Nos. 116/83 etc., a Full Bench judgment not yet reported)*. On the other hand, Article 23 does not come into play, in any event as regards the imposition by or under the authority of a law of a tax, duty or rate of any kind whatsoever and otherwise justified by the provisions of Article 24 of the Constitution. 15 20 25

Whilst at this point, I may say that I have no difficulty in concluding that the special refugee charge of 2% on the dutiable value of goods imported for home consumption is neither destructive nor prohibitive in nature - treating it for the purposes of this case as a tax other than customs duties - and it is imposed for a public burden such burden being the relief of the displaced and stricken persons, hence the payment of every amount collected into the said Fund. As regards the issue of discrimination, 30 35

* Now reported in (1984) 3 C.L.R. 509.

the said charges are based on the principle of equality between all persons before the law and the equal distribution of the financial burdens as every person who imports into the Republic such dutiable goods is treated in the same way. The issue, therefore, of unconstitutionality should also fail.

It remains now to consider what appears to be the main issue in this case. The interpretation and application of section 4(1) of the Law in respect of which it has been argued on behalf of the applicant Company that the expression "imported goods cleared through Customs for home consumption" does not cover goods which are not intended to be sold to the public. The entry of goods is regulated by section 24(1) of the Customs and Excise Law, 1967, by virtue of which the importer of any goods must deliver to the proper Officer an entry form. Sub-section 2, in so far as relevant, provides:

"Goods may be entered under this section -

- (a) for home consumption so long as they may, by law, be used for such purpose; or
- (b) for warehousing; or
- (c) for transit or transshipment; or
- (d) in such cases as the Director may permit for temporary retention with a view to subsequent re-exportation.

Provided that _____".

Under the Law customs duties are imposed and collected on goods that come within the first category and this because under section 30(1) of the Customs and Excise Law, 1967 (Law 82/67) and section 3(1)(a) of the Customs and Excise Duties Law, 1977 (Law No. 42/77), are imposed on all the goods to be found in the second Schedule to the said Law, which, after importation, are cleared for home consumption.

"Home consumption" no doubt covers not only the sale but also the use or other disposition of imported and cleared goods. Needless to say that the Greek text of the law is the official one and the word "κατανάλωσις" in Greek is defined in the Concise Dictionary of the Greek Language by Demetrakou, as meaning: "όλοσχερής δαπάνη, φθορά, έξάντλησις, ξόδεμα. Πώλησις προϊόντος. (Περίληπτ.), οι καταναλωται". In the

Dictionary of the Modern Greek (Λεξικόν τῆς Δημοτικῆς), "κατανάλωση" is defined as meaning: "δαπάνη, ἐξάντληση, ξόδεμα, φθορά".

I feel tempted, however, to turn to the English meaning of the word "consumption", that is the term that existed in the previous Customs Laws which constituted part of the new Laws which were a consolidation, extension and amendment of the enactments relating to Customs and Excise. If any reference is necessary, section 3 of the Customs Tariff Law, Cap. 316, refers to goods "which after importation into the Colony are cleared for home consumption therein".

In the Concise Oxford Dictionary, the word "consumption" is defined as "Using up; destruction; waste; amount consumed; wasting disease, esp. pulmonary consumption, phthisis".

In both, therefore, languages it has obviously the same meaning and in anyway it is not confined only to the sale of goods, but it includes their use, disposition, destruction, waste, amount consumed, etc. The argument, therefore, of learned counsel for the applicant Company that "ἐπιτόπιος κατανάλωσις" (home consumption) refers to goods imported only for home sale or local sale, cannot stand. He has indeed tried to draw support for his argument by the fact that in the last part of subsection 1, it is provided that in no case this 2% charge can be taken into account at the fixing of the sale price of the goods except with the special approval of the Minister. I am afraid this does not add to the argument that home consumption means home sale only, inasmuch as the cost of the chemical materials used in the course of the industrial processing, is taken into account in fixing the price of the product and this part of the subsection merely excludes the addition of the 2% to the cost of the chemicals used, without the prior approval of the Minister. It does not, therefore, point exclusively to the notion that home consumption means home sale.

Furthermore, support for his proposition was sought to be derived from the last phrase of section 5, para. (d), of the Law which refers to goods imported by Public Utility Organizations and which are not intended for sale to the public. Section 5, paras. (a) to (e) of the Law, cover the cases which are exempted

from such charge and does not add anything to the meaning that the words "home consumption" had and has always been ascribed to them in the context of Customs Laws. The goods in question were imported and cleared through Customs for home consumption in the sense that they were to be utilized in the industrial processing of purification and filtration of edible seed oil and as such are dutiable goods and attracted in law the special refugee charge of 2% which was imposed on them. If any question of drawback arises on account of re-exportation of goods, that is a matter which cannot be the subject of this recourse as it was a mere argument used and not part of the claim based on the facts of the case.

For all the above reasons this recourse is dismissed, but there will be no order as to costs.

15 *Recourse dismissed. No order as to costs.*