1985 May 15

[TRIANTAFYLLIDES, P., SAVVIDES, PIKIS, JJ.]

THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS AND EXCISE,

Appellants-Plaintiffs,

v.

GRECIAN HOTEL ENTERPRISES LIMITED,

Respondents-Defendants.

(Civil Appeal No. 6652).

Customs Duty—Imposition of, an administrative act—Power of the Customs Authorities to revoke a decision levying duty on imported goods after clearance—Decision revoking an earlier one imposing duty is also an administrative act—Such act can only be challenged by a recourse to the Supreme Court under Article 146.1 of the Constitution—Effect of failure to file a recourse within the time limited by Article 146.3 of the Constitution—General principles governing the revocation of administrative acts—The Customs and Excise Law 82/1967, sections 30, 156, 161, 188.

The respondents agreed to purchase 463 crates of Carrara Marble, auctioned by the Marshal of the Admiralty Court pursuant to an order of the Admiralty Court. Initially the said goods were classified by the Department of Customs as rough slabs of marble and, consequently, in accordance with the Customs Legislation, they were treated as not being subject to Customs Duty. Nearly a year later the Customs Department revised the said decision and informed the respondents that the said goods were in fact marble tiles (subject to 28% import duty) and asked them by a "demand note" dated 17.4.1978 to pay C£3,472.- as customs duty. (This sum was during the hearing adjusted to £3,346.-).

As the respondents disputed liability to pay the ap-

pellant sought to recover the said sum by means of a civil action before the District Court of Larnaca. Relying on the authority of *Customs and Excise Comrs.* v. *Tan* [1977] 1 All E.R. 432 (H.L.) the trial Judge dismissed the action on the ground that the Customs Department does not have power, at least in the case where short-levied duty does not originate from any fault of the importer, to revoke a decision levying duty on imported goods after clearance. Hence the present appeal.

Held, allowing the appeal (1) the imposition of Customs Duty is an administrative act, and like any administrative act it may, in appropriate circumstances, be revoked. The "demand note" dated 17.4.1978 clearly amounted to a new administrative decision revoking the earlier administrative decision to allow the importation of the goods in question on the basis that no customs duty was payable in relation to them. As in the light of the material before the Court the initial classification of the goods was erroneous, and, therefore, contrary to the relevant legislative provision, the "demand note" dated 17.4.1978 affords an instance of revocation of an unlawful administrative decision. In this case the application of the general principles of administrative law governing the revocation of unlawful administrative acts were not excluded by any specific legislative provision either in law 82/1967 or in any other law.

(2) Every illegal administrative act is liable, in appropriate circumstances, to revocation, the effect of which is to remove the decision recalled and create a new situation in law, definitive of the right of those affected thereby. The applicant's decision, on the 17.4.1978, to demand from the respondents the payment of customs duty, created a legal situation binding on the respondents. The customs duty became payable by the respondents and could be recovered by the appellant.

(3) An administrative decision revoking an earlier one can only be reviewed and is reviewable under Article 146.1 of the Constitution. The only way open to the respondents to avoid the payment of the duty imposed by the decision of the 17.4.1978 was to seek an annul-

ment of the said decision by means of a recourse under Article 146 of the Constitution. Since no such recourse was filed within the period of 75 days limited by Article 146.3 of the Constitution it was not, because of the exclusiveness of the Jurisdiction of the Supreme Court to annul administrative acts or decisions under Article 146 of the Constitution, open to the trial Court to find that the customs duty in quesion was not payable. Whether in the present case the power to revocation was properly exercised or not is a matter of no concern to the Court as such review can only be undertaken in the context of proceedings under Article 146.1 of the Constitution.

(4) Despite the similarity between English and Cyprus Legislation the case of *Tan*, supra is distinguishable, because administrative authorities in England lack power to revoke a customs decision, except upon discovery of falsity or concealment. While administrative authorities in Cyprus have inherent power to revoke an administrative act, in virtue of general principles of administrative law introduced in the Cyprus legal system by Article 146 of the Constitution.

Appeal allowed. No order as to costs of the appeal or of the trial.

Cases referred to:

Customs and Excise Comrs. v. *Tan* [1977] 1 All E.R. 432 (H. L.);

A. and S. Antoniades and Co. v. *The Republic* (1965) 3 C.L.R. 673;

Pavlides v. *The Republic* (1966) 3 C.L.R. 530 and on appeal (1967) 3 C.L.R. 217;

Zenios v. *The Republic* (1967) 3 C.L.R. 364;

Karayiannis v. *The Republic* (1974) 3 C.L.R. 420;

Yiangou v. *The Republic* (1975) 3 C.L.R. 228; and on *appeal* (1976) 3 C.L.R. 101;

Michael v. *The Republic* (1979) 3 C.L.R. 499;

Georghiou v. *The Republic* (1983) 3 C.L.R. 827;

Paschali v. *The Republic* (1966) 3 C.L.R. 593;

Saranti v. *The Republic* (1974) 3 C.L.R. 338; and on appeal (1979) 3 C.L.R. 139;

Ioannou v. *The Republic* (1979) 3 C.L.R. 423;

Peristianis v. *The Republic* (1981) 3 C.L.R. 92;

Louca v. *The Republic* (1981) 3 C.L.R. 190;

Charalambous v. *The Minister of Interior* (1981) 3 C.L.R. 203;

Curzon Tobacco Company v. *The Republic* (1975) 3 C.L.R. 363; and on appeal (1979) 3 C.L.R. 151;

Michaelides v. *The Attorney-General of the Republic* (1978) 3 C.L.R. 285; and on appeal (1984) 3 C.L.R. 1596;

The Group of Five Bus Tour Ltd. v. *The Republic* (1983) 3 C.L.R. 793;

Petrides v. *The Republic* (1983) 3 C.L.R. 1355.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Larnaca (Constantinides, S.D.J.) dated the 11th November, 1983 (Action No. 1192/79) whereby their action for the amount of C£3,472.- as customs duty for the importation of a quantity of tiles of Italian marble was dismissed.

Gl. HadjiPetrou, for the appellant.

M. Hadji Christofis, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The first judgment will be delivered by Pikis, J.

PIKIS J.: Do the Customs Authorities have power to revoke, amend or modify a decision levying duty on imported goods after clearance. Relying on the authority of *Customs and Excise Comrs.* v. *Tan* [1977] 1 All E.R. 432

(H.L.), the learned trial Judge decided they have no such power, at least in the case where short-levied duty does not originate from any fault of the importer. And he dismissed the action of the appellants - a customs prosecution for the recovery of short-levied duty, in accordance with the decision taken about a year after clearance.

The appeal is solely directed against the appreciation of the law by the trial Court in respect of the amenity of the Customs Authorities to revoke an erroneous decision and failure on the part of the importer to challenge it before a Court of competent jurisdiction, the Supreme Court, in the exercise of its revisional jurisdiction. Treading on the effect of comparable English legislation[1], the Court concluded there is no right in law to revise a decision affecting the payment of duty after the authorised removal of the goods, except where the incorrect assessment is the result of a false statement, or concealment, by the importer. And as no such misdeed was attributed to the respondents, there was no power in law to revise the decision.

In *Tan*, the House of Lords on a review of legislative provisions similar or identical to those of sections 30, 156, 161 and 188, of the *Customs and Excise Law*, 1967[2], held there is no power or freedom in law on the part of the Customs Authorities to revise a decision on the ground that duty was shortlevied after authorised removal of the goods unless, of course, the decision was the result of a false statement or concealment. The House dismissed suggestions that a serious lacuna in the law would be opened by their decision, or that an avenue would be created thereby for defeating the scheme of the legislation for duty levying. The procedure for declarations, statements and the powers of Customs Authorities to question importers of goods, as well as the expertise of customs officers in the application of the law, provided adequate safeguards. On the other hand, to leave the exact duty payable in suspense, would be counter-productive because of the uncertainty it would inject as to the liability of goods to duty. Guided by the above analysis of the law and for similar reasons, the trial Judge held the original decision of the Customs

[1] Customs and Excise Act, 1952
[2] Law 82/67.

Authorities to classify imported marble as rough slabs was final and, in the absence of any evidence of attributing fault to the importers, irrevocable.

The facts of the case were, to the extent relevant, the following:

The respondents agreed to purchase 463 crates of Carrara Marble, auctioned by the Marshal of Admiralty Court, bonded at the General Warehouse. The sale was effected pursuant to an order of the Admiralty Court. Shortly afterwards, they filed a cargo declaration for the clearance of the goods from customs, describing the goods as rough tiles. There were doubts on the part of the customs officials whether the marble was rough or worked (processed). The view prevailed they were rough slabs of marble and were classified accordingly. Under customs legislation, the importation of rough marble was not subject to duty, whereas processed tiles of marble were subject to 28% import duty. Nearly a year later, the decision was revised and C£3,472.- duty was demanded of the importers who disputed liability to pay. The present proceedings followed, in the nature of a customs prosecution (a civil proceeding), claiming recovery of the revised duty levied. The Court decided, as indicated, in the absence of any act of bad faith on the part of the importers contributing to the allegedly erroneous decision, there was no power to revoke or review the decision. The action was dismissed. Appellants seek its reversal by this appeal for the reasons indicated above. Respondents support the decision as correct in law and just in the circumstances of the case.

Having given due consideration to every aspect of the case, we are unable to uphold the judgment of the trial Court. The imposition of customs duties is an administrative act and like every administrative act it may, in appropriate circumstances, be revoked. As Triantafyllides, J., as he then was, observed in *A. & S. Antoniades & Co.* v. *The Republic* (1965) 3 C.L.R. 673, there is power in administrative law to revoke an erroneous decision and decisions of the customs authorities are no exception. A decision revoking an earlier one, is reviewable under Article 146.1 of the Constitution, in accordance with settled principles of administrative law pertaining to the validity of revocatory

acts. As explained by *Stassinopoulos*[1] there is power in administrative law to revoke an illegal administrative act, that is, an act contrary to law[2]. Thus there is amenity on the part of the Administration to recall a decision claimed to be contrary to law. Whether this power was properly exercised in the present case, is a matter of no concern to us for the review of any such act could only be undertaken, in the context of proceedings challenging the act, under Article 146.1 of the Constitution. Every illegal administrative act is liable, in appropriate circumstances, to revocation, the effect of which is to remove the decision recalled and create a new situation in law, definitive of the rights of those affected thereby. Once there was discretion to revoke in this case the original decision for the classification of the marble on the ground it was taken contrary to law, namely the classification of goods under the Customs and Excise Law, the original decision disappeared and a new situation arose, imposing a burden on the respondents to pay duty according to the new decision. They had a right to question the decision of 17.4.78, a right they forfeited by failing to mount a challenge before the Supreme Court in its revisional jurisdiction within 75 days, as required by Article 146.3 of the Constitution. Only the Supreme Court could inquire, on a recourse into the presumed validity of the revocatory act, as provided in para. 1 of Article 146. Thereafter, the debt or obligation of the respondents accruing under the decision of 17.4.78, was recoverable in a customs prosecution as the appellants sought to recover it by the present proceedings. To this claim, respondents had no valid defence; therefore, appellants were entitled to judgment for a sum of C£3,346.-.

The case of *Tan*, supra, is distinguishable despite similarity between English and Cyprus legislation, because administrative authorities in England lack power to revoke a customs decision, except upon discovery of falsity or concealment. While administrative authorities in Cyprus, have inherent power to revoke an administrative act, in virtue of general principles of administrative law introduced in our legal system by Article 146 of the Constitution. A right

1 See, Law of Administrative Disputes, p. 230 et seq.
2 See, also, Conclusions from the Jurisprudence of Greek Council of State 1929-59, p. 199.

to revoke a decision for illegality inheres, according to settled principles of administrative law, in every administrative authority. Its proper exercise can only be questioned before a Court of revisional jurisdiction. Respondents failed to exercise this right within the time limit set by Article 146.3 and, it is too late in the day to question its propriety. Certainly, it could not be tested before the District Court for exclusive jurisdiction vested in the Supreme Court.

In the result, the appeal is allowed. The judgment of the District Court is set aside. Judgment is given for the appellants for C£3,346.- with no costs here or in the Court below.

TRIANTAFYLLIDES P.: The appellant Director of the Department of Customs and Excise has sought to recover from the respondents by means of a civil action (No. 1192/79 before the District Court of Larnaca) the amount of C£3,472 as customs duty for the importation of a quantity of tiles of Italian marble.

Initially the said quantity was treated by the Department of Customs as not being subject to customs duty inasmuch as the tiles were classified as rough slabs of marble, but about a year later the Department of Customs informed the respondents that they were in fact marble tiles and asked them to pay the aforesaid amount of customs duty, which was, during the hearing of the action, adjusted to C£3,346.-.

There was sent, for this purpose, by the appellant to the respondents a "demand note", dated 17th April 1978, which clearly amounts to a new administrative decision revoking the earlier administrative decision to allow the importation of the tiles in question on the basis that no customs duty was payable in relation to them.

In the light of the material before the Court it is evident that the initial classification of the goods in question was erroneous, and, therefore, contrary to the relevant legislative provisions, and that the aforesaid "demand note" was the result of the proper application of such provisions, even belatedly.

As this was an instance of revocation of an unlawful

administrative decision it is useful, as regards the general principles of administrative law applicable thereto, to refer to, inter alia, *A. &. S. Antoniades & Co.* v. *The Republic*, (1965) 3 C.L.R. 673, 683, 684, *Pavlides* v. *The Republic*, (1966) 3 C.L.R. 530, 549-551, and on appeal (1967) 3 C.L.R. 217, 228, *Zenios* v. *The Republic*, (1967) 3 C.L.R. 364, 371, 372, *Karayiannis* v. *The Republic*, (1974) 3 C.L.R. 420, 433, 434, *Yiangou* v. *The Republic*, (1975) 3 C.L.R. 228, 243, 244, and on appeal (1976) 3 C.L.R. 101, 105-108, *Michael* v. *The Republic*, (1979) 3 C.L.R. 499, 501, 502, and *Georghiou* v. *The Republic*, (1983) 3 C.L.R. 827, 837-840. It is pertinent to point out, too, that such principles differ from those which apply to the revocation of lawful administrative decisions, as they were expounded in, inter alia, *Paschali* v. *The Republic*, (1966) 3 C.L.R. 593, 608, *Saranti* v. *The Republic*, (1974) 3 C.L.R. 338, 341, 342, and on appeal (1979) 3 C.L.R. 139, 143, 144, *Ioannou* v. *The Republic*, (1979) 3 C.L.R. 423, 441, *Peristianis* v. *The Republic*, (1981) 3 C.L.R. 92, 101, *Louca* v. *The Republic*, (1981) 3 C.L.R. 190, 193, and *Charalambous* v. *The Minister of Interior*, (1981) 3 C.L.R. 203, 213.

Moreover, it is apparent from a perusal of the Customs and Excise Law, 1967 (Law 82/67) that the initial decision regarding the importation free of duty of the quantity of marble in question was not revoked by virtue of any specific legislative provision in Law 82/67, or in any other Law, which could be treated as excluding, in whole or in part, the application of the general principles of administrative law governing the revocation of unlawful administrative decisions (see, in this respect, inter alia, the *Antoniades*, case, supra, the *Saranti* cases, supra, in the first instance and on appeal, the *Yangou* cases, supra, in the first instance and on appeal, *Curzon Tobacco Company Limited* v. *The Republic*, (1975) 3 C.L.R. 363, 368, and on appeal, (1979) 3 C.L.R. 151, 156, 157, *Michaelides* v. *The Attorney-General of the Republic*, (1978) 3 C.L.R. 285, 300, and on appeal (1984) 3 C.L.R. 1596, the *Louca* case, supra, *The Group of Five Bus Tour Ltd.* v. *The Republic*, (1983) 3 C.L.R. 793, 808, 809 and *Petrides* v. *The Republic*, (1983) 3 C.L.R. 1355, 1358, 1359).

By virtue of the decision of the appellant, on the 17th

April 1978, to demand from the respondents the payment of customs duty there was created a legal situation binding on the respondents and, as a result of it, the customs duty claimed by the appellant in these proceedings became payable by the respondents and could be recovered by the appellant. The only way open to the respondents to avoid the payment of such duty was to seek the annulment of the said decision of the 17th April 1978 by means of a recourse under Article 146 of the Constitution; and since no such recourse was filed it was not, because of the exclusiveness of the jurisdiction of the Supreme Court to annul administrative acts or decisions under Article 146 of the Constitution, open to the District Court of Larnaca in the present instance to find that the customs duty in question was not payable.

For all the foregoing reasons I am, too, of the view that this appeal should succeed and that judgment should be given against the respondents and in favour of the appellant for the amount of C£3,346 customs duty. The respondents should pay the costs of the present appeal, as well as the costs of the trial.

SAVVIDES J: I had the opportunity of reading the judgments just delivered by my brother Judges and I am in full agreement with them as to the result of this appeal. I, also, agree that in the circumstances of this case there will be no order as to the costs before the trial Court or for this appeal.

COURT: In the result this appeal is allowed unanimously and we have decided not to make any order as to the costs for the trial or of this appeal.

Appeal allowed.
Order for costs as above.