

1986 May 24

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PHIVOS NEOCLEOUS.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTRY OF FINANCE AND/OR THE
DIRECTOR OF THE DEPARTMENT OF CUSTOMS,

Respondent.

(Case No. 465/85).

*Customs and Excise—Duty free importation of motor cars—
Order 188/82 of the Council of Ministers—Permanent
settlement abroad—Meaning of.*

5 The applicant, who was employed abroad from 9.12.74
till 30.1.85, challenges the refusal of the respondent to
allow him to import duty free a motor car. The ground
of the refusal was that applicant's stay abroad was tem-
porary and consequently did not come within the ambit
of Order 188/82, which speaks of a "permanent settlement
10 abroad".

During the said period the wife and children of the
applicant had remained in Cyprus and his salary was
remitted to them in Cyprus. Moreover, the applicant was
paying his social insurance contributions.

15 *Held*, dismissing the recourse, that in the light of the
case law of this Court relevant to the notion of permanent
settlement and the circumstances of this case, it was
reasonably open to the respondent to reach the conclusion
that the applicant had not been permanently settled
20 abroad.

Recourse dismissed.

No order as to costs.

Cases referred to:

Razis v. The Republic (1979) 3 C.L.R. 127;

Rossides v. The Republic (1984) 3 C.L.R. 1482;

Matsas v. The Republic (1985) 3 C.L.R. 54.

Recourse.

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Recourse against the refusal of the respondent to allow applicant to import free of duty a motor car.

A. S. Angelides, for the applicant.

E. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult. 10

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the refusal of the Director of the Department of Customs and Excise to allow him to import free of duty a motor car.

The applicant is a Cypriot who was employed abroad from the 9th December 1974 till the 30th January 1985. During that period he came to Cyprus only for holidays. 15

On the 27th February 1985 he applied to be exempted from the payment of import duty in respect of a motor car which he imported when he returned to Cyprus on the 30th January 1985 in order to resettle here. 20

His application was refused because his stay abroad was treated as temporary and, thus, not constituting a permanent settlement abroad, and, consequently, as not coming within the ambit of the relevant legislative provisions in Order 188/82 (see Third Supplement, Part I, to the Official Gazette of the 11th June 1982). 25

The said Order 188/82 enables the free of duty importation of motor cars by Cypriots who, after permanent settlement abroad for a continuous period of at least ten years, return and settle permanently in Cyprus, provided that the importation is made within a reasonable time after their return. 30

From the information which was placed by the applicant before the respondent Director of Customs it appears that during the whole period of the applicant's stay abroad his wife and his children had remained in Cyprus and that his salary was remitted to them in Cyprus. Moreover the applicant was paying here his social insurance contributions.

The respondent Director of Customs decided that, though the applicant had been for more than ten years abroad, his absence from Cyprus was of a temporary nature and did not constitute permanent settlement abroad and, therefore, he rejected the application of the applicant for the importation of his motor car free of duty.

The main issue which has to be decided in the present case is whether or not it has been correctly found by the Director of Customs that the stay of the applicant abroad was not of a permanent, but of a temporary, nature.

In the light of case-law of our Supreme Court relevant to the notion of permanent settlement abroad, such a *Razis v. The Republic*, (1984) 3 C.L.R. 127, 135, *Rossides v. The Republic*, (1984) 3 C.L.R. 1482, 1486 and *Matsas v. The Republic*, (1985) 3 C.L.R. 54, 58-62, and bearing, also, in mind the particular circumstances of the present case and, especially, that the family of the applicant was residing in Cyprus during all the time when he was abroad, that his salary was remitted to Cyprus for the needs of his family and that he was paying social insurance contributions in Cyprus, I am of the view that it was legally and reasonably open to the respondent Director of Customs to find that the applicant had not settled permanently abroad and to refuse on this ground the applicant's application for duty free importation of his motor car.

Before concluding I would like to observe that I do not think that it was in any way wrong for the Director of Customs to take into account, in examining the present case, factors which were pointed out as relevant to a case of this nature when legal advice was given earlier in re-

lation to a similar case by the Office of the Attorney-General.

In the result the present recourse fails and it is dismissed accordingly; but without any order as regards its costs.

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*Recourse dismissed.
No order as to costs.*