

1986 October 9

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS ERACLEOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondent.

(Case No. 708/85).

Customs and Excise—Motor vehicles, importation of for disabled persons—Exemption from import duty—The Customs and Excise Duties Laws 1978-1984, section 11(1) and Order 221/79 of the Council of Ministers—The only competent organ to decide an application for such exemption is the Director of Customs.

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Recourse for annulment—Power of Court to raise and examine the issue of competency of the administrative organ ex proprio motu.

The respondent Minister, having taken into consideration the report of the Medical Board and the report of the Senior Technical Examiner of Drivers, rejected applicant's application under s. 11(1) of the aforesaid laws and the said Orders of the Council of Ministers for the duty free importation of a motor car for disabled persons. As a result the applicant filed the present recourse.

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Held, annulling the sub judice decision: (1) It is clear from the wording of s. 11(1) of the Law and the Fourth Schedule thereto as amended by the aforesaid Order of the Council of Ministers that the only competent organ to determine an application such as the present one is

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the Director of Customs. The Minister of Finance has no competency in the matter.

5 (2) Though the issue of the competency of the respondent Minister has not been raised by the parties, the Court has power to raise it and examine it *ex proprio motu*.

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

- 10 *Ioannou v. The Republic* (1985) 3 C.L.R. 31;
Kalli v. The Republic (1984) 3 C.L.R. 443;
Cyprus Transport Co. Ltd. & Another v. The Republic
(1970) 3 C.L.R. 163;
Kyriacou v. The Republic (1985) 3 C.L.R. 2414;
15 *Diakos v. The Republic* (1985) 3 C.L.R. 2334.

Recourse.

Recourse against the dismissal by the respondent of applicant's application for relief from import duty of a motor vehicle for disabled persons.

- 20 *N. Papaefstathiou*, for the applicant.
D. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

25 DEMETRIADES J. read the following judgment. The applicant challenges the decision of the respondent, which was communicated to him by letter dated the 12th June, 1985, and by which his application for relief from import duty of a motor-vehicle for disabled persons was dismissed.

30 The applicant, a civil servant, applied on the 15th February, 1985, for relief from import duty in respect of a Mercedes car on the ground that he suffers from atrophy of his right leg and arm caused by poliomyelitis that he contracted when he was 17 months old.

The application of the applicant was made on the basis of the provisions of section 11(1) of the Customs and Excise Duties Laws, 1978-1984 and an Order of the Council of Ministers made under sub-section 2 of that section by which disabled persons are exempted from paying import and excise duty on motor-vehicles imported by them. 5

Section 11(1) of the Law reads:-

«11. - (1) Ἐνεξαρτήτως οἰσδήποτε νομοθετικῆς διατάξεως δυνάμει τῆς ὁποίας εἶναι δυνατή ἡ ἀτελῆς εἰσαγωγή εἰδικῶς καθοριζομένων ἐμπορευμάτων πρὸς χρῆσιν αὐτῶν ὑπὸ ὠρισμένων προνομιούχων προσώπων, ὀργανισμῶν, ἀρχῶν καὶ ὀργανώσεων, καὶ ὑφ' οὓς ὄρους ὁ Διευθυντὴς ἤθελεν ἐπιβάλλει πρὸς διασφάλισιν τῶν δημοσίων προσόδων, ἐμπορεύματα τοῦ ἐν τῷ Τετάρτῳ Πίνακι καθοριζομένου εἶδους ἀπαλλάττονται, ὑπὸ τὰς ἐν τῷ εἰρημένῳ Πίνακι ὀριζόμενας περιστάσεις καὶ ὄρους ἐκτὸς ἐάν ἄλλως προνοῆται ἐν τῇ τετάρτῃ στήλῃ τοῦ ἰδίου Πίνακος, τοῦ εἰσαγωγικοῦ δασμοῦ ἢ φόρου καταναλώσεως ὅστις ἄλλως θὰ ἐπεβάλλετο δυνάμει τοῦ παρόντος Νόμου, νοουμένου ὅτι ἢ αἴτησις ἀπαλλαγῆς ὑποβάλλεται ὑπὸ ἢ διὰ τὸν εἰσαγωγέα πρὶν ἢ τὰ ἐμπορεύματα ἀπομακρυνθῶσι τοῦ τελωνειακοῦ ἐλέγχου, ἐκτὸς ὡς ἄλλως ρητῶς προνοεῖται ἐν τῷ παρόντι Νόμῳ.» 10 15 20 25

("11. - (1) Notwithstanding any other legislative provision permitting the duty free importation of specified goods for the use by certain privileged persons, organizations, authorities and associations, and subject to any terms which the Director may impose for safeguarding public revenue, goods of the kind specified in the Fourth Schedule are exempted under the conditions and circumstances set out therein from the payment of customs or excise duty which otherwise would have been imposed under this law, provided that the application for exemption is submitted by or for the importer before the clearance of the goods, except as otherwise expressly provided by this law.") 30 35

Sub-section 2 of section 11 gives power to the Council of Ministers to add to, delete, alter or otherwise amend any of the classes of goods set out in the Fourth Schedule, by Order published in the Official Gazette.

5 By virtue of the powers vested in it by sub-section 2 the Council of Ministers issued the following Order which was published in the Official Gazette of the Republic No. 1553, dated the 14th September, 1979, under Notification 221/79. The material to this case part reads as follows:-

10 -Περιγραφή 'Απαλλαγής

Βενζινοκίνητα και πετρελαιοκίνητα όδικά όχήματα, ίπποδυνάμειως μή υπερβαινούσης τά 2000 κυβ. έκατοστά και 2300 κυβ. έκατοστά, άντιστοιχως, κατάλληλα πρός χρήςιν υπό προσώπων πασχόντων έκ σωματικής
15 άναπηρίας εισαγόμενα υπό άναπήρων προσώπων τών όποιων ή άναπηρία πιστοποιείται δεόντως υπό έπί τούτφ συγκροτουμένου Κυβερνητικού 'Ιατρικού Συμβουλίου·

20 Νοείται ότι ή άπαλλαγή αύτη δέν τυγχάνει έφαρμογής έπί άναπήρων προσώπων ότινα·

(a)

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(β) δέν κέκτηνται άδειαν όδηγοϋ, νοουμένου ότι ό-
25 σάκις άνάπηροι κέκτηνται άδειαν μαθητευομένου όδηγοϋ ό Διευθυντής δύναται νά παραχωρήση άπαλλαγήν υπό τόν όρον ότι θα έξασφαλισθῆ άδεια όδηγοϋ έντός ένός έτους από τοϋ τελωνισμού τοϋ όχήματος ή έντός τοιαύτης έτέρας περιόδου ως οϋτος ήθελε κρίνει εύλογον.»

30 ("Description of exemption

Petrol and diesel motor vehicles of a horse power not exceeding 2000 c.c. and 2300 c.c. respectively suitable for use by persons suffering from body dis-
35 ability imported by disabled persons whose disability is duly certified by a Government Medical Board constituted for the purpose:

Provided that this exemption is not applicable to disabled persons who:

(a)

or

(b) are not the holders of a driving licence, provided that when disabled persons are the holders of a learner's driving licence the Director may grant such exemption on the condition that a driving licence will be obtained within one year from payment of customs duty for the vehicle or within such other period which he might consider reasonable." 5
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By the said order, the extent of the exemption was left to the discretion of the Minister of Finance, depending on the financial position of the applicant.

As provided by the said Order the applicant was then referred to a Medical Board which, after examining him, reported to the respondent on the 26th April, 1985, confirming the incapacity of the applicant's right leg. 15

The applicant was also referred to the Senior Technical Examiner of Drivers for examination, who, after testing him as to his driving capabilities on the basis of the medical report, informed the respondent, on the 1st June, 1985, that the applicant could drive a vehicle without the need of a special adaptation (see *Appendix 3* to the opposition). 20
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By a letter dated the 12th June, 1985, the Director-General of the Ministry of Finance rejected applicant's application. This letter, which is *Appendix 4* to the Opposition filed by the respondent, reads:-

"I have been instructed to refer to your application dated 15.2.1985 for relief from import duty in respect of a car for disabled persons and to inform you that in accordance with the reports of the relevant Medical Board and the Senior Technical Superintendent of the Office of Driving Examiners, your physical condition does not justify the use of a car specially adapted for disabled persons". 30
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The applicant bases his recourse on the grounds that the sub judice decision -

1. is contrary to the Law and the Regulations and in excess and/or abuse of power,
- 5 2. it was taken without due inquiry, and
3. it was taken by an incompetent organ.

Counsel for the applicant argued the case solely on the last ground maintaining that the only competent organ to ascertain the physical disability of the applicant was, under
10 the Law, the Medical Board and that the respondent was not entitled to seek the advice or opinion of any other organ, that is the Senior Technical Superintendent. In support of his argument counsel for the applicant relied on two recent decisions of this Court, namely *Ioannou v.*
15 *The Republic*, (1985) 3 C.L.R. 31 at pp. 36-37 and *Kalli v. The Republic*, (1984) 3 C.L.R. 443, at pp. 447, 448.

Counsel for the respondent argued that the Medical Board cannot opine as to whether or not the condition of the applicant necessitates a specially adapted car and the
20 opinion of the Senior Technical Superintendent in this respect was rightly sought and obtained. Counsel made reference to Regulations 18, 25 and 26 of the Motor Vehicles and Road Traffic Regulations of 1984, made under the Motor Vehicles and Road Traffic Laws 1972-1983, in
25 order to show that the Senior Technical Superintendent is a person competent to express an opinion as to whether a person is fit to drive an ordinary car or not.

Although not specifically raised by counsel on either side, there is another point going to the competency of the
30 organ which has to be examined first. This point is whether the Minister or the Ministry of Finance was the competent organ or authority to take the sub judice decision. Although not specifically raised, as I said earlier, it is one of the matters which can be examined by the Court ex
35 proprio motu. Authority if needed, may be found, amongst others in *Cyprus Transport Co. Ltd. & Another v. The Republic*, (1970) 3 C.L.R. 163, at p. 166; and *Kyriacou v. The Republic*, (1985) 3 C.L.R. 2414 at p. 2418.

In the cases of *Diakos v. The Republic*, (1985) 3 C.L.R. 2334 and *Kyriacou v. The Republic*, (supra), the matter of incompetency of the Ministry of Finance to decide whether relief from import duty should be granted to a person on the ground of disability was raised by counsel for the respondent. 5

In the case of *Kyriacou v. The Republic*, (where judgment was delivered first), Stylianides J. said the following at pp. 2421-2422:

“Having regard to the provisions of s. 11(1), 10
where reference is made to ‘the Director’ and paragraph (b) of the Order of the Council of Ministers, no doubt is left that the organ vested with competence to examine and accept or reject the claim of the applicant is the Director. ‘Director’ means the Director 15
of the Department of Customs—(See s. 2(2) of the Customs & Excise Duties Laws, 1978-1981, and s. 2(1) of the Customs & Excise Laws, 1967-1977). Neither the Minister of Finance nor the Director-General of the said Ministry had any competence to 20
determine the application of the applicant. Only when the application of the applicant is accepted by the Director, the Minister of Finance is empowered to decide the extent of the relief on the basis of the financial condition of the applicant”. 25

The same view was also held by Loris, J., in the case of *Diakos v. The Republic*, (supra).

I fully agree with the views expressed by my two brother Judges which I adopt. It is clear from the wording both of the Law and the Fourth Schedule to it (the provisions of which need not be quoted here having been 30
quoted earlier), as amended by the Order of the Council of Ministers mentioned above, that the Director of Customs is the only competent organ to decide, exercising his discretion, whether or not to grant relief from payment of 35
import duty in respect of motor vehicles imported by disabled persons, that are specially adapted to their needs.

Before concluding, I would like to make two remarks:

(a) In my view, although the Medical Board is the only

competent body to decide whether a person is suffering from disability, still it is not a body that has the means to test that person in order to ascertain whether he is in a position to drive and how; and

- 5 (b) In my experience practically all persons claiming an exemption under the Law apply for the import not of an ordinary car but for one that falls really within what may be described as a luxury car.

In the result, the sub judice decision is annulled.

- 10 There will be no order as to costs.

*Sub judice decision annulled.
No order as to costs.*