1986 September 29

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

VOLAN TRANSPORT CO. LTD.,

Applicants,

v.

THE DIRECTOR OF CUSTOMS DEPARTMENT,

Respondent.

(Case No. 579/84).

Customs and Excise Duties—Import duty, imposition of—An administrative act.

Revocation of unlawful administrative acts—Principles applicable—Import duty—Classification of goods—General principles of administrative Law governing revocation of such an act not excluded by any provision in the Customs and Excise Duties Law 82/67 as amended or any other Law.

Customs and Excise Duties—Import duty—Classification of goods—Judicial control—Principle applicable.

On 27.10.81 the applicants imported a "Bedford" coach, which was cleared as a new coach and as fulfilling the conditions of the European Economic Community—Cyprus' Free Trade Agreement. During a subsequent scrutiny it was revealed that the said coach ought to have been classified as "used" having been driven by the applicants from U.K., where it was purchased, to Greece, in order to save transport expenses as the applicants admitted and that it did not fulfil the conditions of the E.E.C.—Cyprus. Free Trade Agreement and, as a result, the respondent revoked his initial decision as to the amount of import duty and made a new assessment on the basis of the correct facts revealed as aforesaid and demanded by letter dated 10.9.84 payment of the difference. The applicants

feeling aggrieved filed the present recourse complaining that the respondent had no power to revise the assessment after clearance of the coach and that in any event he misconceived the facts as well as the law applicable.

Held, dismissing the recourse: (1) The imposition of custom duties is an administrative act which in appropriate circumstances may be revoked. The demand note dated 10.9.84 clearly amounted, to a revocation of the earlier decision. If the initial classification of the goods is erroneous then it is contrary to the relevant legislative provision. The application of the general principles of administrative law governing the revocation of unlawful acts are not excluded in this case by any specific legislative provision either in Law 82/67 as amended or in any other law *(Director of Customs* v. *Grecian Hotel* (1985) 1 C.L.R. 476 followed.)

(2) In matters of classification of goods this Court does not substitute its discretion to that of the administration, but only examines the legality of the decision and whether it was reached through a misconception or related matters. *(Antoniades and Co.* v. *Republic* (1965) 3 C.L.R. 673 at 680).

(3) In the light of all relevant provisions of the law and of the facts the sub judice decision whereby the coach was classified under Tariff 87.01.29 without preferential treatment under the E.E.C.—Cyprus Trade Agreement was reasonably open to the respondent.

Recourse dismissed.
No order as to costs.

Cases referred to:

Director of Customs v. *Grecian Hotel* (1985) 1 C.L.R. 476;

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

Recourse.

Recourse against the decision of the respondents to revise his initial decision in connection with the rates of customs duty and special refugee charges payable on the

importation to Cyprus from the United Kingdom on 27.10.81 of a "Bedford" coach and demand the additional amounts of £3,107.400 mils and £184.600 mils for customs duty and special refugee charge respectively.

A. Skordis, for the applicants.

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

Cur. adv. vult.

LORIS J. read the following judgment. The applicants by means of the present recourse impugn the decision of the respondent Director of Customs communicated to them by his letter of 10.9.1984, whereby the respondent, revising his initial decision in connection with the rates of Customs duty and Special Refugee Charges payable on the importation to Cyprus from U.K. on 27.10.81 of a "Bedford" coach under English Registration No. XG S 778X, demands the additional amounts of £3,107.400 mils and £184.600 mils for Customs Duty and Special Refugee Charge respectively.

The undisputed facts of the present case are very briefly as follows:

On 27.10.81, the applicants imported to Cyprus, from U.K. as "Bedford" coach, under English Registration No. XGS 778X, which was declared by them at the clearance of same, at the Customs Office:

(a) As a new coach (vide Appendices 1 - 2 attached to the opposition);

(b) As fulfilling the conditions of the European Economic Community - Cyprus, Free Trade Agreement, producing for the purpose "Movement Certificate" under EUR 1 No. K630888 issued on their application by the exporter of the aforesaid coach (vide Appendix 3 attached to the opposition).

The respondent acting on the aforesaid documents (Appendices 1, 2 and 3) classified the coach in question under "Tariff item" 87.02.21 and allowed preferential treatment pursuant to the provisions of s. 4(1) and (2) of Law 18/78 as

amended by s. 3 of Law 33/78; the import duty thus imposed and collected was £1,507.550 mils whilst the Special Refugee Charge (under the Special Refugee Charge (Imported Goods) Law of 1977—Law 14/77, as amended) was £353.810 mils.

During a subsequent scrutiny, by the respondent, of the documents aforesaid presented at the clearance, in correlation with the circumstances in which the aforesaid import was made, it was revealed:

(i) That the coach in question ought to have been classified as "used", having been driven by applicants from U.K. where it was purchased, up to Greece—in order to save transport expenses, as the applicants themselves admit —having been embarked on a ship for transportation to Cyprus only from Greece; such a classification entails its emplacement under "Tariff Item" 87.01.29 and not under item 87.02.21 i.e. the item under which the Import Duty and the Special Refugee Charge were initially levied.

(ii) That the aforesaid coach did not fulfil the conditions of E.E.C.—Cyprus, Free Trade Agreement (and therefore no question of preferential treatment arose) and the relevant certificate (Appendix 3 attached to the opposition) was issued through the error of the exporter (in this connection vide letter dated 19.5.82 addressed to the Cyprus Department of Customs and Excise by U.K. Customs & Excise—Appendix 5 attached to the opposition).

As a result of the aforesaid scrutiny, the respondent obviously revoked his initial decision as to the amount of Import Duty and the Special Refugee Charge leviable for the coach in question and proceeded to make a new assessment thereof on the basis of the correct facts revealed, according to law. The new assessment of the respondent is £4,614.960 mils for Import Duty and £538.412 mils for Special Refugee Charge.

In consequence thereof, the respondent addressed a letter dated 10.9.84 (Appendix 6 attached to the opposition) demanding from the applicants to pay the difference of £3,107.400 mils Import Duty and £184.600 mils Special Refugee Charge due under the new assessment.

The applicants feeling aggrieved filed the present recourse praying for the annulment of the sub judice decision of the respondent set out in his letter of 10.9.84 (Appendix 6 attached to the opposition).

The complaints of the applicants, as I was able to comprehend them may be summed up under two broad alternative Heads, as follows:

A) The respondent had no power in Law to revise his initial decision after clearance, of the coach in question from the Customs, or

B) If the respondent was vested with authority to revise his initial decision after clearance, he wrongly exercised his discretion having misconceived the facts as well as the law applicable.

The short answer to the complaint under A) above, which is the main complaint of the applicants, is to be found in the case of *Director of Customs* v. *Grecian Hotel* (1985) 1 C.L.R. 476 where it was held that "The imposition of customs duties is an administrative act and like every administrative act it may, in appropriate circumstances be revoked... there is power in administrative law to revoke an erroneous decision and decisions of the customs authorities are no exception...." (vide p. 481 of the report).

As pointed out by the learned President of this Court (vide page 483 of the report) "There was sent, for this purpose, ... a 'demand note' ...., which clearly amounts to a new administrative decision revoking the earlier administrative decision to allow the importation of the ties 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 belately."

And further down (at p. 484) the learned President added: "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 provisions 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...".

Thus it is clear from the decision of our Court of Appeal in *Director of Customs* v. *Grecian Hotel* (supra) that (a) the imposition of custom duties is an administrative act which in appropriate circumstances may be revoked.

(b) The 'demand note' clearly amounts to a new administrative decision revoking the earlier one.

(c) If initial classification of goods is erroneous then it is contrary to the relevant legislative provisions.

(d) The application of the general principles of administrative law governing the revocation of unlawful administrative acts are not excluded by any specific legislative provisions either in Law 82/67 as amended, or in any other law.

Having dealt with complaint under A) above I shall now proceed to examine the complaints grouped under B) above having in mind what was stated by Triantafyllides J., as he then was, in the case of *Antoniades & Co.* v. *Republic* (1965) 3 C.L.R. 673 at p. 680:

> "In matters of classification of goods, such as the present case, an Administrative Court has no competence to substitute its own discretion in the place of the discretion of the proper authorities (vide Decisions of the Council of State in Greece 479/1938, 564/1949); but of course, as in every other case of recourse under Article 146 the Court has to examine the legality of the sub judice decision, and also whether it was reached through any misconception and cognate matters."

Now reverting of the facts of this case:

On 27.10.81 the applicants presented to the Customs for clearance of the "Bedford" coach in question, the following documents:

a) Appendix 1 attached to the opposition, signed by or on behalf of the applicants, describing the coach in question as "One New Bedford coach" etc.

b) Appendix 2 attached to the opposition, a vehicle's invoice issued by the seller likewise describing the coach.

c) Appendix 3 attached to the opposition, a "Movement Certificate" under EUR 1 No. K. 630888 issued by the exporter of the aforesaid coach in U.K. on the application of the consignees of same—the applicants in the present recourse—certifying to the effect that the coach in question was fulfilling the conditions of the European Economic Community—Cyprus, Free Trade Agreement.

The respondent acting on the strength of the documents aforesaid and the representations therein contained classified the coach in question under "Tariff item" 87.02.21 and allowed preferential treatment pursuant to s. 4(1) and (2) of Law 18/78 as amended relying on certificate—Appendix 3.

The classification under item 87.02.21 and the preferential treatment according to the rates of E.E.C.—Cyprus Trade Agreement resulted in the imposition of Import Duty at the rate of 9.8% and Temporary Refugee Levy at 2.3% on the declared value of the coach £15,383.200 mils).

This is the initial decision of the respondent. An enquiry of the respondent into the authenticity and accuracy of another "movement certificate" issued in respect of a coach imported by another firm (vide Appendix 4 attached to the opposition) led to the discovery some time around the 19.5.82, that the movement certificate presented by the applicants (Appendix 3) was not correct and the coach in question did not fulfil the conditions of E.E.C.—Cyprus Trade Agreement. (In this connection vide letter dated 19.5.82 addressed to the Cyprus Department of Customs and Excise by U.K. Customs & Excise—Appendix 5 attached to the opposition).

A more careful inquiry into the circumstances of the importation of the coach of the applicants on 27.10.81 revealed that the coach in question ought to have been classified as "used", having been driven by applicants from U.K., where it was purchased, up to Greece—in order to save transport expenses, as the applicants themselves admit—having been embarked on a ship for transportation to Cyprus only from Greece.

In the circumstances the respondent decided that the coach of the applicants should be classified as "used" under Tariff Item 87.02.29 and that it should not receive preferential treatment as not fulfilling the E.E.C.—Cyprus Trade Agreement. This classification entailed the imposition of import duty at the rate of 30% and Special Refugee Levy at the rate of 3.5% on the declared value of the coach.

Thus the respondent relying on the correct facts which came into light after his new enquiry addressed to the applicants his "demand note" 10.9.84 (Appendix 6) which clearly amounts to a new administrative decision revoking the initial one for the reasons explained above, which sufficiently appear in the various documents placed before me.

Having carefully considered the material before me, I have reached the conclusion that the classification of the coach in question under Tariff Item 87.01.29 without preferential treatment under the E.E.C.—Cyprus Trade Agreement, was properly open to the respondent Director, in the light of all relevant provisions of law and fact and I should not therefore interfere therewith.

Before concluding I feel that I should add that I have considered the time interval between the initial decision (27.10.81) and the revocation of same by the "demand note" of 19.10.84; in this connection it must always be borne in mind that the error in the movement certificate (Appendix 3) was not revealed till after the lapse of almost a year (15.5.82) after the initial decision of the respondent; and the correctness of the aforesaid certificate was of utmost importance in reaching at the decision of the respondent, as same regulates the preferential treatment pursuant to the relevant provisions of law 18/78 as amended.

In the particular circumstances of this case I hold the view that the revocation in question was made within a reasonable time.

For the reasons stated above the present recourse fails and it is accordingly dismissed.

Let there be no order as to costs.

Recourse dismissed.
No order as to costs.