

1986 October 30

[TRIANTAFYLLIDES, P., MALACHTOS, SAVVIDES, LORIS,
STYLIANIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE DIRECTOR OF THE DEPARTMENT
OF CUSTOMS,

Appellants,

v.

ALPAN (TAKIS BROS.) LIMITED,

Respondents.

(Revisional Jurisdiction Appeal No. 508).

Constitutional Law—Taxation—Import duties— Constitution, Article 24.3—Import duties may be imposed retrospectively as from the date of the introduction of a Bill—“Date” does not mean a fraction of a day, but the whole day from the expiration of the preceding day—Offer made at 8.30 a.m. of 12.1.84 for payment of import duties refused in anticipation of the introduction of a Bill changing the relevant rates—Bill introduced at 4.30 p.m. on the same day and eventually passed by the House of Representatives with retrospective effect as from 12.1.84—Import duties payable during the whole day of 12.1.84 were those prescribed in the Bill—Offer for said payment rightly refused—Warehouse in which the relevant goods were stored rightly closed—The Customs and Excise Duties Law, 1978, section 7—The Customs and Excise Law 82/67, sections 77(4) and 79(1).

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Constitutional Law—Constitution—Interpretation of— Principles applicable.

Revisional Jurisdiction Appeal—Court approaches it by way of complete re-examination of the case—Basic issue continues to be the validity of the administrative act, decision or omission in respect of which the recourse was made,

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Revisional Jurisdiction—Court, as administrative Court, not bound by submission of parties even by way of consensus.

5 *Words and Phrases: "Date" in Article 24.3 of the Constitution—It means the whole day from the expiration of the preceding day.*

The respondents, who are importers of furniture, appeared at 8.30 a.m. of the 12.1.84 before the customs authorities for the purpose of paying the relevant import duties and remove furniture imported by them. The
10 customs officials refused to accept payment in accordance with instructions from their superiors, which were issued in anticipation of changes in the import duty expected to take effect later in the day by the introduction of a Bill before the House of Representatives. In accordance
15 with the same instruction the bonded warehouse where the said furniture was stored was closed.

Actually on 11.1.84 the Council of Ministers started consideration of a Bill for changes in the customs legislation. The Bill was at the end introduced before the
20 House of Representatives at 4.30 p.m. on 12.1.84. The Bill was eventually passed by the House and promulgated in the Official Gazette of 2.3.84. The Law came into force with retrospective operation as from 12.1.84, with regard to the Second Schedule, as appearing in the Bill,
25 and as from 23.2.84 in respect of modifications brought in the said Schedule by the House.

The respondents challenged by means of recourse 147/84 the aforesaid acts of the Customs officials and as
30 a result a Judge of this Court annulled* the refusal to collect the import duty and the decision to close for purposes of clearing goods the Bonded Warehouse and with regard to the third relief prayed in the Recourse, to wit, annulment of the decision dated on or about 15.1.84 to impose
35 £3,257.32 instead of £1,856.12 as import duties, directed the appellants to re-examine the application of the respondents for clearance from the legal and factual perspective of the morning of 12.1.84.

* See (1985) 3 C.L.R. 1204

The Republic appealed and the respondents cross-appealed against the said direction.

Held, allowing the appeal, Malachos, J. and Loris J. dissenting, and dismissing the cross-appeal. (1) The retrospective imposition of import duties as from the date of the introduction of the relevant Bill is an exception to the principle that no tax, duty or rate of any kind can be imposed with retrospective effect (Article 24.3 of the Constitution). 5

(2) Section 7(1) of the Customs and Excise Duties Law, 1978 gives statutory effect to the said exception. Section 77(4) of the Customs and Excise Law 82/67 provides that no goods shall be removed from a warehouse until any duty chargeable thereon has been paid. Section 79(1) of the same Law provides that the duties of customs or excise and the rates thereof shall be those in force at the date of the removal of the goods from the warehouse. 10
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(3) The point in issue in this appeal is when the change in the import duties comes into operation. The Court has to interpret the word "date" in the context of Article 24.3 of the Constitution and not s.7 of the Law 18/78, independently of that constitutional provision. A constitutional provision cannot be applied or construed on the strength of a statutory provision because the Constitution is the supreme law of the country and it prevails over any statutory provision. The due process is to interpret the Constitution and then consider the statutory provisions. The Court should interpret the Constitution as it finds it and in accordance with the principle that effect should be given to the clear meaning of its provisions. When the meaning of the words in the Constitution are plain, it is not the duty of the Court to busy itself with supposed intentions. 20
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(4) Guided by the above principles the Court is of the opinion that the word "date" in Article 24.3 does not refer to the exact time of the introduction of the Bill. By "date" it is meant the whole day from the expiration of the preceding day. 35

(5) It follows that the import duties payable during the whole day of 12.1.84 were those prescribed in the Schedule to the Bill introduced into the House on that day.

5 (6) At the material time—8.30 in the morning of 12.1.84—the Bill was still under consideration and the rate of import duty in force was, in the circumstances of this case, unknown. It would have been absurd for the customs officials to collect the duty provided by the previous law or any other uncertain amount. For the proper
10 discharge of their duties imposed by law and proper administration, they rightly refused to collect the import duties offered. As no warehoused goods could be lawfully removed from a warehouse before payment of the duties, they rightly kept it closed for purpose of clearing
15 goods.

Appeal allowed.
Cross-appeal dismissed.
No order as to costs.

Cases referred to:

- 20 *Papaleontiou v. Karagiorghis and the Republic* (1986) 3 C.L.R. 1238;
Cambell v. Strangeways. [1877] 3. C.P.D. 105;
Trow v. Ind Coope (West Midlands) Ltd. and Another [1967] 2 All E.R. 900.;
- 25 *Tomlinson v. Bullock* [1879] 4 Q.B. 230;
Police v. Athienitis (1983) 2 C.L.R. 194;
Ozturk v. The Republic, 2 R.S.C.C. 35;
Sturges v. Crowninshield, 4 L. Ed. 529.;
- 30 *Henning Jacobson v. Commonwealth of Massachusetts*, 49 L. Ed. 643.;
- Dafnides v. The Republic*; 1964 C.L.R. 180;
HjiSavva v. The Republic (1967) 3 C.L.R. 155;

- Liassi v. The Attorney-General* (1975) 3 C.L.R. 558;
Antoniou v. The Republic (1978) 3 C.L.R. 308;
Platis v. The Republic (1978) 3 C.L.R. 384;
Angelidou v. The Republic (1982) 3 C.L.R. 62;
Stavros Makris Ltd. v. The Republic (1984) 3 C.L.R. 539; 5
Mahlouzarides v. The Republic (1985) 3 C.L.R. 2279;
Savva v. The Republic (1986) 3 C.L.R. 445;
Director of Customs v. Grecian Hotel (1985) 1 C.L.R. 476.

Appeal and cross - appeal. 10

Appeal and cross-appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 14th June, 1985 (Revisional Jurisdiction Case No. 147/84)* whereby the decision of the Director of the Department of Customs to refuse the clearance of furniture from a bonded warehouse on 12.1.1984, was annulled. 15

M. Photiou, for the appellants.

K. Michaelides, for the respondents.

Cur. adv. vult.

TRIANAFYLLIDES P.: The judgment of the majority of the Court will be delivered by Mr. Justice Stylianides and Mr. Justice Savvides and myself agree with it. 20

STYLIANIDES J.: This appeal is directed against the decision given in Recourse No. 147/84 by a Judge of this Court exercising jurisdiction under the provisions of s.11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33 of 1964). 25

By the said judgment the refusal of the appellants to collect and/or receive the import duties for the clearing of certain furniture belonging to the respondents and stocked in Private Bonded Warehouse and/or the decision of the 30

* Reported in (1985) 3 C.L.R. 1204.

appellants not to allow the clearing on 12.1.84 of the said furniture and the decision to close for purposes of clearing goods on the same date the Private Bonded Warehouse (6.83) were declared null and void and of no effect whatsoever.

With regard to a third relief prayed in the recourse, to wit, the annulment of the decision of the appellants to impose on the respondents on or about 15.1.84 the payment of £3,257.32 instead of £1,856.12 as import duties for the clearing of the same furniture of the respondents, the first instance Judge directed the appellants to re-examine the application of the respondents for clearance from the legal and factual perspective of the morning of 12.1.84. The appellants by this appeal and the respondents by cross-appeal challenge this direction.

The salient facts of the case are:-

The respondents are importers of furniture. Imported furniture of theirs were warehoused in Private Bonded (6.83).

On 10.1.84 a number of forms for clearing items of such furniture for home use stored in Private Bonded (6.83) were produced to the Nicosia Customs Office. The processing of the said documents was completed in the afternoon of 11.1.84. At 8.30 the following morning they attended the customs authorities to pay the relevant import duties and remove the goods. The customs officials refused to accept payment of the amount offered as import duties and to clear the furniture, informing the respondents there and then that they acted so on instructions from their superiors which were issued in anticipation of changes in the import duty expected to take effect later in the day by the introduction of a Bill before the House of Representatives. In accordance with the same instructions the bonded warehouse where the said furniture was stored was closed.

Actually on 11.1.84 the Council of Ministers started consideration of a Bill for changes in the customs legislation. A further meeting was held in the morning of 12.1.1984. A Bill was approved for the increase of import duties in a long list of goods appearing in the Second Sche-

dule of the Customs & Excise Duties Law and was introduced to the House at 4.30 p.m. on the same day. The Bill was eventually passed by the House and promulgated by publication in the Official Gazette of 2.3.84. It is the Customs & Excise Duties (Amendment) Law, 1984 (No. 15 of 1984). The Law came into force with retrospective operation as from 12th January, 1984, with regard to the Second Schedule, as appearing in the Bill, and as from 23.2.84 in respect of the modifications brought in the said Schedule by the House.

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It was the case for the respondents before the first instance Judge that the refusal of the customs officials to collect the import duties and clear the goods and the closing of the bonded warehouse at 8.30 in the morning of 12.1.84 in anticipation of a possible introduction of a Bill increasing the import duties, were impermissible and contrary to Law obtaining at the material time.

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Counsel for the appellants; on the other hand, at the early stage of the trial canvassed the contrary but later conceded that the customs officials "strictly speaking, had no such power".

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Rival submissions were also made as to the time of the coming into operation of the changed import duties which were repeated before us.

With regard to the nature and scope of a revisional jurisdiction appeal it suffices to quote what was said by Triantafyllides, P., in delivering decision on 12.6.86 in Revisional Jurisdiction Appeal No. 350 (unreported):*

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"It is well settled (see, inter alia, *Vassiliades v. The Republic*, (1967) 3 C.L.R. 82, 88) that a revisional jurisdiction appeal, such as the one with which we are now dealing, is intended to ensure to the parties to it the benefit of the opinion of the Full Bench of the Supreme Court in a case coming within the revisional jurisdiction which was vested in the Supreme Constitutional Court under Article 146 of the Constitution and which is now exercised in the first instance

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* Now reported in (1986) 3 C.L.R. 1238.

by a Judge of the Supreme Court under Section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33 of 1964).

5 In dealing with a revisional jurisdiction appeal the Full Bench of this Court approaches it by way of a complete re-examination of the case (see, *inter alia*, *The Republic v. Georghiadis*, (1972) 3 C.L.R. 594, 690, *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241, 249, and *Ayios Andronikos Development Co. Ltd. v. The Republic*, (1985) 3 C.L.R. 2362, 2373).

15 In such an appeal the basic issue continues to be the validity of the administrative act, decision or omission in respect of which a recourse under Article 146 of the Constitution was made and in relation to which there has decided, in the first instance, one of the Judges of this Court (See, *inter alia*, in this respect, *Pikis v. The Republic*, (1968) 3 C.L.R. 303, 305, *Constantinides v. The Republic*, (1969) 3 C.L.R. 20 523, 530, *The Republic v. Pericleous*, (1972) 3 C.L.R. 63, 68, *Christou v. The Republic*, (1982) 3 C.L.R. 634, 639, the *Louca* case, *supra*, 265, *Ethnikos v. K.O.A.*, (1984) 3 C.L.R. 1150, 1154, and *Zachariades v. The Republic*, (1984) 3 C.L.R. 25 1193, 1218). Thus, in effect, the Full Bench of the Court is seized of the matter 'ab initio'".

The retrospectivity of any law imposing tax, duty or rate of any kind is contrary to the express provision of the first part of paragraph 3 of Article 24 of the Constitution. 30 However, the retrospective imposition of import duties as from the date of the introduction of the relevant Bill is an exception to this general principle.

Article 24.3 reads:-

35 "No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect:

Provided that any import duty may be imposed as from the date of the introduction of the relevant Bill".

This exception, permitting the imposition of import duties as from the date of the introduction of the Bill before the House, known in France as "Cadenas", is necessary. Its object is to prevent importers, who are informed of the introduction of the Bill, from importing or clearing before the enactment of the Law, thus paying the lower duty and selling thereafter the imported goods to the purchasers adding on the price thereof the increased import duty which they did not pay to the Revenue, thereby making illicit gains at the expense of the State and the consumer—*(Stassinopoulos—'Mathimata Dimosionomikou D'keou', pp. 252-253; N.M. Saripolos—Constitutional Law, (1923) Volume "B", pp. 266-267; Sgouritsas—Constitutional Law, Volume "B", Part (b), (1964), pp. 47-48).*

Section 7 of the Customs & Excise Duties Laws, 1978, reads:-

«7.- (1) Εν η περιπτώσει κατατίθεται νομοσχέδιον σκοπούν εις την τροποποίησιν οιοδήποτε τελωνειακού δασμού εκ των εκτιθεμένων εν τω Δευτέρω Πίνακι, ο τροποποιημένος τελωνειακός δασμός, ως εκτίθεται εν τω οικείω νομοσχεδίω επιβάλλεται, εισπραττεται και καταβάλλεται από της ημερομηνίας καταθέσεως του νομοσχεδίου ενώπιον της Βουλής των Αντιπροσώπων.

(2) Εάν το νομοσχέδιον δεν ψηφισθή εις νόμον ή εάν τελωνειακός δασμός προνοούμενος εν τω ψηφισθέντι εν τέλει νόμω δεν είναι ο αυτός μετά του προνοούμενου εν τω κατατεθέντι νομοσχεδίω, ο ούτω εισπραχθείς τελωνειακός δασμός αναπροσαρμόζεται αναλόγως και παν ποσόν αχρεωστήτως εισπραχθέν επιστρέφεται εις τον καταβαλόντα τον δασμόν».

("7.- (1) In case of an introduction of a Bill for the purpose of amending any customs duty of those referred to in the Second Schedule, the amended customs duty, as described in the relevant Bill, shall be imposed, collected and paid as from the date of the introduction of the Bill before the House of Representatives.

(2) If the Bill is not passed or if the customs duty provided in the Law, which shall be eventually passed

is not the same as the one provided in the Bill the duty collected as aforesaid shall be adjusted and any sum, which shall have been unjustifiably collected, shall be returned to the person who has paid the duty").

Section 7(1) gives statutory effect to the exception to the constitutional rule against the retrospective imposition of taxes in the context of the customs and excise legislation.

Section 77(4) of the Customs & Excise Law, 1967 (No. 82 of 1967) provides that no goods shall be removed from a warehouse until any duty chargeable thereon has been paid. The duties of customs or excise and the rates thereof chargeable on warehoused goods shall be those in force with respect to goods of that class or description at the date of the removal of the goods from the warehouse—(Section 79(1) of the Customs & Excise Law, 1967 (No. 82 of 1967)).

The point that falls for determination is when the change in the import duties comes into operation.

Mr. Michaelides argued that the fraction and/or division of a day has to be taken into consideration and the word "date" in s. 7 of Law 18/78 and paragraph 3 of Article 24 of the Constitution should be interpreted as the actual time of the tabling of the Bill before the House. He referred to cases cited in *Maxwell on Interpretation of Statutes*, 12th Edition, in support of the proposition that fractions of a day are noticed where it is necessary to decide which of two events first happened—*Campbell v. Strangeways*, [1877] 3 C.P.D. 105; *Trow v. Ind. Coope (West Midlands), Ltd. and Another*, [1967] 2 All E.R. 900; *Tomlinson v. Bullock*, [1879] 4 Q.B. 230, 232).

Mr. Photiou, on the other hand, submitted that the change in the import duties took effect just after midnight of 11.1.84. He based his such submission on the provisions of s. 6 of the Interpretation Law, Cap. 1, which provides that when any Law, or part of a Law, or any public instrument made or issued thereunder is expressed to come into operation on a particular day, it shall be construed as

coming into operation immediately on the expiration of the day next preceding such day.

In this case we have to interpret "date" in the context of paragraph 3 of Article 24 of the Constitution and not s. 7 of Law 18/78, independently of that constitutional provision. A constitutional provision cannot be applied or construed on the strength of a statutory provision because the Constitution is the supreme law of the country and it prevails over any statutory provision; and, as a result, a statutory provision has to be construed and applied in a manner consistent with the Constitution—(See, *inter alia*, *Police v. Athienitis*. (1983) 2 C.L.R. 194).

The due process is to consider and interpret the Constitution and then consider the statutory provisions. It is the duty of the Court to interpret the Constitution as it finds it and in accordance with the principle that effect must be given to the clear meaning of its provisions—(*Turhan M. Ozturk v. The Republic of Cyprus*, 2 R.S.C.C. 35, at p. 39).

In *Sturges v. Crowninshield*, 4 L.Ed. 529, at p. 550, it is stated:-

".. it may not be improper to promise that, although the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operations. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But, if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the

absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application”.

5 In *Henning Jacobson v. Commonwealth of Massachusetts*, 49 L. Ed. 643, Mr. Justice Harlan, in delivering the opinion of the Court, said at p. 648:-

10 “Undoubtedly, as observed by Chief Justice Marshall, speaking for the court in *Sturges v. Crowninshield*, 4 Wheat. 122, 202, 4 L. ed. 529, 550, ‘the spirit of an instrument, especially of a constitution, is to be respected not less than its letter; yet the spirit is to be collected chiefly from its words’. We have no need in his case to go beyond the plain, obvious
15 meaning of the words in those provisions of the Constitution which, it is contended, must control our decision”.

20 When the meaning of the words in the Constitution are plain, it is not the duty of the Court to busy itself with supposed intentions.

25 Guided by the aforesaid principles we are of the opinion that the word “date” in paragraph 3 of Article 24 does not refer to the exact time of the introduction of the Bill; by “date” it is meant the whole day from the expiration of the preceding day. This is the plain and obvious meaning of the word “date” and we see no reason why to depart from it. Therefore, the import duties payable during the whole day of 12.1.84 were those prescribed in the amended Schedule to the Bill introduced into the House on that day.

30 As we have said earlier, in the course of the trial counsel for the appellants made certain statements with regard to the closing of the bonded warehouses and the refusal to collect import duties in the morning of 12.1.84.

35 This Court, as an administrative Court, is not bound by the contentions or submissions of the parties even by way of consensus—(*Dafnides v. The Republic*, 1964 C.L.R. 180; *HjiSavva v. The Republic*, (1967) 3 C.L.R.

155; *Liassi v. The Attorney-General*, (1975) 3 C.L.R. 558; *Antonίου v. The Republic*, (1978) 3 C.L.R. 308; *Platis v. The Republic*, (1978) 3 C.L.R. 384; *Angelidou v. The Republic*, (1982) 3 C.L.R. 62; *Stavros Makris Ltd. v. The Republic*, (1984) 3 C.L.R. 539; *Mahlouzarides v. The Republic*, (1985) 3 C.L.R. 2279; *Savva v. The Republic*, (1986) 3 C.L.R. 445. 5

The working days and hours of the customs offices are in general as prescribed by the Director of Customs, with the approval of the Minister of Finance, to whom the power has been delegated by the Council of Ministers—(See Section 4 of the Customs & Excise Law, 1967 (No. 82 of 1967) and Notification No. 60 issued thereunder, published in Supplement No. 3 of 25.2.72). 10

In the case under consideration the customs office was open. The customs officials did not accept to collect import duties in view of the anticipation of the introduction on that day of a Bill effecting changes to the rates of import duties. As we have said earlier, the import duties to be collected on the whole day of the introduction of the Bill were those prescribed by the new Bill. At the material time—8.30 in the morning—the Bill was still under consideration by the Council of Ministers, and the Director of Customs—the superior authority to the customs officers—was not aware and could not be aware of what those changes would be. The rate of the import duty in force was, in the circumstances of this case, unknown. It would have been absurd for the customs officials to collect the duty provided by the previous Law or any other uncertain amount. For the proper discharge of their duties imposed by Law of collecting and otherwise managing the revenues of customs and excise and proper administration they rightly refused to collect the import duties offered. As no warehoused goods could be lawfully removed from an approved bonded warehouse before the payment of the duties, they rightly kept them closed for purposes of clearing goods. 15
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For the reasons stated above the appeal is allowed and the cross-appeal is dismissed. The recourse is hereby dismissed. 40

In view of the novelty of the point there should be made no order as to costs.

5 MALACHTOS J.: This is an appeal by the respondents in Recourse No. 147/84 against that part of the judgment of a Judge of this Court where it was held that,

1. The respondents' refusal on 12.1.84 to collect from applicants the relevant customs or import duties for the clearing of certain furniture belonging to the applicants and stocked in private bonded (6.83) and/or the refusal and/ 10 or decision of the respondents not to allow the clearing on 12.1.84 of certain furniture belonging to the applicants which were stocked as aforesaid, and

2. The decision of the respondents to close for purposes of clearing goods on 12.1.84 the private bonded (6.83), 15 are null and void and of no effect whatsoever.

There is a third claim of the applicants in the recourse, namely, that the decision of the respondents to impose on applicants on 15.1.84, the payment of the revised import duty, on which the trial Judge gave directions to the res- 20 pondent authority to reexamine the application of the applicants from the legal and factual perspective of the morning of 12.1.84, besides being attacked by the appeal, has also been made the subject of a cross-appeal by the applicants in the recourse.

25 The relevant facts of the case, as found by the trial Judge, and which are not disputed, are the following:

The respondents in the appeal, who were the applicants before the trial Court, and who are importers of furniture, visited on 10.1.84 the Nicosia Customs Office and deposited a number of forms for clearing from their private 30 bonded (6.83) a number of items of furniture sold by them to various customers. By the afternoon of the 11th January, 1984, the necessary formalities for the removal of the said furniture were completed and at 8.30 in the following 35 morning they appeared before the customs authorities in order to pay the relevant import duty. On instructions from their superiors, the customs officials, refused to clear

the said furniture or accept payment of the relevant amount offered as import duty. The instructions were issued in anticipation of changes in the import duty legislation expected to take effect later that day with the introduction of a bill before the House of Representatives. In accordance with the same instructions, the bonded warehouse, where the furniture were stored, was closed. A meeting of the Council of Ministers held in the morning of 12.1.84, discussed the proposals for changes in the customs legislation. They approved a bill for the increase of import duty that was laid before the House of Representatives at 4.30 p.m. on the same day.

The customs authorities agreed to the clearance of the said furniture three days later on 15.1.84, but subject to the payment of the revised import duty. The bill was eventually enacted in March, 1984, as Law 15 of 1984, with retrospective effect as from 12.1.84. This is exceptionally permissible under the proviso to Article 24.3 of the Constitution which reads as follows:-

“24.3. No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect:

Provided that any import duty may be imposed as from the date of the introduction of the relevant Bill.”

It was the case of the applicants before the trial Judge that the refusal of the respondents to clear the items of furniture on 12.1.84 and the closing of the bonded warehouse where the said furniture were stored, were acts of illegality as at 8.30 in the morning of 12.1.84 no bill had been introduced before the House of Representatives as regards the revision of the import duties and, therefore, should be declared null and void.

On the other hand, counsel for the respondent authority not withstanding the acknowledgment of the illegality, argued that the wrongful act was remedied by the decision of the 15th January, 1984, because the bill after its introduction, took effect just after midnight of 11.1.84.

The trial Judge, after careful consideration of the sub-

missions of counsel had this to say at pages 29 to 30 of the record:

5 "As we had occasion to proclaim in *Grigoropoulos*
v. *The Republic* (1984) 3 C.L.R. 449, and earlier in
Anastassiou v. Demetriou and Another (1981) 1
C.L.R. 531, public officers can only derive authority
10 for their actions from the law. No one, however high
he may stand, can override its provisions. The rule of
law binds public officers to act under the law and in
accordance with its provisions. Never in disobedience
or contrary to them. The law is supreme, no one is
above it. The aphorism of Thomas Fuller 'Be you
never so high, the law is above you' finds true expression
15 in the law as Lord Denning proclaimed in *Gourriet v.*
Union of Post Office Workers [1977] 1 Q.B. 729,
761, 762."

And, further down, at page 31 of the record, the trial Judge said:

20 "Administrative action purporting to cure an illegal
or invalid administrative act must be fashioned to the
legal and factual regime obtaining at the time the
defective decision was taken. Obviously the decision
of 15.1.84 was not meant to and did not accomplish
25 the above objective. On the contrary, it aimed to take
advantage of the illegal action of the respondents by
the issue of a new decision fashioned not to the legal
regime of the morning of 12.1.1984 but to the illegal
instructions issued to refrain from applying the law
as it then stood. By prayers 1 and 2 I am required to
30 review the legality of the decision of the morning of
the 12.1.1984 involving, for the reasons above indi-
cated, (a) refusal to clear the goods and, (b) closure
of the particular private bonded warehouse. Both de-
cisions were invalid, being contrary to the law and
35 must accordingly be annulled."

At the hearing of this appeal before us, counsel for the parties put forward the same allegations and submissions as those put forward before the trial Judge.

I have considered the arguments of counsel before us and I must say that I found myself unable to agree with the majority of this Court and I am in full agreement with the approach of the relevant issue of the trial Judge. To my mind the gist of the case does not consist in answering the question as to whether the retrospectivity of Law 15 of 1984 came into force as from midnight of the 11th January, 1984, or not. The gist of the case is that the customs authorities who, as the trial Judge very rightly put it, are deriving authority for their actions from the Law, acted contrary thereto at the material time. The answer is certainly in the affirmative. 5 10

As regards the appeal against the directions of the trial Judge on the third claim of the applicants in the recourse, as well as their cross-appeal. I consider them as superfluous because they depend on the result of the other two remedies and, therefore, I would dismiss them. 15

For the above reasons, I would dismiss both the appeal and the cross appeal.

On the question of costs, taking into consideration the novelty of the point raised, like the trial Judge, I would make no order. 20

LORIS J.: The gist of the recourse under the present appeal, is the legality of the decision of the respondent Director of Customs, of the morning of the 12th January 1984, involving (a) refusal to clear the furniture in question, (b) closure of the particular private bonded warehouse (vide prayers under A and B of the recourse). 25

It is immaterial whether the respondent was anticipating at 8.30 a.m., that morning, approval of a Bill by the Council of Ministers and introduction of same to the House of Representatives. It is true that the introduction of the Bill to the House might have affected the quantum of the customs duty leviable, but that was an altogether different problem, for which there was a remedy. In this connection it must be borne in mind that "the imposition of customs duties is an administrative act and like every administrative act it may, in appropriate circumstances, be 30 35

revoked....” (*Director of Customs v. Grecian Hotel* (1985)
1 C.L.R. 476 at p. 481).

5 The respondent Director should not flinch from exer-
cising the duty cast upon him by law to clear the furniture
in question (once all documents required for the purpose
were presented to him) and levy the customs duty in force
at the time; if subsequently, on the same day, the Bill was
introduced to the House—as in fact it was—and it was
then revealed that a balance of customs duty was still
10 due, the respondent could claim such balance.

The respondent instead refrained from clearing the fur-
niture in question and furthermore closed down that par-
ticular private bonded warehouse.

15 I know not of any such law or regulation—and none
was submitted by the appellants—authorising the res-
pondent to act as he did, on the ground of an anticipated
introduction of a Bill to the House which might alter the
existing tariff of customs duty leviable.

20 The aforesaid decision of the respondent was therefore
contrary to law and as such should be annulled.

I am in agreement with the first instance judgment and
I would therefore dismiss the appeal and cross-appeal.

25 *By majority appeal allowed.*
Cross-appeal dismissed.
No order as to costs.