

1986 November 12

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

SINDESAMOS VIOMICHANON MOSAICON  
AND MARMARON,

*Applicants*

v.

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

*Respondents.*

(Case No. 320179).

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*Customs and Excise Duties—Classification of imported goods—  
Judicial control—Principles applicable.*

5 By means of this recourse the applicants challenge the  
decision of the Director of the Department of Customs,  
whereby small slabs of marble of a dimension of up to  
0.65 X 0.45 meters imported into the Republic were  
classified under tariff heading 68.02.10\*, instead of, as  
the applicants claimed, under tariff heading 25.15\*\* of  
10 the Second Schedule of the Customs and Excise Duties  
Law 18/78.

*Held, dismissing the recourse:* (1) In matters of classi-  
fication of goods this Court, as an administrative Court,  
has to examine the legality of the sub judice decision and  
whether or not the Authority concerned was labouring  
15 under any misconception, but it has no competence to  
substitute its own discretion for that of the administration.

(2) In the light of all the material before the respondent

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\* Quoted at p. 2158.

\*\* Quoted at p. 2157-2158.

Director and, also, before this Court, this Court arrived at the conclusion that the sub judice decision was reasonably open to the respondent Director.

(3) The applicants, on whom the burden lies, have failed to persuade the Court that the respondent Director acted under any misconception of law or fact or that he wrongly exercised his discretion. 5

*Recourse dismissed.*  
*No order as to costs.*

**Cases referred to:** 10

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

*Makrides v. The Republic* (1979) 3 C.L.R. 584.

**Recourse.**

Recourse against the decision of the respondents to classify small slabs of marble of a dimension up to 0.65 X 0.45 metres imported by applicants under tariff heading 68.02.10 instead of tariff heading 25.15 of the second schedule to the Customs and Excise Duties Law, 1978 (Law No. 18 of 1978). 15  
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*P. Sarris*, for the applicants.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicants, who are the Association of the Manufacturers of Mosaic and Marble of Nicosia, by means of their present recourse challenge the decision of the Director of the Department of Customs and Excise (hereinafter referred to as the "Director"), dated the 29th June, 1979, by which small slabs of marble of a dimension up to 0.65X0.45 meters imported into the Republic were classified as falling under tariff heading 68.02.10 instead of under tariff heading 25.15 of the Second Schedule to the Customs and Excise Duties Law, 1978 (Law 18/78). 25  
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The facts that led to the present proceedings are, in brief, the following:

On the 16th April, 1979, the applicants addressed a letter to the first respondent, through the Director, by which they objected to the imposition of import duty on the particular type of marble described above, claiming that the said goods ought to be classified under tariff 25.15, under which goods of similar description are imported free of import duty.

By his letter dated the 29th June, 1979, the Director informed the applicants that after re-examining their claim he decided that the said slabs of marble were blanks of marble and that they ought to be classified under tariff 68.02.10 which provides that goods described therein were liable to duty as follows: If imported from a country member of the European Economic Community at the rate of 18.2% and from elsewhere at the rate of 28%.

As a result of this decision of the Director the applicants filed the present recourse by which they pray as above.

Tariffs 25.15 and 68.02.10 are to be found in Part V of Chapter 25 and Part XIII of Chapter 68, respectively, in the Second Schedule to Law 18/78 and they read as follows:-

«25.15 — Μάρμαρα, τραβερτίνα, βελγικοί ασβεστόλιθοι και ἕτεροι ασβεστόλιθοι λαξεύσεως ἢ δομῆς, φαινομενικοῦ εἰδικοῦ βάρους ἴσου ἢ ἀνωτέρου τῶν 2,5 καὶ ἀλάβαστρον, περιλαμβανομένων παρομοίων λίθων χονδροειδῶς τετμημένων ἢ χονδροειδῶς ἢ διὰ πρίονος τετραγωνισμένων, ἀλλὰ μὴ περαιτέρω κατεργασμένων

68.02.10—'Επεξεργασμένοι λίθοι διὰ μνημεῖα καὶ οἰκοδομὰς, περιλαμβανομένων τῶν ἐπιτυμβίων λίθων καὶ μαρμάρων.»

“25.15 — Marble, travertine, belgian calcareous stone and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more

and alabaster, including such stone not further worked than roughly split, roughly squared or squared by sawing.

68.02.10 — Worked monumental or building stones, including tombstones and marble.”) 5

As stated by counsel for the respondents, the sub judge decision of the Director was based, amongst others, on the internationally agreed system of classification of goods known as the “Nomenclature of the Council of Customs Co-operation” to which Cyprus has acceded on the 24th November, 1972. The relevant convention on Nomenclature for the classification of goods in Customs Tariffs was published in the Official Gazette of the Republic on the 27th October, 1972. 10

As for all customs classifications of the Second Schedule to Law 18/78 there are published explanatory notes by the Committee on Nomenclature of the Council of Customs Co-operation of Brussels, the Director, by letter dated the 5th September, 1978, requested the said Council for their opinion on the subject matter and on the basis of explanatory notes (see exhibits “E” and “Z”) and, also, Note 2 of the relevant notes of Chapter 68 in exhibit “Z”, appended to this judgment, supplied by the said Council to him clarifying that the expression “worked monumental or building stone” in heading 68.02 is to be taken to apply to the varieties of stones referred to in heading 25.15, he arrived at the conclusion that the articles concerned are blanks of marble and, therefore, they fall under heading 68.02. 15 20 25

Counsel for the applicants submitted that the interpretation given by the Director to the description contained in the aforesaid tariffs is erroneous and that, therefore, the sub judge decision is the product of a misconception of Law and of the facts of the case. 30

In matters of classification of goods this Court, as an administrative Court, has to examine (a) the legality of the sub judge decision and (b) whether or not the authority concerned was labouring under any misconception. This 35

Court, however, has no competence to substitute its own discretion for that of the administration (see, inter alia, in this respect, *A. & S. Antoniaides & Co., v. The Republic*, (1965) 3 C.L.R. 673, 680 and *Makrides v. The Republic*, 5 (1979) 3 C.L.R. 584, 601).

In the present case on the basis of the material which was before the Director and was placed, also, before this Court, and of all other relevant considerations, I have reached the conclusion that it was reasonably open to him 10 to arrive at the sub judice decision and the applicants, on whom the burden lies, have failed to persuade me that he acted under any misconception of Law and of fact, or that his relevant discretionary power was wrongly exercised, so as to justify the interference of this Court.

15 Therefore, the present recourse fails and it is dismissed accordingly, but without any order as to its costs.

*Recourse dismissed with  
no order as to costs.*