

1986 July 30

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANNA YIANGOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS,
THROUGH THE DIRECTOR OF CUSTOMS,

Respondent.

(Case No. 272/84).

Customs and Excise Duties—Motor vehicles, importation of by Cypriots—Exemption from import duty—Order 188/82 published on 11.6.82—The relevant application for exemption should be submitted within a reasonable time from applicant’s return to Cyprus for permanent residence—Evaluation of such factor left to the discretion of the Director of Customs—The reasonableness of the period has to be judged from the time of applicants return and not from the date of the publication of the said Order.

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The respondent found that the applicant, who had emigrated to England in 1958, returned to Cyprus for permanent residence in April, 1981 and not on the 6.3.82 as alleged by the applicant. As a result of the said finding the respondent reached the conclusion that applicant’s application dated 29.6.82, whereby she sought under the provisions of Order 188/82, published on 11.6.82, the duty free importation of a motor car in Cyprus, had not been submitted within a reasonable time from her return to Cyprus and ought, therefore, to be dismissed.

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Hence the present recourse.

Held, dismissing the recourse: (1) In the circumstances of this case it was reasonably open to the respondent to find that the applicant had come back to Cyprus in April, 1981.

(2) The reasonableness of the period elapsing between someone’s return to Cyprus for settlement and the submission of an application for the free of customs duty importation of a motor car is an essential prerequisite for obtaining the benefit under Order 188/82. The evaluation of this factor is left to the discretion of the respondent.

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(3) In this case the reasonableness of the said period had to be judged by reference to April 1981, when the applicant returned to Cyprus and not by reference to the date of publication of the said Order.

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*Recourse dismissed.
No order as to costs.*

Recourse.

Recourse against the refusal of the respondent to grant applicant a permit to import free of customs duty a motor car as a repatriated Cypriot.

- 5 *C. Loizou with G. Yiangou*, for the applicant.
 M. Photiou, for the respondent.

Cur. adv. vult.

- 10 **TRIANTAFYLIDIS P.** read the following judgment. The applicant by means of the present recourse challenges the refusal of the respondent to permit her to import free of customs duty a motor-car as a Cypriot who had returned from abroad to settle in Cyprus.

The relevant legislative provisions are to be found in an Order which was published in the Official Gazette on the 11th June 1982 (No. 188, Third Supplement, Part I).

- 15 It appears that the applicant would be entitled to the free of customs duty importation of a motor-car, under the provisions of the said Order, had it been found by the respondent Director of Customs that she had sought such importation within reasonable time after she had come back from England where she had emigrated with her parents in 1958.

- 20 The applicant returned to Cyprus with her husband and daughter in April 1981. The household and personal effects of the family were cleared from the Customs by her husband who declared in the relevant customs form, dated 13th June 1981, that he intended to stay in Cyprus «permanently».

- 25 After the publication on the 11th June 1982 of the aforementioned Order (188/82) the applicant sought, on the 29th June 1982, the free of customs duty importation of a motorcar and she put forward the contention, in a letter dated 5th February 1983, that she had come back to Cyprus for permanent residence on the 6th March 1982, and not in April 1981, because in April 1981 she had only come to Cyprus to explore the possibility of settling here, but she and her husband had not definitely decided to do so until March or April 1982.

- 35 On the basis of the relevant facts before him the respondent Director did not accept this contention of the applicant and found that the applicant was not seeking the free of duty importation of

a motor-car within reasonable time after her return to Cyprus in April 1981.

I have reached the conclusion, in the light of all the material before me, that in the particular circumstances of this case it was reasonably open to the respondent Director of Customs to find that the applicant had come back to Cyprus with her husband to settle here in April 1981 and this is why they brought their household and personal effects to Cyprus in June 1981. 5

In my opinion any second thoughts which the applicant and her husband may have had subsequently, and their trips to England after April 1981, cannot be treated as preventing the respondent Director of Customs from concluding that they had returned from England in order to settle in Cyprus in April 1981. Moreover, I am of the view that it was reasonably open to the Director of Customs to find that the period from April 1981 till June 1982, when she sought the free of customs duty importation of a motor-car, was of such length that he could not find that the applicant was seeking duty free importation within reasonable time after her return to Cyprus. 10 15

It is to be noted that the reasonableness of the period elapsing between the return of someone to Cyprus to settle here and his claim for the free of customs duty importation of a motor-car is an essential prerequisite expressly provided for in Order 188/82 and the evaluation of this factor is left to the discretion of the Director of Customs. 20 25

It is correct that Order 188/82 was not published until the 11th June 1982 and the applicant sought the free of duty importation of a motor-car on the 29th June 1982; but, in my opinion, the reasonableness of the time that elapsed has to be judged by reference to April 1981, when the applicant returned from England, even though at that time the said Order had not yet been made, because otherwise there would be entailed the somewhat paradoxical result that someone who has returned to Cyprus to settle here permanently, even many years before the making of Order 188/82, would be entitled to the benefit granted by it provided he applied reasonably soon after it was published on the 11th June 1982. In my opinion, the respondent Director of Customs was, in effect, empowered to grant the said benefit only to persons who returned to Cyprus either after the making of Order 188/82 or so shortly be- 30 35

fore it that they might be found to have sought such benefit within reasonable time after their return to Cyprus.

For all the foregoing reasons this recourse fails and it is dismissed; but with no order as to its costs.

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*Recourse dismissed.
No order as to costs.*