

1987 February 17

[SAVVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS ANASTASIS,

Applicant,

v

THE MINISTER OF FINANCE, THROUGH
THE DEPARTMENT OF CUSTOMS AND EXCISE,

Respondent

(Case No 316/85)

Executory act—Application under sub-heading 19 of Item 01 of the Fourth Schedule to the Customs and Excise Duties Law 18/78 and Order 188/82 of the Council of Ministers for the duty free importation of a motor car, which the applicant intended to purchase—Reply in the negative—Not of an executory nature—It merely constitutes an opinion or advice

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Customs and Excise Duties—Motor vehicles importation of by Cypriots—Order 188/82 published on 11 6 82—The crucial words in the order are those referring to «importation»—They cannot be extended to cover intended importation of the goods

On 11 7 84 the applicant submitted to the respondent an application for permission to import as a repatriated Cypriot in virtue of the provisions of sub-heading 19 of Item 01 of the 4th Schedule to Law 18/78 a car, which he intended to purchase, free of import duty As the respondent turned down the said application, the applicant filed the present recourse

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Held, dismissing the recourse (1) The crucial words in Order 188/82 of the Council of Ministers are clearly those referring to the «importation» of the goods in question They cannot be construed as extending to the intended importation of the goods The definition of the word «import» in s 2 of Law 18/78 applies to the same word used in the Order

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(2) The applicant in this case did not import a car, but merely applied for relief for a car intended to be purchased

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(3) In the light of the above the sub judice decision is not of an executory nature, but it is only in the form of an opinion or advice and as such it cannot form the subject of a recourse under Article 146 of the Constitution

Recourse dismissed
No order as to costs

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Cases referred to

Yiangou v The Republic (1987) 3 C L R. 27

Recourse.

5 Recourse against the dismissal by the respondents of applicant's application for relief from import duty of a car intended to be purchased by applicant as a repatriated Cypriot.

P. Angelides, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by this recourse prays for a declaration that the decision of the respondent dated 13/2/85 whereby his application for the relief from import duty of a car intended to be purchased by him was dismissed is null and void and of no legal effect.

15 The legal grounds on which the recourse is based are that the sub judice decision is not duly reasoned, the respondent failed to take into consideration all the material submitted by the applicant, the sub judice decision was based on misconception of fact and law and that it is contrary to Article 28 of the Constitution.

25 The applicant was born in Cyprus in 1917 and he emmigrated to the U.K. in 1956 where he settled and stayed, according to his allegation, continuously until the 30th June, 1984 when he returned to Cyprus with his wife with the intention of taking permanent residence here. On the 11th July, 1984 he submitted an application to the respondent for permission to import a car free of import duty, which he intended to purchase, relying in this respect on the provisions of sub-heading 19 of Item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 (Law 18/78) on the ground that he had returned to take permanent residence in Cyprus after permanent settlement abroad for a continuous period of, at least, ten years.

30 The Director of the Department of Customs and Excise by his letter dated the 13th February, 1985, informed the applicant that it was not found possible to accede to his request for the reasons as stated therein that -

(a) His permanent settlement abroad was not continuous since he was residing in Cyprus from 15/8/82 to 2/6/83; and

(b) He failed to produce satisfactory evidence to support his allegation that he was permanently settled abroad continuously during the ten years preceding his return for settlement.

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As a result the applicant filed the present recourse challenging such decision.

In an affidavit filed by the applicant on the 24th October, 1986, after directions by the Court for the filing of evidence by affidavits, he verified his allegation that he had permanently settled abroad for a continuous period of over ten years and returned to take permanent residence in Cyprus. Attached to his affidavit he filed a certificate from the Department of Health and Social Security that he was a contributor to the Social Security Fund as from 5th March, 1956 to 19th June, 1982, and that as from such date he was receiving pension from the said Fund. Also a certificate from the British Consulate that he was a holder of a British passport issued on the 7th November, 1983 and previous to that he was the holder of a similar passport issued in England on the 3rd May, 1974.

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The allegations contained in such affidavit have not been contradicted by any evidence.

Counsel for applicant by his written address submitted that in the circumstances of the case and on the basis of the material before the Director of Customs and Excise the applicant satisfied the prerequisites of the law and that the respondent in refusing his application acted under a misconception of fact and law and that his discretion was wrongly exercised.

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Counsel for the respondent on the other hand by his written address contended that it was reasonably open to the respondent to reach the sub judice decision as the applicant failed to satisfy the respondent in material aspects and in particular he failed to produce his previous passport on the basis of which his allegations that he was continuously residing in England could be checked. Furthermore, on the basis of information contained in the passport of his wife it is apparent that as from March, 1979, till June, 1983 she was residing in Cyprus. Also the applicant had a permanent

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home in Cyprus since 1980, with a telephone, the number of which was recorded in his name in the telephone directory. He concluded by submitting that the sub judice decision was reasonably open to the respondent in the circumstances of the case.

In the course of preparing this judgment, the decision of the Full Bench of the Supreme Court in Revisional Appeal No.617 was delivered in which the question as to whether a similar decision of the Director of Customs and Excise was of an executory nature arose. As a result I reopened the case and invited counsel to address further the Court.

Counsel for the respondent submitted that the circumstances of the present case are similar to those in Revisional Appeal No.617 and that the reply of the Respondent to an application for relief from import duty for a car that applicant intended to purchase is not an executory act but is merely an expression of opinion or advice in the matter.

Counsel for applicant submitted that the applicant in the present case satisfied all the requirements of the law and by the refusal of the respondent to grant his application a legitimate interest of the applicant, that of importing a duty free car, has been affected and, therefore, such decision is of an executory nature and can be challenged by a recourse under Article 146 of the Constitution.

The relevant Order of the Council of Ministers, under which relief is sought, was published in Supplement No.III, Part I of the official Gazette of the Republic, dated the 11th June, 1982, and reads as follows:

«Κλάσις	Εβά- φιον	Περιγραφή Απαλλαγής	Έκτασις απαλλαγής
01	19	Μηχανοκίνητα οχήματα των κλάσεων 87.02.11 και 87.02.19 εισαγόμενα υπό Κυπρίων οι οποίοι κατόπιν μόνιμου εγκαταστάσεως εις το εξωτερικόν διασυνεχή περίοδον τουλάχιστον 10 ετών επανέρχονται και εγκαθίστανται μόνιμως εν τη Δημοκρατία νοουμένου ότι η εισαγωγή γίνεται εντός ευλόγου χρονικού διαστήματος από της αφί-	Η απαλλαγή καλύπτει μόνον έν όχημα δι' εκάστην οικογένειαν.

Ξεώς των κατά την κρίσιν του
Διευθυντού:

Νοείται περαιτέρω ότι ο
Υπουργός Οικονομικών κέκτη-
ται εξουσίαν όπως παραχωρή
ατέλειαν εις Κυπρίους επανα-
πατριθέντας προ της 1.1.1982
οι οποίοι δεν πληρούν τους
ανωτέρω όρους.*.

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(«Motor vehicles under Tariff Headings 87.02.11 and 87.02.19 imported by Cypriots who after permanent settlement abroad for a continuous period of at least 10 years return and settle permanently in the Republic provided the importation takes place within a reasonable time from their arrival at the discretion of the Director:

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Provided further that the Minister of Finance is empowered to grant relief from import duty to Cypriots repatriated before 1.1.1982 who do not satisfy the above conditions.

Extent of relief: The exemption covers only one car for each family.*)

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Before proceeding to make my findings on the issue before me, I consider it necessary to make reference to the recent decision of the Full Bench in Revisional Appeal No.617 (*Yiangou v. The Republic*) in which judgment was delivered on the 20th January, 1987*. The question arose in that case as to whether an application submitted by the appellant to the Director of Customs and Excise for permission to import a car, which was to be purchased by her, free of duty, amounted to an executory act in view of the fact that the appellant had not actually imported any car but wanted to know what the stand of the respondent would be on the matter. The Full Bench of this Court held, in dismissing the appeal, that the letter of the respondent embodying the decision which was being challenged did not constitute an executory act but was merely in the form of an opinion or advice and as such could not be the subject of a recourse.

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The facts of the present case are identical to those in *Yiangou* case (*supra*). The applicant returned from abroad with the

* Reported in (1987) 3 C.L.R. 27

intention of permanently settling in Cyprus without having imported a motor-car. He merely applied to the respondent Director for relief from duty for a car intended to be purchased without even defining the make and model of such car.

- 5 The crucial words in the order of the Council of Ministers are clearly those referring to the «importation» of the goods in question and they cannot in anyway be construed as extending to the intended importation of the goods. The definition of the word «import» in s.2 of the law applies to the same word used in the
10 Order.

In the result I have reached the conclusion that the sub judice decision does not amount to an executory act but is only in the form of an opinion or advice and as such it cannot form the subject of a recourse under Article 146 of the Constitution.

- 15 The recourse, therefore, fails on this ground.

- Bearing in mind, however, all the circumstances of the case and on the basis of the material before me which, prima facie, discloses a good case for the applicant had it been a case of an application for relief in the case of a vehicle already imported, the appropriate
20 authority may, in the exercise of its discretion, consider favourably an application on the part of the applicant in case he applies for relief in respect of a car actually imported by him. By expressing this opinion I do not wish to prejudge or interfere with any discretion of the Director if such application is submitted to him as
25 this is a matter within his own competence and has to be examined by him on the material which will be before him and subject to the relevant provisions of the Law.

In the result this recourse fails and it is hereby dismissed with no order for costs.

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*Recourse dismissed.
No order as to costs.*