

1987 January 21

[SAVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
DIOGENIS DIOGENOUS,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH THE
DIRECTOR OF THE DEPARTMENT OF
CUSTOMS AND EXCISE,

Respondent

(Case No 232/86)

5 *Customs and Excise Duties — Motor vehicles, importation of by Cypriots — Exemption from import duty — The Customs and Excise Duties Law 18/78 — Sub-heading 19 of item 0 1 of the Fourth Schedule and Order 188/82 of the Council of Ministers — Onus of satisfying the appropriate authority that the conditions of the right of relief are satisfied is on the applicant — «Permanent settlement abroad» — Period spent abroad by a Cypriot as a student does not amount to such a settlement*

10 On the 9 9 73 applicant left Cyprus for England. Whilst there he got married on the 17 7 75, describing himself to the Authorities as a «student of hotel and catering management». On the 22 8 83 he returned to Cyprus with his family, but in August 1984 he returned back to England, where he stayed with his mother-in-law for a period of one month.

15 On 6 10 84 the applicant submitted an application for the duty free importation of a motor car on the ground that he had returned to take permanent residence in Cyprus after permanent settlement abroad for a continuous period of 10 years.

20 The respondent asked the applicant to produce evidence of settlement abroad and, in particular, receipts of payment of income tax and social insurance contributions. The applicant produced such receipts in respect of the period from 1975 to 1983, but as at the end he failed to produce receipts for the years 1973-1975 and 1984 the respondent turned down applicant's said application. As a result the applicant filed the present recourse.

Held, *dismissing the recourse* (1) The case is governed by the provisions of

Order 188/82 of the Council of Ministers and the question is whether the applicant satisfied the condition of a continuous settlement abroad for a period of 10 years

(2) It is well settled that the period spent by a Cypriot abroad as a student does not amount to «permanent settlement abroad»

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(3) In the light of the material before the respondent it was reasonably open for him to conclude that the applicant returned to Cyprus with intent to reside permanently therein in 1983 and not in 1984

(4) In the light of the above the sub judice decision was reasonably open to the respondent

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Recourse dismissed
No order as to costs

Cases referred to

Leonida v. The Republic (1986) 3 C L R 2022,

Rossides v The Republic (1984) 3 C L.R 1482,

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Matsas v The Republic (1985) 3 C L R 54,

Mavronichis v The Republic (1985) 3 C L R 2301

Recourse.

Recourse against the refusal of the respondent to allow applicant to import a motor vehicle duty free as a repatriated Cypriot.

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K.C. Saveriades, for the applicant

S. Georghiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 25

SAVVIDES J. read the following judgment. The applicant by this recourse prays for the following relief:

«That the decision of the Director of the Department of Customs and Excise not to accede to applicant's application dated the 6th October, 1984, to import a motor vehicle under British Registration No. WKR 600 X by virtue of the provisions

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of Sub-heading 19 of item 01 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 which was communicated to the applicant by letter dated the 15th February, 1986 is null and void and of no effect whatsoever.»

5 The legal grounds on which the recourse is based, are the following:

1. The Director of the Department of Customs & Excise wrongly construed and applied the provisions of the Customs and Excise Duties Law No. 18 of 1978 and in particular item 01.19 of the
10 Fourth Schedule to the said Law.

2. The Director of the Department of Customs & Excise contrary to the provisions of Article 29 of the Constitution, failed to attend and decide expeditiously upon the said request of the applicant and further the decision of the respondent as communicated to the
15 applicant is not duly reasoned.

The applicant left Cyprus for England on the 9th September, 1973 as a visitor subject to the restrictions imposed by the appropriate authorities and he stayed in England ever since. Whilst in England he got married on the 17th July, 1975 and a
20 copy of his marriage certificate has been annexed to the opposition of the respondent.

The applicant returned with his family to Cyprus on the 22nd August, 1983. In August, 1984 he went back to England where he stayed for one month and then he returned to Cyprus in
25 September, 1984, bringing with him a second-hand motor car under British Registration No. WKR 600 X.

On 6.10.1984 he submitted an application to the Director of the Department of Customs and Excise requesting relief from import duty on the said car under the provisions of Sub-heading 19 of
30 Item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 (Law No.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 10 years.

35 Upon receipt of such application the respondent asked the applicant to produce evidence that he had «permanently settled»

abroad during the alleged period and in particular to produce receipts of payment of income tax and certificates of contributions to the Department of Health and Social Security in England.

The applicant produced such certificates covering the period as from 1975 to 1983. On the 5th January, 1985, the applicant was requested to provide similar certificates for the period 1973-1975 and 1984 to which applicant replied that he was trying to secure them. On the 27th August, 1985, the applicant was reminded again and was asked to produce the certificates asked for within one month, otherwise his application would be dismissed. On the 8th October, 1985, the applicant produced a letter from his accountants dated the 12th August, 1985, to the effect that efforts were being made to secure such certificates. On the 8th November, 1985, the applicant produced a letter from the Department of Health and Social Security dated 12th August, 1985 by which he was being informed that «years 1972-1973 and 1984-1985, are being dealt with». Notwithstanding the contents of such letter, no certificate was made available, as requested, till 15.2.1986 and as a result on 15.2.1986, the Director of the Department of Customs and Excise informed the applicant that it was not found possible to accede to his request contained in his application of the 6th October, 1984, on the ground that he «failed to produce satisfactory evidence to support his claim».

Before proceeding to deal with the substance of the case, I shall make a brief reference to the relevant order relating to the importation of duty-free cars by repatriated Cypriots after a permanent settlement abroad for a period of at least 10 years. The order of the Council of Ministers which was published in the official Gazette of the Republic of the 10th July, 1981 under Notification 151, provides under Item 0.1, Sub-heading 19, that motor vehicles of Tariff Headings 87.02.19 imported by Cypriots who, after permanent settlement abroad (κατόπιν μόνιμου εγκαταστάσεως εις το εξωτερικόν) for a continuous period of at least 10 years, return to take up permanent residence in Cyprus, are exempted from import duty, provided that-

(a) such motor vehicles were in their possession for a period of not less than one year, and

(b) only one motor vehicle for each family could be allowed duty-free.

The above order was repealed and substituted by a new order of the Council of Ministers published in the official Gazette of the
5 Republic, Supplement No. III of the 11th June, 1982, under Notification No. 188. Its scope was enlarged by obliterating the first condition of the previous order and extending its application to new cars, and, also, by the addition of the words «provided the importation takes place within a reasonable period of time' from
10 their arrival at the discretion of the Director».

The question which poses for consideration is whether the applicant at the material time when he returned to take permanent residence in Cyprus satisfied the condition of a continuous permanent settlement abroad for a period of at least 10 years, as
15 provided under Notification 188.

It is well established by a series of decisions of this Court that when a person claims relief from payment of duty, the burden is upon him to satisfy the appropriate authority of his entitlement to such relief.

20 From the material before me the following facts are established.

The applicant left Cyprus in 1973 as a visitor to England and he remained there ever since. According to the contents of a copy of an official certificate issued pursuant to the English Marriage Act, 1949, at the time of the celebration of his marriage in July, 1975,
25 which has been produced, the applicant was, according to a statement made by him to the authorities, a «student of hotel and catering management». The above statement appears in the said certificate under the heading, Rank or Profession. It has not been contested that for the period of 1975 to 1983 he had continuously
30 been working in England and was permanently settled there. The crucial time in the present case is the period between 1973-1975 and the year 1984, and the question which arises for consideration is whether the applicant can be considered as being «permanently settled» in England during such period and his stay there was for
35 the purpose of employment or whether during the years 1973-1975 he was a temporary resident as a student.

The applicant produced sufficient evidence to the respondent that as from 1975 till the end of 1982 he was employed in England and he was paying his contributions to the Department of Health and Social Security. This appears in the certificates issued by the Department of Health and Social Security in England dated 26.9.1984, copies of which have been annexed to the opposition. 5

The applicant though in his application for relief mentioned that as from the period from 15.9.1973 till the 1st March, 1983 he was continuously employed in England as a waiter in various restaurants, he failed to produce any similar certificates from the Department of Health and Social Security in England to the effect that he was so employed and paying his contributions during the period between 1973-1975. On the contrary, as mentioned earlier, when he celebrated his marriage in 1975 he described himself as a student and not as a person employed anywhere or carrying on any profession. 10 15

It is well established by our case law that the years spent by a Cypriot as a student abroad do not satisfy the requirement of «permanent settlement abroad» which is a prerequisite for relief from import duty of motor vehicles. Reference may be made to the case of *Photis Leonida v. The Republic through the Director of Customs*, Case No. 422/85 in which judgment was delivered by me on the 28th November, 1986* and in which reference is made to the cases of *Rossides v. Republic* (1984) 3 C.L.R. 1482, *Matsas v. The Republic* (1985) 3 C.L.R. 54, *Mavronichis v. Republic* (1985) 3 C.L.R. 2301. 20 25

With regard to the period between September, 1983 and September, 1984, as it is shown from his application for relief, and the address of his counsel, the applicant came to Cyprus on the 22nd August, 1983 with his family and left Cyprus again, alone, on the 2nd August, 1984 for England where he stayed for a period of one month residing at the house of his mother-in-law until he finally returned to Cyprus with his car, on the 7th September, 1984. In view of that I find that a conclusion that the applicant returned to Cyprus with intent to reside permanently in 1983 and not in 1984, is a reasonable one. 30 35

*Reported in (1986) 3 C.L.R. 2022

In the light of the material before me I find that it was reasonably open to the respondent to refuse the application of the applicant as the applicant failed to satisfy him that he had a permanent settlement abroad for a period of not less than ten years.

- 5 In the result, this recourse fails and is hereby dismissed but in the circumstances I make no order for cost.

*Recourse dismissed.
No order as to costs.*