

(1987)

1987 June 3  
[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HARIS M. HJIKYRIACOS LTD.,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE DIRECTOR OF CUSTOMS,

*Respondents.*

*(Case No. 545/85).*

*Administrative Law — General principles — Unlawful administrative act — Revocation of — Lapse of reasonable time — Unless the act in question was caused by the fraudulent conduct of the person concerned, revocation is not permissible after lapse of reasonable time.*

On 26.10.83 the applicants cleared from customs a quantity of Elit toasts, which were classified by the importers under tariff 19.07.90. Following a physical examination of the goods, it was revealed that they contained a quantity of fat and so their correct classification was under tariff 19.08. The applicants voluntarily paid the difference of the import duty that resulted from such different classification.

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Following the aforesaid incident an investigation was ordered as to applicants previous imports of Elit toasts. According to the respondents such investigation revealed that on nine different occasions between 8.4.82 till 29.9.83 the applicants imported Elit toasts, which were wrongly classified under tariff 19.07.90, instead of under the correct tariff 19.08.

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In the light of such finding the respondents demanded by letter dated 15.5.85 the payment of £5,848.31 cents, being the difference in the customs duty.

Hence this recourse. In support of it, the applicants alleged, inter alia, that up until October, 1983 the wrapping of the Elit toasts did not contain a description of the ingredients and the applicants did not and could not know that they contained fat. This allegation was not disputed by the respondents.

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Held, annulling the sub judice decision: (1) As the respondents did not

dispute the applicants' aforesaid allegation, they must be taken as accepting it and, therefore, the applicants were not guilty of any fraud or concealment

5 (2) The sub judge decision amounts to a revocation of an administrative act In the absence of specific legislative provision, the legality of the revocation is governed by the general principles of administrative law relating to the revocation of illegal administrative acts

(3) In accordance with such principles, the revocation of such an act is not permissible after the lapse of reasonable time, unless that act in question was caused by fraudulent conduct of the person concerned

10 (4) In the circumstances of this case the time that elapsed from the importations until the revocation is not a reasonable one

*Sub judge decision annulled*  
*No order as to costs*

*Cases referred to*

- 15 *Director of Customs v Grecian Hotel* (1985) 1 C L R 476,  
*Charalambides v The Republic*, 1964 C L R 326,  
*Paschali v The Republic* (1966) 3 C L R 593,  
*Karayannis v The Republic* (1974) 3 C L R. 420,  
20 *Yiangou v The Republic* (1976) 3 C L R 101

**Recourse.**

Recourse against the decision of the respondents to classify Elit toasts under tariff item 19 08 instead of 19.07.90 and to demand from applicant the sum of £5,848.31 cents as difference in respect of previous importations due to such wrong classification.

25 *G. Triantafyllides*, for the applicant.

*Y. Lazarou*, for the respondent.

*Cur. adv. vult.*

30 A. LOIZOU J. read the following judgment. The applicants were at all material times importers of Elit toasts from Greece. On the 26th October, 1983, they cleared from customs a quantity of Elit toasts. They were classified by the importers under tariff item 19.07.90, and duty was paid by them accordingly. Following a physical examination of the goods it was revealed that they contained a quantity of fat and so their correct classification was  
35 under tariff item 19.08.

The difference in import duty which has resulted due to the

wrong classification was estimated at £879.68 cents which were duly paid by the applicants.

Thereafter the matter was referred by the District Senior Customs Officer to the Director of Customs, who directed an investigation into previous importation of the same products made by the applicants from 1981 to 1983, and with regard to the correctness of the classification. 5

The investigation revealed that nine previous importations were, according to the respondents, wrongly classified under tariff item 19.07.90, and that the difference in customs duty was £5,848.31 cents. 10

The respondents demanded the above amount by means of a letter dated 15th May 1985, (Exhibit 1), upon receipt of which the applicants filed the present recourse praying for the following reliefs: 15

«A. Declaration that the decision of the Respondents to classify the ELIT toasts as mentioned in Exh. 1 attached hereto in class 19.08 instead of 19.07.90, is null and void and of no effect whatsoever.

B. The decision of the Respondents to demand from Applicants the amount of £5,848.31 or any other sum or at all as mentioned in Exh. 1 attached hereto is null and void and of no effect whatsoever.» 20

The main submission of counsel for the applicants was (a), that there was no evidence and no proof that the Elit toasts which had been imported prior to October, 1983 contained any fat therefore they were correctly classified in class 19.07.90. 25

(b) Up until October, 1983 the wrapping of the Elit toasts did not contain a description of the ingredients and the applicants did not and could not have known there exact contents; and even if a minimal amount of fat was contained since the applicants did not know of its existence and since they had already sold all the above products by basing themselves on the duty demanded and paid on the basis of the classification 19.07.90, they should not be forced to pay the additional amount of duty because they have already sold the toasts in question at prices which were fixed having regard to the duty they had paid therefor and the payment of additional duty at that stage would cause great economic loss to them. 30  
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(c) Once the goods had been cleared from customs and duty paid upon them, the respondents have no right to demand a higher amount of duty later if the applicants have not been guilty of falsity or concealment.

5 In order to substantiate submission (a) above, the applicants produced a telex from the manufacturers to the effect that fat started being added as from 1st October 1983. The respondents, however, contended that the contents of the telex were untrue because the matter had been investigated by them as early as 1975  
10 upon an application by another firm of importers which submitted a sample and was found that the correct classification was 19.07.90. Though this assertion of the respondents is not at all evidence that the consignments imported by the applicants did contain fat, I will leave the matter at that and I will proceed to deal  
15 with the case by having regard to submission (b) above namely that the applicants in the absence of a description of the ingredients on the wrapping did not and could not know the exact contents of the toasts and therefore they were not guilty of any fraud or any concealment.

20 The respondents did not dispute this assertion and therefore they must be taken as accepting that the applicants are not guilty of any fraud or concealment.

The act of the respondents to make a new classification and to demand additional duty amounts to revocation of the original  
25 classification, and as this revocation was not effected by virtue of any specific legislative provision, Law No. 82 of 1967 (and see in this respect the judgment of Triantafyllides P., in *Director of Customs v. Grecian Hotel* (1985) 1 C.L.R. 476, at p. 484, and the authorities therein referred to), it must be governed by the  
30 principles of administrative law governing revocation of administrative acts. And as the administrative act revoked constitutes an instance of unlawful administrative act, need arises to review the principles governing the revocation of unlawful administrative act. In *Charalambides v. The Republic*, 1964  
35 C.L.R. 326, Triantafyllides J., - as he then was - quoted at p. 334 the following passage from Stassinopoulos textbook «Discourses in Administrative Law» 1975 at p. 258.

«The existing legislation does not regulate by general rules  
40 the question as to when it is permissible to revoke an administrative act. This matter is regulated by general

principles which have been formulated through decisions of the Council of State. In accordance with such principles there is a distinction being made between revocation of lawful and revocation of illegal administrative acts. The lawful administrative acts out of which have flown rights for the subject cannot be revoked. Illegal administrative acts, through which a favourable situation has been created for the subject, may be revoked only if there is no lapse of a long interval of time and within reasonable time.»

He then proceeded as follows:

«Having regard to all the circumstances of this case and the fact that the Greek Communal Chamber had embarked on a course of action which was subsequently confirmed by decision of the Council of Ministers, and having regard to the lapse of over a year between the first decision of the Council of Ministers and its subsequent revocation by a new decision, the Court is of the opinion that much more than a 'reasonable time' has elapsed in this case in the sense of the passage quoted above.»

In *Pashall v. The Republic* (1966) 3 C.L.R. 593 the following was said at p. 609.

«Assuming now, contrary to what has been already held, that the 'scheme of service' (exhibit 10) as made by the Commission, was validly in force and that, therefore, the appointment of Applicant, as made in 1961, was contrary to it, it is well-settled that, where the irregularity of an administrative act is due to the action of the Administration, and is not due to any fraudulent conduct of the person concerned, then such act is irrevocable after the lapse of a reasonable period if time; - what is reasonable period being determined in the light of the circumstances of each particular case (See Kyriakopoulos, supra, vol. 3, p. 182; Stassinopoulos (1957) supra, p. 325. Also, in Decisions 720/1930 and 439/1930 of the Greek Council of State it has been held that the revocation of even an illegal administrative act, effected after the lapse of what is a reasonable period of time in the circumstances of the particular case, is - unless the illegal act was made due to the fraudulent conduct of the person concerned - an invalid act itself, as contrary to the notions of

proper administration and to the good faith which should govern relations between the Administration and those subject to it.»

5 In *Karayiannis v. The Republic* (1974) 3 C.L.R. 420, Hadjianastassiou J., said at p. 443:

«Of course, the rule that defective or illegal acts can be revoked is now generally accepted in the science of administrative law, but on the understanding that no vested rights have been created preventing such revocation.»

10 Reference may also be made to the judgment of the Full Bench in *Yiangou v. The Republic* (1976) 3 C.L.R. 101 at pp. 105-107.

15 It is clear that the above case law firmly establishes that the revocation of an unlawful administrative act is not permissible after the lapse of a reasonable time unless the unlawful administrative act has been caused by fraudulent conduct of the person concerned.

20 I have already found that the applicants are not guilty of any fraudulent conduct and the question which therefore arises, is whether the revocation was made within reasonable time. The alleged unlawful acts took place between the 8th April 1982 till the 29th September 1983, and the revocation on the 15th May 1985. What is reasonable time is a matter which depends on the circumstances of each particular case (see *Yiangou* (supra)).

25 Having regard to the particular circumstances of the case, namely that it was quite practical and easy for the respondents to conduct a physical check of the commodity in question within a few days from their importation, I have come to the conclusion that the time that elapsed from the importation until the revocation is not a reasonable one.

30 Therefore the sub judge decision must be, for the reasons hereinabove set out annulled.

In the circumstances there will be no order as to costs.

35 *Sub judge decision annulled. No order as to costs.*