

(1988)

1988 January 30

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

OTHON GALANOS AND SONS LTD.,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND/OR
THE DIRECTOR OF CUSTOMS AUTHORITY,

Respondents.

(Case No. 383/85).

Legitimate interest—Acceptance of an administrative act—Free and voluntary—Deprives acceptor of a legitimate interest to challenge it.

Customs and Excise—Export of goods from a bonded warehouse—The Customs and Excise Laws, 1967(Law 82/67)—Section 41(1) (b) and Circular 282 of the Director—Forfeiture of deposit if landing certificate from country of destination is not produced within a fixed period of time—Condition within the Director's power.

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The applicants requested permission to export a quantity of whisky from a bonded warehouse and deposited £2,133.50 as a security that a landing certificate from the Customs Authorities of the country of destination will be produced within two months. The relevant form stated clearly that in the event of failure to produce the certificate, the deposit would be automatically forfeited.

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The goods were, consequently, shipped on 17.9.84. The landing certificate was issued on 1.11.84. The applicants forwarded it to the Director by letter dated 30.11.84. The letter was received on 14.12.84.

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As the respondents refused to refund the deposit for failure to produce the certificate within the aforesaid time limit, the applicants filed this recourse.

It is common ground that the deposit was made in virtue of s 41(1) (b) of Law 82/67

5 Held, dismissing the recourse (1) The deposit was made by the applicants in accordance with a Circular of the Director (Circular 282) The applicants freely and voluntarily accepted the contents of the Circular They cannot, therefore, challenge the condition in the relevant form as ultra vires the law.

(2) Even if such acceptance was not free and voluntary, this recourse is doomed to failure as it is out of time

10 (3) In any event the act of the Director was not outside the ambit of his powers under s 41(1) (b) of the Law Indeed, the section requires an exporter (a) to give security, (b) to the satisfaction of the Director, (c) that the goods will be duly shipped and exported and discharged at the destination for which they are entered outwards, (d) within such time as the
15 Director considers reasonable

(4) The period of two months began from date of shipment, not from date of unloading at the port of discharge

Recourse dismissed
No order as to costs

20 **Recourse.**

Recourse against the refusal of the respondents to refund to applicants the amount of £2,133 50 deposited by them pending the production of a landing certificate.

A Sofocleous for A Skordis, for the applicants.

25 *M Photiou, for the respondents.*

Cur adv vult

STYLIANIDES J. read the following judgment. The applicants are a trading company.

30 On 13.9.84 they deposited with the Customs Authorities of Limassol three clearance forms in the prescribed Customs Form

C. 41 for export from the bonded warehouse a quantity of whisky. Prior to the deposit of the said clearance forms the applicants on 12.9.84 requested permission and paid as deposit the amount of £2,133.50. The request for the permission was made in the prescribed Form C. 29, which reads as follows:-

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"I request permission to deposit the sum of £2,133.50 in respect of production of landing certificate from the Customs Authorities of the country of destination within two months, in connection with the shipment to U.K. per M/S VERED of 8534 ctns x 12 75 cls btls (i. e. 1.980 glns per ctn) Whisky. I have noted the fact that failure to produce a proper landing certificate before the lapse of the said time limit will lead to automatic forfeiture of the deposit."

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The contents of the above application clearly denote that the applicant knew and contended that if they failed to produce the proper landing certificate before the lapse of two months, the deposit would automatically be forfeited.

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The requirement for such a deposit was made by virtue of the provisions of s. 41(1) (b) of the Customs and Excise Laws, 1967 (Law No. 82/67) and in pursuance of Circular 282 of the Director of Customs, dated 4.6.1982, whereby a cash deposit was prescribed for exports of high-rated goods.

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The aforesaid goods (Whisky) were exported on 17.9.84 and reached their destination on/or about 19.10.1984. A Landing Certificate to this effect, dated 1.11.84, was issued by the Customs Authorities of Glasgow (see Appendix 7 to the opposition).

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The applicants by letter dated 30.11.84, received by the respondents on 14.12.84, requested repayment of the amount of the deposit of £2,133.50 and enclosed the Landing Certificate. The respondents declined to accept the request to refund the deposited amount, on the ground that the applicants failed to produce the relevant Landing Certificate to Customs before the

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lapse of the franchise period of two months as per their undertaking in Form C. 29.

By means of the present recourse the applicants challenge the validity of the aforesaid decision.

5 It is common ground that the amount was deposited in virtue of the provisions of s. 41(1) (b) of Law 82/67, the relevant part of which reads as follows:-

10 "41. -(1) Ο εξαγωγεύς εμπορευμάτων προοριζομένων δι' εξαγωγήν ή προς χρήσιν αυτών ως εφοδίων διά τινα πλουν ή πτήσιν εν τη αλλοδαπή οφείλει όπως -

(α)

15 (β) παράσχη εγγύησιν ικανοποιούσασ τον Διευθυντήν, ότι τα εμπορεύματα ταύτα θα φορτωθώσιν, εξαχθώσιν και εκφορτωθώσιν προσηρόντως, εις τον εν τη κατατεθεί-
ση διασαφήσει καθοριζόμενον προορισμόν, εντός ευλό-
γου κατά την κρίσιν του Διευθυντού προθεσμίας ή εν τη
περιπτώσει εμπορευμάτων προοριζομένων ως εφοδίων
20 ότι θα χρησιμοποιηθώσιν δεόντως ως τοιαύτα ή άλλως
θα δοθώσιν εξηγήσεις ικανοποιούσασ τον Διευθυντήν:

20 Νοείται ότι ο Διευθυντής δύναται κατά το δοκούν να εξαιρέση οιαδήποτε τοιαύτα εμπορεύματα απάσών ή τινων των διατάξεων του παρόντος εδαφίου:"

25 ("41 - (1) Where any goods are goods to be shipped for exportation or as stores for use on a voyage or flight to a place outside the Republic, the exporter-

(a)

30 (b) shall give security to the satisfaction of the Director that the goods will be duly shipped or exported and discharged at the destination for which they are entered outwards within such time as the Director considers reasonable, or, in the case of goods for use as stores, will be duly so used, or

that they will be otherwise accounted for to the satisfaction of the Director:

Provided that the Director may relax all or any of the requirements of this sub-section as he thinks fit in relation to any goods.")

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Counsel for the applicants contended that the object of s.41(1) (b) is the protection of the ordinary export trade; it intends to secure the lawful unloading of the goods at their destination outside the Republic within reasonable time. This is ensured by the giving of security by the exporters. The imposition, however, by the Director of the payment of the deposit and the condition that they produce a Landing Certificate before the lapse of two months is ultra vires the Law.

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The short answer to this argument is that the applicants freely and voluntarily accepted the decision of the Director embodied in the Circular, they deposited the amount and signed the deposit No. B 262/84 Form C. 29 to which reference was made above. The applicants cannot say that this acceptance was not free and voluntary. If they were pressed to export their goods, they might pay the deposit and sign the aforesaid Form with reservation and contest its legality before this Court. They did neither. Furthermore, even if such acceptance was not free and voluntary- I have decided to the contrary - they are prevented by an insurmountable obstacle to challenge its validity before this Court, as the time prescribed by para. 3 of Article 146 of the Constitution for the filing of a recourse has expired long before the date of filing of this recourse.

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Irrespective of the above, the Court is of the view that the act of the Director was not outside the ambit of the power given to him by s. 41(1) (b) of the Law.

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An exporter is required:-

(a) to give security,

(b) to the satisfaction of the Director,

(c) that the goods will be duly shipped and exported and discharged at the destination for which they are entered outwards,

(d) within such time as the Director considers reasonable.

5 The Director for the achievement of the aforesaid prescribed a cash deposit of 0.250 mils (per case of 12 bottles of 0.75 centilitres of Whisky), (see his Circular No. 282 of 4/6/1982).

10 This was a security for the export of the goods and their discharge at their destination; he further required and the applicants accepted, the production of Landing Certificate from the Customs Authorities of the country of destination within two months period. The two months period is the time that the Director considered reasonable. The production of the certificate is the proof of the discharge of the goods at their destination.

15 Counsel further submitted that the period of two months is to be computed as from the date of the unloading of the goods. This is the only interpretation that can be given to the document -Form C. 29- and that the applicants did comply, having regard to the fact that the goods were discharged in October 1984.

20 The document signed by the applicants - Form C. 29 - is clear and unambiguous. The two months period starts from the date of shipment, i.e. 17.9.1984.

25 To summarize, the applicants cannot contest the validity, at this stage, of the requirement imposed by the Director in the implementation of s.41(1) (b) of the Law to deposit the amount as security and the requirement to produce the Landing Certificate from the Customs Authorities of the country of destination within two months from the time of shipment, and failure to produce appropriate Landing Certificate before the lapse of the said time
30 limit renders automatic forfeiture of the deposit. This was reasonably open to Director in the exercise of his powers under

the Law. The applicants did not contest it at the material time, on the contrary, they freely and voluntarily accepted it and, even if they had any legitimate interest - which they did not - they were deprived of it. The restriction imposed by Law and the terms and conditions of the deposit do not restrain the free export trade, on the contrary it is necessary for more than one reasons. I find no merit in the submission that the acts of the Director are ultra vires. The period of two months elapsed on the 17.11.1984. The applicants produced the Landing Certificate on the 14th of December 1984. The goods were discharged at Glasgow before 19.10.84. The certificate of the appropriate Customs Authorities was issued on 1.11.84, 17 long days prior to the expiration of the time of two months limit. If the applicants acted diligently in an era, when the communications and telecommunications are so advanced, due to modern technology, they might produce it before the lapse of the two months.

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In view of the above, this recourse fails. The sub judice decision is confirmed.

In all the circumstances of the case, let there be no order as to costs.

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Recourse dismissed
No order as to costs.