

1988 November 19

[BOYADJIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HANSEATIC SHIPPING CO. LTD.,

Applicants,

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,

2. THE DIRECTOR OF CUSTOMS AND EXCISE,

3. SENIOR COLLECTOR OF CUSTOMS,

Respondents.

(Case No. 154/850).

Customs and Excise Duties—Exemption from import duty—Order 151/81 of the Council of Ministers—“Office equipment” imported by Offshore Companies—Whether carpets are office equipment—Question determined in the affirmative—Question left open as regards carpets, which once fitted, cannot be removed.

Misconception of law—Amounts to an excess of power.

Customs and Excise Duties—Classification of goods—Judicial Control—Order 151/81 of the Council of Ministers—Once the issue concerns the interpretation of a legal provision (in this case “Office equipment”) the principle that the Court does not interfere, if the discretion was exercised in a manner reasonably open to the respondent, is not relevant.

The applicants are an off-shore company. They imported a quantity of carpets for their officers and applied for relief from Customs' duty under Order 151/81* of the Council of Ministers.

* The relevant part is quoted at pp. 2220 -2221 post.

Applying the Explanatory Notice issued by the Director of Customs and Excise in September 1984, which purported to clarify and explain the aforesaid Order 151/81 for the guidance of those interested, the respondents turned down the application.

Hence this recourse. Respondents originally based their case on the ground that since the applicants' carpets must as of their very nature be glued on the floor of the building of the applicants' office and thus become an inseparable part of the building, their use is outside the letter and the spirit of the exemption. Notwithstanding that the respondents at the end admitted, that the carpets were not to be glued and, therefore, they would be easily removable, the respondents insisted on the correctness of the sub judice act, because in accordance with the said explanatory note carpets are household equipment. 5 10

Held, annulling the sub judice decision (1) The principle that in matters relating to classification of goods the Department of Customs and Excise has very wide discretion and that the court will not disturb a decision, if it was reasonably open to the Director, has no bearing on this case. Here the question is if the words "office equipment" in the context of order No. 151/81, properly construed, include carpets. If yes, it was not reasonably open to the Director to defeat the object of the order. 15 20

(2) Order 151/81 should be interpreted as a whole. The order makes no distinction whatsoever between the office equipment on the one hand and the household equipment on the other hand. Furniture, however, is expressly excluded in both cases. This indicates that the expression "πας γραφειακός και οικιακός εξοπλισμός (all the office and household equipment) in the context of order No. 151/81 is used in a sense wide enough to include furniture but for their express exemption from the ambit of the order. The word furniture does not include carpets. 25

(3) Therefore, the Explanatory Note correctly classifies carpets as household equipment. Whether or not carpets should also be considered as part of the office equipment depends on whether they are ordinarily used in offices as well. The answer is in the affirmative. 30

(4) In the light of the above the sub judice decision has to be annulled for misconception of law.

(5) The question whether carpets, which, once fitted, cannot be removed, are within the exemption, is left open. 35

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

Demetriou Dairy Products v. The Republic (1985) 3 C.L.R. 758;

Demetriou and Sons v. The Republic (1968) 3 C.L.R. 444;

Kasapis v. The Republic (1968) 3 C.L.R. 546;

Christodoulou v. The Republic (1967) 3 C.L.R. 50.

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Recourse.

Recourse against the decision of the respondents conveyed orally to the applicants to the effect that the importation of fitted carpets for their offices was not free of customs duty.

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Chr. Demetriadis, for the applicants.

D. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

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BOYADJIS J. read the following judgment. By the present recourse the applicants seek a declaration of the Court that "the decision of the respondents or of any of them, orally conveyed to the applicants on or about 29th November, 1984, to the effect that the importation of fitted carpets for their offices was not free from customs duty under order No. 151/81, published in the official gazette of the Republic dated 10/7/81, is null and void and of no effect whatsoever, being contrary to the Law and/or to the relevant order and/or as having been taken in excess or in abuse of the powers vested to them or to anyone of them".

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As it appears from the Application and the Opposition the factual background to the present recourse is briefly as follows:

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The applicants are a big offshore ship management company. They operate their business from their Limassol offices which oc-

copy the extent of more than two floors in an office block.

Sometime in November 1984, applicants imported a quantity of fitted carpets valued £11,219 for use in their aforesaid offices. The carpets were imported in small pieces 50 cm X 50 cm each. A small sample of the carpets was attached to the written address of counsel for the applicants and is in the file of the proceedings. 5

Relying on order 151/81 published in the official gazette of the Republic of 10/7/1981, issued by the Council of Ministers under section 11(2) of Law 18 of 1978 as amended, the applicants submitted on the prescribed form on 26 November 1984 a formal claim for relief from customs duty in respect of their aforesaid carpets on the ground that they formed part of their office equipment within the ambit of the aforesaid order 151/81. 10

The respondents dismissed applicants' claim for relief and collected from the applicants the full import duty amounting to £1,958.55 cents which the latter paid under protest as it appears from their letter dated 30 November 1984, attached to the Application as Exh. 2. 15

In reaching their sub-judice decision the respondents had complied with an Explanatory Notice issued by the Director of Customs and Excise in September 1984, which purported to clarify and explain the aforesaid Order 151/81 for the guidance of those interested. 20

Feeling aggrieved with the aforementioned decision of the respondents to charge and collect from them import duty on their aforesaid carpets imported for use in their office; the applicants seek to have it annulled through the present recourse filed on 7 February 1985 on the sole ground that the interpretation given by the respondents to the words "γραφειακός εξοπλισμός" ("office equipment") in the aforesaid order 151/81 is wrong. 25 30

In their Opposition the respondents alleged that the sub judice decision was lawfully and correctly taken in accordance with the

5 Customs and Excise Duties Law, 1978, Fourth Schedule, sub-
heading 18 of item 01 as amended by order No. 1151/81. The rea-
soning for the respondents' decisions set out in the statement of
facts upon which the Opposition is based and repeated in the writ-
ten address of their counsel, is that, since the applicants' carpets
10 must, as of their very nature, be glued on the floor of the building
of the applicants' office and thus become an inseparable part of
the building, their use is outside the letter and the spirit of the ex-
emption. It follows that the respondents were throughout labour-
ing under the belief that, once they are fixed on the floor, the ap-
plicants' carpets, by their very nature, cannot be removed for use
at another place. In view of the aforesaid reasons put forward by
the respondents, the particular nature of the applicants' carpets,
which the latter originally described as fitted carpets, became of
15 vital importance and, such nature being a matter of fact that must
be proved by evidence, the applicants filed an affidavit sworn on
28 March 1986 by Andreas Droushiotis, the Chief Accountant
and one of the Directors of the applicants, in an effort to disprove
the allegation put forward by the respondents.

20 Attached to this affidavit there is a leaflet illustrating, inter alia,
the manner in which the carpet tiles are placed on the floor. In this
affidavit it is stated that Mr. Droushiotis was responsible for the
order of these particular carpets and had personally supervised
their fitting on the floor of the applicants' office which was effect-
25 ed without the use of any kind of glue with the result that they are
easily removable.

30 Far from attempting to disprove the aforesaid allegation of Mr.
Droushiotis, the respondents filed an affidavit sworn on 19 July
1986 by Antonios Antoniaides, a Collector of Customs attached to
the Customs Headquarters, Nicosia, in para. (3) of which refer-
ence is made to the applicants' affidavit and it is stated that: "On
the basis of the technical information contained in the said leaflets
and the statements contained in the aforesaid affidavit, the Re-
spondent will not insist on considering the 'carpet tiles' in ques-
35 tion as 'fitted carpets'".

The matter, however, did not end there. In the concluding paragraph of his affidavit Mr. Antoniadis insists on the correctness of the sub-judice decision which he seeks to justify on somewhat different grounds. Paragraph 4 of the affidavit reads as follows:

"4. Nevertheless the dispute as to their eligibility for relief still remains because the Department of Customs does not consider and it has been its policy not to consider carpets (individual units) as falling within the scope of 'office equipment' (γραφειακός εξοπλισμός), but simply considered carpets only as 'household equipment'. In the relevant Notice 41 (Appendix 1 of the Opposition) it is stated that relief from duty is not allowed on household equipment cleared by offshore companies for furnishing their offices."

At the subsequent stage of oral arguments and/or clarifications made by counsel on both sides, counsel for the respondents adopted the aforesaid contents of paragraph (4) of the affidavit of Mr. Antoniadis and sought to justify the sub-judice decision on the last aforementioned reasoning.

The policy of the Department of Customs belatedly relied upon by the respondents is itself the result of the Notice issued by the Director of the Department of Customs to which reference has already been made. The relevant part of this Notice reads as follows:

"The companies may obtain relief on office equipment, i.e. supplies of a durable nature, such as photo-copiers, typewriters, calculating machines and computers. They may not obtain relief on household effects for furnishing their offices but they may import or acquire locally such goods under item 01. 18 for the exclusive use of their approved expatriate employees in their dwelling houses. Moreover, relief is not afforded in respect of replacement parts, air-conditioners and goods of a consumable nature, such as stationery."

The personnel may obtain relief on household effects, a

term which means all durable goods used in a household and extends to items such as carpets and curtains, TV sets, video recorders, washing machines, refrigerators, kitchen utensils, mattresses, linen, cutlery and tableware, household decorative articles and practically everything normally used to furnish a house. Relief is not afforded in respect of consumable goods, air-conditioners and personal effects, such as photographic or video cameras."

Counsel for the applicants submitted: (i) that the very fact that the respondents consider carpets as forming part of the household equipment strengthens their argument that carpets should likewise be considered as forming part of the office equipment: (ii) that the object of the legislature in exempting offshore companies and their expatriate personnel from payment of customs duty on their office and household equipment respectively was to attract thereby offshore companies to incorporate themselves and operate from within the Republic: and (iii) that in construing the relevant provision the Court should give full effect to the aforesaid object by giving the words of the exemption the wider possible meaning.

Counsel for the respondents, on the other hand, submitted that in matters relating to classification of goods the Department of Customs and Excise has very wide discretion and that the court will not disturb a decision if it was reasonably open to the Director. In support of this proposition counsel cited the decision in *Demetriou Dairy Products v. The Republic* (1985) 3 C.L.R. 758.

I fail to see the relevancy of the decision in the above case to the matters now under consideration. The aforesaid case concerned the classification of certain vans for the purpose of payment of customs duty and the Court held that in matters of classification of goods an administrative Court has no competence to substitute its own discretion in the place of the discretion of the Customs Authorities once it is found that it was in the circumstances reasonably open to the Authorities to classify the goods under tariff heading 87.02, sub-heading 99, instead of under sub-heading 91 as the applicants in that case had alleged. The dispute in this case does not concern the exercise by the Director of any discretion one way or the other. It concerns the alleged wrong ap-

application of the law. If the words "office equipment" in the context of order No. 151/81, properly construed, include carpets, it is not reasonably open to the Director to exercise his discretion in a way that would defeat the object of the order. It follows that the sole issue here is the correct interpretation of order No. 151/81 issued by the Council of Ministers under section 11(2) of the Customs and Excise Duties Laws 1978-1981, whereby sub-heading 18 was added to item 01 of the Fourth Schedule to the Law, the relevant part of which reads as follows:

Κλάσις	Υπόδειγμα	Περιγραφή Απαλλαγής	Έκταση Απαλλαγής
01	18	Μηχανοκίνητα οχήματα των κλάσεων 87.02.11 και 87.02.19 εισαγόμενα, και πιας γραφειακός και οικιακός εξοπλισμός, πλην των επίπλων, εισαγόμενος, υπό αλλοδαπών εταιρειών ή αλλοδαπού προσωπικού αυτών.	

Translated in English, sub-heading 18 of item 01 reads as follows:

Item	Sub-heading	Description of relief	Extent of relief
01	18	Motor vehicles of categories 87.02.11 and 87.02.19 imported, and all the office and household equipment, other than furniture, imported, by offshore companies or their expatriate employees.	

The provision must be construed as a whole. It is material to note in this respect that relief from customs duty is afforded to those eligible in respect of all their office and household equipment. It makes no distinction whatsoever between the office equipment on the one hand and the household equipment on the other hand. Furniture, however, is expressly excluded in both cases. This indicates that the expression "πιας γραφειακός και

οικιακός εξοπλισμός" (all the office and household equipment) in the context of order No. 151/81 is used in a sense wide enough to include furniture but for their express exemption from the ambit of the order. The word furniture does not include carpets. Therefore, the Director was right when he advised, in his aforesaid Explanatory Notice all persons concerned that carpets form part of the household equipment and as such are exempted from payment of customs duty. Whether or not carpets should also be considered as part of the office equipment depends on whether they are ordinarily used in offices as well. It has not been argued in this case that it is nowadays unusual for offices to be fitted with carpets, especially offices of companies of the size and financial standing of the applicants.

It follows from the above that, upon the correct construction of sub-heading 18 of item 01 of the Fourth Schedule to the Customs and Excise Duties Law 1978 as amended, by giving to the words used therein their ordinary literal meaning, without the necessity of applying the so-called "purposive construction", I am led to the conclusion that the particular carpets imported by the applicants are exempted from the payment of customs duty as forming part of applicants' office equipment. I leave the question open whether carpets which, once they are fitted in the office cannot possibly be removed therefrom, fall under the aforesaid sub-heading 18 of item 01 or not.

The respondents have in this case misinterpreted and misapplied the law and their decision is liable to be annulled on this sole ground. Misconception of law vitiates the administrative act: *Demetriou & Sons v. The Republic* (1968) 3 C.L.R. 444. Misdirection by the administrative authority as to the meaning and effect of a statutory provision is a ground for annulment of its decision: *Kasapis v. Republic* (1968) 3 C.L.R. 546. A decision taken under a basic misconception of law is a decision taken in excess of powers: *Christodoulou v. Republic* (1967) 3 C.L.R. 50.

In the result, the sub-judice decision is annulled, but in the circumstances I make no order as to costs.

*Sub-judice decision annulled.
No order as to costs.*