

1981 January 21

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STILVI GENERAL CLEANERS LTD.,

Applicants,

v.

1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 385/87).

Taxation—Income tax—Plant or machinery—Mini bus—The Income Tax Law (as amended by Law 8/79), section 12(1)—It expressly excludes from the definition of “plant and machinery” private motor vehicles qualifying as such under the Motor Vehicles Traffic Regulations (1973 - 1978)—
5 *Test for determination of the character of a vehicle is its classification under such Regulations—Mini buses are classified thereunder as private vehicles—Consequently, respondent had no discretion in the matter, but had to treat the mini buses as not qualifying either as plant or machinery.*

10 The facts of this case sufficiently appear from the hereinabove head-note.

Recourse dismissed.

No order as to costs.

Cases referred to:

Hellenic Bank v. Republic (1986) 3 C.L.R. 267;

15 *Melikian and Co. v. Republic (1985) 3 C.L.R. 1322.*

Recourse.

Recourse against the income tax assessments raised on applicants for the years 1981 - 1985.

A. Papacharalambous with P. Angelides, for the applicants.

Y. Lazarou, for the respondents.

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Cur. adv. vult.

PIKIS J. read the following judgment. This is an application for review of the validity of tax assessments whereby the liability of the applicants to income tax for the years 1981 - 1985 inclusive was determined. Notwithstanding the generality of the challenge to the assessments, the objections of the applicants were confined to one aspect of them only, namely, the refusal of the Commissioner to treat mini buses acquired by the applicants as plant or machinery and the sequential disallowance of the monies incurred for their purchase as a capital investment. The limitation of the contentious issues was foreshadowed by a letter of applicant's accountant dated 23rd March, 1987, and confirmed by the address submitted by counsel and confirmed on their behalf.

An earlier suggestion for the deduction of interest paid for failure to meet special contributions at the appointed time, was not pursued; rightly, in my view, considering the nature of the payment and the decision in *Hellenic Bank v. Republic**. Section 12 (1) of the Income Tax Law (as amended and fashioned by s.2 of Law 8/79), expressly excludes from the definition of plant and machinery private motor vehicles qualifying as such under the Motor Vehicles Traffic Regulations (1973-1978). Unlike private vehicles, goods vehicles qualify for exception.

Regulation 17(7) (N) of the aforementioned regulations defines goods vehicle as one constructed or adapted for the carriage

* (1986) 3 C.L.R. 267.

of goods. The test for determination of the character of the vehicle is its classification under the Road Traffic Regulations and not the use made of it. This was made by the Full Bench of the Supreme Court in *Melikian and Co. v. Republic* (1985) 3 C.L.R. 1322.

- 5 The object of s.12 is to define with precision the vehicles that qualify as plant or machinery and for which corresponding allowance may be made under its provisions. Their classification is solely dependent on the provisions of the relevant regulations leaving no discretion to the Commissioner to adopt any other test for
10 their classification.

The mini buses acquired by the appellants, a firm of window and carpet cleaners, were private vehicles within the meaning of the Regulations adapted for the carriage of passengers and as such incapable of qualifying as either plant or machinery for the
15 purposes of s.12 of the law. That being the case, the decision of the respondents is confirmed pursuant to the provisions of Art. 146.4(a) of the Constitution; and the recourse is dismissed accordingly. No order as to costs.

*Recourse dismissed.
No order as to costs.*

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* (1985) 3 C.L.R. 1322.