

1982 June 14

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

- 1. CHR. DEMETRIADES AND CO. LTD.,
- 2. THE POPULAR BANK LTD. OF CYPRUS,
- 3. PATSALIS BROTHERS LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
 THE MINISTER OF COMMUNICATIONS AND WORKS  
 AND/OR  
 THE REGISTRAR OF MOTOR VEHICLES,

*Respondent.*

(Case No. 279/80).

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*Motor vehicle—Classification for purposes of registration—To be made by reference to the nature of its use which may be gathered from its construction and the purpose for which it is used and not by reference to the number of its seats—“Private vehicle”—“Goods vehicle—light”—Construction and characteristics of applicants’ vehicle those of a “goods vehicle”—Wrongly classified as a “private vehicle”—Section 2(1) of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72), definition of “private motor vehicle” and regulation 50(6) of the Motor Vehicles and Road Traffic Regulations, 1973.*

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Applicants 1, a company of limited liability, who are importing and selling “Daihatsu” light goods vehicle imported a “Daihatsu” pick-up double cabin delta V 24W which it sold to applicants 3. On importation the said vehicle was classified for import duty purposes by the Customs Authorities as light goods pick-up vehicle for the carriage of goods and agricultural and other products. By application dated 12.6.1980 the applicants applied to the Registrar of Motor Vehicles for registration of the said vehicle. The Registrar registered the vehicle in category 11, as a “private vehicle” instead of category 23 as a “goods vehicle—

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light". Applicants objected to such classification and hence this recourse for:

5 "A declaration of the Court that the decision of the respondents dated 13.6.1980 and communicated to the applicants on or about 14.6.1980 whereby the respondents registered the light goods vehicle pick-up under Reg. No. LL. 347, DAIHATSU make, under the category of private motor vehicles (No. 11) instead of the proper category of light goods vehicles (No. 23), is null and void and/or 10 in abuse of powers and/or illegal and/or of no legal effect whatsoever".

The said vehicle consisted of a double cabin and a cargo bed. The cargo bed was used for loading and carrying loads and materials contrary to a saloon car which had no cargo bed 15 because saloon cars are so constructed as to carry passengers and their load capacity is restricted. The gross weight of the vehicle was 4150 Kgs. as against 2000 Kgs of a private saloon car and the reason for such difference was that it was so made to carry loads in its cargo bed. The overall length of the vehicle 20 was such as to indicate that it was a truck.

Counsel for the respondent submitted that due to the fact that the vehicle in question was so constructed as to carry more than three passengers, in addition to the driver, it could not be considered as anything else than a private vehicle in view of the provisions of regulation 50(6)\* of the Motor Vehicles and Motor 25 Traffic Regulations, 1973.

*Held*, (I) that there is no provision\*\* in the Motor Vehicles and Road Traffic Laws 1972 to 1981 and the Road Traffic Regulations empowering the Registrar of Motor Vehicles to 30 classify a vehicle for the purposes of registration as a private one on the basis that such vehicle has seats for more than three passengers; that the only restriction that does exist, concerns the number of passengers to be carried in a goods vehicle and not the number of seats, and it is the one under paragraph (6) of regulation 50; that under the proviso, however, to such 35 paragraph, in the case of vehicles used for agricultural purposes,

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\* Regulation 50(6) is quoted at pp. 339-400 post.

\*\* The relevant provisions are quoted at pp. 396-398 post.

as defined therein, no restriction exists even as to the number of passengers to be carried in such vehicle provided the passengers are sitting on properly fixed seats; that it is not the number of seats that are fixed on a vehicle that can change its characteristics but the nature of its use which may be gathered from its construction and the purpose for which it is used; that in accordance with the definition of "private motor vehicle" under section 2(1) of the Motor Vehicles and Road Traffic Law, for a goods vehicle to be exempted from the definition of a private vehicle it has to be used for the carriage of goods; that, moreover, under Part I of the Schedule to section 5 of Law 86/72, for registration purposes even a private vehicle not used for hire or reward but mainly for the carriage without reward of passengers who are in the service of the owner and who are so carried by him for the purpose of such service or is used for carriage without reward of goods or load in connection with the work of the owner, is not deemed to be a private vehicle; that having regard to the specification of the said vehicle, its construction and characteristics and to the provisions of the respective Laws and Regulations the proper classification of such vehicle should have been that under category 23 of "goods vehicle-light" and not that under category 11 of "private vehicle"; that, therefore, the decision of the Registrar of Motor Vehicles to classify and register the vehicle in question as a private vehicle instead of "goods vehicle-light" was wrong and contrary to the provisions of the respective Laws and Regulations and has to be annulled.

*Sub judice decision annulled.*

### **Recourse.**

Recourse against the decision of the respondents to register motor vehicle under Reg. No LL 347, Daihatsu make, under the category of private motor vehicle instead of the proper category of light goods vehicle

*A. Boyadjis*, for the applicant.

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

SAVVIDES J. read the following judgment. Applicant 1 in this recourse is a Company of limited liability which is importing and selling, inter alia, "Daihatsu" light goods vehicles. Applicant 2 is a Bank financing applicant 1 and in whose name

the vehicles imported by applicant 1 are registered for security purposes. Applicant 3 is also a company which is the hire-purchaser, under a hire-purchase agreement between it and the other applicants, of a Daihatsu pick-up Double Cabin Delta  
5 V 24W which has been registered under Reg. No. LL 347. The said vehicle was imported and classified for import duty purposes by the Customs Authorities, as light goods pick-up vehicle for the carriage of goods and agricultural and other products.

10 The applicants by application dated 12.6.1980 applied to the Registrar of Motor Vehicles (respondent 2) for registration of the said vehicle, supplying him with all necessary particulars concerning the same.

There was a series of correspondence between applicant 1  
15 and respondent 1 concerning the registration of similar vehicles dating back to 28.12.1979 till the date of the present recourse whereby applicant 1 was setting out facts why such type of vehicles should be classified as light goods vehicles. A bundle of copies of such correspondence is annexed to the written  
20 address of counsel for applicants as Annex II.

Respondent 2 registered the said vehicle on 13.6.1980, under Registration No. LL 347 in category 11, that is, as a private vehicle instead of category 23, as "goods vehicles-light" and sent to the applicants the respective certificate of registration on  
25 which such classification is recorded and which was received by applicants on 14.6.1980.

The applicants objected to such classification and filed the present recourse whereby they pray for:

30 "A declaration of the Court that the decision of the respondents dated 13.6.1980 and communicated to the applicants on or about 14.6.1980 whereby the respondents registered the light goods vehicle pick-up under Reg. No. LL 347, DAIHATSU make, under the category of private motor vehicles (No. 11) instead of the proper category of light  
35 goods vehicles (No. 23), is null and void and/or in abuse of powers and/or illegal and/or of no legal effect whatsoever".

The grounds of law relied upon in support of the application as set out therein, are as follows:

- “(a) The decision and/or act of the respondents and especially that of the Registrar of Motor Vehicles, was taken in abuse and/or excess of power. 5
- (b) The decision of the respondents is the result of a misconception of the law and of wrong interpretation and application of the Motor Vehicles and Road Traffic Regulations.
- (c) The decision and/or administrative act of the respondents is the result of a misconception of fact and/or of wrong criteria and/or of wrong assessment of facts on the part of the respondents. 10
- (d) The decision of the respondents is contrary to the existing principles of Administrative Justice concerning the exercise of discretionary powers of administrative organs and/or contravenes the accepted general principles of Administrative Law. 15
- (e) The decision of the respondents does not conform with the principles of equality of treatment of citizens and/or is biased. 20
- (f) In general the act and/or decision of the respondents is not reasoned and/or is unjustified”.

The application was opposed on the ground that the sub-judice decision was taken lawfully in accordance with the provisions of the Motor Vehicles and Road Traffic Laws 1972 to 1978 and the Regulations made thereunder and after all relevant facts were taken into consideration. 25

It was the contention of applicant’s counsel that the said vehicle is so constructed as to be used for the carriage of goods and the fact that it can carry more passengers than an ordinary goods vehicle does not convert it into a private car, thus altering its classification which, according to its specifications, comes within the category of “goods-vehicle-light”. He further submitted that its classification as a goods vehicle does not offend against any of the provisions of the respective Laws or Regulations and that its construction and description brings it within 30 35

the definition of "goods vehicle" under the provisions of Law 86/72 and also the definition of "light goods vehicle" under the provisions of the respective Regulations. The only limitation that can be imposed, counsel argued, is as to the number  
5 of passengers that may be carried in the cabin of such vehicle and not as to the number of seats that such vehicle has.

He further contended that in this particular case the vehicle in question is used for agricultural purposes in the sense of the proviso to regulation 50(6) of the respective Regulations and the definition of the term "agriculture" as set out therein  
10 and it is so constructed as to carry more than three passengers by having fixed seats for such passengers.

Counsel for the respondents based his argument on the provisions of the Regulations and in particular regulation 50(6)  
15 and maintained that the meaning of such regulation is that if a vehicle is so constructed as to have more than three passengers' seats, it cannot be registered as a goods vehicle because it falls within the category of a private one.

Counsel for applicants in support of his case called as a  
20 witness an expert technician engineer who gave a description of the subject matter vehicle and produced a report prepared by him on the 19th of November, 1981 (*exhibit 2*), the contents of which he affirmed on oath and also a leaflet showing the picture of the car and its specifications (*exhibit 1*). According  
25 to the evidence of this witness and the various exhibits produced, the vehicle comprises of a double cabin and a cargo bed. The cargo bed is used for loading and carrying loads and materials contrary to a saloon car which has no cargo bed as saloon cars are so constructed as to carry passengers and their load capacity  
30 is restricted. The specifications of the vehicle in question cannot suggest that they can be those of a private saloon car. The gross weight of this vehicle is 4150 kgs as against 2000 kgs of a private saloon car, and the reason for such difference is that it is so made to carry loads in its cargo bed. The overall  
35 length of the car is such as to indicate that it is a truck. Also, the gear ratios are high enough suggesting tractive effort and not high speeds as in the case of a private saloon car.

The only point in issue in the present case is whether the Registrar of Motor Vehicles acted properly by registering the

said vehicle as a private vehicle instead of a “goods-vehicle-light”. The whole issue turns on the interpretation of the relevant provisions in the respective Laws, (The Motor Vehicles and Road Traffic Laws, 1972 to 1981) and the Regulations made thereunder (The Motor Vehicles and Road Traffic Regulations 1973 to 1980). 5

Material in this respect is section 2(1) of Law 86/72 which reads as follows:

“ ‘goods vehicle’ means a motor vehicle constructed or adapted for use for the carriage or haulage of goods or loads of any description or a trailer so constructed or adapted. 10

‘private motor vehicle’ means any motor vehicle other than a public service motor vehicle or a goods vehicle used for the carriage or haulage of goods or burden for hire or reward. 15

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The above definition of “private motor vehicle” has been repealed and replaced by section 2 of Law 72/81, as follows:

“ ‘Ιδιωτικόν μηχανοκίνητον ὄχημα’ σημαίνει πᾶν μηχανοκίνητον ὄχημα πλὴν τῶν δημοσίας χρήσεως τοιοῦτων καὶ τῶν φορτηγῶν μηχανοκινήτων ὀχημάτων, τῶν χρησιμοποιούμενων διὰ τὴν μεταφορὰν ἀγαθῶν ἢ φορτίου ἐπὶ μισθῶσει ἢ ἐπ’ ἀμοιβῆς, καὶ τῶν μηχανοκινήτων ὀχημάτων τῶν χρησιμοποιούμενων διὰ τὴν ἐκπαίδευσιν ὁδηγῶν· ὁ ὅρος ‘ἐκπαίδευσιν ὁδηγῶν’ κέκτηται τὴν εἰς τὸν περὶ Μηχανοκινήτων Ὀχημάτων (‘Εκπαίδευσιν Ὀδηγῶν) Νόμον τοῦ 1968 ἀποδιδόμενην ἔννοιαν”. 20 25

And the English text reads as follows:—

“ ‘private motor vehicle’ means any motor vehicle other than a public service motor vehicle or a goods vehicle used for the carriage or haulage of goods or burden for hire or reward and the motor vehicles used for the instruction of drivers; the term ‘instruction of drivers’ has the meaning attached to it in the Motor Vehicles (Instruction of Drivers) Law, of 1968”. 30 35

Sub-section (2) of section 2 of Law 86/72 provides that:

“For the purposes of this section, where a motor vehicle

is so constructed that a trailer may by partial super-  
imposition be attached to the motor vehicle in such a  
manner as to cause a substantial part of the weight of the  
trailer to be borne by the motor vehicle, the motor vehicle  
5 shall be deemed to be a vehicle itself constructed to carry  
a load”.

Under the provisions of section 5(1) of Law 86/72, power  
is given to the Council of Ministers, inter alia:

“(a) to regulate, on payment of the fees set out in Part  
10 I of the Schedule to this Law, the classification, registration  
and licensing of motor vehicles and trailers, and the display,  
production, suspension, cancellation and surrender of  
such licences, and to exempt any class of motor vehicles  
15 from the liability to pay fees in respect of registration or  
licensing;”.

Part I of the Schedule to the Law, referred to above, provides,  
amongst others, for the following:

“1. In relation to the payment of the fees provided by  
this Part, a private motor vehicle, not used for hire or  
20 reward, but used mainly for the carriage without reward  
of passengers who are in the service of the owner of such  
vehicle and so carried by him for the purposes of such  
service, or the carriage without reward of passengers in  
connection with the work of the owner of such vehicle  
25 or used for the carriage without reward of goods or load  
in connection with the work of the owner, is not deemed  
to be a private motor vehicle”.

In the exercise of the powers cited above, the Motor Vehicles  
and Road Traffic Regulations of 1973 were made and published  
30 in the official Gazette of the Republic No. 1023 of 13.7.1973,  
Supplement No. 3, Part I, page 571, Notification 159.

Regulation 2(1) gives the meaning of certain words and expres-  
sions to which reference is made therein and regulation 2(2)  
provides that any expressions used in the context to which no  
35 special reference is made in regulation 2(1), are deemed to have  
the same meaning as that under the law.

No definition of the expression “private motor vehicle”



appears in the Regulations. Therefore, such expression shall be deemed, under regulation 2(2), to have the same meaning as the one under section 2(1) of Law 86/72. The definition of "goods vehicle" (φορτηγόν μηχανοκίνητον όχημα) and "light goods vehicle" (έλαφρόν φορτηγόν μηχανοκίνητον όχημα) as set out in regulation 2(1) is as follows: 5

" 'Light goods vehicle' means a goods vehicle the cubic engine capacity of which does not exceed 3000 cubic centimetres or the unladen weight of which does not exceed two tons. 10

'Goods vehicle' means a vehicle constructed or adapted for use for the carriage or haulage of goods of any kind or load, or a trailer so constructed or adapted; except if otherwise provided in these Regulations, the expression 'goods vehicle' includes both light goods vehicle as well as heavy goods vehicle". 15

According to the said schedule to Law 86/72 vehicles are classified as follows for the purpose of registration fees.

- (1) Private Motor Vehicles.
- (2) Motor Vehicles other than Private Motor Vehicles. 20
- (3) Motorcycles.
- (4) Trailers of any type
- (5) Motor tractors.
- (6) Track laying motor vehicles.
- (7) Visitors' motor vehicles (temporary registration). 25
- (8) Registration of Motor Vehicles for re-export.

It is an undisputed fact, as it appears in the statement of facts and the application for registration which is attached to the written address of counsel for applicants and marked 'A', that the unladen weight of the vehicle is 33 1/2 CWT. The registration fee for a vehicle classified as a "private motor vehicle" as set out in part 2.A(1) of the Schedule the unladen weight (tare) of which exceeds 25 CWT is £400—whereas in the case of a vehicle classified as "a motor vehicle other than private motor vehicle" as set out in part 2.A(2) of the Schedule, of an unladen weight (tare) exceeding 25 CWT, is £55.—. Thus, 30 35

there is a difference of £345.—in the registration fee between the two categories.

Having dealt with the provisions in the respective Laws and Regulations, I come now to consider whether the decision of respondent 2 to classify such vehicle as a private vehicle was correctly taken.

The main argument of counsel for respondents is that in view of the fact that the vehicle in question was so constructed as to carry more than three passengers in addition to the driver could not be considered as anything else than a private vehicle and therefore is was correctly classified as such. Counsel for respondents in support of his argument relied on regulation 50(6) of the Motor Vehicles and Motor Traffic Regulations, 1973. Paragraph (6) of such regulation, provides as follows:

“(6) ἀπαγορεύεται ἡ μεταφορὰ ἐντὸς φορτηγοῦ μηχανοκινήτου ὀχήματος, οἰουδήποτε ἑτέρου προσώπου, πλὴν τοῦ ἐκμισθώσαντος τὸ ὄχημα ἢ τοῦ ἰδιοκτῆτου τοῦ ὀχήματος ἢ τῶν ἐν αὐτῷ μεταφερομένων ἀγαθῶν, τῶν ὑπηρετῶν ἢ τοῦ ἀντιπροσώπου τοῦ ἰδιοκτῆτου ἢ ἐκμισθωτοῦ. Τὰ οὕτω μεταφερόμενα πρόσωπα ἐπιπροσθέτως τοῦ ὀδηγοῦ ἐν οὐδεμιᾷ περιπτώσει δύνανται νὰ ὑπερβῶσι τὰ τρία, ἔξαιρέσει δὲ ἐνὸς προσώπου, ὅπερ δύναται νὰ κάθηται ἐπὶ τῶν μεταφερομένων ἀγαθῶν, τὰ ἐν τῷ ὀχήματι μεταφερόμενα πρόσωπα δέον ὅπως κάθηνται εἰς δεόντως ἠσφαλισμένα καθίσματα:

• Νοεῖται ὅτι εἰς ἑλαφρὰ φορτηγὰ μηχανοκίνητα ὄχηματα, χρησιμοποιούμενα ὑπὸ προσώπων ἀπασχολουμένων εἰς τὴν γεωργίαν, ἐπιτρέπεται ἡ μεταφορὰ προσώπων διὰ γεωργικούς σκοπούς, ἐφ’ ὅσον τὸ ὄχημα διαθέτει προσηκόντως ἠσφαλισμένα καθίσματα.

Διὰ τοὺς σκοποὺς τῆς παρούσης παραγράφου ‘γεωργία’ περιλαμβάνει τὴν κηπουρικὴν, τὴν φρουτοπαραγωγὴν, τὴν παραγωγὴν σπόρων, τὴν γαλακτοκομίαν, τὴν κτηνοτροφίαν, τὴν ἀνάπτυξιν κήπων καὶ φυτωρίων, ὃ ὅρος δὲ ‘γεωργικός’ θέλει τύχει ἀναλόγου ἐρμηνείας”.

(“ (6) no person shall be carried in a goods vehicle other than the hirer of the vehicle or the owner of the vehicle or of the goods carried therein or the servants or agent

of the owner or hiter. The persons so carried shall not exceed three in all, excluding the driver, and, with the exception of one person who may sit on the goods carried in the vehicle will be seated on properly secured seats:

Provided that in light goods vehicles used by persons engaged in agriculture, persons may be carried for agricultural purposes if the vehicle has properly secured seats. 5

For the purposes of this paragraph "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as market gardens and nursery grounds, and the term 'agricultural' shall be interpreted accordingly;"). 10

Counsel further contended that if a vehicle of this type is classified as light goods vehicle and due to its construction and the seating accommodation it has, it carries more than three passengers in contravention of regulation 50(6) the Police would be burdened with a very heavy task to check whether each such vehicle carries more than three passengers. 15

I find this contention of counsel for respondents as untenable. What is the concern of this Court is to safeguard the rights of the citizen and protect the citizen from unreasonable and unfounded burdens and not to forego such rights of the citizen because the police who are paid and bound to do their duty will be overburdened by having to check whether owners or drivers of vehicles act in compliance with the law and regulations or not. 20 25

Having gone through the provisions of the Motor Vehicles and Road Traffic Laws 1972 to 1981 and the Motor Vehicles and Road Traffic Regulations 1973 to 1980, I have not traced any provision empowering the Registrar of Motor Vehicles to classify a vehicle for the purposes of registration as a private one on the basis that such vehicle has seats for more than three passengers. The only restriction that does exist, concerns the number of passengers to be carried in a goods vehicle and not the number of seats, and it is the one under paragraph (6) of regulation 50. Under the proviso, however, to such paragraph, in the case of vehicles used for agricultural purposes, as defined therein, no restriction exists even as to the number of 30 35

passengers to be carried in such vehicle provided the passengers are sitting on properly fixed seats.

5 It is not the number of seats that are fixed on a vehicle that can change its characteristics but the nature of its use which may be gathered from its construction and the purpose for which it is used. In accordance with the definition of "private motor vehicle" under section 2(1) of the Motor Vehicles and Road Traffic Law, for a goods vehicle to be exempted from the definition of a private vehicle it has to be used for the carriage  
10 of goods.

Furthermore, under Part I of the Schedule to section 5 of Law 86/72, for registration purposes even a private vehicle *not used for hire or reward but mainly for the carriage without reward of passengers who are in the service of the owner and who are so carried by him for the purpose of such service or*  
15 *is used for carriage without reward of goods or load in connection with the work of the owner, is not deemed to be a private vehicle.*

At it appears from the facts set out in the application and the  
20 correspondence attached to the written address of the applicants and as stated by counsel for applicants in his written address, which has not been contested by counsel for the respondents, when such vehicle was imported the Customs Authorities of Cyprus, having taken into consideration its construction and  
25 specifications, classified same, for import duty purposes, in the category of light goods (pick-up) vehicles.

From the evidence before me of the expert called by the applicants, the specifications of the said vehicle, its construction and characteristics and for all other reasons given by him in  
30 his evidence and with my mind directed to the provisions of the respective laws and regulations, I have come to the conclusion that the proper classification of such vehicle should have been that under category 23 of "goods vehicle-light" and not that under category 11 of "private vehicle".

35 For all the above reasons I find myself in agreement with counsel for applicants that the decision of the Registrar of Motor Vehicles to classify and register the vehicle in question as a private vehicle instead of "goods vehicle-light" was wrong

and contrary to the provisions of the respective laws and regulations and has to be annulled. The sub judice act and/or decision is hereby annulled and a declaration is made as per application.

Respondents to pay £30.—against applicants' costs.

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*Sub judice decision annulled. Order for costs as above.*