[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,
A. LOIZOU, MALACHTOS, JJ.]

THE CYPRUS CEMENT COMPANY LTD.,

Appellants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND INDUSTRY,

Respondent.

(*Revisional Jurisdiction Appeal No.* 125).

Cement Industry (Encouragement and Control) Law, Cap. 130—*Licensee thereunder—Importation of fuel oil by licensee—Section* 5 *of the said Law and clause* 9 (1) *of their licence—Licensee not exempted thereby from the provisions of the Imports (Regulation) Law,* 1962 (*Law No.* 49 *of* 1962) *and the order of the Minister of Commerce and Industry made thereunder—The licensees (appellants) are entitled to claim under said section* 5 *and clause* 9 (1) *exemption only from the payment of customs duties on importation,* inter alia, *of fuel oil—But not exemption from the restrictions imposed on the importation,* inter alia, *of such fuel oil under the latter Law No.* 49 *of* 1962 *and the said ministerial order made thereunder—Consequently the respondent Minister in this case did not contravene section* 5 *of Cap.* 130 *and clause* 9 (1) *of the said licence* (supra) *in turning down the appellants' application for a licence to import* 8,000 *metric tons of fuel oil and refusing such licence—Minister properly acted under the provisions of the Imports (Regulation) Law,* 1962 *and the order made by him thereunder* (supra)—*In the result what the appellants were given under said section* 5 *of Cap.* 130 *and clause* 9 (1) *of their licence* (supra) *was only exemption from the payment of customs duties,* inter alia, *on fuel oil imported by them—But not liberty to import fuel oil outside the restrictions provided by the recent aforesaid statute* viz. *the Imports (Regulation) Law,* 1962 *and the ministerial order made thereunder* (supra).

Cement Industry (Encouragement and Control) Law, 1962—*Construction of section* 5 *of the Law.*

Imports (Regulation) Law, 1962 (*Law No.* 49 *of* 1962)—*Construction of section* 12 *of the Law.*

Statutes—Construction—Principles applicable—When the words or phrases of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. (Income Tax Commissioners *v.* Pemsel [1891] *A.C.*531 *at p.* 543).

This is an appeal from the judgment of a Judge of the Supreme Court dismissing the recourse under Article 146 of the Constitution whereby the applicant company sought to challenge the decision of the respondent Minister of Commerce and Industry refusing to grant to the company a licence or permit for the importation of 8,000 metric tons of fuel oil. (Note: The judgment appealed from is reported in (1973) 3 C.L.R. 486). The main ground on which the recourse and this appeal were based was that, on the true construction of section 5 of Cap. 130 (*infra*) and clause 9 (1) of their licence (*infra*), the applicants-appellants were entitled as of right to such permit; because allegedly they had been expressly exempted by the said section 5 and clause 9 (1) from any restriction imposed (or which may be imposed) by legislation regulating or restricting the importation, *inter alia*, of fuel oil, such as the Imports (Regulation) Law, 1962 and the Ministerial Order made thereunder; and on which the respondent Minister relied in refusing to grant to the appellants the aforesaid licence to import 8,000 metric tons of fuel oil. It should be noted here that the judgment appealed from (and dismissing the said recourse) was upheld by the Supreme Court, dismissing the present appeal.

The applicants are a public company with limited liability and are the holders of a licence issued on August 17, 1953, pursuant to the provisions of section 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130. Section 5 of the said Law provides:

"5. Notwithstanding anything to the contrary in any other Law contained, the licence may provide for exempting the holder thereof, subject to such conditions as may be specified in the licence, from the payment of any customs duties upon any materials or goods imported into the colony (now the Republic of Cyprus) in respect of any of the purposes or objects of the said licence and upon which the licence was granted and for which such duties would be payable under the provisions of any Law for the time being in force."

In pursuance of the provisions of the aforesaid section 5, the licence issued to the appellants on August 17, 1953 (*supra*) contained clause 9 (1) which provides, *inter alia*, that:

> "9 (1) Immediately after the commencement of this licence the Licensees shall be entitled to import into the Colony (now the Republic of Cyprus) free from any Customs duties any material or goods set out in the Schedule hereto which are required for the purpose..................................
>
> ....
>
> Provided that for a period of fifty years from the commencement of this licence the Licensees shall be entitled to import into the colony free from any Customs duties any materials or goods required for the construction, equipment or commencing the operation of factory for the manufacture of cement or .... and also the following materials or goods imported for use for any purpose connected with the manufacture or packing of cement:-
>
> (a) fuel oil, diesel oil, and any other fuels whether solid or liquid;
>
> (b) ....
>
> (c) .... ".

To complete the legal picture, it should be noted here that as far back as 1939, supplies and services were controlled and regulated, originally by means of Defence Regulations and later by the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 175A, which was repealed and replaced by the Imports (Regulation) Law, 1962 (Law No. 49 of 1962) section 3 (2) of which, as amended by Law 7 of 1967, reads as follows:

> "3 (2) Whenever it becomes necessary in the public interest to restrict and regulate the importation of goods for the encouragement of local production and manufacture, the improvement of the balance of trade, compliance with international obligations or the development of the economy of the Republic, the Minister may, by Order published in the Official Gazette of the Republic restrict or regulate the importation of the goods specified in the Order."

The Minister of Commerce and Industry by virtue of the powers vested in him by this Law, issued and published an

Order under Notification No. 755 in Supplement 3 of the Official Gazette of the Republic No. 898, dated September 24, 1971, restricting the importation, *inter alia*, of fuel oil, obviously done upon the establishment of the fuel refinery in Cyprus.

On March 1, 1972, the appellant Company applied to the Minister of Commerce and Industry for a permit or licence to import 8,000 metric tons of fuel oil. Some time in March/April 1972 this application was turned down and the licence applied for refused.

It is against this refusal that the Company filed a recourse under Article 146 of the Constitution on the main ground that in view of the provisions of section 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130 and clause 9 of their licence (*supra*) the Minister has no power to refuse the licence because under the aforesaid provisions of section 5 and clause 9 they were entitled to import freely fuel oil, as they were excluded from the provisions of the subsequent Law *viz.* the Imports Regulation Law, 1962 and the Order made thereunder (*supra*).

This recourse was dismissed in the first instance by a Judge of the Supreme Court (see this judgment reported in (1973) 3 C.L.R. 486). From this judgment the applicant Company took the present appeal which was dismissed on the broad ground that on the true construction of section 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130 and clause 9 of their licence (*supra*) the Company were merely exempted from the payment of customs duties on fuel oil, without that implying in the least that they were also exempted from obtaining import permits or licences necessary by virtue of a general control on the imports of that kind.

There was a subsidiary ground of appeal to the effect that the respondent Minister did exercise the discretionary powers vested in him in a defective manner. This ground was also dismissed by the Supreme Court holding that the Minister did validly exercise his discretion once he had considered, and given proper weight to, all relevant factors and there had been no misconception of fact or law.

The Supreme Court, dismissing the appeal and upholding the judgment appealed from:-

Held, (1). In our view, this is a case where the words used in the Law and the licence in question (*supra*), must be construed in their ordinary and natural meaning as there is nothing in the language of the statute which calls for their modification. As pointed out in Maxwell on Interpretation of Statutes, 12th ed. p. 28 –

> " The length and detail of modern legislation............ has undoubtedly reinforced the claim for literal construction as the only safe rule. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. The safer and more correct course of dealing with a question of construction is to take the words themselves, and arrive if possible at their meaning without, in the first instance, reference to cases."

(2) In the case in hand, if we look at the wording of section 5 of Cap. 130 (*supra*) without the alternatives which draftsmen are fond of inserting in enactments to cover all possible eventualities we find the following:—" The licence may provide for exempting the holder thereof from the payment of any Customs duties upon any goods imported into the Colony and for which such duties would be payable under the provisions of any law". On the other hand, clause 9 of the licence in question (*supra*) approached in the same way reads:- " The licensees shall be entitled to import into the Colony free from any customs duties any material......... which are required for any of the purposes set out..........". In the proviso to the said clause 9 it appears that " the licensees shall be entitled to import into the Colony free from any customs duties ....(a) fuel oil".

(3) The only reasonable construction that can be given to the aggregate of these provisions relied upon by the appellants is that the benefit that the law gave them for the purpose of encouraging the establishment and the functioning of their factory was the importation of fuel oil (and other materials) free of import duty. What was intended was to relieve the appellants from the payment of customs duties which otherwise would have been payable under the relevant Customs and Excise Laws and not to give to the appellants complete immunity from any laws, such as those regulating (or restricting) the importation of goods, the Exchange Control Law etc. (*Income Tax Commissioners* v. *Pemsel* [1891] A.C. 531 at p. 543 *followed*).

(4) *Regarding the subsidiary ground concerning the alleged defective exercise by the Minister of the discretionary powers vested in him:*

The Minister had all the material before him and has given due weight to them without acting under any misconception of fact or law; and so long as he has exercised his discretion in a valid manner the Administrative Court will not interfere and substitute its own discretion for that of the administrative authority concerned, even if in exercising its own discretion on the merits the Court would have reached a different conclusion (see: *Jacovides* v. *The Republic* (1966) 3 C.L.R. 212, at p. 220; *Constantinou* v. *The Republic* (1966) 3 C.L.R. 793; *Zittis* v. *The Republic* (1973) 3 C.L.R. 37; *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361).

Appeal dismissed with costs.

Cases referred to:

Income Tax Commissioners v. *Pemsel* [1891] A.C. 531 at p. 543;

Jacovides v. *The Republic* (1966) 3 C.L.R. 212, at p. 220;

Constantinou v. *The Republic* (1966) 3 C.L.R. 793;

Zittis v. *The Republic* (1973) 3 C.L.R. 37;

Impalex Agencies Ltd. v. *The Republic* (1970) 3 C.L.R. 361.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court (Hadjianastassiou J.) given on the 15th September 1973, (Revisional Jurisdiction case No. 142/72) whereby appellants' recourse for a declaration (a) that the decision of the respondent to refuse the granting of a permit for the importation of 8,000 metric tons of fuel oil and (b) to refuse to pay to the appellants the difference in price between the imported fuel oil and the fuel oil obtained from the local refinery on account of the aforesaid refusal is *null* and *void* was dismissed.

G. Cacoyiannis, for the appellants.

N. Charalambous, Counsel of the Republic for the respondent.

Cur. adv. vult.

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice A. Loizou. The President of the Court who is absent abroad has requested me to say that he agrees with it.

A. LOIZOU, J.: This is an appeal under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964, (Law No. 33 of 1964) from the judgment* of a judge of this Court who dismissed the recourse of the applicant Company, hereinafter referred to as "the appellants", by which they sought a declaration –

(a). That the decision of the respondent to refuse the granting of a permit for the importation by them of 8,000 metric tons of fuel oil, and

(b) to refuse to pay to the appellants the difference in price between the imported fuel oil and the fuel oil obtained from the local refinery on account of the aforesaid refusal was *null* and *void* and of no effect whatsoever.

The uncontested facts in the present appeal are as follows:–

The appellants are a public company with limited liability and are the holders of a licence issued on the 17th August, 1953, pursuant to the provisions of section 3 of the Cement Industry (Encouragement and Control) Law, Cap. 130. Under this statutory provision, the Governor could grant, to a person who satisfied him that he commanded the requisite capital and technical experience, a licence affording thereby special facilities and in particular sufficient security of tenure, in order to attract large capital sums and special technical experience, without which the more effective exploitation of quarry materials and the encouragement of the manufacture of cement in the Colony could not be achieved.

Section 5 of the Law provides –

"5. Notwithstanding anything to the contrary in any other Law contained, the licence may provide for exempting the holder thereof, subject to such conditions as may be specified in the licence, from the payment of any customs duties upon any materials or goods imported into the

* Published in (1973) 3 C.L.R. 486.

Colony in respect of any of the purposes or objects of the said licence and upon which the licence was granted and for which such duties would be payable under the provisions of any Law for the time being in force".

In pursuance of the provisions of the aforesaid section, the licence issued to the appellants contained clause 9 (1) which, to the extent that is material to the present appeal, reads:–

"9 (1) Immediately after the commencement of this Licence the Licensees shall be entitled to import into the Colony free from any Customs duties any materials or goods set out in the Schedule hereto which are required for any of the purposes set out against each item of the said Schedule and where no such purpose is set out, for any of the purposes set out in sub–paragraphs (a), (b), (c) and (e) of sub–clause (1) of clause 3 of this Licence:

Provided that for a period of fifty years from the commencement of this Licence the Licensees shall be entitled to import into the Colony free from any Customs duties any materials or goods required for the construction, equipment or commencing the operation of a factory for the manufacture of cement or for the alteration, reconstruction or extension of any such factory and also the following materials or goods imported for use for any purpose connected with the manufacture or packing of cement:–

(a) fuel oil, diesel oil, and any other fuels whether solid or liquid;

(b) containers of all kinds or types for packing cement;

(c) spare parts or replacements for machinery.

Whenever the Licensees propose to avail themselves of the benefits conferred by this sub–clause, they shall declare at the time of importation that such materials or goods are imported for some purpose which entitles them under this sub–clause to exemption from Customs duties. Such declaration shall be in writing signed on their behalf by either one of their Directors or by their Secretary and shall state that the materials or

goods, as the case may be, will not be sold or otherwise disposed of except as provided in this Licence".

It may be useful to mention here also, that as far back as 1939, supplies and services were controlled and regulated, originally by means of Defence Regulations and later by the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 175A. By section 3 of that Law the Governor of the then Colony of Cyprus could, if it appeared to him to be necessary or expedient that any Defence Regulation should have effect for the purpose of so maintaining, controlling and regulating supplies and services, as to promote the productivity of industry, commerce and agriculture or to foster and direct exports and reduce imports, or imports of any classes to redress the balance of trade or generally to ensure that the whole resources of the community are available for use and are used in a manner best calculated to serve the interest of the community, by order, direct that the Regulation should have effect by virtue of that Law. That Law was repealed and replaced by the Imports (Regulation) Law, 1962, Law No. 49 of 1962, section 3 (2) of which, as amended by Law 7 of 1967, reads as follows:-

> " Whenever it becomes necessary, in the public interest, to restrict and regulate the importation of goods for the encouragement of local production and manufacture, the improvement of the balance of trade, compliance with international obligations or the development of the economy of the Republic, the Minister may, by Order published in the Official Gazette of the Republic, restrict and regulate the importation of the goods specified in the Order".

The Minister of Commerce and Industry by virtue of the powers vested in him by this Law, issued and published an Order under Notification No. 755 in Supplement No. 3 to the Cyprus Gazette No. 898 dated September 24, 1971, restricting the importation, *inter alia*, of fuel oil, obviously done upon the establishment of the fuel refinery in Cyprus.

It is apparent that at the time of the enactment of the Cement Industry (Encouragement and Control) Law, Cap. 130, and the issue of the licence to the appellants there was in force a law, whereby imports could be regulated and controlled and the Imports Regulation Law, 1962, merely replaced by a law of a permanent form all war legislation which was kept in force in peace time by means of an enactment of a transitional nature.

The appellants on March 1st, 1972 applied to the Director-General of the Ministry of Commerce and Industry for the issue of an import licence so that they would, as they stated, proceed with the conclusion of a contract for the supply to them of fuel oil to be delivered at their cement works at Moni around the end of April, 1972 at a price of 13.50 U.S. dollars c.i.f. per metric ton as compared with 19.50 U.S. dollars which had been offered by Shell for supplying them from the Larnaca Oil Refinery. The reply was that their application could not be entertained for "local industry considerations".

There was further correspondence, and this time the legal approach to the matter by the appellants was placed to the said Director-General. They invoked section 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130, and clause 9 of their licence, as well as section 12 of Law 19 of 1962, which reads as follows:-

> " Nothing in this Law contained shall affect the provisions of any other law in force for the time being dealing with importation of goods".

They further offered that as they were in urgent need of fuel oil they would take delivery of fuel oil from the local refinery, which they eventually did, and they would claim from the Ministry 6 U.S. dollars per metric ton, difference in price.

On the 13th April, 1972 the Director-General by letter (*exhibit* 5) replied to the effect that section 5 provided for the exemption from the payment of customs duty, without that implying that they are exempted from obtaining import permit necessary by virtue of a general control on the imports of that kind. They added also that section 12 of Law 49 of 1962, as amended by Law 7 of 1967 saved all laws dealing with the importation of goods and their effect was in no way affected.

The appeal, as presented to this Court, has raised one main issue, namely, that under the Cement Industry (Encouragement and Control) Law and the licence granted to the appellants thereunder, they were entitled to import freely fuel oil and that they were excluded from the provisions of the Imports Regulation Law, 1962, and the order made thereunder, by which they could do so only upon a licence issued for the purpose by the Ministry of Commerce and Industry.

In our view, this is a case where the words used in the Law and the licence in question, must be construed in their ordinary and natural meaning, as there is nothing in the language of the Statute which calls for their modification. As pointed out in Maxwell on Interpretation of Statutes, 12th ed. p. 28 –

> "The length and detail of modern legislation .... has undoubtedly reinforced the claim of literal construction as the only safe rule. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. 'The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases'".

In the case in hand, if we look at the wording of section 5 without the alternatives which draftsmen are fond of inserting in enactments to cover all possible eventualities, we find the following:– "The licence may provide for exempting the holder thereof from the payment of any customs duties upon any goods imported into the Colony and for which such duties would be payable under the provisions of any law". Clause 9 of the licence approached in the same way, reads:– "The licensees shall be entitled to import into the Colony free from any customs duties any materials ...... which are required for any of the purposes set out ......". In the proviso to the said clause, it appears also that—" the licensees shall be entitled to import into the Colony free from any customs duties...... (a) fuel oil". Furthermore, it is also required as a matter of procedure, that the licensees, in order to avail themselves of the benefits conferred by clause 9 (1), should make a declaration that such materials or goods are imported for a purpose which entitles them under this special clause to exemption from customs duties.

The only reasonable construction that can be given to the aggregate of these provisions relied upon by the appellants, is that the benefit that the law gave them for the purpose of encouraging the establishment and the functioning of their factory was the importation of fuel oil and other materials specified in the relevant sections of the law free of import duty. What was intended, was to relieve the appellants from the payment of customs duties which otherwise would have been payable under

the relevant Customs and Excise Law and not to give to the appellants complete immunity from any laws, such as those regulating the importation of goods, the Exchange Control Law, etc. The learned trial Judge, rightly in our view, referred, *inter alia*, to the *Income Tax Commissioners* v. *Pemsel* [1891] A.C. 531 at p. 543, where it was said that:-

> " If the words of the statute are in themselves precise and unambiguous, them no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declaring the intention of the lawgiver".

The conclusion reached by the learned trial Judge, therefore, that—"there is no difficulty in construing the words of section 12 of Law 49/62, because those words in their natural and ordinary sense declare the intention of the legislature that other laws dealing with importation of goods remain unaffected", is correct, and we fully agree with it. In the circumstances, therefore, the contention of learned counsel for the appellants that his clients were entitled to import freely and independently of the restrictions imposed by Law 49 of 1962, cannot stand.

Alternative to the aforesaid main ground of appeal, is the ground that the learned trial Judge's conclusion that the respondent Minister's discretion was validly exercised, was wrong and or unreasonable, having regard to the facts and circumstances of this case. The argument was that only one factor was taken into consideration, namely, that of protecting local industries.

The matter was extensively dealt with by the learned trial Judge who concluded that the respondent Minister validly exercised his discretionary powers in refusing the appellants a licence, once he had all the material before him, given due weight to them and there had been misconception of fact or law; he went on to reiterate the principle that so long as the discretion was exercised in a valid manner, this Court will not interfere and substitute its own discretion for that of the Authority concerned, even if in exercising its own discretion on the merits, the Court would have reached a different conclusion. If any authority is needed for the aforesaid propositions, reference may be made to the cases of *Jacovides* v. *The Republic* (1966) 3 C.L.R. 212 at p. 220, *Constantinou* v. *The Republic*

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We see no reason to interfere with the aforesaid conclusion or in any way interfere with the exercise of the discretion by the respondent Minister who has acted in the manner and for the objects contemplated by law.

In the light of the aforesaid conclusions, the second relief prayed for by the present recourse *ipso facto* fails as well.

In the result, the appeal is dismissed with costs.

Appeal dismissed with costs.