

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
ARGOLIS ESTATE LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE
2. THE DIRECTOR OF THE DEPARTMENT
OF CUSTOMS AND EXCISE,

Respondents.

(Case No. 232/72).

Customs and Excise (Duties and Drawbacks) Law, 1967 (Law 81 of 1967)—“Hotels” in the Fourth Schedule, item 12, of the Law—Means “licensed hotels”—Hotels and Tourists Establishments Law, 1969 (Law 40 of 1969) (formerly Cap. 138).

- 5 *Statutes—Construction—Principles applicable—“Hotels” in the Fourth Schedule, item 12, of the Customs and Excise (Duties and Drawbacks) Law, 1967 (Law 81 of 1967)—Means “licensed hotels”.*

- 10 *Equality—Discrimination—Article 28 of the Constitution—Principle of equality entails the equal or similar treatment of all those who are found to be in the same situation.*

The main issue for consideration in this recourse was the meaning of the word “Hotels” appearing in the Fourth Schedule, item 12, of the Customs and Excise (Duties and Drawbacks) Law, 1967 (Law 81 of 1967); and it arose out of the refusal of the respondents to grant relief from import duty on certain goods destined for applicants hotel flats on the ground that they were not registered hotels.

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- 20 *Held, (after stating the principles governing construction of statutes—vide pp. 449-450 post) that the word “hotels” appearing in the Fourth Schedule, item 12, of Law 81/67 means “licensed hotels” and nothing else; that there can be no premises functioning as unlicensed hotels because they are not consi-*

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dered as hotels at all; that the Director of Customs and Excise in taking the decision not to grant to the applicants the relief applied for was interpreting the law correctly; that had it been otherwise the Director would have been obliged to enquire in every case how any given premises were functioning, what services they were offering and the like and that this was not the intention of the legislator; and that, accordingly, the recourse must be dismissed.

(2) (*On the question whether discrimination will arise between the keeper of a licensed and a keeper of an unlicensed hotel*) that an unlicensed hotel cannot be considered as a hotel at all; that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation; that the keeper of a licensed hotel is not in the same situation as the keeper of an unlicensed hotel; and that, accordingly, there is no merit in applicants' contention about discrimination.

Application dismissed.

Cases referred to:

Longford [1889] 14 P.D. 34 at p. 36;

Burns [1907] P. 137;

R. v. Casement [1917] 1 K.B. 98;

Commissioner for Special Purposes of the Income Tax v. John Frederick Pemsel [1891] A.C. 531 at p. 580;

The Republic v. Arakian and Others (1972) 3 C.L.R. 294 at p. 299.

Recourse.

Recourse against the refusal of the respondents to grant relief from import duty under item 12 of the 4th Schedule to Law 81/67, on certain goods destined for applicants' hotel flats in Famagusta.

C. Indianos, for the applicants.

C. Kypridemos, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The applicants in this recourse seek a declaration of the court that the decision of the respondents of the 18th July, 1972 to the effect that the applicants were not entitled to relief from import duty on im-

ported goods for use in hotels in the Republic under item No. 12 of the 4th Schedule to the Customs and Excise (Duties and Drawbacks) Law, 1967, Law 81/67, unless their establishment known as "Argolis Hotel Apartments" at Kennedy Avenue No. 134 Famagusta, was duly registered as a hotel, is *null* and *void* and of no legal effect whatsoever.

The relevant facts of the case appear in the exchange of correspondence between the applicants and the respondent authorities and are as follows:

By letter dated 29.4.72, *exhibit 7*, addressed to the Director of the Department of Customs and Excise and the Ministry of Finance the applicants were claiming relief from customs duty in accordance with item No. 12(a) of the Fourth Schedule of Law 81/67. This letter is as follows:

"We have much pleasure in informing you that we are building a block of Hotel flats at Kennedy Avenue No. 134 Famagusta, consisting of 36 flats or 100 beds with full hotel amenities, including reception services and full catering facilities.

We have only recently applied to Cyprus Tourism Organization for Registration of our premises as a hotel.

We have to clear 220 blankets, now lying at F'sta Customs stores, as per enclosed invoice, which are all labelled in the hotel name and we hereby inform you that we shall claim for Relief from Customs Duty in accordance with item No. 12(a) and will submit all appropriate Forms.

It is our humble submission that in accordance with the conditions Relief Law we are entitled to the said Relief irrespective whether our Hotel has already been an approved Hotel or NOT, so long as the premises will be used for the professional accommodation and catering of guests.

Your prompt reply will be very much appreciated".

To the above letter of the applicants the said department replied by letter dated 4.5.72, *exhibit 8*, which reads:

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“I refer to your letter XNS/S.I of the 29th April, 1972, requesting relief from duty on 220 blankets, now lying at Famagusta Customs, destined for your hotel flats at Kennedy Avenue No. 134, Famagusta, and inform you that relief applies only to duly registered hotels.

2. Meanwhile you may clear the blankets under reference on payment of duty as provided for under section 161 of Law No. 81/67, under protests, pending production of the registration certificate”.

The Fourth Schedule of Law 81/67 refers to imported goods of specified description and conditionally eligible for relief from duty in accordance with the provisions of section 12 of the said Law. This section is as follows:

“12.(1) Without prejudice to the provisions of any other enactment whereunder specified goods may be imported free of import duty for use by certain privileged persons, bodies, authorities and organizations, goods of the descriptions specified in the Fourth Schedule shall in the circumstances and subject to compliance with the conditions set out therein, be relieved to the extent stated in the third column of the said Schedule, from any import duty which would be otherwise chargeable on them by virtue of this Law, provided that relief from the payment of such import duty is claimed by or on behalf of the importer before the goods are released from customs control save as is otherwise expressly provided for herein.

(2) The Council of Ministers, by Order published in the official Gazette of the Republic, may add to, delete from, vary or otherwise amend the items, or any of them, as set out in the Fourth Schedule hereto”.

Item 12 of the Fourth Schedule of the Law refers to goods imported for use in hotels in the Republic and among these goods are blankets, articles for air conditioning, refrigerators and table ware.

On 23.6.72 the applicants addressed to the Director

General of the Ministry of Finance the following letter, exhibit 5:

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"I wish to inform you that on the 29th April, 1972, we addressed the Director of the Department of Customs & Excise, for duty relief on 220 blankets imported by us for use at our 'ARGOLIS' Hotel at Famagusta and by his letter dated 4th May, 1972, he informed us that relief item 12 applies only to duly registered hotels and advised us to pay duty under protest pending production of the registration certificate. Consequently we had to pay duty on the following consignments for articles which are all eligible for duty relief under item 12:-

IMPORT DUTY NO.	DESCRIPTION OF GOODS	MAIN TARIFF ITEM	AMOUNT OF DUTY
A.237/May, 1972	Central Air Conditioning	84.15.10	£893.950
A 238/May, 1972	Woollen blankets	62.01.10	118.660
A.3046/May, 1972	Refrigerators	84.15.90	227.420
A.343/June, 1972	Stainless steel table ware	73.38.19	65.—

In the meantime we run our establishment as 'Hotel Apartments' and we hereby apply for your approval to relieve from the payment of duty all the articles imported or to be imported by us for use at our Hotel, which comply with the provisions of relief item 12 of the Fourth Schedule to the tariff. We can find no provision in this relief item or any other part of the Customs Law by which application of this relief is limited to registered Hotels only to support the Director's decision communicated to us by his letter under reference.

Unless, therefore, any duty paid by us on past importations is refunded and instructions were given to relieve any future importations we will have no other alternative but to file a recourse in the Supreme Court of Cyprus to reverse the Director's decision on the matter.

In our opinion the intention of the legislator was to give an incentive to private enterprise to build and equip modern hotel establishments for the promo-

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tion of tourism and the relevant provision in the law should not be given such a narrow interpretation which appears to be a discrimination against 'hotel apartments' which are admittedly filling a need in Cyprus and boosting our tourist development.

5

Copies of the correspondence exchanged with the Director are enclosed.

Your kind attention and prompt reply will be very much appreciated in view of the fact that under section 161 of Law 82 of 1967 we have to file the recourse within three months from the date of payment".

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To the said letter applicants received a reply from the said Ministry contained in a letter dated 18th July, 1972, exhibit 6, which reads:

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"I am directed to refer to your letter of the 23rd June, 1972 and the enclosures thereto, on the subject of the relief from import duty on goods for use in hotels in the Republic and to inform you that unless your establishment is duly registered as hotel, conditional Relief item No. 12 of the IV Schedule to the Customs and Excise Law, 1967 is not applicable".

20

As a result the applicants filed the present recourse.

The grounds of law on which the application is based as stated therein are the following:-

25

The respondents and/or either of them have wrongly interpreted and/or construed and/or applied the Law and their said act and/or decision is contrary to the provisions of the Law, particularly because:

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(a) The respondents were wrong in deciding that Item 12 to the Fourth Schedule of Law 81/67 (Goods for use in Hotels in the Republic) applies only to duly registered hotels and/or that the word "hotels" appearing in same means only duly registered hotels. The applicants allege that the meaning of the word "hotels" in the said Schedule is wider so as to cover non-registered hotels and that the said meaning also comprises in it business and or premises

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and/or organized places as that of the applicants and/or businesses run and/or operated and/or managed and/or offering such services and/or amenities as that of the applicants, known as ARGOLIS hotel and/or ARGOLIS HOTEL FLATS.

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As a result of the above; the applicants allege that the respondents and/or either of them were wrong in deciding that the said hotel and/or hotel flats of the applicants does not fall within the meaning of the word "hotels".

10 Alternatively and without prejudice to the allegations above the applicants will allege that their hotel and/or hotel flats known as ARGOLIS is covered by the meaning of the word "hotels" taken in either its narrow or wider sense.

15 (b) The respondents were wrong to consider themselves bound by the Law not to exempt from the payment of import or customs duty and/or not to allow the importation of the applicants' goods into the Republic without the payment of any customs duty and/or they were wrong
20 to refrain from exercising their discretionary powers as they should.

(c) The respondents' act and/or decision is not duly reasoned and/or is contrary to the provisions of the Law and/or defective and/or in error.

25 (d) Alternatively and without prejudice to the allegations above, the applicants will allege, in case it is decided and/or resolved that the word "hotels" includes registered hotels only; that the said provision of the Law is unconstitutional as being contrary to the provisions of Article 28
30 of the Constitution, creating unjustifiably unequal treatment between those competing on the economic field and/or plane.

Counsel for applicants submitted that the word "Hotels" appearing in item 12 of Law 81/67 should be given a wide interpretation and not be limited to premises registered as such by virtue of the Hotels Law, Cap. 138 (now Law 40/1969), so as to cover the establishment of the applicants where services very similar to services rendered in registered hotels are offered. In fact, evidence
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was adduced to show how the applicants are managing their hotel appartments as they call them and the services and amenities they offer to their customers resorting therein. In support of his argument he made reference to the evolution of the relevant legislation and alleged that the word "hotel" covers the hotel appartments of the applicants quite apart from the necessity of any registration. What really matters is the mode of operation or the way in which an establishment is run or managed so as to be classified as one for the use of which goods covered by item 12 of the Fourth Schedule of the Law, are imported. He also argued that even in the definition of a "Hotel" in section 2 of Law 40/69 there is nothing about registration. This Law provides mainly for the classification of hotels and gives the essential requirements for the issue of a licence to operate them as such. The main purpose is the structural aspect of the building due to the creation of the Cyprus Tourism Organization. He also submitted that when the decision complained of was taken the premises of the applicants could not be considered as service flats as those described in Law 40/69. This Law was amended later on by Law 17/73 so as to cover hotel appartments.

An alternative argument of counsel for the applicants was that if the word "Hotel" appearing in item 12 of the Fourth Schedule to the Law, means a registered hotel under the Hotels Law, then there is discrimination in favour of Hotel Keepers of duly registered hotels to Hotel Keepers of unregistered ones, contrary to Article 28.1 of the Constitution which provides that all persons are equal before the Law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

Counsel for the respondents, on the other hand, argued that the word "Hotels" appearing in the Fourth Schedule of Law 81/67, item 12, should only mean "registered hotels" and nothing else. He submitted that this meaning can be extracted if we compare the meaning given to the word "schools" referred to in item 7 of the same schedule where it is stated that schools means registered ones. The legislator in the case of schools made the above clarification because there are both registered and unregistered ones whereas in the case of hotels there are only register-

ed hotels, and these are premises which are operating as hotels in accordance with the Hotels Law so that the word "Hotel" should be given its functional meaning. This functional meaning is to be derived by looking at the totality of the provisions contained in the Hotels Law in its several and different schedules and sections, and not only at the interpretation section of the Law which provides that hotel means premises providing by way of trade or business and on payment to the persons visiting the same temporary sleeping accommodation with or without food, and, possibly, entertainment. He further submitted that the brief description of services appearing in the definition is not exhaustive but is part of the whole meaning to be ascribed to the word "hotel" as a functional institution and as an enterprise. The law requires that the briefly defined services must be rendered within a context which applies both to the premises and to the person managing or keeping the hotel and unless it is so, no licence is issued and, therefore, no hotel exists. The time of birth of a hotel is the time the licence is issued which is evidence that it does comply with all the requirements regarding the quality and the kind of services to be offered to prospective clients. When Law 81/67 was enacted there was no other meaning of the word "Hotel" than a registered hotel both in ordinary language and in its legal meaning.

The main issue for the court to decide in this recourse is the meaning of the word "Hotels" appearing in the Fourth Schedule, item 12, of the Customs and Excise (Duties and Drawbacks) Law, 1967. The Fourth Schedule of this Law is dealing with goods of specified description conditionally eligible for relief from duty and reads "goods for use in hotels in the Republic".

It is a general rule of construction that words are taken to be used in the sense they bore at the time the law was passed. This rule was settled in the *Longford* case [1889] 14 P.D. 34 where at page 36 Lord Esher, M.R., said: "The first point to be borne in mind is that the Act must be construed as if one were interpreting it the day after it was passed". This case was followed in the *Burns* [1907] P. 137 and in *R. v. Casement* [1917] 1 K.B. 98.

In the case of the *Commissioner for Special Purposes of the Income Tax v. John Frederick Pemsel* [1891] A.C.

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531, a House of Lords case, Lord Macnaghten at page 580 had this to say:

“In construing Acts of Parliament, it is a general rule, not without authority in this House (*Stephenson v. Higginson* 3 H.L.C. at page 686) that words must be taken in their legal sense unless a contrary intention appears”.

And at page 542 of the same case Lord Halsbury L.C. said:

“My Lords, to quote from the language of Tindal C.J. when delivering the opinion of the judges in the Sussex Peerage Case 11 Cl. & F. at p. 143: ‘The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then 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 declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Dyer C.J. *Stowel v. Lord Zouch*, Plow at p. 369, is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress’.”

Before the coming into force of item 12 of the Fourth Schedule of Law 81/67 a similar provision was in force made by the then Governor of Cyprus by Order-in-Council No. 2772 published in Supplement No. 3 to the Cyprus Gazette No. 3845 of 31.7.55 where it was provided that certain specified articles should be admitted into the country free of import duty for hotels. This order was the Customs (Hotel Furniture) (Duties and Exemptions Reduction) Order, 1955. This Order was made under section 132 of the Customs Management Law, Cap. 315, (Former section 133 of the Customs Management Law, 1954, Law 8/54) which section provided that the Governor-in-Coun-

5 cil may, at any time by Order, admit free of customs duty,
or at reduced rates of import duty such goods as may be
specified under the conditions stated in such order. Cap.
315 has been repealed by the Customs and Excise Law
10 1967, Law 82/67. At the time when Law 81/67 came
into force the relevant legislation as far as hotels are con-
cerned was the Hotels Law, Cap. 138. In the Interpreta-
tion section of this Law, section 2, "hotel" means any
building or premises, howsoever described, used for the
15 accommodation of the public in which lodgings are pro-
vided and provisions are supplied by the keeper or mana-
ger thereof. "Hotel keeper" means any person to whom a
licence to keep or manage a hotel has been issued under
section 4 of the Law. Section 4(1) provides that no per-
20 son shall keep or manage a hotel unless he shall have pre-
viously obtained a licence from the Hotels Board specify-
ing the premises in respect of which the licence is granted.

25 Without overlooking the principle that the construction
of words appearing in a law should not be made with re-
ference to what they mean in another law, I have come to
the conclusion that the word "hotels" appearing in the
Fourth Schedule item 12 of Law 81/67 means "licensed
30 hotels" and nothing else. There can be no premises func-
tioning as unlicensed hotels because they are not consi-
dered as hotels at all. The Director of Customs and Ex-
cise in taking the decision not to grant to the applicants
the relief applied for was interpreting the law correctly.
Had it been otherwise the Director would have been
obliged to enquire in every case how any given premises
were functioning what services they were offering and the
like. I don't think that this was the intention of the le-
gislator.

35 As regards the other argument of counsel for the ap-
plicant that if the word "hotels" is given the meaning of
licensed hotels then discrimination will be created between
the keeper of a licensed hotel and a keeper of an un-
licensed one, I find no merit, since as I have already de-
cided an unlicensed hotel cannot be considered as a hotel
at all. The principle of equality entails the equal or simi-
40 lar treatment of all those who are found to be in the same
situation, (*The Republic v. Nishan Arakian and Others*
(1972) 3 C.L.R. 294 at page 299).

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The keeper of a licensed hotel is not in the same situation as the keeper of an unlicensed one.

For the above reasons this recourse fails.

There will be no order as to costs.

Application dismissed. 5
No order as to costs.