1986 October 31

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

THE SHELL CO. OF CYPRUS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMISSIONER OF INCOME TAX,

Respondent.

AND BY AMENDMENT PURSUANT TO AN ORDER OF
THE COURT MADE ON THE 26th JUNE 1982,
B P CYPRUS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMISSIONER OF INCOME TAX,

Respondent.

(Case No. 47/80).

Income Tax—The Income Tax Laws, 1961-1977, section 11(1)—Additional contributions by employer paid into the employees' Provident Fund—Allegations that nearly one third of the assets of the Fund were lost during the invasion—Rejection of claim for deduction of the said contributions from applicants' chargeable income on the ground that the expenditure was not "wholly and exclusively incurred in the production of income"—No reasoning for such conclusion—Absence of inquiry as to the said allegation and the impact of the losses on the employees—Discretionary power exercised in a defective manner.

Income Tax—The Income Tax Laws, 1961-1977, section 8(x) —The prerequisites of its application—Meaning of word 'export"—Delivery of fuel to aircraft at the International Airport and to ships in Cyprus Ports for consumption beyond the limits of the ports—Such delivery is an export within the natural meaning of the term

Words and phrases Export in section 8(x) of the Income Tax Laws 1961-1977

The applicants claimed the following deductions from their chargeable income, namely a deduction of the additional contribution paid by them into the Provident Fund of their employees and a deduction of the 3% of foreign exchange in respect of locally manufactured petroleum products delivered to foreign ships and aircrafts in Cyprus for consumption abroad

The capital of the Provident Fund stood in 1974 at £335,000, out of which £119,000 had been lent to the Famagusta and Morphou Municipalities The applicants alleged that as both towns were occupied by the Turkish invasion forces recovery of the said loans became impossible, a fact that caused dismay and anxiety among applicants' employees and the applicants in order to maintain their good reputation as good employers and preserve their good relations with their employees made the following additional contributions into the Provident Fund namely £5,681 in 1977 £20,199 in 1975 £33,704 in 1976 and £26,168 in 1977 The respondent Commissioner rejected applicants' claim for deduction of the said amounts from applicants' chargeable income on the ground that the said payments "do not represent money wholly and exclusively incurred in the production of" applicants income

The respondent Commissioner also rejected the second claim of the applicants relating to the 3% foreign exchange on the ground that "the provision of the petroleum products to aircrafts at the International Airport and to ships in Cyprus ports does not constitute an export of products but a mere sale of products in Cyprus

As a result the applicant filed the present recourse

Held, annulling the sub judice decision: (1) *As regards the claim for deduction of the amounts paid as additional contributions to the Provident Fund:* The legislative provision relevant to this issue is section 11(1)* of the Income Tax Laws, 1961 - 1977. The Commissioner rejected the claim of deduction by merely saying that the payments were not wholly and exclusively made in the production of applicants' income. He gave no reasoning for reaching this decision nor does it appear from the record that he carried an inquiry as to the facts of the case.

Important facts such as the loss by the fund of practically one third of its assets and the impact of such loss on the employees, who are undoubtedly the greatest asset of a business, do not appear to have been taken into consideration.

In the light of the above the discretionary power of the respondent Commissioner was exercised in a defective manner. Furthermore the Court is of the view that the payments were made for the purpose of enabling the applicants to carry on their business in a more efficient way by giving their employees an incentive and thus earn income.

(2) *As regards the claim for deduction of the 3% foreign exchange:* The relevant legislative provision is section 8(x)** of the Income Tax Laws, 1961 - 1977, which provides that "there shall be exempt from tax(x) 3% of the foreign exchange imported into Republic, which is the derived from the export of locally manufactured or produced products, for a period of five years...."

As there is no definition of the word "export" in the Income Tax Laws, one should attach to it its natural meaning, namely "carried out of the port." As it has been held in *Muller* v. *Baldwin* [1874] L. R. 9 Q. B. 457 "coals carried away from the port, not on a temporary excursion, as in a tug or pleasure boat .... but taken away for the purpose of being wholly consumed beyond the li-

* Quoted at p. 1720 post.
** Quoted at p. 1725 post.

mits of the port, are coals 'exported' within the meaning of the Act". Tyne Coal Dues Act, 1872). One of the pre-requisites for someone to be entitled to the said allowance of 3% is in addition to the requirement that the goods must be locally manufactured and that they must be exported that payment must be in foreign exchange which must be imported into Cyprus.

Considering the undisputed fact that applicants' products were locally made, the meaning of the word "export" and the fact that the applicants were paid in foreign exchange imported into the Republic, the conclusion is that the respondent Commissioner misinterpreted section 8(x) of the said laws.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Atherton v. *British Insulated and Helsby Cables Ltd.* [1925] 1 K.B. 421 and on appeal to the House of Lords [1926] A.C. 205;

Smith v. *Incorporated Council of Law Reporting for England* [1974] K.B. 674;

Hancock v. *General Reversinary and Investment Co.*, 88 L.J.K.B. 248;

Sargent v. *Eayrs* [1973] 2 All E.R. 277;

Tucker v. *Granada Motoring Services* [1979] 2 All E.R. 801;

Heather v. *P.E. Consulting Group* [1973] 1 All E.R. 8;

Jeffs v. *Ringston Ltd.* [1986] 1 All E.R. 144;

Manufacturer's Life Insurance Co. v. *The Republic* (1967) 3 C.L.R. 460;

Muller v. *Baldwin* [1874] L.R. 9 Q.B. 457.

Recourse.

Recourse against the additional assessments raised on

applicants for income tax and special contribution for the years 1975-1978.

P. Polyviou, for the applicants.

M. Photiou, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By this recourse the applicants pray for -

"1. A Declaration to the effect that the additional assessments set out in the schedule attached hereto and marked 'A', raised by the respondent on the applicants for income tax and special contribution purposes in respect of the years of assessment or quarters referred to therein, are null and void and erroneous in so far as they relate to:

(a) The amounts which the applicants have paid into the Provident Fund for their employees in excess of their ordinary annual contribution, and

(b) the 3% of Foreign Exchange in respect of locally manufactured petroleum products delivered in Cyprus to aircraft at the International Airport of Larnaca and to ships in Cyprus ports (which the Applicants allege that they are entitled to deduct from their profits).

2. A declaration to the effect that additional assessment No. 91010023/75 for the year of assessment of 1975(4) should be revised in such a way as to increase the loss of the applicants which they are entitled to carry forward on 31.12.74 and be set off against their income for subsequent years by an amount of £5,681 which is the additional contribution by the applicants to the Staff Provident Fund out of its profits for the year 1974

3. Costs of this recourse."

The grounds of law on which the applicants base their recourse are:

"A. In so far as the additional contribution to the Staff Provident Fund is concerned the amounts of additional contributions by the applicants to their employees' Provident Fund are in law an expenditure wholly and exclusively incurred for the purposes of the applicants' trade

B. In so far as the exemption from taxation of the three percent of the Foreign Exchange imported in Cyprus through deliveries in Cyprus to International Airlines and Ships of locally manufactured petroleum products is concerned,

(i) Exemption is claimed by virtue of the provisions of para (κδ) of section 8 of the income tax laws 1961-1975

(ii) Such deliveries are considered in law to be 'exports' of goods manufactured in Cyprus because they are not consumed in Cyprus but consumed outside its territorial limits"

It is an undisputed fact that the applicants are a limited company incorporated in the United Kingdom with a branch office in the Republic; that they are one of the leading oil companies trading here; that they derive their profits from the sale of petroleum products, and that they are shareholders in the Cyprus Petroleum Refinery Ltd

With regard to their complaint under prayer No 1(a) it is the case for the applicants that in their intention and objective to keep and retain the best possible relations with their employees, they have established, amongst other schemes for the benefit of their monthly and daily wage employees, a Trust Fund known as "the Shell Cyprus Provident Fund" under the Rules of which the applicants in addition to their obligation to make an annual contribution for each one of their said employees, were entitled to make additional contributions to the Fund

The Trust Deed and the Regulations made thereunder, which are in the form of a booklet, were produced and are exhibit No 1 before me

It is an undisputed fact that in 1974 the capital of the Fund stood at £335,000.-, out of which £119,000.- had been lent to the Famagusta and Morphou Municipalities, two of the towns of the Republic that are occupied by the Turks since the invasion of Cyprus in 1974. It is the allegation of the applicants that as recovery of these loans became impossible and the Fund suffered a very heavy loss, a fact that caused great dismay and anxiety amongst its members, they, in their wish to assist their employees, and in order to maintain their good reputation as good employers and to preserve their good relations with their employees, decided to make and did make the following additional contributions to the Fund out of their profits:

In the year 1974 £ 5,681.-

In the year 1975 £20,199.-

In the year 1976 £33,704,- and

In the year 1977 £26,168.-.

In their returns for income tax purposes for the above-mentioned years the applicants claimed that the amounts contributed in those years by them to the Provident Fund ought to be deducted from their taxable income as they were expenses incurred wholly and exclusively in the production of their income.

In their returns for the years 1975, 1976 and 1977, the applicants further claimed that they were entitled to a deduction of 3% of the foreign exchange imported by them into the Republic in the said years.

The respondent considered the claims of the applicants and after a number of letters exchanged between his office and the applicants, decided to reject the applicants' claims for deductions and raised the sub judice assessments. The decision of the respondent was contained in a letter to the applicants, dated the 23rd February, 1980, which reads:-

> "I wish to refer to your letter dated 21st February 1980 objecting against the assessments raised on your above clients for the years of assessment 1975 to 1978 and to state:

(a) *Extraordinary contributions to the Company's Staff Provident Fund:*

I have considered your views but I am still of the opinion that the said contributions cannot be allowed as a deduction from your clients' income because they do not represent money wholly and exclusively incurred in the production of your clients' income.

(b) *3% of the foreign exchange imported into the Republic:*

In my opinion the provision of the petroleum products by your clients to airclaft at the International Airport and to ships in Cyprus ports does not constitute an export of products but a mere sale of products in Cyprus. The fact that payment is made in foreign currency does not alter the nature of the transaction. Your clients are not, therefore, entitled to this exemption.

2. For the reasons stated above I am of the opinion that the assessments are correct and I have decided to determine your objection by maintaining the assessments.

3. I am enclosing notices accordingly."

As a result of the above decision of the respondent, the applicants filed the present recourse by which they challenge the said notices of assessment.

In the light of the facts of this case the issues which have to be decided are whether the respondent Commissioner, in deciding to reject the applicants' claim for deduction from their chargeable income of -

(a) the additional contributions made by them into the Provident Fund,

(b) the 3% of foreign exchange in respect of locally manufactured petroleum products delivered to foreign ships and aircraft in Cyprus for consumption abroad,

acted properly.

The legislation relevant to the first issue raised by the

applicants is section 11(1) of the Income Tax Laws, 1961-1977 and it reads:

«11.- (1) Πρὸς ἐξεύρεσιν τοῦ φορολογητέου εἰσοδήματος παντὸς προσώπου θα ἐκπίπτωνται ἄπασαι αἱ δαπάναι ἃς τὸ τοιοῦτο πρόσωπον ὑπέστη ἐξ ὁλοκλήρου καὶ ἀποκλειστικῶς πρὸς κτῆσιν τοῦ εἰσοδήματος Ἐν αὐταῖς περιλαμβάνονται -

(α)

(β) αἱ συνήθεις ἐτήσιαι εἰσφοραὶ αἱ καταβαλλόμεναι ὑπὸ τοῦ ἐργοδότου εἰς Ταμεῖον ἐγκεκριμένον ὑπὸ τοῦ Ἐφόρου συμφώνως τῆς παραγράφου (ε) τοῦ ἐδαφίου (1) τοῦ ἄρθρου 19

(γ) »

("11.-(1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred by such person in the production of the income, including -

(a)

(b) ordinary annual contributions paid by an employer to a Fund approved by the Commissioner pursuant to paragraph (e) of sub-section (1) of section 19;

(c) ")

Counsel for the applicants argued that the contributions to the Fund were wholly and exclusively incurred by them for the production of their income, in that their sole motivation in doing so was to increase their profits by keeping their employees happy so that they would work more efficiently and effectively; that their intention was to replenish the Fund after the loss it suffered as a result of the Turkish invasion and that no distinction should be drawn between their obligation to make annual contributions and their additional ones.

Counsel for the respondent submitted that the burden of proof that a case comes within one of the exemptions provided by the Income Tax Laws lies on the applicant who

claims such exemption. He further submitted that this case is very similar to the case of *Atherton* v. *British Insulated and Helsby Cables Ltd.*, 10 T.C. 155; [1926] A.C. 205, where it was held by the House of Lords, affirming by majority of three to two the judgment of the Court of Appeal, that a lump sum, which the company had paid into the pension fund established by trust deed for the benefit of its employees, was not deductible as an expense incurred wholly and exclusively for the benefit of the trade and that in the light of that case one can only reach the conclusion that the applicants in the present case made the additional contributions to the Fund out of their profits simply in order to satisfy their employees and that such contributions had no effect on the applicants' future earning capabilities. Such contributions, counsel contended, were capital expenditure as they were meant to replace annual contributions which had already merged in the capital of the Fund and if part of it was invested and lost, it made no difference. The fact, he said, that the extraordinary contributions to the Fund were paid not in one year but over a number of years, does not change their nature, namely that they were capital expenditure.

Relevant to this issue are a great number of English and Cyprus authorities, some of which have been cited and relied upon by counsel in support of their arguments.

I shall make reference to a few of these cases which gave me guidance in reaching my conclusions. As the judgments in these cases are available for study by everyone concerned, I shall only give a short summary of the facts and what was held by the Bench that tried them.

In *Smith* v. *Incorporated Council of Law Reporting for England and Wales*, [1974] K.B. 674, the respondents were a limited company incorporated under section 23 of the Companies Act, 1867, with no power to pay any portion of their earnings to their members by way of profits. In 1911 the respondents gave a gratuity of £1500.- to one of their reporting staff on his retirement after long service. The payment was not made under any contract between the respondents and the reporter, but it was within the powers conferred by the respondents' memorandum and

articles of association, and it was the habit of the respondents, to give gratuities to reporters on retirement after long service. The £1,500 was included in the respondents' trading accounts for 1911 as an item of expenditure, and an additional assessment to income tax under Schedule D was in consequence made on the respondents of £500, i.e. one-third of £1500, in respect of their profits for that year. On appeal by the respondents to the Commissioners, they held that the £1500 was allowable to the respondents as a business expense in calculating the profits of the year for income tax purposes.

On a case stated by the Commissioners, it was held by Scrutton J. that the question whether the £1500 could be deducted from the respondents' profits as being "money wholly and exclusively laid out or expended for the purposes of" the respondents' business, was a question of fact for the Commissioners, and that, as there was evidence to support their finding of fact, their decision was final.

In *Hancock* v. *General Reversionary and Investment Co.*, (88 L.J.K.B. 248), which was decided in 1918, it was held that a lump sum paid for an annuity to an ex-employee was a business expense not in the nature of capital expenditure and was an admissible deduction from the trading profits of the company for income tax purposes.

This case was later criticized and distinguished by the Appeal Court in *Atherton* v. *British Insulated and Helsby Cables Ltd.*, [1925] 1 K.B. 421, the judgment of which was, by majority of three to two, upheld by the House of Lords in *British Insulated and Helsby Cables Ltd.* v. *Atherton* [1925] All E.R. Rep. 623.

In the *Atherton* case the respondent company, in computing its profits, claimed as a deduction a lump sum that it had contributed to a pension fund established by trust deed for the benefit of its employees, thus forming the nucleus of the pension fund in order to enable past years of service of the then existing staff to rank for pension. The commissioners, considering themselves bound by the *Hancock* case (supra), found in favour of the company. The Crown appealed by way of Case Stated to the High

Court, which upheld the view of the Commissioners, again feeling bound by the *Hancock* case. The Crown then appealed to the Court of Appeal which unanimously reversed the judgment of the High Court. The House of Lords affirmed the judgment of the Court of Appeal by a majority of three to two.

The *Atherton* case was followed and applied in a number of other cases (see, amongst others, *Sargent* v. *Eayrs* [1973] 1 All E.R. 277; *Tucker* v. *Granada Motoring Services* [1979] 2 All E.R. 801) but it was explained and distinguished in *Heather* v. *P.E. Consulting Group* [1973] 1 All E.R. 8. The *Heather* case was applied in *Jeffs* v. *Ringtons Ltd.*, [1986] 1 All E.R. 144.

In the *Heather* case the shares in the tax payer company were owned by a holding company and the shares in the holding company were owned as to 41 per cent by the group's pension fund and as to 59 per cent by outside shareholders. The taxpayer company carried on a management consulting business and had a professional staff of 310, all of whom holding university degrees or professional qualifications, whilst the outside shareholders had no such qualifications. Following drastic changes in management made on two occasions by the outside shareholders which upset the senior professional staff, a scheme was introduced to enable the employees to gain control of the company. Under the scheme the company was to make annual payments to the trustees of the fund who were to use them to acquire shares in the company so as to gain control and held them for the benefit of the employees, to whom they would offer them for sale. The taxpayer company paid certain sums to the trustees over a period of five years and claimed to deduct them as revenue expenses wholly and exclusively incurred in the course of its trade. The Court of Appeal, in distinguishing the *Atherton* case held that such amounts were deductible as being incurred wholly and exclusively for the purposes of the trade in that the taxpayer company was dependent on the qualifications and experience of its employees and the object of the scheme was to retain their goodwill and to secure that control remained in their hands.

In *Jeffs (Inspector of Taxes)* v. *Ringtons*, (supra), the facts were similar to those of the *Heather* case in that a trust was established to provide benefits for its older employees who might receive inadequate pensions as a result of the company's joining the state pension scheme. The company was to contribute 5% of its annual profits to the fund and the money was to be applied in the purchase of shares in the company which were to be held for the benefit of certain employees in the discretion of the trustees. In this case it was common ground that the payment was money laid out wholly and exclusively for the purposes of the company's trade and the question which had to be decided was whether the payments were capital or revenue expenditure.

In the present case the respondent, by his letter dated the 23rd February, 1980, to which I have earlier referred, rejects the claims of the applicants by merely saying that he was of the opinion that the contributions to the fund did not represent money wholly and exclusively incurred in the production of the applicants' income. The respondent gave no reasoning for reaching this decision, nor does it appear from the documents produced that he carried an inquiry as to the facts of the case before he reached his decision.

Important facts, like the loss by the fund of practically one third of its assets in view of the extra-ordinary circumstances that led to it, the impact of the loss on the employees who are undoubtedly the greatest asset of a business, as they are the persons who unless they are kept content cannot be efficient in their work, do not appear to have been taken into consideration by the respondent in reaching his decision.

In the circumstances of this case, I am of the view that the respondent, in reaching his decision that the payments made to the fund were not wholly and exclusively laid out or expended for the purposes of the trade of the applicants, did not exercise his discretionary power properly. It is further my view that the payments to the fund were made for the purpose of enabling the applicants to carry on their business in a more efficient way by giving their employees an incentive and thus earn income.

In reaching my above decision, I have not lost sight of the decision in the case of *Manufacturer's Life Insurance Co.* v. *The Republic* (1967) 3 C.L.R. 460 which, however, I consider to be distinguishable from this case.

In the result, the sub judice decision on this issue is annulled.

The second issue to be decided is whether deliveries of locally manufactured petroleum products to foreign carriers can be considered as exports, in which case 3% of foreign exchange imported is deductible in computing income for income tax purposes.

The relevant legislative provision is section 8(x) of the Income Tax Laws, 1961-1977 (in the consolidated English text), which reads as folows (in the Greek text it is section 8(κβ) introduced by Law 37/75, now renumbered, by Law 24/81 section 4(c), as section 8(κδ):

«8. Ἀπαλλάσσονται τοῦ φόρου -

. . . . . .

(κβ) τὰ τρία τοῖς ἑκατὸν τοῦ ἐν τῇ Δημοκρατίᾳ εἰσαγομένου ξένου συναλλάγματος προερχομένου ἐκ τῆς ἐξαγωγῆς ἐπιτοπίως κατασκευαζομένων ἢ παραγομένων προϊόντων, διὰ περίοδον πέντε ἐτῶν ὡς καὶ δι' ἑτέραν ἄλλην περίοδον οἵαν καὶ ὑφ' οὕς ὅρους τὸ Ὑπουργικὸν Συμβούλιον ἤθελεν καθορίσει

»

("8. There shall be exempt from the tax -

(x) three per centum of the foreign exchange imported into the Republic which is derived from the export of locally manufactured or produced products, for a period of five years as well as any other period which and subject to such conditions as the Council of Ministers may define,)."

Counsel for the applicants argued that two conditions have to be satisfied in order that the goods in question

should qualify for an exemption. The first is that they should be locally manufactured and the second that they should be exported.

The fact that the goods are supplied by the applicants to foreign carriers is not in dispute. What is in dispute is whether these goods are exported.

In the course of his address counsel for the applicants produced certain certificates from the Department of Statistics and Research of the Ministry of Finance, as well as from the Central Bank of Cyprus, to the effect that deliveries in Cyprus of locally manufactured petroleum products to ships and aircraft are considered by these Departments as exports.

Counsel argued that although the delivery of the products takes place in Cyprus, the fuel supplied to foreign carriers is not consumed in Cyprus and that the sale does not in fact take place in Cyprus but in England, since the applicants are a branch of a foreign company. Counsel submitted, citing certain authorities from p. 207 of the *'Words and Phrases Legally Defined*, Vol. 2, that the material question is whether the goods have left the jurisdiction and the operative word is consumption and not sale abroad.

Counsel for the respondent argued that since there is no definition of the word "export" in the Income Tax Laws, reference may be made to the Customs & Excise Law, No. 82/67, where refueling of ships or aircraft is dealt with as a separate category. He submitted that the ordinary meaning of the word "export" does not include refueling. As to the several documents produced by counsel for the applicants from other Government Departments, counsel submitted that certain of them cannot be taken into consideration since they were issued after the sub judice decision was taken and that as they were issued for the purposes of those Departments they cannot bind the respondent or the Court. Counsel refuted the allegation that the sale does not take place in Cyprus, maintaining that the company trades through its agent here and pays income tax on its profits. Lastly, counsel argued that the case of

Muller v. *Baldwin*, [1874] L.R. 9 Q.B. 457, which was relied upon by counsel for the applicants, should be distinguished as it was decided on its own facts and it is a very old case and cannot be applied today. He further argued, and this argument he based on *Maxwell on Interpretation of Statutes* (12th ed. p. 85), that the word "export" should be given the meaning it had at the time when the Law in question was enacted, and not the meaning that was construed in 1874.

There is no definition of the word "export" in the Income Tax Laws. I, therefore, should attach to it its ordinary meaning, unless the contrary is shown. Counsel for the respondent suggested that it should be interpreted in the context of the Customs & Excise Law, (No. 82/67). The word "export", however, is not defined therein either.

There is hardly any authority on the subject in issue but useful reference may be found in the *Words and Phrases Legally Defined*, Vol. 2 at p. 207, where, under the word "export", the following are stated:-

"EXPORT

'The question is, whether the goods laden on board this ship, having broken ground in the Thames, and not having left the port of London, may be said to have been exported. I am of opinion that the goods shipped could not be considered as exported until the ship had cleared the limits of the ports.' *A. G.* v. *Pougett* [1816], 2 Price, 381, per Wood, B., at pp. 393, 394.

'There is nothing in the language of the Act (Tyne Coal Dues Act 1872) to shew that the word 'exported' was used in any other than its ordinary sense, namely, 'carried out of the port'... We feel bound to hold that coals carried away from the port, not on a temporary excursion, as in a tug or pleasure boat, which intends to return with more or less of the coals on board, and which may be regarded as always constructively within the port, but taken away for the purpose of being wholly consumed beyond the limits of the port, are coals 'exported' within the meaning of

the Act.' *Muller* v. *Baldwin* (1874), L.R. 9 Q.B. 457, per cur., at p. 461."

Although I am not in the habit of quoting long passages from judgments which I find useful in guiding me to reach my conclusions, I feel that the judgment of Lush J., which was delivered in *Muller* v. *Baldwin*, [1874] L.R. 9 Q.B. 457 at pp. 460-461 and which is not a long one, is very material to the issue and I shall quote the whole of it.

"LUSH, J. The question raised by this appeal is whether coals, taken out of the port of Newcastle in a foreign steamer for the purpose of consumption on board in the course of a foreign voyage, are liable to the coal dues of one penny per ton, granted to the Tyne Improvement Commissioners by the Tyne Coal Dues Act, 1872, on all coals exported from the port of Newcastle. The learned Judge of the county Court considered, that, having regard to the usage of the corporation while the coal dues belonged to them of treating coals taken on board for consumption as exempted from duty, the term 'exported' must receive a qualified interpretation and be taken to mean coals exported for the purpose of commerce, as distinguished from what are called 'bunker coals', that is, coals taken on board for the purpose of consumption on the voyage. We agree as to the reasonableness of making a distinction between coals taken away for sale and coals taken for the necessary use of the vessel; but we are constrained to differ from the learned Judge in his construction of the Act. There is nothing in the language of the Act to shew that the word 'exported' was used in any other than its ordinary sense, namely 'carried out of the port;' and considering how easily and how extensively the privilege of storing for use may be abused, and what quantities may be carried away under the name of bunker coals, we think that, if it had been intended to exempt from duty coals taken on board for fuel, some limitation as to quantity would have been imposed. Nothing would have been easier than to insert a proviso to that effect. We cannot, however, speculate upon the intentions of the legislature which are

neither expressed in terms nor conveyed by implication; our duty is to interpret the words of a statute according to their plain and grammatic meaning, when, as in this case, they are not controlled by anything to be found in the context. Construing the words of the Act upon this principle, we feel bound to hold that coals carried away from the port, not on a temporary excursion, as in a tug or pleasure-boat, which intends to return with more or less of the coals on board, and which may be regarded as always constructively within the port, but taken away for the purpose of being wholly consumed beyond the limits of the port, are coals 'exported' within the meaning of the Act."

Counsel for the respondent suggested that the case of *Muller* v. *Baldwin*, should be distinguished as it was decided on its own facts and that it is a very old one.

With due respect, I cannot agree with the view taken by counsel for the respondent. It is clear from the judgment in that case that the test is not whether the fuel is loaded in sacks or bargs, tanks etc., but whether the goods have been taken away from the port for the purpose of being wholly consumed beyond its limits. The fact that the case is quite old is immaterial since the meaning of "export", as I find it to be explained in a number of contemporary dictionaries both Greek and English, has not changed and the ordinary meaning of the word continues, in my view, to be the same. I cannot, therefore, see how this case can be distinguished from the one in hand.

One of the prerequisites for someone to be entitled to the allowance of 3% in addition to the requirement that the goods must be locally manufactured and that they must be exported, is that payment must be in foreign exchange which must be imported into the Republic.

As it appears from the certificates issued by the Central Bank of the Republic, which are exhibits before me, fuel supplied to foreign carriers was paid in foreign exchange during the years of the assessments in dispute and that the applicants did import into the Republic the price of fuel

they sold to foreign carriers. Considering this, the undisputed fact that the goods were locally manufactured and my views as to the meaning of the word "export", I have no hesitation in coming to the conclusion that the respondent in deciding this issue misinterpreted the relevant provisions of the Law, that is section 8(x) of the Income Tax laws 1961-1977.

For the above reasons the sub judice decision is annulled on both points but because of the novelty of the legal issues raised in this recourse, I have decided not to make any order as to costs.

Sub judice decision annulled.
No order as to costs.