1987 October 17

[A LOIZOU J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SERAFINO SHOE INDUSTRY & TRADING CO LTD

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent

(Case No 497/86)

Income tax — Exemptions — Foreign exchange imported into the Republic — The Income Tax Laws 1961-1984, section 8(x) — Whether the 3%/6% relief thereunder applies in respect of foreign exchange imported for the purpose of reimbursing the exporter of locally manufactured goods for the freight and insurance charges, which such exporter had paid in respect of such goods exported by him — Question answered in the negative

Construction of Statutes — Taxing provisions — Principles applicable to their construction

The sole issue in this case is whether applicant company is entitled in virtue of section 8(X)* of the Income Tax Laws 1961-1984 to the 3%/6% exemption on the foreign exchange imported into the Republic attributable to freight and insurance charges initially paid by the applicant company and in respect of which the applicant was reimbursed by the foreign purchasers

Held, dismissing the recourse (1) Taxing provisions must be strictly construed The taxpayer must be given the benefit of the doubt, but in the absence of any ambiguity the words must be given their ordinary meaning Strict interpretation applies to the taxpayer just as much to the Revenue Any hardship produced by the literal constructions is not a relevant consideration Where an exception from taxation is granted, such exception is to be construed strictly and any ambiguity construed against the taxpayer**

(2) The wording of paragraph (x) of s 8 is clear and unambiguous and the words have to be given their natural meaning The significant part of it are the words «derived from» read in conjunction with the words «export of locally manufactured or produced products» That is, foreign exchange which stems

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* *Quoted at p 1318*

** *The aforesaid principles of construction are expounded in Butterworth's U K Tax Guide 1986-87 at p 93 The relevant passage was cited by the Court with approval*

directly from the export of the locally manufactured goods as opposed to the foreign exchange derived from the payment by the exporter of freight and insurance on behalf of the foreign purchaser and refunded to him by the latter. Such freight and insurance do not amount to export of goods but constitute the necessary facilities for the export of the goods locally manufactured.

Recourse dismissed.
No order as to costs.

Cases referred to:

Cape Brandy Syndicate v. I.R.C [1921] 1 K.B 64,

Re Micklethwaite (1855) 11 Exch. 452,

Tennant v Smith [1892] A C. 150,

Re Joynson's Will Trusts, Gaddum v. I.R.C. [1954] Ch. 567;

IRC. v. Hinchy [1960] 1 All E.R. 505;

Littman v. Barron [1951] 2 All E.R. 393;

A-G. v. Prince Ernest Augustus of Hanover [1957] AC 436.

Recourse.

Recourse against the decision of the respondent whereby the 3%-6% exemption on the foreign exchange imported from certain exports would not be granted on such part of the foreign exchange as it is attributable to insurance and freight charges.

X. Xenopoulos, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse, the applicant company seeks a declaration of the Court that the act and/or decision of the respondent Commissioner communicated to them by letter dated 17th June, 1986, by which the 3%/6% exemption on the foreign exchange imported from certain exports would not be granted on such foreign exchange so imported as being attributable to insurance and freight charges, is null and void and with no legal effect whatsoever.

The applicant company is a private company with limited liability registered under the Companies Law Cap. 113 and has an

issued share capital of 300.000 shares of one pound each. It derived its income, during the material time, from the manufacturing of shoes. It submitted audited accounts for the relevant years and upon the assessments being communicated to them by letter dated 14th April, 1986, the applicant company objected to them on the ground that the 3%/6% exemption on foreign exchange attributable to export expenses should not have been disallowed.

The respondent Commissioner of Income Tax, having considered the objection filed on behalf of the applicant company, maintained his original decision, determined the objection accordingly, and informed them of his duly reasoned decision by letter dated 17th June, 1986 (Appendix D), upon receipt of which the applicant company filed the present recourse. The sole issue for determination in this recourse is whether the applicant company is entitled to 3%/6% exemption on the foreign exchange imported into the Republic attributable to freight and insurance charges paid by them and reimbursed by the foreign purchasers.

Section 8(x) of the Income Tax Laws 1961-1984, in so far as relevant, reads:-

> «8(x) three per centum of the foreign exchange imported into the Republic which is derived from the export of locally manufactured or produced products,....
>
> Provided that in the case of exports which fall within a category of products specified by the Minister of Finance and approved by the Council of Ministers, which in his opinion need increased encouragement in attaining or increasing their export, the Minister of Finance may, under such terms and restrictions as he may set out in his decision, increase the amount of the foreign exchange so exempted up to a further rate of three per centum.»

No doubt, taxing provisions must be construed strictly. In *Cape Brandy Syndicate v. I.R.C.*, [1921] 1 K.B. 64 at p. 71, Rowlatt, J. said:

«In a taxing act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. there is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.»

«This principle», as pointed out in Butterworth's U.K. Tax Guide 1986-87 p. 93, «has two consequences: The first is that it is for the Crown to establish that the subject falls within the charge. This means that if the words are ambiguous the subject is entitled to the benefit of the doubt. But the principle is not that the subject is to have the benefit if on any argument that in genuity can suggest the act does not appear perfectly accurate but only if, after careful examination of all the causes, a judicial mind still entertains reasonable doubts as to what the legislature intended. If there is no ambiguity the words must take their natural meaning.»

In support of the aforesaid proposition, reference is made to the cases of *in Re Micklethwaite* [1855] 11 Exch. 452 approved in *Tennant v. Smith* [1892] A.C. 150.

«The second consequence is that strict interpretation applies to the taxpayer just as much as to the Revenue. So if a literal interpretation produces a construction whereby hardship falls on innocent beneficiaries by the rights, monstrous or otherwise, conferred on the Inland Revenue, that interpretation must be adhered to and the hardship produced is not a relevant consideration. Further where an exception from taxation is given by a statute, that exception is to be construed strictly and any ambiguity construed against the taxpayer.

It is as well to recall here that support of the very highest authority can be found for general and apparently irreconsilable propositions.»

In support of the aforesaid proposition reference is made to *in Re Joynson's Will Trusts, Gaddum v. IRC* [1954] Ch. 567; *IRC v. Hinchy* [1960] 1 All E.R. 505, 38 T.C. 625; *Littman v. Barron*

[1951] 2 All E.R. 393; *A-G v. Prince Ernest Augustus of Hanover* [1957] A.C 436.

With these principles of interpretation in mind, I turn now to the issues before me.

It has been argued on behalf of the applicant company that it is quite clear that the said 3%-6% tax exemption is granted on the foreign exchange which has been imported in Cyprus as a result of the export of products manufactured locally and that it covers also the freight and insurance costs and expenses. Consequently it is applied on the CIF total price of exports which are paid in Cyprus in local currency and therefore do not affect the money remitted to Cyprus, that is «the foreign exchange imported into the Republic...» and as such should not affect the calculation of the 3%/6% allowance.

It was further argued that there is no distinction between freight and insurance charges and the costs of the materials, as all expenses fall under the definition of cost of sale.

It has been the respondent's submission that the interpretation given by learned counsel for the applicant company to the words in paragraph (x) of the law, gives to them a strained meaning and infringes the above principles of strict interpretation. Looking fairly at the language used, and in particular the words «derived from the export of locally manufactured or produced products», it was submitted, that the interpretation most appropriate is that the exemption in question is restricted to the foreign exhange directly attributable to the manufacture of the goods exported as opposed to the foreign exchange attributable to the carriage of such goods, e.g. insurance and freight costs.

I find myself unable to agree with the submission of learned counsel for the applicant company and the interpretation he placed on the relevant words of s.8, para. x of the Law.

The wording of paragraph (x) of s. 8 is clear and unambiguous and the words have to be given their natural meaning. It allows exemption from tax on the foreign exchange derived from the export of locally manufactured or produced products. The significant parts of it are the words «derived from» read in conjunction with the words «export of locally manufactured or produced products.» That is, foreign exchange which stems directly from the export of the locally manufactured goods as

opposed to the foreign exchange derived from the payment by the exporter of freight and insurance on behalf of the foreign purchaser and refunded to him by the latter. Such freight and insurance do not amount to export of goods but constitute the necessary facilities for the export of goods locally manufactured This approach comes within the object of this provision which is to give an incentive by way of tax relief for the local industry and not a profit on the payment of the freight and insurance charges here.

In the result, the recourse is dismissed with no order as to costs.

Recourse dismissed.
No order as to costs.