1987 February 7

[PIKIS J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SYNEK LIMITED,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF FINANCE,
2 THE COMMISSIONER OF INCOME TAX,

Respondents

(Case No 144/86)

Income Tax—The Income Tax Laws section 8(x)—The exemption of 3% is confined to foreign exchange actually imported

Construction of Statutes—Purposive interpretation—No room for such interpretation if objects of the law are succinctly defined—Section 8(x) of the Income Tax Laws

Constitutionality of Statutes—Presumption as to their constitutionality—In the absence of a challenge as to the constitutionality of a statute, the Court cannot probe into the matter of its constitutionality

The applicants entered into a contractual arrangement with German manufacturers whereby the latter supplied them with raw material with which the applicants made garments, which they re-exported to the German suppliers. Property in the material remained throughout with the German suppliers, the contribution of the applicants being confined to the supply of the work necessary to finish the product. The applicants never paid for the value of the imported material. They simply credited the suppliers with it. The only money passing between the suppliers and the applicants was an amount equal to the work rendered by the applicants for the conversion of the material as aforesaid.

The respondent determined that the applicants were entitled to the 3% exemption from income tax allowed by section 8(x) of the Income Tax Laws with respect to the foreign exchange actually imported by the applicants.

As the applicants did not agree, claiming that the deduction should be granted for the entire value of the goods exported, despite the amount of foreign exchange actually imported, they filed the present recourse.

Counsel for the applicants submitted that section 8(x) should be liberally construed in order to give effect to the broader objectives of the legislature to provide incentives for the export trade. She further submitted that literally construed it may result in injustice by discriminating against persons in the position of the applicants or similarly circumstanced.

Held, *dismissing the recourse:* (1) Section 8(x) specifically limits the power of the respondent to foreign exchange actually imported. There is no room for a purposive interpretation whenever the objects of the law are succinctly defined, as in this case. The administration had no discretion to make a notional adjustment of the amount of foreign exchange imported.

(2) Failing a submission of unconstitutionality of a law the duty of the Court is to apply it. Statute laws are deemed to be constitutional, unless their constitutionality is specifically challenged and then established beyond doubt that the law in question is repugnant or inconsistent with the Constitution. As in this case no such challenge was made the Court cannot probe a question of constitutionality of s. 8(x).

Recourse dismissed
No order as to costs

Cases referred to:

Georghiades v. The Republic (1982) 3 C.L.R. 659,

Marathovouniotis v. Theodotou (1982) 1 C.L.R. 35,

The Board for Registration of Architects and Civil Engineers v. Kynakides (1966) 3 C.L.R. 640;

Matsis v. The Republic (1969) 3 C.L.R. 245.

Recourse.

Recourse against the decision of the respondents whereby exemption from income tax was allowed only in respect to the foreign exchange actually imported representing applicants remuneration for the work and services rendered to the German suppliers of the raw material with which the applicants made garments.

A. Vassiliou (Mrs.), for the applicants.

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

Cur. adv. vult

PIKIS J. read the following judgment. SYNEK Ltd., applicants trade in the making of garments and related products. They

entered into a contractual arrangement with German manufacturers whereby the latter supplied them with raw material with which SYNEK made garments, seemingly according to specification, that they re-exported to the German suppliers. The contribution of SYNEK to the finished product consisted of the provision of labour and the capital outlay necessary to run their workshop or factory. Notwithstanding some confusion about the terms under which the trade between suppliers and makers was conducted, the facts emerged fairly clearly after the inquiry made by the Administration to ascertain the facts relevant to the sub judice decision. The conclusions reached, reflected in the findings of the Commissioner, were reasonably open to the respondent, if not inevitable. The relevant finding is that the material was imported exclusively for the purpose of being turned through the manufacturing process into garments with a view to re-exportation to the German owners. Property in the material remained throughout with the German suppliers, the contribution of SYNEK being confined to the supply of the work necessary to finish the products. Evidence of the fact that ownership remained with the German suppliers was also forthcoming from the insurance of the goods by them against probable risks. The applicants never paid for the value of the imported material; they merely credited the suppliers with the value of the raw material that they subsequently set off against the value of the finished products. Duty paid on the importation of the raw material was duly refunded, according to standard procedure, when the material in its converted form was re-exported. The only money passing between the German suppliers and the Cypriot manufacturers was an amount equal to the work rendered by the applicants for the conversion of the raw material into garments.

The elicitation and ascertainment of the facts pertinent to administrative action is the province of the Administration. And income tax cases are no exception - see, inter alia, *Georghiades v. Republic**. Judicial review is confined to scrutiny of the legality of administrative action, designed to ensure that the Administration operates within the bounds of the law and duly heeds the standards of sound administration.

Guided by the factual substratum outlined above, the Commissioner determined the applicants were entitled to the 3%

*(1982) 3 C.L.R. 659 (F.B.).

exemption from income tax allowed by section 8(κδ)*, only wi respect to the foreign exchange actually imported representir their remuneration for the work and services rendered to tl German suppliers Applicants challenged the decision as inval on account of misapplication of the relevant provisions of the la The contention advanced on behalf of the applicants before tl Court, earlier rejected by the Commissioner, was that exemptic from income tax should be granted for the entire value of tl goods exported despite the amount of foreign exchange actual imported

First, it is difficult to reconcile applicants' interpretation section 8 (κδ) with the plain provisions of the enactment, th specifically limit the power of the Commissioner to allowing reduction only for the foreign exchange in fact imported The la specifically provides that relief from income tax is confined to tl foreign exchange in fact imported Nontheless, counsel submitte we should interpret liberally the provisions of section 8(κ meaning, as I perceive her submission, that we should constr purposively the provisions of the relevant enactment in order give effect to the broader objectives of the legislature, namely, provide incentives for the export trade A purposive interpretatic may, no doubt, be adopted** where the objectives sought to l achieved by individual provisions of the law are not clearly sp out therein, in which case the gap may be filled by reference to tl wider objects of the law But, there is no room for such approa whenever the objects of the law are succinctly defined in tl relevant section, as in this case In accordance with section 8 (κ relief is confined to foreign exchange actually imported There no discretion in the Administration to make a notional adjustme of the amount of foreign exchange imported Therefore, given tl facts of the case there was no amenity in the Commissioner allow relief for any amount in excess of foreign exchange actual imported

Further, counsel complained that literally construed the la may result in injustice by discriminating against persons in th position of the applicants or similarly circumstanced In th absence of specific submission that the provisions of section 8(κ

*Section 8(κ) in the English translation

**See inter alia Marathovouniotis v Theodotou (1982) 1 C L R 35

are unconstitutional for incompatibility or inconsistency with the provisions of Art. 28 of the Constitution, safeguarding equality before the law and the Administration, we cannot probe a question of constitutionality. It is an axiom of constitutional law that statute laws are deemed to be constitutional* unless their constitutionality is specifically challenged and then established beyond doubt that they are repugnant to or inconsistent with one or more provisions of the Constitution. Failing a submission of unconstitutionality the duty of the Court is to apply the law as laid down by the legislature. Certainly I shall not speculate on what the fate of a submission of unconstitutionality of s.8(κδ) might be; save to remind that in matters of taxation wide discretion is acknowledged to the legislature to make the classifications deemed necessary for the promotion of the objects of the law**.

In the result the recourse fails and it is dismissed. The sub judice decision is confirmed pursuant to the provisions of Art. 146.4(a) of the Constitution. There will be no order as to costs.

Recourse dismissed.
No order as to costs.

See, inter alia, The Board for Registration of Architects and Civil Engineers v. Chr. Kynakides (1966) 3 C.L.R. 640 (F.B.).

**See, inter alia, Andreas Matsis v. Republic (1969) 3 C.L.R 245 (F.B.).*