

(1987)

1987 March 18

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS K. HADJIGEORGI,

Applicant,

v.

THE MINISTER OF FINANCE, THROUGH
THE CUSTOMS DEPARTMENT,

Respondent.

(Case No. 3/83).

Executory act — Rejection of application for duty free importation of a motor vehicle (the Customs and Excise Duties Law, 1978, Sub-heading 19 of item 0.1 to the Fourth Schedule), which the applicant has not imported, but intended to purchase at some future time — Lacks executory nature.

Recourse for annulment — Powers of Court — Court can examine ex proprio motu whether the sub judice decision is of an executory nature or not. 5

By means of this recourse the applicant challenges the validity of a decision, whereby his application for importation of a car, which he intended to purchase, free from import duty as a repatriated Cypriot, was turned down.

Held, dismissing the recourse: (1) The question whether the sub judice decision is of an executory nature or not may be examined by the Court ex proprio motu. 10

(2) As in this case the applicant did not import a car, but merely applied for relief for a car, which he intended to purchase at some future time, the sub judice decision lacks executory character (*Yiangou v. The Republic* (1987) 3 C.L.R. 27). 15

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Yiangou v. The Republic (1987) 3 C.L.R. 27; 20

Georghiou v. The Republic (1982) 3 C.L.R. 828.

3 C.L.R. Hadjigeorgi v. The Minister of Finance

Recourse.

Recourse against the decision of the respondent to reject applicant's application for his exemption from import duty on the importation of a motor vehicle as a repatriated Cypriot.

5 A. Papacharalambous, for the applicant.

M. Photiou, for the respondent.

Cur. adv. vult.

10 MALACHTOS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent to reject his application to buy and import a duty free motor vehicle, is null and void and of no legal effect whatsoever.

The relevant facts of the case are, briefly, as follows:

15 The applicant, who was born in Cyprus, emigrated to South Africa in 1947. In 1950 he settled in Zambia, where he remained, according to his allegation, until 1982 when he returned and settled permanently in Cyprus. From October 1970 to March 1975 he was residing in Cyprus but, as he alleges, temporarily for health reasons. He finally returned to Cyprus on 11.7.82 with the intention of taking up permanent residence here. On 16.8.82 he submitted an application to the Director of the Department of Customs and Excise for relief of the import duty on a car he intended to purchase under sub heading 19 of Item 0.1 to the Fourth Schedule of the Customs and Excise Law, 1978.

25 He was, however, informed by letter of 20.10.82 that according to the standing Customs Legislation, it was not found possible to accede to his request as it was considered by the respondent that during the period of 24.10.70 to 22.3.75, when the applicant was living in Cyprus there had been a break in the continuity of his permanent residence abroad. Therefore, the continuous period of 30 10 years, as is required by Law, should begin to run as from 22.3.75 when he left Cyprus and so the prerequisite of a minimum of ten years continued period of time abroad was not fulfilled by the date of repatriation on 11.7.82.

35 As a result, the applicant filed the present recourse on the grounds that the sub judice decision lacked due reasoning, that it

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was reached without proper inquiry, and that it was contrary to Article 28 of the Constitution.

In the course of preparing this judgment, the decision in Revisional Appeal No. 617, *Anna Yiangou v. The Republic*, was delivered on 20.1.87*, not yet reported, where it was held by the Full Bench that a decision of the Director of Customs as regards an application for relief from payment of import duty in respect of an intended importation of a motor vehicle, is not an executory administrative act but is of an informatory or advisory nature. 5

Though the question as to whether the sub judice decision is of an executory nature or not, was not raised in these proceedings, nevertheless, such matter may be examined by the Court *ex proprio motu*. (See *Costas Georghiou v. The Republic*, (1982) 3 C.L.R. 828 at p. 835 and also *Anna Yiangou v. the Republic*, (supra)). 10 15

In the present case when the applicant returned from abroad with the intention of permanently settling in Cyprus, he did not import a motor vehicle, nor had he imported one by the time of his application. He merely applied for relief for a vehicle he intended to purchase and import at some future date. 20

In view of the above, I have reached the conclusion that the sub judice decision is not an executory one but is only in the form of an opinion or advice and as such, cannot be challenged by a recourse under Article 146 of of the Constitution.

In the result, this recourse fails and is hereby dismissed, with no order as to costs. 25

*Recourse dismissed
with no order as to costs.*

*Reported in (1987) 3 C.L.R. 27.