

1988 June 24

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS NICOLIS,

Applicant.

v.

1. THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS AND EXCISE,
2. THE REPUBLIC OF CYPRUS, THROUGH THE OFFICE OF THE ATTORNEY-GENERAL,

Respondents.

(Case No. 744/87).

Customs and Excise Duties—Motor vehicles, importation of by Cypriots—Exemption from import duty—Order 188/82 of the Council of Ministers—"Permanent settlement abroad"—Meaning of—Review of authorities on the subject.

The recourse in this case remained unopposed to the end. The sub judice refusal to allow the duty free importation of a Motor Vehicle by the applicant was annulled on the ground that, in the light of the facts of this case, it was not reasonably open to the respondent Commissioner.

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Sub judice decision annulled.

No order as to costs.

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Cases referred to:

Mavronichis v. The Republic (1985) 3 C.L.R. 230;

Constantinides v. The Republic (1986) 3 C.L.R. 822;

Neocleous v. The Republic (1986) 3 C.L.R. 1435;

Ioannou v. The Republic (1986) 3 C.L.R. 1263.

Recourse.

5 Recourse against refusal of the respondent to allow applicant to import a duty free motor vehicle as a repatriated Cypriot.

A. Poetis, for the applicant.

No appearance for the respondent.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. The applicant by the present recourse challenges the refusal of the respondent Director of the Department of Customs & Excise not to accede to applicant's application to import a motor-vehicle free of duty under the provisions of Sub-heading 19 of item 0.1 of the Fourth Schedule to the Customs & Excise Duties Law, 1978, which was
15 communicated to the applicant by letter dated the 4th August, 1987.

20 The only legal ground on which the recourse is based and which was argued by counsel for applicant is that the sub judice decision violates the provisions of Law 18/78 and the Fourth Schedule of the said law under Sub-heading 19, item 0.1.

25 The case was fixed for the 2nd December, 1987, and copy of the application together with a notice of the date of hearing was served on the respondents on 9th September, 1987. Neither the respondents nor any counsel on their behalf appeared on the 2nd December, 1987, and directions were given in their absence by the ex-President of this Court before whom the case was fixed for an opposition to be filled by the 15th January and for written addresses thereafter in accordance with the directions given and the case was adjourned to the 6th April, 1988. Directions were also

given to the Registrar of the Court that copy of the record be sent to the respondents. Such copy was sent to them by the Registry on 7th December, 1987, but again the respondents failed to appear and oppose the application.

When the case came up before me, on the 6th April, 1988, 5
having been satisfied that notice of the hearing had duly been sent to the office of the Attorney-General I treated the case as unopposed and I gave directions to counsel for applicant to file his written address within one month and appear before the Court on the 14th June, 1988, for oral clarifications. 10

In view of the fact that respondents failed to appear and also failed to oppose the application I shall proceed to deliver my judgment on the basis of the facts before me as presented by counsel for the applicant which are supported by an affidavit sworn by the applicant on the 14th June, 1988. 15

The applicant is a citizen of the Republic and was born on 14th October, 1950. He attended school up to the third class of the Gymnasium and then decided to take employment originally as a seaman and for such purpose he left for Denmark. Since 1973 according to his affidavit he took permanent residence abroad. In 20
1981 he got married abroad and returned to Cyprus in November, 1984, for permanent settlement in Cyprus.

Applicant submitted an application on the 18th July, 1985 to respondent I for the duty free importation of his Mitsubishi Gal- 25
lant 1.6 GLS motor-car which had been previously temporarily imported into Cyprus by customs permission and registered in Cyprus under Reg. SE 347. Respondent I informed the applicant that it was not found possible to accede to his request on the ground that "his stay abroad did not constitute permanent settle- 30
ment as provided by the law" and also that the temporary stay in Cyprus of the vehicle in question was extended till 31st July, 1987 by which date he had either to export it from Cyprus or place it in a general bonded warehouse or pay all customs duties and charges payable thereon at a value to be assessed at the rates

in force as at 21st June, 1985.

5 In fact the reply of respondent (1) is on a cyclostyled form on which the only additions were the name of the applicant, the number of his car, the reason of the refusal and with the deletion of certain parts which were not applicable. This fact however might have been material had a ground of law for lack of due reasoning been raised which is not the case and, therefore, I shall limit myself to the sole question put before me for answer.

10 Before touching the substance of the case I shall make a brief reference to the relevant Orders relating to the importation of duty-free cars by repatriated Cypriots after a permanent settlement abroad for a period of at least ten years.

15 The Order of the Council of Ministers which was issued under the provisions of s.11(2) of the Customs & Excise Laws 1978 to 1981 and published in the official Gazette of the Republic of 10th July, 1981, under Notification 151 provides under item 0.1, Sub-heading 19, that motor-vehicles of tariff headings 87.02.11 and 87.02.19 imported by Cypriots who after permanent settlement abroad for a continuous period of at least ten years returned to take up permanent residence in Cyprus, are exempted from import duty provided that (a) such motor-vehicles were in their possession for a period of not less than one year and (b) only one motor-vehicle for each family could be allowed duty-free. The above Order was repealed and substituted by a new Order of the Council of Ministers published in the official Gazette of the Republic, Supplement No. 3 of the 11th June, 1982, under Notification 188. Its scope was to obliterate the first condition of the previous Order and extend its application to new cars and, also, by the addition of the words "provided the importation takes place within a reasonable period of time from their arrival at the discretion of the Director".

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The question of exemption from import duty in respect of cars imported by Cypriots who after permanent settlement abroad returned to take up permanent residence in Cyprus and the extent of

such exemption has now been regularized by new provisions introduced by the Customs & Excise (Amendment) (No.3) Law of 1987 (Law 309/87) which amended s.11 of the previous law by virtue of which the above Orders were issued. In view of the fact however, that the present case has to be decided on the legal situation which existed on the date when the sub judice decision was taken I find it unnecessary to make any detailed reference to the new provisions introduced by Law 309/87 in this respect. 5

The sole question which poses for consideration, as mentioned earlier, is whether the applicant at the material time when he returned to take permanent residence in Cyprus satisfied the condition of permanent settlement abroad for a continuous period of at least ten years as provided by Notification 188. 10

It is well established by a series of decisions of this Court that when a person claims relief from payment of duty the burden is upon him to satisfy the appropriate authority of his entitlement to such relief. 15

From the material before me the following facts are established:

The applicant left Cyprus in 1972 and went to Denmark where he took employment as a seaman and he remained abroad ever since. According to his affidavit he settled permanently abroad and in 1981 he got married there and returned to Cyprus about the end of 1984 for permanent settlement. Applicant brought to Cyprus in 1985 a Mitsubishi Gallant 1.6 GLS motor-car which he was allowed to import temporarily by virtue of a permit granted to him on 27th June, 1985. On 18th July, 1985, he submitted his application for relief from import duty under the provisions of Sub-heading 19 of item 0.1 of the Fourth Schedule to the Customs & Excise Duties Law on the ground of a permanent settlement abroad for a continuous period of at least ten years. After a delay of two years the Director of the Department of Customs & Excise decided to reject applicant's application and informed him accordingly by letter dated 4th July, 1987, to which reference has al- 20 25 30

ready been made.

5 The question as to what amounts to a permanent settlement abroad has been considered in a number of cases of this Court. In some of them the stay of an applicant in a foreign country for purposes of studies was not considered to be a permanent settlement abroad (*Mavronichis v. The Republic* (1985) 3 C.L.R. 230, *Con-*
10 *stantinides v. The Republic* (1986) 3 C.L.R. 822. In others it was found that in the surrounding circumstances and the facts of the particular cases, the conclusion of the Director of the Department of Customs & Excise was reasonably open to him (*Neocleous v. The Republic* (1986) 3 C.L.R. 1435).

15 In *Ioannou v. The Republic* (1986) 3 C.L.R. 1263, although the applicant had proved that he had been residing in Saudi Arabia for more than ten years nevertheless his recourse was dismissed on the ground that it was reasonably open to the respondent to find that the applicant had not been permanently staying in Saudi-Arabia as in the circumstances of the case and on the material before the Court non-Moslems had no right to settle at that country.

20 In the present case from the facts before me it emanates that the applicant since 1973 had been residing abroad and had no connection with Cyprus. There is no indication that in Denmark or in any other European country permanent settlement for a foreigner irrespective of denomination as in the case of *Ioannou* (supra) cannot be acquired. In fact from what emanates from the facts set
25 out in applicant's affidavit he had permanently settled and resided abroad since 1973, a fact which stands uncontradicted.

30 In the circumstances of the present case and in the light of all material before me I find that the conditions set out for the grant of the concession for a duty-free car are satisfied and, therefore, the decision taken by the respondent was not reasonably open to him. Furthermore I have come to the conclusion that the respondent Director of the Department of Customs & Excise failed to carry out a due inquiry into the case of the applicant before reaching his decision of refusing his application.

In the result the present recourse succeeds and the sub judice decision is hereby annulled. Bearing in mind the fact that the recourse has not been opposed I make no order for costs.

Sub judice decision annulled.
No order as to costs.

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