JUDGMENT OF THE COURT (FIRST CHAMBER)
9 DECEMBER 1982 [1]

Ditta Italgrani v Amministrazione delle Finanze dello Stato (reference for a preliminary ruling from the Tribunale Civile e Penale, Florence)

(Post-clearance recovery of import or export duties)

Case 82/82

European Communities — Own resources — Post-clearance recovery of import or export duties — Regulation No 1697/79 — Retroactivity — None
(Council Regulation No 1697/79)

Regulation No 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties does not apply to payments of import or export duties made before the date on which it entered into force, namely 1 July 1980.

In Case 82/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Civile e Penale [Civil and Criminal District Court], Florence, for a preliminary ruling in the action pending before that court between

DITTA ITALGRANI

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

1 — Language of the Case: Italian.

on the interpretation of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979, L 197, p. 1),

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

I — Facts and procedure

In November 1972 the company known as Italgrani made a declaration to the customs authorities at Leghorn (Livorno) concerning a consignment of wheat to be imported from Argentina. The import declaration was accepted on 8 November 1972 but the goods were cleared through customs by instalments spread over a period of time, in other words, by consignments which were withdrawn after the import declaration had been accepted.

In making the original determination of the duties payable, the customs authorities applied on each occasion the rate of levy which prevailed on the day when the goods were actually withdrawn. Subsequently, in a notice served on 11 July 1977, the customs authorities in Leghorn demanded from Italgrani payment of the sum of LIT 5 901 035, plus interest, being the balance undercharged in respect of import levies.

One of the reasons given for taking action to recover that balance was that the Court of Justice, in its judgment of 15 June 1976 in Case 113/75 (*Frecassetti*, ECR [1976] 983), had held that agricultural levies were to be calculated consistently in accordance with the rate prevailing on the day when the import declaration was accepted.

By a summons served on 28 July 1977 Italgrani contested the notice of assessment and brought the Amministrazione delle Finanze before the Tribunale in Florence, arguing *inter alia* that the principle laid down in the *Frecassetti* judgment (mentioned above) was inapplicable to situations which had already been settled.

While court proceedings were still pending, there came into force Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal L 197, p. 1). By an order of 25 November 1981, registered at the Court on 5 March 1982, the Tribunale in Florence put to the Court a number of questions on the interpretation of that regulation. Those questions run as follows:

"1. Does Council Regulation (EEC) No 1697/79 of 24 July 1979, in particular Articles 1, 2 (1), 5 (1) and 7 thereof, apply in respect of payments of agricultural levies made prior to 1 July 1980 at a rate lower than the amount legally due, in relation to which even before that date steps had been taken for recovery the lawfulness of which is being challenged, in other respects, before a national court?

2. If the answer to Question 1 is in the affirmative, what meaning must be attached to the words 'take action to recover' in the first subparagraph of Article 2 (1) with regard to levies not collected in full if the provisions of the succeeding subparagraph are to be understood as rendering unlawful an action for recovery commenced before 1 July 1980 but after the expiry of a period of three years starting from the date of the administrative measure determining the amount of the levy originally claimed from the person in question?

3. If the answer to Question 1 is in the affirmative, do the provisions of Article 5 (1) extend to the payment of agricultural levies at a rate lower than the amount legally due, where such payment was made, on the one hand, on the basis of national provisions subsequently held not to apply to this matter but which at the time in question were consistently applied by the national administrative authorities in accordance with the criteria laid down in ministerial circulars and instructions and, on the other hand, in compliance with the interpretation of the Community provisions followed by the administrative organs of the Community and by the national courts but subsequently disregarded by the Court of Justice?

4. If the reply to Question 1 is in the negative, does the provision contained in Article 7 of the above-mentioned regulation extend to payments required subsequent to its entry into force, in connection with recoveries in respect of payments made at a rate lower than the amount legally due, in the circumstances described at 3, above, prior to 1 July 1980"?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by the Government of the Republic of Italy, represented by the Avvocato dello Stato, Ivo M. Braguglia, acting as Agent, and by the Commission of the European Communities represented by Alberto Prozillo, a member of its Legal Department, also acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. By order of 29 June 1982 the case was assigned, pursuant to Article 95 (1) and (2) of the Rules of Procedure, to the First Chamber.

II — Summary of the written observations submitted to the Court

The *Government of the Italian Republic* and the *Commission of the European Communities* point out that the facts of the dispute are identical to those of Joined Cases 212 to 217/80 *Amministrazione delle Finanze dello Stato* v *Salumi and Others* (judgment of 12 November 1981 [1981] ECR 2735).

They therefore request confirmation of that case-law. The *Commission* proposes that the Court should reply to the first question from the Tribunale in Florence as follows:

"Council Regulation (EEC) No 1697/79 of 24 July 1979 is inapplicable in its entirety where import or export duties have been determined before 1 July 1980".

The remaining questions would then become irrelevant.

III — Oral procedure

At the sitting on 7 October 1982 oral argument was presented by the Government of the Italian Republic, respresented by I. M. Braguglia, acting as Agent, and by the Comission of the European Communities, represented by A. Prozzillo, acting as Agent.

The Advocate General delivered her opinion at the sitting on 11 November 1982.

Decision

1 By order of 25 November 1981, which was received at the Court on 5 March 1982, the Tribunale Civile e Penale [Civil and Criminal District Court], Florence, referred four questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty, concerning the interpretation of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979, L 197, p. 1).

2 Those questions were raised in proceedings between Ditta Italgrani and Amministrazione delle Finanze dello Stato [Italian State Finance Administration], relating to a notice of reassessment concerning agricultural levies, which was issued by that administration prior to 1 July 1980, the date on which Regulation No 1697/79 entered into force.

3 The trader contested the notice of reassessment before the Tribunale in Florence, which stayed the proceedings and referred the following questions to the Court:

"1. Does Council Regulation (EEC) No 1697/79 of 24 July 1979, in particular Articles, 1, 2 (1), 5 (1) and 7 thereof, apply in respect of payments of agricultural levies made prior to 1 July 1980 at a rate lower than the amount legally due, in relation to which even before that date steps had been taken for recovery the lawfulness of which is being challenged, in other respects, before a national court?

2. If the answer to Question 1 is in the affirmative, what meaning must be attached to the words 'take action to recover' in the first subparagraph of Article 2 (1) with regard to levies not collected in full if the provisions of the succeeding subparagraph are to be understood as rendering unlawful an action for recovery commenced before 1 July 1980 but after the expiry of a period of three years starting from the date of the administrative measure determining the amount of the levy orginally claimed from the person in question?

3. If the answer to Question 1 is in the affirmative, do the provisions of Article 5 (1) extend to the payment of agricultural levies at a rate lower than the amount legally due, where such payment was made, on the one hand, on the basis of national provisions subsequently held not to apply to this matter but which at the time in question were consistently applied by the national administrative authorities in accordance with the criteria laid down in ministerial circulars and instructions and, on the other hand, in compliance with the interpretation of the Community provisions followed by the administrative organs of the Community and by the national courts but subsequently disregarded by the Court of Justice?

4. If the reply to Question 1 is in the negative, does the provision contained in Article 7 of the above-mentioned regulation extend to payments required subsequent to its entry into force, in connection with recoveries in respect of payments made at a rate lower than the amount legally due, in the circumstances described at 3, above, prior to 1 July 1980?"

4 The first and fourth questions are, in substance, identical to those referred to the Court by the Corte Suprema di Cassazione [Supreme Court of Cassation] in 1980, which are the subject of the Court's judgment of 12 November 1981 (Joined Cases 212 and 217/80, *Amministrazione delle Finanze dello Stato* v *Salumi and Others* [1981] ECR 2735).

5 In that judgment, the Court came to the conclusion that Regulation No 1697/79 relates only to imports and exports in respect of which payments of duties were made on or after 1 July 1980.

6 The answer to the first and fourth questions must therefore be that Council Regulation No 1697/79 of 24 July 1979 does not apply to payments of import or export duties made before 1 July 1980.

7 Therefore the second and third questions, which were put only in the event of the first question's being answered in the affirmative, do not require to be answered.

Costs

8 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the action pending before the national court, the costs are a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the Tribunale Civile e Penale, Florence, by order dated 25 November 1981, hereby rules:

Council Regulation No 1697/79 of 24 November 1979 does not apply to payments of import or export duties made before 1 July 1980.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 9 December 1982.

P. Heim
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 11 NOVEMBER 1982 [1]

Mr President,
Members of the Court,

1. The questions which were referred to the Court on 5 March 1982 by the Tribunale Civile e Penale, Florence, pursuant to an order issued on 25 November 1981, again raise the issue of the post-clearance recovery of import duties which were not charged on goods entered for a customs procedure involving the obligation to pay them.

2. The circumstances giving rise to the dispute between the company known as Italgrani and the Italian customs authorities are as follows:

In November 1972 the company made a declaration to the customs authorities at Leghorn (Livorno) that it intended to import a consignment of wheat from a non-member country. The declaration was accepted by the authorities on 8 November 1972, but the goods were not removed from the customs until after that date, in batches spread over a period of time.

Initially, the customs authorities applied the agricultural levy at the rate ruling on the dates when the goods were removed. However, on 11 July 1977 they demanded payment from the importing company of the sum of LIT 5 901 035, plus interest, representing the difference between the rate ruling on the day when the import declaration was accepted and the rate ruling when the goods were removed.

In so doing, the customs authorities were merely abiding by the Court's judgment of 15 June 1976 in *Frecassetti* [2], in which

1 — Translated from the French.

2 — Case 113/75 *Frecassetti*, [1976] ECR 983.