Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

15 November 2012*

(Agriculture — Regulation (EEC) No 1443/82 — Article 3(4) — Application of the quota system in the sugar sector — Surplus quantity of sugar found by the national authorities of a Member State during an a posteriori investigation carried out at the producer's premises — Whether that surplus is to be taken into account when establishing the final production figures for the marketing year during which the difference came to light)

In Case C-131/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Germany), made by decision of 8 March 2011, received at the Court on 17 March 2011, in the proceedings

Pfeifer & Langen KG

v

Hauptzollamt Aachen,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, M. Ilešič, M. Safjan (Rapporteur) and M. Berger, Judges,

Advocate General: E. Sharpston,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 9 February 2012,

after considering the observations submitted on behalf of:

— Pfeifer & Langen KG, by D. Ehle and C.M. Hagemann, Rechtsanwälte,

— the Hauptzollamt Aachen, by M. Lambertz and R.-M. Gleim-Arnold, acting as Agents,

— the European Commission, by P. Rossi and B. Schima, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2012,

gives the following

* Language of the case: German.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(4) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector (OJ 1982 L 158, p.17; corrigendum OJ 1982 L 169, p. 39), as amended by Commission Regulation (EC) No 392/94 of 23 February 1994 (OJ 1994 L 53, p. 7) ('Regulation No 1443/82').

2 The reference was made in proceedings between Pfeifer & Langen KG ('Pfeifer & Langen') and the Hauptzollamt Aachen (Principal Customs Office, Aachen) concerning a surplus quantity of sugar found by the German authorities during an a posteriori inspection at the producer's premises and the marketing year to which that surplus should be attributed.

Legal context

3 Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Commission Regulation (EC) No 1148/98 of 2 June 1998 (OJ 1998 L 159, p. 38) ('the basic regulation'), sought, in the context of the common organisation of the markets in the sugar sector ('the COM in sugar'), to maintain the necessary guarantees in respect of employment and standards of living for producers of basic products, including sugar manufacturers, in the European Community and to ensure the continuous supply of sugar to all consumers at reasonable prices by stabilising the sugar market.

4 Accordingly, the basic regulation regulated the production, import and export of sugar. In particular, it introduced a system of production quotas to be allocated to undertakings, which, according to the 15th recital in its preamble, constituted a means of guaranteeing producers Community prices and an outlet for their production.

5 Under the quota system, each Member State was allocated, inter alia, a basic quantity for national production for each marketing year (that is to say, from 1 July in one year until 30 June in the following year). That quantity was shared out, within each Member State and on the basis of criteria laid down by the basic regulation, between sugar producers in the form of A and B production quotas.

6 The second subparagraph of Article 24(1) of the basic regulation provided as follows:

'For the purposes of this Regulation:

(a) "A sugar" ... mean[s] any quantity of sugar ... the production of which is attributable to a specific marketing year and which is produced by the undertaking concerned within its A quota;

(b) "B sugar" ... mean[s] any quantity of sugar ... the production of which is attributable to a specific marketing year and which is produced by the undertaking concerned outside its A quota but within the sum of its A and B quotas;

(c) "C sugar" ... mean[s] any quantity of sugar the production of which is attributable to a specific marketing year and which is produced either by the undertaking concerned outside the sum of its A and B quotas or by an undertaking which has no quota.'

7 A quota sugar, which represented consumption within the Community, could be freely marketed within the common market and its disposal was guaranteed by the intervention price. B quota sugar could also be freely marketed within the common market, albeit without an intervention price guarantee, or exported to non-member countries with export aid. C quota sugar was not eligible for the price support mechanism or for the export refund mechanism.

8 As the COM in sugar was based on a self-financing system, the costs of export refunds were financed by a production levy, although no charges were levied in respect of C sugar production. Moreover, C sugar had to be exported from the Community for sale on the world market.

9 In that regard, Article 26 of the basic regulation was worded as follows:

'1. … C sugar which is not carried forward pursuant to Article 27 … may not be disposed of on the Community's internal market and must be exported in the natural state before 1 January following the end of the marketing year in question.

...

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 41.

These rules shall provide, in particular, for the levying of a charge on the C sugar … referred to in paragraph 1 in respect of which proof of its export in the natural state within the prescribed period was not furnished at a date to be determined.'

10 Article 27(1) and (2) of the basic regulation provided as follows:

'1. Each undertaking shall be free to decide to carry forward the whole or part of its sugar production outside its A quota to the next marketing year to be treated as part of that year's production. That decision shall be irrevocable.

...

2. Undertakings which take the decision referred to in paragraph 1 shall:

— inform the Member State concerned, before 1 February, of the quantity or quantities of sugar being carried forward, and

— undertake to store such quantity or quantities for a period of 12 consecutive months from a date to be determined. For this period, storage costs for C sugar carried forward and for A sugar and B sugar which have become carried-forward C sugar after application of Article 23(4a) shall also be reimbursed under Article 8.

...'

11 Article 27(3) of the basic regulation was worded as follows:

'Detailed rules for the application of this Article, which may fix a limit on the quantities of sugar allowed to be carried forward, shall be adopted in accordance with the procedure laid down in Article 41.

These rules shall provide, in particular, for a charge to be levied on any sugar comprising the quantity referred in the second indent of paragraph 2 which is disposed of during the prescribed period of storage.'

12 Article 28 of the basic regulation laid down the criteria for calculating production levies, in particular on the production of A and B sugar. Those levies were collected by the Member States.

13 Adopted on the basis of Article 26(3) of the basic regulation, Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EC) No 158/96 of 30 January 1996 (OJ 1996 L 24, p. 3) ('Regulation No 2670/81'), laid down the conditions under which C sugar was to be considered to have been exported.

14 Article 1(1) of Regulation No 2670/81 was worded as follows:

'The products referred to in Article 26(1) of [the basic] Regulation shall be considered to have been exported if:

(a) without prejudice to the other provisions of this Regulation, the proof referred to in Article 2 is in the possession of the competent agency of the Member State of production whichever the Member State of export of the C sugar … may have been;

(b) the export declaration in question is accepted by the Member State of export before 1 January following the end of the marketing year during which the C sugar … was produced;

(c) the C sugar … or a corresponding quantity within the meaning of Article 2(3) has left the customs territory of the Community not later than 60 days after the 1 January referred to in point (b);

(d) the product has been exported without either refund or levy as white sugar or raw sugar that has not been denatured … .

Except in cases of force majeure, if any of the conditions provided for in the first subparagraph are not fulfilled, the quantity of C sugar … concerned shall be considered to have been disposed of on the internal market.

In cases of force majeure, the competent agency of the Member State on whose territory the C sugar … was produced shall decide on the necessary measures on the basis of the circumstances cited by the party concerned.

Where the C sugar … is exported from the territory of a Member State other than that in which it has been produced, those measures shall be taken after receiving the opinion, where appropriate, of the competent authorities of that Member State.'

15 Article 3(1) of Regulation No 2670/81 provided as follows:

'The Member State concerned shall levy on quantities which, within the meaning of Article 1(1), have been disposed of on the internal market, a charge for C sugar per 100 kilograms of white or raw sugar as appropriate … equal to the sum of:

— the highest import charges applicable to the product concerned during the period comprising the marketing year during which the C sugar … concerned was produced and the six months following that marketing year

and

— [Euro] 1.21.'

16 Article 1(1) of Regulation No 1443/82 provided as follows:

‘For the purposes of Articles 26 to 29 of [the basic] Regulation, “sugar production” means the total quantity, expressed as white sugar, of:

(a) white sugar;

(b) raw sugar;

(c) invert sugar;

...’

17 Article 3 of Regulation No 1443/82 was worded as follows:

‘1. Before 15 February of each year Member States shall establish provisional sugar production figures for the current marketing year for each undertaking situated on their territories.

...

3. Before 1 October of each year Member States shall establish final figures for sugar … production by each undertaking in the preceding marketing year.

4. Where differences are found after the establishment of final production figures for the sugar referred to in paragraph 3, such differences shall be taken into account when final production figures are established for the marketing year in which the differences were found.’

18 Article 4 of Regulation No 1443/82 provided as follows:

‘1. For the purposes of Articles 26 to 29 of [the basic] Regulation and without prejudice to the following paragraphs, the sugar … production of an undertaking means the quantity of sugar … actually manufactured by that undertaking.

2. For a given marketing year, total sugar production shall be the production referred to in paragraph 1 plus the quantity carried over to that marketing year and minus the quantity carried over to the following marketing year.’

19 Article 23 of Council Regulation No 1009/67/EEC of 18 December 1967 on the common organisation of the markets in sugar (OJ, English Special Edition 1967, p. 304) provided as follows:

‘1. The Member States shall fix a basic quota either for each factory or for each undertaking producing sugar within its territory. Without prejudice to the provisions laid down in paragraphs 3 and 4, the basic quota shall be determined by multiplying the average annual sugar production of the factory or undertaking concerned during the 1961/1962 to 1965/1966 marketing years by a coefficient expressing the ratio of the Member’s States basic quantity to the average annual sugar production of that State during the same period.

The basic quantities shall be as follows:

Germany: 1 750 000 tonnes of white sugar;

France: 2 400 000 tonnes of white sugar;

Italy: 1 230 000 tonnes of white sugar;

The Netherlands: 550 000 tonnes of white sugar;

Belgium-Luxembourg: 550 000 tonnes of white sugar.

2. Where a Member State fixes basic quotas by reference to undertakings, it shall adopt the measures necessary to take account of the interests of sugar beet producers and sugar cane producers.

3. The Council, acting on a proposal from the Commission, in accordance with the voting procedure laid down in Article 43(2) of the Treaty, shall adopt the general rules for the implementation of paragraph 1 and any derogation from its provisions.

4. Should detailed rules for the implementation of this Article be necessary, such rules shall be adopted in accordance with the procedure laid down in Article 40.'

20 Regulation No 1009/67 was repealed by Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organisation of the market in sugar (OJ 1974 L 359, p. 1).

21 The basic regulation was repealed and replaced by Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1).

22 Regulation No 2670/81 was repealed and replaced by Commission Regulation (EC) No 967/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards sugar production in excess of the quota (OJ 2006 L 176, p. 22).

23 Regulation No 1443/82 was repealed and replaced by Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40).

24 Nevertheless, in view of the time at which the events in question occurred, the present case remains governed by the basic regulation and by Regulations Nos 2670/81 and 1443/82.

The dispute in the main proceedings and the question referred for a preliminary ruling

25 It is apparent from the order for reference that Pfeifer & Langen manufactures sugar in its factories in Elsdorf, Euskirchen, Appeldorn and Lage (Germany).

26 In response to that undertaking's declaration of 8 September 1998, the Hauptzollamt Köln-West (Principal Customs Office, Cologne West) established its final sugar production figure for the 1997/98 marketing year by decision of 25 September 1998.

27 On 4 November 1999, the Hauptzollamt für Prüfungen Köln (Principal Customs Office for Inspections, Cologne) began an inspection at Pfeifer & Langen's premises. On 16 January 2003, the Hauptzollamt Krefeld (Principal Customs Office, Krefeld) resumed the inspection, which related inter alia to the sugar production levy for the 1997/98 marketing year.

28 In their report of 9 May 2006, the inspectors indicated that they had discovered surplus amounts that were not recorded on Pfeifer & Langen's declaration. Consequently, by decision of 28 December 2006, the Hauptzollamt Aachen found that Pfeifer & Langen had produced a surplus quantity equivalent to 9 657.4 tonnes of white sugar for the 1997/98 marketing year. By further decision of the same date, the Hauptzollamt Aachen imposed a C sugar levy of EUR 5 810 857.58 on Pfeifer & Langen in respect of the surplus production.

29 Pfeifer & Langen challenged those decisions, arguing inter alia that it was not possible, under Article 3(4) of Regulation No 1443/82, to attribute the purported surplus production to the 1997/98 marketing year as it had not come to light before 1 October 1998.

30 By decision of 27 April 2010, the Hauptzollamt Aachen dismissed Pfeifer & Langen's objections on the ground, inter alia, that the surplus production established had been correctly attributed to the 1997/98 marketing year, since Article 3(4) of Regulation No 1443/82 could be applied only in respect of the production figures declared by the manufacturer. Undeclared surplus production quantities established a posteriori were to be attributed to the marketing year in which such quantities were produced.

31 Moreover, also by decision of 27 April 2010, the Hauptzollamt Aachen amended its decision of 28 December 2006, establishing a surplus production figure of 6 922,1 tonnes for the 1997/98 marketing year. By further decision that day, it amended its levy decision of 28 December 2006, imposing on Pfeifer & Langen a production levy of EUR 4 165 027.57.

32 At the hearing, Pfeifer & Langen stated that that surplus represented 1.4% of its total sugar production for the 1997/98 marketing year.

33 Pfeifer & Langen appealed against that decision before the Finanzgericht Düsseldorf.

34 According to that court, the resolution of the dispute before it depends on whether the sugar surplus established after the end of the 1997/98 marketing year, in the course of the investigation conducted at Pfeifer & Langen's premises, is to be attributed to that marketing year or to a subsequent marketing year.

35 In that regard, the referring court states that Article 3(4) of Regulation No 1443/82 is consistent with the judgment in Case 159/73 *Hannoversche Zucker* [1974] ECR 121, paragraph 6, but that that judgment concerned surplus quantities produced before the entry into force of the COM in sugar, which is not the case in the main proceedings.

36 Moreover, the referring court points out that, under the basic regulation, the production quotas allocated to undertakings are based on the quantities produced in the course of a marketing year. If Article 3(4) of Regulation No 1443/82 were applied to surplus quantities of sugar established after the expiry of a marketing year, that would necessitate the carrying forward of those quantities to a subsequent marketing year. In those circumstances, the referring court entertains doubts as to whether that interpretation is compatible with the production quotas system.

37 It is in those circumstances that the Finanzgericht Düsseldorf decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 3(4) of Regulation No 1443/82 be interpreted as extending also to the additional quantities subsequently found by the authorities in the context of an inspection at the producer's premises?'

Consideration of the question referred

38 By its question, the Finanzgericht Düsseldorf asks, in essence, whether Article 3(4) of Regulation No 1443/82 must be interpreted as being applicable in a situation in which a surplus quantity of sugar has been found by the national authorities in the context of an a posteriori investigation carried out at the producer's premises.

39 As a preliminary point, it should be noted that a marketing year was from 1 July of one year until 30 June of the following year. The Member States were required, under Article 3(1) of Regulation No 1443/82, to establish, before 15 February each year, provisional sugar production figures for the current marketing year for each undertaking situated in their territories. They were then required, pursuant to Article 3(3) of that regulation, to establish, before 1 October each year, final figures for sugar production by each undertaking in the preceding marketing year.

40 Article 3(4) of Regulation No 1443/82 provided that where differences are found after the establishment of final production figures, 'such differences shall be taken into account when final production figures are established for the marketing year in which the differences were found'.

41 That provision, with which the question referred is concerned, is drafted in the same terms as Article 2(3) of Commission Regulation (EEC) No 700/73 of 12 March 1973 laying down certain detailed rules for the application of the quota system for sugar (OJ 1973 L 67, p. 12). It should be noted that in *Hannoversche Zucker* the Court referred to Article 2(3) of Regulation No 700/73.

42 The case which gave rise to that judgment concerned a surplus quantity of sugar which came to light in the course of an official stocktaking after 1 July 1968 – the date on which the COM in sugar came into force – but arose before that date.

43 As the Court observed at paragraph 3 of *Hannoversche Zucker*, the question referred was whether that surplus was to be attributed, for the purpose of the calculation of the production levy, to the period before the COM in sugar came into force, to the first sugar marketing year under the system established by that organisation, or to the marketing year during which it was discovered.

44 The Court stated inter alia in that regard, at paragraph 5 of that judgment, that the technical conditions for stocking sugar are such that stocktaking can take place only at intervals of several years and, in practice, it would be difficult to determine precisely the actual production year of any surplus found by reference to the stocks calculated on the basis of the producer's accounting records.

45 The Court added, in that paragraph, that the attribution of a surplus to a previous sugar marketing year would make it necessary to amend the final production figures established for that marketing year not only for the individual undertaking but also for the Member State concerned and the whole of the Community and that such an amendment, by reason of the retroactive consequences for the calculation of the production quotas and levies to be imposed in respect of the surplus production, would involve administrative complications out of all proportion to the result sought.

46 The Court concluded, at paragraph 6 of that judgment, that in those circumstances, the reply to the questions referred had to be to the effect – formally adopted by Regulation No 700/73 with effect from 15 March 1973 – that a difference which comes to light after the final production figures have been established must be treated as arising during the marketing year in which it was ascertained.

47 However, the circumstances of the present case are different from those in the case which gave rise to the judgment in *Hannoversche Zucker*, in so far as the sugar surplus identified in that case related to sugar production that did not exceed the quota established by the regulation then in force, namely Article 23 of Regulation No 1009/67. In essence, that quota corresponded to the total amount of the 'A sugar' and 'B sugar' quotas laid down in the basic regulation.

48 It is common ground that the sugar surplus identified in the main proceedings is C sugar within the meaning of Article 24(1)(a) of the basic regulation, not A or B sugar. Moreover, that is not disputed by any of the persons referred to in Article 23 of the Statute of the Court of Justice of the European Union who have submitted observations to the Court.

49 Consequently, while the solution adopted by the Court in *Hannoversche Zucker* remains valid as regards the establishment of the final production figures for sugar covered by the A and B quotas, it is necessary to determine whether Article 3(4) of Regulation No 1443/82 is also applicable in a situation in which the additional quantity of sugar found by the national authorities in the context of an a posteriori investigation carried out at the producer's premises constitutes C sugar.

50 It must be noted in that regard that there is nothing in the wording of Article 3(4) of Regulation No 1443/82 to suggest that the substantive scope of that provision should be limited to A and B sugar.

51 However, that provision must be interpreted in the light of the overall scheme and objectives of EU legislation on the COM in sugar.

52 Account must be taken of the fact that the basic regulation introduced a specific system for the treatment of surpluses constituting C sugar. Under that system, a sugar producer who exceeded his A and B quotas and therefore possessed a quantity of C sugar had two options as regards the C sugar.

53 First, he was entitled, as provided for in Article 26(1) of the basic regulation, to export the C sugar before 1 January following the end of the marketing year in question. If no proof was furnished that such sugar had been exported within the prescribed period, the producer was required to pay the charge referred to in Article 26(3) of the regulation.

54 Second, under Article 27(1) and (2) of the basic regulation, the producer could elect to carry that quantity of sugar forward to the next marketing year and was required to inform the Member State concerned of this before 1 February. If a certain quantity of the sugar which had thus been carried forward was disposed of on the internal market during the prescribed period of storage, a charge was also levied on the quantity of sugar disposed of.

55 It follows that by 1 January and 1 February, respectively, the status of surpluses constituting C sugar had to be established with certainty.

56 Any interpretation of Article 3(4) of the basic regulation by which it was possible to attribute such sugar surpluses to the marketing year during which they came to light would have undermined the objective of the C sugar system, which was to prevent such sugar being disposed of on the internal market.

57 Indeed, if it had been possible, under Article 3(4) of Regulation No 1443/82, for C sugar, in the same was as A and B sugar, to be taken into account when establishing the final production figures for the marketing year during which the difference was discovered, producers would have had no incentive to export such sugar surpluses or to declare them and carry them forward to the next marketing year. Thus, the possibility could not have been ruled out that producers might retain indefinitely the same sugar surpluses, which could be perpetually attributed to the marketing year during which they came to light, even though the sugar was in actual fact being carried forward from an earlier marketing year.

58 Such a situation would not only have precluded any effective control of the marketing of C sugar but would also have infringed Article 27(3) of the basic regulation, which provided that the quantities of sugar allowed to be carried forward could be limited.

59 As regards the argument put forward by the Hauptzollamt Aachen that Article 3(4) of Regulation No 1443/82 was applicable only if the producer was unaware of the existence of the surplus at the time when he submitted his final figures for sugar production, it must be noted that, setting aside the difficulty entailed in substantiating such a claim, a prudent trader aware of the rules must, in his assessment of the benefits which trading in sugar may confer, take account of the risks associated

with the production of such goods, in particular the difficulty of identifying with any degree of certainty the quantity of sugar produced, and accept them as normal trade risks inherent in such production.

60 It should also be noted that the system applicable to C sugar established by the legislation in question is based on objective criteria and is applicable irrespective of any fraudulent intent on the part of the producer. Accordingly, the charges to be levied in accordance with Article 26(3) of the basic regulation where C sugar was not exported within the period prescribed in Article 26(1) of that regulation, or where such sugar was placed on the domestic market, had to be imposed irrespective of any fraudulent conduct on the part of the producer.

61 It follows from the foregoing that the scope of Article 3(4) of Regulation No 1443/82 cannot be extended to C sugar.

62 Consequently, the answer to the question referred is that Article 3(4) of Regulation No 1443/82 must be interpreted as not being applicable in a situation in which a surplus quantity of sugar has been found by the national authorities in the context of an a posteriori investigation carried out at the producer's premises if the surplus quantity constitutes C sugar.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 3(4) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector, as amended by Commission Regulation (EC) No 392/94 of 23 February 1994, must be interpreted as not being applicable in a situation in which a surplus quantity of sugar has been found by the national authorities in the context of an a posteriori investigation carried out at the producer's premises if the surplus quantity constitutes C sugar.

[Signatures]