JUDGMENT OF THE COURT (Third Chamber)
15 May 1986 *

In Case 160/84

Oryzomyli Kavallas OEE, a partnership governed by Greek law, whose registered office is at 4 Odos Panagouda, Kavala

and

Oryzomyli Agiou Konstantinou, G. Raptis — L. Triandafyllidis kai Sia OE, a partnership governed by Greek law, whose registered office is in Pernis, Kavala, represented by Panagiotis Marinos Bernitsas, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 27 place de Paris, L-2341 Luxembourg,

applicants,

v

Commission of the European Communities, rue de la Loi 200, B-1049 Brussels, represented by Xenophon Yataganas, a member of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision No E(84) 557 of 25 April 1984, finding that remission of import duties is not justified in the applicants' case, is void,

* Language of the Case: Greek.

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: K. Riechenberg, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 13 March 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Regisry on 25 June 1984 Oryzomyli Kavallas OEE, whose registered office is in Kavala, and Oryzomyli Agiou Konstantinou, whose registered office is in Pernis, Kavala, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the Commission Decision of 25 April 1984, adopted following applications made by the applicants to their national authorities for the remission of import duties and an application to that end submitted to the Commission by the Ministry of Finance of the Hellenic Republic, is void.

2 On 26 August 1981, the applicant companies, in order to import from non-member countries consignments of rice amounting to 1 000 tonnes in all, asked the competent sections of the Greek Ministry of Agriculture to indicate to them the rate of levy chargeable upon importation. The reply they received was that the rate was DR 381 per tonne on that day and that importation was subject to submission of an application and the lodging of a bank guarantee in order to obtain the import licence necessary to clear the goods in question through customs.

3 On 27 August 1981, the applicant companies submitted to the competent Greek authorities two applications for import licences and lodged the required bank guarantees. The licences were issued to them on 28 August 1981.

4 When the rice was actually imported at the end of September 1981, the competent customs office informed the applicants that the rate of levy upon importation was no longer DR 381 per tonne, but DR 3 811 per tonne, since the applicants had submitted ordinary import licences which did not provide for advance fixing of the levy. Under those circumstances, the applicants preferred to place the rice in a customs warehouse.

5 The applicants immediately applied to the Ministry of Agriculture for the issue *a posteriori* of advance fixing certificates at a rate of DR 381 per tonne and the rectification of the import licences originally issued. In support of that application, they claim that at the time when the application form for the import licences was presented to them on 27 August 1981, they were unaware of the meaning of the expression 'advance fixing requested' and could obtain no enlightenment on that point from the competent official. It was ultimately the latter who filled in in their place the relevant part of the form and thus determined that the import licences issued did not provide for advance fixing. A considerable exchange of correspondence resulted between the administration and the applicant companies, who were unable to obtain satisfaction, however.

6 On the expiry of the time-limit beyond which the goods could no longer be kept in the customs warehouse, that is to say, on 27 September 1983, two years after they had been placed there, the applicants cleard the rice in question through customs. On that date, the rate of levy on importation was DR 11 487.54 per tonne, that is to say, 30 times what it had been in August 1981. The applicants therefore applied for remission of that part of the levy exceeding the amount resulting from the application of a rate of DR 381 per tonne, which was the rate which had been in force on 26 August 1981 (that is to say, DR 11 452 296 minus DR 379 832 = DR 11 072 464), arguing that they had been unaware of the Community provisions applicable in Greece since 1 January 1981 and complaining of the conduct of the competent administrative services.

7 On 30 November 1983, the Greek Ministry of Finance, in an application submitted to the Commission under Article 13 of Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal

L 175, p. 1) as amended by Council Regulation No 1672/82 of 24 June 1982 (Official Journal L 186, p. 1) for the remission of an amount of DR 11 072 464 and for a decision of the Commission authorizing such a remission. In its application, the Ministry of Finance stated that the conduct of the undertakings involved revealed no negligence or deception and that it was clear that the competent section of the Ministry of Agriculture had not noticed the difference between an ordinary import licence and an advance fixing certificate.

8 The Commission rejected that application in a decision of 25 April 1984, against which the applicant companies brought the present action, along with an application for suspension of the decision. By order of 16 July 1984, the President of the Court granted the application to suspend the decision, and by order of 24 October 1984 that suspension was extended until the Court had delivered judgment.

9 Article 13 of Council Regulation No 1430/79 of 2 July 1979, as amended by Council Regulation No 1672/82 of 24 June 1982, provides that 'import duties may be repaid or remitted in situations other than those referred to in Sections A to D which result from special circumstances in which no negligence or deception may be attributed to the person concerned . . . '.

10 The applicants draw the Court's attention generally to its judgment of 15 December 1983 (Case 283/82 *Papierfabrik Schoellershammer H. A. Schoeller* v *Commission* [1983] ECR 4219) in which the Court held that Article 13 constituted a 'general equitable provision', and argue that it should be applied in the present case. They claim that the conditions for establishing the existence of special circumstances and the absence of negligence or deception have been fulfilled. Without indicating that there was any deception on the part of the applicants, the Commission considers that there were no special circumstances in this case and that the applicants were negligent to a degree which made any remission of duty impossible.

The existence of special circumstances

11 The applicants rely in particular on the circumstances that the application for import licences was submitted in the very first months of Greek membership of the

European Economic Community, that, at that time, the regulations governing agricultural imports were not yet available in Greek, that, in order to apply those regulations, officials were obliged to work on the basis of provisional and uncertain translations intended for purely internal use, that the terms used in the form filled in by the applicants did not make it possible to determine the exact meaning of advance fixing and that the competent section of the Ministry of Agriculture was unable to provide them with useful information on that point.

12 The Commission, on the other hand, denies the existence of special circumstances and contends that all the necessary Community regulations had been translated into Greek and were available from the very first days of Greek membership, both to government departments and to individuals who might wish to consult them. It adds that the meaning of the regulations establishing a levy on agricultural imports is perfectly clear and could not give rise to any confusion. The same is true for the terms in which the application form for import licences is drafted. The Commission considers that the argument to the effect that the affair took place during the first months of Greek membership is unacceptable, particularly in regard to the implementation of the machinery of the common agricultural policy.

13 It must be observed that from the time at which a new Member State joins the European Economic Community, traders in that State are immediately subject to Community rules under the conditions laid down in the Act of Accession. The fact that the contested importation took place during the first months following the accession of Greece and was the first transaction of this type carried out by the applicants under Community law may not, of itself, be relied upon in support of an application for remission of duties submitted under Article 13 of Regulation No 1430/79.

14 In order to verify the facts relied upon by the applicants, the Court (Third Chamber), by order of 14 February 1985, issued letters rogatory for the hearing by the competent Greek judicial authority of four witnesses, officials in the various Greek administrative services which dealt with the affair. The evidence obtained pursuant to that order was received at the Court Registry on 19 November 1985.

15 It can be seen from the evidence heard in the context of the letters rogatory that when the undertakings submitted their application for import licences they encountered serious difficulties by reason of the following circumstances:

(i) they did not have available to them the Greek language text of the applicable regulations;

(ii) even the competent section of the Ministry of Agriculture had not received the Greek language edition of the Official Journal of the European Communities and used texts in other language versions or translations made by Greek officials and intended for internal use;

(iii) no instructions or circulars had been issued explaining to the officials in those sections the basic principles of the Community rules;

(iv) the applicants, by virtue of the absence of the head of the licensing section of the Foreign Trade Section, who understood the difference between a simple import licence and an advance fixing certificate, were received by a newly-appointed official who did not have the experience to explain that difference.

16 It must therefore be considered that those highly exceptional factors, taken together, constitute 'special circumstances' within the meaning of Article 13 of Regulation No 1430/79.

The absence of negligence

17 The applicants claim that they were led into error by the official of the Ministry of Agriculture, who himself filled in the relevant part of the form, even though he was unaware of the difference between a simple licence and an advance fixing certificate. Even if the applicants made a mistake of law in confusing a simple import licence with an advance fixing certificate, that mistake is wholly excusable having regard to the special circumstances considered above. Moreover, once they became aware that the import levy had increased tenfold, the applicants placed the rice in a customs warehouse with a view to reaching an agreement with the Ministry of Agriculture. The remission of duty which they seek is intended merely to compensate them for the damage which they have suffered by virtue of the lack of knowledge of the officials of the ministry.

18 On the other hand, the Commission considers that the applicants' ignorance of the provisions of Community law undoubtedly constitutes negligence because it is hard to imagine that commercial companies engaging in international trade could be unaware of the legislation governing their activities. The Commission considers that in this case the Greek authorities are not guilty of any error. It also contends that by failing to re-export the rice immediately or to put it into free circulation the applicants aggravated the damage they suffered. If they did not wish to assume the commercial risk resulting from changes in the rate of the import levy, they should have cleared the rice through customs not later than the date of arrival of the ship (September 1981), rather than placing it in a customs warehouse for such a long period.

19 It must be pointed out that relatively small companies, whose registered office is situated several hundred kilometres from Athens, where the import formalities in question had to be carried out, and which were unable to obtain the Greek language version of the applicable Community regulations and were, moreover, faced with the series of special circumstances set out above, cannot reasonably be expected to take any steps other than those which they actually did take in order to obtain information as to the exact meaning of the expression 'advance fixing'.

20 Moreover, the applicant companies also cannot be criticized for not having placed the imported rice in free circulation as soon as it arrived in order to limit the extent of the damage suffered. It can be seen from the documents in the case that the explanation for their conduct is to be found in the hope, which they entertained in all good faith, that they would be able to reach an agreement with the Greek administration which would permit them to pay only the rate of levy in force on the day on which they submitted their application for a licence and not in any speculative intention, which, moreover, the state of the world market did not encourage them to hold.

21 It must therefore be decided that in this case the conduct of the applicants, faced with the special circumstances set out above, did not in any way constitute negligence. The conditions required for the application of Article 13 of Regulation No 1430/79 were therefore fulfilled, and consequently the contested decision should be declared void.

Costs

22 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Declares that the Commission Decision of 25 April 1984 addressed to the Hellenic Republic and finding that the remission of import duties in the applicants' case is not justified, is void;

(2) Orders the Commission to pay the costs.

Everling Galmot Moitinho de Almeida

Delivered in open court in Luxembourg on 15 May 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber