JUDGMENT OF THE COURT (Third Chamber)

3 May 2001 *

In Case C-190/00,

REFERENCE to the Court under Article 234 EC by the Cour d'appel de Paris (France) for a preliminary ruling in the criminal proceedings pending before that court against

Édouard Balguerie and Others

and

Société Balguerie and Others, liable in a civil capacity,

on the interpretation of Commission Regulation (EEC) No 4142/87 of 9 December 1987 determining the conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use (OJ 1987 L 387 p. 81),

* Language of the case: French.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, F. Macken (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Balguerie and Others and Société Balguerie and Others, by Y. and M. Famchon, avocats,

— the French Government, by R. Abraham and C. Vasak, acting as Agents,

— the Commission of the European Communities, by R. Tricot, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 8 February 2001,

gives the following

Judgment

1 By judgment of 15 May 2000, received at the Court on 23 May 2000, the Cour d'appel de Paris referred to the Court for a preliminary ruling under Article 234a EC a question on the interpretation of Commission Regulation (EEC) No 4142/87 of 9 December 1987 determining the conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use (OJ 1987 L 387 p. 81).

2 That question was raised in the context of criminal proceedings against Mr Mercier, as manager of Orkos Diffusion SARL, Mr Thomas, as chairman of the board of Société Balguerie, and Mr Balguerie, as the person vested with the legal representation of Pillet & Cie (hereinafter referred to jointly as 'Mr Balguerie and Others') and Orkos Diffusion SARL, Société Balguerie and Pillet & Cie (hereinafter referred to jointly as 'Société Balguerie and Others'), being liable in a civil capacity, who are alleged to have committed the offence of undeclared importation of prohibited goods.

Community provisions

3 Article 1 of Regulation No 4142/87 states that the purpose of the regulation is to determine the conditions to be applied to the admission of goods put into free circulation under a favourable tariff arrangement by reason of their end-use.

4 Article 3 of Regulation No 4142/87 provides:

'1. The benefit of the tariff arrangement referred to in Article 1 shall be conditional upon the granting by the competent authorities of the Member State in which the goods are declared for entry into free circulation, of a written authorisation to the person importing those goods into free circulation or having them so imported.

2. Without prejudice to the provisions of the following Articles, the granting of the authorisation provided for in paragraph 1 shall impose an obligation to:

(a) put the goods to the prescribed end-use;

(b) pay the amount of uncollected import duties if the goods are not put to the prescribed end-use;

(c) keep records such as to enable the competent authorities to carry out any checks which they consider necessary to ensure that the goods are put to the prescribed end-use, and to preserve such records for such period as is required under the relevant provisions in force;

(d) permit inspection of the records provided for in subparagraph (c); and

(e) submit to any other measure of control which the competent authorities may deem appropriate to check the actual use of the goods and provide any information required for that purpose.

3. The competent authorities may withhold the authorisation from persons unable to offer the safeguards considered necessary.

4. The granting of the authorisation may be subject to the provision of security fixed by the competent authorities.'

5 Article 6(1) of Regulation No 4142/87 states that the amount of uncollected import duties is to be paid where the goods have not been put to the prescribed end-use. Article 6(2) provides that waste and scrap which result in particular from the processing of the goods, together with losses due to natural causes, are to be regarded as goods having been put to the end-use.

6 As regards specifically the goods at issue in the main proceedings, Council Regulation (EEC) No 1517/91 of 31 May 1991 temporarily suspending the autonomous Common Customs Tariff duties on a number of agricultural products (OJ 1991 L 142, p. 7), provides that the autonomous Common Customs Tariff duties for '[d]ates, fresh or dried, for packing for retail sale into immediate packings of a net content not exceeding 11 kg' are suspended from 1 July 1991 to 30 June 1992.

7 That suspension was extended for the period from 1 July 1992 to 30 June 1993 by Council Regulation (EEC) No 1431/92 of 26 May 1992 (OJ 1992 L 151, p. 1) and for the period from 1 July 1993 to 30 June 1994 by Council Regulation (EEC) No 1421/93 of 7 June 1993 (OJ 1993 L 140, p. 6).

8 The first and second recitals in the preamble to Regulations Nos 1517/91, 1431/92 and 1421/93 state that 'production in the Community of the products specified in this Regulation is currently inadequate or non-existent [and] ... producers thus cannot meet the needs of user industries in the Community', so that 'it is in the interest of the Community to suspend the autonomous Common Customs Tariff duties ... in [such] cases ... totally'.

The main proceedings

9 Between 12 December 1991 and 27 April 1994, Orkos Diffusion, which is engaged in the importation and resale, following repacking, of exotic fruits, imported dates from the United States of America, delivered in boxes measuring 36 cm by 42 cm and weighing 15 pounds (7.5 kg). The customs declarations for those imports were made by the customs agents Pillet & Cie and Balguerie, acting for Orkos Diffusion.

10 The goods at issue were imported into France under tariff headings 0804 10 00 222 OY (in 1991 and 1992) and under headings 0804 10 00 022 OM and 0804 10 00 012 OC (in 1993 and 1994), covering '[d]ates, fresh or dried, for packing for retail sale into immediate packings of a net content of 11 kg or less'.

11 The dates were therefore eligible for suspension of customs duties and VAT was charged at the reduced rate of 5.5%.

12 Between 19 October 1994 and 11 August 1995, staff of the Direction nationale du renseignement et des enquêtes douanières (National Directorate for Intelligence and Customs Investigations) carried out a check on those imports, which established that the dates in question should have been declared under headings 0804 10 00 223 9E (in 1991 and 1992) and 0804 10 00 013 9R or 0804 10 00 023 9N (in 1993 and 1994), which cover 'dates, fresh or dried, in immediate packings of a net content of 35 kg or less', which should have been subject to customs duty of 12%.

13 When the matter was brought before it by Mr Mercier, pursuant to Article 450 of the French Customs Code, the Commission de conciliation et d'expertise douanière (Commission for Customs Arbitration and Expertise), on 27 February 1996, declared itself incompetent on the ground that 'the dispute to be resolved does not relate to the nature or improper use of a tariff heading but concerns rather the interpretation of Community regulations which determine how goods should be packed for export or import'.

14 The Customs Administration therefore brought proceedings against Mr Balguerie and Others and Société Balguerie and Others before the Tribunal de grande instance de Melun (Regional Court, Melun) (France) in order, first, to secure their conviction for the offence of making false declarations or engaging in deceitful practices having as their object or effect to secure an exemption or some other advantage relating to the import of dates and, second, an order for payment of the duties which had been evaded.

15 By judgment of 8 March 1999 that court found Mr Balguerie and Others guilty of the offence of which they were charged and ordered them jointly and severally with Société Balguerie and Others to pay FRF 288 563 in respect of evaded duties

and taxes. It held that as regards retail sale in immediate packings of a net content of 11 kg or less there was no need for the defendants in the main proceedings to repack the goods. It also noted that the stock records had not been produced on the day on which the inspection was carried out.

16 The defendants in the main proceedings appealed against that decision to the Cour d'appel de Paris.

17 The Cour d'appel found that it was common ground between the parties that the imports at issue came within the scope of Regulation No 4142/87, as amended by Commission Regulation (EEC) No 3803/92 of 23 December 1992 (OJ 1992 L 384, p. 15).

18 It noted that the Customs Administration, apart from the issue of the failure to produce the stock records at the time of the initial demand, claimed that the tariff exemption arrangement at issue in the main proceedings precluded the import of dates packed in original packings of a content of 11 kg or less, whereas the defendants in the main proceedings argued that such imports could qualify for the benefit of that arrangement since the dates were repacked, after sorting and quality control, into packings with a content which complied with the rules concerning the prescribed end-use.

19 It was in those circumstances that the Cour d'appel decided to stay proceedings and refer the case to the Court of Justice for a ruling on the question whether 'Commission Regulation No 4142/87 of 9 December 1987 and the conditions imposed for its application in regard to imports of dates under the procedure for the suspension of customs duties by reason of the end-use of the goods preclude such goods being imported in original packings with a content of 11 kg or less'.

The question referred for a preliminary ruling

20 It is not disputed that the issue before the national court is whether, in order to be eligible for the exemption from duties provided for in Regulations Nos 1517/91, 1431/92 and 1421/93, dates must be imported in packings of a net content of more than 11 kg.

21 It should be noted that Regulation No 4142/87, Article 1 of which states that it determines the conditions to be applied to the admission of goods put into free circulation under a favourable tariff arrangement by reason of their end-use, does not itself, since it does not contain any specific provision to that effect, make clear whether dates for packing for retail sale into immediate packings of a net content not exceeding 11 kg must be imported in packings of a content exceeding 11 kg in order to be exempt from duties.

22 In order to resolve this issue it is necessary therefore to give an interpretation also of Regulations Nos 1517/91, 1431/92 and 1421/93, which provide that autonomous Common Customs Tariff duties for dates, fresh or dried, for packing for retail sale into immediate packings of a net content not exceeding 11 kg are suspended for certain specified periods.

23 The question referred for a preliminary ruling should therefore be understood as essentially seeking to ascertain whether Regulations Nos 4142/87, 1517/91, 1431/92 and 1421/93 preclude dates imported in original packings of a net content not exceeding 11 kg from being eligible for suspension of the autonomous Common Customs Tariff duties.

24 Mr Balguerie and Others contend that in order to be eligible for the tariff suspension at issue in the main proceedings, it is sufficient that dates, fresh or dried, should be for packing for retail sale into immediate packings of a net content of 11 kg or less.

25 They maintain that it is neither denied nor open to dispute that the dates at issue in the main proceedings were put up for retail sale in 7 kg boxes (50 cm by 30 cm) or in 1 kg plastic containers, following sorting and checking, which amounted to compliance with the rules concerning the prescribed end-use.

26 In this regard they point out that even though the dates were imported in packings of a net content of less than 11 kg, the fact remains that they repacked them so that the goods would meet the requirements of their customers.

27 Since the goods were repacked, Mr Balguerie and Others claim to have complied with Regulation No 4142/87, with the result that the goods must be eligible for suspension of customs duties.

28 The French Government contends that, in the case of dates, the cut-off point between goods in bulk and goods ready-packed has been set at 11 kg, so that imported packed goods weighing less than 11 kg must be regarded as ready-packed and are not therefore eligible for any suspension of duties applying to goods in bulk.

29 The Commission observes that it is not in dispute that the goods at issue in the main proceedings were fresh or dried dates and that they were packed for retail sale, following importation, into immediate packings of a content not exceeding 11 kg. In that connection, it states that whether or not the content of the packings before such repacking was already 11 kg or less is not a matter taken into account in the wording of the tariff heading concerned.

30 Consequently, the goods at issue in the main proceedings appear, according to the Commission, to be covered by the wording of the tariff headings under which they were declared.

31 Thus, the repacking of the dates was not intended to affect the particular end-use for which they were declared, and, according to the Commission, might even be explained by the requirements of retail sale.

32 Regulation No 4142/87 does not preclude such a practice but is intended to ensure effective monitoring of their end-use.

33 The Commission concludes that if the particular circumstances of this case were to lead the national court to find that there were deceitful practices or fraud or even actions likely to affect the grant of favourable tariff treatment by reason of the end-use of the dates, those circumstances would call for more than a mere finding that the dates were already packaged in immediate packings of a net content not exceeding 11 kg, since such a finding by itself would be irrelevant for the purposes of the grant or refusal of the tariff preference.

34 In that connection it should be observed, on the one hand, that Regulations Nos 1517/91, 1431/92 and 1421/93 apply to dates for packing for retail sale into immediate packings of a net content not exceeding 11 kg, but not to those intended for retail sale in their original packing, even if that packing does only contain a quantity of 11 kg or less.

35 On the other hand, those regulations do not apply expressly to dates which on import are already packed in immediate packings of a net content not exceeding 11 kg but which are to be repacked for retail sale into immediate packings having a net content not exceeding that weight.

36 However, it is clear, first, from the first two recitals in the preambles to Regulations Nos 1517/91, 1431/92 and 1421/93 that the tariff suspension is designed to protect the interests of user industries.

37 Secondly, the suspension also applies, according to Regulations Nos 1517/91, 1431/92 and 1421/93, to '[d]ates, fresh or dried, for the processing industry, other than for the production of alcohol', as well as to fresh dates for packing for retail sale.

38 It is clear, therefore, that, in order to achieve the purpose of the tariff suspension, namely to protect the interests of user industries and processing industries, it is sufficient that dates have actually been packed or repacked before sale,

irrespective of the weight of the content of the packings in which they are imported into the Community.

39 In that connection, it should be pointed out, first, that the conditions for the eligibility of goods laid down in Regulation No 4142/87 must be met and, second, that the control mechanisms referred to in that regulation make it possible to ensure that only goods which have been packed or repacked are eligible for the tariff suspension.

40 In those circumstances, the reply to the question must be that Regulations Nos 4142/87, 1517/91, 1431/92 and 1421/93 do not preclude dates imported in original packings of a net content not exceeding 11 kg from being eligible for suspension of the autonomous Common Customs Tariff duties.

Costs

41 The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Cour d'appel de Paris by judgment of 15 May 2000, hereby rules:

Commission Regulation (EEC) No 4142/87 of 9 December 1987 determining the conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use, Council Regulation (EEC) No 1517/91 of 31 May 1991, Council Regulation (EEC) No 1431/92 of 26 May 1992 and Council Regulation (EEC) No 1421/93 of 7 June 1993 temporarily suspending the autonomous Common Customs Tariff duties on a number of agricultural products do not preclude dates imported in original packings of a net content not exceeding 11 kg from being eligible for suspension of the autonomous Common Customs Tariff duties.

Gulmann Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 3 May 2001.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber