JUDGMENT OF THE COURT (FIRST CHAMBER)
27 MAY 1982 [1]

Provveditorie Marittime S. Giacomo S.p.A. v Amministrazione delle Finanze dello Stato — Dogana di Genova (reference for a preliminary ruling from the Tribunale di Genova)

(Export levies on sugar — Date on which they become payable)

(Case 196/81)

Agriculture — Common organization of markets — Sugar — Export levy — Payable at the latest at the time of completion of the customs formalities — Collection at a later date — Forfeiture of the debt — None

(Regulation (EEC) No 1076/72 of the Commission, Art. 3 (2))

The expression "payable at the latest" at the time of completion of the customs formalities, contained in Article 3 (2) of Regulation (EEC) No 1076/72 of the Commission laying down detailed rules for applying export levies on sugar, must be understood not as involving forfeiture of rights but rather as applying where the debt is determined, and consequently becomes payable, before the day of completion of the customs formalities. Accordingly, the calculation and actual collection of the levy, that is to say payment thereof, may be made at a later stage.

In Case 196/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Section of the Tribunale di Genova [District Court, Genoa] for a preliminary ruling in the action pending before that court between

PROVVEDITORIE MARITTIME S. GIACOMO S.P.A., Milan,

1 — Language of the Case: Italian

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO — DOGANA DI GENOVA

[State Finance Administration — Genoa Customs Office]

on the interpretation of Article 3 (2) of Regulation (EEC) No 1076/72 of the Commission of 25 May 1972 laying down detailed rules for applying export levies on sugar and amending Regulation (EEC) No 2637/70 (Official Journal, English Special Edition 1972 (II), p. 470),

THE COURT (First Chamber)

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

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar,

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Article 16 (1) of Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (Official Journal, English Special Edition 1967, p. 304), as amended by Regulation (EEC) No 607/72 of the Council of 23 March 1972 (Official Journal, English Special Edition 1972 (I), p. 236), provides that:

"If the cif price for white sugar or raw sugar is higher than the threshold price, a levy equal to the difference between those prices shall be charged on exports of the product in question.

Where the Community or any region thereof can no longer be supplied with

sugar at prices within the limit of the threshold price, provision may be made for charging a special levy on exports of the product in question. Where the provisions of this subparagraph apply, those of the preceding subparagraph shall not apply" (The distinction between a levy and a special levy was abolished by Regulation No 3330/74).

"Save as otherwise privided by the Council in accordance with the procedure laid down in paragraph (3), the levy or the special levy to be charged, as appropriate, shall be that applicable on the day of exportation".

The purpose of those levies was to ensure that the Community was sufficiently supplied with sugar by discouraging exports at times at which increases in world prices rendered such exports attractive.

Regulation No 1076/72 of the Commission, referred to above, lays down detailed rules for applying the export levies. Article 3 of that regulation provides that:

"(1) Save in cases where the special export levy is determined by invitation to tender, the levies referred to in Article 1 shall be those applicable on the day on which the customs formalities referred to in the second subparagraph of Article 8 (2) (b) of Regulation (EEC) No 1373/70 are completed.

(2) The levies shall be collected by the Member State on whose territory the formalities referred to in paragraph (1) are completed. They shall be payable at the latest at the time of completion of those formalities".

The levies are those applicable on the day on which the customs formalities are completed, which is defined by Article 15 (5) of Regulation (EEC) No 1373/70 of the Commission of 10 July 1970 on common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products subject to a single price system (Official Journal, English Special Edition 1970 (II), p. 439) as being the day

"... on which the customs authorities accept the document by which the declarant states his intention to export the products in question ... or to place the products under customs control ...".

2. Provveditorie Marittime S. Giacomo S.p.A., a ships' chandler for liners belonging to the Italia shipping company, which has its registered office in Milan, exported to Switzerland between August and December 1974, consignments of refined sugar totalling 261 033 kg. No levy was required at the time of exportation of the sugar.

In January and February 1975, the Genoa customs authorities resolved to seek payment of an amount totalling LIT 151 038 885 as the levy payable under Regulation No 1009/67 which it had omitted to demand as a result of an error at the time of completion of the customs formalities.

There is disagreement between the parties in the main action concerning the origin of the contested goods and the country from which they came. The exporting company maintains that the goods, which were stored in its private bonded warehouse at Genoa-Rivarolo, came from various sources and were placed there as "products from abroad". It claims that it obtained authorization

from the customs authorities to put the goods in free circulation. The Amministrazione delle Finanze dello Stato [hereinafter referred to as "the Administration"] contends that the contested sugar originated in and came from the Community.

The exporting company challenged the demands for payment made by the customs authorities before the Tribunale di Genova on the ground that the claims of the Administration were unlawful and relied especially on Article 3 (2) of Regulation No 1076/72, which expressly defines the time at which the levy is payable as being "at the latest at the time of completion of [the customs] formalities"; accordingly, in its opinion, failure to exercise that right must be assimilated to a forfeiture of the right to demand the levy. The exporting company therefore argues that since the specific request for authorization to export the sugar was set out in the documents which it produced, the customs authorities could, at the time of completion of the customs formalities, have demanded the contested payment if they had regarded the export levies as payable. By not demanding payment of the special levy at the time of completion of the formalities, the customs authorities forfeited their right to claim it subsequently.

The Administration acknowledged before the Tribunale di Genova that the day of completion of the customs formalities coincided with that on which the customs authorities accepted the import or export declaration, but stated that, in its opinion, it was at that moment that the preliminary stage of the customs declaration was completed whereas the calculation and collection of the customs duties normally occurred at a later stage. It denied that the provision of Community law in question acted as a bar precluding the competent authorities of a Member State from subsequently demanding payment of a special levy which had not been collected as a result of an error at the time of completion of the customs formalities.

3. Taking the view that a question concerning the interpretation of a provision of Community law had arisen, the Tribunale di Genova, by order of 25 May 1981 and in accordance with Article 177 of the EEC Treaty, decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling a question on the interpretation of Article 3 (2) of Regulation No 1076/72, which provides that the levies referred to in Article 1 "shall be payable at the latest at the time of completion of those formalities" (that is to say the customs formalities). The question is as follows:

"What is the precise meaning of the expression 'at the latest' and in particular is it to be understood as referring to the time of determination of the amount of the levy or to the first or last moment when actual payment (collection) may be demanded"?

The order of the Tribunale di Genova was received at the Court Registry on 2 July 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Provveditorie Marittime S. Giacomo S.p.A., represented by E. Airenti of the Milan Bar, by the Italian Government, represented by I. M. Braguglia, Avvocato dello Stato, and by the Commission of the European Communities, represented by its Legal Adviser, R. Wainwright, acting as Agent, assisted by G. Berardis, a member of its Legal Department.

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 and, in accordance with Article 95 (1) of the Rules of Procedure, to assign the case to the First Chamber.

II — Written observations submitted to the Court

1. Observations submitted by Provveditorie Marittime S. Giacomo S.p.A.

In the exporting company's opinion, it is clear from Article 3 (2) of Regulation No 1076/72 that the levy must be collected at the time of completion of the customs formalities, that is to say when the goods are presented or the documents concerning the goods are produced to the customs authorities of the Member State in question. A Member State may not collect the levies at a later date.

In its view, once the competent Italian authorities had authorized the exportation of the goods without demanding payment of Community duties because they had not considered any duties to be payable, they were not entitled to take subsequent action against the exporter unless there was a specific provision of Community or national law enabling them to exercise that right.

The exporting company refers to certain questions which it had invited the national court to refer to the Court of Justice for a preliminary ruling. The first of those questions concerns the legal classification under Community law of sugar "from abroad" intended for use as "ships' stores". Such goods must be regarded as exempt from all Community duties, whether they are placed in a "public" or "private" bonded warehouse. There should be no difference in treatment in that regard and goods stored in a private bonded warehouse should, in the same way as those stored in a public bonded warehouse, be regarded as "stateless".

The goods in question do not fall within the scope of Regulations Nos 1009/67 and 1076/72. The customs documents show that the goods were brought into the Community for use as ships' stores and are not therefore of Community origin. Much of the sugar in fact comes from the Val d'Aosta, a region enjoying special status within the Community, and cannot therefore be regarded as Community sugar since, in the exporting company's opinion, "it is from a territory which, as far as the Community is concerned, was and is outside its territorial jurisdiction".

2. Observations submitted by the Italian Government

According to the Italian Government, it does not appear from scrutiny of the second sentence of Article 3 (2) of Regulation No 1076/72 that the provision acts as a bar in regard to the right to collect the levy. Accordingly, it does not impair the right or the duty of a Member State which has omitted to collect the levy as a result of an error at the time of completion of the customs formalities to demand it subsequently within any period of limitation which may be applicable under its national legislation.

The "customs formalities" consist of the submission of an export licence to the customs office (Article 8 (2) b of Regulation (No 1373/70). The export licence is considered to have been used when it has been submitted to the customs office and the document by which the declarant states his intention to export the goods has been accepted by that office. Moreover, completion of the formalities does not include the physical crossing of the Community frontier in the case of products which are the subject of an export declaration. Such products may remain under customs control until they leave the Community (Article 15 (5) (b) of Regulation No 1373/70). In those circumstances, the contested provision should be construed as bringing forward the date on which the competent authorities of the Member State may demand the levy to the time when the export licence is presented to the customs office, even if the goods have not yet been physically exported. Therefore, in addition to its normal function of determining the levy applicable, the submission of the export licence also determines the time at which the levy must be paid.

It cannot be argued, either on the basis of a literal interpretation, a logical interpretation or a systematic interpretation of the provision in question, that the right to demand the levy is barred. Although it is for the Member State to demand the amount due by a certain date "at the latest", its failure to do so does not imply that the Member State forfeits its right and is relieved of its duty to demand the amount due from private persons. Moreover, although the expression "at the latest" clearly reflects the intention not to delay the collection of the levy, its use is incorrect in so far as it is impossible to detect, in the legislation in question, an earlier time at which the amount payable may be demanded. That supports the view that the expression in question means "forthwith", that is to say immediately after completion of the customs formalities.

In accordance with the Council Decision of 21 April 1970 on the Community's own resources, levies are to be collected by the Member States also "in accordance with national provisions imposed by law, regulation or administrative action" and, in 1972, the process of partial harmonization of those provisions had not even started. For that reason, as the Court has acknowledged on several occasions, for example in Joined Cases 66, 127 and 128/79 *Salumi and Others* [1980] ECR 1237, "... in so far as no provisions of Community law are relevant, it is for the national legal system of each Member State to lay down the detailed rules and conditions for the collection of Community revenues in general and agricultural levies in particular ...". Accordingly, a provision of Community law providing, without any justification, for forfeiture by the State of its right to collect a debt would be quite incomprehensible. Furthermore, such forfeiture would constitute an exception and derogate from the principles in force governing the collection of debts in the various Member States. Therefore, Community legislation which has as its purpose to provide for forfeiture of rights should contain a clear and express provision to that effect, which is not the case in this instance.

3. Observations submitted by the Commission

According to the Commission, the use of the expression "at the latest" does not denote a form of forfeiture of the fiscal claim at a specified moment but means

rather that the debt may be determined and therefore claimed even before the day on which the customs formalities are completed, as is generally the case moreover. Evidently, the calculation and actual collection of the levy, that is to say payment thereof, may be made at a later stage, in accordance with an undisputed principle of revenue law.

Where the Community legislation provides for the payment of export levies, the fact that the exporter is unaware of his obligations or has not been informed thereof in no way prevents him from incurring a fiscal debt, which cannot be subordinated to factors which are both subjective and variable without defeating the objectives of economic policy pursued by means of the application of export levies. Furthermore, to accept that a fiscal claim is forfeited because no contemporaneous demand for payment is made by the customs officer responsible would be tantamount to the creation of quite unjustified discrimination.

Forfeiture of rights is unknown in the sphere of customs duties, whereas rights may be barred by limitation for well-established reasons relating to certainty in legal relations. To state that a debt is payable does not mean that the creditor must demand payment thereof for fear of forfeiting his rights but merely that he may demand payment of the debt within the period of limitation.

In the absence of a relevant provision of Community law, national law applies to the procedures for collecting taxes and, in particular, to the effects of limitation. That was the position when the events at issue in this case occurred.

It was only by the adoption of Regulation (EEC) No 1697/79 of 24 July 1979 (Official Journal 1979, L 197, p. 1), which entered into force on 1 July 1980, that the Council resolved the problem of the post-clearance recovery of import or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which payment has not been required of the person liable for payment.

The Commission proposes that the answer to the question should be as follows:

"The expression 'at the latest' contained in the second sentence of Article 3 (2) of Regulation No 1076/72 means that the obligation to pay the export levy normally arises for exporters on the day on which the customs formalities are completed. However, it may also arise at an earlier date. In both cases, it arises as soon as the customs debt becomes payable, in the sense that it may be collected by the competent authorities from that time."

III — Oral procedure

At the sitting on 4 February 1982 the Italian Government, represented by I. M. Braguglia, Avvocato dello Stato, and the Commission of the European Communities, represented by G. Berardis, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 1 April 1982.

Decision

1 By order of 25 May 1981, which was received at the Court Registry on 2 July 1981, the Tribunale di Genova [District Court, Genoa] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 3 (2) of Regulation (EEC) No 1076/72 of the Commission of 25 May 1972 laying down detailed rules for applying export levies on sugar and amending Regulation (EEC) No 2637/70 (Official Journal, English Special Edition 1972 (II), p. 470).

2 The main action concerns the collection of the Community levy on consignments of refined sugar exported to Switzerland between August and December 1974 by the plaintiff, Provveditorie Marittime S. Giacomo S.p.A., a ships' chandler for liners belonging to the Italia Maritime Company. The goods were originally intended for use as stores for liners and were placed in the plaintiff's private bonded warehouse at Genoa-Rivarolo.

3 No levy was collected on the goods at the time of their exportation, that is to say at the time of completion of the customs formalities. Later however, in January 1975, the Genoa customs office requested the plaintiff to pay the levy on the ground that the failure to collect it earlier had been the result of an error.

4 Article 16 (1) of Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (Official Journal, English Special Edition 1967, p. 304), as amended by Regulation (EEC) No 607/72 of the Council of 23 March 1972 (Official Journal, English Special Edition 1972 (I), p. 236), provides that:

"If the cif, price for white sugar or raw sugar is higher than the threshold price, a levy equal to the difference between those prices shall be charged on exports of the products in question.

Where the Community or any region thereof can no longer be supplied with sugar at prices within the limit of the threshold price, provision may be made for charging a special levy on exports of the product in question. Where the provisions of this subparagraph apply, those of the preceding subparagraph

shall not apply" (The distinction between a levy and a special levy was abolished by Regulation No 3330/74).

"Save as otherwise provided by the Council in accordance with the procedure laid down in paragraph (3), the levy or the special levy to be charged, as appropriate, shall be that applicable on the day of exportation".

The purpose of those levies was to ensure that the Community was sufficiently supplied with sugar by discouraging exports at times when increases in world prices rendered such exports attractive.

5 Moreover, Regulation No 1076/72 of the Commission, cited above, lays down detailed rules for applying the export levies. Article 3 of that regulation provides that:

"(1) Save in cases where the special export levy is determined by invitation to tender, the levies referred to in Article 1 shall be those applicable on the day on which the customs formalities referred to in the second subparagraph of Article 8 (2) (b) of Regulation (EEC) No 1373/70 are completed.

(2) The levies shall be collected by the Member State on whose territory the formalities referred to in paragraph (1) are completed. They shall be payable at the latest at the time of completion of those formalities".

6 The plaintiff company challenged the demands for payment made by the customs authorities before the Tribunale di Genova, which referred the following question to the Court of Justice for a preliminary ruling:

"What is the precise meaning of the expression 'at the latest' and in particular is it to be understood as referring to the time of determination of the amount of the levy or to the first or last moment when actual payment (collection) may be demanded"?

7 The levies referred to by the aforesaid regulations are those applicable on the day of completion of the customs formalities, which is defined by Article 15 (5) of Regulation (EEC) No 1373/70 of the Commission of 10 July 1970 on common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products subject to a

single price system (Official Journal, English Special Edition 1970 (II) p. 439) as being the day

"... on which the customs authorities accept the document by which the declarant states his intention to export the products in question ... or to place the products under customs control ...".

8 The plaintiff relies on Article 3 (2) of Regulation No 1076/72, which provides that the levies "shall be payable at the latest at the time of completion of [the customs] formalities", and on Article 15 (5) of the aforesaid Regulation No 1373/70 in support of its argument that the levy in question should have been collected at the time when the application for an export licence was lodged. In its view, the customs authorities' failure to exercise their right to collect the levy leads, under the aforesaid provisions of Community law, to the forfeiture of that right.

9 The Amministrazione delle Finanze dello Stato [State Finance Administration] is of the opinion that the collection of customs duties or levies is a stage which occurs after the acceptance by the customs authorities of the import or export declaration. It denies that the provision of Community law in question acts as a bar precluding the competent authority of a Member State from demanding a levy which has not been collected as a result of an error at the time of completion of the customs formalities.

10 In the view of the Italian Government and the Commission, which have submitted observations to the Court, Article 3 (2) of Regulation No 1076/72 cannot be interpreted as meaning that, if at the time of completion of the customs formalities the right to collect the levy has not been exercised, the right to collect it subsequently is forfeited.

11 That is the interpretation which must be adopted. In the first place, the actual text of the provision of Community law in question does not lead to the conclusion that the expression "at the latest" contained therein means that the fiscal claim is forfeited at a given time. There would be grounds for such a conclusion only if the text in question expressly provided for the concept of forfeiture and contained a clear and express provision to that effect.

12 Furthermore, it is clear that the expression "at the latest" relates not to the collection of the debt but to the time when is becomes payable, which is the decisive factor for understanding the contested provision. The debt may be determined, and therefore become payable, even before the day of completion of the customs formalities. Moreover, that is normally the case, as the Commission and the Italian Government emphasize.

13 The expression "payable at the latest" contained in the provision in question must therefore be understood not as involving forfeiture of rights but rather as applying where the debt is determined, and consequently becomes payable, before the day of completion of the customs formalities. Accordingly, the calculation and actual collection of the levy, that is to say payment thereof, may be made at a later stage.

Costs

14 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 action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Tribunale di Genova by order of 25 May 1981, hereby rules:

The expression "payable at the latest", contained in Article 3 (2) of Regulation (EEC) No 1276/72 of the Commission of 25 May 1972 laying down detailed rules for applying export levies on sugar and amending Regulation (EEC) No 2637/70 (Official Journal, English Special Edition 1972 (II), p. 470), must be understood not as involving forfeiture of rights but rather as applying where the debt is determined,

and consequently becomes payable, before the day of completion of the customs formalities. Accordingly, the calculation and actual collection of the levy, that is to say payment thereof, may be made at a later stage.

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 27 May 1982.

For the Registrar

H. A. Rühl

Principal Administrator

G. Bosco

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 1 APRIL 1982 [1]

Mr President,
Members of the Court,

Article 16 of Regulation No 1009/67/EEC on the common organization of the market in sugar (Official Journal, English Special Edition 1967, p. 304), as amended by Regulation (EEC) No 607/72 (Official Journal, English Special Edition 1972 (I), p. 236), provides that if the cif. price for white sugar or raw sugar, which is determined by the Commission pursuant to Regulation (EEC) No 784/68 (Official Journal, English Special Edition 1968 (I), p. 161), is higher than the threshold price, that is to say the price determined under Article 12 of Regulation No 1009/67, a levy equal to the difference between those prices is to be charged on exports of the product in question. Article 16 also provides that where the Community or any region thereof can no longer be supplied with sugar at prices within the limit of the threshold price, provision may be made for charging a *special* levy on exports of the product in question, in which case the first-mentioned levy is inapplicable. Furthermore, the article provides that: "Save as otherwise provided by the Council ... the levy or

1 — Translated from the German