JUDGMENT OF THE COURT (Third Chamber)
7 March 1985 *

In Case 30/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Seventh Senate of the Hessisches Finanzgericht [Finance Court, Hesse] for a preliminary ruling in the action pending before that court between

Nicolet Instrument GmbH

and

Hauptzollamt [Principal Customs Office] **Frankfurt am Main-Flughafen**

on the validity of Commission Decision No 80/716/EEC of 7 July 1980 finding that the apparatus described as 'Nicolet data acquisition and processing system, model NIC-1180' is not a scientific apparatus (Official Journal 1980, L 191, p. 31),

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

**

gives the following

* Language of the Case: German.

** after considering the observations submitted on behalf of
the applicant by Mr K. Villaschek,
the Commission of the European Communities by Mr J. Sack, acting as Agent, and by Mr Caruso, a nuclear expert,
after hearing the Opinion of the Advocate General delivered at the sitting on 17 January 1985,

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 order of 16 January 1984 which was received at the Court Registry on 30 January 1984, the Hessisches Finanzgericht [Finance Court, Hesse] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the validity of Commission Decision No 80/716/EEC of 7 July 1980 establishing that the apparatus described as 'Nicolet data acquisition and processing system, model NIC-1180' may not be imported free of Common Customs Tariff duties (Official Journal 1980, L 191, p. 31).

2 The as question was raised in a dispute between Nicolet Instrument GmbH [hereinafter referred to as 'Nicolet'], a German subsidiary of a United States manufacturer, and the Hauptzollamt [Principal Customs Office], Frankfurt am Main Airport.

3 It is apparent from the documents before the Court that on 20 June 1980 Nicolet imported from the United States a data processing system corresponding to the above description which was intended for the Institute for Physical Chemistry of the University of Cologne. In accordance with the normal practice in such cases, the Hauptzollamt Frankfurt am Main Airport provisionally admitted the data processing system free of Common Customs Tariff duties.

4 However, after further investigation the Hauptzollamt claimed, by notice of assessment dated 20 March 1981, payment of a total of DM 6 582.77 in customs duties for the importation of the apparatus in question on the ground that, having regard to its characteristics, it was not specifically suited to scientific research.

5 On 3 April 1981 Nicolet submitted an objection which was rejected by the Hauptzollamt on 16 July 1982 on the basis of Decision No 80/716, adopted by the Commission on 7 July 1980 and finding that the NIC-1180 model was not a scientific apparatus. That decision had been adopted on the basis of Regulation (EEC) No 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials

(Official Journal 1975, L 184, p. 1) — as amended by Council Regulation (EEC) No 1027/79 of 8 May 1979 (Official Journal 1979, L 134, p. 1) — and of Regulation (EEC) No 3195/75 of the Commission of 2 December 1975 laying down provisions for the implementation of Regulation No 1798/75 of the Council (Official Journal 1975, L 316, p. 17), as amended by Commission Regulation (EEC) No 2784/79 of 12 December 1979 (Official Journal 1979, L 318, p. 32).

6 On 13 August 1982 Nicolet brought an action before the Hessisches Finanzgericht challenging the Hauptzollamt's decision rejecting its objection. That court decided to refer to the Court of Justice the following question for a preliminary ruling:

'Is Commission Decision No 80/716/EEC of 7 July 1980 in relation to the apparatus described as "Nicolet data acquisition and processing system, model NIC-1180" valid?'

7 In the written observations which it submitted to the Court, the Commission expressed certain reservations as regards the 'admissibility' of the reference for a preliminary ruling. However, it withdrew its objections during the oral procedure. The Court therefore considers that it is unnecessary to examine them.

8 Nicolet challenges in particular the Commission's assessment of the scientific character of the apparatus in question. Such apparatus is so highly specialized and so complex that only the researchers who use it can assess its characteristics. The plaintiff submitted a report prepared by Professor Schrader of Essen University. According to that report, the NIC-1180 apparatus, by comparison with traditional micro-computers, enables high-level performances above those normally required for industrial or commercial use to be obtained and it displays the objective characteristics of an apparatus specifically suited to scientific research.

9 It must be remembered that according to Article 3 (1) and (3) of Regulation No 1798/75 of the Council, as amended by Council Regulation No 1027/79, scientific instruments and apparatus imported exclusively for non-commercial purposes may be admitted free of Common Customs Tariff duties provided that, by reason of their objective technical characteristics and the results which they make it possible to obtain, they are mainly or exclusively suited to scientific activities.

10 Those provisions have been supplemented by Article 5 (1) of Commission Regulation No 2784/79, implementing Regulation No 1798/75, which provides that 'the "objective technical characteristics" of a scientific instrument or apparatus shall be understood to mean those characteristics resulting from the construction of that instrument or apparatus or from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use'.

11 The second subparagraph of Article 5 (1) of the same regulation provides that 'where it is not possible to establish clearly on the basis of its objective technical characteristics whether an instrument or apparatus is to be regarded as a scientific instrument or apparatus, reference shall be made to the general uses in the Community of instruments or apparatus of the type for which duty-free admission is requested'.

12 It is apparent from those provisions taken together that the Commission is under an obligation to scrutinize the objective technical characteristics of the apparatus in question in order to determine whether or not it is of a scientific nature. Only if it proves impossible to draw unequivocal conclusions from that examination must reference be made to the general uses in the Community of apparatus of the same type.

13 It is clear from the preamble to Commission Decision No 80/716 that, having established that the apparatus in question constituted a data acquisition system, the Commission considered that it did not display the objective characteristics making it specifically suited to scientific research.

14 When, in the course of the proceedings before the Court, the Commission was requested to explain its precise reasons for coming to that conclusion, it stated in particular that a computer can be regarded as a scientific instrument only if it is connected to an apparatus which is intended for a scientific purpose and is programmed exclusively to operate that apparatus. If that is not the case, a computer cannot, in view of the diversity of its functions, be regarded as an apparatus specifically suited to scientific research.

15 It is clear from those observations that the Commission did not examine the objective technical characteristics of the apparatus in question as required by the relevant Community legislation and merely applied in this case general considerations applicable to all computers. Accordingly, by adopting a general approach which excluded a scrutiny of the objective characteristics of the apparatus in question, the Commission has infringed the above-mentioned provisions of Article 3 (1) and (3) of Regulation No 1798/75, as amended.

16 It is also clear from the wording of Decision No 80/716 that in support of its contention that the apparatus in question was not of a scientific character, the Commission relied on a second ground, to the effect that apparatus of the same kind is used principally for non-scientific activities.

17 The aforesaid provisions of the second subparagraph of Article 5 (1) of Commission Regulation No 2784/79 indicate clearly that reference to the general uses in the Community of apparatus of the same type is an ancillary criterion which may be relied upon by the Commission only where it proves impossible to draw an unequivocal conclusion from the principal criterion, namely examination of the objective characteristics of the apparatus. Since the Commission did not lawfully apply the principal criterion, it could not base its decision on the second ground concerning the use to which apparatus of the same type is put.

18 Accordingly, without there being any need to give a ruling on the other grounds relied upon by the applicant to challenge the validity of Commission Decision No 80/716, it must be held that the decision is not valid and that the Commission must re-examine the file with a view to making a fresh assessment.

19 In the light of those considerations, the answer to the question submitted by the national court must be that Commission Decision No 80/716 of 7 July 1980 is not valid.

Costs

20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are 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 (Third Chamber)

in answer to the question submitted to it by the Hessisches Finanzgericht by an order of 16 January 1984, hereby rules:

Commission Decision No 80/716/EEC of 7 July 1980 is not valid.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 7 March 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber