JUDGMENT OF THE COURT (First Chamber)
18 April 1991 *

In Case C-324/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Republic of Germany), for a preliminary ruling in the proceedings before that court between

Nordgetränke GmbH & Co. KG, whose registered office is in Hamburg, Federal Republic of Germany,

and

Hauptzollamt Hamburg-Ericus,

on the interpretation of the Common Customs Tariff,

THE COURT (First Chamber),

composed of: G. C. Rodríguez Iglesias, President of the Chamber, Sir Gordon Slynn and R. Joliet, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the written observations submitted on behalf of

Nordgetränke GmbH & Co. KG, by Mr Jahnke, Rechtsanwalt, Hamburg,

* Language of the case: German.

the Commission, by J. Sack, Legal Advisor, and Mrs R. Kubicki, an official of the Ministry of Justice of the Federal Republic of Germany, seconded to the Commission's Legal Department under the exchange scheme for national civil servants, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Nordgetränke and the Commission at the hearing on 14 November 1990,

after hearing the Opinion of the Advocate General at the sitting on 15 January 1991,

gives the following

Judgment

1 By order of 7 September 1989, which was received at the Court on 23 October 1989, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Council Regulation No 3333/83/EEC of 4 November 1983 amending Regulation No 950/68/EEC on the Common Customs Tariff (Official Journal L 313, p. 1).

2 Those questions arose in proceedings between Nordgetränke GmbH & Co. KG (hereinafter referred to as 'Nordgetränke') and Hauptzollamt (Principal Customs Office) Hamburg-Ericus (hereinafter referred to as 'the Hauptzollamt') concerning the tariff classification of apricot purée which had undergone a process of concentration under vacuum.

3 In January 1984, Nordgetränke imported apricot purée coming from Argentina. The purée was made by pressing fruit pulp through a sieve and heating the purée thus obtained in a vacuum concentrator up to boiling point for a maximum of 30

seconds. The purpose of that process was to evaporate off part of the water in the product so as to reduce its volume for ease of transport.

4 The Hauptzollamt first classified the product under heading No 20.06 of the Common Customs Tariff which refers to 'fruit otherwise prepared or preserved, whether or not containing added sugar or spirit'. That classification gave rise in the present case to a customs duty of 22% being levied and an additional levy on the sugar at a fixed rate of 2%.

5 By an amending notice of 20 March 1984, the Hauptzollamt then classified the apricot purée under heading No 20.05 which covers 'jams, fruit jellies, marmalades, fruit purée and fruit pastes, being cooked preparations, whether or not containing added sugar'. That new classification led to the levying of a 30% customs duty and an additional levy on the sugar, and the Hauptzollamt demanded payment of supplementary customs duties and levy.

6 Nordgetränke objected to the Hauptzollamt about the classification. That objection was rejected whereupon Nordgetränke appealed to the Finanzgericht, which upheld the Hauptzollamt's view. Nordgetränke therefore appealed on a point of law to the Bundesfinanzhof, which decided to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

'(1) Should the Common Customs Tariff (1984) be interpreted as meaning that apricot purée made by pressing fruit pulp through a sieve and then bringing it to boiling point for no more than 30 seconds in a vacuum concentrator should be classified under subheading 20.05 C as fruit purée, being a cooked preparation?

(2) If not:

Is it to be interpreted as meaning that products of the kind described should be classified under subheading 20.06 B as "fruit otherwise prepared or preserved"?

(3) If not:

Under which other heading should the goods be classified?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

8 In replying to the first question, it must be stated first that a procedure in which, by a process of concentration under vacuum, the temperature of a product is raised to boiling point for around 30 seconds, cannot be treated as cooking within the meaning of the Common Customs Tariff. The concept of cooking is to be confined to an application of heat which brings about a change in the taste and chemical properties of the product. No such change has occurred in the case of the product at issue; the only effect of the process used was to reduce the water content of the purée, and the product obtained is substantively identical to the initial product.

9 It must further be observed that as the product already existed as purée before undergoing the process of concentration under vacuum, it cannot be regarded as a 'cooked preparation', as is required by heading No 20.05. Use of the term 'cooked preparation' also implies a change in the state of the product, which must, at the end of the cooking process, be in the form of a purée.

10 The reply to the first question should therefore be that the Common Customs Tariff must be interpreted as meaning that apricot purée obtained by pressing fruit pulp through a sieve and bringing the purée thus obtained to boiling point in a vacuum concentrator for no more than 30 seconds is not to be regarded as fruit purée, being a cooked preparation, falling under heading No 20.05.

The second question

11 In replying to the second question, it should be observed that heading No 20.06 is a residual heading intended to cover fruit preparations which do not come under an earlier named heading of the Common Customs Tariff.

12 That is indeed the case of the apricot purée at issue: it has neither the characteristics required for products referred to in Chapter 8, 'Edible fruit and nuts; peel of melons or citrus fruit', nor the characteristics described in the wording of those headings in Chapter 20 which precede heading No 20.06.

13 The reply to the second question should therefore be that interpretation of the Common Customs Tariff shows that the products referred to must be regarded as 'Fruit otherwise prepared or preserved' coming under tariff heading No 20.06.

The third question

14 In view of the reply to the second question, it is not necessary to reply to the third question.

Costs

15 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings 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 questions referred to it by the Bundesfinanzhof, by order of 7 September 1989, hereby rules:

(1) The Common Customs Tariff must be interpreted as meaning that apricot purée made by pressing fruit pulp through a sieve and bringing the purée thus obtained to boiling point in a vacuum concentrator for no more than 30 seconds is not to be regarded as fruit purée, being a cooked preparation, falling under heading No 20.05.

(2) Interpretation of the Common Customs Tariff shows that the product referred to must be regarded as 'Fruit otherwise prepared or preserved' falling under tariff heading No 20.06.

Rodríguez Iglesias Slynn Joliet

Delivered in open court in Luxembourg on 18 April 1991.

J.-G. Giraud
Registrar

G. C. Rodríguez Iglesias
President of the First Chamber.