JUDGMENT OF THE COURT (Sixth Chamber)
22 March 1990 *

In Case C-83/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hof van Beroep (Court of Appeal), Antwerp, for a preliminary ruling in the proceedings pending before that court between

Openbaar Ministerie (Public Prosecutor's Department) **and Minister van Financiën**

and

Vincent Houben,

on the interpretation of certain provisions of Community law relating to goods in free circulation,

THE COURT (Sixth Chamber)

composed of: C. N. Kakouris, President of Chamber, T. Koopmans, G. F. Mancini, T. F. O'Higgins and M. Díez de Velasco, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the Belgian Government, by Koen Lenaerts, of the Brussels Bar, and

* Language of the case: Dutch.

the Commission, by René Barents, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Minister for Finance, represented by I. Maselis, of the Brussels Bar, and of the Commission, presented at the hearing on 12 December 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 23 January 1990,

gives the following

Judgment

1 By judgment dated 10 March 1989 which was received at the Court on 14 March 1989, the Hof van Beroep, Antwerp, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of certain provisions of Community law relating to goods in free circulation. Those questions relate in particular to the meaning of the term 'products . . . in free circulation' as used in Article 9(2) and Article 10(1) of the EEC Treaty and to the burden of proof with regard to the completion of the formalities for the importation of such goods into the Community and the payment of any customs duties payable.

2 Those questions arose in the context of criminal proceedings brought by the Openbaar Ministerie (prosecuting party, the Minister for Finance of the Kingdom of Belgium) against Mr Houben, who was charged with entering Belgium from Germany whilst having in his possession, and installed in his car, stereo equipment manufactured in Japan without making the declaration required by law and without paying the customs duty payable on that importation.

3 The Rechtbank van eerste aanleg (Court of First Instance), Tongeren, before which the proceedings were brought, found that the facts had not been proved and, by judgment of 26 November 1986, acquitted Mr Houben. The Openbaar Ministerie and the prosecuting party, the Minister for Finance, appealed against that acquittal to the Hof van Beroep, Antwerp, which, in order to resolve the matter, stayed the proceedings and sought a preliminary ruling from the Court on the following questions:

'May goods which have been imported from a non-member country into a Member State be regarded as being "in free circulation" when they are imported into another Member State, even if the import tax in the first Member State was not paid?

If it is assumed that goods cannot be "in free circulation" unless the import formalities have been duly completed and the customs duties paid, is it then to be presumed that those obligations have been fulfilled when the goods are found in a Member State, or must it be presumed that those obligations are not fulfilled unless the person in possession of the goods adduces proof to the contrary?

More generally, must an importer of goods originating in a non-member country prove, when importing those goods from one Member State into another Member State, that he has paid customs duties in the first Member State so as to establish the presumption that the goods are in free circulation in the EEC?'

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the relevant provisions of Community law, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 The points on which the national court seeks a ruling may be summed up in the two questions below.

6 The first question seeks to ascertain whether it is possible, and if so in what circumstances, to consider that goods imported from a non-member country are in 'free circulation' in the Community even if the import formalities have not been completed and customs duty has not been paid.

7 The second question seeks to determine on whom, on the occasion of an importation from one Member State into another, the burden of proving that goods accompanying travellers or contained in their luggage are in free circulation in the Community falls.

The first question

8 The answer to this question is to be found in the terms of Article 10(1) of the Treaty, which provides: 'products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges'.

9 As the Court held in its judgment of 15 December 1976 in Case 41/76 *Donckerwolcke* v *Procureur de la République* [1976] ECR 1921, products in free circulation are to be understood as meaning those products which, coming from third countries, were duly imported into any one of the Member States in accordance with the requirements laid down by Article 10 of the Treaty.

10 That article draws no distinction between goods imported from a non-member country in circulation in the Member State where the import formalities were completed and the various duties paid and those which, after due completion of the import formalities and payment of the various duties in one Member State, are subsequently imported into another Member State.

11 The answer to the first question must therefore be that Articles 9 and 10 of the Treaty are to be interpreted as meaning that goods imported into the Community from a non-member country are to be considered to be in free circulation when the import formalities have been complied with and the various duties paid.

The second question

12 In order to answer this question, it must be noted that the question of proof was governed at the material time by Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (Official Journal 1977, L 38, p. 1), as amended by Council Regulation (EEC) No 983/79 of 14 May 1979 (Official Journal 1979, L 123, p. 1). Those are the regulations, therefore, which must be interpreted.

13 Regulation No 222/77 provides for two types of Community transit procedure. The first, the procedure for external Community transit, applies essentially, as may be seen from Article 1(2) of that regulation, to goods which do not satisfy the conditions laid down in Articles 9 and 10 of the Treaty, namely goods coming from non-member countries which are not in free circulation in the Community; Article 12(1) of Regulation No 222/77 provides that such goods must be covered by a declaration on form T1. That form, countersigned by the competent customs authority, constitutes the proof that the goods are not Community goods.

14 The other, the procedure for internal Community transit, applies essentially, as may be seen from Article 1(3) of the regulation, to goods which do satisfy the conditions laid down in Articles 9 and 10 of the Treaty, namely goods originating in Member States or goods in free circulation in the Community, referred to as 'Community goods'. Article 39(1) of the same regulation provides that such goods must be covered by a declaration on form T2. That form, countersigned by the competent customs authority, constitutes the proof that the goods are Community goods.

15 In addition, specific provisions of Regulation No 222/77 lay down cases in which the movement of Community goods is not subject to the procedure for internal Community transit.

16 In the case of Community goods not moving under the procedure for internal Community transit where that procedure is not obligatory, Commission Regu-

lation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (Official Journal 1977, L 38, p. 20) provides for document T2 L, the content of which corresponds to form T2 in the procedure for internal Community transit, to serve as proof (see the ninth recital in the preamble to Regulation No 223/77 and Article 1(8) thereof).

17 Thus Regulation Nos 222/77 and 223/77 establish the rule that proof of the Community status of goods is to be provided exclusively, where no exception is provided for, by a form T2 or T2 L.

18 Article 49(1) and (2) of Regulation No 222/77, as amended by Regulation No 983/79, cited above, provides:

'(1) The Community transit procedure shall not be compulsory for the carriage of goods accompanying travellers or contained in their luggage, if the goods concerned are not intended for commercial use.

(2) The provisions of the Treaty establishing the European Economic Community which relate to the free movement of goods shall apply to goods which, by virtue of paragraph 1, are not carried under the Community transit procedure:

(a) if they are declared as Community goods and there is no doubt as to the accuracy of that declaration;

(b) in other cases, if an internal Community transit document issued to establish the Community status of the goods is produced.'

19 It is clear from that provision that, in the case of the carriage of goods not intended for commercial use, a declaration as to whose accuracy there is no cause for doubt is sufficient for goods accompanying a traveller or contained in his

luggage to be considered to be Community goods; only if there is a doubt in the mind of the customs authorities is it necessary for the traveller to produce an internal Community transit document (T2 or T2 L).

20 It must be specified, however, in that connection, that the fact that the goods in question were manufactured in a non-member country is not of itself sufficient to justify doubt within the meaning of the abovementioned provision. Any doubts on the part of the customs authorities as to the accuracy of the traveller's declaration must have an objective basis, such as the particular circumstances of, or information received by the authorities concerning, the importation. Subjective considerations on the part of the officials carrying out the inspection are not sufficient to justify requiring the traveller to present an internal Community transport document.

21 That interpretation is in accordance with the provision's aim of facilitating the carriage of goods which are not intended for commercial use and accompany travellers or are contained in their luggage, by exonerating travellers from the burden of proof under which they would be obliged to complete the formalities provided for under the procedure for internal Community transit.

22 In the light of the foregoing considerations, the answer to the second question must be that the Community legislation is to be interpreted as meaning that, in the case of the carriage of goods not intended for commercial use, a declaration by the traveller accompanying the goods or in whose luggage they are contained is sufficient for those goods to be considered to be Community goods. However, if there are any objective grounds for doubting the accuracy of that declaration, the traveller must produce an internal Community transport document.

Costs

23 The costs incurred by the Kingdom of Belgium and the Commission of the European Communities, which have 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Hof van Beroep, Antwerp, by judgment of 10 March 1989, hereby rules:

(1) Articles 9 and 10 of the EEC Treaty are to be interpreted as meaning that goods imported into the Community from a non-member country are to be considered to be in free circulation when the import formalities have been complied with and the various duties paid.

(2) The Community legislation is to be interpreted as meaning that, in the case of the carriage of goods not intended for commercial use, a declaration by the traveller accompanying the goods or in whose luggage they are contained is sufficient for those goods to be considered to be Community goods. However, if there are any objective grounds for doubting the accuracy of that declaration, the traveller must produce an internal Community transport document.

Kakouris Koopmans

Mancini O'Higgins Díez de Velasco

Delivered in open court in Luxembourg on 22 March 1990.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Sixth Chamber