JUDGMENT OF THE COURT (Second Chamber)
2 May 1985 *

In Case 81/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Baden-Württemberg for a preliminary ruling in the proceedings pending before that court between

Deutsche Forschungs- und Versuchsanstalt für Luft- und Raumfahrt e.V. [German Aerospace Research and Testing Institute], Cologne,

and

Hauptzollamt [Principal Customs Office] **Stuttgart-West,**

on the validity and interpretation of Commission Decision 82/932/EEC of 20 December 1982 establishing that the apparatus described as 'Hewlett Packard-Digital Signal Analyzer, Model 5420 A' may not be imported free of Common Customs Tariff duties (Official Journal 1982, L 383, p. 6)

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

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

after considering the observations submitted on behalf of the Commission of the European Communities by Jörn Sack, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 March 1985,

gives the following

* Language of the Case: German.

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 15 March 1984, which was received at the Court on 23 March 1984, the Finanzgericht [Finance Court] Baden-Württemberg referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty two questions on the validity and interpretation of Commission Decison 82/932/EEC of 20 December 1982 establishing that the apparatus described as 'Hewlett Packard-Digital Signal Analyzer, Model 5420 A' may not be imported free of Common Customs Tariff duties (Official Journal 1982, L 383, p. 6).

2 Those questions were referred to the Court in proceedings brought by the Deutsche Forschungs- und Versuchsanstalt für Luft- und Raumfahrt e.V. [German Aerospace Research and Testing Institute], Cologne, (hereinafter referred to as 'the Institute') against the decision of the Hauptzollamt [Principal Customs Office] Stuttgart-West, refusing to exempt from customs duty, on its release for free circulation in the Federal Republic of Germany in November 1979, an apparatus and its accessories described as a 'Signal Analyzer HP 5420 A with Interface HP 10920 A' and manufactured by the Hewlett Packard company in the United States of America, on the ground that it was not a scientific apparatus within the meaning of Article 3 (1) 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).

3 It appears from the file that the Institute applied for the duty-free admission of the apparatus for use in research into 'surge noise, industrial noise, the structure of turbulence and noise production'. It sought to establish the scientific nature of the apparatus on the following grounds:

'The precision and the possibility of the internal conversion of data permits the optimal analysis of the data obtained in the research projects described .... The fact that it is easy to connect the analyser up to the Hewlett Packard computer which the Institute possesses means that it is easy to use the peripherals of that computer for the requirements of the analyser.'

4 Before the Finanzgericht the Institute claimed, *inter alia*, that the apparatus was clearly of a scientific nature, even without the interface imported at the same time, because it made it possible to examine with considerable precision the coherence and phase relationship between two signals measured in turbulent currents. The apparatus could therefore be used for research into the origin and structures of turbulence and into the causes of noise.

5 The Hauptzollamt Stuttgart-West relied on the above-mentioned Commission Decision 82/932 concerning the earlier importation of an identical apparatus. It considered that since the addition of an interface enabling the apparatus to be connected up to a computer of the same make was of no material significance, the customs authorities were bound by that decision in this case as well.

6 According to the preamble to Decision 82/932 the examination carried out by the group of experts composed of representatives of all the Member States meeting within the framework of the Committee on Duty-Free Arrangements showed that:

'the apparatus in question is a signal analyser; ... it does not have the requisite objective characteristics making it specifically suited to scientific research; ... moreover, apparatus of the same kind are principally used for non-scientific activities; ... its use in the case in question could not alone confer upon it the character of a scientific apparatus; ... it therefore cannot be regarded as a scientific apparatus; ... the duty-free admission of the apparatus in question is therefore not justified'.

7 The operative part of the decision is worded as follows:

'Article 1

The apparatus described as "Hewlett Packard-Digital Signal Analyzer, Model 5420 A", which is the subject of an application by the Federal Republic of Germany of 18 June 1982, may not be imported free of Common Customs Tariff duties.

Article 2

This Decision is addressed to the Member States.'

8 In its order the Finanzgericht states, referring to the judgment of the Court of 17 March 1983 (Case 294/81 *Control Data* v *Commission* [1983] ECR 911), that there is some question as to the formal and substantive validity of the Commission decision. In addition, it questions the relevance of that decision, because, according to Article 1 thereof, it does not apply to all 'Hewlett-Packard Digital Signal Analyzer, Model 5420 A' apparatuses but only to that 'which is the subject of an application by the Federal Republic of Germany of 18 June 1982'.

9 For those reasons the Finanzgericht stayed the proceedings and referred the following questions to the Court:

'(1) Is Commission Decision 82/932/EEC of 20 December 1982 (Official Journal 1982, L 383, p. 6) valid?

(2) If so, how must Article 1 of the Commission decision be interpreted; does it apply not only to the apparatus mentioned therein but also to all other apparatuses of the same type?'

10 Only the Commission has submitted written observations to the Court and was represented at the oral procedure.

Question 1

11 Question 1 concerns the validity of Decision 82/932. It is clear from the order for reference that the Finanzgericht entertains doubts in that respect because in the above-mentioned judgment of 17 March 1983 the Court declared void a similar decision concerning computers originating in the United States of America.

12 In order to dispel such doubts the Commission points out, with regard to the form of the disputed decision, that the recitals in the preamble set out the procedure followed and the conclusions reached by the group of experts. It concedes that the statement of reasons is indeed brief, but contends that it is nevertheless sufficient, in view of the fact that the national authorities involved in the procedure which are to take the final decisions addressed to the applicants for exemption can provide the applicants with all the details required.

13 As regards the possible existence of a substantive error, the Commission maintains that neither the order for reference nor the documents in the Commission's possession reveal circumstances which would justify recognition of the scientific nature of the apparatus in question. The documents mainly emphasize the precision of the measurements and the great speed of calculation of the apparatus, factors which, in the Commission's view, are not sufficient to make that apparatus capable of performances superior to those necessary for industrial and commercial purposes.

14 It is true that neither the order for reference nor the observations submitted to the Court contain precise details which are in themselves such as to call in question the validity of the disputed decision.

15 As regards the reference to the judgment of the Court of 17 March 1983, it must be admitted that the statement of the reasons on which the disputed decision is based is set out in recitals similar to those of the decision which the Court declared void in that judgment. It is clear from that judgment, however, that the importer of the computers in question had supplied the Court with comprehensive documentation on the specific features which made those computers particularly suitable, in its view, for pure scientific research, whilst at the same time nothing in the procedure made it possible for the Court to establish that the Commission had taken sufficient account of those features. It was in the light of those circumstances that the Court concluded that the Commission decision was to be regarded as invalid for lack of an adequate statement of reasons.

16 In this case, on the other hand, the information supplied in that respect concerns only the precision of measurements and the rapidity of calculation, which, according to the Commission's appraisal, are insufficient to establish the scientific nature of the apparatus in question. The procedure before the Court has revealed no new evidence to cast doubt on the Commission's appraisal.

17 In reply to the first question submitted by the Finanzgericht it must therefore be stated that consideration of Commission Decision 82/932 of 20 December 1982 has disclosed no factor of such a kind as to affect its validity.

Question 2

18 In Question 2 the Finanzgericht seeks essentially to establish whether the contested decision applies only to the importation which gave rise to its adoption or whether it also applies to the importation of other apparatuses of the same type.

19 According to the Commission it is quite clear that Decision 82/932 is binding in this case. That decision concerns exactly the same type of apparatus; it is addressed to all the Member States and is binding on them from the time it was notified to them, even in procedures already pending in which the national administration has not yet taken a definitive decision. It would be entirely pointless to refer the matter to the Commission once again since, although technical progress may cause an apparatus to lose its scientific nature, it can never cause an apparatus to acquire a scientific nature that it did not previously have.

20 It must be noted that in accordance with the rules in force at the material time, namely Article 7 (6) of Commission Regulation (EEC) No 2784/79 of 12 December 1979 (Official Journal 1979, L 318, p. 32) laying down provisions for the implementation of Council Regulation No 1798/75, the disputed decision was addressed to all the Member States. It follows that, notwithstanding the fact that Article 1 thereof refers specifically to the apparatus whose importation gave rise to the adoption of Decision 82/932, that decision applies equally to all importations of apparatuses of the same type, unless the circumstances of such importations justify a different appraisal.

21 That cannot be the case where a decision has declared that the apparatus in question cannot be regarded as a scientific apparatus within the meaning of Regulation No 1798/75. The Court has held that that declaration presupposes that the apparatus does not possess objective characteristics which make it particularly suitable for pure scientific research. If in one case the Commission has rightly held that certain apparatus is not of a scientific nature on the ground that it does not possess those objective characteristics, an identical apparatus may not be regarded as a scientific apparatus within the meaning of Regulation No 1798/75 on the occasion of a subsequent importation.

22 In addition, the fact that the apparatus in question is equipped with an interface enabling it to be connected up to other apparatuses cannot alter its classification. As the Commission has correctly pointed out, that interface is either an

independent apparatus, whose duty-free admission would have to be considered separately, or an accessory, in which case the decision on the exemption of the interface would be contingent on the decision concerning the main apparatus.

23 In reply to the second question submitted by the Finanzgericht it must therefore be stated that Decision 82/932 must be interpreted as applying not only to the importation which gave rise to its adoption but also to other importations of apparatuses of the same type.

Costs

24 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 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 mattter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Finanzgericht Baden-Württemberg by an order of 15 March 1984, hereby rules:

(1) Consideration of Commission Decision 82/932/EEC of 20 December 1982 has disclosed no factor of such a kind as to affect its validity.

(2) The said decision must be interpreted as applying not only to the importation which gave rise to its adoption but also to other importations of apparatuses of the same type.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 2 May 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber