JUDGMENT OF THE COURT (Third Chamber)
10 October 1985 *

In Case 200/84

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

Erika Daiber, Hagnau,

and

Hauptzollamt [Principal Customs Office] **Reutlingen**

on the interpretation of Heading No 99.05 of the Common Customs Tariff on the duty-free importation of 'collectors' pieces of . . . historical ... ethnographic . . . interest',

THE COURT (Third Chamber)

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

Advocate General: C. O. Lenz
Registrar: P. Heim

after considering the observations submitted on behalf of:

Erika Daiber, the plaintiff in the main proceedings, by Günther Daiber, with power of attorney,

the Commission of the European Communities, by Jürgen Grunwald, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 4 July 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 25 July 1984, which was received at the Court on 8 August 1984, the Finanzgericht Baden-Württemberg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Heading No 99.05 of the Common Customs Tariff relating to 'Collectors' pieces of . . . historical ... ethnographic . . . interest'.

2 Those questions were raised in proceedings between Erika Daiber, (plaintiff) and the Hauptzollamt Reutlingen concerning the tariff classification of a second-hand Daimler-Benz 300 SL-coupé motor car manufactured in 1955 for which Mrs Daiber claimed duty-free importation as a 'collectors' piece of historical interest' in accordance with Heading No 99.05 of the Common Customs Tariff.

3 As appears from the order of the national court, the imported car has not in any way been altered since its manufacture. Since importation it has not taken the road except to maintain its mechanism in working order or to take part in 'Old-Timer meetings'.

4 After first holding, in a decision of 14 May 1980, that the car in question came under Heading No 99.05, the Hauptzollamt subsequently revised that view and by an amending decision of 4 November 1981 levied the customs duties payable on goods falling under subheading 87.02 A I (b) of the Common Customs Tariff relating to 'motor vehicles for the transport of persons'.

5 When her objection was rejected by a decision of 27 October 1982, Mrs Daiber brought an action before the Finanzgericht Baden-Württemberg. She submitted that the decision classifying the car under subheading 87.02 A I (b) was incorrect. As a technical monument the car was of historical and ethnographic interest and

should be classified under Heading No 99.05. Its age was of little importance, according to the Explanatory Notes to the Nomenclature of the Customs Cooperation Council.

6 The Hauptzollamt contended, on the other hand, that in the light of the said Explanatory Notes and Heading No 99.05 the car was neither a collectors' piece nor an object of historical or ethnographic interest, because it was not particularly uncommon and so could not be considered a rarity. A collectors' piece was of historical or ethnographic interest only if it was an original, that is to say an item which was authentic as regards place of origin, period, materials and function and to which no changes had been made in the meantime. The development of the motor car came to an end between 1920 and 1925. The special features of the car in question (fuel injection, tubular frame and gull-wing doors) did not mark any fundamental change in the historical development of motor cars, but were merely technical innovations without historical significance.

7 The Finanzgericht Baden-Württemberg found that the car in question was suitable for inclusion in a collection, especially a public museum, that it was undoubtedly exhibited in well-known motor museums and was mentioned in the specialized literature. Nevertheless, it considered that it could not be regarded as particularly uncommon because there were still 400 examples out of a total of 1 400 manufactured in 1955; it was thus not a rarity. Further, it considered that the car was of historical interest but only in the special field of the development of the motor car by reason of the innovative construction features which were evidence of a stage in that development. However, the Explanatory Notes to Chapter 99 and Heading No 99.05 of the Common Customs Tariff did not allow a definite conclusion about the classification of the car on the basis of its special features. For those reasons the Finanzgericht Baden-Württemberg considered it necessary to refer the following questions to the Court for a preliminary ruling:

'How are the terms "collectors' piece" and "of . . . historical ... ethnographic interest" in Heading No 99.05 of the Common Customs Tariff to be interpreted?

(1) Is an article a "collectors' piece" only if it is particularly uncommon and therefore a rarity or is it sufficient that the article is suitable for inclusion in a

collection assembled in accordance with scientific principles, in particular in a public museum (suitability for museum purposes)?

(2) Is an original collectors' piece of "historical" or "ethnographic interest" only if it is representative of a period in the general historical development of one or more nations and in that sense is of exemplary significance, or is it sufficient that the article is apt to contribute to historical education in a specific field (for example the manufacture of motor cars)?'

8 In its written observations to the Court the Commission observes that the two questions are intimately associated and that a separate answer to the first question is therefore not possible. It says that any article may be a 'collectors' piece' if it is of interest to collectors. Such interest does not necessarily depend on the rarity, age, origin or value of the article, although such factors may be useful indications; it is a subjective interest but one shared by the community at large. It is therefore not possible to give an abstract and objective definition of a 'collectors' piece' separate from the term 'of historical interest' because it is precisely such interest which makes an article a 'collectors' piece'. In that respect the Commission points to such factors which may in a particular case confer upon an article historical interest. Technical articles, such as motor cars, can be regarded as having acquired a historical character only with the passage of sufficient time to enable a definite and confident conclusion to be drawn about their historical merit on the ground that they represent authentic evidence of certain stages of historical and cultural development. In that respect the rarity which such an article acquires with the passage of time is evidence — and in certain cases the basis — of its historical merit.

9 Applying the aforementioned considerations to the car in question, the Commission concludes that it does not fall under Heading No 99.05, for on the one hand its perfect working condition deprives it of the 'passive' character which distinguishes 'collectors' pieces' and, on the other, the fact that more than one-third of the models of this construction still exist deprives it of any historical or ethnographic interest. In addition the car in question perfectly satisfies present-day traffic requirements and if properly maintained could be used as a means of transport and could compete with modern cars.

10 In his oral observations before the Court counsel for the plaintiff in the main proceedings first considered the term 'collectors' pieces'. He submitted that the term covered articles which were not used or consumed for their original purpose but were intended for permanent inclusion in a collection of the same of similar articles. It was not its particular infrequency, its quality as a rarity, which made an article a collectors' piece; the important criterion was its relative infrequency, which gave it a value in excess of its intrinsic value.

11 In the second place, according to the plaintiff in the main proceedings, the term 'of . . . historical . . . interest' must be interpreted as meaning that the article is likely to contribute not only to study of history in general but to the study of a specific field of history, such as for example the manufacture of motor cars. In that respect, by reason of its important technical innovations, the car in question is a 'technical monument', which exemplifies a particular stage of development and represents a turning-point in the history of motor car manufacture. Moreover, the value of the car in question is much higher than that of present-day cars; surviving models are mainly the property of collectors.

12 The two questions raise a single question concerning the interpretation of the terms 'collectors' pieces . . . of historical ... ethnographic . . . interest' which are contained in Heading No 99.05 of the Common Customs Tariff, which reads in full 'collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest'.

13 As the Court has repeatedly held, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters.

14 Moreover, for the purpose of interpreting the Common Customs Tariff the Court has consistently held that both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation. For the purpose of interpreting the abovementioned tariff headings it is therefore necessary to take account not only of the wording and system of the Common Customs Tariff but also of the Explanatory Notes.

15 In addition, since it is a question of interpreting a heading allowing duty-free importation, it is necessary to take account of the purpose of the exemption. The exemptions in Chapter 99 of the Common Customs Tariff are intended to facilitate international trade in objects of cultural and educational value and that aim is decisive for the interpretation of the heading in question.

16 It is apparent from consideration of the first sentence of the text of Heading No 99.05, having regard to the various language versions of the Common Customs Tariff, that an item comes under that heading if it is suitable in itself for inclusion in a collection. The Danish, Dutch, English, French, German, Greek and Italian versions ('samlerobjekter', 'voorwerpen voor verzamelingen', 'collectors' pieces', 'objects pour collections', 'Sammlungsstücke', 'είδη συλλογών' and 'ogetti da collezione') all contain a word meaning 'collector' or 'collection'. That concept must be interpreted, in particular, in accordance with the principle that tariff classification must take place on the basis of the objective characteristics and properties of the goods in question.

17 It must be noted in the first place that the Customs Cooperation Council's Explanatory Notes to Chapter 99 ('Works of Art, Collectors' Pieces and Antiques') read 'most articles falling in the present Chapter are either unique or at least exist in such very small numbers that they may not be freely available for purchase'. Moreover, although *prima facie* Heading Nos 99.01 and 99.03 may be regarded as being concerned with unique items, the same is not true of the remaining headings of the Chapter, which cover, for example, original engravings and lithographs, antiques and postage stamps not of current issue, which may not be unique.

18 It follows that in order to be suitable for inclusion in a collection within the meaning of Heading No 99.05 an article must be relatively rare. Consequently, articles which have previously been mass-produced but which currently exist only in a limited number, so that they cannot be easily obtained, satisfy that requirement.

19 The aforesaid Explanatory Notes go on to state that articles coming under Chapter 99 'as a rule . . . are not dealt with in ordinary commercial transactions; some are, however, handled by a specialized trade (postage stamps, antiques, etc.).

They are often of great value, out of all proportion to the value of their constituent materials'.

20 It follows that a further characteristic of the articles in question, linked to the previous one, is that they are not traded on the ordinary market and may fetch a high price.

21 Finally, it must be observed that collectors' pieces are not normally used for their original purpose, although it cannot be ruled out that their functional capacity may remain intact.

22 However, for classification under Heading No 99.05 it is not sufficient that an article should satisfy only the criteria for collectors' pieces set out above. It must also be of 'historical interest'. Articles which possess such interest, according to the Customs Cooperation Council's Explanatory Notes to Heading No 99.05, include 'articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary or earlier peoples. This category includes: mummies, sarcophagi; weapons; objects of worship; articles of apparel; articles used by primitive races; articles which have belonged to celebrities.'

23 Without its being necessary to distinguish between the terms 'historical' and 'ethnographic' it must be observed that neither the wording of Heading No 99.05 nor the Explanatory Notes confine themselves to the general history of nations. The term 'history' covers human development and achievement in all fields.

24 It follows that an article connected with human achievements, including those in the field of technology, may, because it marks a significant step in the evolution of human achievements or illustrates a period of that evolution, be of historical or ethnographic interest within the meaning of Heading No 99.05 of the Common Customs Tariff.

25 Accordingly, the preliminary questions must be answered as follows:

Collectors' pieces within the meaning of Heading No 99.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.

Collectors' pieces which evidence a significant step in the evolution of human achievements or illustrate a period of that evolution are to be regarded as being of historical or ethnographic interest for the purposes of Heading No 99.05 of the Common Customs Tariff.

Costs

26 The costs incurred by the Commission of the European Communities, which 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in reply to the questions referred to it by the Finanzgericht Rheinland-Pfalz by an order of 25 July 1984, hereby rules:

Collectors' pieces within the meaning of Heading No 99.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.

Collectors' pieces which evidence a significant step in the evolution of human achievements or illustrate a period of that evolution are to be regarded as being of historical or ethnographic interest for the purposes of Heading No 99.05 of the Common Customs Tariff.

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 10 October 1985.

P. Heim
Registrar

U. Everling
President of the Third Chamber