Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 July 2012*

(Relief from customs duties and VAT exemptions on imports of goods — Fuel contained in the standard tanks of land motor vehicles — Notion of 'motorised road vehicle' — Locomotives — Road transport and transport by rail — Principle of equal treatment — Principle of neutrality)

In Case C-250/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Lithuania), made by decision of 17 May 2011, received at the Court on 20 May 2011, in the proceedings

Lietuvos geležinkeliai AB

v

Vilniaus teritorinė muitinė,

Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, K. Schiemann (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 26 April 2012,

after considering the observations submitted on behalf of:

— Lietuvos geležinkeliai AB, by J. Sakalauskas and K. Švirinas, advokatai,

— the Vilniaus teritorinė muitinė, by L. Markevičienė, acting as Agent,

— the Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos, by A. Šipavičius, acting as Agent,

— the Lithuanian Government, by D. Kriaučiūnas and D. Stepanienė, acting as Agents,

— the Greek Government, by G. Papadaki and I. Bakopoulos, acting as Agents,

* Language of the case: Lithuanian.

— the European Commission, by A. Steiblytė and C. Soulay, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of:

— Article 112(1)(a) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1), as amended by Council Regulation (EEC) No 1315/88 of 3 May 1988 (OJ 1988 L 123, p. 2) ('Regulation No 918/83');

— Article 107(1)(a) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ 2009 L 324, p. 23);

— Article 82(1)(a) of Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (OJ 1983 L 105, p. 38), as amended by Council Directive 88/331/EEC of 13 June 1988 (OJ 1988 L 151, p. 79) ('Directive 83/181'), and

— Article 84(1)(a) of Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (OJ 2009 L 292, p. 5).

2 That reference was made in the context of proceedings between Lietuvos geležinkeliai AB (Lithuanian Railroad Company) ('LG') and the Vilniaus teritorinė muitinė (Vilnius customs office) concerning additional excise duties and value added tax (VAT), and a fine levied on LG by that customs office.

Legal context

European Union law

3 Article 112 of Regulation No 918/83 is part of Title XXVII thereof, entitled 'Fuels and lubricants present in land motor vehicles and special containers'.

4 Article 112(1)(a) of that regulation provides that fuel contained in the standard tanks of private and commercial motor vehicles and motor cycles entering the customs territory of the Community are to be free of import duty.

5 Under Article 112(2)(a) of that regulation, the notion of 'commercial motor vehicle' is defined as follows:

'"[C]ommercial motor vehicle" means any motorised road vehicle (including tractors with or without trailers) which by its type of construction and its equipment is designed for and capable of transporting, whether for payment or not:

— more than nine persons including the driver,

— goods,

and any road vehicle for a special purpose other than transport as such.'

6 In the versions of Article 112(2)(a) of the same regulation in Bulgarian, Spanish, Czech, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene and Finnish, the definition in that provision describes the vehicle in question as being a 'road' vehicle, whilst the Danish, Dutch and Swedish versions contain no such specification.

7 Article 113 of Regulation No 918/83 authorises the Member States to limit the application of the relief from import duties in respect of fuel contained in the standard tanks of commercial motor vehicles to 200 litres per vehicle per journey.

8 Regulation No 1186/2009 repealed Regulation No 918/83 with effect from 1 January 2010. However, Article 107(1)(a) and (2)(a) and Article 108 reproduced the provisions of Article 112(1)(a) and (2)(a) and also Article 113 of Regulation No 918/83 in identical terms, or, in certain language versions, in terms that are in essence identical.

9 Article 82 of Directive 83/181, which is part of Chapter VI thereof, is entitled 'Fuels and lubricants present in land motor vehicles and special containers'.

10 Article 82(1)(a) of that directive provides, in terms substantively identical to those of Article 112(1)(a) of Regulation No 918/83, that fuel contained in the standard tanks of inter alia commercial motor vehicles is to be exempt from import VAT.

11 Article 82(2)(a) of Directive 83/181 contains a definition of the notion of 'commercial motor vehicles' which is, in all language versions apart from the Romanian and Swedish, identical, or in essence identical, to that contained in Article 112(2)(a) of Regulation No 918/83.

12 In the Bulgarian, Spanish, Czech, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Portuguese, Slovak, Slovene and Finnish and Swedish versions of Article 82(2)(a) of Directive 83/181, the definition in that provision describes the vehicle in question as being a 'road' vehicle, whilst the Danish, Dutch and Romanian versions contain no such specification.

13 Article 83 of Directive 83/181 authorises the Member States to limit the application of the VAT exemption in respect of fuel contained in the standard tanks of commercial motor vehicles to 200 litres per vehicle per journey.

14 Directive 2009/132 repealed Directive 83/181 with effect from 30 October 2009. However, Article 84(1)(a) and (2)(a) of Directive 2009/132 reproduced the provisions of Article 82(1)(a) and (2)(a) of Directive 83/181 in identical terms, or, in certain language versions, in terms that are in essence indentical. Moreover, Article 85 of Directive 2009/132 contains provisions which are, in substance, identical to those of Article 83 of Directive 83/181.

Lithuanian law

15 Article 40 of Law No IX-751 of the Republic of Lithuania on value added tax (Lietuvos Respublikos pridėtinės vertės mokesčio įstatymas No IX-751, Žin., 2002, No 35-1271, 2002, No 40, 2002, No 46, 2002, No 48), as amended (Žin., 2004, No 17-505) ('the Law on VAT'), entitled 'Special cases where imported goods are exempt from VAT', provides, in point 21 of paragraph 1, that import VAT is not to be levied on 'fuel and lubricants present in automotive vehicles and necessary for the operation of those vehicles'.

16 Point 18(1) of Government Decree No 438 of 16 April 2004 concerning exemption of imported goods from value added tax (dėl importuojamų prekių neapmokestinimo pridėtinės vertės mokesčiu, Žin., 2004, No 58-2048) states that the VAT exemption provided for in Article 40(1)(21) of the Law on VAT is to be applied to fuel contained:

'… in fixed fuel tanks of commercial motorised road vehicles for passengers and goods, including tractors and lorry tractors, provided for in the manufacturer's technical documentation (including gas cylinders installed in the vehicle as part of the gas equipment), from which that fuel is directly injected into fixed fuel supply systems or is used in refrigeration or other systems'.

17 Article 41 of Law No IX-1987 of the Republic of Lithuania on excise duty (Lietuvos Respublikos akcizų įstatymas No IX-1987, Žin., 2004 No 26-802) ('the Law on excise duty'), entitled 'Special cases where energy products are exempt from excise duty', provides, in point 8 of paragraph 1, for an exemption from excise duty in respect of:

'energy products imported into the Republic of Lithuania in vehicles having fixed fuel and motor oil tanks mentioned in the manufacturer's technical documentation and from which the motor fuel and lubricant are injected directly into the vehicle's fixed motor fuel supply and lubrication systems'.

18 Article 41(2) of the Law on excise duty provides that the exemption scheme and the restrictions provided for in Article 42(1) are defined by the government or by an institution on whom the government has conferred authority to do so.

19 Point 12 of the Rules for applying the exemptions specified in Article 41(1), points 3 to 8, of the Law on excise duty, approved by Government Decree No 821 of 4 June 2002 (Žin., 2002, No 56-2264), provides that excise duty is not to be levied on energy products imported into Lithuania 'when they are contained in commercial motorised road vehicles for passengers and goods, including tractors and lorry tractors, in fixed fuel tanks provided for in the manufacturer's technical documentation (including gas cylinders installed in the vehicle as part of the gas equipment), from which those energy products are directly injected into fixed fuel supply systems or are used in refrigeration or other systems, provided they are used in the same vehicle as that in which they have been imported'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 From 1 January 2005 to 30 April 2010, LG purchased diesel fuel regularly at the train stations in Nesterov and Sovetsk in the territory of the enclave of Kaliningrad (Russia) as fuel for its locomotives. The diesel fuel was put into the standard locomotive fuel tanks then imported into the customs territory of the European Union in those tanks, without being declared to the customs office.

21 The Lithuanian authorities had indicated to LG that it enjoyed an import exemption for fuel imported in the tanks of locomotives originating from a non-member country. The Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos (Customs Department, Ministry of Finance of the Republic of Lithuania) had indicated, in a letter of 26 February 2002, that it was not necessary to declare separately the fuel present in the tanks of the locomotives crossing the border of the Republic of Lithuania, as that fuel was not subject to excise duties or import VAT.

22 On 8 June 2007, LG submitted a request to the Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (National Tax Directorate, Ministry of Finance of the Republic of Lithuania) asking for clarification as to whether locomotives were to be equated with motorised road vehicles under the Law on VAT. In its reply of 27 June 2007, that office confirmed that locomotives were equated with those vehicles.

23 In a letter of 14 November 2008, addressed to the Republic of Lithuania, the European Commission stated that it took the view that locomotives cannot be equated with motorised road vehicles and that the relief and exemptions provided for in Article 112 of Regulation No 918/83 and Article 82 of Directive 83/181 therefore did not apply to imported fuel contained in the standard tanks of locomotives.

24 By letter of 20 November 2008, the Ministry of Finance informed LG that the import VAT exemptions provided for by the Law on VAT were not applicable to locomotives. LG therefore put a stop to the practice of filling the tanks of its locomotives on Russian territory. By letter of 27 November 2009, the Ministry of Finance informed LG that it would proceed with the recovery of taxes owing on fuel transported in the standard tanks of locomotives.

25 The Vilniaus teritorinė muitinė subsequently conducted a tax inspection of the period from 1 January 2005 to 30 April 2010, in respect of fuel imported into the customs territory of the European Union in standard fuel tanks of locomotives and, on 16 December 2010, notified LG, by Decision No OVM320138M, of an assessment of LTL 28 860 895 in excise duties, import VAT, overdue interest and fine for non-payment of excise duty and import VAT.

26 On 6 January 2011 LG brought a complaint against that decision before the Customs Department of the Ministry of Finance. As that department did not rule on the complaint within the time-limits prescribed by the applicable legislation, on 3 March 2011 LG brought an action before the referring court to have that decision annulled.

27 That court observes that the title of Regulation No 918/83 containing the relevant provisions refers merely to 'land motor vehicles' and that locomotives come within that category. It doubts that it is appropriate and legally well founded to apply a different fiscal scheme to different categories of land vehicles. In its view, it should be considered whether a different fiscal approach to railway and automotive road vehicles can be justified by any objective criteria, since all the other factors at issue, namely the vehicle's purpose (in the present case, commercial) and the way in which the fuel is imported (in standard tanks) and used (for vehicle propulsion) are the same.

28 In that context, the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission, Government of the Republic of Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Should the exemption from import duties laid down in Article 112(1)(a) of Regulation No 918/83 and Article 107(1)(a) of Regulation No 1186/2009 be understood as applying to motor vehicles [motorinės transporto priemonės] that are locomotives?

2. Should the exemption from value added tax laid down in Article 82(1)(a) of Directive 83/181 … and Article 84(1)(a) of Directive 2009/132 … be understood as applying to motor vehicles [motorinės transporto priemonės] that are locomotives?

3. If the answer to the second question is in the affirmative, do legal rules such as those laid down in Article 82(1)(a) of Directive 83/181 … and Article 84(1)(a) of Directive 2009/132 … have to be interpreted as prohibiting a Member State from restricting the cases of exemption from import VAT for fuel by providing that such an exemption is applicable exclusively to fuel that is admitted into the territory of the European Union in the standard tanks of automotive vehicles and is necessary for the operation of those vehicles?'

The questions referred for a preliminary ruling

29 By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 112(1)(a) of Regulation No 918/83, Article 107(1)(a) of Regulation No 1186/2009, Article 82(1)(a) of Directive 83/181 and Article 84(1)(a) of Directive 2009/132 must be interpreted as applying to locomotives.

30 It should be borne in mind that, under those provisions, inter alia fuel contained in the standard tanks of 'commercial motor vehicles' entering into European Union territory is to be exempt from import duty and import VAT.

31 The notion of 'commercial motor vehicle' is defined in Article 112(2)(a) of Regulation No 918/83, Article 107(2)(a) of Regulation No 1186/2009, Article 82(2)(a) of Directive 83/181, and also Article 84(2)(a) of Directive 2009/132 as 'any motorised road vehicle' satisfying certain specific conditions, which could in principle be fulfilled just as well by locomotives as by other land vehicles.

32 In that regard, as observed in paragraphs 6, 8, 12 and 14 of this judgment, there are divergences between the different language versions of the provisions at issue here. In the Bulgarian, Spanish, Czech, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene and Finnish versions, the vehicle in question is expressly described as being a 'road' vehicle, whilst the Danish and Dutch versions contain no such specification; they refer simply to the notion of 'motorised vehicle'.

33 In the Romanian and Swedish versions, there is a difference on this point in the drafting of the relevant regulations and directives. In the Romanian version, whereas the definition in Regulations Nos 918/83 and 1186/2009 refers to the notion of 'motorised road vehicle', the one found in Directives 83/181 and 2009/132 refers to the notion of 'motorised vehicle'. In the Swedish version, on the other hand, the definition in Regulations Nos 918/83 and 1186/2009 refers to 'motorised vehicle' and Directives 83/181 and 2009/132 refer to 'motorised road vehicle'.

34 According to settled case-law, the various language versions of a provision of European Union law must be uniformly interpreted and, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, inter alia, Case C-341/01 *Plato Plastik Robert Frank* [2004] ECR I-4883, paragraph 64 and the case-law cited).

35 In that regard it should be borne in mind, first of all, that it is settled case-law in matters of VAT, which also applies in respect of customs duties, that the terms used to specify the exemptions are to be interpreted strictly, since those exemptions constitute exceptions to the general principle that VAT is to be levied on all goods and services supplied for consideration by a taxable person (see, to that effect, Case C-540/09 *Skandinaviska Enskilda Banken* [2011] ECR I-1509, paragraph 20).

36 Next, regarding the purpose of the provisions in question, the Lithuanian Government and the Commission stated at the hearing that the relief from import duties and the VAT exemption provided for by the provisions in question pursue an objective consisting, on the one hand, in making it easier for individuals to cross the external borders of the European Union and, on the other, to lighten the customs and tax checks to be conducted by the competent authorities. Systematic inspections of the content of the tanks of all road vehicles entering into European Union territory each day would be a virtually impossible task and would, in any event, be disproportionate in terms of costs and inconvenience for travellers, in the light of the import duties and VAT revenues they could generate.

37 Nor is there any indication that those provisions have an objective other than the one just referred to in paragraph 36 of this judgment. On the contrary, that objective is confirmed by the possibility that Member States have under Article 113 Regulation No 918/83, Article 108 of Regulation No 1186/2009, Article 83 of Directive 83/181 and Article 85 of Directive 2009/132 to limit the application of the provisions at issue in the main proceedings to 200 litres per vehicle per journey.

38 By contrast, regarding locomotives such as those at issue in the main proceedings, the case-file submitted to the Court indicates, firstly, that the capacity of their tanks can reach levels of up to 7 000 litres. Secondly, according to the Lithuanian Government, in 2008 LG had only 136 locomotives equipped with diesel motors, only some of which regularly crossed the border between the Republic of Lithuania and the Russian Federation. It does not seem that a systematic check of the locomotive tanks there would entail the same inconveniences as for road vehicles as referred to in paragraph 36 of this judgment and which the European Union legislature wished to avoid in adopting the provisions at issue here.

39 It follows that the application of the import duty relief and the VAT exemption as provided for by those provisions to locomotives is not capable of meeting the same objective which the European Union legislature wished to pursue in adopting those provisions.

40 It is true that where it is necessary to interpret a provision of secondary European Union law, preference should as far as possible be given to the interpretation which renders the provision consistent with the treaties and the general principles of European Union law (see, inter alia, Case C-314/89 *Rauh* [1991] ECR I-1647, paragraph 17, and Case C-1/02 *Borgmann* [2004] ECR I-3219, paragraph 30).

41 LG has argued that an interpretation of the provisions at issue which does not confer the same advantages on rail transport as on road transport is contrary to the principle of equal treatment.

42 In LG's submission, rail transport is in a competitive position vis-à-vis road transport, and there is no objective criterion justifying there being a distinction being drawn between the different categories of land vehicles. LG states in that regard that infringement of the general principle of equal treatment may be established, in matters relating to tax, by other kinds of discrimination which affect traders who are not necessarily in competition with each other but who are nevertheless in a similar situation in other respects (Case C-309/06 *Marks & Spencer* [2008] ECR I-2283, paragraph 49).

43 LG maintains that, both for freight transport and for passenger transport, road transport is an alternative to rail transport. Those modes of transport are, moreover, similar, at least as regards the layout of the routes, the types of freight transported and the methods used, most often based on the use of internal combustion motor vehicles which move at comparable speeds.

44 It should be observed in that regard that the Court has consistently held that the principle of equal treatment requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified (Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 95).

45 According to settled case-law, the principle of equal treatment, which applies in matters relating to VAT through the principle of fiscal neutrality, precludes treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes (see, inter alia, Joined Cases C-259/10 and C-260/10 *The Rank Group* [2011] ECR I-10947, paragraph 32 and the case-law cited).

46 However, the Court found in paragraph 96 of *IATA and ELFAA* that different modes of transport are not generally interchangeable and that the situation of undertakings operating in each of those different transport sectors is accordingly not comparable.

47 Moreover, as evidenced by paragraphs 36 to 38 of this judgment, given the objective pursued by the European Union legislature in adopting those provisions, locomotives are not in a comparable situation to that of road vehicles.

48 It follows that the principle of equal treatment does not require the provisions at issue to be interpreted as also applying to locomotives.

49 It follows from all the foregoing considerations that the answer to the first and second questions is that Article 112(1)(a) of Regulation No 918/83, Article 107(1)(a) of Regulation No 1186/2009, Article 82(1)(a) of Directive 83/181 and Article 84(1)(a) of Directive 2009/132 must be interpreted as meaning that they do not apply to locomotives.

50 In the light of the reply given to Questions 1 and 2, it is not necessary to consider Question 3.

Costs

51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 112(1)(a) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Council Regulation (EEC) No 1315/88 of 3 May 1988, Article 107(1)(a) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, Article 82(1)(a) of Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods, as amended by Council Directive 88/331/EEC of 13 June 1988 and Article 84(1)(a) of Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods must be interpreted as meaning that they do not apply to locomotives.

[Signatures]