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

In Case C-219/89,

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

WeserGold GmbH & Co. KG

and

Oberfinanzdirektion München,

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: H. A. Rühl, Principal Administrator,

having regard to the written observations presented on behalf of:

— WeserGold by Von Alvensleben, Rechtsanwalt, Hamburg,

* Language of the case: German.

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

having regard to the Report for the Hearing,

after hearing the oral submissions of WeserGold and the Commission of the European Communities at the hearing on 13 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 6 June 1989, which was received at the Court on 13 July 1989, the Bundesfinanzhof referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question on the interpretation of the Common Customs Tariff (Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, Official Journal L 256, p. 1).

2 The question arose in proceedings between WeserGold GmbH & Co. KG ('WeserGold') and the Oberfinanzdirektion München (Principal Revenue Office, Munich) on the tariff classification of a product composed of 39.4% orange juice and 60.6% sugar, intended for the production of drinks through the addition of water and/or sugar.

3 On 9 May 1988, the Oberfinanzdirektion issued WeserGold with a binding customs tariff ruling classifying the product under heading No 2106 of the Common Customs Tariff. That heading is a residual heading concerned with 'food preparations not elsewhere specified or included'.

4 WeserGold contested the classification before the Bundesfinanzhof. According to WeserGold, the 'sweetened orange juice' in question must be classified under heading No 2009. That heading covers 'fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter'.

5 The Bundesfinanzhof was uncertain as to the interpretation which should be given to the Common Customs Tariff and referred the following question to the Court for a preliminary ruling:

'Is a product consisting of 39.4% orange juice and 60.6% sugar to be classified as "fruit juice containing added sugar" under heading No 2009 of the combined nomenclature?'

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

6 In order to determine the classification of the contested product, it should be remembered that the Court has consistently held that the decisive criterion for the classification of goods for customs purposes is to be sought in their characteristics and objective properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters (see, for example, the judgment in Case 62/77 *Carlsen-Verlag* [1977] ECR 2343).

7 The characteristics of a product such as the one in question in the present case correspond at first sight to those described by the wording of heading No 2009, 'orange juice containing added sugar'.

8 According to the national court and the Commission, that heading should be excluded on the grounds that the product has become unsuitable for direct consumption and has lost its original character of fruit juice. Therefore, it no longer satisfies the condition required by the Explanatory Notes of the Customs Cooperation Council for that heading.

9 That argument cannot be accepted. First, it is clear from the case-law cited above that the intended use of a product can only be taken into account for the purpose of its tariff classification if the wording of the heading, or the note referring to it, makes an express reference to that criterion (see, on this point, the judgment in Case 38/76 *Luma* [1976] ECR 2027). As that is not the case with heading No 2009, reference cannot be made to that criterion for the purpose of classifying an orange juice such as the one which is at issue in the main proceedings. Furthermore, since it is described in the binding tariff ruling issued by the Oberfinanzdirektion as a yellow-coloured liquid which has the smell and taste of an orange juice, the product must be considered to have retained its original character of fruit juice.

10 The conclusion that the product should be classified under heading No 2009 receives additional support from the wording of subheadings 2009 11 91 and 2009 19 91 which, read in the light of Additional Note No 5 in chapter 20, shows that an orange juice in respect of which the sugar content is equal or greater than 43% falls under heading No 2009. Those two subheadings apply to orange juices having an added sugar content in excess of 30% by weight, whereas Additional Note No 5 assumes that all orange juice contains 13% natural sugar. The characteristics of the orange juice in question in the present case are not fundamentally different from such a product.

11 Finally, it should be observed that the abovementioned explanatory notes establish a distinction, as regards the degree of sweetening, between sugar and other sweetening matters. Whereas for the latter it is required that 'the quantity added does not exceed that necessary for normal sweetening purposes' and that the 'balance of the different constituents' is preserved, the addition of sugar is not subject to any limit.

12 The reply to the question submitted must therefore be that a product composed of 39.4% orange juice and 60.6% sugar must be classified as 'fruit juice containing added sugar' under heading No 2009 of the Combined Nomenclature.

Costs

13 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 proceedings 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 question submitted to it by the Bundesfinanzhof, by order of 6 June 1989, hereby rules:

A product composed of 39.4% orange juice and 60.6% sugar must be classified as 'fruit juice containing added sugar' under heading No 2009 of the Combined Nomenclature.

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