JUDGMENT OF THE COURT (Second Chamber)
10 December 1992 *

In Case C-231/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Hamburg, for a preliminary ruling in the proceedings pending before that court between

Annuss GmbH & Co. KG

and

Hauptzollamt Hamburg-Jonas

on the interpretation of Article 11(2) of Commission Regulation (EEC) No 798/80 of 31 March 1980 laying down detailed rules on the advance payment of export refunds and positive monetary compensatory amounts in respect of agricultural products (OJ 1980 L 87, p. 42) and Article 6(2) of Commission Regulation (EEC) No 2267/84 of 31 July 1984 providing for the grant of private-storage aid fixed at a standard rate in advance in respect of carcasses, half-carcasses, hindquarters and forequarters of beef (OJ 1984 L 208, p. 31),

THE COURT (Second Chamber),

composed of: J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: C. Gulmann,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: German.

— Annuss GmbH & Co. KG, by Wolfgang Ziemer, Rechtsanwalt, Hamburg,

— the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Annuss GmbH & Co. KG and the Commission of the European Communities at the hearing on 17 September 1992,

after hearing the Opinion of the Advocate General at the sitting on 13 October 1992,

gives the following

Judgment

By order of 27 May 1991, received at the Court Registry on 16 September 1991, the Finanzgericht (Finance Court) Hamburg, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the combined provisions of Article 11(2) of Commission Regulation (EEC) No 798/80 of 31 March 1980 laying down detailed rules on the advance payment of export refunds and positive monetary compensatory amounts in respect of agricultural products (OJ 1980 L 87, p. 42) and Article 6(2) of Commission Regulation (EEC) No 2267/84 of 31 July 1984 providing for the grant of private-storage aid fixed at a standard rate in advance in respect of carcasses, half-carcasses, hindquarters and forequarters of beef (OJ 1984 L 208, p. 31).

That question was raised in proceedings brought by Annuss GmbH & Co. KG (hereinafter 'the plaintiff') against Hauptzollamt Hamburg-Jonas (Principal Customs Office, Hamburg Jonas, hereinafter 'the defendant'), which had demanded from it the repayment of export refunds paid in advance on the ground that the plaintiff had failed to comply with a time-limit laid down by the applicable Community provisions.

3 It is appropriate first to set out the applicable Community legislation.

4 Article 5(1) of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (OJ 1980 L 62, p. 5) enables traders to obtain on request the payment in advance of an amount equal to the export refunds for agricultural products as soon as the products or goods have been brought under the customs-warehousing or free-zone procedure with a view to their being exported within a set time-limit.

5 Under Article 2(1) of Regulation No 798/80, entitlement to the advance payment of export refunds is conditional upon the submission to the customs authorities of a payment declaration by which the exporter states his intention to place the products or goods under the customs-warehousing or free-zone procedure, to export them following storage and to receive a refund. Pursuant to Article 3(1) of the same regulation, the products or goods are placed under customs control at the time of acceptance of the payment declaration by the customs authorities.

6 Article 11(2) of that regulation provides that the period within which the products or goods may remain under the customs-warehousing or free-zone procedure is to be six months from the date of acceptance of the customs declaration.

7 The grant of private storage aid fixed at a standard rate in advance for beef and veal is subject to the conclusion of a storage contract between the storer and the storage undertaking. Under Article 5(1) of Regulation No 2267/84, the period of storage may be either 9, 10, 11 or 12 months, according to the preference which the storer must express when submitting the application for aid.

8 Pursuant to Article 5(2) of Regulation No 2267/84, entitlement to the payment of private storage aid is to be established only if the meat has remained in storage throughout the storage period, whilst Article 7(1) of the same regulation enables the contracting party, on the expiry of a storage period of two months, to withdraw from store all or part of the quantity of meat under contract, subject to a minimum of ten tonnes. If this is done, the amount of aid is reduced correspondingly.

9 The first day of the storage period is the day following that on which the operation of putting into storage is completed, by virtue of Article 8(2) of Regulation (EEC) No 1091/80 of 2 May 1980 laying down detailed rules for granting private aid for beef and veal (OJ 1980 L 114, p. 18), as amended by Commission Regulation (EEC) No 2826/82 of 22 October 1982 (OJ 1982 L 297, p. 18).

10 Pursuant to Article 2(4) of Regulation No 1091/80, as amended by Commission Regulation (EEC) No 2629/80 of 14 October 1980 (OJ 1980 L 270, p. 9), the same products or goods could not in principle be covered by a private storage contract and be placed at the same time under the customs-warehousing or free-zone procedure.

11 However, in view of the exceptional situation prevailing in the beef and veal market and in order to encourage traders to use private storage, the Commission, by Article 6(1) of Regulation No 2267/84, subsequently introduced for a limited period a derogation from the prohibition of benefiting simultaneously from the two sets of arrangements concerned.

12 Having regard to the contractual storage periods, the Commission considered it necessary to include, in Article 6(2) of the same regulation, a derogation from Article 11(2) of Regulation No 798/80 and to increase from 6 to 12 months the period for which products or goods covered by a private storage contract could at the same time remain under the customs-warehousing or free-zone procedure.

13 Subsequently, that time-limit was extended by the first indent of Article 4(5) of Commission Regulation (EEC) No 3445/90 of 27 November 1990 laying down detailed rules for granting private-storage aid for beef and veal (OJ 1990 L 333, p. 30), so as to cover the maximum contractual storage period, plus one month.

14 On the basis of an export certificate, the plaintiff placed a number of cartons of beef and veal in an export warehouse in the free port of Hamburg with a view to exporting them at a later stage. The plaintiff obtained the advance payment of the export refunds on 3 January 1985. It had also been granted private storage aid under a private storage contract concluded for a storage period of 12 months.

15 According to the documents forwarded by the national court, the period for which the goods were allowed to remain under the customs procedure started to run on 10 and 11 November 1984 and, pursuant to Article 6(2) of Regulation No 2267/84, that period expired on 11 November 1985 (since 10 November 1985 fell on a Sunday).

16 Since the private storage contract covered consignments of meat for which the operation of putting into storage was not completed until 16 November 1984, the contractual storage period laid down for aid to be granted did not start until 17 November 1984, by virtue of Article 8(2) of Regulation No 1091/80.

17 Some of the products were withdrawn from the warehouse and exported to non-member countries before the end of the period for which it was permissible for them to remain under the customs procedure. However, certain other cartons were not presented to the free port customs office for export clearance until 14 November 1985. The defendant then demanded that the plaintiff repay the relevant proportion of the export refunds paid in advance.

18 Before the national court, the plaintiff claimed that where the two sets of arrangements in question applied simultaneously, the period for which the products in question could remain under the customs-warehousing or free-zone procedure and the storage period should not be different or commence at different times, contrary to the defendant's contention, otherwise the trader would be deprived of the possibility of using the full contractual storage period.

19 The national court therefore wondered whether, notwithstanding their wording, it was possible to amend and supplement the provisions fixing the time-limits at issue. It therefore stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Article 6(2) of Regulation (EEC) No 2267/84 to be interpreted as meaning that, in derogation from Article 11(2) of Regulation (EEC) No 798/80, the storage period does not expire before the expiry of the period which the exporter has to observe in respect of the aid granted to him for private storage?'

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

21 It is clear from the very wording of Article 6(2) of Regulation No 2267/84 that the derogation made by that provision from Article 11(2) of Regulation No 798/80 merely increased from six to twelve months, but did not change the starting point of, the time for which products or goods covered by a private storage contract might at the same time be covered by a customs-warehousing or free-zone procedure.

22 The starting point of that period thus continues to be the date of acceptance by the customs authorities of the payment declaration signed by the trader, even if the operation of putting into storage for the purposes of private storage aid is not

completed by that date. Even in such a case, the trader undertakes, on presenting his payment declaration to the customs authorities, to export his products or goods before the expiry of a period of which the starting point remains the same.

23 Traders cannot validly claim that in such circumstances they are deprived of the possibility of using the full contractual storage period.

24 First, the possibility available for a limited period under Article 6(1) of Regulation No 2267/84 of placing under a customs-warehousing or free-zone procedure products or goods which are at the same time covered by a private storage contract is intended to encourage traders to use private storage facilities, not to make use of the maximum period in all circumstances. In that connection, it is apparent from Article 5(1) of Regulation No 2267/84 that traders are authorized to store the products or goods for a period which they themselves may fix at 9, 10, 11 or 12 months.

25 Secondly, Article 7(1) of the same regulation relaxes the trader's obligation to observe the full storage period initially contracted for by authorizing him, after a period of storage of two months, to withdraw from storage all or part of the meat covered by the contract.

26 The foregoing considerations are not affected by the fact that the first indent of Article 4(5) of Regulation No 3445/90 subsequently extended, so as to cover the maximum contractual storage period plus one month, the period for which products or goods covered by a private-storage contract may at the same time be placed under the customs-warehousing or free-zone procedure for the purposes of the advance payment of export refunds.

27 It need merely be pointed out that, even under that new provision, the starting point of the time-limit laid down for the purposes of the advance payment of export refunds continues to be the date of acceptance of the payment declaration.

28 The answer to the question submitted by the Finanzgericht Hamburg, must therefore be that, in circumstances such as those in the main proceedings, Article 6(2) of Regulation No 2267/84 must be interpreted as meaning that the period for which products or goods covered by a private-storage contract may at the same time be covered by a customs-warehousing or free-zone procedure expires before the period which the exporter is obliged to observe for the purposes of the private-storage aid which was granted to him.

Costs

29 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Finanzgericht Hamburg, by order of 27 May 1991, hereby rules:

In circumstances such as those in the main proceedings, Article 6(2) of Commission Regulation (EEC) No 2267/84 of 31 July 1984 providing for the grant of private-storage aid fixed at a standard rate in advance in respect of carcasses, half-carcasses, hindquarters and forequarters of beef must be interpreted as meaning that the period for which products or goods covered by a private-

storage contract may at the same time be covered by a customs-warehousing or free-zone procedure expires before the period which the exporter is obliged to observe for the purposes of the private-storage aid which was granted to him.

Murray Mancini Schockweiler

Delivered in open court in Luxembourg on 10 December 1992.

J.-G. Giraud

Registrar

J. L. Murray

President of the Second Chamber