JUDGMENT OF THE COURT (Fifth Chamber)
18 December 1997 *

In Case C-284/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Grande Instance de Briey, France, for a preliminary ruling in the proceedings pending before that court between

Didier Tabouillot

and

Directeur des Services Fiscaux de Meurthe-et-Moselle

on the interpretation of Article 95 of the EC Treaty for the purpose of determining whether the French system of motor vehicle tax is compatible with that provision,

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, M. Wathelet (Rapporteur), J. C. Moitinho de Almeida, D. A. O. Edward and J.-P. Puissochet, Judges,

* Language of the case: French.

Advocate General: F. G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Tabouillot, by Georges Benabes, of the Lorient Bar,

— the French Government, by Catherine de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Romain Nadal, Assistant Foreign Affairs Secretary in the same directorate, acting as Agents,

— the Commission of the European Communities, by Hélène Michard and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Tabouillot, the French Government and the Commission at the hearing on 5 June 1997,

after hearing the Opinion of the Advocate General at the sitting on 17 July 1997,

gives the following

Judgment

1 By judgment of 8 August 1996, received at the Court on 22 August 1996, the Tribunal de Grande Instance de Briey (Regional Court, Briey) referred to the Court

for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 95 thereof for the purpose of determining whether the French system of motor vehicle tax is compatible with that provision.

2 Those questions were raised in proceedings between Mr Tabouillot and the French tax authorities concerning the application to his foreign-made vehicle of a method of calculating its fiscal horsepower value which results in a higher tax than that on similar vehicles produced in France.

3 The French legislature imposed the differential tax on motor vehicles by Articles 1599 C to 1599 J of the Code Général des Impôts (General Tax Code). Tax bands covering several fiscal horsepower values are defined by legislation and there is a coefficient for each band. The amount of the differential tax is calculated by multiplying a basic rate, decided annually by the councils of the individual *départements*, by the coefficient corresponding to the relevant tax band.

4 Mr Tabouillot challenges the method of calculating the power rating of private cars.

5 Two successive circulars govern the method of calculating the power rating of private cars: the Circular of 28 December 1956 (*Journal Officiel de la République Française*, 22 January 1957, p. 910) and Circular No 77-191 of 23 December 1977 (*Journal Officiel de la République Française*, 8 February 1978, p. 1052). They were given force of law, with retroactive effect, under Article 35 of the Finance (Amendment) Law for 1993 (Law No 93-859 of 22 June 1993; *Journal Officiel de la République Française*, 23 June 1993, p. 8815).

6 The formula laid down by the Circular of 28 December 1956 for calculating the fiscal horsepower value is $P = K\ n\ D^2\ L\ \omega$. P stands for the power rating, n for the number of cylinders, D for the bore in centimetres, L for the stroke in centimetres, and ω for the rotation speed in revolutions per second, while K is a numerical coefficient. According to the Commission, which has not been contradicted in this respect, that linear formula can be expressed more simply as the cylinder capacity of the vehicle in litres multiplied by a coefficient of 5.7294 for vehicles run on petrol and of 4.0106 for vehicles run on diesel; the result of the application of that formula to vehicles is thus exclusively a function of the engine's cylinder capacity.

7 A new formula, which originates from the Circular of 23 December 1977, came into effect on 1 January 1978. Under that formula $P = m\ (0.0458 \times C/K)^{1.48}$, where P stands for the power rating, m is 1 for petrol and 0.7 for diesel fuel, C is the cylinder capacity of the engine expressed in cubic centimetres, and K is a parameter representing the transmission of motion obtained by calculating 'the weighted arithmetic mean of the speeds expressed in kilometres per hour which would in theory be attained by the vehicle at an engine speed of 1 000 revolutions per minute for the various ratios of the forward gears of the gearbox'.

8 The Circular of 23 December 1977 applies to 'private cars seating fewer than nine people, equipped with a four-stroke cycle internal combustion engine and a transmission falling within one of the types described in the annex ... and granted type-approval on or after 1 January 1978'. Its field of application was amended by Circular No 87-56 of 24 June 1987 ('Circular No 87-56'). It was decided that, in order to remedy 'certain distortions which [had come] to light regarding equivalent type-approved or individually approved models', the Circular of 23 December 1977 was to 'apply in addition to individually approved private cars matching a model granted type-approval or considered to be equivalent, as regards calculation of the power rating, to a model granted type-approval whose fiscal horsepower value [had] been calculated in accordance with the [Circular of 23 December 1977]'.

9 Circular No 87-56 states that 'vehicles other than the private cars referred to below shall continue to be subject to the provisions of the 1956 circular'.

10 It is thus apparent that two separate methods of calculating power ratings have existed in parallel in France since 1 January 1978.

11 It is clear from the file in the proceedings before the national court that the vast majority of vehicles granted approval in France are covered by the formula laid down by the Circular of 23 December 1977. Nevertheless, the formula which results from the Circular of 28 December 1956 continues to apply residually to:

— type-approved or individually approved private cars whose type was received in France before 1 January 1978;

— vehicles presented individually for approval which do not match a model granted type-approval in France after 1 January 1978;

— private cars which match a model granted type-approval after 1 January 1978 but are considered not to be equivalent, as regards fiscal horsepower value, to a model granted type-approval whose power rating has been calculated in accordance with the Circular of 23 December 1977 (Circular No 87-56).

12 Mr Tabouillot is the owner of a Chevrolet Corvette with a cylinder capacity of 5 735 cm^3 which was first put on the road on 1 January 1980, and was first registered in France on 29 May 1992 following a ministerial waiver of 5 May 1992 mentioned in the registration document.

13 The tax authorities fixed the power rating of that vehicle at 33 CV, pursuant to the method of calculation laid down by the Circular of 28 December 1956.

14 On 10 September 1994 Mr Tabouillot was reported for an offence because he had failed to affix a tax disc for 1993-94 to the windscreen of his vehicle. He was asked to pay FF 6 031 for the tax disc together with FF 11 710 as the fine laid down by Article 1840 N quater of the General Tax Code, making a total of FF 17 741, reduced to FF 17 152 after relief.

15 Mr Tabouillot took the view that that tax was contrary to Article 95 of the Treaty and accordingly challenged the legality of the sums demanded from him in an application to the tax authorities for reconsideration of their decision. That application was rejected on 25 September 1995.

16 By application dated 14 November 1995 Mr Tabouillot issued proceedings in the Tribunal de Grande Instance de Briey against the Directeur des Services Fiscaux de Meurthe-et-Moselle (Chief Tax Inspector for the *département* of Meurthe-et-Moselle). He considers that the fiscal provisions relating to the differential tax on motor vehicles of more than 16 CV must be declared inapplicable on the ground that they are incompatible with Article 95 of the Treaty.

17 In support of his action Mr Tabouillot submits in particular that the simultaneous use of two methods of calculating power ratings, one originating from the Circular of 28 December 1956 and the other from the Circular of 23 December 1977, led to adverse results for vehicles bought outside France for import into that State and could thus affect intra-Community trade.

18 The Directeur des Services Fiscaux contended that Mr Tabouillot's application should be dismissed. He maintained that the system of differential tax on motor vehicles resulting from Law No 87-1061 of 30 December 1987 and from the subsequent circulars was in conformity with Community law, as the Conseil d'État (Council of State) had, moreover, held in a judgment of 20 March 1992.

19 In those circumstances the Tribunal de Grande Instance de Briey referred the following two questions to the Court of Justice for a preliminary ruling:

'1. Is Article 95 of the EEC Treaty to be interpreted as precluding the application of a method for establishing the fiscal horsepower value of vehicles which results in a higher such value being conferred on certain vehicles, which consumers are therefore deterred from buying, where all the vehicles in the highest tax categories are imported vehicles standing in direct competition with similar vehicles sold in France which are in more favourable tax categories?

2. Is Article 95 of the EEC Treaty to be interpreted as precluding the simultaneous use of two sets of rules for establishing the fiscal horsepower value of vehicles where the more unfavourable set is applied in particular to vehicles imported from other Member States which French consumers are consequently deterred from buying, to the advantage of similar vehicles sold in France?'

20 By letter of 8 December 1997, received at the Court on 10 December 1997 and thus after the Advocate General had delivered his Opinion, Mr Tabouillot submitted observations on certain points in the Opinion regarding the admissibility of the question referred to the Court and requested the Court to declare admissible the reference made to it for a preliminary ruling.

21 It should be observed that the arguments put forward in support of that approach are not such as to necessitate the reopening of the oral procedure, as provided for in Article 61 of the Rules of Procedure of the Court.

22 It should be noted that counsel for Mr Tabouillot stated in reply to a question put by the Court that his client's vehicle had been imported into France directly from the United States.

23 It is settled case-law (see Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, paragraph 23, Joined Cases C-228/90 to C-234/90, C-339/90 and C-353/90 *Simba and Others* v *Ministero delle Finanze* [1992] ECR I-3713, paragraph 14, and Case C-130/92 *Oto* v *Ministero delle Finanze* [1994] ECR I-3281, paragraph 18) that Article 95 applies only to goods imported from other Member States and, where appropriate, to goods originating in non-member countries which are in free circulation in the Member States. It follows that that provision is not applicable to products imported directly from non-member countries.

24 Accordingly, Article 95 is inapplicable to a situation such as that in the main proceedings.

25 Counsel for Mr Tabouillot maintained at the hearing, however, that the Court was nevertheless obliged to reply to the questions referred to it because he could rely on that ruling under national law by virtue of the principle of equal treatment of taxpayers and French citizens fiscally and before the law.

26 It must be stated in this regard that there is nothing in the order for reference to suggest that the questions referred to the Court are intended to obtain a ruling on that point. On the contrary, as the Advocate General stated in paragraph 30 of his Opinion, the national court asked those questions on the assumption that the vehicle in question had been imported from another Member State.

27 The answer to the national court's questions must therefore be that a situation such as that arising from the importation into a Member State of a vehicle which has come directly from a non-member country does not fall within the scope of Article 95 of the Treaty.

Costs

28 The costs incurred by the French Government and by the Commission of the European Communities, which have 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 (Fifth Chamber),

in answer to the questions referred to it by the Tribunal de Grande Instance de Briey by judgment of 8 August 1996, hereby rules:

A situation such as that arising from the importation into a Member State of a vehicle which has come directly from a non-member country does not fall within the scope of Article 95 of the EC Treaty.

Gulmann Wathelet Moitinho de Almeida

Edward Puissochet

Delivered in open court in Luxembourg on 18 December 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber