JUDGMENT OF THE COURT (Third Chamber)
21 March 1985 *

In Case 54/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Düsseldorf for a preliminary ruling in the proceedings pending before that court between

Michael Paul

and

Hauptzollamt [Principal Customs Office] **Emmerich**

on the interpretation of Regulation No 1544/69 of the Council of 23 July 1969 (Official Journal, English Special Edition 1969 (II), p. 359), as amended by Council Regulation No 3061/78 of 19 December 1978 (Official Journal, L 366, p. 3),

THE COURT (Third Chamber)

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

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

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gives the following

* Language of the Case: German.

** after considering the observations submitted on behalf of
the Commission of the European Communities by Mr C. Bail, acting as Agent,
after hearing the Opinion of the Advocate General delivered at the sitting on 31 January 1985,

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 1 February 1984, which was received at the Court on 29 February 1984, the Finanzgericht Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Regulation No 1544/69 of the Council of 23 July 1969 on the tariff applicable to goods contained in travellers' personal luggage, as amended *inter alia* by Council Regulation No 3061/78 of 19 December 1978.

2 That question was raised in proceedings between Mr Paul, who was resident in the Federal Republic of Germany in the municipality of Ahaus, near the frontier, and the German customs authorities.

3 On 3 May 1980, when crossing at the frontier post of Elten-Lobith some 80 km from his home, Mr Paul was restricted in the amount of cigarettes purchased in the Netherlands, near to the frontier, which he wished to import duty-free into the Federal Republic of Germany. On the basis of the Regulation on the Exemption from Import Duties of Goods in Travellers' Personal Luggage of 3 December 1974 (Bundesgesetzblatt I — 1974, p. 3377), as amended on 12 December 1979 (Bundesgesetzblatt I — 1979, p. 2150), the German customs authorities confiscated the cigarettes which they did not accept as being duty-free.

4 It follows from paragraph 2 (1), point 1 (a) (bb) and paragraph 3 (4), point 1 of that regulation that whereas travellers who are resident in Europe may import for their personal use or as presents 300 duty-free cigarettes, the residents of municipalities situated near the frontier, whose travel into foreign territory has not exceeded 15 km in depth, may import only 40 cigarettes.

5 When the objection which he lodged with the Oberfinanzdirektion Düsseldorf was rejected Mr Paul appealed to the Finanzgericht Düsseldorf.

6 To resolve the question whether or not the aforementioned provisions of the German customs regulation went beyond the terms of the aforesaid Regulation No 1544/69 of the Council, as amended, Article 4 of which provides:

'Member States may set lower limits as to value and/or quantity for the exemption of goods when they are imported . . . in frontier-zone travel',

the Finanzgericht Düsseldorf decided to refer the following question to the Court for a preliminary ruling:

'Is the expression "imported: — in frontier-zone travel" in Article 4 of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 to be interpreted as referring to imports effected by residents of a municipality situated near the frontier, whose travel in the customs territory on the other side thereof cannot be shown to have extended beyond the strip of land 15 km wide on that side, regardless of whether they re-entered in the vicinity of their municipality situated near the frontier or at another place, much farther away?'

7 The Court observes that according to the last recital and Article 1 of Regulation No 1544/69 of the Council, as amended, that regulation establishes the exemptions from duties under the Common Customs Tariff and thus applies only to travellers from a non-member country.

8 Since the case is concerned with the importation of goods between Member States it is necessary to consider only the provisions of Council Directive No 69/169 of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption for turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232), as amended by Council Directive 72/230 of 12 June 1972 (Official Journal, English Special Edition 1972 (II), p. 565) and Directives 78/1032 and 78/1033 of 19 December 1978 (Official Journal, L 366, pp. 28 and 31). Article 2

(1) of Council Directive 69/169, as amended, provides that the exemption in question is to apply to goods contained in the personal luggage of travellers from Member States of the Community.

9 Article 5 (1) of Directive 69/169, in the amended version of that directive, provides:

'Member States may reduce the value and/or quantity of the goods which may be admitted duty-free . . . where such goods are imported from another Member State by persons resident in the frontier zone of the importing Member State or in that of the neighbouring Member State . . . '.

10 Article 5 (4) provides that the restrictions on exemption are not applicable where the persons who have their residence in the frontier zone

'produce evidence to show that they are going beyond the frontier zone or that they are not returning from the frontier zone of the neighbouring Member State . . . '.

11 Article 5 (5) of Directive 69/169 (in the amended version of that directive) provides that, for the purposes of the application *inter alia* of paragraphs (1) and (4), cited above,

'Frontier zone means a zone which, as the crow flies, does not extend more than 15 km from the frontier of a Member State. Each Member State must however include within its frontier zone the local administrative districts, part of the territory of which lies within the zone'.

12 It follows from the foregoing that the question referred to the Court for a preliminary ruling by the Finanzgericht Düsseldorf must be understood as asking, in substance, whether the expression 'frontier zone' as defined in Article 5 (5) of Council Directive 69/169 (in the amended version of that directive) means a strip 15 km in depth running the length of the frontier or a circle having a radius of 15 km and its centre at the customs crossing.

13 The answer to that question must be sought in the objectives of the system of exemptions progressively set up by the aforementioned Council directives.

14 It must be remembered in the first place that it is apparent from the first recital in the preamble to Directive 69/169 and the fifth recital in the preamble to Directive 72/230 that the complete achievement of an internal market covering the Community involves the abolition of the present systems of remission of taxation on export and taxation on import. Those systems may be maintained, notwithstanding the achievement of the customs union, only provisionally until the Member States have achieved extensive harmonization of indirect taxation.

15 In the second place it is clear from the second recital in the preamble to Directive 69/169 that even before such harmonization, which can be achieved only progressively, it is desirable that 'the population should become more strongly conscious of the reality of the Common Market' and that to that end measures should be adopted for the greater liberalization of the system of taxes on imports in travel between Member States.

16 It is true that the exemptions provided for in the those circumstances apply only, according to the terms of Article 1 (1) of Directive 69/169, as regards 'goods in travellers' personal luggage, if such imports have no commercial character' and the total value of the goods does not exceed a certain level expressed in units of account. The fear that their privileged geographical situation might encourage frontier-zone residents to abuse the system and the concern to protect local trade in those districts led the Community legislature to give Member States the power to reduce the ordinary exemptions in respect of goods imported 'in frontier-zone travel'.

17 The extent, however, of that power available to the Member States, which has, moreover, been the subject of several restrictions by directives subsequent to Directive 69/169, must be construed strictly in view of the general objectives referred to above, which led to the establishment of exemptions applicable to goods contained in the personal luggage of travellers from Member States of the Community.

18 In that respect it appears that a zone constituted by a radius of 15 km, having its centre at the customs crossing, best defines the concept of 'frontier zone' in Article 5 (5) of Directive 69/169 (in the amended version of that directive).

19 Concern to protect local trade against any abuse by frontier-zone residents can justify a limitation on exemptions only in respect of purchases facilitated by the particular situation of their residence. That means that only purchases made by frontier-zone residents in the immediate vicinity of their home, that is to say in the vicinity of a customs crossing which is itself near to the municipality of residence, are subject to the limitations on exemptions. That consideration cannot on the other hand justify a limitation on exemptions for purchases made in a place far from the frontier-zone resident's home even if that place is close to the frontier between the Member States in question. Such purchases are comparable to those made without reduction of exemption by persons resident outside a frontier zone.

20 The expression 'frontier zone', defined in the first indent of Article 5 (5) of Council Directive 69/169 of 28 May 1969, as amended by Council Directive 72/230 of 12 June 1972, must therefore be interpreted as meaning a circular zone having a radius of 15 km and its centre at the customs crossing.

Costs

21 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As the 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 (Third Chamber),

in answer to the question referred to it by the Finanzgericht Düsseldorf by order of 1 February 1984, hereby rules:

The expression 'frontier zone', defined in the first indent of Article 5 (5) of Council Directive 69/169 of 28 May 1969, as amended by Council Directive 72/230 of

12 June 1972, must be interpreted as meaning a circular zone having a radius of 15 km and its centre at the customs crossing.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 21 March 1985.

For the President of the Third Chamber

P. Heim
Registrar

A. J. Mackenzie Stuart
President