JUDGMENT OF THE COURT (Third Chamber)

9 November 2006 *

In Case C-120/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Finanzgericht Hamburg (Germany), made by decision of 2 March 2005, received at the Court on 15 March 2005, in the proceedings

Heinrich Schulze GmbH & Co. KG i.L.

v

Hauptzollamt Hamburg-Jonas,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Borg Barthet and U. Lõhmus (Rapporteur), Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: R. Grass,

after considering the observations submitted on behalf of:

— Heinrich Schulze GmbH & Co. KG i.L., by C. Esser, Rechtsanwältin,

— the Hauptzollamt Hamburg-Jonas, by G. Seber, acting as Agent,

— the Commission of the European Communities, by C. Cattabriga and F. Erlbacher, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 June 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the third subparagraph of Article 7(1) of Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of

goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds (OJ 1994 L 136, p. 5), as amended by Commission Regulation (EC) No 229/96 of 7 February 1996 (OJ 1996 L 30, p. 24) ('Regulation No 1222/94').

2 The questions were referred in the course of proceedings between Heinrich Schulze GmbH & Co. KG i.L. ('Schulze') and the Hauptzollamt Hamburg-Jonas (the Hamburg-Jonas customs office) ('the Hauptzollamt') concerning a demand for reimbursement of an export refund on agricultural products.

Legal framework

3 The common detailed rules for the application of the system of export refunds on agricultural products are contained in a number of Community regulations, including Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1), as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 (OJ 1994 L 310, p. 57) ('Regulation No 3665/87') and in Regulation No 1222/94.

4 Article 11 of Regulation No 3665/87 lays down the detailed rules for recovering unduly paid export refunds, the sanctions to be imposed in that connection, and provides for the possibility of waiving certain sanctions in the event of force majeure. Article 11(3) provides, in particular, that where a refund has been paid unduly, the beneficiary is bound to reimburse the amount unduly received, plus interest.

5 According to the 10th recital in the preamble to Regulation No 1222/94, 'it is necessary to provide for a notification system based on the principle that the exporter should declare to the competent authorities, each time that exportation takes place, the quantities of products used in the manufacture of the goods exported; ... it is for the competent authorities to take any measures they consider necessary to verify the accuracy of such declaration'.

6 It follows from the first subparagraph of Article 1(1) of Regulation No 1222/94 that that regulation applies, inter alia, to the basic products listed in Annex A to the regulation, to products derived from the processing thereof, referred to as 'goods', in Annexes B and C.

7 According to Article 2 of that regulation, 'the amount of the refund granted for the quantity, determined in accordance with Article 3, of each of the basic products exported in the form of the same type of goods, shall be obtained by multiplying this quantity by the rate of the refund on the basic products calculated per unit of weight in accordance with Article 4'.

8 Article 3(2) of Regulation No 1222/94 provides:

'For the purposes of paragraph 1, the products used unprocessed in the manufacture of exported goods shall be considered as actually used. Where, during one of the stages of manufacture of such goods, a basic product is itself processed into another more elaborate basic product used at a later stage, only the latter basic product shall be considered as actually used.

The quantities of products actually used, within the meaning of the first subparagraph, shall be determined for each type of goods exported.

However, in the case of regular exports relating to goods manufactured by a particular undertaking under clearly defined technical conditions and having constant characteristics and quality, the quantities may, by agreement with the competent authorities, be determined either from the manufacturing formula for the goods in question or from the average quantities of product used over a specified period in the manufacture of a given quantity of these goods. The quantities of products thus determined shall remain the basis of calculation so long as there is no change in the conditions under which the goods in question are manufactured.

...'

9 Gingerbread is considered to be a product for the purposes of Annex B to Regulation No 1222/94 and the simplified procedure referred to in the third subparagraph of Article 3(2) of that regulation is applicable when it is exported.

10 Article 7 of that regulation provides for a system of notification of export refunds, based on the principle of declarations by the exporter. Article 7(1) and (2) provide:

'1. The provisions of Regulation (EEC) No 3665/87 shall apply. Moreover, when goods are to be exported, the party concerned must declare the quantities of basic products, of products derived from the processing thereof, or of products

assimilated to one of those categories in accordance with Article 1(2), which have actually been used, within the meaning of Article 3(2), in the manufacture of those goods, for which a refund will be requested, or otherwise refer to that composition if it has been determined in accordance with the third subparagraph of Article 3(2).

When goods have been used in the manufacture of goods to be exported, the declaration by the party concerned must include the quantity of the goods actually used and the nature and quantity of each of the basic products, of products derived from the processing thereof or of products assimilated to one of those two categories in accordance with Article 1(2), from which the goods in question are derived.

The party concerned shall, in support of his declaration, supply the competent authorities with all documents and information which the latter consider relevant.

The competent authorities shall verify the accuracy of the declaration made to them by any appropriate means.

At the request of the competent authorities of the Member State on whose territory the customs export formalities are carried out, the competent authorities of the other Member States shall communicate to them directly all information they are able to obtain to enable the declaration made by the party concerned to be verified.

2. Where the party concerned does not draw up the declaration referred to in paragraph 1 or does not provide satisfactory information in support of his declaration, he shall not be entitled to a refund.'

The main proceedings and the questions referred for a preliminary ruling

11 In 1996, Schulze exported gingerbread to a number of third countries and applied for an export refund for the basic products contained therein. In the various export refund applications submitted by Schulze, it referred, as regards the basic products qualifying for the refund, to the manufacturing formula it had provided to the Hauptzollamt.

12 Schulze's production facilities and administrative offices suffered serious fire damage in May 1997, and Schulze shut down in July of that same year.

13 Following inspections conducted in October 1999, the Hauptzollamt, by correction notice of 28 August 2000, demanded that Schulze reimburse the export refund, totalling DEM 26 174.84, on the basis of Article 11(3) of Regulation No 3665/87, on the ground that Schulze could not produce the necessary information and documents in accordance with Article 7(1) of Regulation No 1222/94 to verify the manufacturing formula. It added that the granting of the refund was subject to confirmation of entitlement to an export refund by a subsequent inspection of the relevant documents.

14 Schulze lodged an objection to the demand for reimbursement of the refund, on the ground that the fire in its premises had destroyed the documents required by the Hauptzollamt. Its objection was rejected on 5 May 2003 on the ground that it had not complied with its duty to adduce evidence in accordance with Article 7(1) of Regulation No 1222/94 and could not rely on force majeure to claim exemption from that duty.

15 Schulze subsequently brought an action on 5 June 2003 before the Finanzgericht Hamburg, challenging the demand for reimbursement of the export refunds which, in its view, had been properly granted.

16 The Finanzgericht Hamburg accordingly decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Can the documentary evidence provided for in the third subparagraph of Article 7(1) of Regulation No 1222/94 be disregarded and the exporter permitted to adduce evidence as to the products actually used in the manufacture of the exported goods by means of other types of evidence if the exporter cannot (is no longer able to) adduce the documents relating to production by reason of force majeure?

Does the incidence of force majeure also lead to a reduction in the standard of proof in the sense that the exporter merely has to produce prima facie evidence of or plausibly demonstrate the products actually used in the manufacture of the exported goods?'

The questions referred for a preliminary ruling

17 By its questions, which it is appropriate to examine together, the national court seeks essentially to ascertain whether the third subparagraph of Article 7(1) of Regulation No 1222/94 is to be interpreted as meaning that when an exporter is not able, by reason of force majeure, to provide documentary evidence relating to the quantities of products actually used in the manufacture of exported goods, it does not preclude national authorities from accepting other types of evidence.

18 According to the 10th recital in the preamble to Regulation No 1222/94, that regulation is intended to provide for a notification system based on the principle that the exporter should declare to the competent authorities, each time that exportation takes place, the quantities of products used in the manufacture of the goods exported. It is for those authorities to take any measures they consider necessary to verify the accuracy of such declaration.

19 Under Articles 2 and 3 of Regulation No 1222/94, when the goods contain agricultural products in various quantities, also covered by that regulation, the refund amount to be granted is calculated on the basis of the quantity of agricultural products actually used in the manufacture of those exported goods (see, to that effect, Case C-542/03 *Milupa* [2005] ECR I-3989, paragraph 21).

20 However, a specific procedure is provided for in the third subparagraph of Article 3(2) of Regulation No 1222/94 for goods manufactured using a defined manufacturing formula. For those goods, the amount of the refund is calculated, by agreement with the national authorities, on the basis of the quantities determined using the manufacturing formula.

21 Under the first subparagraph of Article 7(1) of Regulation No 1222/94, the check on the granting of export refunds is carried out on the basis of a declaration by the exporter. In that declaration, the exporter must state the composition of the goods if it was determined using the simplified procedure provided for in the third subparagraph of Article 3(2) of that regulation.

22 Under the third subparagraph of Article 7(1) of Regulation No 1222/94, the exporter must supply, in support of his declaration, all documents and information which the competent authorities consider relevant. The fourth subparagraph of Article 7(1) further provides that those authorities are to verify the accuracy of the declaration made to them by any appropriate means.

23 Those provisions aim to enable the competent authorities to assess the merits of the application for an export refund and to determine the amount thereof.

24 If the exporter fails to provide a declaration, or fails to supply satisfactory documents or information in support of his declaration, he may not claim to be entitled to a refund, and if the refund has already been received, he must reimburse it, in accordance with Article 11(3) of Regulation No 3665/87, to which Article 7 of Regulation No 1222/94 refers.

25 However, Regulation No 1222/94 does not lay down any specific requirements as to the form evidence supplied in support of the export declaration must have. It is, moreover, clear from the third and fourth subparagraphs of Article 7(1) of that regulation, read together with the 10th recital in the preamble thereto, that the competent authorities may deem it appropriate for the party concerned to supply to them not only 'documents' but also 'information' and that they are empowered to use 'any appropriate means' and to take 'any measures they consider necessary' to verify the accuracy of the declaration.

26 Likewise, Article 7(2) provides that the national authorities are to assess whether the information supplied by the party concerned is sufficient. It follows that, in the absence of documentary evidence, it is for the national authorities to take into consideration other types of evidence which may be just as satisfactory for the purpose of the verification, in accordance with the detailed rules laid down by national law, provided that they respect the scope and effectiveness of Community law (see, to that effect, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12).

27 On that basis, checks of similar types of goods carried out subsequently, confirming that the composition of the product is consistent and that it complies with the manufacturing formula notified under the third subparagraph of Article 3(2) of Regulation No 1222/94, may be taken into consideration.

28 Thus, in the case of an exporter who received an export refund for basic products which are contained in the manufacture of the exported product and which are products coming within the simplified procedure, the competent authorities must take account of the fact that they have determined and endorsed the quantities of those products previously.

29 However, contrary to Schulze's assertions in its written observations, where an exporter may not claim a refund in the absence of sufficiently probative evidence provided in support of its declaration, the standard of proof required by Article 7(1) of Regulation No 1222/94 is in no way reduced by the fact that that exporter is unable to provide documentary evidence even if that is by reason of force majeure.

30 Accordingly, the answer to the questions referred must be that the third subparagraph of Article 7(1) of Regulation No 1222/94 is to be interpreted as not precluding an exporter from providing evidence by other means where it is unable to provide in support of its export declaration documentary evidence relating to the quantities of products actually used in the manufacture of exported goods, even in a case of force majeure. The national authorities are to assess that other means of evidence, in accordance with the detailed rules laid down in the national law, provided, however, that those rules do not affect either the scope or effectiveness of Community law. For that purpose, national authorities must also take into consideration documents previously exchanged with the exporter when the application is made under the simplified procedure provided for in the third subparagraph of Article 3(2) of that regulation.

Costs

31 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 (Third Chamber) hereby rules:

The third subparagraph of Article 7(1) of Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds, as amended by Commission Regulation (EC) No 229/96 of 7 February 1996, is to be interpreted as not precluding an exporter from providing evidence by other means where it is unable to provide in support of its export declaration documentary evidence relating to the quantities of products actually used in the manufacture of exported goods, even in a case of force majeure. The national authorities are to assess that other means of evidence, in accordance with the detailed rules laid down in the national law, provided, however, that those rules do not affect either the scope or effectiveness of Community law. For that purpose, national authorities must also take into consideration documents previously exchanged with the exporter when the application is made under the simplified procedure provided for in the third subparagraph of Article 3(2) of that regulation.

[Signatures]