JUDGMENT OF THE COURT (Eighth Chamber)

21 June 2007 *

In Case C-428/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Finanzgericht Hamburg (Germany), made by decision of 21 November 2005, received at the Court on 2 December 2005, in the proceedings

Firma Laub GmbH & Co. Vieh & Fleisch Import-Export

v

Hauptzollamt Hamburg-Jonas,

THE COURT (Eighth Chamber),

composed of E. Juhász (Rapporteur), President of the Eighth Chamber, G. Arestis and J. Malenovský, Judges,

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

* Language of the case: German.

having regard to the written procedure and further to the hearing on 17 January 2007,

after considering the observations submitted on behalf of:

— Firma Laub GmbH & Co. Vieh & Fleisch Import-Export, by O. Wenzlaff, Rechtsanwalt,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of the first sentence of the first subparagraph of Article 11(3), Article 47(2), and Article 48(2)(a) of 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 last amended by Commission Regulation (EC) No 604/98 of 17 March 1998 (OJ 1998 L 80, p. 19) ('Regulation No 3665/87').

2 This request has been made in the course of proceedings between the company Firma Laub GmbH & Co. Vieh & Fleisch Import-Export ('Laub') and Hauptzollamt Hamburg-Jonas (Hamburg-Jonas Main Customs Office) ('Hauptzollamt') concerning the latter's decision relating to the recovery of an export refund which it claimed had been unduly paid to Laub.

Legal context

3 The 25th and 50th recitals of Regulation No 3665/87 state:

'Whereas no refund is granted if the time-limits for export and for submitting the proof required for obtaining payment of the refund are not complied with; ...

...

Whereas in the interests of sound administrative practice applications for payment of the refund, accompanied by all relevant documents, should be required to be made within a reasonable period, save in cases of force majeure and in particular when it has not been possible to comply with the time-limit because of administrative delays beyond the control of the exporter.'

4 The first sentence of the first subparagraph of Article 11(3) of Regulation No 3665/87 sets out:

'Without prejudice to the obligation to pay any negative amount as referred to in the fourth subparagraph of paragraph 1, where a refund is unduly paid, the beneficiary shall reimburse the amounts unduly received, which includes any sanction applicable pursuant to the first subparagraph of paragraph 1, with interest calculated on the basis of the period between payment and reimbursement.'

5 Article 47(1), (2), (4) and (5), which feature under Title 4 of Regulation No 3665/87, entitled 'Procedure for the payment of the refund' is worded as follows:

'1. The refund shall be paid only on written application by the exporter and shall be paid by the Member State in whose territory the export declaration was accepted.

Application for the refund shall be made either:

(a) in writing; Member States may prescribe a special form to be used for this purpose;

...

2. Except in cases of force majeure, the documents relating to payment of the refund or release of the security must be submitted within 12 months following the date on which the ... export declaration was accepted.

...

4. Where the documents required under Article 18 cannot be submitted within the period referred to in paragraph 2, although the exporter has acted with all due diligence to obtain them and communicate them within such period, he may be granted further time for the production of these documents.

5. Requests for the treatment of other documents as equivalent, as referred to in paragraph 3 ... and requests for extension of time referred to in paragraph 4 must be submitted within the period referred to in paragraph 2.'

6 Article 48(2)(a) of Regulation No 3665/87 is worded as follows:

'Where proof that all the requirements laid down by Community rules have been complied with is produced within six months of expiry of the periods set in Article 47(2), (4) and (5), the refund paid shall be 85% of the sum which would have been paid if all the requirements had been complied with.'

The dispute in the main proceedings and the question referred for a preliminary ruling

7 By two export declarations of 26 January and of 26 February 1999 Laub declared frozen pigmeat for export to Russia. Refunds relating to those exports were granted and paid by the Hauptzollamt.

8 By letter of 20 September 2001, the Hauptzollamt stated that the refunds had been unduly paid, because the two CMR-waybills, submitted as transport documents with the application for payment of the export refund, were incomplete. They only contained partial responses to sections 16 and 23 relating to the carrier and did not bear the signature or the stamp of that carrier.

9 By reply of 26 September 2001 Laub produced duly completed waybills, bearing the carrier's stamps. It explained that these supplementary waybills had been sent to it later, but that, in light of the decisions of the Hauptzollamt to grant a refund, it had not considered it necessary to produce them, assuming the transport documents already presented to be sufficient.

10 By two amending decisions of 14 and 17 December 2001 the Hauptzollamt nevertheless sought the repayment of the refunds. The Hauptzollamt rejected the objection lodged by Laub against those decisions and the latter then lodged an appeal before the Finanzgericht Hamburg.

11 It is in these circumstances that the Finanzgericht Hamburg decided to stay proceedings and to refer to the Court of Justice the following question for a preliminary ruling:

'Is a refund within the meaning of Article 11(3), subparagraph 1, first sentence, of Commission Regulation (EEC) No 3665/87 unduly paid and thus to be reimbursed, where the beneficiary presents the documents supporting payment only in the course of the procedure for recovery and after the expiry of the time-limits set out in Articles 47(2) and 48(2)(a) of Commission Regulation (EEC) No 3665/87?'

The question referred for a preliminary ruling

12 By its question referred for a preliminary ruling the referring court asks, in essence, whether, in circumstances such as those in the main proceedings, in the context of the procedure for recovery of an export refund as set out in Article 11(3) of Regulation No 3665/87 ('the recovery procedure'), an exporter is entitled to produce the necessary documents to show its entitlement to the refund after the expiry of the time-limits for their production provided in Articles 47(2) and 48(2)(a) of that regulation, or if the production of the evidence is excluded at that point, so that it is necessary to consider the refund unduly paid within the meaning of Article 11(3).

13 Laub and the Commission of the European Communities submit that an export refund can not be considered 'unduly paid' solely on the ground that the time-limits referred to in Articles 47(2) and 48(2)(a) of Regulation No 3665/87 have not been respected. They submit that it follows from Case C-385/03 *Käserei Champignon Hofmeister* [2005] ECR I-2997 that the time-limits referred to in those articles are

not substantive conditions, but merely administrative formalities necessary to obtain the payment of a refund, so that a contravention of the time-limits does not lead to a refund being considered 'unduly paid'.

14 Laub claims, moreover, that it is apparent from an analysis of the scheme and the aims of Regulation No 3665/87 that the procedure for payment and the procedure for recovery are separate procedures, each with their own objectives, and therefore the time-limit referred to in Article 47 of that regulation should not be applied in the context of a recovery procedure.

15 Laub considers that, if, on the basis of documentation provided by the exporter, a competent authority has finally paid out the export refund, or released the securities for a refund paid in advance, the principle of the protection of legitimate expectations precludes the competent authority from then proceeding to recover that refund on the basis that the documentation is insufficient. According to Laub, the exporter is entitled to consider that, at that stage, the Member State has verified the documentation submitted and that it (the exporter) must not endeavour to obtain secondary evidence provided for in Regulation No 3665/87.

16 At the outset, it is appropriate to point out that, in general, non-compliance with procedural rules set out in Regulation No 3665/87 can lead to the reduction, even the loss, of the rights to an export refund. This is the case, in particular, when an exporter does not produce the necessary evidence to obtain the export refund until after the expiry of the time-limits referred to in Articles 47(2) and 48(2) of that regulation.

17 The 25th recital of Regulation No 3665/87 states that no refund is granted if the time-limits for export and for submitting the proof required for obtaining payment

of the refund are not complied with. Under Article 48(2)(a) of that regulation, the refund to be paid to an exporter is reduced by 15% if the exporter only provides the necessary evidence within six months following the time-limit provided specifically in Article 47(2) of that regulation.

18 Although the Court decided, at paragraph 26 of *Käserei Champignon Hofmeister*, that Article 47 of Regulation No 3665/87 is one of the procedural rules that an exporter must observe to obtain a refund payment, the fact remains that the contravention of these rules can lead to a reduction in, or the loss of, the amount of the refund due to the exporter.

19 Nevertheless, it is accepted that the main proceedings do not concern the production of the necessary evidence in the context of the payment procedure referred to in Article 47(2) of Regulation No 3665/87. The events which have given rise to this reference for a preliminary ruling take place at a later stage, in the context of a recovery procedure under Article 11(3) of that regulation, after the payment procedure had been brought to an end and the export refund had been paid by the competent authority.

20 Whilst Articles 47(2) and 48(2) of Regulation No 3665/87 set the applicable time-limits for the production of the necessary evidence for the payment of the refund, the regulation does not contain provisions regarding the applicable time-limits during the implementation of the recovery procedure referred to in Article 11(3).

21 It should be noted that it does not follow from this absence of provisions that, following a final payment of a refund, a competent authority, which has found

deficiencies in the documents produced pursuant to Article 47(2) of Regulation No 3665/87, may not demand supplementary information from the exporter and, where appropriate, adopt the necessary measures to recover the refund paid.

22 On the contrary, such a right is in keeping with the purpose of the recovery procedure referred to in Article 11(3) of Regulation No 3665/87. This provision has the aim of ensuring the protection and the proper application of the Community budget in regard to export refunds and, in particular, of ensuring that only those exporters entitled to refunds benefit from them, in accordance with the objective conditions established by the Community legislature.

23 Moreover, the Court has already held, in the context of a refund paid to an exporter, that the release of a security does not discharge the exporter from obligations imposed on it under Community legislation (Case C-155/89 *Philipp Brothers* [1990] ECR I-3265, paragraphs 13 to 16). This principle also applies to the final payment of an export refund to an exporter who has not produced sufficient evidence that the conditions for the right to the refund have been fulfilled.

24 Nevertheless, the right of the competent authority to demand from the exporter the necessary documents in order to obtain the refund, even after the payment of that refund and after the expiry of the period referred to in Article 47(2) of Regulation No 3665/87, has as its corollary that the exporter, in turn, must have the opportunity to produce the necessary documentation to prove its right to the refund.

25 To deny exporters this opportunity would constitute an infringement of the principle of good administration, insofar as this principle precludes a public administration from penalising an economic operator acting in good faith for non-compliance with the procedural rules, when this non-compliance arises from the behaviour of the administration itself. The fact that the competent authority, on the

one hand, went ahead with the payment of the export refund on the basis of incomplete evidence, and on the other hand, only initiated the recovery procedure after a certain period had passed, directly affected the opportunity for Laub to produce sufficient proof. Further, it is not claimed in the request for a preliminary ruling that, according to the competent authority, the exporter acted in bad faith.

26 It would be contrary to the objectives of Regulation No 3665/87 if the actions of the competent authority were able to prevent exporters of agricultural products from benefiting from the system of export refunds, when they fulfil the conditions set out in that regulation and are acting in good faith.

27 As the time-limits referred to in Articles 47(2) and 48(2)(a) of Regulation No 3665/87 are not applicable to the recovery procedure and as there are no specific Community law rules prescribing the time-limits for the presentation of supplementary evidence in the context of a recovery procedure, it is a matter for the competent national authorities, in accordance with national law, and subject to the limits imposed by Community law, to grant a supplementary period on the basis of the specific circumstances of each case (see, to that effect, Case C-467/01 *Eribrand* [2003] ECR I-6471, paragraph 49). The period allowed must be reasonable in order to allow the exporter to obtain and produce the required documentation and must take account of, in particular, any effect of the actions of the competent authority on the exporter.

28 In light of the foregoing, the reply to the question referred for a preliminary ruling must be that an export refund can not be regarded as 'unduly paid', within the meaning of the first sentence of the first subparagraph of Article 11(3) of Regulation No 3665/87, if the beneficiary, in the context of a recovery procedure for the refund, produces the necessary evidence to justify its right to that refund. It is a matter for the competent national authorities to set a reasonable time-limit which allows the beneficiary to produce this evidence.

Costs

29 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 (Eighth Chamber) hereby rules:

An export refund can not be regarded as 'unduly paid', within the meaning of the first sentence of the first subparagraph of Article 11(3) of 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, as last amended by Commission Regulation (EC) No 604/98 of 17 March 1998, if the beneficiary, in the context of a recovery procedure for the refund, produces the necessary evidence to justify its right to that refund. It is a matter for the competent national authorities to set a reasonable time-limit which allows the beneficiary to produce this evidence.

[Signatures]