JUDGMENT OF THE COURT (Fourth Chamber)

1 March 2007 *

In Case C-391/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Finanzgericht Hamburg (Germany), made by decision of 30 August 2005, received at the Court on 31 October 2005, in the proceedings

Jan De Nul NV

v

Hauptzollamt Oldenburg,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, E. Juhász, R. Silva de Lapuerta (Rapporteur), G. Arestis and J. Malenovský, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 8 November 2006,

after considering the observations submitted on behalf of:

— Jan De Nul NV, by W. Meven, Rechtsanwalt,

— the Hauptzollamt Oldenburg, by A. Gessler, acting as Agent,

— the Belgian Government, by A. Hubert, acting as Agent,

— the Commission of the European Communities, by W. Mölls, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 14 December 2006,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), as amended by Council Directive 94/74/EC of 22 December 1994 (OJ 1994 L 365, p. 46) ('Directive 92/81').

2 That request has been submitted in the context of proceedings between Jan De Nul NV ('Jan De Nul') and the Hauptzollamt (Principal Customs Office) Oldenburg ('the Hauptzollamt') concerning the latter's refusal to exempt from excise duty on mineral oils ('the duty') certain quantities of mineral oils used for the operation of a hopper dredger.

Legal context

Directive 92/81

3 Article 8(1) and (2) of Directive 92/81 provided as follows:

'1. In addition to the general provisions set out in Directive 92/12/EEC on exempt uses of excisable products, and without prejudice to other Community provisions,

Member States shall exempt the following from the harmonised excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

...

(c) mineral oils supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than in private pleasure craft.

For the purposes of this Directive, "private pleasure craft" shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

2. Without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils used under fiscal control:

...

(b) for navigation on inland waterways other than for private pleasure craft;

...

(g) in respect of dredging operations in navigable waterways and in ports.'

National legislation

4 In Germany, the national provisions relating to the exemption of mineral oils from excise duty are contained in the Law on excise duty on mineral oils (Mineralölsteuergesetz) of 21 December 1992 (BGBl. 1992 I, pp. 2150 and 2185, 'the MinöStG') and in the Regulation implementing the Law on excise duty on mineral oils (Mineralölsteuer-Durchführungsverordnung) of 15 September 1993 (BGBl. 1993 I, p. 1602).

5 Paragraph 4(1)(4) of the MinöStG provides that, subject to Paragraph 12 thereof, mineral oils may be used on an exempt-from-duty basis as motor or heating fuel on vessels deployed exclusively for commercial navigation and associated ancillary activities such as pilotage, towing and other services, and for work purposes and on warships and public authority boats, sea rescue boats and dedicated fishing boats.

6 In accordance with the statutory power conferred on the legislative authority by Paragraph 31(2)(5) of the MinöStG, Paragraph 17(5)(2) of the Regulation implementing the Law on excise duty on mineral oils excluded certain types of floating constructions from the definition of 'vessels' within the meaning of Paragraph 4(1)(4) of the MinöStG. Thus, dredgers, cranes and grain elevators are not considered to be vessels within the meaning of that last provision, with the result that the fuels which are used on board as motor or heating fuel cannot benefit from an exemption from excise duty.

The dispute in the main proceedings and the questions referred for preliminary ruling

7 Jan De Nul, which is the claimant in the main proceedings and carries on hydraulic engineering activities, sought to benefit from an exemption from duty for certain quantities of mineral oils used for the operation of a hopper dredger called '*Christoforo Colombo*', a vessel with a capacity of 10 062 tonnes, in respect of dredging operations carried out on the Elbe between 19 October and 17 December 1999, in an area between Hamburg and Cuxhaven.

8 A hopper dredger sucks up sand, gravel and other materials from the water bed and pours them into its hold using pumped water. Subsequently, those materials are transported to dumping sites where they are discharged.

9 On 3 April 2000, Jan De Nul declared the quantities of mineral oils which had been consumed during the operations of pumping and discharge of materials. Later, the Hauptzollamt informed that company that duty was also payable on the qualities of

mineral oils used during the unladen journeys of the vessel and the manoeuvres which it carried out in the course of its operations.

10 The supplementary excise duty return, submitted on 15 November 2000 by Jan De Nul, resulted in outstanding duty in the amount of DEM 183 127.

11 By decision of 3 July 2002, the Hauptzollamt dismissed the objection lodged by Jan De Nul on 19 December 2000 with a view to obtaining remission of that amount. On 2 August 2002, Jan De Nul brought an action before the Finanzgericht Hamburg (Hamburg Finance Court) seeking exemption from excise duty for the quantities of mineral oils used, not for the activities of the dredger itself, but for its unladen journeys.

12 Jan De Nul asserts before the referring court that the activity of the hopper dredger must be equated with that of a special vessel involved in commercial navigation, the fuel consumption of which benefits from the exemption provided for in Article 8(1)(c) of Directive 92/81, irrespective of the purpose of that dredger's journey.

13 The Hauptzollamt maintains before the same court that the area in which the hopper dredger pursued its operations constitutes an inland waterway, with the

result that the exemption which Member States may apply, as provided in Article 8 (2)(b) of Directive 92/81, arises from the legislative power of the national authorities.

14 By an amending notice of 27 December 2004, the Hauptzollamt amended the excise duty return of 15 November 2000 in the light of a judgment delivered on 3 February 2004 by the Bundesfinanzhof (Federal Finance Court) and accepted that the consumption of mineral oils on the unladen journeys of a hopper dredger had to benefit from the exemption from excise duty provided for in Paragraph 4(1)(4) of the MinöStG. Consequently, the amount of duty owing was reduced by DEM 164 372.

15 The parties to the main proceedings are therefore in agreement that the action has become devoid of purpose in so far as it concerns the components of the excisable amount giving rise to that reduction in the amount of the excise duty and that the dispute is therefore limited to the question whether Jan De Nul is required to pay that excise duty on the quantities of mineral oils consumed in the course of manoeuvres involved in dredging operations.

16 In those circumstances, the Finanzgericht Hamburg, taking the view that the outcome of the proceedings before it hinged on the interpretation of the term 'navigation within Community waters', decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) What interpretation should be given to the term "Community waters" in the first subparagraph of Article 8(1)(c) of Directive 92/81 in contrast to the

term "inland waterways" for the purposes of Article 8(2)(b) of Directive 92/81?

(2) Should the operation of a suction and holding vessel (so-called "hopper dredger") in Community waters always be regarded as navigation within the meaning of the first subparagraph of Article 8(1)(c) of Directive 92/81 or is it necessary to draw a distinction between the various forms of activity during the course of its use?'

The questions referred for preliminary ruling

The first question

17 By its first question, the referring court asks how it should interpret the term 'Community waters' within the meaning of the first subparagraph of Article 8(1)(c) of Directive 92/81 in contrast to the term 'inland waterways' within the meaning of Article 8(2)(b) of Directive 92/81.

18 In order to reply to the question raised, it is necessary to recall at the outset that Directive 92/81 was adopted on the basis of Article 99 of the EC Treaty (now Article 93 EC), which authorises the Council of the European Union, acting unanimously on a proposal from the Commission of the European Communities, to adopt, inter alia, provisions for the harmonisation of legislation concerning excise duties to the extent

to which such harmonisation is necessary to ensure the establishment and the functioning of the internal market.

19 In the context of the harmonised system of the structures of excise duties implemented at Community level, Directive 92/81 provides in Article 8(1) for a number of obligatory exemptions, such as that relating to mineral oils supplied for use as fuel for the purposes of navigation within Community waters, including fishing, other than in private pleasure craft.

20 Concerning the term 'Community waters', which appears in Article 8(1)(c) and is not defined, it should be mentioned that the interpretation of a provision of Community law must particularly take into account the context in which it occurs and the objects of the rules of which it is part (see Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 41 and the case-law cited).

21 To that effect, it appears from the third and fifth recitals in the preamble to Directive 92/81 that the latter is intended to render more precise a number of common definitions for mineral oil products which are to be subject to the general excise system and to lay down certain exemptions relating to those products which are obligatory at Community level (see Case C-389/02 *Deutsche See-Bestattungs-Genossenschaft* [2004] ECR I-3537, paragraphs 17 and 18). It is also apparent both from those recitals and from the title of Directive 92/81 that those common definitions and the exemptions laid down are intended to promote the establishment

and proper functioning of the internal market and to set up a harmonised system in respect of the structures of excise duties on mineral oils at Community level.

22 Consequently, the definitions relating to the products governed by Directive 92/81 and the exemptions applicable to them should be interpreted independently on the basis of the wording of the provisions in question and on the purpose of the directive (see *Deutsche See-Bestattungs-Genossenschaft*, paragraph 19).

23 An independent interpretation of those exemptions is all the more essential because Article 8(1) of Directive 92/81 imposes on the Member States the obligation not to levy the harmonised excise duty on mineral oils supplied for use as fuel for a number of activities set out in that provision (see Case C-346/97 *Braathens* [1999] ECR I-3419, paragraph 31, and *Deutsche See-Bestattungs-Genossenschaft*, paragraph 20). Any divergent interpretation at national level of those exemption obligations provided for in Directive 92/81 would not only undermine the objectives of the Community legislation and legal certainty, but could introduce unequal treatment between the economic operators concerned (see *Deutsche See-Bestattungs-Genossenschaft*, paragraph 21).

24 With regard to Article 8(1), it must be noted that the obligatory exemption for mineral oils used as fuel for the purposes of navigation within Community waters is designed to facilitate intracommunity trade, particularly the movement of goods and the freedom to provide services capable of taking place on the waters concerned.

25 By the exemption concerned, the Community legislature intended to promote the equality of certain tax conditions under which the transport undertakings or other services which ply the waters concerned operate.

26 It follows that the term 'Community waters' must be understood as including all the waters in which maritime navigation is normally practised for commercial ends. That navigation concerns all sea-going vessels, including those which have the greatest capacity.

27 Moreover, as the Commission points out, such an interpretation alone can ensure the equality of economic conditions between sea ports within the Community, irrespective of the geographical position of each port in relation to the nearest coast from which the abovementioned activities are carried on.

28 Finally, it should be noted that Directive 92/81 also has as its objective to ensure the free movement of mineral oils in the internal market, and to avoid distortions of competition which could stem from variations in the structures of excise duties from one Member State to another (see Case C-240/01 *Commission* v *Germany* [2004] ECR I-4733, paragraphs 39 and 44).

29 In those circumstances, the system laid down by Article 8(2) of Directive 92/81, which concerns the possibility for Member States of applying total or partial exemptions or reductions in the rate of duty to mineral oils used under fiscal control, and particularly the concept of navigation on inland waterways, appearing

in Article 8(2)(b), cannot be a conclusive factor in interpreting the extent of the obligatory exemptions provided for in Article 8(1).

30 It is common ground that vessels appropriate for navigation for commercial purposes on maritime waters can also pursue those purposes on certain internal waterways as far as certain sea ports, although they are not situated on the coast. To exclude from the scope of obligatory exemption the navigation thus practised from the moment when it is carried out on those waterways towards sea ports would harm intracommunity trade since such an exclusion, in placing economic operators concerned by such navigation at a disadvantage, would risk diverting some of that sea traffic away from those ports. It would thus place the operators at a disadvantage in relation to those who operate in coastal ports.

31 Thus, the optional system provided for in Article 8(2)(b) of Directive 92/81 can only be residual in that it would be applicable to navigation on inland waterways only in so far as that is engaged in beyond the waters on which maritime navigation for commercial purposes can be carried on.

32 The answer to the first question raised must therefore be that the term 'Community waters' within the meaning of the first subparagraph of Article 8(1)(c) of Directive 92/81 relates to all waters which can be used by all sea-going vessels, including those which have the greatest capacity, capable of travelling maritime waterways for commercial purposes.

The second question

33 By its second question, the referring court asks, in substance, whether or not certain operations performed by a hopper dredger may be regarded as coming within the scope of the term 'navigation' as used in the first paragraph of Article 8(1)(c) of Directive 92/81.

34 As follows from paragraph 15 above, the dispute between the parties to the main proceedings is limited to the question whether the quantities of mineral oils consumed in the course of manoeuvres involved in dredging operations are capable of benefiting from the exemption provided for by the provision in question, as Jan De Nul has accepted the imposition of excise duty on the quantities of mineral oils used for the operations of pumping and discharge of materials.

35 It is also apparent from the order for reference that the consumption of mineral oils during the unladen journeys of the hopper dredger were included in the benefit of the exemption from excise duty.

36 As for the term 'navigation' within the meaning of the first subparagraph of Article 8(1)(c) of Directive 92/81, the Court, at paragraph 23 of its judgment in *Deutsche See-Bastattungs-Genossenschaft*, declared that all navigation activity for commercial purposes comes within the scope of the exemption from the harmonised excise duty provided for in that provision. At paragraph 25 of that judgment, the Court stated that that provision does not make any distinction as to the purpose of the navigation referred to, given that the distortions of competition which the provisions of that directive are intended to avoid can arise whatever the type of commercial navigation at issue.

37 It thus follows from the judgment in *Deutsche See-Bestattungs-Genossenschaft* that the purpose for which the journey is effected is irrelevant since it concerns navigation involving a provision of services for consideration.

38 As for the case in the main proceedings, it is common ground that the hopper dredger has a propulsion system which permits it to be autonomous in its movements. That vessel has therefore the technical characteristics necessary for navigation allowing it to carry out such a provision of services.

39 Concerning the system provided for in Article 8(2)(g) of Directive 92/81, under which the Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils used for dredging operations in navigable waterways and in ports, suffice it to observe, as was pointed out at paragraph 29 above, that that exemption capacity granted to the Member States cannot influence the interpretation to be given to Article 8(1).

40 Consequently, the answer to the second question must be that manoeuvres carried out by a hopper dredger during its operations of pumping and discharge of materials, that is to say, journeys inherent in the carrying out of dredging activities, come within the scope of the term 'navigation' as used in the first subparagraph of Article 8(1)(c) of Directive 92/81.

Costs

41 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 (Fourth Chamber) hereby rules:

1. **The term 'Community waters' within the meaning of the first subparagraph of Article 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994, relates to all waters which can be used by all sea-going vessels, including those which have the greatest capacity, capable of travelling maritime waterways for commercial purposes.**

2. **Manoeuvres carried out by a hopper dredger during its operations of pumping and discharge of materials, that is to say, journeys inherent in the carrying out of dredging activities, come within the scope of the term 'navigation' as used in the first subparagraph of Article 8(1)(c) of Directive 92/81, as amended by Directive 94/74.**

[Signatures]