JUDGMENT OF THE COURT (Eighth Chamber)

19 April 2007 *

In Case C-63/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Vyriausiasis administracinis teismas (Lithuania), made by decision of 20 December 2005, received at the Court on 3 February 2006, in the proceedings

UAB Profisa

v

Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos,

* Language of the case: Lithuanian.

THE COURT (Eighth Chamber),

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

Advocate General: Y. Bot,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— UAB Profisa, by T. Blažys, advokatas,

— the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,

— the Portuguese Government, by L. Fernandes and Â. Seiça Neves, acting as Agents,

— the Commission of the European Communities, by W. Mölls and A. Steiblytė, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 27(1)(f) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21).

2 The request was made in proceedings between UAB Profisa ('Profisa') and the Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos (the

Lithuanian Customs Administration) regarding the submission to the harmonised excise duty of alcohol contained in chocolate products.

Legal context

The Community legislation

3 Article 27(1)(f) of Directive 92/83 states:

'Member States shall exempt the products covered by this Directive 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 when used directly or as a constituent of semi-finished products for the production of foodstuffs, filled or otherwise, provided that in each case the alcoholic content does not exceed 8.5 litres of pure alcohol per

100 kg of the product for chocolates, and 5 litres of pure alcohol per 100 kg of the product for other products.'

The national legislation

4 Article 25(1)(5) of the Lithuanian law on excise duty (Lietuvos Respublikos akcizų istatymas) of 30 October 2001 (žin., 2001, No 98-3482), as amended by the law of 29 January 2004 (žin., 2004, No 26-802) ('the law on excise duty'), states that ethyl alcohol and alcoholic beverages intended to be used in chocolate products are exempt from excise duty provided that the ethyl alcohol content does not exceed 8.5 litres of pure ethyl alcohol per 100 kilograms (net) of the chocolate product.

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

5 Profisa imports into Lithuania chocolate products containing ethyl alcohol.

6 By decisions of 4 January and 14 March 2005 the Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos refused to exempt from excise duties the

products imported by Profisa, on the ground that, although Article 25(1)(5) of the law on excise duty exempts from duty ethyl alcohol intended for use in the manufacture of chocolate products, this provision does not apply to finished imported chocolate products which contain ethyl alcohol, such as those at issue in the present case.

7 Profisa requested the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court) to set aside those decisions, but, by judgment of 9 May 2005, it rejected this request.

8 Profisa appealed this decision to the Vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania).

9 That court states that, in so far as Article 25(1)(5) of the law on excise duty aims to ensure the transposition of Article 27(1)(f) of Directive 92/83 into the Lithuanian legal system, an interpretation of this latter article is necessary in order to give judgment in the dispute before it.

10 The referring court notes that the Lithuanian version of Article 27(1)(f) of Directive 92/83 differs from other linguistic versions of that article.

11 It is in this context that the Vyriausiasis administracinis teismas decided to stay proceedings and to request a preliminary ruling from the Court of Justice on the following question:

'Having regard to the differences in various language versions in the wording of Council Directive 92/83 ... is Article 27(1)(f) of that directive to be understood as imposing an obligation on Member States to exempt from excise duty ethyl alcohol imported into the customs territory of the European Communities and contained in chocolate products intended for direct use, where the alcohol content does not exceed 8.5 litres for every 100 kilograms of the chocolate products?'

The question referred for a preliminary ruling

12 All the parties who submitted written observations propose an answer in the affirmative to the question referred for preliminary ruling.

13 According to settled case-law, the need for a uniform interpretation of the provisions of Community law makes it impossible for the text of a provision to be considered in isolation, but requires, on the contrary, that it be interpreted and applied in the light of the versions existing in the other official languages (Case 26/69 *Stauder* v *Ulm* [1969] ECR 419, paragraph 3; Case 55/87 *Moksel* [1988] ECR

3845, paragraph 15; and Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36).

14 Where there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case C-482/98 *Italy* v *Commission* [2000] ECR I-10861, paragraph 49; and Case C-1/02 *Borgmann* [2004] ECR I-3219, paragraph 25).

15 From a comparative examination of the various linguistic versions of Article 21(1)(f) of Directive 92/83 it is apparent that, with the exception of the Lithuanian version, all the linguistic versions of that article state that the Member States shall, under conditions which they shall lay down, exempt from excise duty the products covered by that directive including ethyl alcohol, when they are used directly in the production of foodstuffs, provided that in each case the level of alcohol does not exceed 8.5 litres of pure alcohol per 100 kilograms of the product for chocolates and 5 litres of pure alcohol per 100 kilograms of the product for other products.

16 The place where the ethyl alcohol is used for this production is irrelevant in this regard.

17 Furthermore, the objective pursued by the exemptions contained in Directive 92/83 is, in particular, to neutralise the impact of excise duties on alcohol used as an

intermediate product in other commercial or industrial products (*Italy* v *Commission*, paragraph 4).

18 Moreover, exemption of products covered by Article 27(1) of Directive 92/83 is the rule and refusal is the exception. The power granted to Member States by Article 27(1) of Directive 92/83 to lay down conditions 'for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse' cannot detract from the unconditional nature of the obligation imposed by that provision to grant exemption (*Italy* v *Commission*, paragraph 50).

19 The answer to the question referred for a preliminary ruling must therefore be that Article 27(1)(f) of Directive 92/83 should be understood as imposing an obligation on Member States to exempt from harmonised excise duty ethyl alcohol imported into the customs territory of the European Union and contained in chocolate products intended for direct use, where the alcohol content does not exceed 8.5 litres for every 100 kilograms of the chocolate products.

Costs

20 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:

Article 27(1)(f) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages should be understood as imposing an obligation on Member States to exempt from harmonised excise duty ethyl alcohol imported into the customs territory of the European Union and contained in chocolate products intended for direct use, where the alcohol content does not exceed 8.5 litres for every 100 kilograms of the chocolate products.

[Signatures]