JUDGMENT OF THE COURT (Third Chamber)
27 February 1986 *

In Case 38/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

Bienengräber & Co., Hamburg,

and

Hauptzollamt Hamburg-Jonas

on the interpretation of certain provisions of the Common Customs Tariff,

THE COURT (Third Chamber)

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

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

the Commission of the European Communities, represented by its Legal Adviser, Peter Kalbe, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 December 1985,

gives the following

* Language of the Case: German.

JUDGMENT

(The account of the fact and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 18 December 1984, which was received at the Court on 11 February 1985, the Bundesfinanzhof [Federal Finance Court] referred to the Court for a preliminary ruling under Article 177 of the Treaty a number of questions regarding the interpretation of the provisions of Chapter 97 ('toys, games and sports requisites; parts thereof') of the Common Customs Tariff (Official Journal, L 289 of 14 November 1977, p. 348).

2 The questions were raised in the course of proceedings between Bienengräber and the Hauptzollamt [Principal Customs Office] Hamburg-Jonas regarding the tariff classification of clothes and accessories for figures known as 'Monchhichi' or 'Kikis' cleared for release into free circulation in the Community.

3 'Monchhichi' or 'Kikis' are half human in appearance, in so far as their hands, feet, the shape of their eyes, cheeks and mouth are concerned, and half animal, with regard in particular to their nose and tail and to the fur which covers their torso and limbs.

4 Bienengräber declared the clothes and accessories for the figures in question under subheading 97.02 B of the Common Customs Tariff, 'parts and accessories' of dolls, but the Hauptzollamt Hamburg-Jonas classified them under subheading 97.03 B, 'other toys; working models of a kind used for recreational purposes'.

5 After its objection to that classification was rejected the plaintiff brought proceedings before the Finanzgericht Hamburg.

6 The Finanzgericht dismissed the action on the ground that 'Monchhichi' or 'Kikis' were not dolls within the meaning of subheading 97.02 B of the Common Customs

Tariff. The judgment was based essentially on the results of an opinion poll carried out at the Finanzgericht's request by the Institut für Verbrauchs- und Einkaufsforschung [a market research organization] and on an expert opinion provided by the Zolltechnische Prüfungs- und Lehranstalt [Customs Laboratory and Training College] according to which 'Kikis' represented animals.

7 Bienengräber appealed against that judgment to the Bundesfinanzhof, and relied in particular on a decision of the French commission de conciliation et d'expertise douanière [Customs Conciliation and Advisory Committee] to the effect that their clothing and accessories made the 'Kikis' stylized representations of human beings.

8 In view of that difference of opinion the Bundesfinanzhof decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Is Note 3 to Chapter 97 of the Common Customs Tariff to be interpreted as meaning that a figure is only to be regarded as a representation of a human being and therefore as a doll within the meaning of heading 97.02 A of the Common Customs Tariff if it displays only such features as correspond to the natural appearance of human beings, albeit in a distorted form?

(2) If Question 1 is answered in the negative:

Are the terms 'representations of human beings' in Note 3 to Chapter 97 of the Common Customs Tariff and 'dolls' in heading 97.02 A of the Common Customs Tariff to be interpreted as meaning that a figure may be regarded as a representation of a human being and therefore as a doll within the meaning of that heading even if it displays animal as well as human features?

Under what conditions, in the presence of animal features as well as those suggesting the representation of a human being, can the figure in question nevertheless be regarded as a doll?'

9 It appears from the wording of those two questions that the Bundesfinanzhof wishes essentially to know whether the representation of human beings for the purposes of Note 3 of Chapter 97 of the Common Customs Tariff must be

understood as meaning the representation of human characteristics only, and if not, in what circumstances certain animal characteristics may be accepted.

10 The Commission considers that in view of the different language versions of the Explanatory Notes on the Nomenclature of the Customs Cooperation Council a doll, as referred to in heading 97.02 of the Common Customs Tariff, may have certain animal characteristics so long as it is predominantly human in appearance.

11 According to the Explanatory Notes on the Nomenclature 'only . . . such articles as are representations of human beings (including those of a caricature type)' are to be regarded as dolls for the purposes of heading 97.02 of the Common Customs Tariff.

12 Inasmuch as the representation of a human being may, according to the wording of those Explanatory Notes, be deformed or even stylized, it may also include certain characteristics borrowed from the animal kingdom. Such animal characteristics must, however, remain minor and secondary and must not put in question the general appearance of the figure which must essentially correspond to that of a human being.

13 The answer to the questions referred by the Bundesfinanzhof must therefore be that Note 3 to Chapter 97 of the Common Customs Tariff is to be interpreted as meaning that a figure may be regarded as a doll within the meaning of subheading 97.02 A of the Common Customs Tariff only if any animal features which it may have are minor and secondary and the figure's general appearance is essentially that of a human being.

Costs

14 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by order of 18 December 1984, hereby rules:

Note 3 to Chapter 97 of the Common Customs Tariff is to be interpreted as meaning that a figure may be regarded as a doll within the meaning of subheading 97.02 A of the Common Customs Tariff only if any animal features which it may have are minor and secondary and the figure's general appearance is essentially that of a human being.

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 27 February 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber