

In Case 40/69

Reference to the Court under [Article 267 TFEU] by the Bundesfinanzhof (Federal Finance Court), Munich, for a preliminary ruling in the action pending before it between

HAUPTZOLLAMT HAMBURG-OBERELBE

and

FIRMA PAUL G. BOLMANN, HAMBURG

on the interpretation of Regulation No 22/62 of the Council and Regulation No 77/62 of the Commission as amended by Regulation No 136/62 of the Commission

THE COURT

composed of: R. Lecourt, President, R. Monaco (Rapporteur) and P. Pescatore, Presidents of Chambers, A. M. Donner, W. Strauß, A. Trabucchi and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer
Registrar : A. Van Route

gives the following

JUDGMENT

Grounds of judgment

1 By an order of 30 July 1969 which reached the Court on 3 September 1969 the Bundesfinanzhof (Federal Finance Court) of the Federal Republic of Germany referred to the Court of Justice under [Article 267 TFEU] several questions on the interpretation of Regulation No 22 of the Council of the [EU] of 4 April 1962 (OJ No 30, 1962 and Regulation No 77 of the Commission of the [EU] of 23 July 1962 (OJ No 66, 1962) as amended by Regulation No 136 of the Commission of the [EU] (OJ No 113, 1962).

The first question

- 2 In its first question the Bundesfinanzhof asks the Court whether the correct interpretation of Article 14 of Regulation No 22/62 is that Member States are entitled and obliged to take internal legislative measures to specify which products are subject to the levy by virtue of Article 1 of that regulation and to differentiate between them.
- 3 According to Article 14 of Regulation No 22/62 'Member States shall take all steps to adapt their laws, regulations, and administrative provisions in such a way that the provisions of the present regulation, unless hereby otherwise provided, may be effectively implemented as from 1 July 1962'.
- 4 Since Regulation No 22/62, in conformity with the second paragraph of [Article 288 TFEU], is directly applicable in all Member States, the latter, unless otherwise expressly provided, are precluded from taking steps, for the purposes of applying the regulation, which are intended to alter its scope or supplement its provisions. To the extent to which Member States have transferred legislative powers in tariff matters with the object of ensuring the satisfactory operation of a common market in agriculture they no longer have the powers to adopt legislative provisions in this field.
- 5 Therefore Article 14 of Regulation No 22/62 is to be interpreted as meaning that Member States must take all steps necessary to eliminate obstacles which may arise under their own legislation to the application of the regulation as from 1 July 1962. This article does not therefore permit Member States to adopt any internal measures affecting the scope of the regulation itself.
- 6 Therefore the answer to the first question must be in the

negative.

The second question

- 7 In the event of the first question's being answered in the negative the Bundesfinanzhof asks the Court whether 'Article 1 of Regulation No 22/62 which mentions some of the goods included in the Common Customs Tariff is to be construed as meaning that national legislatures may interpret the terms by which these goods are described, since the terms by which goods in a customs tariff are described of necessity require interpretation'.
- 8 As the description of the goods referred to in the regulations establishing a common organization of a market is part of [Union] law its interpretation can only be settled in accordance with [Union] procedures. Moreover the common organizations of the markets in agriculture, such as the one which it is the aim of Regulation No 22/62 to establish progressively, can only achieve their objectives if the provisions adopted for their realization are applied in a uniform manner in all Member States. The descriptions of goods covered by these organizations must therefore have exactly the same range in all Member States.
- 9 Such a requirement would be placed in jeopardy if, whenever there was a difficulty in the classification of any goods for tariff purposes, each Member State could determine the range covered by the descriptions in question by way of interpretation. Although it is true that in the event of any difficulty in the classification of any goods the national administration may be led to take implementing measures and clarify in the particular case the doubts raised by the description of the goods, it can only do so if it complies with the provisions of [Union] law and subject to the reservation that the national authorities cannot issue binding rules of interpretation.
- 10 The second question must therefore be answered in the negative.

The third question

- 11 Should the second question be answered in the negative the Bundesfinanzhof asks the Court whether turkey rumps constitute backs (parts of backs) or other poultry cuts within the meaning of Article 2 of Regulation No 77/62 as amended by Article 1 of Regulation No 136/62, or edible offals within the meaning of Article 3 of that regulation.
- 12 In accordance with a general rule of classification for tariff purposes set out in Rule 5 the Rules for the interpretation of the nomenclature of the Common Customs Tariff (Regulation No 950/68 of the Council, (OJ No 172, 1968)

goods not falling within any heading of the Tariff shall be classified under the heading appropriate to the goods to which they are most akin. The question whether goods are akin one to another is to be decided on the basis not only of their physical characteristics but also of their use and commercial value. In the absence of special circumstances the commercial value of goods is normally their market price.

- 13 The expression 'backs and necks' in Article 2 of Regulation No 77/62 as amended by Regulation No 136/62 refers to cuts of slaughtered poultry other than those which are deliberately separated from the backs and which form as such the residual parts after the bird has been cut into pieces, as is the case with regard to the disputed product. The commercial value of this product as reflected in its market price is very low and in any case much less than that of 'poultry cuts' mentioned in Article 2 of Regulation No 77/62.
- 14 This fact is confirmed by implication in Regulation No 79/66 of the Commission of the [EU] of 29 June 1966 (OJ No 118, 1966), which classifies turkey rumps under 'backs and necks' but applies to them a conversion factor which in Regulation No 77/62 is nearer to the one applied to 'edible offals' (Article 3) than to those applied to 'backs and necks' and 'all other cuts of poultry' (Article 2 as amended by Regulation No 136/62).
- 15 Therefore the expression 'edible offals' within the meaning of Article 3 of Regulation No 77/62 must be interpreted so as to include products having similar commercial value such as the disputed product.

Costs

- 16-17 The costs incurred by the Commission of the European [Union] and the Government of the Federal Republic of Germany which have submitted their observations to the Court are not recoverable and as the proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Bundesfinanzhof of the Federal Republic of Germany the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the observations of the defendant in the main action, the Government of the Federal Republic of Germany and the Commission of the

European [Union];

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty [on the Functioning of the European Union], especially [Articles 38 to 44 and 267];

Having regard to Regulation No 22 of the Council of the [EU] of 4 April 1962;

Having regard to Regulations Nos 77 of 23 July 1962 and 136 of 31 October 1962 of the Commission of the [EU];

Having regard to Regulation No 79 of the Commission of the [EU], of 29 June 1966; Having regard to Regulation No 950 of the Council of the [EU], of 28 June 1968;

Having regard to the Protocol on the Statute of the Court of Justice of the [EU], especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European [Union];

THE COURT

in answer to the question referred to it for a preliminary ruling by the order of 30 July 1969 by the Bundesfinanzhof of the Federal Republic of Germany hereby rules:

1. Article 14 of Regulation No 22 of the Council of the European [Union] of 4 April 1962 is to be interpreted as meaning that Member States must take the necessary steps to eliminate any obstacles to its application which may arise under their own legislation, although they are not permitted to adopt any internal measures affecting the scope of the regulation itself;
2. Article 1 of Regulation No 22 of the Council of the European [Union] of 4 April 1962 which enumerates some goods included in the Common Customs Tariff does not empower the national authorities of Member States to issue binding rules of interpretation for the application of those descriptions;
3. According to Article 3 of Regulation No 77 of the Commission of the European [Union] of 23 July 1962 the expression 'edible offals' must be interpreted so as to include products having a similar commercial value such as 'turkey rumps'.

Lecourt

Monaco

Pescatore

Donner

Trabucchi

Strauß

Mertens de Wilmars

Delivered in open court in Luxembourg on 18 February 1970.

A. Van Routte

Registrar

R. Lecourt

President

Robert Schütze European Union Law Lisbonised Cases