JUDGMENT OF THE COURT (Second Chamber)
7 March 1990

In Case C-69/88

REFERENCE to the Court under [Article 267 TFEU] by the Arrondissementsrechtbank, Maastricht (Netherlands), for a preliminary ruling in the proceedings pending before that court between

H. Krantz GmbH & Co., Aachen (Federal Republic of Germany)

and

Ontvanger der Directe Belastingen (Collector of Direct Taxes), Kerkrade (Netherlands),

and

Netherlands State

on the interpretation of [Articles 34 and 36 TFEU],

THE COURT (Second Chamber)

composed of: F. A. Schockweiler, President of Chamber, G. F. Mancini and T. F. O'Higgins, Judges,

Advocate General: M. Darmon
Registrar: H. A. Ruhl, Principal Administrator

after considering the observations submitted on behalf of

the Netherlands Government, by E. F. Jacobs, Secretary-General at the Netherlands Ministry for Foreign Affairs,

the Commission of the European [Union], by Rene Barents, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral submissions made at the hearing on 7 November 1989 by the plaintiff in the main proceedings, represented by J. E. F. F. M. Duynstee, the Netherlands Government, represented by M. A. Fierstra, acting as Agent, and the Commission of the European [Union],

after hearing the Opinion of the Advocate General delivered at the sitting on 12 December 1989,

gives the following

Judgment

1 By judgment dated 3 March 1988, which was received at the Court on 7 March 1988, the Arrondissementsrechtbank, Maastricht (First Chamber) referred to the Court for a preliminary ruling under [Article 267 TFEU] two questions on the interpretation of [Articles 34 and 36 TFEU].

2 Those questions arose in proceedings between H. Krantz GmbH & Co. (hereinafter referred to as 'Krantz'), of Aachen, Federal Republic of Germany, on the one hand, and the Ontvanger der Directe Belastingen (Netherlands Collector of Direct Taxes, hereinafter referred to as 'the Collector') and the Netherlands State, on the other, concerning the Collector's decision to seize machines belonging to Krantz, pursuant to Article 16 of the Netherlands Law of 22 May 1845 on the collection of direct taxes. The machines had been sold by Krantz on instalment terms with reservation of title to J. J. Krantz & Zoon NV, whose registered office is at Leyden, Netherlands, and had been installed on the premises of its subsidiary company, Vaalser Textielfabriek BV, at Vaals.

3 J. J. Krantz & Zoon NV and its subsidiary were declared insolvent. In order to recover a tax debt owed by Vaalser Textielfabriek BV, the Collector, acting under Article 16 of the aforesaid law, seized all the movable property found on the premises of that company.

4 In proceedings before the various courts seised of the matter, Krantz claimed

that Article 16 of the Law of 22 May 1845 was incompatible with the object and scope of [Article 34 TFEU] on the ground that, if the powers of the Collector were generally known, sales on instalment terms to the Netherlands would decline.

5 The Arrondissementsrechtbank, Maastricht, took the view that the dispute raised problems regarding the interpretation of [Union] law. Accordingly, it stayed the proceedings and referred the following questions to the Court of Justice:

'(1) Is Article 16 of the Wet op de Invordering van 's Rijks Directe Belastingen (Law on the collection of the State's direct taxes) of 22 May 1845 (*Staatsblad* 22) to be regarded as a measure having equivalent effect to a quantitative restriction on imports within the meaning of [Article 34 TFEU] where the Netherlands tax authorities seize goods on the premises of a taxpayer even if those goods are from and are the property of a supplier in another Member State?

(2) If so, is the application of the aforesaid Article 16 none the less justified under Article 36 of the [TFEU] on the basis of one of the grounds referred to in Article 36 [TFEU]?'

6 Reference is made to the Report for the Hearing for a fuller account of the legal background and the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 It must first be pointed out that it is not for the Court, under [Article 267 TFEU], to rule on the compatibility with the Treaty of provisions of national law. It does, however, have jurisdiction to provide the national court with all such matters relating to the interpretation of [Union] law as may enable that court to decide the issue of compatibility in the case before it.

8 The questions submitted by the Arrondissementsrechtbank, Maastricht, must therefore be construed as seeking to establish whether [Article 34 TFEU] is to be interpreted as prohibiting national legislation which authorizes the collector of direct taxes to seize goods, other than stocks, which are found on the premises of a taxpayer even if those goods are from and are the property of a supplier established in another Member State, and, if so, whether that legislation is justified under Article 36 of the [TFEU].

First question

9 As the Court has consistently held, initially in the judgment of 11 July 1974 in Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 837, all measures capable of hindering, directly or indirectly, actually or potentially, intra-[Union] trade are to be regarded as measures having an effect equivalent to quantitative restrictions.

10 It must, however, be observed that the national provision referred to by the national court applies without distinction to both domestic and imported goods, and does not seek to control trade with other Member States.

11 Furthermore, the possibility that nationals of other Member States would hesitate to sell goods on instalment terms to purchasers in the Member State concerned because such goods would be liable to seizure by the collector of taxes if the purchasers failed to discharge their Netherlands tax debts is too uncertain and indirect to warrant the conclusion that a national provision authorizing such seizure is liable to hinder trade between Member States.

12 Accordingly, the answer to the first question must be that [Article 34 TFEU], properly interpreted, does not prohibit national legislation which authorizes the collector of direct taxes to seize goods, other than stocks, which are found on the premises of a taxpayer even if those goods are from, and are the property of, a supplier established in another Member State.

Second question

13 In the light of the answer given to the first question, it is unnecessary to rule on the second question referred to the Court.

Costs

14 The costs incurred by the Netherlands Government and by the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Arrondissementsrechtbank, Maastricht, by judgment of 3 March 1988, hereby rules as follows:

[Article 34 TFEU], properly interpreted, does not prohibit national legislation which authorizes the collector of direct taxes to seize goods, other than stocks, which are found on the premises of a taxpayer even if those goods are from, and are the property of, a supplier established in another Member State.

Schockweiler Mancini O'Higgins

Delivered in open court in Luxembourg on 7 March 1990.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Second Chamber