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Judgment of the Court of 9 October 1980. - Criminal proceedings against Giovanni Carciati. - Reference for a preliminary ruling: Tribunale civile e penale di Ravenna - Italy. - Free movement of goods - Temporary importation of motor vehicles. - Case 823/79.

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Keywords

FREE MOVEMENT OF GOODS - NATIONAL RULES PROHIBITING RESIDENTS FROM USING VEHICLES ADMITTED UNDER A SCHEME FOR TEMPORARY IMPORTATION - COMPATIBILITY WITH THE EEC TREATY

Summary

THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE THE IMPOSITION BY NATIONAL RULES ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE OF A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER A SCHEME FOR TEMPORARY IMPORTATION AND THUS EXEMPT FROM PAYMENT OF VALUE ADDED TAX .

Parties

IN CASE 823/79 ,

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE TRIBUNALE CIVILE E PENALE (CIVIL AND CRIMINAL COURT), RAVENNA , FOR A PRELIMINARY RULING IN THE CRIMINAL PROCEEDINGS PENDING BEFORE THAT COURT AGAINST

Subject of the case

ON THE INTERPRETATION OF THE COMMUNITY RULES APPLICABLE IN RESPECT OF THE FREE MOVEMENT OF GOODS ,

Grounds

1 BY AN ORDER OF 17 DECEMBER 1979 WHICH WAS RECEIVED AT THE COURT REGISTRY ON 21 DECEMBER 1979 , THE TRIBUNALE CIVILE E PENALE DI RAVENNA REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION AS TO THE COMPATIBILITY OF CERTAIN PROVISIONS OF ITALIAN LEGISLATION WITH THE COMMUNITY RULES ON THE FREE MOVEMENT OF GOODS .

2 THE FACTS WHICH GAVE RISE TO THE DISPUTE BEFORE THE TRIBUNALE DI RAVENNA ARE AS FOLLOWS . MR CARCIATI , AN ITALIAN NATIONAL RESIDING IN RAVENNA , WAS STOPPED BY THE GUARDIA DI FINANZA (THE ITALIAN REVENUE ENFORCEMENT OFFICERS) WHILE DRIVING ON ITALIAN TERRITORY A CAR REGISTERED IN GERMANY . HE STATED THAT A NATIONAL OF THE FEDERAL REPUBLIC OF GERMANY HAD ENTRUSTED HIM WITH THE CAR IN ORDER TO HAVE IT AT HIS DISPOSAL IN ITALY WHEN MAKING HIS FREQUENT BUSINESS VISITS . MR CARCIATI WAS CHARGED WITH SMUGGLING IN THAT HE , BEING AN ITALIAN RESIDENT , HAD IN HIS POSSESSION AND HAD USED WITHIN THE NATIONAL CUSTOMS TERRITORY A MOTOR-CAR REGISTERED ABROAD , IN CONTRAVENTION OF THE PROVISIONS GOVERNING TEMPORARY IMPORTATION .

3 IN THE COURSE OF THE PROCEEDINGS THE TRIBUNALE DI RAVENNA DECIDED TO REFER THE FOLLOWING QUESTION TO THE COURT FOR A PRELIMINARY RULING :

'' ARE ARTICLES 25 , 216 , 282 , 287 AND 339 OF THE DECREE OF THE PRESIDENT OF THE REPUBLIC NO 43 OF 23 JANUARY 1973 , IN CONJUNCTION WITH LAW NO 1163 OF 27 OCTOBER 1957 RATIFYING AND IMPLEMENTING THE INTERNATIONAL CONVENTION OF NEW YORK OF 4 JUNE 1954 , AND ARTICLES 67 , 69 , 70 AND 71 OF THE DECREE OF THE PRESIDENT OF THE REPUBLIC NO 633 OF 26 OCTOBER 1972 IN CONFLICT WITH THE COMMUNITY RULES IN RELATION TO THE FREE MOVEMENT OF GOODS?

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4 WHILST THE COURT HAS NO JURISDICTION IN PROCEEDINGS UNDER ARTICLE 177 OF THE TREATY TO DECIDE ON THE COMPATIBILITY OR OTHERWISE OF NATIONAL LEGISLATIVE PROVISIONS WITH COMMUNITY LAW IT MAY , WHEN PRESENTED WITH AN IMPRECISELY FORMULATED REFERENCE , IDENTIFY THE QUESTION OF COMMUNITY LAW IN SUCH TERMS AS ENABLE IT TO GIVE A RULING . IN THIS CASE , THE QUESTION TO BE DETERMINED IS WHETHER THE PRINCIPLES IN THE TREATY CONCERNING THE FREE MOVEMENT OF GOODS PREVENT THE ADOPTION OF NATIONAL RULES WHICH , WHILST SUBJECTING THE NORMAL IMPORTATION OF VEHICLES TO PAYMENT OF VALUE ADDED TAX , PROHIBIT THE RESIDENTS OF THE STATE IN QUESTION , SUBJECT TO CRIMINAL PENALTIES , FROM USING VEHICLES WHICH HAVE BEEN BROUGHT IN UNDER THE TEMPORARY IMPORTATION ARRANGEMENTS AND ARE THUS EXEMPTED FROM

THAT TAX .

5 ARTICLE 2 OF THE NEW YORK CONVENTION OF 4 JUNE 1954 WHICH HAS BEEN RATIFIED BY ALL THE MEMBER STATES OF THE EUROPEAN COMMUNITY GOVERNS THE TEMPORARY TAX-FREE IMPORTATION OF MOTOR VEHICLES . PARAGRAPH (1) OF THAT ARTICLE PROVIDES THAT EACH OF THE CONTRACTING STATES SHALL ' ' GRANT TEMPORARY ADMISSION WITHOUT PAYMENT OF IMPORT DUTIES AND IMPORT TAXES . . . TO VEHICLES OWNED BY PERSONS NORMALLY RESIDENT OUTSIDE ITS TERRITORY WHICH ARE IMPORTED AND UTILIZED , FOR THEIR PRIVATE USE ON THE OCCASION OF A TEMPORARY VISIT , EITHER BY THE OWNERS OF THE VEHICLES OR BY OTHER PERSONS NORMALLY RESIDENT OUTSIDE ITS TERRITORY ' ' .

6 ARTICLE 216 OF THE DECREE OF THE PRESIDENT OF THE ITALIAN REPUBLIC NO 43 OF 23 JANUARY 1973 (CONSOLIDATED TEXT OF THE LEGISLATIVE PROVISIONS IN CUSTOMS MATTERS) GOVERNS THE TEMPORARY IMPORTATION OF ROAD VEHICLES FOR PRIVATE USE BY REFERRING TO THE NEW YORK CONVENTION AND PROVIDES IN PARAGRAPH (2) THAT THE PENALTIES PRESCRIBED FOR THE OFFENCE OF SMUGGLING APPLY WHEN THE CONDITIONS LAID DOWN BY THAT CONVENTION ARE LACKING OR ARE NO LONGER PRESENT . THE SAME ENACTMENT ALSO LAYS DOWN THE FINE TO BE IMPOSED ON ANYONE WHO IS IN POSSESSION OF FOREIGN GOODS WITHOUT BEING ABLE TO SHOW THAT THEY WERE LAWFULLY OBTAINED (ARTICLE 282 IN CONJUNCTION WITH ARTICLE 85), OR WHO USES FOREIGN GOODS WHICH HAVE BEEN IMPORTED DUTY-FREE AND AT A REDUCED RATE OF TAX WHOLLY OR PARTLY FOR A PURPOSE OTHER THAN THAT FOR WHICH THE TAX EXEMPTION OR REDUCTION WAS GRANTED (ARTICLE 287).

7 AS REGARDS THE AMOUNT OF TAX NOT PAID , UPON WHICH THE AMOUNT OF THE FINE IS BASED , DECREE OF THE PRESIDENT NO 633 OF 26 OCTOBER 1972 ON THE INTRODUCTION AND ADMINISTRATION OF VALUE ADDED TAX PROVIDES THAT THE TAX IN QUESTION APPLIES , INTER ALIA , TO IMPORTS EFFECTED BY ANY PERSON , AND GOES ON TO DETERMINE SPECIFICALLY , IN ARTICLES 67 TO 70 , THE ARRANGEMENTS REGARDING THE TAX ON IMPORTS .

8 IT SHOULD BE NOTED THAT THE APPLICATION OF VALUE ADDED TAX TO THE IMPORTATION OF GOODS IS EXPRESSLY PROVIDED FOR IN ARTICLE 2 OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 (NO 67/228/EEC) ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION , 1967 , P . 16). ARTICLE 14 OF THE SIXTH COUNCIL DIRECTIVE OF 17 MAY 1977 (NO 77/338/EEC) ON THIS SUBJECT (OFFICIAL JOURNAL 1977 , L 145 , P . 1) PROVIDES THAT , WITHOUT PREJUDICE TO OTHER COMMUNITY PROVISIONS , MEMBER STATES ARE TO EXEMPT , UNDER CONDITIONS TO BE LAID DOWN BY THEM FOR THE PURPOSE OF ENSURING THE CORRECT AND STRAIGHTFORWARD APPLICATION OF SUCH EXEMPTION AND OF PREVENTING ANY POSSIBLE EVASION , AVOIDANCE OR ABUSE , INTER ALIA , IMPORTATIONS OF GOODS DECLARED TO BE UNDER TEMPORARY IMPORTATION ARRANGEMENTS .

9 MEMBER STATES THUS RETAIN BROAD POWERS TO TAKE ACTION IN RESPECT OF TEMPORARY IMPORTATION , SPECIFICALLY FOR THE PURPOSE OF PREVENTING TAX FRAUDS . IT FOLLOWS THAT IF THE MEASURES ADOPTED TO THAT END ARE NOT EXCESSIVE , THEY ARE COMPATIBLE WITH THE PRINCIPLE OF THE FREE MOVEMENT OF GOODS .

10 AS REGARDS THE PROHIBITION IMPOSED BY A MEMBER STATE ON PERSONS RESIDENT IN ITS TERRITORY ON THE USE OF VEHICLES IMPORTED TEMPORARILY TAX-FREE , IT IS AN EFFECTIVE WAY OF PREVENTING TAX FRAUDS AND ENSURING THAT

TAXES ARE PAID IN THE COUNTRY OF DESTINATION OF THE GOODS . IN FACT THE PROPOSAL FOR A COUNCIL DIRECTIVE ON TAX EXEMPTIONS FOR CERTAIN MEANS OF TRANSPORT TEMPORARILY IMPORTED INTO ONE MEMBER STATE FROM ANOTHER SUBMITTED BY THE COMMISSION ON 30 OCTOBER 1975 (OFFICIAL JOURNAL C 267 , P . 8) RECOGNIZED THE NEED FOR SUCH A MEASURE IN PROPOSING IN ARTICLE 3 (CONCERNING THE TEMPORARY IMPORTATION OF CERTAIN MEANS OF TRANSPORT FOR PRIVATE USE) THE CONDITION THAT ' ' (A) THE INDIVIDUAL IMPORTING SUCH GOODS : (AA) HAS HIS PRINCIPAL RESIDENCE IN A MEMBER STATE OF THE COMMUNITY OTHER THAN THAT OF TEMPORARY IMPORTATION , . . . ' ' AND THAT ' ' (B) THE SAID MEANS OF TRANSPORT IS NOT DISPOSED OF OR HIRED OUT IN THE MEMBER STATE OF TEMPORARY IMPORTATION , OR LENT TO TO A RESIDENT OF THAT STATE ' ' .

11 PROVIDED THAT PROVISIONS SUCH AS THOSE CONTAINED IN THE NATIONAL LEGISLATION IN QUESTION IN THIS INSTANCE ARE FOUND TO BE COMPATIBLE WITH THE RULES OF THE COMMUNITY LEGAL ORDER , THERE IS NO ARGUMENT CAPABLE OF CALLING IN QUESTION THE POWER OF A MEMBER STATE TO IMPOSE CRIMINAL PENALTIES FOR CONTRAVENING THE NATIONAL RULES .

12 THE REPLY TO THE QUESTION WHICH HAS BEEN SUBMITTED BY THE TRIBUNALE DI RAVENNA SHOULD THEREFORE BE THAT THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE THE IMPOSITION BY NATIONAL RULES ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE OF A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION ARRANGEMENTS AND THUS EXEMPT FROM PAYMENT OF VALUE ADDED TAX .

Decision on costs

13 THE COSTS INCURRED BY THE ITALIAN GOVERNMENT AND BY THE COMMISSION OF THE EUROPEAN COMMUNITIES WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT ARE NOT RECOVERABLE . AS THIS CASE IS , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED , IN THE NATURE OF A STEP IN THE PROCEEDINGS BEFORE THE NATIONAL COURT , THE DECISION AS TO COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT (FIRST CHAMBER),

IN ANSWER TO THE QUESTION REFERRED TO IT BY THE TRIBUNALE CIVILE E PENALE DI RAVENNA BY AN ORDER DATED 26 NOVEMBER 1979 , HEREBY RULES :

THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE THE IMPOSITION BY NATIONAL RULES ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE OF A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION ARRANGEMENTS AND THUS EXEMPT FROM PAYMENT OF VALUE ADDED TAX .

