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Judgment of the Court of 11 July 1985. - Commission of the European Communities v Italian Republic. - Value-added tax - Taxation of sparkling wines. - Case 278/83.

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Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

TAX PROVISIONS - INTERNAL TAXATION - DIFFERENTIATED TAXATION SYSTEM - APPLICATION OF A HIGHER RATE OF TAXATION TO A CATEGORY OF SPARKLING WINES DEFINED SO AS NOT TO INCLUDE ANY NATIONAL PRODUCT - UNLAWFULNESS

(EEC TREATY , ART . 95)

Summary

FOR NATIONAL LAW TO SUBJECT THE CATEGORY OF SPARKLING WINES HAVING AN APPELLATION OF ORIGIN AND REQUIRED BY LEGISLATION TO BE FERMENTED NATURALLY IN THEIR BOTTLES , WHEREAS BECAUSE OF THE ABSENCE OF ANY SUCH RULES THE NATIONAL PRODUCT CANNOT FALL WITHIN THAT CATEGORY , CONSTITUTES A MANIFEST BREACH OF THE RULES LAID DOWN IN ARTICLE 95 OF THE TREATY PROHIBITING TAX DISCRIMINATION . SUCH LEGISLATION IS OBVIOUSLY CONCEIVED SO AS TO APPLY ONLY TO IMPORTED PRODUCTS AND IS INTENDED TO PROTECT THE CORRESPONDING DOMESTIC PRODUCTS BY APPLYING APPRECIABLY LOWER RATES OF TAX TO THEM .

Parties

IN CASE 278/83

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY GUIDO BERARDIS , A MEMBER OF ITS LEGAL DEPARTMENT , ACTING AS AGENT , WITH AN ADDRESS FOR

SERVICE IN LUXEMBOURG AT THE OFFICE OF GEORGES KREMLIS , ALSO A MEMBER OF ITS LEGAL DEPARTMENT , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

SUPPORTED BY

THE FRENCH REPUBLIC , REPRESENTED IN THE WRITTEN PROCEDURE BY FRANCOIS RENOARD , DEPUTY DIRECTOR OF LEGAL AFFAIRS OF THE MINISTRY OF FOREIGN RELATIONS , AND IN THE ORAL PROCEDURE BY PHILIPPE POUZOULET , SECRETARY OF FOREIGN AFFAIRS IN THE LEGAL AFFAIRS DIRECTORATE OF THE MINISTRY FOR FOREIGN RELATIONS , BOTH ACTING AS AGENTS , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE FRENCH EMBASSY ,

INTERVENER ,

V

ITALIAN REPUBLIC , REPRESENTED BY ARNALDO SQUILLANTE , HEAD OF THE DEPARTMENT FOR CONTENTIOUS DIPLOMATIC AFFAIRS , TREATIES AND LEGISLATIVE MATTERS OF THE MINISTRY OF FOREIGN AFFAIRS , ASSISTED BY PIE GIORGIO FERRI , AVVOCATO DELLO STATO , ACTING AS AGENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE ITALIAN EMBASSY ,

DEFENDANT ,

Subject of the case

APPLICATION FOR A DECLARATION THAT , BY APPLYING TO IMPORTED SPARKLING WINES A HIGHER RATE OF VALUE-ADDED TAX THAN THOSE APPLIED TO DOMESTICALLY-PRODUCED SPARKLING WINES , THE ITALIAN REPUBLIC HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 95 OF THE EEC TREATY ,

Grounds

1 BY APPLICATION LODGED AT THE COURT REGISTRY ON 19 DECEMBER 1983 THE COMMISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION BEFORE THE COURT UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT , BY APPLYING TO SPARKLING WINES IMPORTED FROM OTHER MEMBER STATES A HIGHER RATE OF VALUE-ADDED TAX THAN THOSE WHICH IT APPLIES TO DOMESTICALLY-PRODUCED SPARKLING WINES , THE ITALIAN REPUBLIC HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 95 OF THE EEC TREATY .

2 IT IS APPARENT FROM THE DOCUMENTS BEFORE THE COURT THAT ARTICLE 16 OF DECREE NO 633 OF THE PRESIDENT OF THE REPUBLIC OF 26 OCTOBER 1972 (GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA , ORDINARY SUPPLEMENT NO 1 TO NO 292 OF 11 NOVEMBER 1972 , P . 2) INTRODUCING VALUE-ADDED TAX MAKES GENERAL PROVISION FOR THREE DIFFERENT RATES OF VALUE-ADDED TAX :

(A) A STANDARD RATE ;

(B)A REDUCED RATE , TO BE APPLIED TO TRANSACTIONS RELATING TO ESSENTIAL GOODS AND SERVICES ; AND

(C)AN INCREASED RATE , TO BE APPLIED TO TRANSACTIONS RELATING TO LUXURY GOODS AND SERVICES .

THE GOODS AND SERVICES TO WHICH THE REDUCED RATE AND THE INCREASED RATE APPLY ARE SET OUT IN TABLES A AND B ANNEXED TO THE DECREE . AT THE MATERIAL TIME , THE RATES WERE RESPECTIVELY 18% , 10% AND 38% (DECREE LAW NO . 495 OF 4 AUGUST 1982 , GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA NO 212 OF 4 AUGUST 1982 , P . 5481).

3 ACCORDING TO THE COMMISSION ' S APPLICATION , THE STANDARD RATE OF 18% IS APPLICABLE TO SPARKLING WINES NATURALLY FERMENTED IN THEIR BOTTLES , PROVIDED THAT THIS PROCESS IS NOT REQUIRED BY NATIONAL LEGISLATION , THE RATE OF 10% TO SPARKLING WINES NOT FERMENTED IN THEIR BOTTLES AND THE RATE OF 38% TO THE SPARKLING WINES DEFINED IN TABLE B ANNEXED TO THE DECREE INTRODUCING VALUE-ADDED TAX AS SPARKLING WINES HAVING AN APPELLATION OF ORIGIN AND REQUIRED BY LEGISLATION TO BE NATURALLY FERMENTED IN THEIR BOTTLES (AMENDMENT MADE BY DECREE LAW NO 46 OF 18 MARCH 1976 , GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA NO 73 OF 18 MARCH 1976 , P . 2067 , RATIFIED BY LAW NO 249 OF 10 MAY 1976 , GAZZETTA UFFICIALE NO 129 OF 17 MAY 1976 , P . 3744). IT IS TO BE OBSERVED THAT SINCE THE ACTION WAS BROUGHT THOSE RULES HAVE UNDERGONE VARIOUS AMENDMENTS BUT THESE HAVE NOT AFFECTED THE DEFINITION OF THE SPARKLING WINES WHICH ARE SUBJECT TO THE HIGHER RATE OF TAX , WHICH IS STILL FIXED AT 38% (DECREE LAW NO 853 OF 19 DECEMBER 1984 , P . 10582 , RATIFIED BY LAW NO . 17 OF 17 FEBRUARY 1985 , GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA NO 41 BIS OF 17 FEBRUARY 1985 , P . 1181).

4 THE COMMISSION CONSIDERS THAT ALL SPARKLING WINES , WHETHER FERMENTED IN THEIR BOTTLES (THE ' CHAMPENOISE ' METHOD) OR IN CLOSED VATS , ARE SIMILAR OR COMPETING PRODUCTS FOR THE PURPOSES OF ARTICLE 95 INASMUCH AS THEY ' HAVE SIMILAR CHARACTERISTICS AND MEET THE SAME NEEDS FROM THE POINT OF VIEW OF CONSUMERS ' , AS THE COURT HELD IN ITS JUDGMENT OF 27 FEBRUARY 1980 IN CASE 169/78 , COMMISSION V ITALIAN REPUBLIC , (1980) ECR 385 (PARAGRAPH 5 AT P . 400 AND REFERENCES THEREIN). THE COMMISSION POINTS OUT IN THIS REGARD THAT ALL ' SPARKLING WINES ' CONSTITUTE A SINGLE CLASS ACCORDING TO ITEM 13 OF ANNEX II TO COUNCIL REGULATION NO 337/79 OF 5 FEBRUARY 1979 ON THE COMMON ORGANIZATION OF THE MARKET IN WINE (OFFICIAL JOURNAL , 1979 , L 54 , P . 1) AND COUNCIL REGULATION NO 358/79 OF 5 FEBRUARY 1979 ON SPARKLING WINES DEFINED IN ITEM 13 OF ANNEX II TO REGULATION NO 337/79 (OFFICIAL JOURNAL , L 54 , P . 130).

5 ACCORDING TO THE COMMISSION , THE TAX SYSTEM IN QUESTION OPERATES TO THE DETRIMENT OF IMPORTED SPARKLING WINES WHILST FAVOURING DOMESTICALLY-PRODUCED SPARKLING WINES . ALL ITALIAN SPARKLING WINES FALL INTO THE TWO CATEGORIES WHICH ARE THE LEAST TAXED , THAT IS TO SAY THE CATEGORY OF SPARKLING WINES FERMENTED IN CLOSED VATS (TAXED AT 10%) OR THE CATEGORY OF SPARKLING WINES NATURALLY FERMENTED IN THEIR BOTTLES (TAXED AT 18%), THIS PROCESS NOT BEING IMPOSED , HOWEVER , BY ANY LEGISLATIVE REQUIREMENT SINCE THERE IS NO REQUIREMENT IN ITALY FOR WINE TO BE FERMENTED IN BOTTLES . HOWEVER , AN APPRECIABLE PROPORTION OF IMPORTED SPARKLING WINES FALLS WITHIN THE HIGHEST TAX CATEGORY (38%) SINCE ONLY FOREIGN LEGISLATION

REQUIRES SPARKLING WINE TO BE FERMENTED IN BOTTLES BEFORE A PARTICULAR APPELLATION OF ORIGIN MAY BE USED , FRENCH CHAMPAGNE BEING THE MOST TYPICAL EXAMPLE . THE COMMISSION CONSIDERS THAT THIS IS THEREFORE A FLAGRANT CASE OF DISCRIMINATION , CONTRARY TO THE FIRST PARAGRAPH OF ARTICLE 95 OF THE TREATY .

6 THE COMMISSION ' S CONCLUSIONS ARE SUPPORTED BY THE FRENCH REPUBLIC , THE INTERVENER IN THIS CASE . THE FRENCH GOVERNMENT DOES NOT IN PRINCIPLE CHALLENGE THE FREEDOM OF MEMBER STATES TO ESTABLISH DIFFERENTIAL TAX SYSTEMS FOR CERTAIN PRODUCTS BASED ON OBJECTIVE CRITERIA ; IT ALSO CONSIDERS THAT THE ITALIAN GOVERNMENT IS ENTITLED TO ADOPT , FOR REASONS OF DISTRIBUTIVE JUSTICE , FISCAL MEASURES DESIGNED TO IMPOSE HEAVIER TAXATION ON GOODS THAT IT REGARDS AS LUXURY GOODS , BUT ONLY IN SO FAR AS SUCH MEASURES ARE CONSISTENT WITH ARTICLE 95 . IN THE PRESENT CASE THE FRENCH GOVERNMENT CONSIDERS THAT THE ITALIAN SYSTEM OF TAXATION DISCRIMINATES AGAINST IMPORTED SPARKLING WINES REQUIRED TO BE FERMENTED IN THEIR BOTTLES BY THE LEGISLATION OF THE COUNTRY IN WHICH THEY ARE PRODUCED AND MAINLY AGAINST FRENCH CHAMPAGNE , INASMUCH AS IT DISCOURAGES THE PURCHASE OF THOSE WINES , WHICH ARE RELATIVELY EXPENSIVE TO PRODUCE .

7 IN ITS DEFENCE THE ITALIAN GOVERNMENT CONTENDS THAT IN ITS JUDGMENT OF 15 MARCH 1983 IN CASE 319/81 , (COMMISSION V ITALIAN REPUBLIC , (1983) ECR 601 - TAXATION OF SPIRITS) THE COURT ACKNOWLEDGED THAT IN ITS DECISIONS IT HAD CONSISTENTLY RECOGNIZED THE FREEDOM OF MEMBER STATES TO ESTABLISH DIFFERENTIAL TAX SYSTEMS FOR CERTAIN PRODUCTS BASED ON OBJECTIVE CRITERIA . IN THE SAME JUDGMENT THE COURT RECOGNIZED THE RIGHT OF MEMBER STATES TO PROVIDE FOR A HIGHER RATE OF TAX ON LUXURY GOODS . IN THE PRESENT CASE , THE ITALIAN TAXATION LEGISLATION HAS DEFINED A PRODUCT - FOR THE PURPOSE OF SUBJECTING IT TO THE RATE OF TAX PROVIDED FOR IN THE CASE OF LUXURY GOODS - WHICH IS KNOWN AND USED AS A PRESTIGIOUS PRODUCT AND CLASS SYMBOL BY A PRIVILEGED CLASS OF CONSUMERS OWING IN PARTICULAR TO ITS HIGH PRICE . SINCE THIS IS AN OBJECTIVE CRITERION , THE ITALIAN LEGISLATURE CANNOT BE REPROACHED FOR HAVING THUS CREATED TAX DISCRIMINATION .

8 THE COMMISSION CHALLENGES THE ITALIAN GOVERNMENT ' S POINT OF VIEW ON THE DETERMINATION OF LUXURY GOODS . IT DRAWS ATTENTION TO THE FACT THAT IN ITS JUDGMENT OF 15 MARCH 1983 IN CASE 319/81 , ON WHICH THE ITALIAN GOVERNMENT RELIES , THE COURT REFUSED TO RECOGNIZE A DESIGNATION OF ORIGIN OR PROVENANCE AS A VALID CRITERION FOR CLASSIFYING A PRODUCT AS A LUXURY PRODUCT . IT ALSO DRAWS ATTENTION TO THE DANGER IN USING THE PRICES OF PRODUCTS AS AN INDICATION THAT THEY MIGHT BE CLASSIFIED AS LUXURY PRODUCTS SINCE PRICE DIFFERENCES MAY ARISE FROM FACTORS SUCH AS THE RAW MATERIALS USED , THE MANUFACTURING PROCESSES AND TRANSPORT , AS IS PRECISELY THE CASE WITH CHAMPAGNE IMPORTED INTO ITALY . IN NO EVENT MAY THE CLASSIFICATION OF A PRODUCT AS A LUXURY PRODUCT BE REGARDED AS AN OBJECTIVE CRITERION OF PROGRESSIVE TAXATION TO THE DETRIMENT OF THE REQUIREMENT OF TAX EQUALITY LAID DOWN IN ARTICLE 95 OF THE TREATY AS REGARDS IMPORTED PRODUCTS .

9 THE COMMISSION ' S APPLICATION CALLS FOR A PRELIMINARY OBSERVATION . IT SEEKS A DECLARATION THAT THE ITALIAN REPUBLIC HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 95 OF THE TREATY ' BY APPLYING TO SPARKLING WINES IMPORTED FROM OTHER MEMBER STATES A RATE OF VALUE-ADDED TAX HIGHER THAN

THE RATES WHICH IT APPLIES TO DOMESTICALLY-PRODUCED SPARKLING WINES '. IT IS APPARENT FROM THE DOCUMENTS BEFORE THE COURT THAT THE COMMISSION IS IN FACT ARGUING ONLY ABOUT THE DIFFERENCE IN TAXATION BETWEEN , ON THE ONE HAND , SPARKLING WINES FERMENTED IN THEIR BOTTLES WHERE THIS METHOD IS NOT REQUIRED IN THE COUNTRY OF ORIGIN (TAXED AT 18%) AND SPARKLING WINES FERMENTED IN VATS (TAXED AT 10%) AND , ON THE OTHER HAND , SPARKLING WINES HAVING AN APPELLATION OF ORIGIN AND REQUIRED BY LEGISLATION TO BE FERMENTED NATURALLY IN THEIR BOTTLES (TAXED AT 38%). HOWEVER , THE COMMISSION HAS NOT CHALLENGED THE TAX DIFFERENTIAL BETWEEN SPARKLING WINES TAXED RESPECTIVELY AT 18 AND 10% .

10 ONCE THE CASE IS DEFINED IN THOSE TERMS , IT BECOMES OBVIOUS THAT THE DEFINITION GIVEN BY ITALIAN LEGISLATION OF THE CATEGORY OF SPARKLING WINES SUBJECT TO THE HIGHEST RATE OF TAXATION IS CONCEIVED SO AS TO APPLY ONLY TO IMPORTED PRODUCTS AND IS INTENDED TO PROTECT THE CORRESPONDING DOMESTIC PRODUCTS BY APPLYING APPRECIABLY LOWER RATES OF TAX TO THEM . IT THEREFORE CONSTITUTES A MANIFEST BREACH OF THE RULE LAID DOWN IN ARTICLE 95 PROHIBITING TAX DISCRIMINATION .

11 IN THOSE CIRCUMSTANCES , THE QUESTION WHETHER A PARTICULAR TYPE OF SPARKLING WINE CONSTITUTES A ' LUXURY PRODUCT ' IS IRRELEVANT IN VIEW OF THE FACT THAT ITALIAN LEGISLATION DOES NOT TREAT THE COMPARABLE DOMESTIC PRODUCTS AS SUCH . IT DOES NOT THEREFORE APPEAR NECESSARY TO CONSIDER THE PARTIES ' ARGUMENTS ABOUT THE CRITERIA FOR DEFINING ' LUXURY PRODUCTS ' OR THE QUESTION RAISED BY THE COMMISSION REGARDING THE EFFECT OF THAT CONCEPT ON INTRA-COMMUNITY TRADE .

12 IT MUST THEREFORE BE CONCLUDED THAT , BY APPLYING TO SPARKLING WINES HAVING AN APPELLATION OF ORIGIN AND REQUIRED BY NATIONAL LEGISLATION TO BE NATURALLY FERMENTED IN THEIR BOTTLES A RATE OF VALUE-ADDED TAX HIGHER THAN THE RATES WHICH IT APPLIES TO COMPARABLE DOMESTICALLY-PRODUCED SPARKLING WINES , THE ITALIAN REPUBLIC HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 95 OF THE EEC TREATY .

Decision on costs

COSTS

13 UNDER ARTICLE 69 (2) OF THE RULES OF PROCEDURE , THE UNSUCCESSFUL PARTY IS TO BE ORDERED TO PAY THE COSTS . SINCE THE ITALIAN REPUBLIC HAS FAILED IN ITS SUBMISSIONS IT MUST BE ORDERED TO PAY THE COSTS .

Operative part

ON THOSE GROUNDS ,

THE COURT

HEREBY :

(1) DECLARES THAT , BY APPLYING TO SPARKLING WINES HAVING AN APPELLATION OF ORIGIN AND REQUIRED BY NATIONAL LEGISLATION TO BE NATURALLY FERMENTED

IN THEIR BOTTLES A HIGHER RATE OF VALUE-ADDED TAX HIGHER THAN THE RATES WHICH IT APPLIES TO COMPARABLE DOMESTICALLY-PRODUCED SPARKLING WINES , THE ITALIAN REPUBLIC HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 95 OF THE EEC TREATY ;

(2)ORDERS THE ITALIAN REPUBLIC TO PAY THE COSTS , INCLUDING THOSE OF THE INTERVENER .