

# 61994J0166

Judgment of the Court (Third Chamber) of 8 February 1996. - Pezzullo Molini Pastifici Mangimifici SpA v Ministero delle Finanze. - Reference for a preliminary ruling: Corte d'appello di Salerno - Italy. - Inward processing arrangements - National legislation providing for default interest on agricultural levies and VAT for the period between temporary and definitive importation. - Case C-166/94.

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## Keywords

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*1. Free movement of goods ° Trade with non-member countries ° Inward processing arrangements ° Release for home use of goods initially subject to inward processing arrangements ° Recovery of the agricultural levy ° Charging of default interest ° Permissible*

*(Council Directive 69/73, Art. 16)*

*2. Tax provisions ° Harmonization of laws ° Turnover tax ° Common system of value added tax ° Chargeable event and chargeability of the tax ° Inward processing arrangements ° Release for home use of goods initially subject to inward processing arrangements ° Recovery of the tax payable on imported goods ° Charging of default interest ° Not permissible*

*(Council Directive 77/388, Arts 10(3), 4th subpara.)*

## Summary

*1. Directive 69/73 on inward processing arrangements allowed a Member State to provide that, in the case of release for home use in the Community of goods previously subject to inward processing arrangements, the agricultural levy payable is to bear default interest for the period between temporary importation and definitive importation.*

*2. The Sixth Directive, Council Directive 77/388, precludes a Member State from requiring default interest to be charged on the VAT payable in the event of declaration for home use in the*

*Community of goods which were earlier subject to inward processing arrangements for the period between temporary importation and definitive importation.*

*That possibility is excluded by the fourth subparagraph of Article 10(3) of the directive, which applies to inward processing arrangements and provides that the tax is to become chargeable only when the goods cease to be subject to those arrangements and are declared for home use.*

## **Parties**

*In Case C-166/94,*

*REFERENCE to the Court under Article 177 of the EC Treaty by the Corte d' Appello, Salerno, Italy, for a preliminary ruling in the proceedings pending before that court between*

*Pezzullo Molini Pastifici Mangimifici SpA*

*and*

*Ministero delle Finanze*

*on the interpretation of Articles 9, 12, 13, 30 and 38 of the EC Treaty and Article 18(2) of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (OJ 1975 L 281, p. 1) and Article 16 of Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing (OJ, English Special Edition 1969 (I), p. 75),*

*THE COURT (Third Chamber),*

*composed of: J.-P. Puissochet, President of the Chamber, J.C. Moitinho de Almeida and C. Gulmann (Rapporteur), Judges,*

*Advocate General: F.G. Jacobs,*

*Registrar: R. Grass,*

*after considering the written observations submitted on behalf of:*

*° the Italian Government, by Luigi Ferrari Bravo, Head of the Legal Service of the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato,*

*° the Commission of the European Communities, by Antonio Aresu, of its Legal Service, acting as Agent,*

*having regard to the report of the Judge-Rapporteur,*

*after hearing the Opinion of the Advocate General at the sitting on 26 October 1995,*

*gives the following*

*Judgment*

## **Grounds**

1 By judgment of 31 May 1994, received at the Court Registry on 20 June 1994, the Corte d' Appello (Appeal Court), Salerno, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Articles 9, 12, 13, 30 and 38 of the EC Treaty and Article 18(2) of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (OJ 1975 L 281, p. 1) and Article 16 of Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing (OJ, English Special Edition 1969 (I), p. 75).

2 That question was raised in proceedings between Pezzullo Molini Pastifici Mangimifici SpA (hereinafter "Pezzullo") and the Ministero delle Finanze (Ministry of Finance).

3 On 21 May 1982 Pezzullo temporarily imported 1 000 tonnes of durum wheat from Canada in order to process it into wheat semolina and re-export it. Having done so, Pezzullo released for consumption in Italy the by-products of the processing (middlings, bran and meal), which were thus definitively imported on 15 January 1985.

4 In respect of the definitive import of those by-products, the Palermo customs authorities required the payment of a levy and of value added tax. It also required, under Article 191 of the Italian Customs Law (Presidential Decree No 43 of 23 January 1973), payment of default interest for the period between temporary importation and definitive importation. It calculated the total interest payable at LIT 18 315 610, comprising LIT 17 382 352 in respect of the agricultural levy and LIT 933 258 in respect of VAT.

5 Pezzullo paid the levy and the VAT, and also the default interest. However, considering that the provisions of Italian law under which the interest had been charged were incompatible with Community law, it instituted proceedings before the Tribunale di Salerno for recovery of the interest paid. Its action was dismissed, whereupon it appealed to the Corte d' Appello, Salerno.

6 It maintained before that court that the default interest demanded from it constituted an internal duty or charge having equivalent effect that was incompatible with Articles 9, 12, 13, 30 and 38 of the Treaty. It also alleged infringement of Council Regulation No 19 of 20 April 1962 on the gradual establishment of a common organization of the market in cereals (JO 1962, 30, p. 933) and of Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33), on the ground that those regulations prohibited the charging of any customs duty or any charge having equivalent effect in trade with non-member countries.

7 The Ministero delle Finanze contended that, when the temporary import took place, Regulations Nos 19 and 120/67 were no longer in force, having been repealed by Regulation No 2727/75. It also maintained that Article 191 of the Italian Customs Law was in conformity with Directive 69/73.

8 The Corte d' Appello, Salerno, decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the following question:

"Was the imposition of default interest provided for in Article 191 of the Italian Customs Law in respect of definitive importation at the time of the import operation at issue in the proceedings (1982) prohibited by provisions of Community law which took precedence over national law?"

9 Since, in this case, the default interest was charged both on the levy and on the VAT, it is necessary to consider first whether Community law precludes the charging of default interest on the levy and then whether it precludes the charging of default interest on VAT.

## *The charging of default interest on the levy*

10 Since the levy was collected under the inward processing arrangements, it is necessary to examine the Community rules applicable at the time of the import in question, namely Directive 69/73.

11 Directive 69/73 introduced common rules on the inward processing arrangements. In certain circumstances it is possible, under those arrangements, to carry out various operations (working, processing, repair or use) within the Community customs territory on non-Community goods intended for re-export outside the Community customs territory in the form of compensating products without those products being subject to customs duties or agricultural levies.

12 Article 15(1)(a) and (b), first indent, of Directive 69/73 provide that, where circumstances so warrant and in particular in the case of undertakings engaged in continuous production both for the Community market and for external markets, the competent authorities may allow compensating products or goods covered by inward processing arrangements to be put on the market.

13 Article 16 of that directive provides: "where goods are put on the market in accordance with the conditions provided for in Article 15(1)(a) or the first indent of Article 15(1)(b), the customs duties, charges having equivalent effect or agricultural levies to be charged in respect of compensating products, intermediate products or goods in the unaltered state, shall be those appropriate to the imported goods according to the rate or amount applicable on the date of acceptance of the relevant customs document by the competent authorities and on the basis of the value for customs purposes and other items of charge ascertained or accepted as applicable on that date, without prejudice to any outstanding arrears of interest due."

14 The last part of that article, namely "without prejudice to any outstanding arrears of interest due" shows that the Council expressly provided that the Member States may charge default interest on the payment of import duties and agricultural levies in respect of products subject to inward processing arrangements.

15 That rule is not contrary to Articles 9, 12, 13, 30 or 38 of the EC Treaty referred to by Pezzullo before the national court. As pointed out by the Advocate General in paragraph 11 of his Opinion, those articles are not applicable or directly relevant to this case.

16 Similarly, that rule is not contrary to Article 18(2) of Regulation No 2727/75, which provides:

"Save as otherwise provided in this regulation or where derogation therefrom is decided by the Council, acting by a qualified majority on a proposal from the Commission, the following shall be prohibited :

the levying of any customs duty or charge having equivalent effect;

...".

17 As the Advocate General pointed out in paragraph 17 of his Opinion, even if the default interest at issue were deemed to constitute a charge having equivalent effect to a customs duty, Article 16 of Directive 69/73 constitutes a derogation, decided on by the Council and thus expressly allowed, from the prohibition contained in Article 18(2) of Regulation No 2727/75.

18 The answer to the first part of the question is therefore that Directive 69/73, as in force at the material time, allowed a Member State to provide that, in the case of release for home use in the Community of goods previously subject to inward processing arrangements, the agricultural levy payable is to bear default interest for the period between temporary importation and definitive importation.

#### *The charging of default interest on VAT*

19 Since default interest was also charged on the VAT for the period between temporary importation and definitive importation, it is necessary to consider whether it is permitted to charge such interest under the Community rules on VAT, namely the Sixth Directive, Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes ° Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as in force at the material time.

20 Article 10(3) of that directive provides:

*"As regards imported goods, the chargeable event shall occur and the tax shall become chargeable at the time when goods enter the territory of the country as defined in Article 3.*

*Where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, Member States may link the chargeable event and the date when the tax becomes chargeable with those laid down for these Community duties.*

*In cases where imported goods are not subject to any of these Community duties, Member States may apply the provisions in force governing customs duties as regards the chargeable event and the date when the tax becomes chargeable.*

*Where goods are placed on importation under one of the arrangements provided for in Article 16(1)(A) or under arrangements for transit or temporary admission, the chargeable event and the date when the tax becomes chargeable shall occur only when the goods cease to be covered by these arrangements and are declared for home use."*

21 By virtue of Article 16(1)(A)(e) of the Sixth Directive, Article 10(3) applies to inward processing arrangements.

22 That directive thus expressly indicates that the chargeable event occurs and the tax becomes chargeable only when the goods cease to be subject to those arrangements and are declared for home use. By virtue of Article 10(1)(b), the moment when the tax becomes chargeable is the moment when the tax authority becomes entitled to claim the tax from the person liable, notwithstanding that the time of payment may be deferred. That, therefore, is the earliest moment from which interest for non-payment of the tax may start to accrue.

23 It follows that the last subparagraph of Article 10(3) of the Sixth Directive precludes a Member State from requiring, in connection with inward processing arrangements, payment of default interest on VAT for the period between temporary importation and definitive importation.

24 The answer to the second part of the question must therefore be that Directive 77/388 precludes a Member State from requiring default interest to be charged on the VAT payable in the event of declaration for home use in the Community of goods which were earlier subject to inward processing arrangements for the period between temporary importation and definitive importation.

# Decision on costs

## Costs

*25 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.*

## Operative part

*On those grounds,*

*THE COURT (Third Chamber)*

*in answer to the question referred to it by the Corte d' Appello, Salerno, by order of 31 May 1994, hereby rules:*

*1. Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing, as in force at the material time, allowed a Member State to provide that, in the case of release for home use in the Community of goods previously subject to inward processing arrangements, the agricultural levy payable is to bear default interest for the period between temporary importation and definitive importation.*

*2. Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes ° Common system of value added tax: uniform basis of assessment, precludes a Member State from requiring default interest to be charged on the VAT payable in the event of declaration for home use in the Community of goods which were earlier subject to inward processing arrangements for the period between temporary importation and definitive importation.*