

JUDGMENT OF THE COURT (First Chamber)
3 December 1998^{*}

In Case C-247/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Cour de Cassation (Belgium) for a preliminary ruling in the proceedings pending before that court between

Marcel Schoonbroodt,

Marc Schoonbroodt,

Transports A. M. Schoonbroodt SPRL

and

Belgian State

on the interpretation of Article 112 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1), as amended by Council Regulation (EEC) No 1315/88 of 3 May 1988, which also amends Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 123, p. 2),

^{*} Language of the case: French.

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, D. A. O. Edward and L. Sevón, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Messrs Schoonbroodt and Transports A. M. Schoonbroodt SPRL, by Ghislain Royen, of the Verviers Bar,
- the Belgian Government, by Jan Devadder, General Adviser in the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent, assisted by Bernard van de Walle de Ghelcke, of the Brussels Bar,
- the French Government, by Kareen Rispal-Bellanger, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Romain Nadal, Assistant Foreign Affairs Secretary in that directorate, acting as Agents,
- the Finnish Government, by Holger Rotkirch, Ambassador, Head of Legal Affairs at the Ministry of Foreign Affairs, acting as Agent,
- the Commission of the European Communities, by Michel Nolin, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Messrs Schoonbroodt and Transports A. M. Schoonbroodt SPRL, of the Belgian Government and of the Commission at the hearing on 30 April 1998,

after hearing the Opinion of the Advocate General at the sitting on 25 June 1998,

gives the following

Judgment

- 1 By judgment of 25 June 1997, received at the Court on 7 July 1997, the Cour de Cassation (Court of Cassation) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 112 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1), as amended by Council Regulation (EEC) No 1315/88 of 3 May 1988, which also amends Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 123, p. 2).
- 2 That question was raised in proceedings between the company Transports A. M. Schoonbroodt (hereinafter 'Schoonbroodt'), whose registered office is in Herve (Belgium), and its two managing directors, Marcel and Marc Schoonbroodt, on the one hand, and the Belgian State, on the other, concerning the payment of special excise duty in respect of the importation of diesel fuel.

The legal framework

Belgian law

3 Articles 1 and 2 of the Belgian Ministerial Decree of 17 February 1960 governing exemptions from excise duties on imports (*Moniteur belge* of 18 February 1960, p. 1041), provide that those exemptions are to be granted in respect of the products referred to therein, including fuel on board vehicles, 'to the same extent and subject to the same conditions' as exemptions from import duties.

Community law

4 As regards goods imported into the customs territory of the Community, the conditions and limits of the exemptions applicable in respect of fuel on board motorised road vehicles are laid down by Article 112 of Regulation No 918/83, as amended by Regulation No 1315/88. That article provides:

'1. Subject to the provisions of Articles 113 to 115:

(a) fuel contained in the standard tanks of:

— private and commercial motor vehicles and motor cycles,

— special containers,

entering the customs territory of the Community;

...

shall be admitted free of import duties.

2. For the purposes of paragraph 1:

(a) “commercial motor vehicle” means any motorised road vehicle (including tractors with or without trailers) which by its type of construction and its equipment is designed for and capable of transporting, whether for payment or not:

— more than nine persons including the driver,

— goods,

and any road vehicle for a special purpose other than transport as such;

...

(c) “standard tanks” means:

— the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems.

...

— tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped;

(d) “special container” means any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems, or other systems.’

5 As regards the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles registered in a Member State and travelling between Member States, the relevant provisions were standardised ‘in order to harmonise conditions of competition between carriers in the various Member States’ by Council Directive 68/297/EEC of 19 July 1968 on the standardisation of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles (OJ, English Special Edition 1968 (II), p. 313).

- 6 Article 2 of Directive 68/297, as amended by Council Directive 85/347/EEC of 8 July 1985 (OJ 1985 L 183, p. 22), defines the terms ‘commercial motor vehicle’ and ‘standard fuel tanks’ as follows:

‘For the purposes of this [Directive]:

— “commercial motor vehicle” means any motorised road vehicle which by its type of construction and equipment is designed for, and capable of, transporting, whether for payment or not:

(a) more than nine persons, including the driver;

(b) goods;

— “standard fuel tanks” means the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation of a refrigeration system.

...’

The dispute in the main proceedings

- 7 Schoonbroodt, which specialises in the international transport of goods at controlled temperatures, uses driving units and trailers equipped with refrigeration systems. It is apparent from the facts as stated in the judgment of the national court that those trailers, which were originally equipped with a 100-litre tank intended to supply the refrigeration system, were fitted, by dealers or coachbuilders, with an additional tank, holding approximately 700 litres. Those additional tanks, which are permanently fixed, are fitted in such a way as to enable their contents to be used, by means of an electric pump controlled by a switch on the trailer, both for the operation of the refrigeration system and to fill the driving units with fuel.
- 8 Following an inspection of Schoonbroodt's vehicles, the special inspectorate of taxes concluded that the additional tanks did not satisfy the definition of 'standard tanks' in Article 112(2)(c) of Regulation No 918/83, as amended by Regulation No 1315/88. It consequently calculated the quantities of fuel contained in those tanks which had been imported from Luxembourg into Belgium without the requisite declaration under the Belgian customs and excise legislation.
- 9 Criminal proceedings were subsequently brought against Messrs Schoonbroodt before the Tribunal Correctionnel (Criminal Court), Verviers, for having evaded special excise duty on the importation of 85 848 litres of diesel fuel. The haulage company was also cited as a party liable under civil law.
- 10 By judgment of 17 May 1995, the defendants were acquitted on the basis, in particular, that it had not been proved that the tanks in question did not constitute standard tanks within the meaning of Article 112(2)(c) of Regulation No 918/83, as amended by Regulation No 1315/88.

- 11 The Public Prosecutor and the Belgian State appealed against that judgment. In a judgment dated 31 January 1996 the Cour d'Appel (Court of Appeal), Liège, specified that the offences had taken place between 17 February and 24 December 1992 and subsequently, by judgment of 8 May 1996, convicted the defendants on the basis that the tanks in question did not fall within the definition of standard tanks in Article 112(2)(c) of Regulation No 918/83, as amended by Regulation No 1315/88.
- 12 An appeal was brought before the Cour de Cassation, which considered it appropriate to stay proceedings in order to refer the following question to the Court:

'Are tanks fixed to containers equipped with a refrigeration system and intended for long-distance road haulage to be regarded as "standard" tanks within the meaning of Article 112 of Regulation (EEC) No 918/83 setting up a Community system of reliefs from customs duty, as amended by Regulation (EEC) No 1315/88, where (1) those tanks have been permanently fixed by one of the manufacturer's dealers or by a coachbuilder, with a permanent fitting enabling fuel to be used directly both for the purposes of propulsion and for the operation of the refrigeration systems; and (2) the aim of that fitting is to provide the haulage unit — driving unit and container — with a sufficient fuel range to:

- (a) avoid difficulties in obtaining fuel in countries where availability is uncertain and where the poor quality of refining makes such fuel dangerous for vehicles;
- (b) avoid the need to obtain fuel at sometimes prohibitive prices in countries where it is too expensive;
- (c) avoid the administrative difficulties involved in the need to recover value added tax in the countries where it has been charged; and

(d) use as few fuel supply points as possible in order to be able to negotiate the best prices with fuel companies?’

The jurisdiction of the Court

13 The Belgian Government and the Commission point out that, since the dispute in the main proceedings relates to the grant of exemptions from import excise duties, rather than from customs duties, the provisions of Community law apply to this dispute only by virtue of Belgian domestic law.

14 In that respect, it is sufficient to recall that, as the Belgian Government and the Commission conceded, the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning Community provisions in situations where the facts of the cases being considered by the national courts were outside the scope of Community law but where those provisions had been rendered applicable by domestic law (see, most recently, Case C-28/95 *Leur-Bloem v Inspecteur der Belastingdienst/Ordernemingen Amsterdam 2* [1997] ECR I-4161, paragraph 27 and Case C-130/95 *Giloy v Hauptzollamt Frankfurt am Main-Ost* [1997] ECR I-4291, paragraph 23).

15 That is the case in the main proceedings where the relevant provisions of Belgian law refer to principles of Community law.

16 It is therefore appropriate to give an answer to the question referred.

The question referred for a preliminary ruling

- 17 The national court essentially asks whether the definition of 'standard tanks' in Article 112(2)(c) of Regulation No 918/83, as amended by Regulation No 1315/88, applies to tanks fixed to containers equipped with a refrigeration system and intended for long-distance road haulage where those tanks have been permanently fixed by one of the manufacturer's dealers or by a coachbuilder in order to attain certain financial objectives.
- 18 As a preliminary point, it should be noted that, although Regulation No 918/83, as amended by Regulation No 1315/88, governs the conditions applicable to the duty-free admission of fuel contained in the fuel tanks of motor vehicles from third countries, Directive 68/297, as amended by Directive 85/347, governs the duty-free admission of fuel contained in the fuel tanks of motor vehicles registered in a Member State and travelling between Member States.
- 19 Next, according to the facts as stated in the judgment of the national court, the tanks in question could have been fixed on trailers, that is to say commercial motor vehicles within the meaning of Article 112(2)(a) of Regulation No 918/83, as amended by Regulation No 1315/88 and Article 2 of Directive 68/297, as amended by Directive 85/347 rather than on containers within the meaning of Article 112(2)(d) of the regulation.
- 20 However, there is no significant difference, in the context of the main proceedings, between the definitions of the term 'standard tanks' used in the various provisions which may prove to be relevant.

- 21 The defendants in the main proceedings state that the installation of the fuel tanks in question was carried out in the interests of the sound management of the undertaking and is consistent with the spirit of the Community legislation, the objective of which is to prevent the uncontrolled and dangerous importation of fuel in make-shift tanks. The imposition of excise duties on fuel contained in tanks such as those in question constitutes, in their submission, a barrier to the free movement of goods and results in a breach of the rules of free competition between haulage firms, to the detriment of Belgian haulage firms
- 22 By contrast, the Belgian, French and Finnish Governments and the Commission contend that the concept of 'standard tanks' should be interpreted restrictively. Since the tanks at issue in the main proceedings were not permanently fixed from the outset to all vehicles of the same type by the manufacturer, but were subsequently fixed on certain vehicles by a dealer or by a coachbuilder, they cannot be regarded as 'standard tanks' for the purposes of the aforementioned provisions.
- 23 It should be pointed out that when adopting provisions granting suspension of customs duties, the Council must take account of the requirements of legal certainty and of the difficulties confronting national customs administrations (Case 58/85 *Ethicon v Hauptzollamt Itzehoe* [1986] ECR 1131, paragraph 12). It follows that such provisions are to be interpreted strictly according to their terms and may not therefore be applied, contrary to their wording, to products which they do not mention (Joined Cases C-47/95 to C-50/95, C-60/95, C-81/95, C-92/95 and C-148/95 *Olasagasti and Others v Amministrazione delle Finanze dello Stato* [1996] ECR I-6579, paragraph 20).
- 24 As pointed out by the governments which submitted observations to the Court and by the Commission, the wording of the definition of 'standard [fuel] tanks' in both Article 112(2)(c) of Regulation No 918/83, as amended by Regulation No 1315/88, and Article 2 of Directive 68/297, as amended by Directive 85/347, is clear. In order to be classified as such, those tanks must, *inter alia*, be fixed by the manufacturer to all vehicles or containers of the same type.

- 25 It is not disputed that the tanks in point in the main proceedings were fixed by dealers or by coachbuilders.
- 26 In that respect, the defendants submit that, in practice, dealers and coachbuilders now carry out a part of the manufacturing work. Whilst manufacturers of trailers generally manufacture only the chassis, coachbuilders are responsible for the final fitting out, under the same conditions of safety and competence, according to the intended use of the trailer.
- 27 Even if that is so, and the changes which have taken place in the division of tasks between manufacturers, on the one hand, and dealers or coachbuilders, on the other, might result in the latter being regarded as acting as agents of the manufacturer in the manufacturing process, it is for the Community legislature to draw the appropriate conclusions.
- 28 Nor is it disputed that tanks such as those at issue in the main proceedings were listed as options, that is to say that they were not affixed to all vehicles or containers of the same type but only, at the request of the purchaser, to certain models.
- 29 The answer to the question referred must therefore be that the definition of 'standard tanks' in Article 112(2)(c) of Regulation No 918/83, as amended by Regulation No 1315/88, does not apply to tanks fixed to containers equipped with a refrigeration system and intended for long-distance road haulage where those tanks have been permanently fixed by one of the manufacturer's dealers or by a coachbuilder in order to attain certain financial objectives.

Costs

30 The costs incurred by the Belgian, French and Finnish Governments, and by the Commission, 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Cour de Cassation by judgment of 25 June 1997, hereby rules:

Article 112(2)(c) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Council Regulation (EEC) No 1315/88 of 3 May 1988, which also amends Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, must be interpreted as follows:

the definition of 'standard tanks' used therein does not apply to tanks fixed to containers equipped with a refrigeration system and intended for long-distance road haulage where those tanks have been permanently fixed by one of the manufacturer's dealers or by a coachbuilder in order to attain certain financial objectives.

Jann

Edward

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Delivered in open court in Luxembourg on 3 December 1998.

R. Grass

P. Jann

Registrar

President of the First Chamber