

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Eighth Chamber) of 29 October 2009 (reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany)) — Dinter GmbH v Hauptzollamt Düsseldorf (C-522/07), Europol Frost-Food GmbH v Hauptzollamt Krefeld (C-65/08)

(Joined Cases C-522/07 and C-65/08) ⁽¹⁾

(Common Customs Tariff — Regulation (EEC) No 2658/87 — Combined Nomenclature — Tariff classification — Validity — Additional note — Apple juice concentrate)

(2009/C 312/02)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicants: Dinter GmbH (C-522/07), Europol Frost-Food GmbH (C-65/08)

Defendants: Hauptzollamt Düsseldorf (C-522/07), Hauptzollamt Krefeld (C-65/08)

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation and validity of Additional Note 5(b) to Chapter 20 of Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004 (OJ 2004 L 327, p. 1) — Pure concentrated apple juice, with a Brix value of 66.8, not containing added sugar — Classification of that product under tariff subheading 2009 7999 (apple juice not containing added sugar) or under subheading 2106 9098 (food preparations not elsewhere specified or included) — Limits on the Commission's powers under Article 9 of Council Regulation (EEC) No 2658/87 to specify the content of the tariff headings

Operative part of the judgment

Additional Note 5(b) to Chapter 20 of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulations (EC) No 1776/2001 of 7 September 2001, (EC) No 2031/2001 of 6 August 2001 and (EC) No 1810/2004 of 7 September 2004, amending Annex I to Regulation No 2658/87, is invalid to the extent that it excludes natural apple juice concentrate from heading 2009.

⁽¹⁾ OJ C 37, 9.2.2008
OJ C 107, 26.4.2008

Judgment of the Court (Fourth Chamber) of 29 October 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-536/07) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Public works contracts — Directive 93/37/EEC — Contract between a public body and a private undertaking for the lease to the former of exhibition halls to be built by the latter — Private undertaking to be paid by means of a monthly rent for a period of 30 years)

(2009/C 312/03)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Kukovec and R. Sauer, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and J. Möller, acting as Agents, and by H.-J. Prieß, Rechtsanwalt)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 7 in conjunction with Article 11 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) — Failure to organise an open procedure for award of a contract before the conclusion of a contract between the City of Cologne and a private investment firm concerning the rent by the city, for a fixed period of 30 years in consideration for a total rent of more than EUR 600 million, of four exhibition halls to be constructed by that private firm in accordance with detailed contract documents

Operative part of the judgment

The Court:

1. Declares that the Federal Republic of Germany has failed to fulfil its obligations under Articles 7(4) and 11 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts by reason of the fact that the City of Cologne concluded the contract of 6 August 2004 with Grundstücksgesellschaft Köln Messe 15 bis 18 GbR, now Grundstücksgesellschaft Köln Messe 8-11 GbR, without applying the procedure for the award of public contracts laid down by those provisions;
2. Orders the Federal Republic of Germany to pay the costs.

(¹) OJ C 51, 23.2.2008.

Judgment of the Court (Third Chamber) of 29 October 2009 (reference for a preliminary ruling from the Regeringsrätten (Sweden)) — Skatteverket v AB SKF

(Case C-29/08) (¹)

(Sixth VAT Directive — Articles 2, 4, 13B(d)(5) and 17 — Directive 2006/112/EC — Articles 2, 9, 135(1)(f) and 168 — Disposal by a parent company of a subsidiary and of its holding in a controlled company — Scope of VAT — Exemption — Supplies of services acquired as part of share disposal transactions — Deductibility of VAT)

(2009/C 312/04)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Skatteverket

Defendant: AB SKF

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of Articles 2, 4, 13B(d)(5) and 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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) and Articles 2, 9, 135(1) and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system for value added tax (OJ 2006 L 347, p. 1) — Sale, by a parent company, of a subsidiary and of its interests in another company with a view to restructuring the group of companies — Deduction of VAT paid on supplies of services acquired by the parent company in the context of those transactions

Operative part of the judgment

1. Articles 2(1) and 4(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, and Articles 2(1) and 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, where a parent company disposes of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was in the past wholly owned by it, and where it has supplied to those companies services that are subject to value added tax, that disposal is an economic activity coming within the scope of those directives. However, in so far as the disposal of shares is equivalent to the transfer of a totality of assets or part thereof of an undertaking, within the meaning of Article 5(8) of Sixth Directive 77/388, as amended by Directive 95/7, or the first paragraph of Article 19 of Directive 2006/112, and where the Member State concerned has chosen to exercise the option provided for by those provisions, that transaction does not constitute an economic activity subject to value added tax.
2. A disposal of shares such as that at issue in the main proceedings must be exempted from value added tax pursuant to both Article 13B(d)(5) of Sixth Directive 77/388, as amended by Directive 95/7, and Article 135(1)(f) of Directive 2006/112.