

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 22 March 2013 by Ghezzi Giovanni & C. Snc di Ghezzi Maurizio & C. against the order of the General Court (Fourth Chamber) of 22 January 2013 in Case T-218/00 Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, formerly Cooperative Mare Azzurro Soc. coop. rl, and Cooperativa vongolari Sottomarina Lido Soc. coop. rl v European Commission

(Case C-145/13 P)

(2013/C 207/02)

Language of the case: Italian

Parties

Appellant: Ghezzi Giovanni & C. Snc di Ghezzi Maurizio & C. (represented by: R. Volpe and C. Montagner, avvocati)

Other parties to the proceedings: Cooperativa Mare Azzurro Socialpesca Soc. coop. rl, formerly Cooperativa Mare Azzurro Soc. coop. rl, Cooperativa vongolari Sottomarina Lido Soc. coop. rl, European Commission

Form of order sought

— Uphold the present appeal,

— accordingly, set aside the order of the General Court (Fourth Chamber) of 23 January 2013, notified on 24 January 2013 in Case T-218/00, and, consequently, annul Commission Decision 2000/394/EC of 25 November 1999, or,

— in the alternative, annul Article 5 of that decision in so far as it imposes an obligation to recover the amount of relief granted from the social security contributions at issue and in so far as it provides that interest is to be added to that amount for the period in question;

— order the Commission to pay the costs both at first instance and on appeal.

Pleas in law and main arguments

By its order of 23 January 2013 ('the order under appeal'), the General Court declared that the action brought by Ghezzi

Giovanni & C. Snc seeking the annulment of Commission Decision 2000/394/EC on relief from social security contributions was in part manifestly inadmissible and in part manifestly lacking any foundation in law.

The first ground of this appeal alleges that no reasons were given for deeming the action before the General Court inadmissible; therefore, paragraph 58 of the order under appeal breaches the general principle that there is a duty to state the reasons on which measures are based and, more specifically, infringes Article 81 of the Rules of Procedure of the General Court.

The second ground raised by the appellant alleges that there has not been a proper, exhaustive interpretation of Article 87(1) EC (now Article 107(1) TFEU).

It is also alleged that Article 87(1) EC has been infringed in that there has been a breach of the principle of equal treatment and non-discrimination, as 22 undertakings have been declared exempt from recovery of the aid granted to them on the grounds that they have provided comprehensive reasons for that grant, whereas the appellant has been deemed not to have provided comprehensive reasons for its grant.

The contested order also breaches the principle of non-discrimination, in that it confers legitimacy upon the Commission's decision by virtue of which recovery of aid under Article 87(1) EC was excluded for municipal undertakings (which the Commission, when implementing that decision, allowed to provide any additional information necessary in order to assess the lawfulness of the aid granted), whereas the appellant was never asked for any supplementary documentation before recovery of the aid was initiated.

In further support of its allegations of infringement of Article 87(1) EC, another part of the appeal also states that the order under appeal does not provide any reasons for finding that the aid granted to the appellant had an effect on intra-Community trade. First the Commission and then the General Court found that the relief in question was unlawful, citing the distortion of intra-Community trade as an element inherent in granting aid to undertakings in the fishing industry, without carrying out any kind of examination of the relevant market or providing any statement of reasons for that finding.

The order under appeal also infringes Article 87(3)(a) EC (now Article 107(3)(a) TFEU), since it has not assessed the conditions for applying the derogation in question to the appellant's situation. In particular, the standard of living in Chioggia is extremely low, with extraordinary levels of underemployment.

Similarly, the order under appeal infringes Article 87(3)(c) EC (now Article 107(3)(c) TFEU), in that it finds that the derogation does not apply to the appellant's situation, although it has provided no reasons in that regard, and Article 87(3)(d) EC (now Article 107(3)(d) TFEU), in that, in breach of the principle of non-discrimination, it finds that the derogation which was found applicable to other Venetian undertakings does not apply to the appellant's situation.

Lastly, it is alleged that the General Court erred in its interpretation regarding the absence of 'existing aid', thereby infringing Articles 1, 14 and 15 of Regulation 659/1999.⁽¹⁾ It cannot be denied that the succession of rules in force represents a continuous reduction in social security contributions over a period of several decades.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 April 2013 — Stanislav Gross v Hauptzollamt Braunschweig

(Case C-165/13)

(2013/C 207/03)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Stanislav Gross

Defendant: Hauptzollamt Braunschweig

Question referred

Does the second subparagraph of Article 9(1) of Council Directive 92/12/EEC⁽¹⁾ on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, notwithstanding its schematic connection with Article 7(3) of that directive, preclude legislation of a Member State under which a person who, for commercial purposes, holds products subject to excise duty which have been released for consumption in another

Member State is not liable for duty in circumstances where he did not acquire those products from another person until after the entry process had been completed?

⁽¹⁾ OJ 1992 L 76, p. 1.

Action brought on 5 April 2013 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-172/13)

(2013/C 207/04)

Language of the case: English

Parties

Applicant: European Commission (represented by: W. Roels, R. Lyal, agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that by imposing conditions on cross-border group relief that make it virtually impossible in practice to obtain such relief and by restricting such relief to periods after 1 April 2006, the United Kingdom has failed to comply with its obligations under Article 49 of the Treaty on the Functioning of the European Union and Article 31 of the Agreement on the European Economic Area order United Kingdom of Great Britain and Northern Ireland to pay the costs.

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

Following the judgment in Case C-446/03 *Marks & Spencer*, the United Kingdom amended its legislation governing the manner in which the losses suffered by companies which are members of a group may be transferred and used by another member of the group in order to reduce its tax liability (group relief rules). The provisions governing losses of non-resident companies are now contained in Part 5 of the Corporation Tax Act 2010.

Under the United Kingdom legislation now in force, a group company may obtain a tax credit for the losses of a non-resident group member only if the latter has no possibility of relief in its State of residence. In relation to the possibility of future relief the United Kingdom legislation makes it virtually impossible to demonstrate compliance with that condition, since that possibility falls to be determined 'as at the time immediately after the end' of the tax year in which the loss was suffered. That condition is for all practical purposes