

JUDGMENT OF THE COURT
21 June 1988 *

In Case 10/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Commissioners of Customs and Excise, *ex parte* Tattersalls Ltd,

on the interpretation of the Seventeenth Council Directive of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value-added tax on the temporary importation of goods other than means of transport (Directive 85/362/EEC) (Official Journal 1985, L 192, p. 20),

THE COURT,

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and J. C. Moitinho de Almeida, Presidents of Chambers, U. Everling, K. Bahlmann, Y. Galmot, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

the applicant in the main proceedings, by A. Park, QC, and G. Barling, Barrister,

* Language of the Case: English.

the United Kingdom, by J. Laws and N. Paines, Barristers,

Ireland, by L. J. Dockery, Chief State Solicitor,

the Commission of the European Communities, by its Legal Adviser J. F. Buhl and by D. Calleja, a member of its Legal Department,

having regard to the Report for the Hearing and further to the hearing on 4 February 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 24 March 1988,

gives the following

Judgment

- 1 By an order dated 18 December 1986, which was received at the Court on 5 February 1987, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of the Seventeenth Council Directive (85/362/EEC) of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value-added tax on the temporary importation of goods other than means of transport (Official Journal 1985, L 192, p. 20) (hereinafter referred to as the 'Seventeenth Directive').
- 2 The questions were raised in proceedings brought by Tattersalls Limited, a firm of bloodstock auctioneers whose headquarters is in Suffolk, against the Commissioners of Customs and Excise concerning temporary importation exemption from value-added tax in respect of racehorses acquired in Ireland — where the supply of racehorses is exempt from that tax — and subsequently temporarily exported to the United Kingdom.

- 3 It appears from the order for reference that Tattersalls Limited, the applicant in the main proceedings, brought an action before the High Court of Justice for an order declaring that it was wrong for the goods in question to be allowed to be temporarily imported into the United Kingdom free of value-added tax. The applicant in the main proceedings maintains that a racehorse acquired in a transaction which is exempt from value-added tax in the exporting State is not 'acquired subject to' or 'pursuant to the rules governing the application of value-added tax in the Member State of exportation' (Articles 10 (c) and 11 (b) of the Seventeenth Directive) and accordingly may not be granted exemption from value-added tax in the Member State of importation. On the other hand, the Commissioners of Customs and Excise, the respondents in the main proceedings, consider that a horse has been acquired in conformity with the rules governing the application of value-added tax in the Member State of exportation where those rules provide that the supply of the horse is exempt from value-added tax in that State.
- 4 Considering that the proceedings before it raised problems of interpretation of Community law, the High Court of Justice stayed the proceedings and submitted the following questions to the Court for a preliminary ruling:
- (1) In Article 10 subparagraph (c) of Council Directive 85/362/EEC are the words "[such goods] . . . have been acquired subject to the rules governing the application of value-added tax in the Member State of exportation, and have not benefited by virtue of their exportation from any exemption from value-added tax;" on their true meaning apt to refer to goods the acquisition of which in the Member State of export was exempt from value-added tax?
- (2) In Article 11 second paragraph subparagraph (b) of Council Directive 85/362/EEC are the words "the goods were not acquired pursuant to the rules governing the application of value-added tax in the Member State of exportation or by virtue of being exported benefited from exemption from value-added tax;" on their true meaning apt to refer to goods the acquisition of which in the Member State of export was exempt from value-added tax?
- 5 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 6 Having regard to the facts set out by the national court, the present case essentially raises the question whether goods purchased in one Member State under an exemption from value-added tax and then temporarily imported into another Member State may be granted in the latter State the temporary importation exemption provided for in Articles 10 and 11 of the Seventeenth Directive.

- 7 Pursuant to Article 28 (3) (b) of the Sixth Council Directive 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 (Directive 77/388/EEC; Official Journal 1977, L 145, p. 1, hereinafter referred to as the 'Sixth Directive'), Ireland continues to exempt supplies of thoroughbred horses from value-added tax.

- 8 In order to answer the questions submitted by the national court, it is necessary to determine whether the expression 'acquired subject to' or 'pursuant to the rules governing the application of value-added tax in the Member State of exportation', in Articles 10 and 11 of the Seventeenth Directive, covers only cases where value-added tax was paid at the time of the transaction in the State of exportation and the goods in question did not, by virtue of their exportation, benefit from any exemption from value-added tax, or also covers cases where the transaction itself was exempted from value-added tax.

- 9 Tattersalls considers that goods are acquired subject to the rules governing the application of value-added tax in the Member State of exportation only if value-added tax on the transaction in question is levied at the time of purchase. If it is not so levied, for any reason whatsoever, the goods have not been acquired subject to the rules governing the application of value-added tax.

- 10 The respondents in the main proceedings, who are supported by the United Kingdom, Ireland and the Commission, consider, on the other hand, that the manner in which the United Kingdom customs authorities apply Articles 10 and 11 of the Seventeenth Directive is correct. In particular, they consider that a horse has been acquired subject to the rules governing the application of value-added tax in the State of exportation where those rules provide that the supply of the horse is exempt from value-added tax in that State.

- 11 It may be inferred from the wording of those provisions that the condition which they impose is that the goods must have been acquired 'subject to' or 'pursuant to the rules governing the application of value-added tax'. The provisions in question therefore do not require value-added tax to have been levied on the transaction in respect of the goods. At the present stage in the process of harmonization of value-added tax, the Member States may on a transitional basis, by virtue in particular of Article 28 (3) of the Sixth Directive, exempt certain operations which would normally be subject to tax. It follows that in those Member States which avail themselves of that power the resultant exemption from value-added tax forms an integral part of the rules governing the application of value-added tax.

- 12 That interpretation is confirmed by the very objective of the Seventeenth Directive. The first two recitals in the preamble state that 'it is important to reduce fiscal barriers to the movement of goods within the Community in order to facilitate the supply of services and thus strengthen the internal market' and that 'the widest possible exemption from value-added tax for goods temporarily imported from one Member State to another will contribute towards the realization of this objective'.

- 13 In view of the foregoing considerations, it must be stated in reply to the questions submitted by the national court that Articles 10 (c) and 11 (b) of the Seventeenth Directive must be interpreted as meaning that temporary importation exemption must be granted for goods the purchase of which in the Member State of exportation is lawfully exempted from value-added tax, provided that the exemption was not granted by virtue of the exportation of the goods in question.

Costs

- 14 The costs incurred by the United Kingdom, Ireland and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in reply to the questions submitted to it by the High Court of Justice of England and Wales, Queen's Bench Division, by order of 18 December 1986, hereby rules:

Articles 10 (c) and 11 (b) of the Seventeenth Directive must be interpreted as meaning that temporary importation exemption must be granted for goods the purchase of which in the Member State of exportation is lawfully exempted from value-added tax, provided that the exemption was not granted by virtue of the exportation of the goods in question.

Mackenzie Stuart Bosco Due Moitinho de Almeida

Everling Bahlmann Galmot O'Higgins Schockweiler

Delivered in open court in Luxembourg on 21 June 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President