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Judgment of the Court of 14 February 1984. - Commission of the European Communities v Federal Republic of Germany. - Failure of a State to fulfil its obligations - Exemptions from turnover tax and excise duties for goods contained in traveller's personal luggage - "Butter-buying cruises". - Case 325/82.

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Summary

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Subject of the case

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Decision on costs

Operative part

Keywords

1 . ACTION FOR FAILURE OF A STATE TO FULFIL OBLIGATIONS - PROCEDURE PRIOR TO THE APPLICATION TO THE COURT - FORMAL INVITATION TO SUBMIT OBSERVATIONS - REASONED OPINION - PURPOSE - STATEMENT OF REASONS ON WHICH THE OPINION IS BASED - CRITERIA

(EEC TREATY , ART . 169)

2 . MEMBER STATES - OBLIGATIONS - FAILURE TO FULFIL OBLIGATIONS - JUSTIFICATION ON BASIS OF A POSSIBLE FAILURE TO FULFIL ITS OBLIGATIONS BY ANOTHER MEMBER STATE - NOT PERMISSIBLE

(EEC TREATY , ART . 169)

3 . TAX PROVISIONS - HARMONIZATION OF LEGISLATION - EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES - GOODS CONTAINED IN THE PERSONAL LUGGAGE OF TRAVELLERS - EXHAUSTIVE COMMUNITY RULES - SCOPE

(COUNCIL DIRECTIVE 69/169)

4 . TAX PROVISIONS - HARMONIZATION OF LEGISLATION - EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES - GOODS CONTAINED IN THE PERSONAL LUGGAGE OF TRAVELLERS AND PURCHASED ON BOARD SHIPS EFFECTING EXCURSIONS AT SEA - GRANT OF THE EXEMPTION - NOT PERMISSIBLE

(COUNCIL DIRECTIVE 69/169)

Summary

1 . IN PROCEEDINGS INSTITUTED BY THE COMMISSION UNDER ARTICLE 169 OF THE TREATY IN RESPECT OF FAILURE BY A MEMBER STATE TO FULFIL ITS OBLIGATIONS , THE LETTER ADDRESSED BY THE COMMISSION TO A MEMBER STATE FORMALLY INVITING IT TO SUBMIT ITS OBSERVATIONS AND THEN THE REASONED OPINION DELIVERED BY THE COMMISSION MUST GIVE THE STATE IN QUESTION AN OPPORTUNITY TO SUBMIT ITS OBSERVATIONS AND CONSTITUTE AN ESSENTIAL GUARANTEE PROVIDED BY THE TREATY ; COMPLIANCE WITH THAT GUARANTEE IS AN ESSENTIAL FORMAL REQUIREMENT OF THE PROCEDURE UNDER ARTICLE 169 OF THE TREATY . THE OPINION REFERRED TO IN ARTICLE 169 MUST BE CONSIDERED TO CONTAIN A SUFFICIENT STATEMENT OF REASONS WHEN IT CONTAINS A COHERENT STATEMENT OF THE REASONS WHICH LED THE COMMISSION TO BELIEVE THAT THE STATE IN QUESTION HAS FAILED TO FULFIL AN OBLIGATION UNDER THE TREATY .

2 . A MEMBER STATE CANNOT PLEAD THE PRINCIPLE OF RECIPROCITY AND RELY ON A POSSIBLE INFRINGEMENT OF THE TREATY BY ANOTHER MEMBER STATE IN ORDER TO JUSTIFY ITS OWN DEFAULT . NOR , THEREFORE , CAN A MEMBER STATE RELY ON THE PRINCIPLE OF RECIPROCITY TO CONTEST THE ADMISSIBILITY OF AN ACTION BROUGHT AGAINST IT FOR FAILURE TO FULFIL ITS OBLIGATIONS .

3 . DIRECTIVE 69/169 CONTAINS EXHAUSTIVE RULES ON EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES APPLICABLE TO GOODS CONTAINED IN THE PERSONAL LUGGAGE OF TRAVELLERS CROSSING THE FRONTIERS OF THE MEMBER STATES . ACCORDINGLY , THE PROVISIONS OF THE DIRECTIVE COVER ALL THE EXEMPTIONS FROM SUCH CHARGES APPLICABLE IN INTERNATIONAL TRAVEL , REGARDLESS OF THE COUNTRY FROM WHICH THE TRAVELLERS COME .

4 . BY GRANTING EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES IN RESPECT OF THE IMPORTATION OF GOODS CONTAINED IN TRAVELLERS ' PERSONAL LUGGAGE AND ACQUIRED FREE OF TAX ON BOARD SHIPS ENTERING THE CUSTOMS TERRITORY ACROSS THE MARITIME FRONTIER WITHOUT THEIR HAVING IN FACT PREVIOUSLY CALLED AT A PORT IN ANOTHER MEMBER STATE OR IN A NON-MEMBER COUNTRY , A MEMBER STATE INFRINGES DIRECTIVE 69/169 , AS AMENDED .

Parties

IN CASE 325/82

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY ITS LEGAL ADVISER , ERICH ZIMMERMANN , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF ORESTE MONTALTO , A MEMBER OF ITS LEGAL DEPARTMENT , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

V

FEDERAL REPUBLIC OF GERMANY , REPRESENTED BY ARVED DERINGER AND JOCHIM SEDEMUND , RECHTSANWALTE , 14 HEUMARKT , D-5000 COLOGNE 1 , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY , 20-22 AVENUE EMILE-REUTER ,

DEFENDANT ,

Subject of the case

APPLICATION FOR A DECLARATION THAT THE FEDERAL REPUBLIC OF GERMANY , BY PERMITTING GOODS WHICH HAVE NOT BORNE TURNOVER TAX AND EXCISE DUTIES TO BE SOLD DURING SHORT CRUISES AND EXCURSIONS ON THE NORTH SEA AND THE BALTIC SEA TO PASSENGERS WHO THEN IMPORT THEM TAX-FREE INTO THE FEDERAL REPUBLIC OF GERMANY ON THEIR RETURN , HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE PROVISIONS OF COMMUNITY LAW GOVERNING TAXES ,

Grounds

1 BY APPLICATION LODGED AT THE COURT REGISTRY ON 20 DECEMBER 1982 THE COMMISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT THE FEDERAL REPUBLIC OF GERMANY , BY GRANTING AN EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES TO TRAVELLERS IMPORTING UNTAXED GOODS ACROSS THE MARITIME CUSTOMS FRONTIER ON THE OCCASION OF EXCURSIONS AT SEA ON THE NORTH SEA AND THE BALTIC SEA , IN CONTRAVENTION OF COUNCIL DIRECTIVE 69/169/EEC OF 28 MAY 1969 (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1969 (I) , P . 232) , HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY AND IN PARTICULAR THE RULES ON TAX EXEMPTIONS FOR TRAVELLERS .

2 THE FACTUAL AND LEGAL CIRCUMSTANCES WHICH LED THE COMMISSION TO BRING THIS ACTION AGAINST THE FEDERAL REPUBLIC OF GERMANY FOR FAILURE TO FULFIL ITS OBLIGATIONS ARE SIMILAR TO THOSE WHICH LED , IN THE FIRST PLACE , TO THE COURT ' S JUDGMENT OF 7 JULY 1981 (CASE 158/80 REWE-HANDELSGESELLSCHAFT NORD MBH AND REWE-MARKT STEFFEN V HAUPTZOLLAMT KIEL (1981) ECR 1805) AND , IN THE SECOND PLACE , TO ITS JUDGMENT OF 14 FEBRUARY 1984 (CASE 278/82 REWE-HANDELSGESELLSCHAFT NORD MBH AND REWE-MARKT HERBERT KUREIT V HAUPTZOLLAMTER FLENSBURG , ITZEHOE AND LUBECK-WEST (1984) ECR 721) .

3 BY LETTER OF 7 APRIL 1982 THE COMMISSION DREW THE ATTENTION OF THE AUTHORITIES OF THE FEDERAL REPUBLIC OF GERMANY TO THE EFFECTS OF THE COURT ' S AFOREMENTIONED JUDGMENT OF 7 JULY 1981 WITH REGARD TO CUSTOMS DUTIES AND OTHER CHARGES ON AGRICULTURAL PRODUCTS AND ALSO WITH REGARD

TO TURNOVER TAX AND EXCISE DUTIES . SINCE THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FAILED TO REPLY TO THAT LETTER BY THE PRESCRIBED DATE , THE COMMISSION DELIVERED A REASONED OPINION TO THE FEDERAL REPUBLIC OF GERMANY ON 11 JUNE 1982 , WHICH BEGAN WITH THE STATEMENT THAT THE FEDERAL REPUBLIC OF GERMANY , BY UNLAWFULLY GRANTING EXEMPTIONS FROM CUSTOMS DUTIES AND AGRICULTURAL LEVIES AND ALSO FROM TURNOVER TAX AND EXCISE DUTIES TO TRAVELLERS IMPORTING GOODS ACROSS THE MARITIME FRONTIER WHO HAVE NOT DISEMBARKED IN ANOTHER COUNTRY , HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE TREATY .

4 BY TELEX MESSAGE OF 30 AUGUST 1982 THE PERMANENT REPRESENTATIVE OF THE FEDERAL REPUBLIC OF GERMANY INFORMED THE COMMISSION THAT THE FEDERAL REPUBLIC HAD DECIDED TO TERMINATE , WITH EFFECT FROM 1 JANUARY 1983 , THE GRANT OF EXEMPTION FROM CUSTOMS DUTIES AND AGRICULTURAL LEVIES IN RESPECT OF GOODS WHICH WERE NOT IN FREE CIRCULATION AND WHICH WERE ACQUIRED IN THE COURSE OF INTRA-COMMUNITY AIR AND SEA TRAVEL AND IN THE COURSE OF EXCURSIONS AT SEA . BY VERORDNUNG (ORDER) OF 28 SEPTEMBER 1982 (BGBl . 1982 I , P . 1377) THE VERORDNUNG UBER DIE EINGANGSABGABENFREIHEIT VON WAREN IM PERSONLICHEN GEPACK DER REISENDEN (ORDER ON TAX EXEMPTIONS ON THE IMPORTATION OF GOODS CONTAINED IN TRAVELLERS ' PERSONAL LUGGAGE) OF 3 SEPTEMBER 1974 (BGBl . 1974 I , P . 3377) WAS AMENDED ACCORDINGLY .

5 HOWEVER , WITH REGARD TO THE ABOLITION OF EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES IN RESPECT OF GOODS ACQUIRED IN THE COURSE OF EXCURSIONS AT SEA , THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY STATED THAT IT CONTINUED TO TAKE THE VIEW THAT THE COMMISSION , BY REQUIRING THE FEDERAL REPUBLIC OF GERMANY ALONE TO TERMINATE THOSE EXEMPTIONS , WAS NOT COMPLYING WITH THE COURT ' S JUDGMENT OF 7 JULY 1981 SINCE , ACCORDING TO THE GERMAN GOVERNMENT , THE PROBLEM MUST BE EXAMINED IN RELATION TO ALL THE MEMBER STATES AND IN RELATION TO ALL TYPES OF MARITIME TRANSPORT .

6 IN THOSE CIRCUMSTANCES THE COMMISSION BROUGHT AN ACTION BEFORE THE COURT ON 17 DECEMBER 1982 ALLEGING THAT THE FEDERAL REPUBLIC OF GERMANY HAD FAILED TO FULFIL ITS OBLIGATIONS UNDER THE TREATY , THE SCOPE OF THE PROCEEDINGS BEING CONFINED TO THE GRANT OF EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES IN THE FEDERAL REPUBLIC OF GERMANY ON RETURN FROM EXCURSIONS AT SEA IN RESPECT OF GOODS ACQUIRED TAX-FREE .

ADMISSIBILITY OF THE COMMISSION ' S APPLICATION

7 THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY MAINTAINS , FIRST , THAT THE REASONED OPINION DELIVERED TO IT IS FORMULATED IN TERMS WHICH ARE INSUFFICIENTLY CLEAR AND CONTAINS A NUMBER OF CONTRADICTIONS AND INCONSISTENCIES .

8 AS THE COURT HAS ALREADY HELD ON SEVERAL OCCASIONS , IN PROCEEDINGS INSTITUTED BY THE COMMISSION UNDER ARTICLE 169 OF THE TREATY IN RESPECT OF FAILURE BY A MEMBER STATE TO FULFIL ITS OBLIGATIONS , THE LETTER ADDRESSED BY THE COMMISSION TO A MEMBER STATE FORMALLY INVITING IT TO SUBMIT ITS OBSERVATIONS AND THEN THE REASONED OPINION DELIVERED BY THE COMMISSION MUST GIVE THE STATE IN QUESTION AN OPPORTUNITY TO SUBMIT ITS OBSERVATIONS AND CONSTITUTE AN ESSENTIAL GUARANTEE PROVIDED BY THE TREATY ; COMPLIANCE WITH THAT GUARANTEE IS AN ESSENTIAL FORMAL REQUIREMENT OF THE

PROCEDURE UNDER ARTICLE 169 OF THE TREATY . THE OPINION REFERRED TO IN ARTICLE 169 MUST BE CONSIDERED TO CONTAIN A SUFFICIENT STATEMENT OF REASONS WHEN IT CONTAINS A COHERENT STATEMENT OF THE REASONS WHICH LED THE COMMISSION TO BELIEVE THAT THE STATE IN QUESTION HAS FAILED TO FULFIL AN OBLIGATION UNDER THE TREATY .

9 AS THE COMMISSION RIGHTLY CONTENDS , THE OBJECTION OF INADMISSIBILITY IS NOT WELL FOUNDED SINCE THE COURT TAKES THE VIEW THAT THE COMPLAINT THAT THE TREATY HAD BEEN INFRINGED FINALLY MADE BY THE COMMISSION IN ITS APPLICATION WAS EXPRESSED IN A SUFFICIENTLY CLEAR MANNER , IN FACT AND IN LAW , BOTH IN THE LETTER OF 7 APRIL 1982 WHICH INITIATED THE PROCEDURE UNDER ARTICLE 169 AND IN REASONED OPINION 82 C/768 , DELIVERED ON 11 JUNE 1982 . THE DEFENDANT THEREFORE HAD NOTICE OF THE COMPLAINT MADE AGAINST IT AND WAS ACCORDINGLY ABLE TO PRESENT ITS DEFENCE IN FULL KNOWLEDGE OF THE ISSUES .

10 THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY MAINTAINS , SECONDLY , THAT THE COMMISSION COULD NOT REQUIRE THE FEDERAL REPUBLIC OF GERMANY ALONE , AND NOT ALL OF THE MEMBER STATES , TO ABOLISH EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES GRANTED ON THE RETURN FROM EXCURSIONS AT SEA .

11 THAT ARGUMENT , TOO , IS NOT WELL FOUNDED . AS THE COURT HAS ALREADY HELD (JUDGMENT OF 25 . 9 . 1979 IN CASE 232/78 COMMISSION V FRENCH REPUBLIC (1979) ECR 2729) A MEMBER STATE CANNOT , IN ANY CIRCUMSTANCES , PLEAD THE PRINCIPLE OF RECIPROCITY AND RELY ON A POSSIBLE INFRINGEMENT OF THE TREATY BY ANOTHER MEMBER STATE IN ORDER TO JUSTIFY ITS OWN DEFAULT . NOR , THEREFORE , CAN A MEMBER STATE RELY ON THE PRINCIPLE OF RECIPROCITY TO CONTEST THE ADMISSIBILITY OF AN ACTION BROUGHT AGAINST IT FOR FAILURE TO FULFIL ITS OBLIGATIONS .

12 THIRDLY , THE ARGUMENT PUT FORWARD BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY ACCORDING TO WHICH THE FACT THAT THE COMMISSION TREATED EXCURSIONS AT SEA DIFFERENTLY FROM SEA-CROSSINGS MADE BY SHIPS OPERATING A REGULAR SERVICE IS IN BREACH OF THE PRINCIPLE THAT COMPARABLE FACTUAL SITUATIONS MUST BE TREATED IN THE SAME WAY , CANNOT BE ADDUCED IN SUPPORT OF AN OBJECTION OF INADMISSIBILITY . THAT ARGUMENT RELATES TO THE SUBSTANCE OF THE CASE AND CAN HAVE NO RELEVANCE WHATSOEVER TO THE ADMISSIBILITY OF THE ACTION . ITS RELEVANCE MUST BE CONSIDERED WHEN THE COURT EXAMINES THE SUBSTANCE OF THE CASE .

13 IT FOLLOWS FROM THE FOREGOING THAT THE OBJECTION OF INADMISSIBILITY MUST BE REJECTED .

THE SUBSTANCE OF THE CASE

14 THE COMMISSION STATES THAT ITS ACTION IS DIRECTED IN PARTICULAR AGAINST PARAGRAPH 2 (2) IN CONJUNCTION WITH THE SECOND SENTENCE OF PARAGRAPH 3 (5) OF THE AFOREMENTIONED ORDER OF 3 DECEMBER 1974 , AS AMENDED .

15 PARAGRAPH 2 OF THE ORDER LAYS DOWN IN RESPECT OF A CERTAIN NUMBER OF PRODUCTS LIMITS AS TO VALUE AND QUANTITY SUBJECT TO WHICH GOODS MAY BE IMPORTED BY TRAVELLERS FREE OF IMPORT DUTIES . THE PROVISION DRAWS A DISTINCTION BETWEEN ' ' IMPORTS OF GOODS PUT IN FREE CIRCULATION IN A MEMBER STATE OF THE EUROPEAN COMMUNITIES ' ' (SUBPARAGRAPH 1) AND ' ' OTHER IMPORTS ' ' (SUBPARAGRAPH 2) . ' ' OTHER IMPORTS ' ' COVER BOTH THE IMPORTATION

OF GOODS FROM A NON-MEMBER COUNTRY AND THE IMPORTATION OF GOODS FOLLOWING EXCURSIONS AT SEA WHERE BOTH THE POINT OF DEPARTURE AND THE POINT OF ARRIVAL ARE PORTS IN THE FEDERAL REPUBLIC OF GERMANY AND IN THE COURSE OF WHICH THE MARITIME CUSTOMS FRONTIER IS CROSSED .

16 WITH REGARD TO ' ' OTHER IMPORTS ' ' IT FOLLOWS FROM THE SECOND SENTENCE OF PARAGRAPH 3 (5) OF THE ORDER THAT WHERE A TRAVELLER ENTERS ACROSS THE MARITIME CUSTOMS FRONTIER THE EXEMPTION IS GRANTED IN RESPECT OF CERTAIN PRODUCTS PROVIDED ONLY THAT THE SHIP COMES FROM THE HIGH SEAS AND HAS REMAINED OUTSIDE THE CUSTOMS AREA FOR AT LEAST EIGHT HOURS .

17 THE COMMISSION CONCLUDES FROM THAT THAT THE IMPORTATION OF GOODS FREE OF TURNOVER TAX AND EXCISE DUTIES ON RETURN FROM A MERE EXCURSION AT SEA , AS PERMITTED BY THE AFOREMENTIONED GERMAN PROVISIONS , IS NOT PROVIDED FOR BY DIRECTIVE 69/169 , AS AMENDED . CONSEQUENTLY , SINCE THAT DIRECTIVE WAS HELD BY THE COURT IN ITS AFOREMENTIONED JUDGMENT OF 7 JULY 1981 TO BE A COMPLETE SYSTEM OF RULES , THE FEDERAL REPUBLIC OF GERMANY HAD NO POWER TO ADOPT SUCH PROVISIONS .

18 FINALLY , THE COMMISSION POINTS OUT THAT ITS ACTION IS DIRECTED SOLELY AGAINST THE IMPORTATION INTO THE FEDERAL REPUBLIC OF GERMANY FREE OF TURNOVER TAX AND EXCISE DUTIES OF GOODS ACQUIRED IN THE COURSE OF EXCURSIONS AT SEA AND NOT AGAINST THE ACTUAL PRINCIPLE OF SELLING GOODS FREE OF TAX ON BOARD SHIPS INVOLVED IN SUCH EXCURSIONS .

19 IN REPLY TO THE COMMISSION ' S ARGUMENT , THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY MERELY MAINTAINED , IN THE FIRST PLACE , THAT THE IMPORTATION OF GOODS ON RETURN FROM AN EXCURSION AT SEA WAS OUTSIDE THE AMBIT OF DIRECTIVE 69/169 AND , IN THE SECOND PLACE , THAT EVEN IF IT WAS WITHIN THE AMBIT OF THE DIRECTIVE , IT WAS NECESSARY , BY VIRTUE OF THE PRINCIPLE OF EQUALITY OF TREATMENT , TO CONSIDER TO WHAT EXTENT SUCH EXCURSIONS DIFFER FROM REGULAR CROSSINGS BY FERRY BETWEEN THE PORTS OF DIFFERENT MEMBER STATES .

20 FIRST , ACCORDING TO THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , DIRECTIVE 69/169 CONTAINS PROVISIONS ON EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES IN INTERNATIONAL TRAVEL WHICH DO NOT COVER IMPORTS OF GOODS ACQUIRED FREE OF TAX ON THE OCCASION OF EXCURSIONS AT SEA . SUCH IMPORTS ARE EFFECTED NEITHER IN THE COURSE OF TRAVEL FROM A NON-MEMBER COUNTRY (ARTICLE 1 AND ARTICLE 4 (1) , COLUMN I OF THE DIRECTIVE) NOR IN THE COURSE OF INTRA-COMMUNITY TRAVEL (ARTICLE 2 AND ARTICLE 4 (1) , COLUMN II OF THE DIRECTIVE) .

21 IT SHOULD BE NOTED THAT , AS THE COMMISSION RIGHTLY STATED , THAT ARGUMENT RESTS ON A MISCONCEPTION OF THE ACTUAL SCOPE OF DIRECTIVE 69/169 AND MUST BE REJECTED .

22 ALTHOUGH IT IS TRUE THAT DIRECTIVE 69/169 DOES NOT EXPRESSLY PROVIDE FOR THE GRANT OF EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES IN RESPECT OF IMPORTS WITH REGARD TO THE SPECIAL CASE OF EXCURSIONS AT SEA , IT IS NOT POSSIBLE TO INFER FROM THIS , AS DOES THE DEFENDANT , THAT THE DIRECTIVE DOES NOT APPLY IN THIS CASE BECAUSE SUCH IMPORTS OCCUR NEITHER IN TRAVEL TO OR FROM A NON-MEMBER COUNTRY NOR IN WHAT IS TRULY INTRA-COMMUNITY TRAVEL . DIRECTIVE 69/169 CONTAINS EXHAUSTIVE RULES ON EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES APPLICABLE TO GOODS CONTAINED IN THE

PERSONAL LUGGAGE OF TRAVELLERS CROSSING THE FRONTIERS OF THE MEMBER STATES . ACCORDINGLY , THE PROVISIONS OF THE DIRECTIVE COVER ALL THE EXEMPTIONS FROM SUCH CHARGES APPLICABLE IN INTERNATIONAL TRAVEL , REGARDLESS OF THE COUNTRY FROM WHICH THE TRAVELLERS COME .

23 SECONDLY , ACCORDING TO THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY IT IS NECESSARY , IN ACCORDANCE WITH THE PRINCIPLE OF EQUALITY OF TREATMENT , TO CONSIDER TO WHAT EXTENT THE CASE OF SUCH EXCURSIONS AT SEA DIFFERS FROM THAT OF FERRY CROSSINGS BETWEEN THE PORTS OF A NUMBER OF MEMBER STATES .

24 THAT ARGUMENT MUST BE TAKEN TO MEAN THAT BY VIRTUE OF DIRECTIVE 69/169 GOODS ACQUIRED FREE OF TAX ON BOARD SHIPS WHICH MERELY UNDERTAKE EXCURSIONS WITHOUT CALLING AT ANY PORT AND GOODS ACQUIRED UNDER THE SAME CONDITIONS ON BOARD SHIPS WHICH PROVIDE REGULAR CROSSINGS BETWEEN MEMBER STATES MUST , ON THEIR RETURN TO THE FEDERAL REPUBLIC OF GERMANY , BE GRANTED THE SAME EXEMPTIONS .

25 AS THE COURT HAS HELD IN ITS JUDGMENT OF 14 FEBRUARY 1984 (CASE 278/82 REWE-HANDELSGESELLSCHAFT NORD MBH AND REWE-MARKT HERBERT KUREIT V HAUPTZOLLAMTER FLENSBURG , ITZEHOE AND LUBECK-WEST , CITED ABOVE) , IT IS CLEAR BOTH FROM THE AIMS OF DIRECTIVE 69/169 AND FROM THE TERMS OF ARTICLE 2 (1) THEREOF ITSELF THAT THE CONCESSIONS PROVIDED FOR IN THAT DIRECTIVE IN RELATION TO TAX EXEMPTIONS FOR GOODS CONTAINED IN THE PERSONAL LUGGAGE OF PERSONS TRAVELLING WITHIN THE COMMUNITY ARE LIMITED TO TRAVELLERS ' ' COMING FROM MEMBER STATES ' ' , THAT IS TO SAY , TRAVELLERS WHO GO FROM ONE MEMBER STATE TO ANOTHER AFTER HAVING IN FACT HAD AN OPPORTUNITY TO MAKE PURCHASES IN THE MEMBER STATE OF DEPARTURE .

26 IT FOLLOWS THAT A PERSON WHO , ON THE OCCASION OF A CRUISE DEPARTING FROM A PORT IN ONE MEMBER STATE , DOES NOT CALL AT ANOTHER MEMBER STATE CANNOT BE REGARDED AS A TRAVELLER , WITHIN THE MEANING OF THE AFOREMENTIONED PROVISIONS , AND THAT , CONSEQUENT , IN SUCH A SITUATION , NO EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES MAY BE GRANTED .

27 THE AFOREMENTIONED SECOND SENTENCE OF PARAGRAPH 3 (5) OF THE GERMAN ORDER ON TAX EXEMPTIONS OF 3 DECEMBER 1974 , AS AMENDED , ALLOWS TRAVELLERS TO ENJOY AN EXEMPTION FROM TURNOVER TAX AND EXCISE DUTIES IN RESPECT OF GOODS ACQUIRED FREE OF TAX ON BOARD CRUISE SHIPS WHEN THEY RETURN TO THE FEDERAL REPUBLIC OF GERMANY AFTER A MERE EXCURSION AT SEA WHICH DID NOT INVOLVE ANY CALL AT A PORT .

28 IT SHOULD THEREFORE BE DECLARED THAT , BY GRANTING EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES IN RESPECT OF THE IMPORTATION OF GOODS CONTAINED IN TRAVELLERS ' PERSONAL LUGGAGE AND ACQUIRED FREE OF TAX ON BOARD SHIPS ENTERING THE CUSTOMS TERRITORY ACROSS THE MARITIME FRONTIER WITHOUT THEIR HAVING IN FACT PREVIOUSLY CALLED AT A PORT IN ANOTHER MEMBER STATE OR IN A NON-MEMBER COUNTRY , THE RULES IN QUESTION INFRINGE DIRECTIVE 69/169 , AS AMENDED .

29 IT MUST THEREFORE BE CONCLUDED THAT THE FEDERAL REPUBLIC OF GERMANY HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY .

Decision on costs

COSTS

30 UNDER ARTICLE 69 (2) OF THE RULES OF PROCEDURE , THE UNSUCCESSFUL PARTY IS TO BE ORDERED TO PAY THE COSTS . SINCE THE DEFENDANT HAS FAILED IN ITS SUBMISSIONS , IT MUST BE ORDERED TO PAY THE COSTS .

Operative part

ON THOSE GROUNDS ,

THE COURT

HEREBY :

1 . DECLARES THAT THE FEDERAL REPUBLIC OF GERMANY , BY GRANTING EXEMPTIONS FROM TURNOVER TAX AND EXCISE DUTIES IN RESPECT OF THE IMPORTATION OF GOODS CONTAINED IN TRAVELLERS ' PERSONAL LUGGAGE AND ACQUIRED FREE OF TAX ON BOARD SHIPS ENTERING THE CUSTOMS TERRITORY ACROSS THE MARITIME FRONTIER WITHOUT HAVING IN FACT PREVIOUSLY CALLED AT A PORT IN ANOTHER MEMBER STATE OR IN A NON-MEMBER COUNTRY , HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY .

2 . ORDERS THE DEFENDANT TO PAY THE COSTS .