

**Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 18 November 2003 in the case of Hauptzollamt Hamburg-Jonas against Milupa GmbH & Co KG**

**(Case C-542/03)**

(2004/C 59/20)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court, Germany) of 18 November 2003, received at the Court Registry on 23 December 2003, for a preliminary ruling in the case of Hauptzollamt Hamburg-Jonas against Milupa GmbH & Co KG on the following question:

Are the second sentence of the first subparagraph of Article 7(1), the first subparagraph of Article 7(2) and Article 7(5) of Regulation (EC) No 1222/94, as amended by Regulation (EC) 229/96, <sup>(1)</sup> to be interpreted as meaning that the party concerned is not entitled to grant of an export refund if, in the production of the exported goods, it was not the product declared by him, which under the first indent of Article 1(2)(c) of Regulation (EC) No 1222/94 <sup>(2)</sup> is assimilated to skimmed milk powder of the type described in Annex A (PG 2), that was used but another product which, in respect of the non-fat part of its dry matter content, is also assimilated to skimmed milk powder of the type described in Annex A (PG 2) by virtue of the first indent of Article 1(2)(f) of Regulation (EC) No 1222/94?

<sup>(1)</sup> OJ 1996 L 30, p. 24.

<sup>(2)</sup> OJ 1994 L 136, p. 5.

**Action brought on 23 December 2003 by the Commission of the European Communities against the Kingdom of Spain**

**(Case C-546/03)**

(2004/C 59/21)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 23 December 2003 by the Commission of the European Communities, represented by M. Díaz-Llanos La Roche and G. Wilms, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to observe the mandatory time-limits for entry in the accounts laid down by Article 220(1) of the Community Customs Code <sup>(1)</sup> (and by Article 5 of Regulation No 1854/89 <sup>(2)</sup>) the Kingdom of Spain has failed to fulfil its obligations under those provisions of Community law;
2. declare, furthermore, that inasmuch as late establishment caused delays to the making available of own resources, by not paying default interest in accordance with Article 11 of Regulation 1552/89 <sup>(3)</sup> up until 31 May 2000 and in accordance with Article 11 of Regulation No 1150/2000 <sup>(4)</sup> from 31 May 2000, the Kingdom of Spain has failed to fulfil its obligations under the relevant provision of Community law;
3. order the Kingdom of Spain to pay the costs.

*Pleas in law and main arguments*

The Community rules on own resources are clear in that they refer to the time when the Spanish authorities are obliged to establish such resources: that moment is when the national authorities are in a position to calculate the amount due and to notify the chargeable person that all the relevant Community provisions have been complied with. In the event of a failure to enter duties deriving from a customs debt in the accounts, those rules do not allow the national administration to apply time-limits provided for in their national legislation, which are different from the compulsory time-limits laid down by Community law. Such time-limits must be observed once the debtor is identified and the amount of the debt can be calculated.

The time at which establishment of own resources must take place is independent of notification to the debtor or of a definitive decision adopted by the national authorities. Those circumstances are relevant only to the relationship between the national authorities and the debtor, whereas the relationship between the Member State and the Community, as regards own resources, is governed exclusively by compliance with objective conditions concerning entry in the accounts. The obligation to establish own resources and subsequently the obligation to make them available is independent of the additional time-limits provided for by the national legislation in order to allow the debtor to submit his observations. Therefore, the practice followed by the Spanish authorities does not comply with Community rules.