JUDGMENT OF THE COURT (Sixth Chamber)

14 November 2002 *

In Case C-112/01,

REFERENCE to the Court under Article 234 EC by the Vestre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

SPKR 4 nr. 3482 ApS

and

Skatteministeriet, Told- og Skattestyrelsen,

Aktieselskabet af 11/9 1996,

Arden Transport & Spedition ved Søren Lauritsen og Lene Lauritsen I/S (ATS),

on the interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), and Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1),

* Language of the case: Danish.

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, V. Skouris, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— SPKR 4 nr. 3482 ApS, by N. Salling, advokat,

— the Danish Government, by J. Molde, acting as Agent, assisted by P. Biering, advokat,

— the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents,

— the French Government, by G. de Bergues and C. Chevallier, acting as Agents,

— the Commission of the European Communities, by H. Støvlbæk, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of SPKR 4 nr. 3482 ApS, represented by N. Salling, of the Danish Government, represented by P. Biering and T. Holsøe, advokat, and of the Commission, represented by H. Støvlbæk and S. Tams, acting as Agents, at the hearing on 25 April 2002,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2002,

gives the following

Judgment

1 By order of 9 March 2001, received at the Court on 12 March 2001, the Vestre Landsret (Western Regional Court, Denmark) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Customs Code') and Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1, hereinafter 'the implementing regulation').

2 Those questions were raised in the course of an action between a firm of customs agents, SPKR 4 nr. 3482 Aps (hereinafter 'SPKR'), and Skatteministeriet, Told- og Skattestyrelsen (Danish Ministry for Taxation, Customs and Taxation Directorate), in particular in respect of the recovery of a customs debt.

Community legislation

3 Article 96 of the Customs Code provides:

'1. The principal shall be the [holder] under the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time-limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.

2. Notwithstanding the principal's obligations under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit shall also be responsible for production of the goods intact at the customs office of destination by the prescribed time-limit and with due observance of the measures adopted by the customs authorities to ensure identification.'

4 Under Article 221(3) of the Customs Code:

'Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. However,

where it is as a result of an act that could give rise to criminal court proceedings that the customs authorities were unable to determine the exact amount legally due, such communication may, in so far as the provisions in force so allow, be made after the expiry of such three-year period.'

5 Article 233 of the Customs Code states:

'Without prejudice to the provisions in force relating to the time-barring of a customs debt and non-recovery of such a debt in the event of the legally established insolvency of the debtor, a customs debt shall be extinguished:

(a) by payment of the amount of duty;

(b) by remission of the amount of duty;

(c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:

— the customs declaration is invalidated in accordance with Article 66,

— the goods, before their release, are either seized and simultaneously or subsequently confiscated, destroyed on the instructions of the customs authorities, destroyed or abandoned in accordance with Article 182, or destroyed or irretrievably lost as a result of their actual nature or of unforeseeable circumstances or *force majeure*;

(d) where goods in respect of which a customs debt is incurred in accordance with Article 202 are seized upon their unlawful introduction and are simultaneously or subsequently confiscated.

In the event of seizure and confiscation, the customs debt shall nonetheless, for the purposes of the criminal law applicable to customs offences, be deemed not to have been extinguished where, under a Member State's criminal law, customs duties provide the basis for determining penalties or the existence of a customs debt is grounds for taking criminal proceedings.'

6 Under Article 248 of the Customs Code:

'The [Customs Code] committee may examine any question concerning customs legislation which is raised by its chairman, either on his own initiative or at the request of a Member State's representative.'

7 In accordance with Article 378(1) of the implementing regulation:

'Without prejudice to Article 215 of the [Customs] Code, where the consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, such offence or irregularity shall be deemed to have been committed:

— in the Member State to which the office of departure belongs,

or

— in the Member State to which the office of transit at the point of entry into the Community belongs, to which a transit advice note has been given,

unless within the period laid down in Article 379(2), to be determined, proof of the regularity of the transit operation or of the place where the offence or irregularity was actually committed is furnished to the satisfaction of the customs authorities.'

8 Article 379 of the implementing regulation provides:

'1. Where a consignment has not been presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of departure shall notify the principal of this fact as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration.

2. The notification referred to in paragraph 1 shall indicate, in particular, the time-limit by which proof of the regularity of the transit operation or the place where the offence or irregularity was actually committed must be furnished to the office of departure to the satisfaction of the customs authorities. That time-limit shall be three months from the date of the notification referred to in paragraph 1. If the said proof has not been produced by the end of that period, the competent Member State shall take steps to recover the duties and other charges involved. In cases where that Member State is not the one in which the office of departure is located, the latter shall immediately inform the said Member State.'

9 In the terms of Article 384 of the implementing regulation:

'Where necessary, the customs authorities of the Member States shall communicate to one another all findings, documents, reports, records of proceedings and information relating to transport operations carried out under the Community transit procedure and to irregularities and offences in connection with that procedure.'

10 The Customs Code Committee adopted, under Article 248 of the Customs Code and Article 384 of the implementing regulation, the early warning system (EWS) for sensitive goods, which is intended for the transmission of information on the shipment of goods considered to be sensitive.

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 The Sønderborg (Denmark) Customs and Taxation Regional Office (hereinafter 'the Regional Office') received, between 10 January and 9 June 1994, four information notices from the Commission (hereinafter 'the information notices') informing them of offences or irregularities committed in the course of external Community transit operations in respect of butter originating from the Czech Republic and, more specifically, the falsification, in that context, of T1 declaration forms. The Commission requested all Member States to pay particular attention to consignments of butter originating in third countries and passing in transit through the Community and to extend the EWS to cover shipments of butter.

12 Between 28 June and 19 October 1994, SPKR placed 32 consignments of butter originating in the Czech Republic under the external Community transit procedure. The destination offices entered on the T1 declaration forms were 'Ravenna, Italy' and 'Naples, Italy'. It is common ground in the main proceedings that SPKR acted in good faith and was unaware of the offences or irregularities which occurred and the contents of the information notices.

13 The Regional Office received, first, No 1 copies of the T1 declaration forms on the date of registration of the Community transit declarations and, second, No 5

return copies of the T1 declarations at the end of 1994 or the beginning of 1995. It did not record exactly when the No 5 copies of the T1 declarations were returned to it. It appeared from those declarations that the consignments of butter had been presented at the destination offices. The EWS was not used by the office of departure.

14 By telex of 28 November 1994 addressed to the Regional Office, the Commission requested an investigation into a certain number of consignments of Czech butter made under the external Community transit procedure, among which were the 32 consignments declared by SPKR. By letter of 6 December 1994, the Regional Office was again requested, as a matter of urgency, to check consignments of Czech butter on the basis of the information notices.

15 By letter of 30 December 1994, the Regional Office informed SPKR that No 5 return copies of the T1 declaration forms had been returned for six of those 32 shipments and that it therefore regarded the files relating thereto as closed.

16 By letter of 30 March 1995, the Regional Office informed the Commission that SPKR had placed under the external Community transit procedure 32 consignments of butter, which corresponded to the suspect consignments notified by the Commission.

17 The Commission then contacted the Italian customs authorities with a view to having the No 5 copies of the T1 declaration forms submitted by SPKR, which were in their possession, checked.

18 By letter of 23 June 1995, the Regional Office notified the guarantor that, with regard to the shipment of 31 of the 32 consignments referred to, the paperwork at the office of departure had not been properly completed. A copy of that notification was sent simultaneously to SPKR. In July 1996, the Regional Office identified the last of those consignments.

19 After carrying out a check, the Italian authorities stated, by letters dated 29 and 31 December 1995 with regard to 31 consignments referred to, and by letter of 10 August 1996 concerning the last consignment, that the No 5 copies of the T1 declaration forms had been falsified.

20 By letters of 6 February 1996 in respect of 31 shipments, and 6 December 1996 in respect of the final consignment, the Regional Office notified SPKR of the offences and informed it that it had a period of three months to provide either evidence of the regularity of the transactions, or evidence of the place where the offences or irregularities had actually been committed.

21 In respect of those consignments for which the Danish customs authorities considered that the place of the offence or irregularity had not been established prior to expiry of the prescribed period, those authorities sought payment from SPKR of the customs debt. On 28 November and 1 December 1997, final decisions were adopted by the Customs and Taxation Directorate for that purpose.

22 On 27 November 1998, SPKR brought an action for annulment of those decisions before the Vestre Landsret.

23 The national court enquires whether the fact that the Danish customs authorities gave notice of the time-limit of three months laid down by Article 379(2) of the implementing regulation after the expiry of the period of 11 months mentioned in Article 379(1) of that regulation can affect the right to recover the customs debt in issue in the main action.

24 That court observes that it is clear from the judgment in Case C-233/98 *Lensing & Brockhausen* [1999] ECR I-7349 that the office of departure is not entitled to seek recovery of a customs debt if the time-limit of three months mentioned in Article 379(2) of the implementing regulation has not been respected. However, the Court has not ruled on the legal effect of non-compliance, by the authorities, with the period of 11 months mentioned in paragraph 1 of that article.

25 The Vestre Landsret therefore decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must the provisions of Council Regulation (EEC) No 2913/92 (the Customs Code) and of Commission Regulation (EEC) No 2454/93 (the implementing regulation), in particular Article 379(1) of the implementing regulation, be construed as meaning that a customs debt arising by reason of an offence or irregularity in connection with external Community transit cannot be recovered from the principal by the office of departure if the principal did not, before the end of the 11th month following the date of registration of the Community transit declaration, receive the notification referred to in Article 379 of the implementing regulation?

2. Does the fact that the office of departure did not follow an administrative instruction for the transmission of information adopted in the Customs Code Committee (early warning system) or that the customs authorities in the office of departure wrongly failed to notify in good time have any bearing on the answer to Question 1?'

The questions

26 By its questions, which can be considered together, the referring court asks whether Article 379(1) of the implementing regulation, read with the Customs Code, is to be interpreted as meaning that a customs debt arising by reason of an offence or irregularity in connection with a consignment placed under the external Community transit scheme can be recovered from the principal by the office of departure even if that office did not inform the principal before the end of the 11th month following the date of registration of the Community transit declaration that the consignment had not been presented to the office of destination and that the place of the offence or irregularity could not be established. The referring court also asks whether the reply to that question is different if the office of departure did not follow an administrative procedure relating to the transmission of information, such as the EWS, or if the failure to comply with the time-limit is due to error or negligence on the part of that office.

27 Under Article 379(1) of the implementing regulation, where a consignment has not been presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of departure is to notify the principal of this fact 'as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration' (hereinafter 'the time-limit of 11 months').

28 It must be noted, first, that neither Article 379 of the implementing regulation nor any other provision of that regulation sets out the effects of non-compliance, by the customs authorities, with the time-limit of 11 months.

29 It should be noted, also, that the implementing regulation must be given, if possible, an interpretation consistent with the provisions of the basic regulation. Therefore, the effects of the failure to observe the time-limit of 11 months must be determined taking account of the provisions of the Customs Code (see, in particular, Case C-90/92 *Dr Tretter* [1993] ECR I-3569, paragraph 11).

30 No provision of the Customs Code suggests that failure to observe the time-limit of 11 months results in the extinction of the customs debt incurred by the principal. Article 221(3) of the Code gives the customs authorities a period of three years from the date on which the customs debt was incurred to notify the debtor of the amount thereof, whilst Article 233 of the Code, which contains a list of various causes of extinction of the customs debt, does not include, among them, failure to observe the time-limit of 11 months.

31 As the Commission has correctly pointed out, Articles 221(3) and 233 of the Customs Code establishes a balance between, on the one hand, the need to protect the Community's own resources and, on the other hand, the concern to protect the interests of customs agents and transport operators, which the implementing regulation cannot be deemed to undermine by creating new causes of extinction.

32 Therefore, Article 379(1) of the implementing regulation must be construed as meaning that the customs authorities' failure to observe the time-limit of 11 months does not exonerate the principal from the obligation to pay the customs debt resulting from the failure to comply with the obligations connected to the external Community transit procedure, since, in particular, under Article 221(3) of the Customs Code, the amount of that debt was notified within the limitation period of three years from the date on which the debt was incurred and the person concerned was unable to produce the evidence provided for by Article 378(1) of the implementing regulation.

33 In those circumstances, the failure to observe the time-limit of 11 months has no effect either on the recoverability of the customs debt or on the liability of the principal and does not affect the entitlement of the competent customs authorities to recover that debt.

34 As the Danish, German and French Governments have correctly observed, the time-limit of 11 months is a procedural rule which is directed only at the administrative authorities and the objective of which is to ensure diligent uniform application, by those authorities, of the provisions relating to the recovery of customs debts in order to secure rapid availability of the Community's own resources.

35 The interpretation advocated by SPKR, to the effect that failure to observe the time-limit of 11 months would make the rule as to the burden of proof stated in Article 378 of the implementing regulation inapplicable and require the office of departure therefore to show, in order to recover the customs debt, both the existence of an irregularity and the place where it was committed, cannot be upheld. That interpretation would have the practical effect of adding a new cause of extinction of the customs debt to those prescribed by the Customs Code, since the initiation of the procedure laid down in Article 379(1) of the implementing

regulation assumes that the place of the offence or irregularity cannot be established by the customs authorities.

36 The interpretation upheld takes sufficient account of the interests of the principal. As the Commission correctly pointed out, the person concerned is, as a general rule, in a position to provide, where appropriate, evidence of the regularity of the external Community transit operation within the time-limit of three months mentioned in Article 379(2) of the implementing regulation.

37 Furthermore, in a case such as that in the main action, where the customs authorities have been presented with falsified documents, to require the office of departure to notify the offence or irregularity to the principal within the time-limit of 11 months on pain of depriving those authorities of the right to recover the customs debt might seriously compromise it since there can be no certainty that any falsification of documents will be detected prior to the expiry of that period. Therefore, such an interpretation would seriously prejudice the financial interests of the Community and the campaign against fraud.

38 Nor is the lack of effect of disregarding the time-limit of 11 months on the application of the detailed rules for the recovery of customs debts laid down in Articles 378 and 379 of the implementing regulation inconsistent with the judgment in *Lensing & Brockhausen*, cited above. In that regard, it suffices to observe that the time-limit mentioned in Article 379(2) of the implementing regulation, which was the subject of that judgment, serves to protect the interests of the principal by allowing him a period of three months to produce, where appropriate, evidence of the absence of an irregularity or offence, whereas, as is clear from paragraph 34 of this judgment, the time-limit of 11 months is only a procedural rule intended to ensure diligent uniform application of the provisions relating to the recovery of customs debts in order to secure rapid availability of the Community's own resources.

39 Finally, since the failure to observe the time-limit of 11 months has, in itself, no effect on the recoverability and detailed rules for recovery of customs debts, the fact that the office of departure did not follow an administrative procedure, such as the EWS, or that the delay in notification was due either to an error or negligence on the part of that office is irrelevant.

40 In those circumstances, the reply to the questions referred for a preliminary ruling must be that Article 379(1) of the implementing regulation, read in conjunction with the Community Customs Code, should be interpreted as meaning that a customs debt arising by reason of an offence or irregularity committed in connection with a consignment placed under the external Community transit procedure can be recovered from the principal by the office of departure even if it did not notify the principal before the end of the 11th month following the date of registration of the Community transit declaration that the consignment had not been presented at the office of destination and that the place of the offence or irregularity could not be established. The same applies if the office of departure did not follow an administrative procedure for the transmission of information, such as the early warning system, or if the failure to comply with the time-limit was due to error or negligence on the part of that office.

Costs

41 The costs incurred by the Danish, German and French Governments, and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Sixth Chamber),

in answer to the questions referred to it by the Vestre Landsret by order of 9 March 2001, hereby rules:

Article 379(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, read in conjunction with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, should be interpreted as meaning that a customs debt arising by reason of an offence or irregularity committed in connection with a consignment placed under the external Community transit procedure can be recovered from the principal by the office of departure even if it did not notify the principal before the end of the 11th month following the date of registration of the Community transit declaration that the consignment had not been presented at the office of destination and that the place of the offence or irregularity could not be established. The same applies if the office of departure did not follow an administrative procedure for the transmission of information, such as the early warning system, or if the failure to comply with the time-limit was due to error or negligence on the part of that office.

Puissochet Gulmann Skouris

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 14 November 2002.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber