JUDGMENT OF THE COURT (First Chamber)

15 September 2011 *

In Case C-138/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 8 March 2010, received at the Court on 15 March 2010, in the proceedings

DP grup EOOD

v

Direktor na Agentsia 'Mitnitsi',

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, A. Borg Barthet, M. Ilešič (Rapporteur) and M. Berger, Judges,

* Language of the case: Bulgarian.

Advocate General: P. Cruz Villalón,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 March 2011,

after considering the observations submitted on behalf of:

— Direktor na Agentsia 'Mitnitsi', by V. Tanov, S. Valkova, N. Yotsova and S. Yordanova, acting as Agents,

— the Bulgarian Government, by E. Petranova and T. Ivanov, acting as Agents,

— the Czech Government, by M. Smolek and V. Štencel, acting as Agents,

— the Spanish Government, by M. Muñoz Pérez, acting as Agent,

— the Netherlands Government, by C. Wissels and M. Noort, acting as Agents,

— the European Commission, by P. Mihaylova and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 June 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 4(5), 8(1), first indent, 62, 63 and 68 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1) ('the Customs Code').

2 The reference has been made in proceedings between DP grup EOOD ('DP grup') and Direktor na Agentsia 'Mitnitsi' (Director of the Customs Agency) concerning an action by DP grup seeking annulment of a customs declaration made on its behalf.

Legal context

The Customs Code

3 The sixth recital in the preamble to the Customs Code is worded as follows:

'… in view of the paramount importance of external trade for the Community, customs formalities and controls should be abolished or at least kept to a minimum.'

4 Article 4 of the Customs Code states:

'For the purposes of this Code, the following definitions shall apply:

…

(5) "Decision" means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; this term covers, inter alia, binding information within the meaning of Article 12;

…

(17) "Customs declaration" means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure;

…'

5 Article 59(1) of the Customs Code provides:

'All goods intended to be placed under a customs procedure shall be covered by a declaration for that customs procedure.'

6 Article 62 of the Code provides:

'1. Declarations in writing shall be made on a form corresponding to the official specimen prescribed for that purpose. They shall be signed and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.

2. The declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.'

7 Under Article 63 of the Customs Code:

'Declarations which comply with the conditions laid down in Article 62 shall be accepted by the customs authorities immediately, provided that the goods to which they refer are presented to customs.'

8 Article 66 of that Code reads as follows:

'1. The customs authorities shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes proof that goods were declared in error for the customs procedure covered by that declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

Nevertheless, where the customs authorities have informed the declarant of their intention to examine the goods, a request for invalidation of the declaration shall not be accepted until after the examination has taken place.

2. The declaration shall not be invalidated after the goods have been released, except in cases defined in accordance with the committee procedure.

3. Invalidation of the declaration shall be without prejudice to the application of the penal provisions in force.'

9 Article 68 of the Customs Code provides:

'For the verification of declarations which they have accepted, the customs authorities may:

(a) examine the documents covering the declaration and the documents accompanying it. The customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration;

(b) examine the goods and take samples for analysis or for detailed examination.'

10 Article 71 of the Code provides:

'1. The results of verifying the declaration shall be used for the purposes of applying the provisions governing the customs procedure under which the goods are placed.

2. Where the declaration is not verified, the provisions referred to in paragraph 1 shall be applied on the basis of the particulars contained in the declaration.'

The Implementing Regulation

11 Article 199(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007 (OJ 2007 L 62, p. 6), ('the Implementing Regulation') provides:

'Without prejudice to the possible application of penal provisions, the lodging with a customs office of a declaration signed by the declarant or his representative shall render him responsible under the provisions in force for:

— the accuracy of the information given in the declaration,

— the authenticity of the documents attached,

and

— compliance with all the obligations relating to the entry of the goods in question under the procedure concerned.'

12 Article 251 of that Regulation provides:

'By way of derogation from Article 66(2) of the [Customs] Code, a customs declaration may be invalidated after the goods have been released, as provided below:

…'

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

13 On 13 March 2007, DP grup, through an agent, lodged, at the Mitnichesko byuro Kremikovtsi (Kremikovtsi Customs Office) in Sofia (Bulgaria), a customs declaration for the importation from Brazil of 'frozen and boneless turkey leg, prepared with white pepper', in order to release those goods for free circulation.

14 That customs declaration was accepted by the customs authorities on the same day. A customs officer signed it and entered the following information on the reverse of the document:

'Documentary examination in respect of box 44 in accordance with Article 218 of the [Implementing Regulation] carried out. Tariff heading in box No 33 corresponds to the description of the goods in box No 31 and to the [Integrated Tariff of the European Communities, established by Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)]. Customs value determined in accordance with Article 29

of the Customs Code. Not a product covered by a preferential system. The requirements for being placed under the "end-use" procedure are satisfied. Record of a detailed customs examination at Sofia Airport (No 120/13.03.2007). Owing to suspicion of an incorrect tariff classification, samples were taken for a laboratory examination by the Central Chemical Laboratory…'

15 The record of goods examination No 120/13.03.2007 states in item 13 that the goods presented correspond, in view of their nature and quantity, to those declared in the customs declaration and that samples were taken for a laboratory examination.

16 The amount of import duties calculated on the basis of the tariff heading declared by DP grup, namely BGN 22 646.88, was entered in the relevant box of the customs declaration.

17 On 25 March 2007, the customs authorities released the imported goods.

18 On the basis of the results of the expert report, the customs authorities, by letter of 17 April 2007, informed DP grup that, in their view, the tariff classification of those goods was incorrect and that this constituted a breach of customs legislation.

19 Consequently, the customs authorities fixed additional outstanding amounts, BGN 49 754.31 in respect of customs duties and BGN 11 293.75 in respect of value added tax, as well as default interest thereon, and called on DP grup to pay those amounts.

20 DP grup brought proceedings before the Administrativen sad Sofia-grad (Administrative Court, Sofia), by which it sought the annulment of the customs declaration of 13 March 2007 on the ground that the import duties totalling BGN 22 646.88, stated therein, had been calculated incorrectly.

21 It is apparent from the order for reference that DP grup claimed before that court that the customs declaration at issue in the main proceedings is an administrative act which may be challenged before a court. That company, while acknowledging that it had incorrectly stated the tariff heading, takes the view that, insofar as that heading was accepted by the customs authorities, by the signature of the agent confirming acceptance of that declaration, the heading was 'confirmed' by those authorities. Accordingly, the customs declaration, it argues, constitutes an express manifestation of intention by the customs authorities and gives rise to rights as well as obligations for the declarant, which confers on it the nature of a challengeable act.

22 In support of its action, DP grup submitted that the incorrect tariff heading stated in the customs declaration at issue in the main proceedings renders it void. It also claimed that the customs duties calculated on the basis of the illegal declaration were inconsistent with the objectives of the Bulgarian customs rules and as a result caused it loss.

23 The Administrativen sad Sofia-grad, on 21 July 2008, made an order declaring the action inadmissible by reason of the lack of a challengeable administrative act, the customs declaration which was completed by the declarant and accepted by the customs authorities not being, in its view, an administrative act which could be challenged before a court.

24 DP grup appealed against that order to the Varhoven adminstrativen sad (Supreme Administrative Court), which held that, even if it had been completed by the declarant itself, the customs declaration at issue in the main proceedings was, for the

reasons set out in paragraph 21 of the present judgment, an individual administrative act which indisputably affects the declarant's interests. The Varhoven adminstrativen sad, the guidance of which on the interpretation and application of legislation are, according to Bulgarian law, binding during further examination of the case, referred the case back to the same chamber of the Adminstrativen sad Sofia-grad for resumption of the proceedings.

25 The referring court takes the view that the outcome of the main proceedings depends on the interpretation of the applicable provisions of European Union customs law and that the case raises, in particular, the question of the scope and content of the examination of the conformity of customs declarations with the requirements laid down by Article 62 of the Customs Code and, more specifically, the question whether, as part of that examination, the customs authorities are required to verify whether the tariff heading stated by a declarant is correct.

26 It points out, in addition, that, where the heading indicated is incorrect and has not subsequently been amended in accordance with Article 65 of the Customs Code, the customs authorities are entitled to impose fines on the declarant for committing a customs offence, and in particular may seize the goods and dispose of them pursuant to the procedure provided for that purpose under national law. According to that court, by the claim brought before it, DP grup is evidently seeking to avoid incurring detrimental legal consequences such as those mentioned above.

27 In those circumstances, the Administrativen sad Sofia-grad decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. In the circumstances of the main proceedings, is Article 63 of [the Customs Code] to be interpreted as requiring the customs authority to carry out only an examination of the conformity of the customs declaration with the requirements

of Article 62 of that [Code] by merely undertaking an examination of documents to the extent specified in Article 68 of the [Code], and to take a decision concerning acceptance of the customs declaration solely on the basis of the documents presented, where a doubt has arisen as to the correctness of the tariff code of the goods and an expert report is necessary in order to determine that code?

2. In the circumstances of the main proceedings, is the decision of the customs authority concerning immediate acceptance of the customs declaration pursuant to Article 63 of [the Customs Code] to be regarded as a decision of a customs authority in accordance with Article 4(5), in conjunction with Article 8(1), first indent, of [that Code], and this in respect of the entire content of the customs declaration made, when at the same time the following circumstances are present:

   (a) the customs authority's decision concerning acceptance of the customs declaration was taken solely on the basis of the documents presented together with the customs declaration;

   (b) when the required examinations were being carried out prior to acceptance of the customs declaration, the suspicion existed that the tariff code declared for the goods was not correct;

   (c) when the required examinations were being carried out prior to acceptance of the customs declaration, the information on the content of the goods declared, which is relevant for the purposes of correct determination of the tariff code, was incomplete:

(d) during the examination prior to acceptance of the declaration, a sample was taken in order that an expert report could be drawn up for the purpose of correct determination of the tariff code of the goods?

3. In the circumstances of the main proceedings, is Article 63 of [the Customs Code] to be interpreted as meaning that:

(a) it allows the lawfulness of acceptance of the customs declaration to be contested before a court after release of the goods, or that

(b) acceptance of the customs declaration is not contestable, because it merely records the declaration of the goods to the customs authorities and determines the date on which the customs debt on importation is incurred and does not constitute a decision by the customs authority as to the correct tariff classification and the amount of duties due on the basis of that declaration?'

Consideration of the questions referred

28 It should be recalled that, in proceedings under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, inter alia, Case C-459/07 *Elshani* [2009] ECR I-2759, paragraph 40, and Case C-339/09 *Skoma-Lux* [2010] ECR I-13251, paragraph 21).

29 However, it is for the Court, as part of those proceedings, to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. Moreover, the Court has a duty to interpret all provisions of European Union law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (see, to that effect, inter alia, Case C-45/06 *Campina* [2007] ECR I-2089, paragraphs 30 and 31; Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* [2008] ECR I-4635, paragraph 45; and Case C-243/09 *Fuß* [2010] ECR I-9849, paragraph 39).

30 In that regard, first, it is apparent from the decision of the referring court that the action before it seeks the annulment of the customs declaration at issue in the main proceedings, and not the annulment of the acceptance of that declaration as such. Secondly, it is apparent from the case-file that DP grup sought the annulment of that declaration after the goods at issue in the main proceedings had been released by the customs authorities.

31 In those circumstances, by the questions submitted, the referring court is seeking to ascertain whether the provisions of European Union Law in customs matters must be interpreted as meaning that a declarant can, after the goods have been released by the customs authorities, ask a court to annul the customs declaration which relates to those goods.

32 In order to answer the questions thus reformulated, it is necessary to consider the nature and scope of the customs declaration.

33 As is clear from Article 59(1) of the Customs Code, European Union customs law establishes the principle whereby all goods intended to be placed under a customs procedure must be covered by a declaration.

34 The information necessary for the application of customs rules to goods is thus determined, not on the basis of the customs authorities' findings, but on the basis of the information provided by the declarant.

35 The customs declaration is, therefore, as is clear from Article 4(17) of the Customs Code, the act whereby the declarant indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure. As a result, that declaration, which by its nature is a unilateral act, is not a 'decision' within the meaning of Article 4(5) of that Code.

36 With respect to customs declarations made in writing, Article 68 of that Code gives customs authorities the power to verify the information provided by the declarant.

37 With the aim, expressed in the sixth recital in the preamble to the Customs Code, of keeping customs formalities and controls to a minimum, that Code does not require customs authorities to systematically carry out such verifications. Thus, under Article 71(2) of the Customs Code, where the customs declaration is not verified, the provisions governing the customs procedure under which the goods are placed are to be applied on the basis of the particulars contained in that declaration.

38 The system described above, which does not provide for systematic verification of customs declarations, assumes that the declarant will provide the customs authorities with complete and accurate information. Indeed, Article 199(1), first indent, of the Implementing Regulation provides that the lodging with a customs office of a declaration signed by the declarant or its representative renders that declarant responsible under the provisions in force for the accuracy of the information given in the declaration.

39 In that regard, it is important to point out that, as the Advocate General stated at point 29 of his Opinion and contrary to the arguments of DP grup before the referring court, where the customs authorities accept a customs declaration signed by the declarant or its representative, Article 63 of the Customs Code requires that they confine themselves to monitoring compliance with the requirements laid down in Article 62 of that Code. Consequently, when a customs declaration is accepted, those authorities do not take a decision on the accuracy of the information provided by the declarant, for which the latter assumes responsibility. Indeed, it follows from the wording of Article 68 of the Customs Code that acceptance of the declaration does not prevent those authorities from subsequently verifying the accuracy of the information, where necessary even after the goods have been released.

40 The obligation on the declarant to provide accurate information also extends to the determination of the correct subheading at the time of the tariff classification of the goods (see, by analogy, Case 378/87 *Top Hit Holzvertrieb* v *Commission* [1989] ECR 1359, paragraph 26), the declarant being able, if there is any doubt, to request in advance from the customs authorities a binding tariff information, pursuant to Article 12 of the Customs Code.

41 The aforementioned obligation has as its corollary the principle of the irrevocability of the customs declaration once it has been accepted, a principle the exceptions to which are strictly defined by the relevant European Union legislation.

42 Thus, while the Customs Code does not make provision for the declarant to obtain the annulment of a customs declaration made by it, the first subparagraph of Article 66(1) of that Code allows the declarant to request the customs authorities to invalidate a declaration that they have already accepted, on condition that it furnishes proof that the goods were declared in error for the customs procedure covered by that declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

43 Article 66(2) of the Customs Code provides that the declaration may not be invalidated after the goods have been released, except in certain cases. Those cases are defined in Article 251 of the Implementing Regulation.

44 It follows from the wording of Article 66 that where the declarant, on its own initiative, seeks the invalidation of the customs declaration, its request must be addressed to the customs authorities and not to the courts.

45 At the conclusion of their assessment, those authorities must thus, subject to the possibility of a subsequent court action, either reject the declarant's application by reasoned decision or proceed with the invalidation requested (see, by analogy, Case C-468/03 *Overland Footwear* [2005] ECR I-8937, paragraph 50).

46 As for the fact that, in the view of the referring court, the action brought before it by DP grup is designed to avoid possible sanctions being imposed on that company in respect of the infringement relating to the incorrect tariff classification of the imported goods made when the customs declaration at issue in the main proceedings was drawn up, suffice it to note that, under Article 66(3) of the Customs Code, invalidation of the declaration is without prejudice to the application of the penal provisions in force.

47 As regards, moreover, the instructions given to the referring court by the Varhoven administrativen sad, it should be recalled that European Union law precludes a national court which is called upon to decide a case referred back to it by a higher court hearing an appeal from being bound, in accordance with national procedural law, by legal rulings of that higher court, if it takes the view, having regard to the interpretation which it has sought from the Court, that those rulings are inconsistent with European Union law (Case C-173/09 *Elchinov* [2010] ECR I-8889, paragraph 32).

48 In the light of the foregoing, the answer to the questions referred is that the provisions of European Union law in customs matters must be interpreted as meaning that a declarant cannot request a court to annul a customs declaration made by it when that declaration has been accepted by the customs authorities. By contrast, under the conditions laid down in Article 66 of the Customs Code, that declarant may request those authorities to invalidate that declaration, even after they have released the goods. At the conclusion of their assessment, the customs authorities must, subject to the possibility of a court action, either reject the declarant's application by reasoned decision or proceed with the invalidation requested.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The provisions of European Union law in customs matters must be interpreted as meaning that a declarant cannot request a court to annul a customs declaration made by it when that declaration has been accepted by the customs authorities. By contrast, under the conditions laid down in Article 66 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, that declarant may request those authorities to invalidate that declaration, even after they have released the goods. At the conclusion of their assessment, the customs authorities must, subject to the possibility of a court action, either reject the declarant's application by reasoned decision or proceed with the invalidation requested.

[Signatures]