JUDGMENT OF THE COURT (First Chamber)

15 September 2005 *

In Case C-140/04,

REFERENCE for a preliminary ruling under Article 234 EC, from the Hof van beroep te Antwerpen (Belgium), by decision of 11 March 2004, received at the Court on 16 March 2004, in the proceedings

United Antwerp Maritime Agencies NV

v

Belgische Staat,

and

Seaport Terminals NV

v

Belgische Staat,

United Antwerp Maritime Agencies NV,

* Language of the case: Dutch.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues (Rapporteur), E. Juhász and M. Ilešič, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: M. Ferreira, Principal administrator,

having regard to the written procedure and further to the hearing on 7 April 2005,

after considering the observations submitted on behalf of:

— United Antwerp Maritime Agencies NV, by E. Gevers, advocaat,

— Seaport Terminals NV, by P. Hoogmartens and G. Huyghe, advocaten,

— the Belgian Government, by D. Haven, acting as Agent,

— the Commission of the European Communities, by X. Lewis, acting as Agent, and F. Tuytschaever, advocaat,

after hearing the Opinion of the Advocate General at the sitting on 26 April 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the fourth indent of Article 203(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code').

2 The reference was made in the course of proceedings between the Belgian State, United Antwerp Maritime Agencies NV ('Unamar'), a maritime transport company, and Seaport Terminals NV, now Katoen Natie Terminals NV ('Seaport Terminals'), a freight forwarder, concerning the payment of a customs debt which was incurred as a result of the unlawful removal of goods liable to import duty from customs supervision.

Community law

The Customs Code

3 In accordance with Article 37 of the Customs Code:

'1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to control by the customs authority in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status ...'

4 Article 38 of the Code provides:

'1. Goods brought into the customs territory of the Community shall be conveyed by the person bringing them into the Community without delay, by the route specified by the customs authorities and in accordance with their instructions, if any:

(a) to the customs office designated by the customs authorities or to any other place designated or approved by those authorities;

...

2. Any person who assumes responsibility for the carriage of goods after they have been brought into the customs territory of the Community, inter alia as a result of transhipment, shall become responsible for compliance with the obligation laid down in paragraph 1.

...'

5 In accordance with Article 40 of the Customs Code:

'Goods which, pursuant to Article 38(1)(a), arrive at the customs office or other place designated or approved by the customs authorities shall be presented to customs by the person who brought the goods into the customs territory of the Community or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry.'

6 Under Article 43 of the Customs Code:

'Subject to Article 45, goods presented to customs within the meaning of Article 40 shall be covered by a summary declaration.

The summary declaration shall be lodged once the goods have been presented to customs. The customs authorities may, however, allow a period for lodging the declaration which shall not extend beyond the first working day following the day on which the goods are presented to customs.'

7 Article 44(2) of the Customs Code states:

'The summary declaration shall be lodged by:

(a) the person who brought the goods into the customs territory of the Community or by any person who assumes responsibility for carriage of the goods following such entry; or

(b) the person in whose name the persons referred to in subparagraph (a) acted.'

8 Article 46(1) of the Customs Code provides:

'Goods shall be unloaded or transhipped from the means of transport carrying them solely with the permission of the customs authorities in places designated or approved by those customs authorities. ...'

9 Article 50 of the Customs Code provides:

'Until such time as they are assigned a customs-approved treatment or use, goods presented to customs shall, following such presentation, have the status of goods in temporary storage. Such goods shall hereinafter be described as "goods in temporary storage".'

10 According to Article 51 of the Customs Code:

'1. Goods in temporary storage shall be stored only in places approved by the customs authorities under the conditions laid down by those authorities.

2. The customs authorities may require the person holding the goods to provide security with a view to ensuring payment of any customs debt which may arise under Articles 203 or 204.'

11 In accordance with Article 53(2) of the Customs Code:

'The customs authorities may, at the risk and expense of the person holding them, have the goods in question transferred to a special place, which is under their supervision, until the situation of the goods is regularised.'

12 Article 203 of the Customs Code provides:

'1. A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

3. The debtors shall be:

— the person who removed the goods from customs supervision,

— any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

— any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision, and

— where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.'

Regulation (EEC) No 2454/93

13 In accordance with Article 183(1) and (2) 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 (OJ 1993 L 253, p. 1 and — corrigendum — OJ 1994 L 268, p. 32 ('the Implementing Regulation'):

'1. The summary declaration shall be signed by the person making it.

2. The summary declaration shall be endorsed by the customs authorities and retained by them for the purpose of verifying that the goods to which it relates are assigned a customs-approved treatment or use within the period laid down in Article 49 of the Code.'

14 Article 184 of the Implementing Regulation provides:

'1. Goods covered by a summary declaration which have not been unloaded from the means of transport carrying them shall be re-presented intact by the person referred to in Article 183(1) whenever the customs authorities so require, until such time as the goods in question are assigned a customs-approved treatment or use.

2. Any person who holds goods after they have been unloaded in order to move or store them shall become responsible for compliance with the obligation to re-present all the goods intact at the request of the customs authorities.'

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

15 According to the order for reference, Unamar lodged a summary declaration at the Antwerp Customs Office for a consignment of cigarettes as non-Community goods, which was validated on 9 June 1996. On 18 June 1996 Seaport Terminals unloaded the container holding the consignment in question from *MS Cap Trafalgar*, which had transported the goods from Paranagua (Brazil) to Antwerp. Seaport Terminals

deposited the container on the quayside, without a customs-approved treatment or use having been assigned to them. On 19 June 1996, it was found that the container had been stolen the previous day so that it could no longer be presented to the customs authorities.

16 The Belgian customs and excise authorities concluded that the disputed container had been brought into the customs territory of the European Union in an unlawful manner and therefore a customs debt on importation had been incurred.

17 Accordingly, on 13 March 1998, the customs authorities issued and served summonses on Unamar and Seaport Terminals requiring each of them to pay EUR 785 555.04 together with interest and costs in respect of import duties and excise duties.

18 It is also clear from the order for reference that the customs authorities rely on Articles 202(1) and (3) and 203 of the Customs Code and, in respect of Seaport Terminals, on Article 184(2) of the Implementing Regulation.

19 Unamar and Seaport Terminals raised objections to those summonses. By judgment of 9 September 2002 the Rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp) joined their applications and then dismissed them as unfounded.

20 Unamar and Seaport Terminals brought appeals against that judgment, on 14 October 2002 and 9 January 2003 respectively, before the Hof van beroep te Antwerpen, which decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. May the person who must present the goods to customs (Article 40 of the Customs Code ...) be deemed to be the person required to fulfil the obligations arising from temporary storage of the goods (final indent of Article 203(3) of the Customs Code), in which connection he or his representative must lodge the summary declaration (Article 44(2)) and must sign it (Article 183(1) of the Implementing Regulation), and must present the goods to the customs authorities so long as they have not been unloaded from the means of transport carrying them at the time when they are brought into the Community and until they have been assigned a customs-approved treatment or use?

2. May the person required to fulfil the obligations arising from temporary storage of the goods (final indent of Article 203(3) of the Customs Code) be deemed to be the person who, after release of the goods, holds them in order to move them or store them, in consequence of which, under Article 51(2) and 53(2) of the Community Customs Code, he is deemed to be the holder of the goods and is, therefore, required under Article 184(2) of the implementing provisions to represent the goods whenever the customs authorities so require?

3. If the first and second questions are answered affirmatively, may the persons referred to in those questions consequently be deemed to be joint and several

customs debtors, it being understood that the persons mentioned in the first and second questions are different persons (in this case the representative of the shipping line by which the goods were brought into the Community and the freight forwarder responsible for the storage and removal of the goods at the unloading place or quayside indicated by the customs authorities)?

4. If the third question is answered affirmatively does the person mentioned in the first question remain the debtor until the goods are assigned a customs-approved treatment or use, regardless of the fact that after goods are unloaded from the means of transport by which they entered the Community they were stored with or removed by the person mentioned in the second question?

5. If the third question is answered in the negative must the person mentioned in the first question be regarded as remaining a customs debtor until the goods are received by the person mentioned in the second question and does the person mentioned in the second question become a debtor only from the time when he arranges the storage and removal of the goods?

6. If the first question is answered affirmatively and the second question negatively must the person mentioned in the first question continue to be regarded as the debtor until the time when the goods are received by the person mentioned in the second question or until the time when the goods have been assigned a customs-approved treatment or use?'

The questions referred for a preliminary ruling

21 By those questions, which it is appropriate to consider together, the national court asks essentially whether the fourth indent of Article 203(3) of the Customs Code must be interpreted as meaning that the 'the person required to fulfil the obligations arising from temporary storage of the goods' may designate both the person who must present the goods to customs, within the meaning of Article 40 of the Code, and the person who holds the goods after they have been unloaded in order to move or store them. If the answer is affirmative, the national court wishes to know whether those persons may, in circumstances such as those in the present case, be deemed to be jointly and severally liable for the payment of the customs debt.

22 In order to answer those questions, it is appropriate to consider the provisions of the Customs Code and the Implementing Regulation relating to the rules applicable to goods brought into the customs territory of the Community which have not yet been assigned a customs-approved treatment or use.

23 In accordance with Article 38(1)(a) and (2) of the Customs Code, goods brought into the customs territory of the Community are to be conveyed without delay, by the person bringing them into the Community, or, if appropriate, by the person who assumes responsibility for the carriage of goods after such entry, to the customs office designated by the customs authorities or to any other place designated or approved by them. According to Article 40 of the Customs Code those goods must be presented to customs by those persons.

24 Pursuant to Article 43 of the Customs Code the goods presented to customs, within the meaning of Article 40, must be covered by a summary declaration which must, in principle, be lodged once the goods have been presented to customs. It is clear from Article 44(2)(a) and (b) that that declaration must be lodged either by the person who brought the goods into the customs territory of the Community or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry or the person in whose name the persons mentioned above acted.

25 Article 50 of the Customs Code states that until such time as they are assigned a customs-approved treatment or use, goods presented to customs are, following such presentation, to have the status of goods in temporary storage.

26 Article 46(1) of the Customs Code provides that those goods may be unloaded from the means of transport carrying them solely with the permission of the customs authorities in places designated or approved by those authorities.

27 According to Article 51(2) of the Customs Code the customs authorities may require the person holding the goods to provide security with a view to ensuring payment of any customs debt which may arise under Article 203 of the Code.

28 It is clear from Article 203(1) of the Customs Code that a customs debt on importation is incurred through the unlawful removal from customs supervision of goods liable to import duties from the moment of that removal (see, in particular, Case C-300/03 *Honeywell Aerospace* [2005] ECR I-689, paragraph 18). According to the case-law of the Court, the concept of unlawful removal from customs

supervision covers any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from carrying out the monitoring required by Article 37(1) of the Customs Code (see, in particular, *Honeywell Aerospace*, paragraph 19).

29 Under the fourth indent of Article 203(3) of the Customs Code, the customs debt may be incurred by several categories of persons, in particular, the persons who removed the goods and, if appropriate, 'the person required to fulfil the obligations arising from temporary storage of the goods'.

30 As the Court has held 'the Community legislature intended, since the entry into force of the Customs Code, to lay down exhaustively the conditions for determining who are the debtors of the customs debt (Case C-414/02 *Spedition Ulustrans* [2004] ECR I-8633, paragraph 39, and Case C-195/03 *Papsimedov and Others* [2005] ECR I-1667, paragraph 38).

31 It is apparent from the order for reference that the goods which are the subject-matter of these proceedings were presented to the relevant customs office, covered by a summary declaration pending the assignment of a customs-approved treatment or use and, therefore, had the status of goods in temporary storage. Furthermore, it is common ground that those goods were unlawfully removed from customs supervision following a theft, which took place at the time when they had just been unloaded from the vessel and placed on the quayside by Seaport Terminals.

32 The national court is uncertain whether, in such circumstances, the person who presented the disputed goods to the customs office, within the meaning of Article 40 of the Customs Code, and the person who held the goods after they were unloaded in order to move or store them, may be deemed to be the persons liable for the customs debt, as the persons 'required to fulfil the obligations arising from temporary storage of the goods' within the meaning of the fourth indent of Article 203(3) of the Customs Code.

33 As Unamar and the Commission of the European Communities have rightly submitted, where goods in temporary storage have been unloaded from the means of transport carrying them and pending assignment of a customs-approved treatment or use, it is the person who holds the goods who is liable for the customs debt under the fourth indent of Article 203(3) at the moment when the goods are unlawfully removed from customs supervision.

34 As regards the 'obligations arising from temporary storage of the goods', within the meaning of Article 203 of the Customs Code, Article 184(1) of the Implementing Regulation provides that the person referred to in Article 183(1), that is to say, the person who signs the summary declaration, is required to re-present intact goods which have not been unloaded from the means of transport carrying them whenever the customs authorities so require. Article 184(2) provides that 'any person who holds goods after they have been unloaded in order to move or store them shall become responsible for compliance' with that obligation.

35 It appears from the wording of Article 184 of the Implementing Regulation that the decisive criterion for determining the person responsible for re-presenting the goods

in temporary storage to customs, whenever they so require is, from the moment when the goods are unloaded, the person who holds the goods. It is the person who holds the goods who has custody of them and who is able to re-present them whenever required, since the person who signed the summary declaration does not have physical control of them at that time.

36 That obligation is intended, by means of the criterion of possession, to facilitate the supervision of the goods in temporary storage by the customs authorities required by Article 37(1) of the Customs Code.

37 That interpretation is supported by Article 51(2) of the Customs Code, which provides that the customs authorities may require the person 'holding' the goods to provide security with a view to ensuring payment of any customs debt which may arise under Article 203.

38 As regards the obligation to assign a customs-approved treatment or use to the goods in temporary storage within the time-limits set down in Article 49 of the Customs Code, which fall, where appropriate, to the person making the summary declaration, that obligation is not covered by the provisions of the fourth indent of Article 203(3) of the Code, which refers only to obligations specific to the temporary storage of the goods.

39 It follows from that that the expression 'the person required to fulfil the obligations arising from temporary storage of the goods' within the meaning of the fourth indent of Article 203(3) of the Customs Code refers, after the goods in question have been unloaded, to the person who holds the goods.

40 Article 213 of the Customs Code, which states that where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for such debt, does not call into question that interpretation, since in a situation such as the present, the person who signed the summary declaration, unlike the person holding the goods after they have been unloaded, is not obliged to re-present them whenever the customs authorities so require.

41 Having regard to the foregoing, the answer to the questions referred for a preliminary ruling is that the fourth indent of Article 203(3) of the Customs Code must be interpreted as meaning that 'the person required to fulfil the obligations arising from temporary storage of the goods' designates the person who holds the goods after they have been unloaded in order to move them or store them.

Costs

42 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 fourth indent of Article 203(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that 'the person required to fulfil the obligations arising from temporary storage of the goods' is the person who holds the goods after they have been unloaded in order to move or store them.

[Signatures]