Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

21 January 2016*

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 29(1)(d) — Determination of the customs value — Regulation (EEC) No 2454/93 — Article 143(1)(h) — Definition of 'related persons' for the purposes of determining the customs value — Kinship relationship between the buyer, a natural person, and the director of the company which sold the goods)

In Case C-430/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Supreme Court, Latvia), made by decision of 12 September 2014, received at the Court on 19 September 2014, in the proceedings

Valsts ieņēmumu dienests

v

Artūrs Stretinskis,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, F. Biltgen, A. Borg Barthet (Rapporteur), E. Levits and M. Berger, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— the Latvian Government, by I. Kalniņš and I. Ņesterova, acting as Agents,

— the European Commission, by A. Sauka and L. Grønfeldt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 October 2015,

gives the following

* Language of the case: Latvian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 143(1)(h) 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), as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999 (OJ 1999 L 10, p. 1) ('Regulation No 2454/93').

2 The request has been made in proceedings between the Valsts ieņēmumu dienests (national revenue authority) and Mr Stretinskis concerning the determination of the customs value of goods imported from the United States of America for release for free circulation in the territory of the European Union.

Legal context

The Customs Code

3 Title II 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 Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) ('the Customs Code'), includes Chapter 3 entitled 'Value of goods for customs purposes', consisting of Articles 28 to 36 of that Code.

4 Under Article 29(1) and (2) of the Customs Code:

'1. The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with Articles 32 and 33, provided:

…

(d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under paragraph 2.

2.

(a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the customs authorities have grounds for considering that the relationship influenced the price, they shall communicate their grounds to the declarant and he shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with paragraph 1 wherever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Community;

(ii) the customs value of identical or similar goods, as determined under Article 30(2)(c);

(iii) the customs value of identical or similar goods, as determined under Article 30(2)(d).

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 32 and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not incurred by the seller in sales in which he and the buyer are related.

(c) The tests set forth in subparagraph (b) are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said subparagraph.'

5 Article 30 of that code provides:

'1. Where the customs value cannot be determined under Article 29, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraph 2 to the first subparagraph under which it can be determined …

2. The customs value as determined under this Article shall be:

(a) the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued;

(b) the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued;

(c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the sellers;

(d) the computed value, consisting of the sum of:

— the cost or value of materials and fabrication or other processing employed in producing the imported goods;

— an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community,

— the cost or value of the items referred to in Article 32 (1) (e).

…'

6 Article 31 of that code provides:

'1. Where the customs value of imported goods cannot be determined under Articles 29 or 30, it shall be determined, on the basis of data available in the Community, using reasonable means consistent with the principles and general provisions of:

— the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994,

— Article VII of the General Agreement on Tariffs and Trade of 1994,

and

— the provisions of this chapter.

…’

Regulation No 2454/93

7 Article 143(1) of Regulation No 2454/93 provides:

‘For the purposes of Title II, Chapter 3 of the [Customs] Code and of this Title, persons shall be deemed to be related only if:

(a) they are officers or directors of one another’s businesses;

(b) they are legally recognised partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another:

…

— brother and sister (whether by whole or half blood) ...

…’

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

8 Between 2008 and 2010, Mr Stretinskis imported from the United States second-hand clothing for release for free circulation in the territory of the European Union. In the single administrative documents which he completed for this purpose, Mr Stretinskis calculated the customs value of those goods in accordance with the transaction value method, relying on the total cost of the goods as it appeared on the invoices of Latcars LLC and Dexter Plus LLC (referred to jointly as ‘the companies which sold the goods’) and the cost of transporting the goods by sea.

9 After examining the documents submitted by Mr Stretinskis and carrying out an inspection at his business premises, the national revenue authority expressed doubts as to the accuracy of the values declared, on the ground, in particular, that the director of the companies which sold the goods was Mr Stretinskis’ brother. Taking the view that they are related persons for the purposes of Article 143(1)(h) of Regulation No 2454/93, the national revenue authority, by a decision of 22 July 2010, recalculated the customs value of the goods on the basis of Article 31 of the Customs Code.

10 Mr Stretinskis brought an action for the annulment of that decision before the administrative court with jurisdiction at first instance. That action was dismissed by that court.

11 Hearing the case on appeal, the administrative court with jurisdiction upheld Mr Stretinskis' action. That court held, in particular, that the national revenue authority's doubts as to the accuracy of the declared customs values of the goods concerned were not sufficiently substantiated, as the existence of a kinship relationship, for the purposes of Article 143(1)(h) of Regulation No 2453/93, could be recognised, in circumstances such as those in the dispute in the main proceedings, only if Mr Stretinskis' brother was the owner of the companies which sold the goods, which that authority failed to determine.

12 That authority lodged an appeal on a point of law against that judgment, claiming, in particular, that the administrative court with jurisdiction to hear the appeal ought to have taken the view that Mr Stretinskis and the director of the companies which sold the goods were related persons, for the purposes of Article 143(1)(h) of Regulation No 2453/93.

13 Taking the view that the resolution of the case in the main proceedings depends on the interpretation of EU law, the Augstākā tiesa (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 143(1)(h) of Regulation No 2454/93 be interpreted as referring not only to situations in which the parties to the transaction are exclusively natural persons, but also to situations in which there is a family or kinship relationship between a director of one of the parties (a legal person) and the other party to the transaction (a natural person) or a director of that party (in the case of a legal person)?

(2) If the answer is affirmative, must the judicial body hearing the matter carry out an in-depth examination of the circumstances of the case in relation to the actual influence of the natural person concerned over the legal person?'

Consideration of the questions referred

14 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 143(1)(h) of Regulation No 2454/93 must be interpreted as meaning that a buyer, who is a natural person, and a seller, which is a legal person whose director is the brother of that buyer, must be regarded as being related persons, within the meaning of Article 29(1)(d) of the Customs Code.

15 The Court points out, at the outset, that, under Article 29(1) of that code, the customs value of imported goods is, in principle, to be made up of their transaction value, that is, the price actually paid or payable for them when sold for export to the customs territory of the European Union.

16 However, it follows from Article 29(1)(d) and (2) of that code that, where the buyer and seller are related, the transaction value is to be accepted only provided that the relationship did not influence the sale price.

17 In that regard, Article 143(1) of Regulation No 2454/93 lists, restrictively, the types of cases in which it is appropriate to consider that persons are related for the purposes of the application of Article 29 of the Customs Code.

18 In particular, under Article 143(1)(h) of Regulation No 2454/93, persons who are members of the same family are deemed to be related. Under that provision, which is also worded restrictively, persons are deemed to be members of the same family 'only if they stand in [one] … of the … relationships [listed].' Amongst those is the relationship between brother and sister.

19 Admittedly, it follows from the wording of Article 143(1)(h) of Regulation No 2454/93 that the relationships covered by that provision link natural persons, whereas, in the case in the main proceedings, the seller of the goods concerned is a legal person.

20 The Court notes, however, that Article 143(1)(h) of Regulation No 2454/93 is an implementing provision of Title II, Chapter 3 of the Customs Code, entitled 'Value of the goods for customs purposes', which includes Article 29 of that code.

21 Consequently, Article 143(1)(h) of Regulation No 2454/93 must be interpreted as taking account of the general scheme of those provisions and the objective pursued by them.

22 In that regard, it should be borne in mind that, according to settled case-law of the Court, the objective of the EU legislation on customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values (judgment in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 36 and the case-law cited).

23 It should also be noted that, in accordance with Article 29 of the Customs Code, the customs value of imported goods is, in principle, to be made up of their transaction value, Article 29(1)(d) and (2) have the objective of ensuring that the customs value reflects the real economic value of imported goods and is not determined arbitrarily or fictitiously (see, to that effect, judgments in *Mitsui & Co. Deutschland*, C-256/07, EU:C:2009:167, paragraph 20, and *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraphs 39 and 40). To that end, customs authorities are entitled to examine the price indicated by the person making the declaration and to reject it if they consider that the latter has been influenced by the relationships which exist between the parties to the transaction (judgment in *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraph 37).

24 In that respect, Article 143(1) of Regulation No 2454/93 lists, in accordance with Article 29(2)(a) of the Customs Code, situations in which the sales price of the goods concerned is capable of being influenced by the relationships existing between the parties to the transaction.

25 Under Article 143(1)(h) of that regulation, that is the case, in particular, where those parties are members of the same family.

26 The likelihood of persons in a kinship relationship being able to influence the sales prices of imported goods similarly exists where the seller is a legal person within which the buyer's kin has the power to influence the sales price for the buyer's benefit.

27 In those circumstances, and having regard to the objectives pursued by the EU legislation on customs valuation, as set out in paragraphs 22 and 23 of the present judgment, to rule out, from the outset, that a buyer and a seller may be regarded as being related persons, within the meaning of Article 143(1)(h) of Regulation No 2454/93, on the ground that one of the parties to the sales contract is a legal person, would undermine the effectiveness of Article 29(1)(d) of the Customs Code. In that case, the revenue authorities would be denied the possibility of examining, pursuant to Article 29(2)(a) of the Customs Code, the circumstances specific to the sale concerned, even though there are reasons for supposing that the transaction value of the imported goods may have been influenced by a kinship relationship between the buyer and a member of the legal person which sold the goods.

28 Accordingly, it is appropriate to consider that, where, in circumstances such as those in the case in the main proceedings, a natural person, acting within a legal person, has the power to influence the sales price of imported goods for the benefit of a buyer to whom he is related, the capacity of the seller as a legal person does not prevent the buyer and seller of those goods from being regarded as being related, within the meaning of Article 29(1)(d) of the Customs Code.

29 For the purposes of assessing whether the buyer's kin has such power over the legal person which sold the goods, the functions carried out by him within that legal person, or, as the case may be, the fact that he is the sole person to carry out an activity within that legal person are relevant factors which the revenue authorities must take into account.

30 It is therefore for the competent revenue authorities, in accordance with Article 29(2)(a) of the Customs Code, to examine, if necessary, the specific circumstances of the sale concerned and to accept the transaction value provided that relationships, such as those at issue in the main proceedings, have not influenced the sales price of the imported goods.

31 Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 143(1)(h) of Regulation No 2454/93 must be interpreted as meaning that a buyer, who is a natural person, and a seller, which is a legal person, within which a kin of that buyer actually has the power to influence the sales price of goods for the benefit of that buyer, must be regarded as being related persons within the meaning of Article 29(1)(d) of the Customs Code.

Costs

32 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 (Fifth Chamber) hereby rules:

Article 143(1)(h) 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, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, must be interpreted as meaning that a buyer, who is a natural person, and a seller, which is a legal person, within which a kin of that buyer actually has the power to influence the sales price of goods for the benefit of that buyer, must be regarded as being related persons within the meaning of Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996.

[Signatures]