JUDGMENT OF THE COURT (Third Chamber)
18 January 1996 *

In Case C-446/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Tributário de Segunda Instância (Portugal) for a preliminary ruling in the proceedings pending before that court between

SEIM — Sociedade de Exportação e Importação de Materiais Ld.ª

and

Subdirector-Geral das Alfândegas

on the interpretation of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1), Commission Regulation (EEC) No 1574/80 of 20 June 1980 laying down provisions for the implementation of Articles 16 and 17 of Council Regulation (EEC) No 1430/79 (OJ 1980 L 161, p. 3) and Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC)

* Language of the case: Portuguese.

No 1430/79 (OJ 1986 L 352, p. 19) and on the validity of Article 4(2)(c) of Regulation No 3799/86,

THE COURT (Third Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J. C. Moitinho de Almeida (Rapporteur) and C. Gulmann, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Portuguese Government, by Luís Fernandes, Director of the Legal Service of the Directorate-General for the European Communities of the Ministry of Foreign Affairs, and Maria Luisa Duarte, Legal Adviser in the same directorate, acting as Agents,

— the Commission of the European Communities, by Maria Blanca Rodriguez Galindo and Francisco de Sousa Fialho, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 June 1995,

gives the following

Judgment

1 By order of 19 January 1993, received at the Court on 19 November 1993, the Tribunal Tributário de Segunda Instância (Customs Court of Second Instance)

referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1), Commission Regulation (EEC) No 1574/80 of 20 June 1980 laying down provisions for the implementation of Articles 16 and 17 of Council Regulation (EEC) No 1430/79 (OJ 1980 L 161, p. 3) and Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 (OJ 1986 L 352, p. 19) and on the validity of Article 4(2)(c) of Regulation No 3799/86.

2 The questions were raised in proceedings between the company SEIM — Sociedade de Exportação e Importação de Materiais Ld.ª (hereinafter 'SEIM') and the Portuguese customs authorities concerning payment of customs duties on the importation of goods.

3 SEIM, the plaintiff in the main proceedings, bought from an undertaking established in Germany certain goods on which customs duties were not charged upon their importation into Portugal in 1986 since the Federal Republic of Germany was stated to be the place of origin of the goods in the EUR 1 certificates of origin.

4 However, those certificates were later cancelled by the German customs authorities on the ground that they had been incorrectly issued because the goods did not have the origin stated therein. The Portuguese customs authorities then began proceedings to effect post-clearance recovery of the customs duties in question, amounting to ESC 7 660 587.

5 SEIM, which was given no time in which to pay that amount, refused to pay it and brought proceedings before the Tribunal Fiscal Aduaneiro (customs court of first instance), Oporto, for annulment of the notice of assessment to customs duties.

6 At the same time SEIM submitted an application to the Oporto customs authorities asking for the case to be submitted to the Commission in accordance with Commission Regulation (EEC) No 1573/80 of 20 June 1980 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1980 L 161, p. 1) in order for the Commission to rule on the request not to effect post-clearance recovery of the amount demanded. SEIM also asked for operation of the decision in question to be suspended as a provisional measure.

7 Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 (OJ 1979 L 197, p. 1) provides that: 'The competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned.'

8 In support of those applications SEIM claimed in particular that there had been an error on the part of the German customs authorities which could not have been detected by it and that it had acted in good faith throughout, so that the conditions for refraining from taking post-clearance recovery action, laid down in Article 5(2) of Regulation No 1697/79, were fulfilled.

9 On 28 February 1989 the Directorate-General for Customs notified SEIM that its application had been rejected. In that notification, the Portuguese authorities maintained, in substance, that Article 5(2) of Regulation No 1697/79 related to errors committed by the competent authorities of the Member State in determining an amount lower than that which was payable, and not to errors committed by the authorities of the State of exportation which, as in this case, incorrectly issued EUR 1 movement certificates.

10 SEIM then brought proceedings before the Tribunal Tributário de Segunda Instância for annulment of that decision which is the subject-matter of the main proceedings. SEIM advances three grounds for annulment. First, the conditions laid down in Article 5(2) of Regulation No 1697/79 for the competent authorities to refrain from effecting post-clearance recovery are fulfilled. Secondly, in view of the amount demanded, which exceeds ECU 2 000, the final decision must be taken by the Commission so that the Directorate-General for Customs should submit the case to that institution. Thirdly, the same result could be achieved on the basis of Article 13(1) of Regulation No 1430/79.

11 The purpose of Regulation No 1430/79 is, according to Article 1 thereof, to lay down the conditions under which the competent authorities are to repay or remit import or export duties resulting from implementation of the Common Agricultural Policy or from implementation of the provisions of the Treaty relating to the customs union.

12 Article 1(2)(d) defines 'remission' as 'the complete or partial waiving of import or export duties which have been entered in the accounts by the authority responsible for their collection, but which have not yet been paid'.

13 Repayment or remission of import duties may be justified in the following cases: where there is no customs debt, or where the amount is fixed at a level higher than that lawfully due (Section A, Article 2); where goods are entered in error for free circulation (Section B, Articles 3 and 4); where goods are refused by the importer because they are defective or do not comply with the terms of the contract (Section C, Articles 5 to 9); and where goods are in a special situation (Section D, Articles 10 to 12).

14 Article 13, as amended by Regulation No 3069/86, cited above, provides for other situations which may give rise to repayment or remission of import duties (Section E). It provides as follows:

'1. Import duties may be repaid or remitted in special situations other than those referred to in Sections A to D, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

The situations in which the first subparagraph may be applied, and the detailed procedural arrangements to be followed for this purpose, shall be determined in accordance with the procedure laid down in Article 25. Repayment or remission may be made subject to special conditions.

2. Import duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12 months from the date on which those duties were entered in the accounts by the authority responsible for their collection.

However, the competent authorities may permit that period to be exceeded in exceptional cases where there is good reason for doing so.'

15 Article 4 of Regulation No 3799/86, cited above, which lays down provisions for the implementation of, in particular, Article 13 of Regulation No 1430/79, lists 'without prejudice to other situations to be considered case by case' 'special situations' within the meaning of the latter provision, authorizing repayment or remission of import duties (paragraph 1) and the situations which are not by themselves to be such special situations (paragraph 2).

16 Article 4(2)(c) of Regulation No 3799/86 provides that 'production, even in good faith, for the purpose of securing preferential tariff treatment of goods entered for free circulation, of documents subsequently found to be forged, falsified or not valid for the purpose of securing such preferential tariff treatment' is not to constitute by itself a special situation within the meaning of Article 13.

17 Article 5 of Regulation No 3799/86 then provides that where the grounds on which an application for repayment or remission is based reflect the situations described in Article 4(1), repayment or remission of the amount of import duties concerned is to be granted (paragraph 1). However, where the grounds relied on correspond to the situations described in Article 4(2), the application is to be rejected (paragraph 2).

18 Article 6(1) of Regulation No 3799/86 provides:

'Where the competent authority of a Member State cannot decide, by reference to Article 4, whether an application for repayment or remission under Article 13(2) of the basic Regulation should be granted, it shall refuse the application if it is not supported by evidence of a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

In all other cases it shall submit the case to the submission for a decision, in accordance with the procedure laid down in Articles 7 to 10 ...'.

19 Finally, Article 7(1) of Regulation No 1574/80, cited above, which lays down provisions for the implementation of Articles 16 and 17 of Regulation

No 1430/79 relating to the procedure to be followed for making an application for repayment or remission, provides:

'When the decision-making authority possesses all the necessary information, it shall give its decision on the application at the earliest opportunity and notify the applicant in writing of that decision'.

20 In its order for reference, the Tribunal Tributário de Segunda Instância first observes that it must determine a preliminary question concerning its own jurisdiction. It explains that in Portuguese law there is a distinction between *contencioso administrativo aduaneiro*, consisting of actions against administrative measures relating to matters concerning customs taxation and which fall within its own jurisdiction, and *contencioso tributário aduaneiro*, consisting of actions against notices of assessment to duty for customs purposes and which fall within the jurisdiction of the Tribunais Fiscais Aduaneiros. In this context the referring court is unsure whether the contested measure, which, pursuant to Article 7(1) of Regulation No 1574/80, rejects the application for remission of customs duties, is applying substantive tax provisions or procedural or administrative tax provisions. It is also unsure whether that decision was adopted by the customs authorities acting as a tax authority or as an administrative authority.

21 The national court then asks whether, in order for there to be an application for 'remission' of import duties, it is sufficient, as is stated in Article 1(2)(d) of Regulation No 1430/79, for the duties assessed to have 'not yet been paid' or whether it is also necessary for the non-payment to be due to the grant of a period for payment.

22 The national court is also unsure whether the inquisitorial principle, which, in Portuguese administrative law, governs the informal procedure whereby application is

made to the same administrative authority for reconsideration of its decision, is applicable to remission of import duties. If it is, the plaintiff in the main proceedings simply had to set out the factual arguments in favour of granting remission, whilst the national authority had to assess those facts in the manner most consistent with customs law, that is to say that in this case it had to treat the points raised as an application under Article 13 of Regulation No 1430/79.

23 Finally, the national court has doubts about the validity of Article 4(2)(c) of Regulation No 3799/86 in so far as it restricts the cases in which, pursuant to Article 13(1) of Regulation No 1430/79, remission may be granted beyond what is necessary in order to safeguard other rights or interests protected by the Community.

24 Because of those doubts the Tribunal Tributário de Segunda Instância decided to stay proceedings until the Court of Justice has given a preliminary ruling on the following questions:

'(a) Having regard to the considerations set out in Section II of this order for reference, the system of post-clearance recovery laid down in Council Regulation (EEC) No 1697/79 of 24 July 1979 and the system of remission of duties which have already been assessed but not yet paid, set out in Council Regulation (EEC) No 1430/79 of 2 July 1979, does a decision of the national customs authority which, adopted pursuant to Article 7(1) of Commission Regulation (EEC) No 1574/80 of 20 June 1980, rejected an application for remission of duties involve the application of substantive tax provisions or provisions of Community administrative law, or was it adopted by the customs service acting as a tax authority or as an administrative authority properly so called? What is the legal nature of that decision?

(b) Is the phrase "duties which ... have not yet been paid" in Article 1(2)(d) of Regulation No 1430/79 to be interpreted restrictively as meaning duties whose payment has been deferred?

(c) Since the applicant has relied on facts which could be classifiable for legal purposes as special situations which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned (Article 13(1) of Regulation No 1430/79, as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986), was the national customs authority required by Article 5(2) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 to assess the application for remission of import duties from the point of view of the general principle of fairness set out in Article 13(1)?

(d) Is Article 4(2)(c) of Regulation No 3799/86 of 12 December 1986 invalid in that it restricts special cases of remission of payment beyond what is necessary in order to safeguard other Community interests, thereby infringing Article 13(1) of Regulation No 1430/79?'

Admissibility of the reference for a preliminary ruling

25 According to the Portuguese Government, the reference for a preliminary ruling is inadmissible. In holding that the contested decision constitutes a refusal to grant remission of import duties, the Tribunal Tributário de Segunda Instância misread SEIM's application and the contested decision. That court thus confused non-post-clearance recovery of import duties and remission of import duties, which are two different things, subject to different sets of rules.

26 According to the Portuguese Government, the contested decision is in fact a decision declining an application for non-post-clearance recovery of the import duties in question and not an application for remission of those duties. This explains why the decision only took account of the corresponding legal basis, namely Regulation No 1697/79. Owing to that error of categorization, the questions referred for a preliminary ruling bear no relation to the dispute which the national court is called upon to resolve.

27 That argument cannot be accepted.

28 According to the case-law of this Court, Article 177 of the Treaty, which is based on a clear separation of functions between national courts and this Court, does not allow this Court to review the reasons for which a reference is made. Consequently, a request from a national court may be rejected only if it is quite obvious that the interpretation of Community law or review of the validity of a rule of Community law sought by that court bears no relation to the actual facts of the case or to the subject-matter of the main action (see, in particular the judgment in Case 126/80 *Salonia* v *Poidomanial Giglio* [1981] ECR 1563, paragraph 6).

29 It appears, however, from the order for reference that, even though SEIM did not formally apply for remission of the customs duties in question, that is how the Portuguese Directorate-General for Customs construed the request for the case to be submitted to the Commission in order for the Commission to take a decision on non-recovery and it was on the basis of that classification that it did not grant SEIM's request. The national court concludes that SEIM's application must be treated as an application for remission of import duties.

30 In those circumstances, reference to the Community rules on remission of import duties would not appear to be manifestly wrong. It is therefore appropriate for the Court to examine the questions referred to it.

Substance

The first question

31 Both the Portuguese Government and the Commission consider that the issue of classification raised by the first question is a matter for domestic law only and that it therefore falls outside the jurisdiction of this Court when asked to give a preliminary ruling.

32 In that regard, it must be observed that the Court has ruled (see, in particular, its judgment in Case 179/84 *Bozetti* v *Invernizzi* [1985] ECR 2301, at paragraph 17) that it is for the legal system of each Member State to determine which court has jurisdiction to hear disputes involving individual rights derived from Community law, but at the same time the Member States are responsible for ensuring that those rights are effectively protected in each case. Subject to that reservation, it is not for the Court to intervene in order to resolve questions of jurisdiction to which the classification of certain legal situations based on Community law may give rise in the national judicial system.

33 However, in that same judgment the Court also stated (at paragraph 18) that it has power to explain to the national court points of Community law which may help to solve the problem of jurisdiction with which that court is faced.

34 It must be pointed out in this regard that, by virtue of Article 8(1)(a) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on the customs debt (OJ 1987 L 201, p. 15), applicable to the case before the national court, a 'customs debt' is extinguished in particular 'by payment of the amount of the import or export duties payable on the goods in question or, where appropriate, by remission of that amount pursuant to the Community provisions in force'. The decision on an

application for remission therefore relates directly to the obligation of a natural or legal person to pay the amount of the import duties applicable under the current provisions to goods subject to such duties.

35 The answer to the first question must therefore be that the decision of the national customs authority, adopted pursuant to Article 7(1) of Regulation No 1574/80, relates directly to the obligation of a national or legal person to pay the amount of the import duties applicable under the current provisions to the goods subject to such duties. It is for the national court to draw the relevant conclusions from that finding when determining whether it has jurisdiction in the matter.

The second question

36 According to the actual wording of Article 1(2)(d) of Regulation No 1430/79, 'remission' consists of 'the complete or partial waiving of import or export duties which have been entered in the accounts by the authority responsible for their collection, but which have not yet been paid'. There is nothing in that provision to suggest that remission is to be subject to the additional condition that the person concerned must first have obtained a period of time in which to pay those duties.

37 That interpretation is borne out by the first paragraph of Article 13(2) of Regulation No 1430/79, which, as amended by Regulation No 3069/86, applicable to the case before the national court, makes repayment or remission of import duties subject, for the reasons indicated in paragraph (1) of that provision, only to submission of the relevant application to the customs office concerned 'within 12 months from the date on which those duties were entered in the accounts by the authority responsible for their collection'.

38 It cannot be objected in this regard that the second recital in the preamble to Regulation No 1430/79 refers to the situation, governed by Article 2 of the regulation, in which the amount of import duties which was paid or whose 'payment has been deferred' exceeds the amount lawfully due. As the Commission has indeed rightly observed, that expression refers only to a situation envisaged by Council Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (OJ 1978 L 146, p. 19), which does not prevent the Community legislature from establishing an autonomous system governing the remission and repayment of import duties or export duties.

39 The answer to the second question must therefore be that the words 'duties ... which have not yet been paid' appearing in Article 1(2)(d) of Regulation No 1430/79 do not refer only to duties whose payment has been deferred.

The fourth question

40 By this question the national court asks whether Article 4(2)(c) of Regulation No 3799/86 is valid if it restricts the general principle of fairness set out in Article 13(1) of Regulation No 1430/79, as amended, beyond what is necessary.

41 According to the case-law of the Court, Article 13(1) of Regulation No 1430/79 constitutes a general equitable provision designed to cover situations other than those which arose most often in practice and for which special provision could be made when the regulation was adopted (see, in particular, the judgment in Joined Cases 244/85 and 245/85 *Cerealmangimi and Italgrani* v *Commission* [1987] ECR 1303, paragraph 10).

42 The second subparagraph of Article 13(1) empowers the Commission to determine the situations in which and the conditions on which import duties may be repaid or remitted, other than those referred to in Sections A to D, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

43 Article 4(1) of Regulation No 3799/86 accordingly defines special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, which give rise to repayment or the remission sought whilst Article 4(2) of that regulation defines the situations which are not by themselves to constitute a sufficient reason for the competent authorities of the Member States to grant remission or repayment.

44 As regards, in particular, the type of situation referred to in Article 4(2)(c), the Court held, in its judgment in Joined Cases 98/83 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763, at paragraph 13, that verifications carried out after importation would be largely deprived of their usefulness if the use of false certificates could, of itself, justify granting a remission.

45 As the Commission rightly points out, the opposite result could discourage traders from adopting an inquiring attitude and make the public purse bear a risk which falls mainly on traders.

46 However, where an application based on the trader's ignorance of the fact that documents submitted were forged, falsified or not valid is supported by evidence of a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to him, that application is to be submitted to the Commission, in accordance with Article 6 of Regulation No 3799/86, in order for it to take a decision.

Accordingly, Article 4(2)(c) of Regulation No 3799/86 cannot be regarded as restricting the general principle of fairness laid down in Article 13(1) of Regulation No 1430/79 beyond what is necessary.

8 The answer to be given must therefore be that examination of the question has disclosed no factor of such a kind as to call in question the validity of Article 4(2)(c) of Regulation No 3799/86.

The third question

9 By its third question the national court seeks to ascertain in substance whether, where in an application actually seeking remission of import duties the person concerned relies on facts capable of constituting a special situation within the meaning of Article 13(1) of Regulation No 1430/79 without, however, expressly mentioning that provision, that omission prevents the national customs authorities from considering the application with reference to that provision.

10 The Portuguese Government maintains that the application of Article 13 depends, according to paragraph (2) of that article in the version appearing in Regulation No 3069/86, on the application made and the evidence provided by the person concerned. In its view, therefore, the customs authority may not reclassify the application.

51 That argument cannot be upheld.

52 Although the grant of remission under Article 13 necessitates the submission of an application by the person concerned to the competent authority and Regulation No 1430/79 provides that the competent authorities may grant remission only in the cases provided for in Article 2, those provisions do not prevent those authorities from checking in all cases that the circumstances relied on do not fall within any of the cases referred to by the rules in question.

53 It is true that Article 5(1) and Article 6(1) of Regulation No 3799/86, on the competence of the national authorities and the Commission to assess applications for remission or repayment, refer, respectively, to 'an application under Article 13(2) of the basic Regulation' and to 'an application for repayment or remission under [the same article] ...'. However, those provisions cannot be interpreted as precluding national authorities from examining whether the factual reasons set out in an application for remission correspond to a situation covered by Article 13(1) of that regulation and, where appropriate, from granting remission of the import duties in question.

54 The answer to be given to the third question must therefore be that where, in an application actually seeking remission of import duties, the person concerned relies on facts capable of constituting a special situation within the meaning of Article 13(1) of Regulation No 1430/79, without, however, expressly mentioning that provision, that omission does not prevent the national customs authority from considering the application with reference to that provision.

Costs

5 The costs incurred by the Portuguese Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Third Chamber)

in answer to the questions submitted to it by the Tribunal Tributário de Segunda Instância, by order of 19 January 1993, hereby rules:

1. The decision of the national customs authority, adopted pursuant to Article 7(1) of Commission Regulation (EEC) No 1574/80 of 20 June 1980 laying down provisions for the implementation of Articles 16 and 17 of Council Regulation (EEC) No 1430/79, relates directly to the obligation of a natural or legal person to pay the amount of the import duties applicable under the current provisions to the goods subject to such duties. It is for the national court to draw the relevant conclusions from that finding when determining whether it has jurisdiction in the matter.

2. **The words 'duties ... which have not yet been paid' appearing in Article 1(2)(d) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties do not refer only to duties whose payment has been deferred.**

3. **Examination of the fourth question has disclosed no factor of such a kind as to call in question the validity of Article 4(2)(c) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79.**

4. **Where, in an application actually seeking remission of import duties, the person concerned relies on facts capable of constituting a special situation within the meaning of Article 13(1) of Regulation No 1430/79, without, however, expressly mentioning that provision, that omission does not prevent the national customs authority from considering the application with reference to that provision.**

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 18 January 1996.

R. Grass J.-P. Puissochet

Registrar President of the Third Chamber