Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 February 2014*

(Request for a preliminary ruling — Community Customs Code — Articles 70(1) and 78 — Customs declarations — Partial examination of goods — Sampling — Incorrect code — Application of the results to identical goods covered by earlier customs declarations after release — Post-release examination — Impossible to request a further examination of the goods)

In Case C-571/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākās tiesas Senāts (Latvia), made by decision of 21 November 2012, received at the Court on 6 December 2012, in the proceedings

Greencarrier Freight Services Latvia SIA

v

Valsts ieņēmumu dienests,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 2 October 2013,

after considering the observations submitted on behalf of:

— Greencarrier Freight Services Latvia SIA, by A. Brunavs and B. Cera, advokāte,

— the Latvian Government, by I. Kucina, K. Freimanis and I. Kalniņš, acting as Agents,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

— the European Commission, by L. Keppenne, A. Sauka. and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 December 2013,

* Language of the case: Latvian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 70(1) 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 request has been made in proceedings between Greencarrier Freight Services Latvia SIA ('GFSL'), a limited liability company under Latvian law, and the Valsts ieņēmumu dienests (Latvian tax administration; 'the VID'), concerning the levying of import duties and the imposition of a fine after a post-release examination of a number of customs declarations.

Legal context

3 Recitals 5 and 6 in the preamble to the Customs Code are worded as follows:

'Whereas, in order to secure a balance between the needs of the customs authorities in regard to ensuring the correct application of customs legislation, on the one hand, and the right of traders to be treated fairly, on the other, the said authorities must be granted, inter alia, extensive powers of control and the said traders a right of appeal; whereas the implementation of a customs appeals system will require the United Kingdom to introduce new administrative procedures which cannot be effected before 1 January 1995;

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 68 of that 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, if necessary, take samples for analysis or detailed examination.'

5 Under Article 70 of that code:

'1. Where only part of the goods covered by a declaration are examined, the results of the partial examination shall be taken to apply to all the goods covered by that declaration.

However, a declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared.

2. For the purposes of paragraph 1, where a declaration form covers two or more items, the particulars relating to each item shall be deemed to constitute a separate declaration.'

6 Article 71 of that code reads as follows:

'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.'

7 Article 78 of the Customs Code provides:

'1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

2. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them.'

8 Under Article 221(1) and (3) of that code:

'1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

…

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

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

9 GFSL imports, on behalf of Hantas SIA, biscuits and chocolate bars from Russia for release for free circulation in the European Union.

10 In April and May 2007, the VID carried out an examination of the customs duties paid by Hantas SIA between 1 May 2004 and 31 December 2006 on the basis of 35 customs declarations completed by GFSL, which would have to be regarded as the debtor if a customs debt were incurred.

11 That examination was carried out following the sampling and analysis, by the VID, of samples concerning six customs declarations made during October and November 2005 ('the customs declarations at issue'). Relying on the results of that examination, the VID noted that, in 29 customs declarations made between 4 June 2004 and 29 November 2005, including the 6 customs declarations at issue, GFSL had declared the goods imported into the European Union for release for free circulation there under Combined Nomenclature codes for their classification in the Integrated Tariff of the European Communities (TARIC) instituted in 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), as amended, which were incorrect.

12 By decision of 31 May 2007, the VID informed GFSL that a customs debt had been incurred, set the amounts of import duties and value added tax ('VAT'), together with default interest, and imposed on it a fine for incorrect application of the Combined Nomenclature codes.

13 GFSL's objection to that decision was rejected by a decision of the VID of 14 September 2007.

14 An action against that rejection decision was brought before the administratīvā rajona tiesa (Regional Administrative Court), which upheld it in part by judgment of 29 June 2009, which was confirmed by the Administratīvā apgabaltiesa (Regional Administrative Court of Appeal). By a judgment of 8 December 2011, the latter held that, although the import duties, the VAT and the fine concerning the goods covered by the customs declarations at issue had been rightly determined, by contrast, the remainder of the decision of 14 September 2007 had to be annulled on the ground that the VID, contrary to Article 70(1) of the Customs Code, had wrongly applied the results of the examination of the goods covered by the customs declarations at issue to the goods covered by 23 other declarations made between 4 June 2004 and 6 September 2005 ('the earlier customs declarations'), that is, goods imported more than one year before the goods which were examined. Since the VID was not entitled to find that incorrect codes were applied to the goods in question, GFSL is under no obligation to adduce evidence concerning the objective characteristics of those goods, especially since it is no longer in a position to have examinations of those goods carried out.

15 Both the VID and GFSL brought appeals on points of law against that judgment before the Augstākās tiesas Senāts (Senate of the Supreme Court).

16 In support of its appeal, the VID claimed that the goods relating to the earlier customs declarations were identical to those covered by the customs declarations at issue, having the same composition, name, appearance and manufacturer, which is borne out by the information in the certificates provided by the manufacturer. The VID is therefore entitled, in its view, in accordance with the principle of procedural economy, not to examine the remainder of the goods and to apply the results of the identification to the other identical goods, GFSL being under an obligation, for its part, to provide evidence of the difference between the goods.

17 The referring court observes, however, that the earlier customs declarations were made more than one year prior to the customs declarations at issue. According to GFSL, it is not objectively possible either to subject the goods which had been covered by the earlier customs declarations to an examination subsequent to customs clearance, or to exercise the right to request a further examination.

18 In those circumstances, the Augstākās tiesas Senāts decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. May the first subparagraph of Article 70(1) of [the Customs Code] be interpreted as meaning that it is possible to apply the results of the examination of part of the goods in a customs declaration also to goods included in earlier declarations which were not the subject of the partial examination, but which had been declared with the same Combined Nomenclature code, came from the same manufacturer and which, according to information concerning the name and composition of the goods on that manufacturer's certificates, were identical to the goods in the declaration in respect of which samples had been taken for partial examination?

In other words:

Does the concept of "declaration" within the meaning of the first subparagraph of Article 70(1) of [the Customs Code] also include declarations [relating to goods] in respect of which samples have not been taken for examination, but in which identical goods have been declared (that is, the

goods are declared under the same Combined Nomenclature code, come from the same manufacturer and on the manufacturer's certificates the same name and composition of goods are given)?

2. If the first question is answered in the affirmative, may the results of the partial examination of the goods under the first subparagraph of Article 70(1) of [the Customs Code] be applied also to declarations in respect of which, for objective reasons, the declarant is unable to request a further examination under the second subparagraph of Article 70(1) of Regulation No 2913/92 since it is not possible to produce the goods for examination pursuant to Article 78(2) of [that code]?'

Consideration of the questions referred

19 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 70(1) of the Customs Code is to be interpreted as meaning that it permits the customs authorities to apply the results of the partial examination of goods covered by a customs declaration, carried out by sampling those goods, also to goods covered by earlier declarations made by the same customs declarant, which have not been and can no longer be subject to such an examination since the release has been granted, when it is apparent from the written statements made by that declarant that all those goods come under the same Combined Nomenclature code, come from the same manufacturer and have identical names and composition.

20 It must be borne in mind that, under Article 68 of the Customs Code, the customs authorities may, for the purposes of checking customs declarations, examine the documents covering the declaration and the documents accompanying it or they may examine the goods and take samples for analysis or for detailed examination.

21 In the latter case, Article 70(1) of that code provides that, where only part of the goods covered by a declaration are examined, the results of the partial examination is to be taken to apply to all the goods covered by that declaration, with the proviso that a declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared.

22 That general provision thus institutes the legal fiction of uniform quality enabling the customs authorities, where only part of the goods covered by a declaration are examined, to apply the results of that examination to all the goods covered by that declaration (see, to that effect, Case C-353/04 *Nowaco Germany* [2006] ECR I-7357, paragraphs 54 and 55, and Joined Cases C-323/10 to C-326/10 *Gebr. Stolle* [2011] ECR I-12177, paragraphs 100 and 101).

23 In that regard, that provision is intended to guarantee rapid and efficient procedures for the release for free circulation by not requiring the customs authorities to make a detailed inspection of all goods declared to customs, which would serve neither the interests of traders, who are in general concerned to obtain the release in order to be able rapidly to sell the goods declared by them, nor the interests of those authorities, for whom a systematic examination of declared goods would mean a considerable amount of extra work (see, to that effect, Case C-290/01 *Derudder* [2004] ECR I-2041, paragraph 45).

24 It must be noted that it is apparent from both the wording of Article 70(1) of the Customs Code and the scheme of Articles 68 to 74 of that code that that possibility of applying the results of a partial examination concerns only those goods which are covered by 'a [single] declaration' where those goods are examined by the customs authorities before those authorities grant the release of those goods (see, to that effect, *Derudder*, paragraph 43).

25 Consequently, that provision does not permit the customs authorities, in a case such as that in the main proceedings, to apply the results of a partial examination of goods covered by a customs declaration to goods covered by earlier customs declarations which have already been released by those authorities.

26 However, it does not follow that such earlier customs declarations can no longer be called into question by the customs authorities.

27 In that regard, it must be borne in mind that, in the procedure laid down in Article 267 TFEU for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it (see, inter alia, Case C-45/06 *Campina* [2007] ECR I-2089, paragraph 30, and Case C-243/09 *Fuß* [2010] ECR I-9849, paragraph 39).

28 As the Czech and Spanish Governments have stated in their written observations, after the grant of the release of goods covered by a customs declaration, the customs authorities may, on their own initiative, if necessary, amend such a declaration in accordance with Article 78 of the Customs Code (see, to that effect, Case C-468/03 *Overland Footwear* [2005] ECR I-8937, paragraphs 62, 64 and 66).

29 According to Article 78(2) of the Customs Code, after releasing the goods, the customs authorities may inspect the commercial documents and data relating to the import or export operations in respect of the goods or to subsequent commercial operations involving those goods and they may also inspect the goods, where they are still available for inspection.

30 Thus that provision permits the customs authorities to call into question earlier customs declarations which have not been examined under Article 68 of the Customs Code and which, accordingly, have been dealt with on the basis of the particulars contained in Article 71(2) of the code (see, to that effect, Case C-138/10 *DP grup* [2011] ECR I-8369, paragraph 37).

31 There is nothing to prevent the customs authorities from applying, for that purpose, the results of a partial examination of goods covered by a customs declaration to goods covered by earlier customs declarations which have already been released by those authorities where those goods are identical, which it is for the referring court alone to ascertain. A finding that the goods are identical may be based, inter alia, on the inspection of the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods and, in particular, on the particulars supplied by the customs declarant stating that the goods come from the same manufacturer and are identical as regards their name, appearance and composition to the goods covered by those earlier customs declarations.

32 The option of applying those results is justified by the very purpose of the Customs Code, which is, as stated in recital 5 in the preamble to that code, to ensure the correct application of the duties provided for therein, while guaranteeing, as is apparent from paragraph 23 of this judgment, rapid and efficient procedures in the interests of both traders and the customs authorities, by dispensing with a systematic examination of all declared goods, thus keeping to a minimum, as stated in recital 6 in the preamble to that code, customs formalities and controls (see, to that effect, *Derudder*, paragraphs 42 and 45).

33 That possibility also accords with the specific logic of Article 78 of the Customs Code, which is to bring the customs procedure into line with the actual situation by correcting material errors or omissions and errors in the interpretation of the applicable law (see, to that effect, *Overland Footwear*, paragraph 63; Joined Cases C-430/08 and C-431/08 *Terex Equipment and Others* [2010] ECR I-321, paragraph 56; and Joined Cases C-608/10, C-10/11 and C-23/11 *Südzucker* [2012] ECR, paragraph 47).

34 In that regard, it is irrelevant that the customs declarant is no longer in a position, in a case such as that in the main proceedings, to request a further examination of the goods in question and, if necessary, the taking of additional samples.

35 Article 78 of the Customs Code applies, as a matter of principle, after the grant of the release of the goods to a time when their presentation may be impossible (see *Overland Footwear*, paragraph 66).

36 In any event, as the majority of the parties which have filed written observations has pointed out, it follows from the very wording of Article 78(2) of the Customs Code that the post release inspections of the customs declarations may be carried out on the basis of written documents without the customs authorities being required physically to inspect the goods, such an inspection being provided for only where 'it is still possible for them to be produced' (see, to that effect, Joined Cases C-320/11, C-330/11, C-382/11 and C-383/11 *Digitalnet and Others* [2012] ECR, paragraphs 66 and 67).

37 In those circumstances, where a partial examination has been made of the goods and those covered by earlier customs declarations are identical, having particular regard to the fact that it is apparent from inspection of the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods and, in particular, to the fact that, according to the particulars supplied by the customs declarant, those goods come from the same manufacturer and are identical as regards their name, appearance and composition, which it is for the referring court alone to ascertain, the customs authorities may apply the result of that partial examination to the latter goods.

38 However, it is essential that customs declarants have the right to challenge such an application, in particular where, as in the main proceedings, they consider, despite their own information provided in their customs declarations, that the result of the partial examination of the goods declared is not transferable to goods covered by earlier customs declarations, by adducing evidence in support of that assertion to show that the goods in question are not identical (see, by analogy, *Derudder*, paragraph 42).

39 In that regard, it is nevertheless necessary to point out that a general and abstract assertion, such as that put forward by GFSL in its written observations before the Court, that, as regards foodstuffs such as those at issue in the main proceedings, different factors could have altered their chemical composition, particularly their starch content, cannot be of any relevance, since in such circumstances, assuming them to be established, did not lead the customs declarant to supply, as regards the goods covered by the earlier customs declarations, information different from that supplied with regard to the goods which were partially examined or, as the case may be, to request that those declarations be amended, so that it has not been established, or even claimed, that such factors were likely to affect the classification of those goods in the Combined Nomenclature. None the less, it is for the referring court to make all assessments in that regard.

40 Finally, it must be noted that, although Article 78 of the Customs Code does not institute any specific time-limit for the amendment of customs declarations, the customs authorities, in accordance with Article 221(3) of that code, may communicate a new customs debt within a period of three years from the date on which that debt arose.

41 In the present case, subject to the checks to be carried out by the referring court, it is apparent from the information provided to the Court that that time-limit, as GFSL confirmed in reply to a question put by the Court at the hearing, has been complied with since, as it follows from paragraphs 11 and 12 of this judgment, the first of the amended customs declarations bears the date of 4 June 2004 and the communication of that new customs debt was made on 31 May 2007.

42 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 70(1) of the Customs Code is to be interpreted as meaning that, since it applies only to goods covered by 'a [single] declaration' where those goods are examined by the customs authorities before those authorities grant the release of those goods, that provision does not permit those authorities, in a case such as that in the main proceedings, to apply the results of the partial examination of goods covered by a customs declaration to goods covered by earlier customs declarations which have already been released by those authorities.

43 However, Article 78 of that code is to be interpreted as meaning that it permits the customs authorities to apply the results of a partial examination of goods covered by a customs declaration, carried out by way of sampling of them, to goods covered by earlier customs declarations submitted by the same customs declarant, which were not and can no longer be examined since the release has been granted, where those goods are identical, which it is for the referring court to ascertain.

Costs

44 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 (Third Chamber) hereby rules:

Article 70(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, since it applies only to goods covered by 'a [single] declaration' where those goods are examined by the customs authorities before those authorities grant the release of those goods, that provision does not permit those authorities, in a case such as that in the main proceedings, to apply the results of the partial examination of goods covered by a customs declaration to goods covered by earlier customs declarations which have already been released by those authorities.

However, Article 78 of that code is to be interpreted as meaning that it permits the customs authorities to apply the results of a partial examination of goods covered by a customs declaration, carried out by way of sampling of them, to goods covered by earlier customs declarations submitted by the same customs declarant, which were not and can no longer be examined since the release has been granted, where those goods are identical, which it is for the referring court to ascertain.

[Signatures]