Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 September 2012*

(Community Customs Code — Regulation (EEC) No 2913/92 — Article 204(1)(a) — Inward processing procedure — System of suspension — Incurrence of a customs debt — Non-fulfilment of an obligation to supply the bill of discharge within the prescribed period)

In Case C-262/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 30 March 2010, received at the Court on 27 May 2010, in the proceedings

Döhler Neuenkirchen GmbH

v

Hauptzollamt Oldenburg,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, R. Silva de Lapuerta, G. Arestis (Rapporteur) and D. Šváby, Judges,

Advocate General: N. Jääskinen,

Registrar: B. Fülöp, Administrator, and subsequently A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 13 April 2011,

having regard to the order of 25 October 2011 reopening the oral procedure and further to the hearing on 1 December 2011,

after considering the observations submitted on behalf of:

— Döhler Neuenkirchen GmbH, by H. Bleier, Rechtsanwalt,

— the Hauptzollamt Oldenburg, by A. Gessler, Oberregierungsrätin,

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

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

after hearing the Opinion of the Advocate General at the sitting on 8 March 2012,

* Language of the case: German.

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 204(1)(a) 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 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 13) ('the Customs Code').

2 The reference has been made in proceedings between Döhler Neuenkirchen GmbH ('Döhler') and the Hauptzollamt Oldenburg (Principal Customs Office, City of Oldenburg; the 'Hauptzollamt') concerning a customs debt on importation imposed on Döhler on the basis of the fact that a bill of discharge concerning goods placed under the inward processing procedure in the form of a system of suspension had not been supplied to the customs supervising office within the time-limit set.

Legal context

The Customs Code

3 The inward processing procedure in the form of a system of suspension is defined in Article 114(1)(a) of the Customs Code. That procedure allows non-Community goods intended for re-export from the customs territory of the European Union in the form of compensating products to be used in the customs territory of the European Union in one or more processing operations, without such goods being subject to import duties or commercial policy measures. Under Article 114(2)(c) and (d), compensating products are all products resulting from processing operations, including, inter alia, the processing of goods.

4 Article 89(1) of the Customs Code reads as follows:

'A suspensive arrangement with economic impact shall be discharged when a new customs-approved treatment or use is assigned either to the goods placed under that arrangement or to compensating or processed products placed under it.'

5 Article 118(1) and (2) of the Customs Code provide:

'1. The customs authorities shall specify the period within which the compensating products must have been exported or re-exported or assigned another customs-approved treatment or use. …

2. The period shall run from the date on which the non-Community goods are placed under the inward processing procedure. The customs authorities may grant an extension on submission of a duly substantiated request by the holder of the authorisation.

For reasons of simplification, it may be decided that a period which commences in the course of a calendar month or quarter shall end on the last day of a subsequent calendar month or quarter respectively.'

6 Title VII of the Customs Code, entitled 'Customs debt', contains, in Chapter 2, the provisions relating to incurrence of a customs debt. That chapter contains, inter alia, Articles 201 to 205 which set out the events which give rise to the incurrence of a customs debt on importation.

7 Article 204(1) and (2) of the Customs Code provide:

1.

A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

…

in cases other than those referred to [concerning the removal from customs supervision of goods liable to import duties] unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure.2. The customs debt shall be incurred … at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met …'

The Implementing Regulation

8 On 2 July 1993, the European Commission adopted Regulation (EEC) No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007 (OJ 2007 L 62, p. 6) (the 'Implementing Regulation').

9 Article 496(m) of the Implementing Regulation defines the 'period for discharge' as 'the time by which the goods or products must have been assigned a new permitted customs-approved treatment or use'.

10 Article 521 of the Implementing Regulation provides:

'1. At the latest upon expiry of the period for discharge, irrespective of whether aggregation in accordance with Article 118(2), second subparagraph, of the [Customs] Code is used or not:

— in the case of inward processing (suspension system) or processing under customs control, the bill of discharge shall be supplied to the supervising office within 30 days,

…

Where special circumstances so warrant, the customs authorities may extend the period even if it has expired.

2. The bill or the claim shall contain the following particulars, unless otherwise determined by the supervising office:

(a) reference particulars of the authorisation;

…

(e) the particulars of the declarations entering the import goods under the arrangements;

(f) the type and quantity of the compensating or processed products or the goods in unaltered state and the customs-approved treatment or use to which they have been assigned, including particulars of the corresponding declarations, other customs documents or any other document relating to discharge and periods for discharge;

…

(i) the amount of import duties to be paid or to be repaid or remitted and where applicable any compensatory interest to be paid. Where this amount refers to the application of Article 546, it shall be specified;

…

3. The supervising office may make out the bill of discharge.'

11 The first and second paragraphs of Article 546 of the Implementing Regulation provide:

'[The decision of the customs authorities to authorise the use of the procedure] shall specify whether compensating products or goods in the unaltered state may be released for free circulation without customs declaration, without prejudice to prohibitive or restrictive measures. In this case they shall be considered to have been released for free circulation, if they have not been assigned a customs-approved treatment or use on expiry of the period for discharge.

For the purposes of the first subparagraph of Article 218(1) of the [Customs] Code, the declaration for release for free circulation shall be considered to have been lodged and accepted and release granted at the time of presentation of the bill of discharge.'

12 Article 859 of the Implementing Regulation, which is found in Part IV of that regulation, concerning customs debt, and more specifically, under Title IV of that part, entitled 'Incurrence of the debt', states:

'The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204(1) of the Code, provided:

— they do not constitute an attempt to remove the goods unlawfully from customs supervision,

— they do not imply obvious negligence on the part of the person concerned, and

— all the formalities necessary to regularise the situation of the goods are subsequently carried out:

…

9. in the framework of inward processing and processing under customs control, exceeding the time-limit allowed for submission of the bill of discharge, provided the limit would have been extended had an extension been applied for in time;

…'

13 Under Article 860 of the Implementing Regulation, '[t]he customs authorities shall consider a customs debt to have been incurred under Article 204(1) of the [Customs] Code unless the person who would be the debtor establishes that the conditions set out in Article 859 are fulfilled'.

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

14 During the first quarter of 2006, Döhler imported concentrated fruit juice which it processed under the inward processing procedure in the form of the system of suspension, as permitted by the authorisation issued to it. According to that authorisation, the period for discharge of the inward processing procedure expired in the fourth calendar quarter following the placing of non-Community

goods under that procedure, that is to say, on 31 March 2007. It is also apparent from the documents before the Court that the authorisation permitted Döhler to release compensating products or goods in the unaltered state for free circulation without customs declaration.

15 Although the bill of discharge should have been supplied within 30 days of the expiry of the period for discharge, that is, in the main proceedings, no later than 30 April 2007, Döhler failed to do so, and ignored the warning from the Hauptzollamt requiring the bill of discharge to be supplied by 20 June 2007.

16 In the absence of that bill of discharge, on 4 July 2007 the Hauptzollamt imposed import duty on all the imported goods in respect of which the period for discharge had expired on 31 March 2007, for the full amount, namely EUR 1 403 188.49.

17 On 10 July 2007, Döhler finally supplied the bill of discharge for the goods at issue in the main proceedings, which showed a lesser amount of import duty, namely EUR 217 338.39, corresponding to a significantly lower quantity of the imported goods which had not been re-exported within the time-limit, that is to say, before 31 March 2007.

18 Döhler challenged the difference between the amount of the import duty determined by the Hauptzollamt and that resulting from its bill of discharge. Following the dismissal of its claim, it brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg) seeking the rebate of those duties which it did not consider to be due.

19 The Finanzgericht Hamburg dismissed the action before it, holding that, by exceeding the period allowed for submission of the bill of discharge, Döhler had not fulfilled its obligations and had thus incurred a customs debt pursuant to Article 204(1)(a) of the Customs Code. That court also held that the late submission of the bill of discharge could not be considered a failure having no significant effect on the correct operation of the customs procedure within the meaning of Article 204(1) *in fine* of the Customs Code, as implemented by Article 859(9) of the Implementing Regulation.

20 In that connection, the Finanzgericht Hamburg pointed out, first, that the time-limit for submission of the bill of discharge could not have been extended even if an extension had been applied for in time, as there were no special circumstances which warranted such an extension, and secondly, that Döhler had been obviously negligent since it was aware, as an experienced operator under the inward processing procedure, of the obligation to submit bills of discharge within a specified period and, in addition, had had its attention drawn to that requirement by the Hauptzollamt.

21 Challenging the dismissal of its action by the Finanzgericht Hamburg, Döhler then brought an appeal on a point of law before the Bundesfinanzhof (Federal Finance Court), claiming that the customs procedure had been discharged on 31 March 2007 and that any non-fulfilment of obligations after that date, such as the late submission of the bill of discharge, could not have an impact on the procedure or, still less, give rise to a customs debt.

22 The referring court, having analysed the interpretation of the Customs Code put forward by Döhler, examined the issue of the incurrence of a customs debt in circumstances such as those of the present case. Furthermore, it stressed the risk of a double customs debt being incurred by goods which are not re-exported: first, upon the expiry of the time-limit for discharge of the relevant customs procedure and, secondly, on the expiry of the time-limit for submission of the bill of discharge.

23 In those circumstances, the Bundesfinanzhof, taking the view that the resolution of the dispute before it requires the interpretation of the Customs Code, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 204(1)(a) of [the Customs Code] to be interpreted as meaning that it also applies to non-fulfilment of those obligations which are to be fulfilled only after discharge of the relevant customs procedure which has been used, so that where goods imported under an inward processing

procedure in the form of a system of suspension have been partly re-exported within the time-limit the failure to fulfil the obligation to supply the bill of discharge to the supervising office within 30 days of the expiry of the time-limit for discharging the procedure gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge if the requirements of Article 859(9) of [the Implementing Regulation] are not fulfilled?'

Procedure before the Court

The reopening of the oral procedure

24 By decision of 1 March 2011, the Court assigned the case to the Seventh Chamber, which called the parties to a hearing on 13 April 2011. Furthermore, it decided that the case would be determined without an Opinion.

25 Pursuant to Article 44(4) of the Rules of Procedure of the Court, the Seventh Chamber, on 22 September 2011, decided to refer the case back to the Court in order that it might be reassigned to a formation composed of a greater number of judges. Subsequently, the Court decided to reassign the case to the Third Chamber and to hear the Opinion of the Advocate General before ruling.

26 By order of 25 October 2011, in accordance with Article 61 of the Rules of Procedure, the Court ordered the reopening of the oral procedure and summoned the parties to a new hearing which took place on 1 December 2011.

27 The Advocate General delivered his Opinion at the sitting on 8 March 2012, following which the oral procedure was closed.

The application for the reopening of the oral procedure following the Opinion

28 By letter of 9 March 2012, Döhler applied for leave to reply in writing to the Opinion of the Advocate General or for the reopening of the oral procedure. In support of its application, Döhler indicated its disagreement with the position adopted by the Advocate General and claimed that the Opinion had been delivered outside the oral procedure which had been closed on 1 December 2011.

29 First, it must be pointed out that neither the Statute of the Court of Justice of the European Union nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion (order in Case C-17/98 *Emesa Sugar* [2000] ECR I-665, paragraph 2).

30 As regards the reopening of the oral procedure, it must be pointed out that the Court may, of its own motion, on a proposal from the Advocate General or at the request of the parties, order the reopening of the oral procedure under Article 61 of its Rules of Procedure if it considers that it lacks sufficient information or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see Case C-205/06 *Commission* v *Austria* [2009] ECR I-1301, paragraph 13).

31 In the present case, since the Court considers that it has sufficient information to make a ruling and since the case does not have to be resolved on the basis of arguments which were not the subject of debate between the parties, it is not appropriate to grant the request that the oral procedure be reopened.

32 As regards Döhler's argument that the Opinion was delivered outside the oral procedure, it must be pointed out that Article 59 of the Rules of Procedure provides, first, that the Advocate General is to deliver his Opinion orally at the end of the oral procedure and that, secondly, after the Advocate

General has delivered his Opinion, the President of the Court is to declare the oral procedure closed. In the present case, it is established that the oral procedure was not closed before the Advocate General delivered his Opinion at the sitting on 8 March 2012. It must therefore be held that the manner in which the Opinion was delivered in the present case did not in any way infringe the rules applicable before the Court.

33 Consequently, the Court, having heard the Advocate General, considers that the applicant's applications, seeking leave to submit further written observations or the reopening of the oral procedure, must be dismissed.

Consideration of the question referred

34 By its question, the referring court asks, in essence, whether Article 204(1)(a) of the Customs Code is to be interpreted as meaning that non-fulfilment of the obligation to submit the bill of discharge to the supervising office within 30 days of the expiry of the period for discharging the relevant procedure laid down in the first indent of the first subparagraph of Article 521(1) of the Implementing Regulation gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge, including those re-exported outside the territory of the European Union, where the conditions set out in Article 859(9) of the Implementing Regulation are not considered to be fulfilled.

35 Under Article 204(1)(a) of the Customs Code, a customs debt on importation is incurred through non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from the use of the customs procedure under which they are placed, unless it is established that the failure has no significant effect on the correct operation of the procedure in question. It must be noted that, as the Advocate General points out in point 49 of his Opinion, any circumstance not covered by this exception falls within the sphere of application of Article 204 of the Customs Code.

36 Döhler claims that, in the main proceedings, the inward processing procedure was discharged, in accordance with Article 89(1) of the Customs Code, by the re-exportation of goods in the manner, and within the period, prescribed, and that the benefit of that procedure cannot be retroactively withdrawn by the incurrence of a customs debt on the ground that the bill of discharge was not submitted within the prescribed period. Hence, according to Döhler, the non-fulfilment of the obligation to submit the bill of discharge, laid down in the first indent of the first subparagraph of Article 521(1), cannot give rise to a customs debt since that obligation arose after the discharge of the relevant customs procedure.

37 That argument cannot be accepted.

38 No provision of the Customs Code or its Implementing Regulation, in the versions in force at the relevant time, supports the notion that it is necessary, as regards the effect of a failure on the incurrence of a customs debt, pursuant to Article 204 of the Customs Code, to distinguish between an obligation which must be carried out before the discharge of the relevant customs procedure and an obligation which must be carried out after such discharge, or between a 'principal' and 'secondary' obligation.

39 Furthermore, Article 204 of the Customs Code states, in paragraph 1, that a customs debt is incurred through 'non-fulfilment of one of the obligations arising … from the use of the customs procedure', therefore applying to all obligations arising from the relevant customs procedure. In addition, it must be pointed out that Article 859(9) of the Implementing Regulation expressly provides that exceeding the time-limit allowed for submission of the bill of discharge is not a failure which gives rise to a customs debt where certain conditions, set out in that article, are fulfilled.

40 It must be observed that the inward processing procedure in the form of a system of suspension constitutes an exceptional measure intended to facilitate the carrying-out of certain economic activities. That procedure involves the presence, on the customs territory of the European Union, of non-Community goods, which carries the risk that those goods will end up forming part of the economic networks of the Member States without having been cleared through customs (see Case C-234/09 *DSV Road* [2010] ECR I-7333, paragraph 31).

41 Since that procedure involves obvious risks to the correct application of the customs legislation of the European Union and the resulting collection of duties, the beneficiaries of that procedure are required to comply strictly with the obligations resulting therefrom. Similarly, the consequences of non-compliance with their obligations must be strictly interpreted (see Joined Cases C-430/08 and C-431/08 *Terex Equipment and Others* [2010] ECR I-321, paragraph 42).

42 Hence, as pointed out by the Advocate General in point 50 of his Opinion, it is through the discharge of the inward processing procedure based on the corresponding bill of discharge that the final fate of the imported goods is established, by way of derogation from the general arrangement. The bill of discharge is therefore a central document in the operation of the inward processing procedure in the form of a system of suspension, as shown also by the detailed wording which must appear on it in accordance with Article 521(2) of the Implementing Regulation, and the obligation to submit that bill of discharge within 30 days of the expiry of the period for discharge, as laid down in the first indent of the first subparagraph of Article 521(1) of the Implementing Regulation, is of particular importance for customs supervision in the context of that customs procedure.

43 Consequently, the incurrence of a customs debt does not, in circumstances such as those in the main proceedings, have the nature of a penalty, but must rather be regarded as the consequence of the finding that the conditions required to obtain the advantage derived from the application of the inward processing procedure in the form of a system of suspension have not been fulfilled. The procedure implies the granting of a conditional advantage, which cannot be granted if the applicable conditions are not respected, thereby making the suspension inapplicable and consequently justifying the imposition of customs duties.

44 Moreover, the Court has held that Article 859 of the Implementing Regulation contains a validly constituted and exhaustive set of rules on failures, within the meaning of Article 204(1)(a) of the Customs Code, which 'have no significant effect on the correct operation of the temporary storage or customs procedure in question' (Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 43). In the main proceedings, the referring court formulated the question referred on the assumption that the conditions set out in Article 859 were not fulfilled.

45 Therefore, it must be held that the non-fulfilment of an obligation, linked to the benefit of an inward processing procedure in the form of a system of suspension, which must be carried out after the discharge of that customs procedure – in the present case the obligation to submit the bill of discharge within the period of 30 days prescribed in the first indent of the first subparagraph of Article 521(1) of the Implementing Regulation – gives rise, in respect of the entire quantity of the goods covered by the bill of discharge, to a customs debt pursuant to Article 204(1)(a) of the Customs Code, where the conditions set out in Article 859(9) of the Implementing Regulation are not met.

46 As regards the risk, mentioned by the referring court and by Döhler, of the incurrence of a double customs debt in the main proceedings for the goods which were not re-exported, it must be pointed out that the customs union precludes the double taxation of the same goods (Case 252/87 *Kiwall* [1988] ECR 4753, paragraph 11).

47 It is therefore for the referring court to ensure that the customs authorities do not impose a second customs debt for goods in respect of which a customs debt has already been incurred on the basis of an earlier chargeable event.

48 In the light of the above, the answer to the question referred is that Article 204(1)(a) of the Customs Code must be interpreted as meaning that the non-fulfilment of the obligation to submit the bill of discharge to the supervising office within 30 days of the expiry of the period for discharging the relevant procedure laid down in the first indent of the first subparagraph of Article 521(1) of the Implementing Regulation gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge, including those re-exported outside the territory of the European Union, where the conditions set out in Article 859(9) of the Implementing Regulation are not considered to be fulfilled.

Costs

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

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

Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that the non-fulfilment of the obligation to submit the bill of discharge to the supervising office within 30 days of the expiry of the period for discharging the relevant procedure laid down in the first indent of the first subparagraph of Article 521(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007, gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge, including those re-exported outside the territory of the European Union, where the conditions set out in Article 859(9) of Regulation No 2454/93 are not considered to be fulfilled.

[Signatures]