Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

19 January 2012*

(Regulation (EC) No 800/1999 — Article 15(1) and (3) — Agricultural products — System of export refunds — Differentiated export refund — Conditions for granting — Import of the product into the third country of destination — Payment of import duties)

In Case C-392/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Germany), made by decision of 8 July 2010, received at the Court on 4 August 2010, in the proceedings

Suiker Unie GmbH — Zuckerfabrik Anklam

v

Hauptzollamt Hamburg-Jonas,

THE COURT (Fifth Chamber),

composed of E. Levits, acting for the President of the Fifth Chamber, J.-J. Kasel and M. Berger (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Suiker Unie GmbH — Zuckerfabrik Anklam, by P.N. Söhngen, Rechtsanwältin,

— the European Commission, by P. Rossi and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 15(1) and (3) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11), as amended by Commission Regulation (EC) No 444/2003 of 11 March 2003 (OJ 2003 L 67, p. 3) ('Regulation No 800/1999').

2 The reference has been made in proceedings between the German company Suiker Unie GmbH — Zuckerfabrik Anklam ('Suiker Unie'), legal successor to Danisco Zucker GmbH ('Danisco Zucker'), and the Hauptzollamt (principal customs office) Hamburg-Jonas ('the Hauptzollamt') concerning an application for repayment of an export refund awarded to Danisco Zucker by the Hauptzollamt by way of advance payment.

Legal context

Regulation (EEC) No 3665/87

3 Article 17(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) provided that an agricultural product for which the granting of a differentiated export refund was sought 'shall be considered to have been imported when it has been cleared through customs for release for consumption in the non-member country concerned'.

Regulation No 800/1999

4 In the version applicable at the time material to the main proceedings, Regulation No 800/1999, which replaced Regulation No 3665/87, states in recital 17 in the preamble that 'proof should be furnished that the product concerned has been imported into a third country; … completion of customs import formalities consists notably in the payment of import duties applicable in order that the product may be marketed in the third country concerned'.

5 Article 15 of that regulation is worded as follows:

'1. The products shall be imported in their unaltered state into the third country or one of the third countries for which the refund applies within 12 months of the date of acceptance of the export declaration; however, an extension of this limit may be granted in accordance with Article 49.

2. Products shall be considered to have been imported in their unaltered state if there is no evidence whatsoever of processing.

However:

— …

— products processed prior to import shall be considered to have been imported in their unaltered state provided that processing takes place in the third country into which all the products resulting from such processing are imported.

3. A product shall be considered to have been imported when the customs import formalities, in particular those concerning the collection of import duties in the third country, have been completed.

…'

6 Article 16(1) of that regulation provides as follows:

‘1. Proof that customs formalities for importation have been completed shall, as the exporter chooses, be furnished by one of the following documents:

(a) the customs document or a copy or photocopy thereof; …

(b) a certificate of unloading and importation drawn up … in accordance with the rules set out in Annex VI, Chapter III, using the model set out in Annex VII. The date and number of the customs document of import must appear on the certificate concerned.’

7 Paragraph 2 of Chapter III of Annex VI to that regulation states, inter alia, that the certificates of unloading and importation provided for in Article 16(1)(b) of that regulation are also to include ‘verification that the goods have been cleared through customs for definitive importation’.

8 Article 20 of Regulation No 800/1999, which is in Title II, Chapter 1, Section 3, ‘Specific measures of protection of the Community’s financial interests’, states:

‘1. Where:

(a) there are serious doubts as to the real destination of the product;

or

(b) by reason of a difference between the amount of the refund on the exported product and the amount of the non-preferential import duty applicable to an identical product on the date of acceptance of the export declaration, the product is liable to be reimported into the Community,

or

(c) there are definite suspicions that the product, in its unaltered state or after having been processed in a third country, will be reimported into the Community duty free or at a reduced rate of import duty;

the single-rate refund or the part of the refund referred to in Article 18(2) shall be paid only if the product has left the customs territory of the Community in accordance with Article 7, and,

(i) in the case of a non-differentiated refund, the product has been imported into a third country during the 12 months following the date of acceptance of the export declaration or has undergone substantial processing or working in this period within the meaning of Article 24 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”)];

(ii) in the case of a refund differentiated according to destination, the product has been imported in its unaltered state into a specific third country within 12 months of the date of acceptance of the export declaration.

Articles 15 and 16 shall apply to imports into third countries.

In addition, the competent authorities of the Member States may require additional evidence for all refunds proving to their satisfaction that the product has actually been placed on the market in the importing third country or has undergone substantial processing or working within the meaning of Article 24 of [the Customs Code].

…

4. Paragraph 1 shall apply before the refund has been paid.

However, the refund shall be deemed to be unwarranted and shall be reimbursed if the competent authorities find, even after the refund has been paid:

(a) that the product has been destroyed or damaged before being placed on the market in a third country or before undergoing substantial working or processing within the meaning of Article 24 of [the Customs Code] in a third country, unless the exporter can prove to the satisfaction of the competent authorities that exportation was carried out in economic conditions such that the product could reasonably have been marketed in a third country, without prejudice to the second subparagraph of Article 21(2);

(b) that the product is placed under a duty-suspension arrangement in a third country, 12 months after the date of export from the Community, without having undergone in a third country any substantial processing or working within the meaning of Article 24 of [the Customs Code] and that export was not carried out as a normal commercial transaction;

(c) that the product exported is reimported into the Community without having undergone any substantial processing or working within the meaning of Article 24 of [the Customs Code], that the non-preferential duty on import is less than the refund granted, and that export was not carried out as a normal commercial transaction;

(d) that the products listed in Annex V are reimported into the Community:

— after undergoing working or processing in a third country without having attained the level of processing provided for in Article 24 of [the Customs Code], and

— attract a reduced or zero rate of import duty rather than the non-preferential rate.

…'

The Customs Code

9 Article 24 of the Customs Code states:

'Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.'

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

10 By an export declaration of 16 May 2003, Danisco Zucker gave notice of the export to Lithuania of 23 000 kilograms of white sugar and in that regard applied to the Hauptzollamt for the grant of an export refund by way of advance payment. The Hauptzollamt granted that request by decision of 2 June 2003.

11 By letter of 29 August 2003, Danisco Zucker sent to the Hauptzollamt in connection with the export consignment at issue Lithuanian customs documents which in box 37 contained the customs procedure code 5100, which stands for 'temporary importation with re-export of the compensating product' without payment of import duty. The white sugar was processed in Lithuania to make soft drinks and then exported to Latvia and Estonia.

12 By amending decision of 25 November 2003, the Hauptzollamt demanded the repayment of the export refund granted to Danisco Zucker by way of advance payment together with a supplement of 10 %, amounting to EUR 12180.18 in total, on the grounds that the white sugar had not been released for consumption in Lithuania and thus the conditions for granting a differentiated refund were not satisfied.

13 Following an unsuccessful administrative appeal, Danisco Zucker brought proceedings on 2 November 2007 before the Finanzgericht Hamburg (Finance Court, Hamburg). It argued that although according to Article 15(1) of Regulation No 800/1999 products are to be imported in their unaltered state into the third country, none the less according to Article 15(3) a product is to be considered to have been imported when the customs import formalities, in particular those concerning the collection of import duties in the third country, have been completed. According to Danisco Zucker, whereas Article 17(3) of Regulation No 3665/87 had stated that products were considered to have been imported only when they had been cleared through customs for release for consumption in the non-member country concerned, it had to be concluded that, since Article 15 of Regulation No 800/1999 does not refer to 'release for consumption', the Community legislature had deliberately refrained from requiring it.

14 Danisco Zucker submitted that, since the concept of 'import' is not defined in law and since the purpose of export refunds is to relieve the European Union market of the products concerned, the decisive criterion is simply whether or not the customs formalities have been satisfied. By contrast, whether or not customs duties have been paid is irrelevant.

15 Lastly, Danisco Zucker argued that it could not make any difference whether a product is released for inward processing within the framework of the drawback scheme, or, as in a situation such as that at issue in the main proceedings, under duty-suspension arrangements, in the third country. The Court had already ruled that the release of products for inward processing within the framework of the drawback scheme sufficed as proof of import. The applicant, having in the meantime become the legal successor to Danisco Zucker, therefore sought an order setting aside both the amending decision of 25 November 2003 and the administrative appeal decision of 1 October 2007.

16 The Hauptzollamt argued that the action should be dismissed. It stressed that in the present case the white sugar, which was merely released for inward processing without the collection of import duties, remained under the supervision of the customs authorities following its release and until the termination of inward processing by re-export of the compensating products. Accordingly, the white sugar could not have been freely marketed in the third country.

17 In those circumstances, the Finanzgericht Hamburg decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the condition for receipt of a differentiated refund established in Article 15(1) in conjunction with Article 15(3) of … Regulation … No 800/1999 … that is, completion of the customs import formalities, satisfied when in the third country of destination, following release for inward processing without collection of import duties, the product undergoes a substantial processing or working within the meaning of Article 24 of [the Customs Code] and the product resulting from that processing or working is exported to a third country?'

Consideration of the question referred

18 By its question, the referring court asks, in essence, whether Article 15(1) and (3) of Regulation No 800/1999 is to be interpreted as meaning that the condition for receipt of a differentiated refund laid down by that article, namely completion of the customs import formalities, is satisfied when in the third country of destination, following release for inward processing without collection of import duties, the product undergoes a 'substantial processing or working' within the meaning of Article 24 of the Customs Code and the product resulting from that processing or working is exported to a third country.

19 The concept of 'import', as the applicant in the main proceedings rightly points out, is not defined in Regulation No 800/1999. Accordingly, it is necessary to determine the scope of that concept within the context of Article 15 of that regulation, taking into account, first, the aim pursued by 'differentiated' export refunds and, second, the wording of Regulation No 800/1999.

20 Regarding the aim of differentiated export refunds, it is settled case-law that they are intended to gain and maintain access for European Union exports to the markets of the non-member countries concerned and the differentiation in the refund is based on the desire to take account of the particular characteristics of each import market in which the European Union wishes to play a part (see Case C-218/09 *SGS Belgium and Others* [2010] ECR I-2373, paragraph 38 and the case-law cited).

21 It is clear from that case-law that, if it sufficed, in order to qualify for payment of the refund, for the goods exported in the unaltered state simply to be unloaded in the non-member country, the raison d'être of the differentiated system would be disregarded (*SGS Belgium and Others*, paragraph 39). On the contrary, as the Commission points out, the differentiation system requires that the product in question effectively and definitively reaches the country of destination, in the sense that it can be marketed there. That system is thus distinct from the single-rate refund system.

22 It is true that Article 17(3) of Regulation No 3665/87, which is not applicable in the present case, explicitly stated in that regard, unlike Article 15(1) and (3) of Regulation No 800/1999, that a product needed to be 'cleared through customs for release for consumption in the non-member country concerned'. However, first, recital 17 in the preamble to Regulation No 800/1999 states that completion of customs import formalities in a third country consists notably in the payment of import duties applicable in order that the product may be marketed in the third country concerned.

23 Second, Article 15(3) of Regulation No 800/1999 states that the product concerned can only be considered to have been imported into a third country if the customs import formalities, 'in particular those concerning the collection of import duties in the third country', have been completed. Lastly, paragraph 2 of Chapter III of Annex VI to that regulation states that the certificates of unloading and importation provided for in Article 16(1)(b) of that regulation are also to include verification that the goods have been cleared through customs 'for definitive importation'.

24 Accordingly, having regard to all of the above, it does not appear that the Community legislature, in adopting Article 15 of Regulation No 800/1999, waived the requirement that the imported product must have definitively reached the third country concerned so that it can be marketed there.

25 However, it is clear that the release of a product for 'inward processing' is not done with the aim of marketing that product in the third country concerned. On the contrary, the very aim of that system is to exempt from customs duties only those goods which are brought into the national territory purely on a temporary basis in order that they may be worked, repaired or processed, and then re-exported (see Case C-158/08 *Pometon* [2009] ECR I-4695, paragraph 24).

26 Accordingly, the mere release for 'inward processing' within the third country concerned of a product for which a differentiated export refund has been sought cannot be considered as constituting an 'import' into that third country within the meaning of Article 15(3) of Regulation No 800/1999.

27 That finding is not undermined by the fact that the product concerned has undergone substantial processing within the meaning of Article 24 of the Customs Code in that third country. In that regard, it is sufficient to state that the choice of 'inward processing' means that neither the product itself nor the compensating product which contains it will be marketed in the third country concerned.

28 Nor is it called into question by the argument that such an interpretation of Article 15 of Regulation No 800/1999 is incompatible with Article 20 of that regulation, since the latter article states that, under certain circumstances, evidence of substantial processing of a product within the meaning of Article 24 of the Customs Code may dispel doubts as regards observance of the conditions for granting export refunds.

29 Indeed, as the Commission pointed out, Article 20 of Regulation No 800/1999, as an anti-misuse clause, has a different aim from Article 15 of that regulation. Article 20 makes it possible to prevent an unjustified application for repayment of a refund which has already been correctly awarded, but it does not create any new or even different conditions for obtaining an export refund. Accordingly, it does not apply in a situation where, as in the case in the main proceedings, it would appear from the outset that the conditions for granting an export refund are not met.

30 In the light of the foregoing considerations, the answer to the question referred is that Article 15(1) and (3) of Regulation No 800/1999 must be interpreted as meaning that the condition for receipt of a differentiated refund laid down by that article, namely completion of the customs import formalities, is not satisfied when in the third country of destination, following release for inward processing without collection of import duties, the product undergoes a 'substantial processing or working' within the meaning of Article 24 of the Customs Code and the product resulting from that processing or working is exported to a third country.

Costs

31 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 15(1) and (3) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 444/2003 of 11 March 2003, must be interpreted as meaning that the condition for receipt of a differentiated refund laid down by that article, namely completion of the customs import formalities, is not satisfied when in the third country of destination, following release for inward processing without collection of import duties, the product undergoes a 'substantial processing or working' within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and the product resulting from that processing or working is exported to a third country.

[Signatures]