Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

27 June 2013*

(Community Customs Code — Regulation (EEC) No 2913/92 — Goods in temporary storage — Non-Community goods — External Community transit procedure — Point at which a customs-approved treatment or use is assigned — Acceptance of the customs declaration — Release of the goods — Customs debt)

In Case C-542/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decision of 30 September 2011, received at the Court on 24 October 2011, in the proceedings

Staatssecretaris van Financiën

v

Codirex Expeditie BV,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, A. Rosas, E. Juhász (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: N. Jääskinen,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 December 2012,

after considering the observations submitted on behalf of:

— the Netherlands Government, by M. Noort and C. Wissels, acting as Agents,

— the Greek Government, by I. Bakopoulos and I. Pouli, acting as Agents,

— the European Commission, by B.-R. Killmann and W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2013,

gives the following

* Language of the case: Dutch.

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 request has been made in proceedings between the Staatssecretaris van Financiën (State Secretary for Finance; 'the Staatssecretaris') and Codirex Expeditie BV ('Codirex') concerning tax assessment notices relating to customs duties and value added tax ('VAT').

Legal context

3 Under Article 4(15) to (17) and (20) of the Customs Code, for the purposes of the code:

'(15) "Customs-approved treatment or use of goods" means:

(a) the placing of goods under a customs procedure;

(b) their entry into a free zone or free warehouse;

(c) their re-exportation from the customs territory of the Community;

(d) their destruction;

(e) their abandonment to the Exchequer.

(16) "Customs procedure" means:

(a) release for free circulation;

(b) transit;

…

(17) "Customs declaration" means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure.

…

(20) "Release of goods" means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed.'

4 Article 37 of that code provides:

'(1) Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.

(2) They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and without prejudice to Article 82(1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.'

5 Article 40 of the Customs Code provides, inter alia, that goods entering the customs territory of the Community are to be presented to customs by the person who brings them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry.

6 Under Article 48 of the Customs Code, '[n]on-Community goods presented to customs shall be assigned a customs-approved treatment or use authorised for such non-Community goods'.

7 Article 50 of that code is worded as follows:

'Until such time as they are assign[ed] a customs-approved treatment or use, goods presented to customs shall, following such presentation, have the status of goods in temporary storage. Such goods shall hereinafter be described as "goods in temporary storage".'

8 Article 51 of the Customs Code provides:

'(1) Goods in temporary storage shall be stored only in places approved by the customs authorities under the conditions laid down by those authorities.

(2) The customs authorities may require the person holding the goods to provide security with a view to ensuring payment of any customs debt which may arise under Articles 203 or 204.'

9 Under Article 59 of the Customs Code:

'(1) All goods intended to be placed under a customs procedure shall be covered by a declaration for that customs procedure.

(2) Community goods declared for an export, outward processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community or are destroyed or the customs declaration is invalidated.'

10 Article 62 of that code is worded as follows:

'(1) Declarations in writing shall be made on a form corresponding to the official specimen prescribed for that purpose. They shall be signed and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.

(2) The declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.'

11 Under Article 63 of the Customs Code:

'Declarations which comply with the conditions laid down in Article 62 shall be accepted by the customs authorities immediately, provided that the goods to which they refer are presented to customs.'

12 Article 67 of the Customs Code provides:

'Save as otherwise expressly provided, the date to be used for the purposes of all the provisions governing the customs procedure for which the goods are declared shall be the date of acceptance of the declaration by the customs authorities.'

13 Under Article 68 of that code, the customs authorities may, for the purposes of verifying the declarations accepted by them, examine the documents covering the declaration and the documents accompanying it; and they may examine the goods and take samples for analysis or for detailed examination. The declarant's rights and obligations are laid down, inter alia, in Articles 69 and 70 of the code.

14 Article 71 of the Customs Code provides that the results of the verification of the declaration are to be used for the purposes of applying the provisions governing the customs procedure under which the goods are placed and that, where the declaration is not verified, those provisions are to be applied on the basis of the particulars contained in the declaration.

15 Under Article 72(1) of the Customs Code:

'The customs authorities shall take the measures necessary to identify the goods where identification is required in order to ensure compliance with the conditions governing the customs procedure for which the said goods have been declared.'

16 It appears from Article 73(1) of that code that, as a general rule, where the conditions for placing the goods under the procedure in question are met, the customs authorities are to release the goods as soon as the particulars in the declaration have been verified or accepted without verification.

17 The first sentence of Article 74(1) of the Customs Code provides:

'Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured.'

18 Under Article 91(1)(a) of the Customs Code:

'The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures'.

19 Article 96(1) of that code provides:

'The principal shall be the [holder] of ... the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.'

20 Article 203 of the Customs Code provides:

'(1) A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

(2) The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

(3) The debtors shall be:

— the person who removed the goods from customs supervision,

— any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

— any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision,

and

— where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.'

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

21 A consignment of chilled beef which had been shipped in a container from Brazil to the Netherlands was unloaded at the Port of Rotterdam (Netherlands) by Seaport International. While waiting for the goods to be assigned a customs-approved treatment or use, the company stored the consignment of beef on its premises.

22 On 6 November 2007, while the container was on the premises of Seaport International, Codirex submitted a customs declaration in electronic form with a view to having the consignment placed under the external Community transit procedure. The customs authorities accepted that declaration immediately. At that time, the goods had the status of 'goods in temporary storage' within the meaning of Article 50 of the Customs Code.

23 After affixing customs seals to the container, the customs authorities released it on 7 November 2007. The container was transported by road to Eurofrigo BV ('Eurofrigo'), the recipient undertaking, whose place of business is on the Maasvlakte industrial estate (Netherlands).

24 Since they did not receive any confirmation that the goods had arrived at Eurofrigo, the customs authorities carried out an investigation. On 27 December 2007, Eurofrigo informed them that, although the customs seals on the container had remained intact, the consignment delivered contained two packages fewer than the number quoted on the customs declaration.

25 On 17 February 2008, the customs authorities asked Codirex, as declarant, to provide more detailed information about the missing goods. When Codirex did not respond, the authorities sent it a notice of assessment on 3 July 2008 requesting payment of the customs duties and VAT.

26 That notice of assessment was confirmed by the tax inspector with whom Codirex filed an objection to it.

27 Codirex contested the tax inspector's decision before the Rechtbank te Haarlem (District Court, Haarlem).

28 In its judgment, the Rechtbank te Haarlem found that non-Community goods declared with a view to their being placed under the customs transit procedure retain the status of goods in temporary storage until such time as the customs authorities release them and that, consequently, it was not possible in the circumstances to rely upon the provisions regulating the customs transit procedure as against Codirex. Referring to the judgment in Case C-140/04 *United Antwerp Maritime Agencies and Seaport*

Terminals [2005] ECR I-8245, paragraphs 35 to 39, the Rechtbank te Haarlem ruled that, between the period of temporary storage and the time when the customs authorities released the goods for transit, Codirex – which had no power of physical disposal over the goods – could not be regarded as the customs debtor within the meaning of the fourth indent of Article 203(3) of the Customs Code.

29 The Staatssecretaris brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) against that decision. That court took the view that an interpretation of the Customs Code was necessary for it to be able to give a decision.

30 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'At what point in time are non-Community goods assigned a customs-approved treatment or use, for the purposes of Article 50 of the Community Customs Code, where goods with the status of goods "in temporary storage" are declared for placing under the external Community transit procedure?'

Consideration of the question referred

31 According to the information sent by the referring court, examination of the case is predicated on the assumption that, at the time of the customs declaration, all the packages declared and intended for external Community transit were in the container on Seaport International's site, but two packages had disappeared before the container was sealed by customs.

32 It is clear from paragraphs 1 and 2 of Article 203 of the Customs Code that the unlawful removal from customs supervision of goods liable to import duties gives rise, from the moment of that removal, to a customs debt on importation. 'Unlawful removal from customs supervision' covers any act or any omission the result of which is to prevent, even if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from carrying out the monitoring provided for under Article 37(1) of the Customs Code (see *United Antwerp Maritime Agencies and Seaport Terminals*, paragraph 28 and the case-law cited).

33 If, at the time when goods are removed from customs supervision, they have already been placed under the external Community transit procedure, it is the holder of that procedure who – as the 'principal' for the purposes of Article 96(1) of the Customs Code – is required to fulfil the obligations arising from the use of that procedure and who is liable for payment of the customs debt in accordance with the fourth indent of Article 203(3) of that code, if the first three indents of paragraph 3 do not apply.

34 On the other hand, if, at the time of that removal, the goods have not yet been placed under the external Community transit procedure, but are still in temporary storage, the person liable for payment of the customs debt – if the first three indents of Article 203(3) of the Customs Code do not apply – is the person who, being responsible for fulfilling the obligations arising from temporary storage, holds the goods, after they have been unloaded, in order to move or store them (see, to that effect, *United Antwerp Maritime Agencies and Seaport Terminals*, paragraph 39 and the operative part). On the basis of the information in the documents before the Court, that person is not Codirex.

35 Consequently, it is necessary to establish precisely when, pursuant to the Customs Code, temporary storage of goods ends and their coverage by the external Community transit procedure begins.

36 First of all, it is apparent from Case C-66/99 *D. Wandel* [2001] ECR I-873, paragraphs 35 to 38 and 45 – a judgment given in relation to imported goods intended for release for free circulation – that those goods remain in temporary storage until released and that their customs status does not change until they are released by the customs authorities.

37 In that connection, it should be recalled that, under Article 4(16)(a) of the Customs Code, release for free circulation is a customs procedure, too, and the placing of goods under that procedure is also the assignment of a customs-approved treatment or use.

38 Accordingly, as the Advocate General states in point 60 of his Opinion, despite the fact that *D. Wandel* related to a different procedure from the procedure at issue in the main proceedings, the Court's reasoning in that judgment can be transposed to the present case.

39 Secondly, under Article 4(17) of the Customs Code, the customs declaration constitutes the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure.

40 Admittedly, Article 67 of the Customs Code provides that, save where otherwise expressly provided, the date to be used for the purposes of all the provisions governing the customs procedure for which the goods are declared is that of the acceptance by the customs authorities of that declaration.

41 Nevertheless, that acceptance is not sufficient alone to put an end to temporary storage.

42 Article 37(2) of the Customs Code provides that goods brought into the customs territory of the Community are to remain under customs supervision for as long as is necessary for their customs status to be determined and, in the case of non-Community goods and without prejudice to Article 82(1) of that code, until their customs status is changed.

43 Under Article 50 of the Customs Code, goods presented to customs are thereafter in temporary storage until they are assigned a customs-approved treatment or use.

44 The placing of goods under a customs procedure is, by virtue of Article 4(15)(a) of the Customs Code, the assignment of a customs-approved treatment or use and, under Article 4(16)(b) of the code, transit constitutes a customs procedure. Article 4(20) of the Customs Code defines the 'release of goods' as the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed.

45 It follows that, in circumstances such as those of the case before the referring court, goods remain in temporary storage until they are covered by external Community transit.

46 However, goods cannot be in external Community transit until all the conditions for that transit are met.

47 As regards those conditions, it should be noted that, where appropriate, the customs declarations must be verified; measures to ensure identification of the goods in question must be adopted; and the provision of a guarantee of payment of any customs debt must be required.

48 Accordingly, the customs authorities may, after accepting a customs declaration pursuant to Article 68 of the Customs Code, verify that declaration by checking documents and/or inspecting the goods.

49 So far as concerns the measures adopted by the customs authorities to ensure identification, the verification provided for under Article 68 of the Customs Code must – as the Commission has observed – be viewed in conjunction with Articles 71 and 73(1) of that code and means that the formal acceptance of a declaration may be followed by the adoption of measures such as those provided for under Article 72 of the code, in order to ensure the correct application of the customs procedure governing the goods. As it is, one of the steps taken by the authorities in the case before the referring court was to seal the container between the acceptance of the declaration and the release of the goods, in order to ensure compliance with the external Community transit procedure.

50 As regards the obligation under Article 91(1)(a) of the Customs Code to provide a guarantee, external Community transit allows the movement of non-Community goods from one point to another within the customs territory without import duties being levied on those goods. That movement is therefore subject to the very strict conditions set out in Articles 91(2), 94 and 96 of the code. They provide, inter alia, that, as a general rule, a guarantee must be provided in order to ensure payment of any customs debt which may be incurred in respect of the goods; that the goods must be produced intact at the customs office of destination by the prescribed deadline; and that the measures adopted by the customs authorities for ensuring identification must have been observed.

51 Consequently, where errors are found during the verification of declarations, or the obligations flowing from the adoption of measures to ensure identification are not complied with or the required guarantee is not lodged, the goods may not be covered by external Community transit.

52 By contrast, where the conditions for placing goods under the customs procedure in question are fulfilled, the customs authorities are to release them, in accordance with Article 73(1) of the Customs Code, as soon as the particulars in the declaration have been verified or accepted without verification.

53 The need or the possibility for the customs authorities to apply verification or identification measures, or to require guarantees, does not permit the inference that all the conditions for coverage by the external Community transit procedure can be fulfilled solely by dint of the acceptance of the customs declaration.

54 Furthermore, the fact that goods, such as those at issue in the case before the referring court, cannot be covered by the external Community transit procedure until they have been released follows from the definition in Article 4(20) of the Customs Code, which emphasises the fact that the goods are to be made available by the customs authorities 'for the purposes stipulated by the customs procedure under which they are placed'.

55 In the light of the foregoing, the answer to the question referred is that Articles 50, 67 and 73 of the Customs Code must be interpreted as meaning that the point at which non-Community goods, covered by a customs declaration accepted by the customs authorities for placing under the external Community transit procedure and having the status of goods in temporary storage, are placed under that customs procedure and thereby assigned a customs-approved treatment or use is the moment at which they are released.

Costs

56 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:

Articles 50, 67 and 73 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 point at which non-Community goods, covered by a customs declaration accepted by the customs authorities for placing under the external Community transit procedure and having the status of goods in temporary storage, are placed under that customs procedure and thereby assigned a customs-approved treatment or use is the moment at which they are released.

[Signatures]