Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 October 2020*

(Reference for a preliminary ruling – Union Customs Code – Article 124(1)(k) – Extinction of the customs debt in the event the goods are not used – Concept of 'goods that have been used' – Inward processing procedure – Customs debt incurred through non-compliance with requirements provided for under the inward processing procedure – Bill of discharge not submitted within the prescribed time limit)

In Case C-476/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kammarrätten i Göteborg (Administrative Court of Appeal, Gothenburg, Sweden), made by decision of 19 June 2019, received at the Court on 19 June 2019, in the proceedings

Allmänna ombudet hos Tullverket

v

Combinova AB,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan, and N. Jääskinen (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Allmänna ombudet hos Tullverket, by M. Jeppsson, acting as Agent,

– the Czech Government, by M. Smolek, O. Serdula and J. Vláčil, acting as Agents,

– the Estonian Government, by N. Grünberg, acting as Agent,

– the European Commission, by K. Simonsson and F. Clotuche-Duvieusart, acting as Agents,

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

* Language of the case: Swedish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 124(1)(k) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum OJ 2016 L 267, p. 2; 'the Customs Code').

2 The request has been made in proceedings between the Allmänna ombudet hos Tullverket (General representative of the Customs Authority, Sweden; 'AOT') and Combinova AB concerning a customs debt arising on the importation of goods under the inward processing procedure.

Legal context

3 Recital 38 of the Customs Code states:

'It is appropriate to take account of the good faith of the person concerned in cases where a customs debt is incurred through non-compliance with customs legislation and to minimise the impact of negligence on the part of the debtor.'

4 Article 5 of that code provides:

'For the purposes of the Code, the following definitions shall apply:

…

(16) "customs procedure" means any of the following procedures under which goods may be placed in accordance with the Code:

…
(b) special procedures;

…

(37) "processing operations" means any of the following:
(a) the working of goods, including erecting or assembling them or fitting them to other goods;
(b) the processing of goods;

…
(d) the repair of goods, including restoring them and putting them in order;

…'

5 Article 79(1) and (2) of that code provides as follows:

'1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

(b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;

(c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

2. The time at which the customs debt is incurred shall be either of the following:

(a) the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;

(b) the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.'

6 Article 124 of the Customs Code states:

'1. Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

…

(k) where, subject to paragraph 6, the customs debt was incurred pursuant to Article 79 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union.

…

6. In the case referred to in point (k) of paragraph 1, the customs debt shall not be extinguished in respect of any person or persons who attempted deception.

…'

7 Article 211(1) of that code is worded as follows:

'An authorisation from the customs authorities shall be required for the following:

(a) the use of the inward or outward processing procedure, the temporary admission procedure or the end-use procedure;

…

The conditions under which the use of one or more of the procedures referred to in the first subparagraph or the operation of storage facilities is permitted shall be set out in the authorisation.'

8 Article 256 of the Customs Code, concerning the scope of the inward processing procedure, provides in paragraph 1 thereof:

'Without prejudice to Article 223, under the inward processing procedure non-Union goods may be used in the customs territory of the Union in one or more processing operations without such goods being subject to any of the following:

(a) import duty;

(b) other charges as provided for under other relevant provisions in force;

(c) commercial policy measures, in so far as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.'

9 Article 257(1) of the code provides:

'The customs authorities shall specify the period within which the inward processing procedure is to be discharged, in accordance with Article 215.

That period shall run from the date on which the non-Union goods are placed under the procedure and shall take account of the time required to carry out the processing operations and to discharge the procedure.'

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

10 On 23 November 2017, Combinova imported, with authorisation from the Tullverket (Customs Authority, Sweden), goods under the inward processing procedure referred to in Article 256 of the Customs Code. Those goods were then re-exported on 11 December 2017.

11 Although the bill of discharge should have been submitted by Combinova to the Customs Authority on 22 February 2018 at the latest, that is to say 30 days after the expiry, on 23 January 2018, of the period for discharge under that procedure, the Customs Authority received that bill only on 6 March 2018.

12 Taking the view that the failure to submit the bill of discharge within the required time period gave rise to a customs debt under Article 79 of the Customs Code, the Customs Authority decided to debit Combinova for customs duties of 121 Swedish Kronor (SEK) (approximately EUR 11.50) plus value added tax in the amount of SEK 2 790 (approximately EUR 265).

13 By judgment of 22 August 2018, the Förvaltningsrätten i Göteborg (Administrative Court, Gothenburg, Sweden), before which Combinova brought an action against the decision of the Customs Authority, considered that that decision was correct and that Combinova had failed to demonstrate that there were any grounds for extinguishing the customs debt.

14 The AOT appealed against that judgment before the Kammarrätten i Göteborg (Administrative Court of Appeal, Gothenburg, Sweden) claiming, in favour of Combinova, that the customs debt should be extinguished.

15 The AOT claims in that regard that, under Article 79(2)(a) of the Customs Code, that customs debt was incurred at the time at which the bill of discharge should have been submitted, namely 22 February 2018. However, at that date, the goods in question in the main proceedings had already left the customs territory of the European Union on account of their being re-exported on 11 December 2017. There had thus been no use of the goods at the time at which the customs debt arose or thereafter. According to the AOT, the use of the goods prior to the time at which the

customs debt arose was not connected to that customs debt being incurred and, further, was in accordance with the processing authorised by the Customs Authority. Lastly, the AOT claims there are no indications whatsoever that Combinova attempted to commit fraud.

16 In those circumstances, according to the AOT, it cannot be considered that the goods in question in the main proceedings have been used in such a way as could prevent the customs debt being extinguished pursuant to Article 124(1)(k) of the Customs Code.

17 For its part, the Customs Authority, which despite not being the entity that brought the appeal before the referring court submitted its observations in the context of the procedure, does not claim that the goods have been consumed. In its view the question is rather whether the goods have been 'used' within the meaning of Article 124(1)(k) of the Customs Code. The concept of 'goods that have been used', which is not defined in the EU customs legislation, can be understood in two ways, either (i) the goods have been used in the way they are intended to be used, or (ii) they have been used in some way, meaning that they have been processed. The basic idea behind the inward processing procedure is that the goods are processed in some way. In the present case, under the authorisation for inward processing, Combinova would have had to repair and calibrate various instruments, which, in accordance with Article 5(37) of the Customs Code, are processing operations.

18 The Customs Authority adds that, as is clear from Article 256(1) of the Customs Code, under the inward processing procedure non-Union goods may be used. In light of that provision, the expression 'goods that have been used' therefore means that the goods must be processed in some way.

19 In the present case, since it has not been alleged that the goods in question in the main proceedings have not been processed during the inward processing procedure, the conditions for extinguishing the customs debt under Article 124(1)(k) of the Customs Code have not been satisfied.

20 The referring court has doubts as to the meaning of the concept of 'goods that have been used' referred to in the latter provision. It states that that concept appears in several instances in the Customs Code and that Article 256 thereof provides that, under the inward processing procedure, non-Union goods may be used in the customs territory of the Union in one or more processing operations without the goods being subject, inter alia, to import duties.

21 Thus it is necessary, first, to establish the meaning of the concept of 'goods that have been used' for the purpose of Article 124(1)(k) of the Customs Code and, second, as a matter of principle, to determine the time at which that provision applies.

22 In those circumstances, the Kammarrätten i Göteborg (Administrative Court of Appeal, Gothenburg) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'A customs debt on importation or exportation incurred under Article 79 of the Customs Code is to be extinguished in accordance with Article 124(1)(k) [of that code] if there is sufficient evidence to the satisfaction of the customs authorities that the goods have not been used or consumed and have been removed from the customs territory of the Union. Does the term 'used' mean that goods have been processed or refined for the purpose for which authorisation was granted to a company for those goods, or does the term concern a use which goes beyond that processing or refining? Is it relevant whether the use takes place before or after the customs debt arose?'

Consideration of the question referred

23 By its question, the referring court asks, in essence, whether Article 124(1)(k) of the Customs Code must be interpreted as meaning that the use of the goods referred to in that provision concerns only use which goes beyond the processing operations authorised by the customs authority under the inward processing procedure provided for in Article 256 of that code, or whether it also includes use in accordance with those authorised processing operations.

24 In accordance with Article 256 of the Customs Code, under the inward processing procedure non-Union goods may be used in the customs territory of the Union in one or more processing operations without the goods being subject, inter alia, to import duties.

25 In the present case, it is apparent from the order for reference that Combinova imported, on 23 November 2017, goods under the inward processing procedure after having been issued authorisation to do so by the Customs Authority in accordance with Article 211 of the Customs Code, and that those goods were re-exported on 11 December 2017. However, since Combinova did not submit the bill of discharge within 30 days of the expiry, on 23 January 2018, of the period for discharge under that procedure, set in accordance with Article 257 of that code, a customs debt was incurred pursuant to Article 79 of that code.

26 In accordance with the latter provision, for goods liable to import duties, a customs debt on importation is incurred through non-compliance with, inter alia, a condition governing the placing of non-Union goods under a customs procedure.

27 However, in accordance with Article 124(1)(k) of the Customs Code, the customs debt incurred under Article 79 of that code is extinguished if it is proven, first, that the goods have not been used or consumed and, second, that the goods have been removed from the customs territory of the Union, albeit that, even in such a case, as Article 124(6) of that code provides, 'the customs debt shall not be extinguished in respect of any person or persons who attempted deception'.

28 Although the Estonian and Czech Governments and the AOT maintain, in essence, that the use of the goods referred to in Article 124(1)(k) of the Customs Code refers only to use which goes beyond the processing operations authorised by the customs authority under the inward processing procedure, by contrast, the Commission takes the view, relying on the usual meaning of the term 'use' in everyday language, that the use referred to also covers the processing of the goods in accordance with that authorisation.

29 In that regard, it should be noted from the outset that the Customs Code does not contain a definition of the concept of 'goods that have been used' for the purposes of that code.

30 Furthermore, a comparative analysis of the various language versions of the Customs Code shows that in some language versions, such as those versions in Swedish, English, Finnish and Dutch, the same expression is used in Article 256(1) and Article 124(1)(k), while in other language versions, such as the versions in French, German and Romanian, a different expression is employed in each of those provisions. Thus, in the French-language version, Article 124(1)(k) employs the word 'utilisées' and Article 256(1) employs the expression 'mettre en œuvre'. Similarly, in the German-language version, the words 'verwendet' and 'unterzogen werden' are employed, respectively. As regards the Romanian-language version, the words 'utilizate' and 'folosirea' are used, respectively.

31 In that context, it must be borne in mind that, according to the Court's settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Where there is divergence between the various language versions of an EU

legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgments of 15 November 2012, *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraph 48; of 15 October 2015, *Grupo Itevelesa and Others*, C-168/14, EU:C:2015:685, paragraph 42; and of 23 January 2020, *Bundesagentur für Arbeit*, C-29/19, EU:C:2020:36, paragraph 48).

32 In that regard, Article 124(1)(k) of the Customs Code, read in the light of recital 38 and in conjunction with Article 124(6) of the code, seeks, as the Czech Government noted in its written observations, to allow – in the absence of attempted deception – a customs debt incurred under Article 79 of that code to be extinguished in the event that, despite certain conditions or obligations flowing from that code not having been complied with, it is proven that the goods have not been used in such a way that justifies the imposition of duties and that they have left the customs territory of the European Union (see, by analogy, judgments of 5 October 1983, *Esercizio Magazzini Generali and Mellina Agosta*, 186/82 and 187/82, EU:C:1983:262, paragraph 14, and of 2 April 2009, *Elshani*, C-459/07, EU:C:2009:224, paragraph 29).

33 The concept of 'goods that have been used' for the purpose of Article 124(1)(k) of the Customs Code must therefore be understood as covering not all use but only such use giving rise, on its own, to a customs debt.

34 Under the inward processing procedure, goods which are subject only to authorised processing procedures and subsequent re-exportation out of the territory of the European Union, and are not placed on the market or subject to another comparable use, are not subject to import duties.

35 It follows that, as regards goods placed under that procedure, the use of goods to which Article 124(1)(k) of the Customs Code refers must necessarily be understood as covering only use going beyond processing procedures authorised by the customs authority.

36 If the use of the goods referred to in that provision also included use in accordance with those processing procedures, extinguishing, in accordance with Article 124(1)(k) of the Customs Code, the customs debt incurred under Article 79 of that code would be precluded under the inward processing procedure, which would go against the objective of the first of those provisions.

37 Article 124(1)(k) of the Customs Code, in the light, in particular, of the referral that that provision makes to Article 79 of the code, is a provision applicable to all the customs procedures provided for in that code.

38 It is true that the Court has held, as regards the inward processing procedure provided for by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), which was replaced by the Customs Code, that, 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 and, similarly, the consequences of non-compliance with their obligations must be strictly interpreted. The Court deduced from this that the non-fulfilment of the obligation to submit the bill of discharge within the time period prescribed 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 (see, to that effect, judgment of 6 September 2012, *Döhler Neuenkirchen*, C-262/10, EU:C:2012:559, paragraphs 41 and 48).

39 Nevertheless, as regards the case in the main proceedings, it must be noted that the Court is asked not whether a customs debt is incurred in the event that the bill of discharge is submitted late under the inward processing procedure, since the fact that such a debt was incurred under Article 79 of the Customs Code is common ground in the present case, but whether that debt may be extinguished under Article 124(1)(k) of that code.

40 It is apparent from the wording of Article 124(1)(k) that a customs debt incurred under Article 79 of the code is extinguished when the conditions provided for in the first of those provisions are satisfied, except in the event of attempted deception.

41 In the present case, the customs debt incurred under Article 79 of the Customs Code as a result of Combinova's late submission of the bill of discharge is intended to be extinguished if, inter alia, as is apparent from paragraph 35 above, the goods in question in the main proceedings are not used in a way that goes beyond the processing operations authorised by the Customs Authority, which is a matter for the referring court to ascertain.

42 In addition, the referring court asks whether the fact that the use of the goods in question in the main proceedings took place before or after the customs debt was incurred is of any significance as regards the interpretation of the concept of 'goods that have been used' for the purposes of Article 124(1)(k) of the Customs Code.

43 In that regard, the latter provision contains no indication that the time at which the use of the goods referred to in that provision took place is of any significance for the purpose of establishing whether the goods in question have been used for the purposes of that provision.

44 However, it is necessary to note that, under Article 79(2)(a) of the Customs Code, when the customs debt is incurred on account of the late submission of the bill of discharge and when the goods have already been re-exported, those goods cannot be considered to have been used within the meaning of Article 124(1)(k) of that code, in the customs territory of the Union after that customs debt was incurred.

45 In the light of all the foregoing considerations, the answer to the question referred is that Article 124(1)(k) of the Customs Code must be interpreted as meaning that the use of the goods referred to in that provision concerns only use which goes beyond the processing operations authorised by the customs authority under the inward processing procedure provided for in Article 256 of that code, and not use in accordance with those authorised processing operations.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

Article 124(1)(k) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as meaning that the use of the goods referred to in that provision concerns only use which goes beyond the processing operations authorised by the customs authority under the inward processing procedure provided for in Article 256 of that code, and not use in accordance with those authorised processing operations.

[Signatures]