JUDGMENT OF THE COURT (THIRD CHAMBER)
15 DECEMBER 1983 [1]

Papierfabrik Schoellershammer Heinrich August Schoeller & Söhne GmbH & Co. KG v Commission of the European Communities

(Repayment of import duties)

Case 283/82

European Communities — Own resources — Repayment or remission of import or export duties — Regulation No 1430/79 — General provision based on equitable grounds — Scope)

(Regulation No 1430/79, Art. 13)

Article 13 of Regulation No 1430/79, by virtue of which import duties may be repaid or remitted in special circumstances where no negligence or deception is attributable to the person concerned, appears, in the light of the preamble to the regulation, to be a general equitable provision designed to cover situations other than those which had most often arisen in practice and for which special provision could be made when the regulation was adopted. Since Articles 3 and 4 of the regulation in question, which are applicable where goods have been erroneously entered for free circulation, were not drawn up to cover the particular situation of an undertaking which has been unable to benefit from those provisions because the error was discovered only after re-exportation of the goods and which was thus unable to complete the necessary formalities to correct the original declaration, there is no reason in such a case to exclude the possibility of applying Article 13.

In Case 283/82

PAPIERFABRIK SCHOELLERSHAMMER HEINRICH AUGUST SCHOELLER & SÖHNE GMBH & CO. KG, Düren, Federal Republic of Germany, represented by Messrs Raupach, Käuffer and Garsky, 15 Goethestraße, 5160 Düren, with

1 — Language of the Case: German.

an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Christoph Bail, a member of its Legal Department, and Alberto Prozzillo, a Legal Adviser of the Commission, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION requesting the Court to declare void the Commission's decision of 9 July 1982 establishing that the repayment of import duties is not justified in an individual case,

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

The repayment or remission of import or export duties is governed by Council Regulation (EEC) No 1430/79 of 2 July 1979 (Official Journal 1979, L 175, p. 1).

In particular, Articles 3 and 4 provide for the repayment or remission of import

duties where "the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods which were entered in error for free circulation instead of being placed under another customs regime".

Article 13 of the same regulation provides that import duties may be repaid or remitted in situations resulting from special circumstances in which no negligence or deception may be attributed to the person concerned. The provisions for the implementation of that article are laid down in Commission Regulation (EEC) No 1575/80 of 20 June 1980 (Official Journal 1980, L 161, p. 13). If the national authority considers that the application submitted by the person concerned is supported by sufficient evidence, it submits the case to the Commission, which takes a decision after consulting a group of experts composed of representatives of all the Member States meeting within the framework of the Committee on Duty-Free Arrangements.

In October 1981 the applicant entered for free circulation five consignments of drawing paper from Switzerland and paid customs duties on them. The paper had been purchased in order to fulfil an order which exceeded the applicant's production capacity. The paper was intended for export to Japan and the only operation carried out by the applicant was to affix new labels to the consignments and then to load them immediately into containers which were shipped to Yokohama.

According to the applicant, the consignments of paper were entered for free circulation as a result of an error attributable to the very short period between the arrival of the goods and their reshipment, the unusual nature of the operation and lack of experience on the part of the applicant's employee who was responsible for dealing with the customs formalities. The error was noticed only after the goods had been dispatched, and an application for repayment of the duty was made on 9 November 1981.

The German customs authorities refused the applicant the benefit of Articles 3 and 4 of Regulation No 1430/79, stating that the duty could not be repaid in that particular case because the goods had not been exported under customs supervision. The applicant therefore asked for Article 13 of the regulation to be applied and that request was forwarded to the Commission, which gave its decision on the basis of the opinion of the experts meeting within the Committee on Duty-Free Arrangements. At its meeting of 19 May 1982 the majority of the delegates considered that there were no grounds for granting the applicant's application of 9 November 1981. In their opinion, the case submitted must be examined in the light of the provisions of Articles 3 and 4, which precluded the application of Article 13. The Commission notified its negative decision to the Government of the Federal Republic of Germany on 9 July 1982.

By an application received at the Court Registry on 25 October 1982, the applicant brought an action under Article 173 of the EEC Treaty for a declaration that that decision was void.

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and assigned the case to the Third Chamber.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare void the defendant's decision of 9 July 1982 relating to proceedings for the repayment of import duties under Article 13 of Regulation No 1430/79 and declare that the repayment of DM 24 703.96 in respect of import duties is justified;

2. Order the defendant to pay the costs.

The *defendant* contends that the Court should:

1. Dismiss the application;

2. In the alternative, dismiss the claim for a declaration and refer the case back to the Commission for more extensive consideration;

3. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

The *applicant* alleges that it may be inferred from the statement of reasons accompanying the decision of 9 July 1982 that no detailed investigation of the facts was carried out. The decision was taken on a general basis without any attempt to establish whether the person concerned had acted negligently. Thus no account was taken of the special circumstances of the case; that constitutes a misuse of powers.

The fact that the imported products were dealt with and re-exported in only a few hours is such a rare occurrence that it should be regarded as a special circumstance. As a result of that circumstance the applicant was obliged to depart from the usual practice of making collective monthly returns, so as to fulfil the requirement of applying for repayment under Articles 3 and 4 before re-exportation.

Account should also be taken of the particular circumstances of the applicant's situation, in so far as the employee in question had been assigned to his post only a few weeks earlier and was confronted with an exceptional situation which would have taken even an experienced employee unawares.

When the benefit of Article 13 is withheld on the ground of negligent conduct, account should be taken only of gross negligence, and there is no question of that in this case.

The *Commission* contends that Article 13 is not applicable to this case. That article applies only to situations other than those which are governed by the preceding provisions, that is to say situations which could not, at the time of the adoption of the regulation, be covered by specific rules. The applicant's situation is governed by Articles 3 and 4 in Section B of Title I, which deal with goods erroneously entered for free circulation. The applicant could not claim the benefit of those provisions since it had failed immediately to enter the goods "for the customs regime for which they were intended" and had even neglected to export the goods under customs supervision. In order to be entitled to affix labels to the goods the applicant required either a declaration from a customs warehouse or an authorization

for inward processing, and that procedure was not followed.

The Commission draws the Court's attention to the amendment made to Regulation No 1430/79 by Council Regulation No 1672/82 of 24 June 1982 (Official Journal 1982, L 186, p. 1). The new Article 13 (2), which has been in force since 1 July 1982, extends the possibility of repayment in certain circumstances to cases where repayment or remission could not be granted under the earlier provisions because of the failure of the person concerned to comply with procedural requirements. In the Commission's view, the legislature thus considered that the earlier version of the regulation did not permit repayment in such circumstances.

The Commission rejects the allegation that its investigation was insufficient. The complaint that it exceeded its power of appraisal is unfounded for the simple reason that the Commission reached the conclusion that Article 13 was not applicable. The Commission did not go into detail regarding the question whether the applicant had been negligent, even though several delegations from the Member States expressed the view that that was the case.

If the Court does not agree with the Commission's opinion, it should refer the case back to the Commission so that it may exercise its power of appraisal under Article 13. The claim for a declaration that the repayment of the import duties is justified should be dismissed.

The *applicant* replies that Articles 3 and 4 of the regulation are not applicable, first, because in this case there was no substantive error but rather ignorance of procedures and, in the second place, because according to those provisions the goods must, after discovery of the error, be placed under the customs regime for which they were initially intended. That condition logically presupposes that such an operation is still possible. In the present case, it was not possible because the goods had already been exported. The applicant contests the Commission's argument concerning the consequences of Regulation No 1672/82.

The applicant also contests the Commission's view that Article 13 of the regulation is applicable only in cases which are not dealt with in the previous provisions. Article 13 is a general provision which enables repayment to be made on equitable grounds, because it is impossible to determine exactly in advance all the cases which must be provided for. Article 13 allows a margin of appraisal as regards the legal situation or the personal situation of the person concerned.

The Commission decided not to exercise its power of appraisal and the Court should not refer the case back to the Commission. The claim for a declaration that repayment of the import duties is justified is legitimate.

In the *Commission's* view, Articles 3 and 4 apply to all cases in which goods are erroneously entered for free circulation, even if the error stems from ignorance of the rules or confusion between procedures with which the person concerned is familiar. Errors deriving from a lack of knowledge of customs provisions are in fact the most typical case to which those articles apply. The Committee on Duty-Free Arrangements considered it dangerous to apply those articles in cases where the error was discovered only after re-exportation of the goods. The Commission makes clear that it has not

expressed any view as to whether the applicant acted negligently.

The Commission claims that since the Court is dealing with this case by virtue of Article 173 of the Treaty it cannot substitute its own assessment for that of the Commission and that in the event of disagreement as to the interpretation of Article 13 the Court should refer the case back to the Commission.

IV — Oral procedure

At the sitting on 30 June 1983 oral argument was presented by W. Garsky for the applicant and by C. Bail and A. Prozzillo for the Commission.

The advocate General delivered his opinion at the sitting on 27 October 1983.

Decision

1 By an application lodged at the Court Registry on 25 October 1982 Papierfabrik Schoellershammer Heinrich August Schoeller & Söhne GmbH & Co. KG requested the Court, pursuant to the second paragraph of Article 173 of the EEC Treaty, to declare void the Commission's decision of 9 July 1982, addressed to the Federal Republic of Germany, establishing that, in the applicant's case, the repayment of import duties under Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal 1979, L 175, p. 1) was not justified.

2 The applicant imported five consignments of transparent drawing paper from Switzerland into the Federal Republic of Germany, merely so that they could be labelled in its factory, and it then re-exported them to Japan. The goods were erroneously entered for free circulation because of the inexperience of one of the company's employees. Articles 3 and 4 of Regulation No 1430/79 provide in such cases for the possibility of repayment of the import duties. However, the applicant was unable to benefit from those provisions because the error was discovered only after the re-exportation of the goods and thus it was unable to complete the required formalities.

3 The applicant is of the opinion that it may nevertheless benefit from Article 13 of Regulation No 1430/79, by virtue of which import duties may be repaid in special circumstances where no negligence or deception is attributable to the person concerned. It submits that Article 13 is a general provision permitting repayment of import duties on equitable grounds and

that it was included in the regulation because it was impossible to determine precisely in advance, owing to the multifarious and mutable nature of circumstances, all the cases which must be provided for.

4 The Commission contests that interpretation of Article 13. In its opinion, Article 13 applies only to situations other than those governed by the preceding sections of the regulation; the applicant's situation falls within Articles 3 and 4 and it cannot therefore benefit from Article 13. It is for that reason that the Commission did not consider in detail the question whether the applicant had been negligent, notwithstanding the view to that effect expressed by the delegations of several Member States. The Commission suggests that if the Court does not share its opinion it should refer the case back to the Commission to enable it to exercise its power of appraisal under Article 13.

5 In support of its interpretation of Article 13 the Commission refers to the amendment made to Regulation No 1430/79 by Council Regulation No 1672/82 of 24 June 1982. The new Article 13 (2) extends the possibility of repayment to cases where the person concerned failed to comply with the prescribed procedural requirements. In the Commission's view, that proves that the legislature considered that the previous version of the regulation did not allow repayment in such circumstances.

6 It must be acknowledged that the wording of Regulation No 1430/79, and in particular Article 13 thereof, in the version in force at the material time is not unequivocal regarding the exact relationship between the various possibilities of exemption. That is true, in particular, with respect to any person in the applicant's situation who has failed to comply with the necessary formalities to correct a declaration which was originally made in error. Although the Council has usefully clarified the regulation for the future by making the amendment referred to by the Commission, it is not possible to draw any inferences therefrom regarding the interpretation to be attributed to the version of the regulation in force before the amendment. It is appropriate therefore to analyse the spirit and the scheme of that regulation, and of Article 13 thereof, solely on the basis of its original wording in order to determine whether the Commission's interpretation of it is correct.

7 In the light of the preamble to the regulation, Article 13 appears to the Court to be a general equitable provision designed to cover situations other than those which had most often arisen in practice and for which special provision

could be made when the regulation was adopted. It is clear from the conditions which must be satisfied by persons wishing to benefit from Articles 3 and 4 that those provisions were not drawn up to cover the particular situation in which the applicant finds itself. In those circumstances, the Court sees no reason in this case to exclude the possibility of applying Article 13.

8 Consequently, the contested decision, which rests on the finding that the applicant's case does not fall within the scope of Article 13 of Regulation No 1430/79, is based on legally incorrect grounds. It must therefore be declared void.

9 It is incumbent upon the Commission, by virtue of the first paragraph of Article 176 of the Treaty, to reconsider the applicant's case with a view to deciding whether it fulfilled the conditions laid down by Article 13 of Regulation No 1430/79 and to consider in particular whether there are any circumstances indicating negligence on the applicant's part.

10 However, the applicant's claim that the Court should declare that the repayment of DM 24 703.96 in respect of import duties is justified manifestly exceeds the powers conferred on the Court by Article 173 of the EEC Treaty and must therefore be dismissed as inadmissible.

Costs

11 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares void the Commission's decision of 9 July 1982, addressed to the Federal Republic of Germany, establishing that the repayment of import duties in the applicant's case is not justified;**

2. **Dismisses the remainder of the application;**

3. **Orders the Commission to pay the costs.**

Galmot Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 15 December 1983.

J. A. Pompe
Deputy Registrar

Y. Galmot
President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 27 OCTOBER 1983 [1]

Mr President,
Members of the Court,

1. The Court is asked to adjudicate in an action brought by Papierfabrik Schoellershammer Heinrich August Schoeller & Söhne GmbH & Co. KG [hereinafter referred to as "Schoellershammer"] on 21 October 1982 for (a) a declaration that the Commission's decision of 9 July 1982 relating to proceedings under Article 13 of Regulation (EEC) No 1430/79 regarding the repayment of import duties is void and (b) a declaration that the repayment of those import duties is justified in the circumstances of the case.

The facts are as follows. To enable it to meet an order which exceeded its production capacity, the applicant imported five consignments of drawing paper from Switzerland, entering them for free circulation at the Düren Customs Office and paying the appropriate duty of DM 24 703.96 (between 5 and 15 October 1981. However, the goods were not intended for domestic consumption; they remained on Community customs territory for the time required for new labels to be affixed and for them to be loaded into containers belonging to the shipping company which was to transport them to Japan (between 6 and 21 October 1981). By application dated 9 November 1981

1 — Translated from the Italian.