JUDGMENT OF THE COURT (Fifth Chamber)

15 December 2004 *

In Case C-272/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 13 May 2003, lodged at the Court on 24 June 2003, in the proceedings

Hauptzollamt Neubrandenburg

v

Jens Christian Siig, trading as 'Internationale Transport' Export-Import,

THE COURT (Fifth Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C. Gulmann and R. Schintgen (Rapporteur), Judges,

* Language of the case: German.

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the written procedure,

after considering the written observations submitted on behalf of:

— Mr Christian Siig, by F. Bähring, Rechtsanwalt,

— the Italian Government, by I.M. Braguglia, acting as Agent, and by G. de Bellis, avvocato dello Stato,

— the Commission of the European Communities, by J.C. Schieferer, acting as Agent,

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

gives the following

Judgment

1 The reference for a preliminary ruling relates to the interpretation of Articles 670(p) and 718(3)(d) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92

establishing the Community Customs Code (OJ 1993 L 253, p. 1) ('the implementing regulation').

2 That reference was made in the course of proceedings between Mr Siig, who carries on business under the trading name 'Internationale Transport' Export-Import ('Mr Siig') and the Hauptzollamt Neubrandenburg (Neubrandenburg principal customs office) ('the Hauptzollamt') relating to the recovery of customs duties and value added tax ('VAT') on imports.

Legal framework

3 Article 137 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') states:

'The temporary importation procedure shall allow the use in the customs territory of the Community, with total or partial relief from import duties and without their being subject to commercial policy measures, of non-Community goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.'

4 Article 141 of the Customs Code is worded as follows:

'The case[s] and the special conditions under which the temporary importation procedure may be used with total relief from import duties shall be determined in accordance with the committee procedure.'

5 Article 204(1) of the Customs Code states:

'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

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203, unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.'

6 Article 239(1) of the Customs Code provides:

'Import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238:

— to be determined in accordance with the procedure of the committee;

— resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the committee procedure. Repayment or remission may be made subject to special conditions.'

7 Article 670 of the implementing regulation states:

'For the purposes of this chapter:

...

(e) commercial use means: the use of a means of transport for the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration;

...

(p) internal traffic means: the carriage of persons or goods picked up or loaded in the customs territory of the Community for setting down or unloading at a place within that territory.'

8 Article 718 of the implementing regulation provides:

'1. The temporary importation procedure shall apply to road vehicles for commercial use.

2. For the purposes of this article, vehicles shall mean all road vehicles and all trailers which can be coupled to such vehicles.

3. Without prejudice to paragraph 4, admission under the temporary importation procedure referred to in paragraph 1 shall be subject to the condition that the vehicles are:

...

(d) used exclusively for transport which begins or ends outside the customs territory of the Community.

...

5. The vehicles referred to in paragraph 1 may remain in the customs territory of the Community subject to the conditions laid down in paragraph 3 during the time required for carrying out the operations for which temporary importation is requested, e.g. the carriage, picking up and setting down of passengers, loading and unloading goods, transport and maintenance.

...

7. By way of derogation from paragraph 3:

...

(c) vehicles for commercial use may be used in internal traffic where the provisions in force in the field of transport, in particular those concerning admission and operations, so provide.'

The main proceedings and the question referred

9 Mr Siig, who operates as sole proprietor a haulage business in Poland, has three road tractors. On 25 May 2000, the Bundesministerium für Verkehr, Bau- und Wohnungswesen (Federal Ministry of Transport, Building and Housing) granted him an authorisation for the international carriage of goods between Germany and Poland and in transit through Germany in respect of the tractor with the Polish registration number GWN 3247. The date of entry was specified in the authorisation as 4 June 2000, the place of unloading as Viborg in Denmark, the date of the return journey as 6 June 2000 and the country of unloading as Poland.

10 That tractor and the semi-trailer with the Polish registration number VB 4064 entered the customs territory of the Community on 4 June 2000. The goods carried were for delivery to a purchaser in Denmark. After the goods had been unloaded, the semi-trailer was loaded at Flensburg (Germany) on 6 June 2000 with goods for delivery to an undertaking established in Warsaw (Poland). The semi-trailer was parked in the grounds of the firm Agroservice in Penkun (Germany) on 7 June 2000 and the road tractor with the Polish registration number GWN 3247 left the Community customs territory without the semi-trailer, in the direction of Poland. On 8 June 2000, another tractor, with the Polish registration number SML 3525, entered the territory of the Community. That tractor picked up the semi-trailer concerned and transported it, on 9 June 2000, via Eberswalde (Germany) customs office to Warsaw, where it arrived at the consignee's premises on 12 June 2000.

11 By tax assessment notice of 18 August 2000, the Hauptzollamt claimed from Mr Siig customs duties amounting to DEM 2 240 and import turnover tax of DEM 2 598.40, on the basis of an assessment of the value of the tractor with the Polish registration

number GWN 3247, in relation to a carriage of goods in Germany on 7 June 2000. As his objection to that assessment was rejected, Mr Siig brought proceedings before the Finanzgericht (Finance Court) (Germany). The latter upheld the action on the ground that Mr Siig had not infringed any of the obligations arising from the customs procedure for temporary importation, under which the tractor and semi-trailer concerned had been placed separately on crossing the border of the customs territory of the Community.

12 According to the Finanzgericht, Mr Siig complied with Article 718(3)(d) of the implementing regulation, the relevant criterion for assessing the lawfulness of the activity concerned being that of the carriage of the goods for which the means of transport is used. Under Article 670(p) of the implementing regulation, 'internal traffic' is to be understood as meaning the carriage of goods loaded in the customs territory of the Community for unloading at a place within that territory. The tractor and the semi-trailer were used for the purposes of, first, transport which began outside the customs territory of the Community and which ended within it and, secondly, transport which began in the territory and ended outside it. The fact that the semi-trailer was parked for two days in grounds at Penkun merely interrupted the temporary importation procedure for a short period.

13 The Hauptzollamt appealed against that decision on a point of law, arguing that, contrary to the position adopted by the Finanzgericht, the relevant criterion is not the final destination of the goods transported but the means of transport actually used. The manner in which a road tractor is unloaded is determined by the type of its construction: either the semi-trailer is unloaded or it is set down while still loaded with goods. In the case at issue, it is true that carriage was merely interrupted as far

as the semi-trailer was concerned. However, the tractor was unloaded in Penkun and thus used in breach of Article 718(3)(d) of the implementing regulation.

14 As it considered that a decision on the interpretation of the implementing regulation was necessary in the proceedings before it, the Bundesfinanzhof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 718(3)(d) in conjunction with Article 670(p) of [the implementing regulation] to be interpreted as meaning that that regulation prohibits the use of a road tractor registered outside the customs territory of the Community to transport a semi-trailer from a place within the customs territory of the Community, where the semi-trailer is loaded with goods, to another place within the customs territory of the Community, where the semi-trailer is merely parked with a view to being transported subsequently by another road tractor to the consignee of the goods, who is established outside the customs territory of the Community?'

On the question referred

15 For the purposes of answering the question referred, it should be pointed out first that Article 718(3)(d) of the implementing regulation is included under point (a), headed 'Means of road transport', of Sub-section 1, 'Temporary importation with total relief: scope and conditions', of Section 3, 'Temporary importation of means of transport', of Chapter 5, headed 'Temporary importation procedure', whereas Article

670(p) of the regulation appears in Section 1, headed 'General provisions' of Chapter 5.

16 It follows that Article 718 of the implementing regulation must be treated as a special rule (*lex specialis*) in relation to Article 670 of the regulation, and accordingly that the later provision will override the earlier one in those situations which it specifically seeks to regulate, namely the application of the temporary importation procedure to a means of transport such as that concerned in the main proceedings.

17 It should next be noted that Article 718(3)(d) of the implementing regulation provides that, for the temporary importation procedure to apply to a means of road transport, the latter must be used exclusively for transport which begins or ends outside the customs territory of the Community.

18 It is therefore apparent that the application of the temporary importation procedure directly depends on the carrying out by the vehicle concerned of a clearly defined transport operation, namely carriage which includes a crossing of the external border of the customs territory of the Community by that vehicle and the goods or persons transported.

19 That interpretation is supported by Articles 718(5), 722(2) (in relation to air transport) and 723(2) (in relation to sea transport) of the implementing regulation, which show that the temporary importation of a means of transport is permitted only for the time required for carrying out the transport operation for which the temporary importation was requested.

20 It follows that it is the transport operation itself, carried out by the means of transport concerned, which is decisive and not the final destination of the goods or persons transported.

21 While it is true, as the Commission points out, that the definition of 'internal traffic' under Article 670(p) of the implementing regulation means that the final destination of the goods or persons carried by a means of transport is decisive for determining whether or not internal traffic is involved, it none the less remains the case that the relevant criterion for applying the temporary importation procedure to such a means of transport is, as Article 718(3)(d) of the implementing regulation makes clear, cross-border transport by means of the vehicle in question.

22 Since temporary importation is permitted for a specific transport operation which must be carried out by means of the vehicle to which the procedure applies, it is not sufficient for the vehicle to cover only the part of the journey within the customs territory of the Community. That vehicle must be the means by which the border of the customs territory of the Community is crossed by the goods or persons transported and cannot be used merely for the carriage of those goods or persons to the border.

23 It should lastly be held that the opposite interpretation, under which the decisive test for determining whether transport carried out by a vehicle covered by temporary importation is transport which begins or ends outside the customs territory of the Community is satisfied by reason only of the fact that the goods, at

some point carried by the vehicle in question, did, independently of that vehicle, indeed cross the border of that territory, and does not require that the border be crossed at the same time by the vehicle and the goods being transported, would render Article 718(3)(d) of the implementing regulation in effective.

24 There would be nothing to prevent a carrier from importing a tractor under the temporary importation procedure and using it exclusively for providing carriage within the customs territory of the Community once he has satisfied himself that the semi-trailers under haulage and their loads either originate at or are destined for a point outside the customs territory of the Community.

25 However, it should be added, first, that under Article 204 of the Customs Code no customs debt is incurred if it is established that the alleged conduct of the declarant has had no significant effect on the correct operation of the customs procedure in question. Secondly, even where a customs debt is incurred as a result of that provision, Article 239 of the Customs Code lays down a procedure allowing a declarant such as that involved in the main proceedings to obtain, subject to compliance with certain conditions, remittance or repayment of the duties concerned.

26 It follows from all the above considerations that Articles 718(3)(d) and 670(p) of the implementing regulation are to be interpreted as meaning that they prohibit the use of a road tractor registered outside the customs territory of the Community to transport a semi-trailer from a place within the customs territory of the Community, where the semi-trailer is loaded with goods, to another place within the customs territory of the Community where it is parked merely with a view to being transported subsequently by another road tractor to the consignee of the goods, who is established outside the customs territory of the Community.

Costs

27 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 718(3)(d) and 670(p) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code are to be interpreted as meaning that they prohibit the use of a road tractor registred outside the customs territory of the Community to transport a semi-trailer from a place within the customs territory of the Community, where the semi-trailer is loaded with goods, to another place within the customs territory of the Community where it is parked merely with a view to being transported subsequently by another road tractor to the consignee of the goods, who is established outside the customs territory of the Community.

Signatures.