JUDGMENT OF THE COURT (First Chamber)

2 July 2009 *

In Case C-7/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 7 December 2007, received at the Court on 9 January 2008, in the proceedings

Har Vaessen Douane Service BV

v

Staatssecretaris van Financiën,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič, A. Tizzano, E. Levits (Rapporteur) and J.-J. Kasel, Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 5 March 2009,

after considering the observations submitted on behalf of:

— Har Vaessen Douane Service BV, by R.N. van der Paardt and C. Bouwmeester, advocaten,

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

— the Commission of the European Communities, by S. Schønberg and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 27 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1), as amended by Regulation (EEC) No 3357/91 of 7 November 1991 (OJ 1991 L 318, p. 3) ('Regulation No 918/83 as amended').

2 The reference was made in the context of proceedings between Har Vaessen Douane Service BV ('Har Vaessen'), a Dutch company incorporated under Netherlands law, and the Staatssecretaris van Financiën concerning its refusal to grant Har Vaessen the relief provided for in Article 27 of Regulation No 918/83 as amended with regard to the importation of compact discs and magnetic tapes.

Legal context

3 Chapter 1 of Regulation No 918/83, entitled 'Relief from import duty', includes an Article 27 which, in its original version, is worded as follows:

'Subject to Article 28, any consignment dispatched to its consignee by letter or parcel post containing goods of a total value not exceeding [EUR] 10 shall be admitted free of import duties.'

4 That provision was amended by Commission Regulation (EEC) No 2287/83 of 29 July 1983 laying down provisions for the implementation of Article 127 of Regulation No 918/83 (OJ 1983 L 220, p. 12). Article 1 of Regulation No 2287/83 provides:

'The duty-free admission referred to in Article 27 of Regulation (EEC) No 918/83 shall apply only to consignments dispatched by letter or parcel-post directly from a third country to a natural or legal person in the Community.'

5 The reason for the amendment to Article 27 of Regulation No 918/83 is apparent from the third recital in the preamble to Regulation No 2287/83:

'Whereas commercial undertakings should not be enabled to benefit from [the relief provided for in Article 27 of Regulation No 918/83] by instigating ad hoc activities or by artificially transferring existing activities, thus giving rise to distortions of competition within the common market; whereas, in order to avoid such distortions, the abovementioned consignments should not be eligible for relief from import duties if, prior to their entry for free circulation, they were placed under another customs procedure; whereas, therefore, the relief should apply only where the consignments in question are dispatched directly from a third country to a natural or legal person in the Community'.

6 Article 1 of Regulation No 3357/91 lifts the restriction in Article 27 of Regulation No 918/83 to consignments dispatched by post.

7 The first recital in the preamble to Regulation No 3357/91 explains the amendment to Article 27 of Regulation No 918/83 in the following terms:

'Whereas the administrative simplification provided for in Article 27 of Council Regulation (EEC) No 918/83 … as last amended by Regulation (EEC) No 4235/88 …, must, if it is to be effective, be applied to all imports of consignments made up of goods of negligible value'.

8 Article 27 of Regulation No 918/83 as amended now therefore provides as follows:

'Subject to Article 28, any consignments made up of goods of negligible value dispatched direct from a third country to a consignee in the Community shall be admitted free of import duties.

Goods of negligible value means goods the intrinsic value of which does not exceed a total of [EUR] 22 per consignment.'

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

9 Har Vaessen is a transportation company which, in the period from 12 November 1998 to 28 October 1999, made declarations for release for free circulation in respect of compact discs and magnetic tapes on behalf of ECS Media BV ('ECS'), an undertaking established in the Netherlands.

10 Those goods, with an individual value of less than EUR 22, has been ordered from ECI voor Boeken en Platen BV ('ECI'), the parent company of ECS also established in the Netherlands, by individual customers. Under an agreement between ECS and ECI, ECI transfers the orders to ECS which then prepares the goods for dispatch from a distribution centre in Switzerland. The goods are then presented as a grouped consignment to Har Vaessen to be transported, accompanied by a T-document, to a distribution centre in the Netherlands, from where they are delivered individually to ECI's customers by PTT Post BV ('PTT'), a Dutch undertaking.

11 Each individual parcel includes the name of the customer receiving the goods and a remittance form for payment thereof.

12 In the declaration for release for free circulation of the goods at issue in the main proceedings, Har Vaessen claimed relief under Article 27 of Regulation No 918/83 as amended, which was refused. By notice of assessment of 29 December 1999, it was therefore requested, in particular, to pay customs duties in the sum of NLG 436907.60, that is to say approximately EUR 198260.02.

13 As the Staatssecretaris van Financiën, following an unsuccessful objection made by Har Vaessen, upheld that demand for payment, the latter brought an appeal against that decision before the Tariefcommissie (Customs and Excise Tribunal), which was replaced in the course of the proceedings by the Gerechtshof te Amsterdam.

14 That court dismissed Har Vaessen's action on the ground that ECI, and not the customers who individually placed the orders, should be considered to be the consignee of the goods at issue in the main proceedings, for the purposes of Article 27 of

Regulation No 918/83 as amended. Those customers are in no way involved in the customs declaration procedure, as they are neither persons liable to pay the customs debt nor proprietors of the goods dispatched. In those circumstances, that court concluded that the goods at issue in the main proceedings were not dispatched direct to individual customers as consignees within the meaning of Article 27 of Regulation No 918/83 as amended.

15 Har Vaessen brought an appeal in cassation against that judgment before the referring court.

16 The Hoge Raad der Nederlanden doubts whether relief can be afforded to a grouped consignment such as that at issue in the main proceedings for two reasons.

17 First, although the grouped consignment does indeed consist of different goods of a negligible individual value and whose final destination varies for each of them, the objective of administrative simplification which justifies the relief provided for in Article 27 of Regulation No 918/83 as amended is not relevant in such a case, as the costs of collection of customs duties are not greater than the total customs duties to be collected.

18 Second, in order to prevent abuse of the relief provided for in Article 27 of Regulation No 918/83 as amended, the concept of 'direct dispatch' could be construed as being limited to the case in which the contractual partner of the consignee of the goods is established in a third country. However, the main proceedings concern a consignment consisting of different goods whose consignees, residing in the Netherlands, are the customers of a company which is itself established in the Netherlands.

19 In this context, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 27 of Regulation [No 918/83 as amended] to be interpreted as meaning that the relief referred to in that article may be claimed in respect of consignments made up of goods which are individually of negligible value but are dispatched as a grouped consignment with a combined intrinsic value which exceeds the value threshold in Article 27?

(2) Should Article 27 of Regulation [No 918/83 as amended] be applied on the basis that 'dispatched direct from a third country to a consignee in the Community' also covers a situation in which the goods are in a third country before being dispatched to the consignee but the consignee's contractual partner is established in the Community?'

The questions referred for a preliminary ruling

20 In its two questions referred for a preliminary ruling, which should be dealt with together, the referring court asks whether the fact, first, that the goods at issue in the main proceedings, of an individual value of less than EUR 22, are presented to customs as a grouped consignment of a value exceeding that provided for in Article 27 of Regulation No 918/83 as amended and, secondly, that the contractual partner of the customers which ordered the goods, namely ECI, is established in the Community, precludes the application to those goods of the relief provided for in that provision.

21 First of all, provisions granting relief from customs duties are to be interpreted according to their terms (see, by analogy, Joined Cases C-47/95 to C-50/95, C-60/95,

C-81/95, C-92/95 and C-148/95 *Olasagasti and Others* [1996] ECR I-6579, paragraph 20).

22 In the present case, Article 27 of Regulation No 918/83 as amended lays down that consignments made up of goods of a negligible value, that is to say below EUR 22, dispatched direct from a third country to a consignee within the Community are to be admitted free of import duties.

23 One of the conditions to be fulfilled for the grant of relief concerns, therefore, under that provision, the value of the goods dispatched, which must be less than EUR 22.

24 It is apparent from the order for reference that the consignments at issue in the main proceedings, for which relief was refused by the Dutch authorities on the ground that their total value exceeded EUR 22, were made up of parcels of an individual value of less than EUR 22, dispatched as a group for their release for free circulation in the Community. Those parcels, initially dispatched as a group to a PTT distribution centre, were to be distributed subsequently by PTT to ECI's customers.

25 As the referring court points out, in those circumstances, it is on the basis of the identity of the consignee of the goods, namely the customers of ECI or PTT, that the value of the consignments as presented in the main proceedings must be taken into account when applying Article 27 of Regulation No 918/83 as amended.

26 In the present case, it is not disputed that each parcel contains, from the moment it is received by Har Vaessen, the address of ECI's customer.

27 The Netherlands Government states, however, that the customs declaration form at issue in the main proceedings refers to PTT, in box 8 thereof, as the consignee.

28 That argument is not in itself relevant. Apart from the fact that it could be an error, it is apparent from the documents on the Court's file, and as the Advocate General stated in point 34 of her Opinion, that the list of ECI's customers who were the consignees of the individual parcels was attached to the declaration form at issue in the main proceedings.

29 Furthermore, the goods contained in a parcel are intended to be used ultimately by ECI's customer who is the individual consignee. Indeed, the goods were ordered individually from ECI by customers who can, therefore, be considered to be the users thereof, unlike Har Vaessen and PTT which are, as transporters, merely a link in the shipping chain connecting ECI with its customers, the final consignees of the goods.

30 It follows that the consignments at issue in the main proceedings must be regarded as a group of different parcels of a respective value of less than EUR 22 whose consignees are ECI's customers and, therefore, eligible for relief under Article 27 of Regulation No 918/83 as amended.

31 That interpretation is confirmed by the wording of Article 27 of Regulation No 918/83 as amended, which makes no distinction between the modes of transport of the goods for the purposes of relief, so that it cannot be considered that, in the main proceedings, ECI's customers are not the consignees of the goods once those goods leave the third country or that those goods cannot be admitted free of duty.

32 Although the original wording of Article 27 of Regulation No 918/83 restricted relief to consignments of goods of a value not exceeding EUR 10 dispatched by post, Article 1 of Regulation No 3357/91 removed the condition relating to the method of dispatch, so that other modes of transport can result in the grant of the relief referred to in Article 27 of Regulation No 918/83 as amended. Thus, the transport of goods by a consignor such as Var Haessen, which, for logistical reasons, groups individual parcels before their presentation to customs cannot result in those goods being denied admission free of duty, where they were not dispatched by post, but fulfil the conditions of Article 27 of Regulation No 918/83 as amended.

33 That interpretation is, moreover, in accordance with the objective of Article 27 as it is set out in the first recital in the preamble to Regulation No 3357/91, namely that the relief provided for in that provision aims at administrative simplification of customs procedures.

34 It should be pointed out that when adopting provisions granting relief from customs duties, the Council of the European Union must take account, amongst other things, of the difficulties confronting national customs administrations (see, by analogy, Case C-247/97 *Schoonbroodt* [1998] ECR I-8095, paragraph 23).

35 Although such an objective of administrative simplification can cover, as the Netherlands Government argues in its observations, situations in which the collection costs of customs duties are greater than the duties themselves, that objective may also cover other situations.

36 Thus, the refusal to grant the relief provided for in Article 27 of Regulation No 918/83 as amended to consignments such as those at issue in the main proceedings, even though the parcels taken individually are of a value not exceeding EUR 22, could lead to the consignor presenting each parcel individually to customs in order to be able to obtain

relief. However, such an increase of procedures is not compatible with the objective of administrative simplification.

37 Likewise, in the absence of the application of the relief to the consignments at issue in the main proceedings, it would be for the national customs authorities to determine the total customs value of a consignment consisting of a large number of goods. Such a situation could also not be compatible with the Community legislature's objective of administrative simplification.

38 Therefore, the fact that the parcels at issue in the main proceedings, of an individual value not exceeding EUR 22, are presented to customs as a group for the purpose of their dispatch in the Community does not preclude their being granted relief, since, as soon as they leave the third country of dispatch, the consignee of each of those parcels is identified.

39 It is apparent, however, from the third recital in the preamble to Regulation No 2287/83 that such relief must be refused where it constitutes an abuse of rights.

40 This is, in essence, what the referring court puts forward by way of its second question for a preliminary ruling, pointing out that, in the case before it, the contractual partner of the consignees of the goods entered for free circulation, namely ECI, is established in the Community and not in the third country of dispatch.

41 First, it must be noted that the wording itself of Article 27 of Regulation No 918/83 as amended does not make the establishment outside the Community of the contractual partner of the consignees of goods a condition for the grant of relief for those goods.

42 Secondly, it must be recalled that, according to the third recital of the preamble to Regulation No 2287/83, in order to avoid any abuse of the customs relief and the distortions of competition resulting therefrom, the consignments of goods should not be eligible for relief from import duties if, prior to their entry for free circulation, they were placed under another customs procedure. Consequently, the relief only applies to consignments dispatched directly from a third country to a natural or legal person in the Community.

43 However, the mere fact that ECI is established in the Community does not make it possible, in itself, to find that the consignments of goods at issue in the main proceedings were placed under another customs procedure prior to their entry for free circulation in the Community. In any event, and without prejudice to the national court's investigations to that effect, it is not apparent from the documents before the Court that that was the case with regard to those consignments.

44 The Netherlands Government, however, contends that, in the circumstances of the action in the main proceedings, the abuse of rights lies not so much in the grant of relief from customs duties as in ECI's attempt to be exempted from turnover tax. As Article 101 of the Dutch customs code sets out that the goods granted the relief provided for in Article 27 of Regulation No 918/83 as amended are also exempted from turnover tax, ECI resorted to a distribution centre outside the Community in order to benefit, initially, from the relief from customs duties, then, from the related exemption from turnover tax. That undertaking would thus derive a financial advantage leading to a distortion of competition with respect to undertakings operating in the same field and dispatching their goods to their customers from within the territory of the Community.

45 In this regard, it should be noted that the interpretation of Article 27 of Regulation No 918/83 as amended proposed by the Netherlands Government aims to prevent abuse in obtaining the exemption from turnover tax and not the relief provided for in that provision.

46 However, as the Advocate General noted in points 56 to 60 of her Opinion, the Kingdom of the Netherlands itself opted for a method of exemption from turnover tax linked to the grant of the relief provided for in Article 27 of Regulation No 918/83 as amended. Moreover, the Community case-law cited by the Netherlands Government in its observations provides a framework for Member States to refuse the grant of a fiscal advantage in the field of turnover tax where obtaining it amounts to abuse. Therefore, combatting abuse in obtaining exemption from turnover tax cannot be relied upon in support of the interpretation of Article 27 of Regulation No 918/83 as amended.

47 Furthermore, concerning the alleged distortions of competition which would benefit ECI in the main proceedings, it should be noted that the choice made by such an undertaking to dispatch its goods from a third country necessarily involves costs related to the transport of the goods and to the customs import procedures which are not necessarily incurred by undertakings operating in the same sector which dispatch their goods from within the customs territory of the Community.

48 Therefore, and without prejudice to the investigation to be undertaken by the referring court, the relief provided for in Article 27 of Regulation No 918/83 as amended cannot be refused, in the circumstances of the main proceedings, solely by virtue of the fact that ECI is established within the Community.

49 It follows from all those considerations that Article 27 of Regulation No 918/83 as amended must be interpreted as meaning that it does not preclude grouped consignments of goods, with a combined intrinsic value which exceeds the value threshold laid down in that Article 27, but which are individually of negligible value, from being admitted free of import duties, provided that each parcel of the grouped consignment is addressed individually to a consignee within the Community. In that respect, the fact that the contractual partner of those consignees is itself established in the Community is not relevant where the goods are dispatched directly from a third country to those consignees.

Costs

50 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 (First Chamber) hereby rules:

Article 27 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Regulation (EEC) No 3357/91 of 7 November 1991, does not preclude grouped consignments of goods, with a combined intrinsic value which exceeds the value threshold laid down in Article 27, but which are individually of negligible value, from being admitted free of import duties, provided that each parcel of the grouped consignment is addressed individually to a consignee within the European Community. In that respect, the fact that the contractual partner of those consignees is itself established in the European Community is not relevant where the goods are dispatched directly from a third country to those consignees.

[Signatures]