JUDGMENT OF THE COURT (Fourth Chamber)

16 June 2011 *

In Case C-351/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Austria), made by decision of 24 June 2010, received at the Court on 12 July 2010, in the proceedings

Zollamt Linz Wels

v

Laki DOOEL,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

* Language of the case: German.

Advocate General: N. Jääskinen,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Laki DOOEL, by R. Burghofer, Rechtsanwalt,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

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

— the European Commission, by A. Caeiros and B.-R. Killmann, acting as Agents,

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 concerns the interpretation of Articles 555(1)(c) and 558(1) 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 L 253, p. 1), as amended by Commission Regulation (EC) No 993/2001 of 4 May 2001 (OJ L 141, p. 1; 'the Implementing Regulation'), and Article 61 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, p. 1; 'the VAT Directive').

2 The reference has been made in proceedings between the Zollamt Linz Wels (Linz Wels Customs Office) and Laki DOOEL ('Laki'), a transport undertaking established in the former Yugoslav Republic of Macedonia, concerning customs duties and value added tax (VAT) on importation, claimed from that undertaking in respect of the importation of a vehicle and trailer into the territory of the European Union under the temporary importation procedure with total relief from import duties.

Legal context

European Union law

The Customs Code

3 The provisions of Title IV, Chapter 2, Section 3, F, of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1), as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ L 311, p.17; 'the Customs Code'), lay down the rules concerning the temporary importation procedure with total relief from import duties.

4 Article 137 of the Customs Code, contained in Title IV, provides:

'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.'

5 Title VII, Chapter 2, of the Customs Code contains the provisions relating to incurrence of a customs debt.

6 Article 204 of the Customs Code, contained in Title VII provides:

'1. 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.

...

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.'

7 Article 215 of the Customs Code provides:

‘1. A customs debt shall be incurred:

— at the place where the events from which it arises occur

...’

The Implementing Regulation

8 Article 232 of the Implementing Regulation lays down the rules relating to the temporary importation procedure with total relief from import duty, inter alia, for means of transport. It reads as follows:

‘The following, where not declared to customs in writing or orally, shall be considered to have been declared for temporary importation by the act referred to in Article 233, subject to Article 579:

...

(b) the means of transport referred to in Articles 556 to 561;

...’

9 Title III, Chapter 5, Section 2, Subsection 1, of the Implementing Regulation, containing Articles 555 to 562, lays down the conditions for total relief from import duties for means of transport covered by the customs procedure for temporary importation.

10 Article 555 of the Implementing Regulation provides:

‘1. For the purposes of this subsection:

...

(c) “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.

...’

11 Article 558 of that regulation provides:

‘1. Total relief from import duties shall be granted for means of road, rail, air, sea and inland waterway transport where they:

...

(c) in the case of commercial use and with the exception of means of rail transport, are used exclusively for transport which begins or ends outside the customs territory of the Community; however, they 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 VAT Directive

12 So far as the VAT on imports of goods is concerned, Article 61 of the VAT Directive provides:

'By way of derogation from Article 60, where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

...'

The ECMT licensing scheme

13 By a resolution of 14 June 1973, the Council of the European Conference of Ministers of Transport (ECMT), which comprises 42 members, among which are all the Member States of the European Union, introduced a quota system for international road

haulage between Member States. That system provides that the competent authorities may issue a licence based on each national quota ('the ECMT licence').

14 It is apparent from the form relating to that licence, annexed to the User Guide for that quota, that the licence allows the commercial transport of goods between the points of loading and unloading located in Member countries of that Conference and the movement of unladen vehicles in all the territories of those countries.

National law

15 It is apparent from the order for reference that, under Paragraph 7(1) of the Law on the carriage of goods by road (Güterbeförderungsgesetz, BGBl. 593/1995; 'GütbefG'), hauliers which are authorised, under the provisions applicable in the State in which their undertakings are established, to transport goods by motor vehicle and which hold inter alia an ECMT licence, may carry out transport operations to or through the federal territory, or from points within the federal territory to another country.

16 Under Paragraph 9(1) of the GütbefG, whenever goods are transported across the border, the haulier must ensure that the documents providing evidence of the authorisations required by Paragraph 7(1) of that law, duly completed and, where appropriate, endorsed by the competent authority, are carried on board the vehicle. Also, under Paragraph 9(2) of the GütbefG, whenever goods are transported across the border, the driver must have those same documents available throughout the journey and present them to the inspecting authorities at their request.

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

17 On 14 April 2008, a vehicle and trailer belonging to Laki entered the customs territory of the European Union unladen, under the temporary importation procedure with total relief from import duties. An ECMT licence had been issued for that vehicle and its trailer to transport goods between Sweden and Germany.

18 In Sweden the vehicle was loaded with goods intended for Germany and Austria. The goods dispatched to Germany were unloaded first. The other goods were unloaded in Austria and the vehicle was loaded with goods for transportation to Sweden. At the point of crossing the Austrian border the vehicle was inspected by the Austrian customs authorities.

19 On completion of that inspection, the Zollamt Linz Wels decided that the vehicle in question did not have a licence to transport goods in Austria and that therefore Laki had failed to comply with the conditions for the temporary importation of that vehicle with total relief from import duties. It required that undertaking to pay customs duties of EUR 7 524, and VAT at importation of EUR 10 909, in respect of the vehicle and its trailer.

20 Laki lodged an appeal against the decision of the Zollamt Linz Wels before the Unabhängiger Finanzsenat, Außenstelle Linz (Independent Tax Tribunal, Linz) challenging the lawfulness of that decision. That court allowed the appeal, taking the view that the customs debt had been incurred as the result of an infringement due to the absence of a licence for transporting the goods to Austria, and that that infringement had been committed in Sweden, since the goods concerned had been loaded in that Member State. The Swedish customs authorities were therefore, according to that court, responsible for claiming payment of the import duties at issue in the main proceedings.

21 The Zollamt Linz Wels lodged an appeal against the decision of the Unabhängiger Finanzsenat, Außenstelle Linz, before the Verwaltungsgerichtshof.

22 In its reference for a preliminary ruling, the national court states that Article 558(1)(c) of the Implementing Regulation provides that total relief from import duties is to be granted for vehicles used in internal traffic only where the national provisions in the field of transport, in particular those concerning admission and performance of such operations, authorise transport within the territory of the State concerned.

23 It therefore considers that in order to establish which authorities are responsible for establishing that there has been any infringement of that provision of the Implementing Regulation, it is necessary to define the term 'internal traffic' used in that provision.

24 The Verwaltungsgerichtshof cites in that regard Case C-272/03 *Siig* [2004] ECR I-11941, in which the Court held that, in order to establish whether the use of a vehicle complies with the conditions of the temporary importation procedure with total relief from import duties, it is the transport operation itself which is decisive and not the final destination of the goods. The national court states, however, that that judgment concerns the interpretation of Article 670 of the Implementing Regulation in the version in force prior to that resulting from Regulation No 993/2001, which defined 'internal traffic' in the German version as meaning 'the carriage of goods loaded in the customs territory of the Community and unloaded at a place within that territory', whereas Article 555 of the Implementing Regulation, at issue in the main proceedings, defines 'internal traffic' as meaning 'the carriage of … goods … loaded in the customs territory of the Community for … unloading at a place within that territory'.

25 The national court queries whether that change may have an effect on the definition of the criteria for determining the State in which the infringement took place and thus on the designation of the authorities responsible for establishing the infringement. It raises in particular the question whether that change can be interpreted as a 'tightening-up' of the earlier rules, in so far as the fact of loading goods onto a vehicle with a view to transporting them without the required licence, and starting to transport them, already constitutes unlawful internal traffic and, therefore, whether the customs debt is incurred in the State in which the transport operation begins. It states that the new definition of 'internal traffic' contained in Article 555 of the Implementing Regulation could also be interpreted as a relaxation of the conditions laid down in the earlier rules, in so far as the unlawful internal traffic can be said to exist only where goods are actually transported and unloaded in a Member State without a licence. According to the latter interpretation, the customs debt is incurred only in the Member State which is the destination for the goods concerned.

26 In those circumstances, the Verwaltungsgerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 558(1) in conjunction with Article 555(1)(c) of [the Implementing Regulation], to be interpreted as meaning that there is an unauthorised use of a means of transport in internal traffic as soon as the means of transport is loaded and the transport operation begins, in cases where authorisation has been granted for a vehicle for commercial use to be employed in internal traffic between two Member States, the vehicle is loaded in one of the two Member States but the destination (the planned place of unloading) is situated in a Member State other than those two Member States and authorisation has not been granted in respect of that other Member State?

2. If the answer to the first question is in the affirmative, is Article 204(1)(a) in conjunction with Article 215 of the Customs Code to be interpreted as meaning

that, in the abovementioned circumstances, the customs debt is incurred in the Member State of loading and that that Member State is responsible for collecting the import duties, even though it is established only upon unloading that the transport operation took place in a Member State in respect of which there is no authorisation for use in internal traffic?

3. Furthermore, if the answer to the first question is in the affirmative, is Article 61 of [the VAT Directive] to be interpreted as meaning that, in the abovementioned circumstances, importation takes place in the Member State of loading and that that Member State is responsible for collecting the import [VAT], even though it is established only upon unloading that the transport operation took place in a Member State in respect of which there is no authorisation for use in internal traffic?'

Consideration of the questions referred

First question

27 By its first question, the national court asks, in essence, whether Article 555(1) and Article 558(1)(c) of the Implementing Regulation must be interpreted as meaning that a vehicle registered in a third country, which has been authorised for internal traffic in two Member States of the European Union under the temporary importation procedure with total relief from import duties provided for in Article 137 of the Customs Code, and which has unloaded goods in a third Member State, in breach of the transport rules applying in that State, must be regarded as having been used unlawfully from the time the goods are loaded or rather at the time they are unloaded.

28 That court asks in particular which national authorities are responsible, for the purposes of Article 204 of the Customs Code, for levying the import duties in respect of such a vehicle.

29 In order to designate the Member State of non-performance of the obligations to be met in order for a vehicle to be covered under the temporary importation procedure with total relief from import duties and the Member State in which the owner of that vehicle must pay customs duties, it should be noted that, under Article 558(1)(c) of the Implementing Regulation, such relief is to be granted for means of road transport not only where they are used exclusively for transport which begins or ends outside the customs territory but also where they are used in internal traffic, that is to say, for the transport of goods which begins and ends in the customs territory. In the latter situation, the vehicle may be used for internal traffic only where such transport is not prohibited by the national provisions in force, in particular those concerning admission and performance of such operations.

30 Therefore, total relief from customs duties for a vehicle used in internal traffic is, in particular, conditional upon the transport of the goods it contains being authorised in all the States in which the vehicle is used.

31 In the present case, it is apparent from the order for reference that the vehicle at issue in the main proceedings entered the customs territory of the European Union unladen, with an ECMT licence to transport goods between Sweden and Germany, and that it was loaded in Sweden with goods intended not only for Germany but also for Austria. In Austria the haulier, without having an ECMT licence, unloaded the goods concerned and loaded the vehicle with goods intended for transport to Sweden.

32 The question therefore arises whether the responsibility for levying import duties in respect of that vehicle lies with the authorities of the Kingdom of Sweden, the Member State in which the goods concerned were loaded, or rather with the authorities of the Republic of Austria, the Member State in which the vehicle was used in breach of the national provisions, and in which some or all of those goods were unloaded unlawfully.

33 It is apparent, first, from Article 204(1)(a) of the Customs Code that a customs debt is incurred as a result of non-fulfilment of one of the obligations to be met in order for the procedure for relief of duties on importation of goods into the territory of the European Union to apply and, second, from Article 204(2), that that debt is incurred at the moment one of those obligations ceases to be met. Moreover, according to Article 215 of the Customs Code, the customs debt is incurred at the place where the events from which it arises occur and therefore, in circumstances such as those at issue in the main proceedings, at the place where the infringement took place.

34 In order to establish which authorities are responsible for levying import duties in respect of the vehicle concerned, it is therefore necessary to determine what the event was that gave rise to non-fulfilment of the obligations incumbent on the owner of that vehicle, thus excluding it from the procedure for internal traffic. It is necessary, therefore, to decide whether (i) the irregularity consists in the loading of goods intended for a Member State in which the vehicle was not authorised to engage in the commercial transport of goods, or (ii) the irregularity actually occurs at the moment of crossing the border of the Member State in which the vehicle is used in breach of the national provisions, or (iii) the irregularity occurs when the goods are unloaded in the territory of that latter Member State.

35 As was correctly observed by the Commission, in order for a customs debt to be incurred, mere intent to use goods placed under the temporary importation procedure otherwise than on the conditions to which they are subject is not in itself an infringement so long as that intent does not take the form of an act or omission which

objectively constitutes an infringement of the relevant rules (see, to that effect, Case C-66/99 *D. Wandel* [2001] ECR I-873, paragraph 48).

36 Therefore, in order to establish the irregularity committed by the use of a vehicle exported under the total relief procedure, it is necessary to take into consideration only the transport operations carried out by that vehicle. The final destination of the goods and whatever the general intent of the owner of the vehicle may have been are therefore irrelevant (see, to that effect, *Siig*, paragraph 20). Therefore, an irregularity in respect of the use of the vehicle must be established taking into consideration solely the journeys made by that vehicle.

37 In such circumstances as those at issue in the main proceedings, it must be held that the irregularity occurred when the vehicle concerned ceased to be covered by the internal traffic procedure under which it had been allowed into the territory of the European Union because it carried out a commercial transport operation in the territory of the Republic of Austria which no longer corresponded to that covered by the ECMT licence, and did not fulfil the conditions to which such an operation is subject under the provisions in force in that State. The fact that the goods loaded onto the vehicle in Sweden were intended to be transported to Austria, without the haulier's having obtained the appropriate licence, did not constitute an irregularity until the vehicle crossed the border of that Member State, where it was not authorised to carry out a commercial transport operation.

38 The national court points out that Article 670 of the Implementing Regulation, in an earlier version than that applying in the main proceedings, which was interpreted by the Court in *Siig*, defined 'internal traffic', in the German version, as 'the carriage of goods loaded in the customs territory of the Community and unloaded at a place within that territory'. Article 555 of the Implementing Regulation, however, which is currently in force, defines 'internal traffic' as 'the carriage of … goods … loaded in the customs territory of the Community for … unloading at a place within that territory'.

That court questions whether that change has an effect on the definition of the criteria for determining the State in which the infringement took place and thus on the designation of the authorities responsible for establishing that infringement. It raises the question whether that change in the wording has introduced an element of intent into the definition of internal traffic.

39 In that regard, as the Austrian Government and the Commission have pointed out, the change in some language versions of the Implementing Regulation to the wording of the definition of 'internal traffic' from that used in Article 670 does not alter the content of that provision. It is settled law that in the case of divergence between the different language versions of a text of European Union law, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see, inter alia, Case C-340/08 *M and Others* [2010] ECR I-3913, paragraph 44). As is apparent from paragraph 35 above, an interpretation of Article 555 that bases the establishment of an irregularity on the intent of the haulier would be inconsistent with the scheme of the rules of which that provision forms part.

40 Moreover, it should be pointed out that the change in the wording of the provision noted by the national court is to be found in only some language versions of the Implementing Regulation; the large majority of language versions did not amend that sentence in Article 670 of the Implementing Regulation.

41 It follows from all the above considerations that the answer to the first question is that Article 555(1) and Article 558(1)(c) of the Implementing Regulation must be interpreted as meaning that the irregularity in respect of the use of a vehicle imported into the European Union under the temporary importation procedure with total relief from import duties which is used for internal traffic must be regarded as occurring at the moment of crossing the border of the Member State in which the vehicle is used

in breach of the national provisions in the field of transport, that is to say, without authorisation to unload given by the Member State of unloading, the authorities of that Member State being responsible for levying those duties.

Second and third questions

42 In the light of the answer to the first question, there is no need for the Court to answer the second and third questions, since they were raised by the national court only in the event of an affirmative answer's being given to the first question.

Costs

43 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 (Fourth Chamber) hereby rules:

Article 555(1) and Article 558(1)(c) 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, as amended by Commission Regulation (EC) No 993/2001 of 4 May 2001, must be interpreted

as meaning that the irregularity in respect of the use of a vehicle imported into the European Union under the temporary importation procedure with total relief from import duties which is used for internal traffic must be regarded as occurring at the moment of crossing the border of the Member State in which the vehicle is used in breach of the national provisions in the field of transport, that is to say, without authorisation to unload given by the Member State of unloading, the authorities of that Member State being responsible for levying those duties.

[Signatures]