

## Case C-97/95

**Pascoal & Filhos Ld.<sup>a</sup>**

**v**

**Fazenda Pública**

(Reference for a preliminary ruling  
from the Tribunal Tributário de Segunda Instância)

(Customs duties — Methods of administrative cooperation —  
Procedures for verifying EUR.1 certificates — Post-clearance recovery  
of customs duties — Person responsible for the customs debt)

Opinion of Advocate General Cosmas delivered on 14 November 1996 ..... I - 4212  
Judgment of the Court (Fifth Chamber), 17 July 1997 ..... I - 4240

### Summary of the Judgment

1. *Association of the overseas countries and territories — Importation into the Community, with exemption from customs duties, of goods originating in the overseas countries and territories — Origin of the goods — Proof provided by the EUR.1 certificate — Subsequent verification establishing that the certificate had been improperly issued — Notification of the 'results of ... verification' by the authorities of the Member State of exportation to the authorities of the Member State of importation — Detailed arrangements and consequences — Post-clearance recovery of the uncollected customs duties*  
(Council Regulation No 1697/79, Art. 2(1); Council Decision 86/283, Annex II, Art. 25(3))

2. *Association of the overseas countries and territories — Importation into the Community, with exemption from customs duties, of goods originating in the overseas countries and territories — Origin of the goods — Proof provided by the EUR.1 certificate — Certificate issued on the basis of false information supplied by the exporter and cancelled following subsequent verification — Recovery of the uncollected customs duties — Determination of the person responsible for paying the customs debt*  
 (Council Regulation No 2144/87, Arts 2(1)(a) and 3(a); Council Directive 79/623, Arts 2(a) and 3(a); Council Decision 86/283, Annex II, Art. 10(1))

3. *Association of the overseas countries and territories — Importation into the Community, with exemption from customs duties, of goods originating in the overseas countries and territories — Origin of the goods — Proof provided by the EUR.1 certificate — Certificate issued on the basis of false information supplied by the exporter and cancelled following subsequent verification — Recovery of the uncollected customs duties — Good faith on the part of the importer responsible for paying the customs debt — No prior check by the authorities of the State of exportation to determine the true origin of the goods — Not relevant*  
 (Council Decision 86/283, Annex II, Art. 8(2))

1. A communication addressed to the authorities of the State of importation by the authorities of the State of exportation following subsequent verification of an EUR.1 movement certificate, in which the latter merely confirm that the certificate in question was improperly issued and must therefore be cancelled, without setting out in detail the reasons justifying cancellation, must be regarded as 'results of ... verification' within the meaning of Article 25(3) of Annex II to Decision 86/283 on the association of the overseas countries and territories with the European Economic Community. The authorities of the State of importation are entitled to bring an action for recovery of the uncollected customs duties on the basis of such a communication alone, without seeking to establish the true origin of the goods imported.

86/283 on the association of the overseas countries and territories with the European Economic Community, to submit the request for the EUR.1 certificate, along with, where relevant, any supporting documents, concerns only the procedure for obtaining the EUR.1 certificate. It does not extend to customs duties which prove to be due in respect of the importation into the European Community of goods which are the subject of an EUR.1 movement certificate, even where the latter was issued on the basis of false information supplied by the exporter as to the origin of the goods and was cancelled following subsequent verification.

2. The responsibility of the exporter, under Article 10(1) of Annex II to Decision

3. The fact of requiring, in certain circumstances, an importer who has acted in good faith to pay customs duties payable on the importation of goods in respect of

which the exporter has committed a customs offence, where the importer has played no part in that offence, is not contrary to the general principles of law, in particular the principles of proportionality and legal certainty, which the Court must uphold. It is the responsibility of professional traders to make the necessary arrangements in their contractual relations in order to guard against the risks of an action for post-clearance recovery.

Furthermore, the fact that the authorities of the State of exportation issued an

EUR.1 movement certificate pursuant to Decision 86/283 without having carried out any prior check to determine the true origin of the goods in question does not constitute a case of *force majeure* preventing post-clearance recovery of customs duties owed by an importer who has acted in good faith. Article 8(2) of Annex II to Decision 86/283 entitles, but does not oblige, the authorities of the State of exportation to carry out such a prior check. In those circumstances, a situation in which a customs debt subsequently proves to be due, even though those authorities had decided, in a specific case, not to exercise that option, is neither abnormal nor unforeseeable.