

Reference for a preliminary ruling from VAT and Duties Tribunals, London (United Kingdom) made on 29 September 2008 — 1) FG Wilson (Engineering) Ltd, 2) Caterpillar EPG Ltd v The Commissioners for Her Majesty's Revenue & Customs

(Case C-431/08)

(2008/C 327/23)

Language of the case: English

Referring court

VAT and Duties Tribunals, London (pursuant to a request from the Northern Ireland Tribunal Centre)

Parties to the main proceedings

Applicants: FG Wilson (Engineering) Ltd, Caterpillar EPG Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Were the goods in this case unlawfully removed from customs supervision within the meaning of Article 203(1) of the Code ⁽¹⁾, by reason of the operation of Article 865 IR ⁽²⁾?
2. If so, was a customs debt on importation thereby incurred under Article 203 of the Code?
3. If the answers to questions 1 and 2 are in the affirmative, does the Code, and in particular Article 78(3), permit revision of the declaration to correct the CPC and if so, are HMRC required to amend the declaration and to regularise the situation?
4. If there can be no regularisation under Article 78 of the Code and given that there was a customs debt under Article 203 of the Code and given that it is common ground that there was a special situation as contemplated by Article 899 IR, was it in the circumstances and in the light of the findings that follow open to the Tribunal to conclude that there was no obvious negligence present, so that the customs debt should be remitted under Article 239 of the Code and the demand for customs duty should be withdrawn? In particular, in considering whether there has been obvious negligence on the part of the trader concerned, are the competent authorities entitled to take into account the fact that the revenue authority's own failing in its duty of

care and management has contributed to the errors giving rise to the customs debt?

- ⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1).
⁽²⁾ 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).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 6 October 2008 — F. Gielen, other party: Staatssecretaris van Financiën

(Case C-440/08)

(2008/C 327/24)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: F. Gielen

Other party: Staatssecretaris van Financiën

Question referred

Is Article 43 EC to be interpreted as meaning that it does not preclude the application of a provision in a Member State's tax legislation to profits which a national of another Member State (foreign taxable person) has derived from a part of his undertaking operated in the first Member State, if that provision, when interpreted in a particular way, indeed makes a distinction between domestic and foreign taxable persons which — viewed in isolation — is contrary to Article 43 EC, but the foreign taxable person concerned has had an opportunity to opt for treatment as a domestic taxable person and has not done so for reasons of his own?