



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

8 November 2012*

(Customs debt — Post-clearance recovery of import or export duties — Entry of duty in the accounts — Practical procedures)

In Case C-351/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the rechtbank van eerste aanleg te Antwerpen (Belgium), made by decision of 24 June 2011, received at the Court on 4 July 2011, in the proceedings

KGH Belgium NV

v

Belgische Staat,

THE COURT (Fifth Chamber),

composed of A. Borg Barthet (Rapporteur), acting as President of the Fifth Chamber, M. Ilešič and M. Safjan, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 19 September 2012,

after considering the observations submitted on behalf of:

- KGH Belgium NV, by E. Gevers and J. Gevers, advocaten,
- the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents,
- the European Commission, by B.-R. Killmann and W. Roels, acting as Agents,

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

gives the following

* Language of the case: Dutch.

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 217 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) ('the Customs Code').
- 2 The reference has been made in proceedings between KGH Belgium NV ('KGH Belgium') and the Belgische Staat, represented by the Federale Overheidsdienst Financiën (Federal Tax Authority) ('the Tax Authority'), concerning the issue whether the customs authorities under the control of the Tax Authority validly entered a customs debt in the accounts, within the meaning of Article 217(1) of the Customs Code.

Legal context

European Union legislation

- 3 Article 217 of the Customs Code states:

'1. Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called "amount of duty", shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).

The first subparagraph shall not apply:

- (a) where a provisional anti-dumping or countervailing duty has been introduced;
- (b) where the amount of duty legally due exceeds that determined on the basis of a binding tariff information;
- (c) where the provisions adopted in accordance with the Committee procedure waive the requirement for the customs authorities to enter in the accounts amounts of duty below a given level.

The customs authorities may discount amounts of duty which, under Article 221(3), could not be communicated to the debtor after the end of the time allowed.

2. The Member States shall determine the practical procedures for the entry in the accounts of the amounts of duty. Those procedures may differ according to whether or not, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that the said amounts will be paid.'

- 4 Article 221(1) of the Customs Code provides:

'As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.'

Belgian legislation

- 5 Article 1 of the General Law on customs and excise duty, coordinated by the Royal Decree of 18 July 1977 (*Belgisch Staatsblad* of 21 September 1977, p. 11425), confirmed by the Law of 6 July 1978 on customs and excise duty (*Belgisch Staatsblad* of 12 August 1978, p. 9013) and amended, with effect

from 1 January 1994, by Article 1(4) of the Law amending the General Law on customs and excise duty of 27 December 1993 (*Belgisch Staatsblad* of 30 December 1993, p. 29031) ('the General Law on customs and excise duty') provides:

'For the purposes of this law

...

(6) "entry in the accounts" shall mean the entry, in the accounts or on any alternative medium, of the amount of duty corresponding to a customs debt

...'

6 Under Article 3 of the General Law on customs and excise duty:

'The rules relating to the entry in the accounts and conditions of payment of the amounts of duty payable pursuant to a customs debt are laid down in the regulations of the European Communities.'

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

- 7 It is apparent from the decision to refer that the dispute before the national court concerns the issue as to whether the customs authorities under the control of the Tax Authority validly entered in the accounts, within the meaning of Article 217(1) of the Customs Code, a customs debt imposed on KGH Belgium.
- 8 The dispute in the main proceedings, as described by the national court, concerns the annulment of the decision of the customs and excise administrator of 19 March 2009 and of the decision of the regional customs and excise director of Antwerp of 4 July 2008, under which KGH Belgium is liable for a customs debt in the principal amount of EUR 3 620.52.
- 9 On 26 November 2009, the Tax Authority lodged a counterclaim seeking a declaration that the decision of 4 July 2008 is founded and valid and that the customs duty is definitively and indisputably payable.
- 10 KGH Belgium submitted before the national court that it is apparent from Article 217(2) of the Customs Code that the Member States are required to determine, in their national legislation, how the entry in the accounts provided for in Article 217(1) of the Customs Code is to be made in practice, so that a debtor can ascertain whether the national customs authorities have actually made that entry. The Tax Authority, on the other hand, takes the view that the Member States are under no such obligation.
- 11 KGH Belgium also considers that, in the absence of legal provisions under Belgian law, the customs debt was not able to be validly entered in the accounts within the meaning of Article 217(1) of the Customs Code.
- 12 According to the Tax Authority, each and every entry of the customs debt on any other medium is sufficient for the purposes of establishing that a valid entry in the accounts has been made within the meaning of Article 217(1) of the Customs Code.
- 13 The Tax Authority submits that, notwithstanding the fact that there is no requirement for the Belgian State to lay down, in national legislation, legislative provisions determining the practical procedures for the entry in the accounts, such provisions exist none the less under Belgian law.

14 Accordingly, in the view of the national court, if there is in fact a requirement that Belgian legislation lay down the practical procedures for the entry in the accounts, the question arises whether the existing Belgian legislative provisions determine, in accordance with Article 217(2) of the Customs Code, the practical procedures for the entry in the accounts within the meaning of Article 217(1) of the Customs Code.

15 In those circumstances, the rechtbank van eerste aanleg te Antwerpen decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Is Article 217(2) of [the Customs Code] to be interpreted as meaning that, when determining the practical procedures for the entry in the accounts of the amounts of duty, the Member States can confine themselves to including in their national legislation provisions stipulating merely:

— that, for the purposes of such national legislation, “entry in the accounts” is to mean “the entry, in the accounts or on any alternative medium, of the amount of duty corresponding to a customs debt” – in this case, Article 1(6) of the [General Law on customs and excise duty]

and

— that the rules relating to entry in the accounts and conditions of payment of the amounts of duty payable pursuant to a customs debt are laid down in the regulations of the European Communities – in this case, Article 3 of the [General Law on customs and excise duty],

or must the Member States, in implementing Article 217(2) of the Community Customs Code, determine in their national legislation how the entry in the accounts provided for in Article 217(1) of the Community Customs Code is to be effected in practice, so that a debtor can ascertain whether such entry in the accounts has actually been effected by the customs authorities?

2. Is Article 217(2) of the Community Customs Code to be interpreted as meaning that, where national legislation merely provides:

— that, for the purposes of such national legislation, “entry in the accounts” is to mean “the entry, in the accounts or on any alternative medium, of the amount of duty corresponding to a customs debt” – in this case, Article 1(6) of the [General Law on customs and excise duty];

and

— that the rules relating to the entry in the accounts and conditions of payment of the amounts of duty payable pursuant to a customs debt are laid down in the regulations of the European Communities – in this case, Article 3 of the [General Law on customs and excise duty],

the customs authorities can maintain that the entry by those authorities of the amount of duty on a “1552 B form” or in a “PLDA” (paperless customs and excise duty) debt database, or any other registration or entry by the customs authorities of the amount of duty on any other possible medium constitutes an entry in the accounts within the meaning of Article 217(1) of the Community Customs Code?

3. On the assumption that the entry by the customs authorities of the amount of duty on a 1552 B form may be deemed to constitute an entry in the accounts within the meaning of Article 217(1) of the Community Customs Code, is Article 217 of the Community Customs Code to be interpreted as meaning that only the entry on a 1552 B form of the precise amount of the duty arising pursuant to a customs debt constitutes an entry in the accounts within the meaning of Article 217(1) of the Community Customs Code?’

Admissibility of the reference for a preliminary ruling

- 16 In its written observations, the Belgian Government submits that, to some degree, the questions referred fall outside of the jurisdiction of the Court of Justice. The questions as formulated by the national court would require the Court of Justice to give a ruling on the compatibility of certain provisions of national law with Article 217(2) of the Customs Code. However, the Court of Justice does not have jurisdiction to rule on the compatibility of the national law of a Member State with European Union law.
- 17 In that regard, it should be noted that it is settled case-law that, although, in proceedings under Article 267 TFEU, the Court of Justice may not rule upon the compatibility of a provision of domestic law with European Union law or interpret domestic legislation or regulations, it may nevertheless provide the national court with an interpretation of European Union law on all such points as may enable that court to determine the issue of compatibility for the purposes of the case before it (see, inter alia, Case C-292/92 *Hünernmund and Others* [1993] ECR I-6787, paragraph 8; Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 36; and Case C-126/10 *Foggia - SGPS* [2011] ECR I-10923, paragraph 29).
- 18 In the present case, in the light of the wording of the questions referred, it must be considered that an interpretation is being requested of Article 217(2) of the Customs Code to enable the national court to determine the practical procedures for the entry in the accounts of the amounts of duty, the type of medium to be used and the question whether only the exact amount of the customs duty can be entered in the accounts.
- 19 It follows that the reference for a preliminary ruling must be declared admissible.

Consideration of the questions referred

- 20 By its three questions, which should be examined together, the national court asks, in essence, whether Article 217(2) of the Customs Code must be interpreted as meaning that a Member State is required to determine in its national legislation the practical procedures for entry in the accounts of amounts of duty resulting from a customs debt, that a specific medium is required for such an entry, and that only the exact amount of the duty can be entered in the accounts.
- 21 It should be recalled that it follows from the first subparagraph of Article 217(1) of the Customs Code that entry in the accounts consists of the entry, by the customs authorities, of the amount of import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium (Case C-126/08 *Distillerie Smeets Hasselt and Others* [2009] ECR I-6809, paragraph 22).
- 22 It should also be noted that, in accordance with Article 217(2) of the Customs Code, it is for the Member States to determine the practical procedures for the entry in the accounts, which may differ according to whether or not, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that the amount of duty resulting from that debt will be paid.
- 23 Since Article 217 of the Customs Code does not lay down any practical procedures for 'entry in the accounts' within the meaning of that provision or, accordingly, any minimum requirements of a technical or formal nature, that entry in the accounts must be made in a way which ensures that the competent customs authorities enter the exact amount of the import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium, so that, inter alia, the entry in the accounts of the amounts concerned may be established with certainty, including with regard to the person liable (Case C-264/08 *Direct Parcel Distribution Belgium* [2010] ECR I-731, paragraph 23).

- 24 Consequently, the Member States are not required to determine, in their national legislation, the practical procedures as to how the entry in the accounts of customs duty is to be made, since internal measures of customs authorities are sufficient.
- 25 Moreover, as regards the nature of the medium required, the Court has already held that, having regard to the margin of discretion conferred on them by Article 217(2) of the Customs Code, the Member States can provide that the entry in the accounts of the amount of duty resulting from a customs debt may be made by the entry of that amount on the record which is drawn up by the competent customs authorities for the purpose of establishing an infringement of the applicable customs legislation (*Distillerie Smeets Hasselt and Others*, paragraph 25, and *Direct Parcel Distribution Belgium*, paragraph 24).
- 26 Thus, Article 217(2) of the Customs Code does not impose any obligation to use accounting records as a medium, since a paper based or electronic medium may be sufficient, provided that the exact amount of the customs duty is entered thereon.
- 27 As regards the entry of the exact amount of the customs duty in the accounts, it has been noted, in paragraph 23 above, that the entry in the accounts must be made so as to ensure that the competent customs authorities enter the exact amount of import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium.
- 28 If, however, that amount is incorrect, the amount communicated is also invalid. That amount may, none the less, be corrected in the accounting records by the customs authorities, which are then to proceed with a new communication to the debtor.
- 29 Thus, in accordance with Article 221(1) of the Customs Code, the communication of the amount of duty to be recovered must have been preceded by the entry in the accounts of that amount by the customs authorities of the Member State concerned and, if it has not been entered in the accounts in accordance with Article 217(1) of the Customs Code, that amount may not be recovered by those authorities, which however remain entitled to proceed with a new communication of that amount, in accordance with the conditions laid down by Article 221(1) of the Customs Code and the limitation rules in force at the time the customs debt was incurred (see, inter alia, the order of 9 July 2008 Case C-477/07 *Gerlach & Co.*, paragraph 30, and *Direct Parcel Distribution Belgium*, paragraph 39).
- 30 Consequently, in the light of the foregoing, the answer to the questions referred is that Article 217(2) of the Customs Code must be interpreted as meaning that, since that article does not lay down any practical procedures for entry in the accounts within the meaning of that provision, the Member States are free to determine the practical procedures for the entry in the accounts of amounts of duty resulting from a customs debt, without being under an obligation to determine, in their national legislation, how the entry in the accounts is to be made. That entry must be made in a way which ensures that the competent customs authorities enter the exact amount of the import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium, so that, inter alia, the entry in the accounts of the amounts concerned may be established with certainty, including with regard to the person liable.

Costs

- 31 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:

Article 217(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that, since that article does not lay down any practical procedures for the entry in the accounts within the meaning of that provision, the Member States are free to determine the practical procedures for the entry in the accounts of amounts of duty resulting from a customs debt, without being under an obligation to determine, in their national legislation, how the entry in the accounts is to be made. That entry must be made in a way which ensures that the competent customs authorities enter the exact amount of the import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium, so that, inter alia, the entry in the accounts of the amounts concerned may be established with certainty, including with regard to the person liable.

[Signatures]