



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

12 June 2014\*

(Customs union and Common Customs Tariff — Unlawful removal from customs supervision of goods liable to import duties — Incurrence of a customs debt)

In Case C-75/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 11 December 2012, received at the Court on 14 February 2013, in the proceedings

**SEK Zollagentur GmbH**

v

**Hauptzollamt Gießen,**

THE COURT (Sixth Chamber),

composed of A. Borg Barthet (Rapporteur), President of the Chamber, S. Rodin and F. Biltgen, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- SEK Zollagentur GmbH, by T. Ulbrich, Rechtsanwalt,
- the European Commission, by B.-R. Killmann and L. Keppenne, acting as Agents,

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

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 50 and 203 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 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2000 L 117, p. 13) ('the Customs Code').

\* Language of the case: German.

- 2 The request has been made in proceedings between SEK Zollagentur GmbH ('SEK Zollagentur') and the Hauptzollamt Gießen (Principal Customs Office, Gießen) concerning its application for reimbursement of customs duties owed on the ground that it unlawfully removed the goods at issue from customs supervision during the transit procedure.

### Legal context

- 3 Article 4 of the Customs Code provides:

'For the purposes of this Code, the following definitions shall apply:

...

(13) "Supervision by the customs authorities" means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed;

(14) "Customs controls" means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts;

(15) "Customs-approved treatment or use of goods" means:

- (a) the placing of goods under a customs procedure;
- (b) their entry into a free zone or free warehouse;
- (c) their re-exportation from the customs territory of the Community;
- (d) their destruction;
- (e) their abandonment to the Exchequer.

...

(20) "Release of goods" means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed;

...'

- 4 Article 37(1) of that code states:

'Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.'

5 In accordance with Article 50 of the Customs Code:

‘Until such time as they are assigned a customs-approved treatment or use, goods presented to customs shall, following such presentation, have the status of goods in temporary storage. Such goods shall hereinafter be described as “goods in temporary storage”.’

6 Article 91 of the Customs Code provides:

‘(1) The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

...

(2) Movement as referred to in paragraph 1 shall take place in one of the following ways:

(a) under the external Community transit procedure;

...’

7 Article 92 of the Customs Code provides:

‘(1) The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

(2) The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.’

8 Article 96(1) of the Customs Code states:

‘The principal shall be [the holder] under the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.’

9 Article 201(1) of the Code provides:

‘A customs debt on importation shall be incurred through:

(a) the release for free circulation of goods liable to import duties.

...’

10 Article 203 of the Customs Code provides:

‘(1) A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

(2) The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

(3) The debtors shall be:

— the person who removed the goods from customs supervision,

...

— where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.’

11 Article 236(1) of the Code provides:

‘Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

...’

12 Under Article 398 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of [Regulation No 2913/92] (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1192/2008 of 17 November 2008 (OJ 2008 L 329, p. 1):

‘Persons wishing to carry out Community transit operations without presenting the goods and the corresponding transit declaration at the office of departure or any other authorised place may be granted the status of authorised consignor.

...’

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

13 On 15 January 2010, a shipment of 12 bicycle carriers was brought into the customs territory of the European Union. The shipment was placed in temporary storage and the owner of the storage facility presented the goods to customs and drew up a summary declaration thereof.

14 On 17 January 2010, SEK Zollagentur declared the bicycle carriers for transit under the external Community transit procedure. The bicycle carriers were released for transit the same day.

15 The following day, the haulage company designated by SEK Zollagentur, the approved consignor, was meant to collect a number of consignments, including the aforementioned articles, at the temporary storage location and deliver them to a recipient in Greven (Germany).

16 When the articles arrived, the recipient established that the bicycle carriers were not included in the consignments and accordingly notified the customs office at the place of destination.

- 17 The Hauptzollamt Gießen then wrote to SEK Zollagentur, requesting information on the whereabouts of the bicycle carriers. SEK Zollagentur replied that the bicycle carriers had not been loaded on 17 January 2010. It stated that the owner of the temporary storage facility had not been able to keep the stored consignments in its warehouse and hand them over to the haulage company, which was why the bicycle carriers had not been handed over to the haulage company as planned and had remained at the temporary storage facility.
- 18 On 1 February 2010, a new consignment for the bicycle carriers was arranged under a fresh transit procedure. The recipient then released the bicycle carriers for free circulation and paid import duties of EUR 2 000.
- 19 The Hauptzollamt Gießen also charged the same amount to SEK Zollagentur on the ground that the latter had removed the bicycle carriers from customs supervision by failing to present them at the customs office at the place of destination at the time of the first transit procedure.
- 20 SEK Zollagentur took the view that the customs duties being charged were not legally owed and requested repayment pursuant to Article 236 of the Customs Code. It asserted that a transit procedure began only when the goods were actually collected from the storage depot, irrespective of the declaration made by it. Before the transport began, the external Community transit procedure had not commenced, with the result that the only party responsible for the removal from customs supervision was the owner of the temporary storage facility.
- 21 Following the dismissal of its action brought against the decision refusing it repayment, SEK Zollagentur brought an action before the Finanzgericht Hessen (Finance Court, Hessen), which upheld the refusal of repayment on the ground that the duties could not be repaid because they were legally owed. SEK Zollagentur brought an appeal on a point of law ('revision') before the Bundesfinanzhof (Federal Finance Court).
- 22 In those circumstances, the Bundesfinanzhof decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
1. Are the relevant provisions of [the Customs Code], in particular Article 50 thereof, to be interpreted as meaning that an article left with a person by the customs authority for temporary storage in an approved place is deemed to have been removed from customs supervision if it is declared for an external transit procedure, but it does not in fact accompany the prepared transit papers on the transport planned and is not presented to the customs office at the place of destination?
  2. If the answer to the first question is affirmative:  
  
In such circumstances is the person who, as the approved consignor, placed the goods in the transit procedure a customs debtor under the first indent of Article 203(3) of the Customs Code or under the fourth indent of Article 203(3) of the Customs Code?

## Consideration of the questions referred

### *Consideration of the first question*

- 23 By its first question, the referring court asks, in essence, whether Articles 50 and 203 of the Customs Code must be interpreted as meaning that an article placed in temporary storage must be deemed to have been removed from customs supervision if it is declared for an external transit procedure but does not leave the storage facility and is not presented to the customs office at the place of destination, although the transit documents have been presented to that office.
- 24 It is necessary, as a preliminary point, to establish precisely when, pursuant to the Customs Code, temporary storage of goods ends and their coverage by the external Community transit procedure begins.
- 25 In that regard, it should be noted that Article 50 of the Customs Code must be interpreted as meaning that the point at which non-Community goods, covered by a customs declaration accepted by the customs authorities for placing under the external Community transit procedure and having the status of goods in temporary storage, are placed under that customs procedure and thereby assigned a customs-approved treatment or use is the moment at which they are released (Case C-542/11 *Codirex Expeditie* EU:C:2013:429, paragraph 55).
- 26 Thus, goods such as those at issue in the main proceedings can be covered by the external Community transit procedure only as from the time they are released. On the basis of the information received from the referring court, the goods at issue in the main proceedings were released on 17 January 2010 and therefore were placed under the external Community transit procedure as from that date.
- 27 In order to answer the first question, reformulated thusly, it is appropriate to consider whether goods that have not left the storage area may actually be removed from customs supervision when the transit documents have been presented at the customs office at the place of destination.
- 28 In that regard, it should be noted that, in accordance with the Court's case-law, the concept of unlawful removal from customs supervision, as referred to in Article 203(1) of the Customs Code, must be understood as encompassing any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from monitoring them as provided for in Article 37(1) of the Customs Code (Cases C-66/99 *D. Wandel* EU:C:2001:69, paragraph 47; C-371/99 *Liberexim* EU:C:2002:433, paragraph 55, and C-337/01 *Hamann International* EU:C:2004:90, point 31).
- 29 Under Article 96 of the Customs Code, since the principal is required, amongst other things, to present the goods once again, intact, at the customs office at the place of destination — the transit document under cover of which carriage of goods under the Community external transit system is effected undeniably plays an essential role in the proper functioning of that system. Thus a removal of those goods, even if only temporary, is likely to undermine the very objectives of that system where, contrary to the requirements of Article 37 of the Customs Code, it prevents any possible requisition of those goods by the customs service. Such removal also complicates the identification both of the goods which are subject to the transit procedure and of the customs regime applicable to them (see, by analogy, Case C-222/01 *British American Tobacco* EU:C:2004:250, paragraph 52).
- 30 In such circumstances, the temporary removal of the transit document from the goods listed therein must be characterised as a removal of those goods from customs supervision. In accordance with the interpretation given by the Court in its judgments in *D. Wandel* EU:C:2001:69, *Liberexim* EU:C:2002:433 and *Hamann International* EU:C:2004:90, such removal does constitute an act which

has the effect of preventing the competent customs authority, even if only temporarily, from having access to goods under customs supervision and carrying out the controls prescribed by European Union customs legislation (see, to that effect, *British American Tobacco* EU:C:2004:250, point 53).

- 31 Similarly, it must be borne in mind that, according to settled case-law, removal of goods from customs supervision requires only that certain objective conditions be met, such as the absence of the goods from the approved place of storage at the time when the customs authorities intend to carry out an examination of them (see *D. Wandel* EU:C:2001:69, paragraph 48, and *Liberexim* EU:C:2002:433, paragraph 60).
- 32 It is therefore sufficient, for there to be ‘removal from customs supervision’, for the goods in question to have been objectively removed from possible controls, whether or not such controls have actually been carried out by the competent authority (*British American Tobacco* EU:C:2004:250, paragraph 55).
- 33 In the light of the foregoing considerations, the answer to the first question is that Articles 50 and 203 of the Customs Code must be interpreted as meaning that an article left for temporary storage must be deemed to have been removed from customs supervision if it is declared for an external Community transit procedure, but it does not in fact leave the storage facility and is not presented to the customs office at the place of destination, although the transit documents have been presented there.

#### *Consideration of the second question*

- 34 By its second question, the referring court asks, in essence, whether Article 203(3) of the Customs Code must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an article is removed from customs supervision, the person who, as the approved consignor, placed that article in the external Community transit procedure is a customs debtor under that provision.
- 35 It should be borne in mind that, according to the Court’s case-law, if, at the time when goods are removed from customs supervision, they have already been placed under the external Community transit procedure, it is the holder of that procedure who — as the ‘principal’ for the purposes of Article 96(1) of the Customs Code — is required to fulfil the obligations arising from the use of that procedure and who is liable for payment of the customs debt in accordance with the fourth indent of Article 203(3) of that code, if the first three indents of paragraph 3 do not apply (*Codirex Expeditie* EU:C:2013:429, paragraph 33).
- 36 On the other hand, if, at the time of that removal, the goods have not yet been placed under the external Community transit procedure, but are still in temporary storage, the person liable for payment of the customs debt — if the first three indents of Article 203(3) of the Customs Code do not apply — is the person who, being responsible for fulfilling the obligations arising from temporary storage, holds the goods, after they have been unloaded, in order to move or store them (see, to that effect, Case C-140/04 *United Antwerp Maritime Agencies and Seaport Terminals* EU:C:2005:556, paragraph 39 and *Codirex Expeditie* EU:C:2013:429, paragraph 34).
- 37 As observed in paragraph 26 of this judgment, the goods at issue in the main proceedings were placed under the external Community transit procedure. Accordingly, it is the holder under that procedure, SEK Zollagentur which, in its capacity as approved consignor, is the principal for the purposes of Article 96 of the Customs Code and the debtor of the customs debt for the purposes of the fourth indent of Article 203(3), if the first three indents of paragraph 3 do not apply, which it is for the referring court to determine.

38 In the light of the foregoing, the answer to the second question is that the fourth indent of Article 203(3) of the Customs Code must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an article is removed from customs supervision, the person who, as the approved consignor, placed that article in the external Community transit procedure is a customs debtor under that provision.

### **Costs**

39 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 (Sixth Chamber) hereby rules:

1. **Articles 50 and 203 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that an article left for temporary storage must be deemed to have been removed from customs supervision if it is declared for an external Community transit procedure, but it does not in fact leave the storage facility and is not presented to the customs office at the place of destination, although the transit documents have been presented there.**
2. **The fourth indent of Article 203(3) of Regulation No 2913/92, as amended by Regulation No 648/2005, must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an article is removed from customs supervision, the person who, as the approved consignor, placed that article in the external Community transit procedure is a customs debtor under that provision.**

[Signatures]