

Judgment of the Court (Fifth Chamber) of 8 September 2016 (request for a preliminary ruling from the Debreceni Közigazgatási és Munkaügyi Bíróság — Hungary) — Schenker Nemzetközi Szállítványozási és Logisztikai Kft. v Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-409/14) ⁽¹⁾

(Reference for a preliminary ruling — Common Customs Tariff — Combined Nomenclature — Classification of goods — Interpretation of a subheading of the Combined Nomenclature — Directive 2008/118/EC — Importation of excise goods — Customs suspensive procedure or arrangement — Effects of a customs declaration referring to an incorrect subheading of the Combined Nomenclature — Irregularities during the movement of excise goods)

(2016/C 402/03)

Language of the case: Hungarian

Referring court

Debreceni Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Schenker Nemzetközi Szállítványozási és Logisztikai Kft.

Defendant: Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

Operative part of the judgment

1. Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EU) No 861/2010 of 5 October 2010, must be interpreted as meaning that goods such as those at issue in the main proceedings, consisting in smoking tobacco, irrespective of the presence of tobacco waste, since the latter does not prevent the intended use of the product concerned, are not to be included under heading 2401 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 861/2010. However, such goods may be classified under heading 2403 of the Combined Nomenclature, in particular subheading 2403 10 90 thereof, if they are packed in bulk and compacted in plastic-lined bags having a net weight 30 kg per box.
2. The concept of ‘customs suspensive procedure or arrangement’, laid down in Article 4(6) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, must be interpreted as meaning that the placement of specific goods under a customs suspensive procedure or arrangement cannot be challenged if the chapter of the Common Customs Tariff which covers those goods is correctly mentioned in their accompanying documents, but the specific subheading is incorrectly indicated. In such a case, Article 2(b) and Article 4(8) of Directive 2008/118 must be interpreted as meaning that there has been no importation of those goods, and that they are not excise goods.
3. In a situation such as that at issue in the main proceedings, the concept of ‘irregularity’, within the meaning of Article 38 of Directive 2008/118, must be interpreted as meaning that it does not cover goods placed under a customs suspensive procedure or arrangement which are accompanied by a document mentioning an incorrect tariff classification.

⁽¹⁾ OJ C 439, 8.12.2014.