

Appeal brought on 18 December 2017 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2017 in Case T-435/15: Kolachi Raj Industrial (Private) Ltd v European Commission

(Case C-709/17 P)

(2018/C 112/21)

Language of the case: English

Parties

Appellant: European Commission (represented by: J.-F. Brakeland, A. Demeneix, M. França, Agents)

Other parties to the proceedings: Kolachi Raj Industrial (Private) Ltd, European Bicycle Manufacturers Association

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 10 October 2017 in Case T-435/15 Kolachi Raj Industrial (Private) Ltd v Commission, reject the application at first instance, and order the applicant to pay the costs;

or, alternatively,

— refer back the case to the General Court for reconsideration; reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The appeal brought by the Commission concerns the judgment of the General Court of 10 October 2017 in Case T-435/15. In that judgment, the General Court annulled, to the extent that it concerns Kolachi Raj, Commission Implementing Regulation (EU) 2015/776 ⁽¹⁾ of 18 May 2015 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 502/2013 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Cambodia, Pakistan and the Philippines, whether declared as originating in Cambodia, Pakistan and the Philippines or not.

The Commission relies, in support of its appeal, on one single ground of appeal.

The Commission considers that the General Court misinterpreted Article 1 3(2)(b) of the basic anti-dumping regulation. First, in the contested judgment, the General Court incorrectly imported rules of origin in the application of Article 13 of the Basic Regulation and in the interpretation of the term 'from' used in its Article 13(2)(b). Second, the General Court incorrectly restricted the type of evidence that the Commission may use to demonstrate that parts come 'from' the country subject to anti-dumping measures. The Commission considers that the interpretation adopted by the General Court is not in line with the text, the context and the purpose of Article 13 of the Basic Regulation, nor with the case-law of the Court of Justice on anti-circumvention measures.

⁽¹⁾ OJ 2015, L 122, p. 4.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 18 December 2017 — CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa v Comune di Tarvisio

(Case C-710/17)

(2018/C 112/22)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: CCC — Consorzio Cooperative Costruzioni Soc. Cooperativa

Defendant: Comune di Tarvisio

Question referred

Is a provision such as that of Article 53(3) of Legislative Decree No 163 of 16 April 2006 that allows the participation of an undertaking with a 'named' design engineer who, since he is not himself a tenderer, may not rely on the capacity of others, compatible with Article 48 of Directive 2004/18/EC of 31 March 2004? ⁽¹⁾

⁽¹⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

**Request for a preliminary ruling from the Commissione Tributaria Regionale per la Lombardia (Italy)
lodged on 20 December 2017 — EN.SA. Srl v Agenzia delle Entrate — Direzione Regionale
Lombardia Ufficio Contenzioso**

(Case C-712/17)

(2018/C 112/23)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale per la Lombardia

Parties to the main proceedings

Appellant: EN.SA. Srl

Respondent: Agenzia delle Entrate — Direzione Regionale Lombardia Ufficio Contenzioso

Question referred

In the event of transactions found to be non-existent, which did not cause harm to the Treasury and did not confer any tax benefit on the taxpayer, are national rules resulting from the application of Article 19 (Deduction) and 21(7) (Invoicing of transactions) of Decreto de Presidente della Repubblica 633/72 of 16 October 1972 and Article 6(6) of Decreto Legislativo 471 of 18 December 1997 (Breach of obligations relating to documentation, registration and detection of transactions) consistent with the Community principles on VAT laid down by the Court of Justice, when their simultaneous application bring about:

- (a) the repeated non-deductibility of tax paid on purchases by the transferee for every transaction at issue which relates to the same person and the same taxable amount;
 - (b) the application of the tax on, and payment of the tax by, the transferor (and the preclusion of recovery of sums unduly paid) for the corresponding and mirror sale transactions deemed equally non-existent;
 - (c) the application of a penalty equal to the amount of tax on acquisitions deemed non-deductible?
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