Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

10 July 2019 *

(Reference for a preliminary ruling – Customs Code – Customs declaration – Incorrect combined nomenclature customs subheading stated – Notice of assessment – Article 78 of the Customs Code – Amendment of the declaration – Amendment of the transaction value – Article 221 of the Customs Code – Limitation period applicable to recovery of the customs debt – Interruption of the limitation period)

In Case C-249/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 6 April 2018, received at the Court on 11 April 2018, in the proceedings

Staatssecretaris van Financiën

v

CEVA Freight Holland BV

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský and L.S. Rossi (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 February 2019,

having considered the observations submitted on behalf of:

– CEVA Freight Holland BV, by B.J.B. Boersma, advocaat,

– the Netherlands Government, by M. Bulterman and J.M. Hoogveld, acting as Agents,

– the Spanish Government, by S. Jiménez García, acting as Agent,

* Language of the case: Dutch.

– the European Commission, by W. Roels, F. Clotuche-Duvieusart and M. Kocjan, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 March 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 78 and 221 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 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17) ('the Customs Code').

2 The request has been made in proceedings between the Staatssecretaris van Financiën (State Secretary for Finance, Netherlands; 'the State Secretary') and CEVA Freight Holland BV ('CEVA Freight') concerning the lawfulness of certain demands for the payment of customs duties which were sent to that company.

Legal background

3 Regulation No 2913/92 was repealed and replaced by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (OJ 2008 L 145, p. 1). Nevertheless, under Article 188 of Regulation No 450/2008, that regulation does not apply to the dispute in the main proceedings, which remains governed by the Customs Code.

4 Article 29(1) of the Customs Code provided:

'The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community …'

5 Article 65 of the code stated:

'The [declarant] shall, at his request, be authorised to amend one or more of the particulars of the declaration after it has been accepted by customs. The amendment shall not have the effect of rendering the declaration applicable to goods other than those it originally covered.

However, no amendment shall be permitted where authorisation is requested after the customs authorities:

(a) have informed the declarant that they intend to examine the goods; or,

(b) have established that the particulars in question are incorrect; or,

(c) have released the goods.'

6 Article 76(1) of the code provided:

‘In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the customs authorities shall, under conditions laid down in accordance with the committee procedure, grant permission for:

…

(c) the goods to be entered for the procedure in question by means of an entry in the records; in this case, the customs authorities may waive the requirement that the declarant presents the goods to customs.

…’

7 Article 78 of the code stated:

‘1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

…

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them.’

8 Article 201(2) of the Customs Code read as follows:

‘A customs debt shall be incurred at the time of acceptance of the customs declaration in question.’

9 Article 221(1) and (3) of the code provided:

‘1. 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.

2. Where the amount of duty payable has been entered, for guidance, in the customs declaration, the customs authorities may specify that it shall not be communicated in accordance with paragraph 1 unless the amount of duty indicated does not correspond to the amount determined by the authorities.

Without prejudice to the application of the second subparagraph of Article 218(1), where use is made of the possibility provided for in the preceding subparagraph, release of the goods by the customs authorities shall be equivalent to communication to the debtor of the amount of duty entered in the accounts.

3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.’

10 Article 147(1) 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 1762/95 of 19 July 1995 amending Regulation (OJ 1995 L 171, p. 8; 'the implementing regulation'), provided:

'For the purposes of Article 29 of the [Customs] Code, the fact that the goods which are the subject of a sale are declared for free circulation shall be regarded as adequate indication that they were sold for export to the customs territory of the Community. In the case of successive sales before valuation, only the last sale, which led to the introduction of the goods into the customs territory of the Community, or a sale taking place in the customs territory of the Community before entry for free circulation of the goods shall constitute such indication.

Where a price is declared which relates to a sale taking place before the last sale on the basis of which the goods were introduced into the customs territory of the Community, it must be demonstrated to the satisfaction of the customs authorities that this sale of goods took place for export to the customs territory in question.

The provisions of Articles 178 to 181a shall apply.'

The main proceedings and the questions referred for a preliminary ruling

11 As a customs agent, CEVA Freight makes declarations for release for free circulation, at the request of the importer, under the simplified procedure provided for by Article 76(1)(c) of the Customs Code.

12 Between 1 March and 31 October 2010 inclusive, CEVA Freight made such declarations in respect of the release for free circulation of various models of media player. For the purposes of those declarations, it classified the media players under customs subheadings 8471 70 50 and 8517 62 00 of the combined nomenclature, each of which attracts a rate of duty of 0%. The customs authorities therefore released the media players without levy of import duties.

13 In 2011, following a review of the declarations, the customs inspector determined that the media players in question ought to have been classified under customs subheading 8521 90 00 of the combined nomenclature, which attracts a rate of duty of 13.9%.

14 By letter of 22 February 2013, the customs inspector notified CEVA Freight of his intention to recover the unpaid duties. For the purposes of recovering those duties, he calculated the customs value of the media players on the basis of the prices declared by CEVA Freight, which were the prices at which they had been sold by the importers.

15 On 27 February 2013, in its reply to the customs inspector, CEVA Freight made a request, under Article 78 of the Customs Code, for the customs value to be amended. It asked for the customs value to be recalculated on the basis of the lower price which the manufacturer, an undertaking established in Asia, had charged the importers, which was a valid alternative basis for calculating the customs value.

16 The customs inspector issued a single notice of assessment, dated 28 February 2013, incorporating demands for payment in respect of all the import declarations at issue. CEVA Freight received that notice on 4 March 2013.

17 It then lodged an objection to the demands for payment, in which it reiterated its request for amendment.

18 After the customs inspector had, essentially, rejected that request, CEVA Freight brought an action before the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands) which, by judgment of 10 February 2016, ordered the customs inspector to consider the request for amendment once again. The State Secretary then brought an appeal in cassation against that judgment before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

19 The referring court indicates that it is not disputed that, on the dates when it made the customs declarations, CEVA Freight was not in doubt as to the correct interpretation or the applicability of Article 147(1) of the implementing regulation, read in conjunction with Article 29 of the Customs Code. It states that the company nevertheless took the view that, since media players could be imported free of customs duties, nothing turned on the price stated. It informs the Court that in the proceedings before it, the State Secretary submits that, for the purposes of amending a declaration under Article 78 of the Customs Code, it is irrelevant whether or not the declarant made a mistake. The declaration can be amended only where it contains 'incorrect' or 'incomplete' information.

20 In the view of the referring court, it could undoubtedly be considered that, where the information contained in the declaration is not in any way incorrect, the declarant is bound by it, and must bear in mind that the customs authorities have to be able to use the declared information in an unrestricted manner, for purposes including verification of the amount of the customs debt. However, there is nothing in the substantive provisions of the Customs Code or implementing regulation concerning customs value, or in the objective or purpose of those provisions, to prevent the declarant from providing further information, after the customs declaration has been accepted, for the purposes of determining the customs value of the relevant goods. The referring court observes that in that situation, and given circumstances such as those of the dispute in the main proceedings, the tax authorities would be required to revise the customs value of the goods downwards, notwithstanding that the declarant had not made a mistake.

21 Furthermore, one of the arguments advanced by CEVA Freight, which has lodged a cross-appeal, is that the judgment of the Gerechtshof Amsterdam (Court of Appeal, Amsterdam) was contrary to Article 221(3) of the Customs Code in that it held that the notice of assessment was not out of time on the basis that, for the purposes of the limitation period prescribed in that provision, the relevant date is that on which the notice was sent, as stipulated by the national provisions applicable in the main proceedings, and not that on which it was received by the debtor. The question therefore arises whether the requirement laid down in Article 221(3) of the Customs Code, which provides that communication to the debtor must take place within a period of three years from the date on which the customs debt was incurred, is satisfied where the communication was not received by the debtor before expiry of that period.

22 In that regard, the referring court observes that the detailed rules governing the communication referred to in Article 221(1) of the code fall under the domestic legal system of each Member State. It accordingly asks whether it is for the Member States to determine the date on which the communication to the debtor is deemed to have taken place, or whether that date is to be determined under rules of EU law, and in the latter case, whether the relevant date is that on which the communication was sent, or that on which it was received.

23 In those circumstances the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 78 of [the Customs Code] be interpreted as meaning that a declarant, in the context of a subsequent entry in the accounts with reference to the second subparagraph of Article 147(1) of [the implementing regulation], can choose another, lower transaction price of imported goods with a view to reducing the customs debt?

(2) (a) Is the determination of the time at which communication to the debtor took place, in the context of the application of Article 221(3) of [the Customs Code], a question of EU law?

(b) If Question 2(a) is answered in the affirmative, must Article 221(3) of [the Customs Code] be interpreted as meaning that the communication to the debtor referred to in that provision must have been received within the three-year period after a customs debt was incurred, or is it sufficient that that communication was sent to the debtor within that period?'

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, essentially, whether Article 78 of the Customs Code is to be interpreted as meaning that, where the declarant has a choice as to the price of goods sold for export to the territory of the European Union which is to be taken as the basis of assessment, for the purposes of determining the customs value of those goods, it is open to him to make a request, pursuant to Article 78, for his customs declaration to be amended so as to substitute a lower transaction price for that originally stated, with a view to reducing his customs debt.

25 In answering that question, it must be borne in mind that it follows from Article 29 of the Customs Code and Article 147 of the implementing regulation that, in the case of successive sales of goods for importation into the customs territory of the Union, the importer is at liberty to select from the prices agreed for each of the sales the price which he will take as a basis for determining the customs value of the goods in question, provided that he can furnish the customs authorities with all the necessary particulars and documents relating to the price which he chooses (see, to that effect, judgment of 28 February 2008, *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraphs 27 to 31 and the case-law cited).

26 Furthermore, under Article 65 of the code, the declarant is to be authorised, at his request, to amend one or more of the particulars of the declaration after it has been accepted by customs. It follows that the declarant can, amongst other things, revisit the price he chose as the basis for determining the customs value of the goods in question.

27 It is true, as the Commission points out, that in relation to Article 8(1)(a) of Council Directive 79/695/EEC of 24 July 1979 on the harmonisation of procedures for the release of goods for free circulation (OJ 1979 L 205, p. 19), which was in essentially the same terms as the second subparagraph of Article 65(c) of the Customs Code, the Court held that, if the importer had

referred to one of the prices which could be chosen as the basis for determining the customs value, it was not open to him to correct the declaration after the goods had been released for free circulation (judgment of 6 June 1990, *Unifert*, C-11/89, EU:C:1990:237, paragraph 21).

28 However, while, before the entry into operation of the Customs Code, on 1 January 1994, a declarant was prohibited from correcting his declaration after the goods had been released, Article 78 of that code expressly introduced, as from that date, the possibility of the customs authorities revising a customs declaration on an application by the declarant submitted after the release of the goods (judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraphs 61 and 62).

29 Thus, Articles 65 and 78 of the Customs Code now lay down two different procedures applicable, respectively, before and after the release of the goods, to amendments capable of being made to the information taken into account in determining the customs value and, hence, import duties (judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraph 64).

30 Article 65 permits the declarant himself to amend his customs declaration unilaterally, so long as the goods have not been released. That right is explained by the fact that, until release, the customs authorities can, if necessary, easily check the accuracy of the amendments by physically examining the goods. In addition, amendment may take place at a time when the amount of the import duties has not yet been determined by the customs authorities (judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraph 65).

31 Article 78 of the Customs Code establishes a more restrictive procedure. It applies after release of the goods, to a time when their presentation may be impossible and the import duties have already been determined. It thus entrusts the carrying out of a revision applied for by the declarant to the customs authorities, and makes such a revision subject to their assessment as regards both its principle and its result (judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraph 66).

32 Article 78(3) does not make a distinction between errors or omissions which are capable of correction and others which are not. The words 'incorrect or incomplete information', appearing in that provision, must be interpreted as covering both technical errors or omissions and errors of interpretation of the applicable law (judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraph 63).

33 It must therefore be ascertained whether the declarations made by CEVA Freight incorporated any incorrect or incomplete information concerning the price to be used as the basis for determining the customs value of the goods.

34 It is apparent from the file submitted to the Court that the prices declared by CEVA Freight were those at which the goods were sold by the companies on behalf of which CEVA Freight made the declarations, that the price declared was therefore substantively correct, and that in making its request, CEVA Freight did not in any way intend to correct it.

35 However, it is equally apparent that CEVA Freight had made an error as to the interpretation of the applicable law, in that its declarations classified the goods under the wrong customs subheading.

36 That error clearly influenced the choice as to the transaction value of those goods, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Union, to be used as the basis for determining their customs value in accordance with Article 29 of the Customs Code and Article 147 of the implementing regulation.

37 At the time of making the declarations, CEVA Freight was under the misapprehension that the relevant goods fell under a customs subheading attracting a rate of duty of 0%, and accordingly that the transaction value ascribed to them would not affect the amount of its customs debt. It was thus on the basis of a mistaken interpretation of the Customs Code, and in particular, of the definition of the relevant customs subheading, that CEVA Freight then stated the price to be used as the basis for determining the customs value. It is clear from the documents before the Court that if, at the time of the declarations at issue, CEVA Freight had correctly interpreted the applicable subheading, which attracted a rate of duty of 13.9%, it would have declared a lower transaction value so as to reduce the customs debt.

38 In so far as the error thus made by the declarant, as to the interpretation of the applicable law, induced it to state, in respect of goods which had been the subject of successive sales, and as the basis for determining the customs value of those goods, the highest of the transaction values, that error cannot be regarded as the exercise of a choice, which is by definition voluntary (see, to that effect, judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraph 69).

39 Consequently, in the light of the case-law referred to in paragraph 32 of this judgment, the transaction value stated in a customs declaration by a declarant such as the declarant to which the main proceedings relate constitutes incorrect information, within the meaning of Article 78 of the Customs Code, such that it is open to the customs authorities to amend the declaration.

40 In the light of the foregoing, the answer to the first question is that Article 78 of the Customs Code is to be interpreted as meaning that, where the declarant has a choice as to the price of goods sold for export to the territory of the European Union which is to be used as the basis of assessment in determining the customs value of those goods, and where it transpires on a post-clearance examination that the goods in question were misclassified in the customs declaration, and consequently that a higher duty is applicable, it is open to the declarant to make a request, pursuant to Article 78 of that code, for the declaration to be amended so as to substitute a lower transaction price for that originally stated, in order to reduce its customs debt.

The second question

41 By its second question, the referring court asks, essentially, whether Article 221(1) and (3) of the Customs Code is to be regarded as the basis for determining the date on which the communication to the debtor of the amount of duty is deemed to have been effected, for the purposes of interrupting the three-year limitation period applicable to the customs debt, and if so, whether the relevant date is that on which the communication was sent by the customs authorities, or that on which it was received by the debtor.

42 In answering that question, it must be borne in mind that under Article 221(1) of the Customs Code, the amount of duty is to be communicated to the debtor, in accordance with appropriate procedures, as soon as it has been entered in the accounts.

43 The EU legislature intended, in Article 221(3), to harmonise the period allowed to the customs authorities for effecting that communication, and the point in time when that period begins. However, it did not specify either the manner in which the communication is to be effected, or the date on which it must be effected in order to interrupt the limitation period. The explanation for this is that, as the Court has already held, the rule in Article 221(3) of the Customs Code only applies to the communication of the amount of duty to the debtor, and its implementation, in that respect, is a matter for the national customs authorities alone, who are competent to make such a communication (see, to that effect, judgment of 13 March 2003, *Netherlands* v *Commission*, C-156/00, EU:C:2003:149, paragraphs 63 and 64, and judgment of 15 March 2018, *Deichmann*, C-256/16, EU:C:2018:187, paragraph 81).

44 Thus, since EU customs legislation does not include any provision as to the meaning of 'appropriate procedures', or any provision conferring power on entities other than the Member States and their authorities to determine those procedures, it must be held that the procedures are within the scope of the national legal systems of the Member States and that, when the national authorities implement EU rules, they are to act in accordance with the procedural and substantive rules of their own national law (see, to that effect, judgment of 23 February 2006, *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraphs 52 and 53).

45 Accordingly, it is for the Member States to make provision as to the date on which the amount of duty payable is deemed to have been communicated to the debtor. As the Court has already had occasion to state, it is in any event the task of the competent national authorities to guarantee a form of communication which allows persons liable for customs debts to have full knowledge of their rights (judgment of 23 February 2006, *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraph 53).

46 Lastly, it is important to point out that the detailed arrangements for communicating the amount of duty to the debtor, for the purposes of interrupting the limitation period prescribed by Article 221(3) of the Customs Code, are laid down by procedural rules designed to protect a right enjoyed by justiciable persons, such as CEVA Freight, under EU law – a right which consists in the fact that, once the limitation period has expired, duty is no longer payable in respect of the importation of the relevant goods into the customs territory of the Union.

47 It follows that the Member States, in determining the date on which the communication to the debtor is to be deemed to have been effected, so as to interrupt the limitation period in accordance with Article 221(3) of the Customs Code, must ensure, first, that the applicable national provisions are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render in practice impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, to that effect, judgment of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 17 and the case-law cited).

48 In the light of all the foregoing, the answer to the second question is that Article 221(1) and (3) of the Customs Code is to be interpreted as meaning that it is for the Member States to determine, in compliance with the principles of effectiveness and equivalence, the date on which the amount of duty must be communicated to the debtor for the purposes of interrupting the limitation period of three years on expiry of which the customs debt is extinguished.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby rules:

1. **Article 78 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council, is to be interpreted as meaning that, where the declarant has a choice as to the price of goods sold for export to the territory of the European Union which is to be used as the basis of assessment in determining the customs value of those goods, and where it transpires on a post-clearance examination that the goods in question were misclassified in the customs declaration, and consequently that a higher duty is applicable, it is open to the declarant to make a request, pursuant to Article 78 of that code, for the declaration to be amended so as to substitute a lower transaction price for that originally stated, in order to reduce its customs debt.**

2. **Article 221(1) and (3) of Regulation No 2913/92, as amended by Regulation No 2700/2000, is to be interpreted as meaning that it is for the Member States to determine, in compliance with the principles of effectiveness and equivalence, the date on which the amount of duty must be communicated to the debtor for the purposes of interrupting the limitation period of three years on expiry of which the customs debt is extinguished.**

[Signatures]