



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

7 April 2022*

(Reference for a preliminary ruling – Union Customs Code – Extinguishment of the customs debt – Goods unlawfully introduced into the customs territory of the European Union – Seizure and confiscation – Directive 2008/118/EC – Excise duties – Directive 2006/112/EC – Value added tax – Chargeable event – Chargeability)

In Case C-489/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 30 September 2020, received at the Court on 2 October 2020, in the proceedings

UB

v

Kauno teritorinė muitinė

interested party:

Muitinės departamentas prie Lietuvos Respublikos Finansų ministerijos

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber, acting as President of the Second Chamber, I. Ziemele, T. von Danwitz (Rapporteur), P.G. Xuereb and A. Kumin, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Lithuanian Government, by K. Dieninis and V. Kazlauskaitė-Švenčionienė, acting as Agents,

* Language of the case: Lithuanian.

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Albenzio, avvocato dello Stato,

– the European Commission, by F. Clotuche-Duvieusart and J. Jokubauskaitė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 October 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 124(1)(e) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; ‘the Union Customs Code’), of Article 2(b) and Article 7(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12), and of Article 2(1)(d) and Article 70 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).
- 2 The request has been made in proceedings between UB, the appellant in the main proceedings, and the Kauno teritorinė muitinė (Kaunas Customs Office, Lithuania), as well as the Muitinės departamentas prie Finansų ministerijos (Customs Department attached to the Ministry of Finance, Lithuania), concerning a decision of the Kaunas Customs Office determining the amount of excise duty and value added tax (VAT) payable by UB following the unlawful introduction of cigarettes from Belarus into the territory of Lithuania.

Legal context

European Union law

The Union Customs Code

- 3 According to Article 42(1) of the Union Customs Code:

‘Each Member State shall provide for penalties for failure to comply with the customs legislation. Such penalties shall be effective, proportionate and dissuasive.’

- 4 Article 79 of that code, entitled ‘Customs debt incurred through non-compliance’, provides:

‘1. ‘For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

- (a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

...’

5 Article 124 of that code, entitled ‘Extinguishment’, provides:

‘1. Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

...

(e) where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated;

...

2. In the cases referred to in point (e) of paragraph 1, the customs debt shall, nevertheless, for the purposes of penalties applicable to customs offences, be deemed not to have been extinguished where, under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining penalties.

...’

6 Under Article 286(1) thereof, that code repeals Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1), which had itself repealed Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Regulation No 450/2008

7 Article 86 of Regulation No 450/2008, entitled ‘Extinguishment’, provided:

‘1. Without prejudice to Article 68 and the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on importation or exportation shall be extinguished in any of the following ways:

...

(e) where goods liable to import or export duties are seized and simultaneously or subsequently confiscated;

...’

Regulation No 2913/92

8 Article 202 of Regulation No 2913/92 provided:

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

- (a) the unlawful introduction into the customs territory of the [European] Community of goods liable to import duties, or
- (b) the unlawful introduction into another part of that territory of such goods located in a free zone or free warehouse.

For the purpose of this Article, unlawful introduction means any introduction in violation of the provisions of Articles 38 to 41 and the second indent of Article 177.

2. The customs debt shall be incurred at the moment when the goods are unlawfully introduced.

...’

9 Article 233 of that regulation, entitled ‘Extinction of customs debt’, provided:

‘Without prejudice to the provisions in force relating to the time-barring of a customs debt and non-recovery of such a debt in the event of the legally established insolvency of the debtor, a customs debt shall be extinguished:

...

- (d) where goods in respect of which a customs debt is incurred in accordance with Article 202 are seized upon their unlawful introduction and are simultaneously or subsequently confiscated.

...’

Directive 2008/118

10 In accordance with Article 2(b) of Directive 2008/118:

‘Excise goods shall be subject to excise duty at the time of:

...

- (b) their importation into the territory of the Community.’

11 Article 7(1) and (2) of that directive provides:

‘1. Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.

2. For the purposes of this Directive, “release for consumption” shall mean any of the following:

...

(d) the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.’

The VAT directive

12 Article 2(1)(d) of the VAT Directive provides:

‘The following transactions shall be subject to VAT:

...

(d) the importation of goods.’

13 According to Article 70 of that directive, ‘the chargeable event shall occur and VAT shall become chargeable when the goods are imported’.

14 Under the second subparagraph of Article 71(1) of that directive, ‘where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable’.

Lithuanian law

15 Article 93 of the Lietuvos Respublikos mokesčių administravimo įstatymas (Law of the Republic of Lithuania on tax administration) of 13 April 2004 (Žin., 2004, No 63-2243), entitled ‘Cessation of the tax obligation’, provided, in point 3 of paragraph 2 thereof, that, ‘any obligation with respect to the taxes administered by the customs authorities shall also cease ... if the smuggled goods are seized upon their unlawful introduction and simultaneously or subsequently confiscated’.

16 That provision was repealed with effect from 1 January 2017 and replaced by the following provisions:

– Article 20(2) of the Lietuvos Respublikos akcizų įstatymas (Law of the Republic of Lithuania on excise duty) of 30 October 2001 (Žin., 2001, No 98-3482), as amended Law No XII 2696 of 3 November 2016 (TAR, 2016, No 2016-26860), according to which ‘the obligation to pay excise duty to the customs authorities shall be extinguished *mutatis mutandis* in the cases specified in points (d) to (g) of paragraph 1 of Article 124 of the Union Customs Code’;

– Article 121(2) of the Lietuvos Respublikos pridėtinės vertės mokesčio įstatymas (Law of the Republic of Lithuania on value added tax) of 5 March 2002 (Žin., 2002, No 35-1271), as amended by Law No XII 2697 of 3 November 2016 (TAR, 2016, No 2016-26861), under which ‘the obligation to pay import VAT to the customs authorities shall be extinguished *mutatis mutandis* in the cases specified in points (d) to (g) of paragraph 1 of Article 124 of the Union Customs Code’.

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

- 17 UB, the appellant in the main proceedings, acting in a group of accomplices, organised the unlawful introduction (smuggling) of goods subject to excise duty from Belarus into the territory of Lithuania. On 22 September 2016, at a remote location, 6 000 packets of cigarettes ('the goods concerned') were thrown across the State border and recovered. On the same date, the vehicle transporting the goods concerned within the territory of Lithuania was stopped by border officers, who seized those goods.
- 18 By penal order of 23 January 2017, adopted by the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) in criminal proceedings, UB was convicted of a criminal offence, and a fine of EUR 16 947 was imposed on him; it was also decided to confiscate the goods concerned, and the competent authorities were instructed to destroy them.
- 19 In the light of that penal order, the Kaunas Customs Office recognised UB as being liable, jointly and severally with third parties, for payment of a customs debt and recorded a tax obligation consisting of EUR 10 237 in excise duty and EUR 2 679 in import VAT, together with, respectively, EUR 1 674 and EUR 438 corresponding to default interest on those taxes. As regards, on the other hand, the customs duties, the Kaunas Customs Office did not calculate and record the amount of those duties because it considered that the customs debt had been extinguished pursuant to Article 124(1)(e) of the Union Customs Code.
- 20 Ruling on a complaint lodged by UB, the Customs Department attached to the Ministry of Finance confirmed the decision of the Kaunas Customs Office by decision of 9 May 2018.
- 21 UB brought an action before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius). UB argued, in essence, that, since the customs debt was extinguished on the ground provided for in Article 124(1)(e) of the Union Customs Code, his obligation to pay excise duty and import VAT should also be regarded as extinguished.
- 22 By judgment of 30 October 2018, the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius) dismissed that action as lacking any foundation in law. That court took the view, *inter alia*, that grounds for the extinguishment of the obligation to pay excise duty and/or import VAT are not covered by the Union Customs Code.
- 23 UB brought an appeal against that judgment before the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania), which is the referring court.
- 24 The referring court harbours doubts, first, as to whether a seizure and a confiscation such as those at issue in the main proceedings constitute a ground for the extinguishment of the customs debt under Article 124(1)(e) of the Union Customs Code. It observes that the wording of that provision differs from that of point (d) of the first paragraph of Article 233 of Regulation No 2913/92, which expressly provided that the seizure of the smuggled goods had to take place 'upon their unlawful introduction' in order for the customs debt to be regarded as extinguished. It could therefore be held that, under the Union Customs Code, the time at which the seizure takes place is now irrelevant and the customs debt is extinguished even if the smuggled goods are seized when they have already been introduced into the customs territory of the European Union, that is to say, beyond the area in which the first customs office inside that territory is situated.

- 25 Second, the referring court is uncertain as to the effect of the extinguishment of the customs debt on the obligation to pay excise duty and import VAT. The referring court observes in that regard that, although the Court’s case-law, including the judgment of 29 April 2010, *Dansk Transport og Logistik* (C-230/08, EU:C:2010:231), seems to presuppose that the extinguishment of the customs debt, on the one hand, and the extinguishment of other tax obligations such as those to pay excise duty and import VAT, on the other, ‘occur in parallel’, neither Directive 2008/118 nor the VAT Directive contains provisions providing for the extinguishment of those obligations in situations where goods are unlawfully introduced and subsequently seized and confiscated.
- 26 In those circumstances, the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Article 124(1)(e) of [the Union Customs Code] to be interpreted as meaning that a customs debt is extinguished where, in a situation such as that in the present case, smuggled goods were seized and subsequently confiscated after they had already been unlawfully introduced (released for consumption) into the customs territory of the European Union?
- (2) If the first question is answered in the affirmative, are Articles 2(b) and 7(1) of [Directive 2008/118] and Articles 2(1)(d) and 70 of [the VAT Directive] to be interpreted as meaning that the obligation to pay excise duty and/or VAT is not extinguished where, as in the present case, smuggled goods are seized and subsequently confiscated after they have already been unlawfully introduced (released for consumption) into the customs territory of the European Union, even if the customs debt has been extinguished on the ground provided for in Article 124(1)(e) of [the Union Customs Code]?’

Consideration of the questions referred

The first question

- 27 By its first question, the referring court seeks to ascertain whether Article 124(1)(e) of the Union Customs Code must be interpreted as meaning that a customs debt is extinguished where goods are seized and subsequently confiscated when they have already been unlawfully introduced into the customs territory of the European Union.
- 28 As a preliminary point, it should be borne in mind that, in interpreting a provision of EU law, it is necessary not only to refer to its wording but also to consider its context and the objectives of the legislation of which it forms part, and in particular the origin of that legislation (judgment of 5 April 2022, *Commissioner of An Garda Síochána*, C-140/20, EU:C:2022:258, paragraph 32).
- 29 As regards the wording of Article 124(1)(e) of the Union Customs Code, that provision provides that, without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export is to be extinguished inter alia where smuggled goods liable to import or export duty are seized and simultaneously or subsequently confiscated.
- 30 Consequently, the wording of that provision does not refer to the time at which the seizure of the goods takes place as a condition for the extinguishment of the customs debt.

- 31 In that regard, as the Advocate General observed in points 30, 34 and 35 of his Opinion, the wording of that provision, which replaced Article 86(1)(e) of Regulation No 450/2008, is different from that of point (d) of the first paragraph of Article 233 of Regulation No 2913/92, which expressly referred to a seizure of goods ‘upon their unlawful introduction’ into the customs territory of the European Union.
- 32 Under the procedure established by point (d) of the first paragraph of Article 233 of Regulation No 2913/92, in order to lead to the extinction of the customs debt, the seizure of goods unlawfully introduced into the customs territory of the Community must have taken place before those goods went beyond the first customs office situated inside that territory (see, to that effect, judgment of 29 April 2010, *Dansk Transport og Logistik*, C-230/08, EU:C:2010:231, paragraph 50).
- 33 When it adopted Article 86(1)(e) of Regulation No 450/2008, and subsequently Article 124(1)(e) of the Union Customs Code, the EU legislature chose not to make the extinguishment of the customs debt subject to the condition that the seizure take place concomitantly with the introduction of the goods into the customs territory of the European Union.
- 34 Accordingly, the fact that the seizure and subsequent confiscation took place after the unlawful introduction of the goods into the customs territory of the European Union has no bearing on the applicability of Article 124(1)(e) of the Union Customs Code, with the result that the customs debt corresponding thereto must be deemed to have been extinguished also in that case.
- 35 That interpretation of Article 124(1)(e) of the Union Customs Code is consistent with the objectives pursued by that code, including, in particular, the establishment of an appropriate level of effective, dissuasive and proportionate penalties throughout the internal market, for the purposes of protecting the financial interests of the European Union, within the meaning of recitals 11 and 23 of that code.
- 36 It should be noted in that regard that the extinguishment of the customs debt in no way precludes the imposition of penalties for failure to comply with customs legislation.
- 37 Under Article 42(1) of the Union Customs Code, each Member State is required to provide for effective, proportionate and dissuasive penalties for failure to comply with the customs legislation and, under Article 124(2) of that code, the customs debt is, for the purposes of penalties applicable to customs offences, to be deemed not to have been extinguished where, under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining penalties.
- 38 Thus, the extinguishment of the customs debt provided for in Article 124(1)(e) of that code in the event of the seizure and confiscation of goods after their unlawful introduction into the customs territory of the European Union cannot prevent the application of penalties or undermine the deterrent effect of those penalties.
- 39 Consequently, the answer to the first question is that Article 124(1)(e) of the Union Customs Code must be interpreted as meaning that a customs debt is extinguished where goods are seized and subsequently confiscated when they have already been unlawfully introduced into the customs territory of the European Union.

The second question

- 40 By its second question, the referring court seeks to ascertain, in essence, whether Article 2(b) and Article 7(1) of Directive 2008/118, as well as Article 2(1)(d) and Article 70 of the VAT Directive, must be interpreted as meaning that the extinguishment of the customs debt on the ground provided for in Article 124(1)(e) of the Union Customs Code leads to the extinguishment of the debt linked, respectively, to excise duty and to VAT in respect of goods unlawfully introduced into the customs territory of the European Union.
- 41 As regards the obligation to pay excise duty, it should be recalled that, under Article 2(b) of Directive 2008/118, excise goods are subject to excise duty at the time of their introduction into the territory of the European Union. Under Article 7(1) of that directive, excise duty becomes chargeable at the time, and in the Member State, of release for consumption. Article 7(2)(d) of that directive provides that the concept of ‘release for consumption’ covers the importation of excise goods, including irregular importation, unless those goods are placed, immediately upon importation, under a duty suspension arrangement.
- 42 As the Advocate General observed in point 42 of his Opinion, Directive 2008/118 does not contain any provision extinguishing the obligation to pay excise duty in the event of the extinguishment of the customs debt relating to smuggled goods on the ground set out in Article 124(1)(e) of the Union Customs Code. It follows that, once it has become chargeable, the excise duty on such goods remains due.
- 43 That assessment is supported by the fact that, if unlawfully imported goods are seized and confiscated by the authorities after going beyond the first customs office situated inside the territory of the European Union, they must be regarded as having been imported into the European Union with the result that the chargeable event has occurred in relation to those goods (see, by analogy, judgment of 29 April 2010, *Dansk Transport og Logistik*, C-230/08, EU:C:2010:231, paragraph 74).
- 44 Furthermore, goods which were imported unlawfully in that way are to be regarded as having been released for consumption, with the result that the fact that they were subsequently entered for a customs warehousing procedure, following their seizure and confiscation, has no effect on the chargeability of the excise duty (see, by analogy, judgment of 29 April 2010, *Dansk Transport og Logistik*, C-230/08, EU:C:2010:231, paragraph 81).
- 45 In the present case, since the goods concerned were seized and confiscated after having been released for consumption, within the meaning of Article 7(2)(d) of Directive 2008/118, the excise duty remains chargeable; the extinguishment of the corresponding customs debt is irrelevant in that regard.
- 46 As regards the obligation to pay VAT, it should be noted that, under Article 2(1)(d) of the VAT Directive, the importation of goods is subject to VAT. According to Article 70 of that directive, the chargeable event is to occur and VAT is to become chargeable when the goods are imported.
- 47 In that regard, it should be borne in mind that, according to settled case-law, import VAT and customs duties display comparable essential features since they arise from the fact of importation of goods into the European Union and the subsequent distribution of those goods through the economic channels of the Member States. That parallel nature is confirmed by the fact that the second subparagraph of Article 71(1) of the VAT Directive authorises Member States to link the

chargeable event and the date on which the VAT on importation becomes chargeable with those laid down for customs duties (judgment of 3 March 2021, *Hauptzollamt Münster (Place where VAT is incurred)*, C-7/20, EU:C:2021:161, paragraph 29 and the case-law cited).

- 48 Thus, in addition to the customs debt, there may also be a requirement to pay VAT where, on the basis of the particular unlawful conduct which gave rise to the customs debt, it can be presumed that the goods entered the economic network of the Union and, consequently, that they may have undergone consumption, that is, the act on which VAT is levied (judgment of 3 March 2021, *Hauptzollamt Münster (Place where VAT was incurred)*, C-7/20, EU:C:2021:161, paragraph 30 and the case-law cited).
- 49 The VAT Directive does not contain any provision extinguishing the obligation to pay VAT in the event of the extinguishment of the customs debt relating to smuggled goods on the ground set out in Article 124(1)(e) of the Union Customs Code. It follows that, once it has become chargeable, the VAT on such goods remains due.
- 50 That assessment is borne out by the fact that, where the goods have been seized and confiscated after going beyond the first customs office situated inside the customs territory of the European Union, the chargeable event for VAT has already occurred and the VAT has become chargeable as a result (see, by analogy, judgment of 29 April 2010, *Dansk Transport og Logistik*, C-230/08, EU:C:2010:231, paragraph 94).
- 51 In the present case, since the goods concerned were seized and confiscated after they were imported, for the purposes of Article 70 of the VAT Directive, the VAT remains chargeable; the extinguishment of the corresponding customs debt is irrelevant in that regard.
- 52 Consequently, the answer to the second question is that Article 2(b) and Article 7(1) of Directive 2008/118, as well as Article 2(1)(d) and Article 70 of the VAT Directive, must be interpreted as meaning that the extinguishment of the customs debt on the ground provided for in Article 124(1)(e) of the Union Customs Code does not lead to the extinguishment of the debt linked, respectively, to excise duty and to VAT in respect of goods unlawfully introduced into the customs territory of the European Union.

Costs

- 53 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 (Second Chamber) hereby rules:

- 1. Article 124(1)(e) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as meaning that a customs debt is extinguished where goods are seized and subsequently confiscated when they have already been unlawfully introduced into the customs territory of the European Union.**

2. Article 2(b) and Article 7(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, as well as Article 2(1)(d) and Article 70 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as meaning that the extinguishment of the customs debt on the ground provided for in Article 124(1)(e) of the Union Customs Code does not lead to the extinguishment of the debt linked, respectively, to excise duty and to value added tax in respect of goods unlawfully introduced into the customs territory of the European Union.

[Signatures]