

JUDGMENT OF THE COURT (Fifth Chamber)

11 January 2001 *

In Case C-226/99,

REFERENCE to the Court under Article 234 EC by the Tribunale Civile e Penale di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between

Siples Srl, in liquidation,

and

Ministero delle Finanze,

Servizio della Riscossione dei Tributi — Concessione Provincia di Genova —
San Paolo Riscossioni Genova SpA,

on the interpretation of Article 244 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1),

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet,
D.A.O. Edward, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Siples Srl, in liquidation, by P. Massa, avvocato,
- the Italian Government, by U. Leanza, acting as Agent, and I.M. Braguglia, Avvocato dello Stato,
- the Swedish Government, by I. Simfors, acting as Agent,
- the Commission of the European Communities, by A. Aresu and R. Tricot, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Italian Government, represented by G. De Bellis, Avvocato dello Stato, and of the Commission, represented by P. Stancanelli, acting as Agent, at the hearing on 22 June 2000,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2000,

gives the following

Judgment

- 1 By order of 25 May 1999, received at the Court on 11 June 1999, the Tribunale Civile e Penale di Genova (District Court, Genoa) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 244 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Customs Code').
- 2 That question was raised in proceedings between Siples Srl, in liquidation, (hereinafter 'Siples') and the Ministero delle Finanze (Ministry of Finance) and the Servizio della Riscossione dei Tributi — Concessione Provincia di Genova — San Paolo Riscossioni Genova SpA (agent of the Tax Collection Service in the

Province of Genoa) concerning the recovery of customs duty and value added tax (hereinafter 'VAT') levied on importation.

Legal background

Community legislation

3 Title VIII of the Customs Code, entitled 'Appeals', consists of Articles 243 to 245.

4 Article 243 of the Customs Code provides:

'1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of customs legislation and has not obtained a ruling on that request within the period referred to in Article 6(2) shall also be entitled to exercise the right of appeal.

The appeal must be lodged in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:

- (a) initially, before the customs authorities designated for that purpose by the Member States;
- (b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.'

5 Article 244 of the Customs Code provides:

'The lodging of an appeal shall not cause implementation of the disputed decision to be suspended.

The customs authorities shall, however, suspend implementation of such decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

Where the disputed decision has the effect of causing import duties or export duties to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a security. However, such security need not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties.'

- 6 Article 245 of the Customs Code provides:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

National legislation

- 7 Article 70 of Presidential Decree No 633 of 26 October 1972 on the introduction and regulation of value added tax (GURI No 292 of 11 November 1972, Suppl. Ord. No 1, hereinafter 'the 1972 decree'), provides:

'The tax relating to imports shall be charged, calculated and levied on each operation. As regards disputes and penalties, the provisions of the customs legislation on duties levied at the border shall be applied.'

- 8 The enforced recovery of taxes and other State revenue is governed by Presidential Decree No 43 of 28 January 1988 (GURI No 49, 29 February 1988, Suppl. Ord. No 2). As regards the recovery of customs duties, competence to stay the enforcement procedure is conferred by Article 27 of Legislative Decree No 105 of 26 April 1990 (GURI No 106, 9 May 1990, Suppl. Ord.) and Article 32 of Presidential Decree No 287 of 27 May 1992 (GURI No 116, 20 May 1992, Suppl. Ord.), on the *Direttore Compartimentale delle Dogane*.
- 9 Under the national law in force at the material time, the ordinary courts did not have jurisdiction to hear and determine applications for suspension of implementation of recovery decisions.

Main proceedings and question referred to the Court

- 10 On 16 September 1998, the agent of the Tax Collection Service in the Province of Genoa served a recovery notice on Siples in order to recover the sum of ITL 2 372 083 870 by way of customs duty and VAT levied on importation, plus interest, in respect of imports of mushrooms from Korea in 1993.
- 11 Siples lodged an application with the Tribunale Civile e Penale di Genova for annulment of the recovery notice. By a separate document, it requested that court to suspend implementation of the recovery notice pending the decision of the court on the substance of the case.

- 12 In the context of the latter action, the Tribunale considers that an interpretation of Articles 243 and 244 of the Customs Code is necessary to enable it to resolve the dispute. It points out, in that regard, that Article 70 of the 1972 decree refers, in regard to disputes and penalties relating to VAT levied on importation, to the provisions of the customs legislation on duty levied at the border.
- 13 The national court observes that, in its judgment in Case C-130/95 *Giloy v Hauptzollamt Frankfurt am Main-Ost* [1997] ECR I-4291, the Court interpreted Article 244 of the Customs Code as meaning that the conditions laid down for the grant of suspension of implementation of the contested decision — namely, according to the Tribunale, good reason to believe that the disputed decision is inconsistent with customs legislation or the risk of serious harm to the person concerned — are alternatives. In the present case there is a risk of serious harm to the applicant.
- 14 Being of the view that it appeared to be contradictory that the appeal before the judicial authority did not allow the applicant to obtain interim relief that the customs authority was able to grant, the Tribunale Civile e Penale di Genova decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is the power to suspend the contested decision provided for in Article 244 of Regulation (EEC) No 2913/92 conferred exclusively on the customs authority or also on the judicial authority before which an appeal has been brought?’

The question referred to the Court

- 15 First of all, the Italian Government's argument that the Court has no jurisdiction to rule on the question, on the ground that the main proceedings fall outside the scope of Community law, must be rejected. It follows from the order for reference that the recovery notice in issue relates in part to customs duties, so that the Customs Code is directly applicable to the main proceedings.
- 16 As regards the substance of the question, it follows from the clear wording of Article 244 of the Customs Code that that provision confers power to suspend implementation of the contested decision exclusively on the customs authorities.
- 17 However, that provision cannot limit the right to effective judicial protection. The requirement of judicial control of any decision of a national authority reflects a general principle of Community law stemming from the constitutional traditions common to the Member States and enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Case 222/86 *Unectef v Heylens* [1987] ECR 4097, paragraph 14, and Case C-97/91 *Oleificio Borelli v Commission* [1992] ECR I-6313, paragraph 14).
- 18 In the exercise of their control, it is for the national courts, pursuant to the principle of cooperation laid down in Article 5 of the EC Treaty (now Article 10 EC), to ensure the legal protection which persons derive from the

direct effect of provisions of Community law (Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 19).

- 19 With more specific regard to the possibility of suspending implementation of a decision of a customs authority, it should be pointed out that a court seised of a dispute governed by Community law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law (*Factortame*, cited above, paragraph 21).
- 20 The answer to the question referred to the Court must therefore be that Article 244 of the Customs Code is to be interpreted as meaning that it confers the power to suspend implementation of a contested decision exclusively on the customs authorities. However, that provision does not limit the power of the judicial authorities seised of a dispute pursuant to Article 243 of that Code to order such suspension in order to comply with their obligation to ensure the full effectiveness of Community law.

Costs

- 21 The costs incurred by the Italian and Swedish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Tribunale Civile e Penale di Genova by order of 25 May 1999, hereby rules:

Article 244 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is to be interpreted as meaning that it confers the power to suspend implementation of a contested decision exclusively on the customs authorities. However, that provision does not limit the power of the judicial authorities seised of a dispute pursuant to Article 243 of that regulation to order such suspension in order to comply with their obligation to ensure the full effectiveness of Community law.

La Pergola

Wathelet

Edward

Jann

Sevón

Delivered in open court in Luxembourg on 11 January 2001.

R. Grass

A. La Pergola

Registrar

President of the Fifth Chamber