Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

24 October 2013 *

(Request for a preliminary ruling — Legal basis of the decision at issue in the main proceedings no longer present — Lack of relevance of the questions asked — No need to adjudicate)

In Case C-180/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 4 April 2012, received at the Court on 16 April 2012, in the proceedings

Stoilov i Ko EOOD

v

Nachalnik na Mitnitsa Stolichna,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 11 April 2013,

after considering the observations submitted on behalf of:

— Stoilov i Ko EOOD, by B. Aleksiev, advokat,

— Nachalnik na Mitnitsa Stolichna, by N. Yotsova, D. Yordanova, Y. Yordanova, S. Dimitrova and S. Zlatkov, acting as Agents,

— the European Commission, by B.-R. Killmann, D. Roussanov and L. Bouyon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 July 2013,

gives the following

* Language of the case: Bulgarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the Combined Nomenclature for 2009 in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008 (OJ 2008 L 291, p. 1) ('the CN'), in particular CN subheadings 5407 61 30 and 6303 92 10, and the interpretation 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 Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1) ('the Customs Code'), of the principles of the protection of legitimate expectations and *res judicata*, and of Articles 41 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Stoilov i Ko EOOD ('Stoilov') and the Nachalnik na Mitnitsa Stolichna (Director of Customs in Sofia) concerning the tariff classification of goods described as 'materials for the manufacture of blinds', originating in China.

Legal context

EU law

The Customs Code

3 Under Article 68 of the Customs Code, for the verification of declarations which they have accepted in the 'normal' procedure, the customs authorities may:

'(a) examine the documents covering the declaration …;

(b) examine the goods and take samples for analysis or for detailed examination.'

4 Article 71 of the Customs Code is worded as follows:

'1. The results of verifying the declaration shall be used for the purposes of applying the provisions governing the customs procedure under which the goods are placed.

2. Where the declaration is not verified, the provisions referred to in paragraph 1 shall be applied on the basis of the particulars contained in the declaration.'

5 Under Article 221(1) of the Customs Code, '[a]s soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures'.

6 Article 232, in Section 2, entitled 'Time limit and procedures for payment of the amount of duty', of Title VII, Chapter 3, of the Customs Code, states:

'1. Where the amount of duty due has not been paid within the prescribed period:

(a) the customs authorities shall avail themselves of all options open to them under the legislation in force, including enforcement, to secure payment of that amount.

Special provisions may be adopted, in accordance with committee procedure, in respect of guarantors within the framework of the transit procedure;

(b) interest on arrears shall be charged over and above the amount of duty. The rate of interest on arrears may be higher than the rate of credit interest. It may not be lower than that rate.

2. The customs authorities may waive collection of interest on arrears …'

7 Article 243, in Title VIII of the Customs Code, entitled 'Appeals', is worded as follows:

'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.

…

2. The right of appeal may be exercised:

(a) initially, before the customs authorities …

(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.'

The CN

8 Part One of the CN deals with preliminary provisions. In that part, in Section I, containing general rules, subsection A, 'General rules for the interpretation of the [CN]', states:

'Classification of goods in the [CN] shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

…'

9 The CN is based on the Harmonised Commodity Description and Coding System drawn up by the World Customs Organisation, and uses the same and six-digit headings and subheadings, only the seventh and eighth digits forming subdivisions specific to the CN. Part Two of the CN, entitled 'Schedule of customs duties', consists of a classification of goods in sections, chapters, headings and subheadings.

10 Section XI of the CN is entitled 'Textiles and textile articles'. Note 7 of that section is worded as follows:

'For the purposes of this section, the expression "made up" means:

(a) cut otherwise than into squares or rectangles;

(b) produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

(c) hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;

…'

11 Section XI, Chapter 54 of the CN, entitled 'Man-made filaments; strip and the like of man-made textile materials', includes in particular heading 5 407, covering '[w]oven fabrics of synthetic yarn, including woven fabrics obtained from materials of heading 5 404'. That heading includes in particular the category '[o]ther woven fabrics, containing 85% or more by weight of polyester filaments', which includes in particular subheading 5407 61 relating to '[o]ther woven fabrics, containing 85% or more by weight of non-textured polyester filaments'. That subheading itself includes, inter alia, subheading 5407 61 30, entitled 'dyed'.

12 Subchapter I, entitled 'Other made-up textile articles', in Section XI, Chapter 63 of the CN, includes in particular heading 6 303, referring to '[c]urtains (including drapes) and interior blinds; curtain or bed valances'. That heading is divided into two categories, 'knitted or crocheted' and 'other'. The latter category includes in particular subheading 6303 92, entitled 'of synthetic fibers'. That subheading is itself divided into two subheadings, 6303 92 10 and 6303 92 90, entitled 'non wovens' and 'other' respectively.

Bulgarian law

13 Article 34(3) of the Code of Administrative Procedure (Administrativnoprotsesualen kodeks) provides that 'the administration shall ensure that the parties have the possibility of presenting their comments on the evidence received and on the claims made within a specified period not exceeding seven days. The parties may submit requests and objections in writing.'

14 According to Article 35 of that code, the individual administrative act is issued after clarification of the relevant facts and circumstances considered and an examination of the explanations and objections put forward, as the case may be, by the citizens or organisations concerned.

15 Under Article 179(1) of the Code of Civil Procedure (Grazhdanski protsesualen kodeks) ('the GPK'), an official document, drawn up by an official in the context of his duties in accordance with the appropriate form and detailed arrangements, constitutes evidence of declarations made in his presence and of acts which were performed by him or in his presence.

16 In accordance with Article 297 of the GPK, a judgment which has become final is binding on the court which delivered it as well as on any other court or administrative authority.

17 According to Article 302 of the GPK, a decision of the administrative courts which has become final is binding on the civil courts as regards the validity and legality of the administrative act.

18 Under Article 211(1) of the Customs Law (Zakon na mitnitsite) ('the ZM'), where the amount of duty has not been paid within the prescribed period, the customs authorities are to make use of all the possibilities granted to them by that law or any other legal provision in order to ensure that that amount is paid, including the adoption of administrative implementation measures.

19 Under Article 211a of the ZM, 'decisions to enforce recovery of public debts of the State are individual administrative acts issued by the director of customs within whose geographical jurisdiction the debt not paid within the prescribed period was incurred; those acts establish that customs debts and other public debts have become due'.

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

20 By a customs declaration lodged on 8 January 2009, Stoilov declared 'materials for the manufacture of blinds' under CN subheading 6303 92 10. Customs duties of Bulgarian leva 7598.56 (BGN) and value added tax of BGN 23544.53 were calculated and paid.

21 In order to verify that declaration, the customs authorities carried out an laboratory analysis of samples on 9 January 2009, which was the subject of an official report.

22 In the light of the customs laboratory analysis, those authorities considered that the goods referred to in that declaration could not be classified under Chapter 63 of the CN. It appeared from the examination that those goods satisfied the criteria for classification under Chapter 54 of the CN, more specifically subheading 5407 61 30.

23 In those circumstances, on 27 April 2009, the Nachalnik na Mitnitsa Stolichna served Stoilov with a decision classifying the goods referred to in the customs declaration of 8 January 2009 under that subheading ('the notification decision'), thereby entailing an increase in the rate of customs duty from 6.5% to 8% and, in accordance with Council Regulation (EC) No 1487/2005 of 12 September 2005 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain finished polyester filament fabrics originating in the People's Republic of China (OJ 2005 L 240, p. 1), as amended by Council Regulation (EC) No 1087/2007 of 18 September 2007 (OJ 2007 L 246, p. 1), the imposition of a definitive anti-dumping duty of 74.8%.

24 Under that decision, Stoilov was given seven days to pay voluntarily the public debts of BGN 1211.37 by way of customs duties, BGN 82372.82 by way of anti-dumping duties and BGN 16716.84 by way of value added tax.

25 Stoilov brought an administrative appeal against that decision, and then brought an action before the Administrativen sad Sofia-grad (Administrative Court, Sofia).

26 In the meantime, since Stoilov had not paid the amounts stated in the notification decision within the prescribed period, the Nachalnik na Mitnitsa Stolichna issued the decision to enforce recovery of State debts No 13 of 7 August 2009 ('the recovery decision').

27 On 11 September 2009, Stoilov lodged an administrative appeal against that decision requesting that an independent expert opinion be ordered relating to the classification of the taxed goods. In the absence of a response within the prescribed period, on 7 October 2009, Stoilov brought the main proceedings directly before the Administrativen sad Sofia-grad.

28 On 14 October 2009, the supreme administrative authority, namely the regional director of customs, dismissed the administrative appeal lodged on 11 September 2009 and refused to order the requested expert opinion.

29 By judgment of 30 December 2010, the Administrativen sad Sofia-grad confirmed the notification decision.

30 Stoilov brought an appeal on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court), which was still pending when this request for a preliminary ruling was made.

31 According to the Administrativen sad Sofia-grad, the two possibilities for the classification of the goods at issue in the main proceedings are Chapters 54 and 63 of the CN. In order to distinguish them, it is necessary to interpret the concept of 'made-up' article within the meaning of Note 7 to Chapter 63 and that of 'fabric' referred to in subheading 5407 61 30 of the CN.

32 Moreover, it is necessary to determine whether, in the light of the outcome of five other customs declarations, concerning goods such as those at issue in the main proceedings, made by Stoilov both before and after the contested declaration was lodged, that company may rely on the principle of the protection of legitimate expectations so that the goods concerned in the main proceedings will be classified under tariff heading 6303 92 10.

33 Furthermore, pointing out that the contested declaration has given rise to two separate national proceedings relating to the same issue of fact and law, the referring court considers that it is necessary to refer to the Court the question as to which, under Article 243(1) of the Customs Code, is the actionable measure.

34 Finally, an interpretation of Articles 41 and 47 of the Charter should be requested.

35 In those circumstances, the Administrativen sad Sofia-grad decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Are the goods — rolled-up strips of non-woven fabric for the production of interior blinds — to be assigned to CN code 5407 61 30 in accordance with the characteristics of the goods as "woven fabric" or CN code 6303 92 10 corresponding to their sole intended purpose — for interior blinds — for the purposes of tariff classification according to the [CN], taking the following into consideration:

(a) the term "made-up" article within the meaning of Note 7 to Chapter 63 ("Other made-up textile articles; sets; worn clothing and worn textile articles; rags") in Section XI ("Textiles and textile articles") of the [CN], interpreted in conjunction with point 2(a) of the general rules of interpretation concerning the terms "incomplete or unfinished article" having regard to the case mentioned in point 2(c) of the note, the characteristics of the goods at issue in the present proceedings and the possibility that a single end-product is produced from them;

(b) the question of whether the term "woven fabrics" in Chapter 54, subheading 5407 61 30, of the [CN] covers fabric strips, which, like the end-product forming their single intended purpose — interior blinds —, also come with fixed edges on the long side, having regard also to the express reference to that product in subheading 6303 92 10 of the [CN]?

2. May it reasonably be supposed that a legitimate expectation with regard to the tariff classification of the goods arose for the declarant and person responsible for the importation of the goods and that, in accordance with Article 71(2) of [the Customs Code] and having regard to the principle of

the protection of legitimate expectations, the tariff code of the goods stated in the customs declaration is to be applied if, according to the facts of the case in the main proceedings, the situation at the date of the making of the customs declaration was as follows:

(a) with respect to an earlier customs declaration of identical goods with the same tariff code, after a physical examination of the goods by the customs authorities including a check of the tariff classification, recorded in a report, no samples were taken for analysis and the conclusion was drawn that the goods corresponded to the declaration;

(b) no later examination took place after the release of the goods in the case of five other customs declarations declaring identical goods with the same tariff code, made earlier, both before and after the date of the report of the customs examination finding that the tariff code corresponded?

3. Is Article 243(1) of [the Customs Code], having regard to observance of the principle of *res judicata*, to be interpreted as meaning that an appeal can be brought against an act under Article 232(1)(a) of that code only if the act was adopted on the ground of a payment not being made within the period prescribed, and at the same time establishes the amount of import duty, and constitutes an enforceable order for the collection of the duty under the national law of the Member State?

4. Are Articles 41(2)(a) and 47 of the [Charter] to be interpreted as meaning that, when an application for the taking of evidence by means of an independent expert's report, requested by the debtor after receipt of a communication in accordance with Article 221(1) of [the Customs Code], was not expressly responded to by the customs authorities and was not mentioned in the grounds for later decisions, there is an irremediable infringement of the right to good administration and the rights of the defence in administrative proceedings, which can no longer be remedied in the judicial proceedings because in the circumstances of the main proceedings, it is only before the court of first instance that the person concerned has the chance to prove his objections regarding the tariff classification of the goods by putting questions to an independent expert?'

Consideration of the request for a preliminary ruling

36 It is settled case-law that the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of EU law which they need in order to decide the disputes before them (see, inter alia, Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 22, and Case C-370/12 *Pringle* [2012], paragraph 83).

37 In the context of that cooperation, the national court seised of the dispute is in the best position to assess, having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment and the relevance of the questions which it refers to the Court (see, to that effect, Case C-343/90 *Lourenço Dias* [1992] ECR I-4673, paragraph 15, and Case C-152/03 *Ritter-Coulais* [2006] ECR I-1711, paragraph 14).

38 That does not alter the fact that it is for the Court, where appropriate, to examine the circumstances in which the case was referred to it by a national court in order to assess whether it has jurisdiction and, in particular, determine whether the interpretation of EU law that is sought bears any relation to the facts of the main action or its purpose, so that the Court is not led to deliver advisory opinions on general or hypothetical questions (see, inter alia, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraphs 18 and 21, and Case C-167/01 *Inspire Art* [2003] ECR I-10155, paragraph 45). If it appears

that the question raised is manifestly irrelevant for the purposes of deciding the case, the Court must declare that there is no need to proceed to judgment (see, inter alia, *Lourenço Dias*, paragraph 20, and *Ritter-Coulais*, paragraph 15 and the case-law cited).

39 It is apparent in the present case from the written observations submitted to the Court and from the referring court's reply to the request for clarification sent to it by the Court that, by judgment of 5 July 2012, the Varhoven administrativen sad set aside the judgment referred to in paragraph 29 above and the notification decision.

40 According to the information provided by the national court in its reply to the request for clarification concerning the effect of the annulment of the notification decision on the main proceedings, and as is apparent from that judgment, which is annexed to that reply, the Varhoven administrativen sad held in particular that the tariff classification determined by the Nachalnik na Mitnitsa Stolichna, which had been confirmed by the Administrativen sad Sofia-grad, was erroneous in the light of the evidence and expert opinions in the file. On that point, the Varhoven administrativen sad found that the factors relied on by the Administrativen sad Sofia-grad were substantiated neither by the evidence adduced nor by the findings of the judicial expert's report.

41 In that reply, the referring court also stated that it is for it to ensure compliance with the procedural rules which govern the lawfulness of the recovery decision, including, in particular, the rule relating to the notification of the existence of an 'unpaid debt', within the meaning of Article 211a of the ZM, by the notification decision.

42 At the hearing before the Court, the Nachalnik na Mitnitsa Stolichna acknowledged that, owing to its annulment by the Varhoven administrativen sad, the notification decision no longer existed in the Bulgarian legal order.

43 Furthermore, at that hearing, Stoilov referred to a decision terminating the recovery of public debts, made by the public implementing authority on 24 September 2012. That decision terminated the enforcement proceedings initiated in accordance with the recovery decision. While contesting its validity, the Nachalnik na Mitnitsa Stolichna did not deny the existence of that decision.

44 In those circumstances, whether or not the enforcement proceedings brought in accordance with the recovery decision were terminated, it follows, in any event, from the above findings that, as the Advocate General states in point 16 of his Opinion, the referring court will, in resolving the dispute in the main proceedings, no longer be called upon to adopt a decision taking into consideration the reply that the Court would give to the question referred if it were required to reply to them.

45 As the referring court stated in its reply to the request for clarification sent to it by the Court, the notification decision was annulled in its entirety by the Varhoven administrativen sad and the existence of that decision, as has already been pointed out in paragraph 41 above, is a procedural condition for the adoption of the recovery decision.

46 In those circumstances, it must be held that the present request for a preliminary ruling no longer involves an interpretation of EU law objectively required for the referring court to make a decision (see, by analogy, inter alia, Case C-291/96 *Grado and Bashir* [1997] ECR I-5531, paragraph 16). That request, in the absence of any subject matter, does not enable the factors to be discerned that are necessary for an interpretation of EU law which the national court might usefully apply in order to resolve, in accordance with that law, the dispute before it (see, inter alia, to that effect, Case 132/81 *Vlaeminck* [1982] ECR 2953, paragraph 13).

47 It is true that, in its reply to the request for clarification sent by the Court concerning the effect of the annulment of the notification decision on the main proceedings, the referring court considered that the customs authorities could adopt new decisions with the same contents as the notification and recovery

decisions. However, even assuming that that is still the case, notwithstanding the judgment of 5 July 2012 of the Varhoven administrativen sad, it must be held that to reply to questions asked in such circumstances would amount to providing an advisory opinion on hypothetical questions in disregard of the Court's task in the context of the judicial cooperation instituted by Article 267 TFEU (see, to that effect, Case 149/82 *Robards* [1983] ECR 171, paragraph 19; *Meilicke*, paragraph 25; and Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 26).

48 In the light of all the foregoing, it must be held that there is no need to answer the questions raised by the referring court.

Costs

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

There is no need to answer the questions raised by the Administrativen sad Sofia-grad (Bulgaria).

[Signatures]