Case C-421/19

Request for a preliminary ruling

Date lodged:

19 June 2019

Referring court:

Kammarrätten i Göteborg (Sweden)

Date of the decision to refer:

19 June 2019

Appellant:

Allmänna ombudet hos Tullverket

Opposing party:

Combinova AB

COURT

[...]

APPELLANT

Allmänna ombudet hos Tullverket

OPPOSING PARTY

Combinova AB [...]

DECISION UNDER APPEAL

Judgment of the förvaltningsrätten i Göteborg (Administrative Court, Gothenburg, Sweden) of 22 August 2018 in Case No 6776-18

MATTER

Customs; now a request for a preliminary ruling from the Court of Justice of the European Union

[...]

The kammarrätten (Administrative Court of Appeal) makes the following

ORDER

A preliminary ruling shall be requested from the Court of Justice of the European Union under Article 267 TFEU in accordance with the attached reference for a preliminary ruling (attachment to the minutes).

[...]

[Or. 1]

Annex to the minutes

Reference for a preliminary ruling under Article 267 [TFEU] concerning the interpretation of Article 124(1)(k) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ('the Customs Code')

Background

Combinova AB, with authorisation from Tullverket (Swedish Customs), imported goods under what is known as the inward processing suspension procedure. The material import took place on 23 November 2017 [...]. The goods were re-exported on 11 December 2017. The period for discharge ended on 23 January 2018. A bill of discharge should have been submitted within 30 days of the expiry of the period for discharge, that is to say by 22 February 2018. On 6 March 2018, Tullverket received a bill of discharge from the company. Since the bill of discharge was not submitted within the prescribed period, a customs debt was incurred under Article 79 of the Customs Code. Tullverket decided to debit Combinova AB for customs duties of SEK 121 plus value added tax of SEK 2 790.

Combinova AB appealed against Tullverket's decision. The förvaltningsrätten (Administrative Court) took the view that Tullverket's decision to levy customs duty and VAT on the company was correct and that the company had not shown that there were any grounds for extinguishing the customs debt.

Proceedings before the kammarrätten (Administrative Court of Appeal)

The *Allmänna ombudet hos Tullverket* (General representative of Swedish Customs; 'AOT') has appealed against the judgment of the förvaltningsrätten (Administrative Court) and claims that the customs debt should be extinguished in

accordance with Chapter 6, Paragraph 15, of the tullagen (2016:253) (Law on customs (2016: 253); 'the TL'). The AOT states as follows.

It follows from Article 79(2)(a) of the Customs Code that the time at which the customs debt was incurred was the latest moment at which the bill of discharge submitted late should have been submitted, which was 22 February 2018. The customs debt therefore arose at the end of that day, since at that time the bill of discharge had not been submitted. At that time, the goods had **[Or. 2]** already been removed from the EU customs area, as the goods were re-exported on 11 December 2017. There was thus no use of the goods at the time at which the customs debt arose or thereafter. Use prior to the time at which the customs debt arose was not connected to that customs debt being incurred. The use was also in accordance with the processing authorised in the authorisation granted by Tullverket. There are no indications whatsoever that Combinova AB attempted to commit fraud. In those circumstances, it should not be possible to take the view that the goods have been used in such a way as could prevent the customs debt being extinguished in accordance with Article 124(1)(k).

It is clear from Chapter 6, Paragraph 13, of the TL that when the AOT appeals against a decision, the public's case is pleaded by the AOT and not by Tullverket.

Tullverket has nevertheless been given the opportunity to comment on the case and states as follows.

Tullverket does not claim that the goods have been consumed. The question is whether the goods have been used. The meaning of the term 'used' is not set out in the customs legislation. The term can be understood in two ways. It may be either that the product has been used in the way it is intended to be used or that it has been used in some way. On the latter interpretation, the product will be deemed to be used if it is processed.

A basic idea behind the inward processing procedure is that goods are to be processed in some way. Under the authorisation for inward processing, the company must repair and calibrate various instruments, which, in accordance with Article 5(37) of the Customs Code, are processing operations. As is clear from Article 256(1) of the Customs Code, under the inward processing procedure non-Union goods may be used. In its judgment of 31 October 2018 in Case No 103-18, the kammarrätten i Jönköping (Administrative Court of Appeal, Jönköping) held that a work of art which has been exhibited has been used within the meaning of Article 124(1)(k) of the Customs Code. In light of Article 256 of the Customs Code, use of the expression may be deemed to mean that the goods are processed in some way. It has not been alleged that the goods in this case have not been processed during the procedure. There is therefore no ground on which the customs debt can be extinguished in accordance with that article.

[Or. 3]

The need for a preliminary ruling

The term ‘use’ appears in several places in the Customs Code. Article 256 provides that, under the inward processing procedure, non-Union goods may be used in the customs territory of the Union in one or more processing operations without the goods being subject, inter alia, to import duties.

In this case, the meaning given to the term ‘used’ in Article 124(1)(k) of the Customs Code is of decisive importance. In addition, it is important, as a matter of principle, to define when that provision is applicable.

The kammarrätten (Court of Appeal) requests, against the background set out above, an answer to the following question.

A customs debt on importation or exportation incurred under Article 79 is to be extinguished in accordance with Article 124(1)(k) if there is sufficient evidence to the satisfaction of the customs authorities that the goods have not been used or consumed and have been removed from the customs territory of the Union. Does the term ‘used’ mean that goods have been processed or refined for the purpose for which authorisation was granted to a company for those goods, or does the term concern a use which goes beyond that processing or refining? Is it relevant whether the use takes place before or after the customs debt arose?