

**Anonymised version**

Translation

C-206/24 – 1

**Case C-206/24**

**Request for a preliminary ruling**

**Date lodged:**

14 March 2024

**Referring court:**

Cour de cassation (France)

**Date of the decision to refer:**

13 March 2024

**Applicants:**

YX

Logistica I Gestio Caves andorrannes I Vida SA

**Defendants:**

Ministre de l'Économie, des Finances et de la Relance

Directeur général des douanes et droits indirects

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[OMISSIS]

**FRENCH REPUBLIC**

IN THE NAME OF THE FRENCH PEOPLE

JUDGMENT OF THE COUR DE CASSATION, CHAMBRE COMMERCIALE,  
FINANCIÈRE ET ÉCONOMIQUE (COURT OF CASSATION,  
COMMERCIAL, FINANCIAL AND ECONOMIC DIVISION, FRANCE) OF 13  
MARCH 2024

1/ YX [OMISSIS] 99000 Andorra [Principality of Andorra],

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2/ Logistica I Gestio Caves andorrannes I Vida, formerly named Caves Andorranes, a publicly owned company with its seat [in] [OMISSIS] 99000 Andorra [Principality of Andorra],

brought [an] [OMISSIS] appeal [OMISSIS] against the judgment of 10 February 2020 of the cour d'appel de Toulouse (First Chamber, Section 1) (Court of Appeal, Toulouse, France) in the proceedings between:

1/ the ministre de l'économie, des finances et de la relance (Minister for Economic Affairs, Finance and Recovery, France), residing [in] [OMISSIS] 75572 Paris [OMISSIS] [France]

2/ the directeur général des douanes et droits indirects (Director-General of Customs and Indirect Taxes), residing [in] [OMISSIS] 93558 Montreuil [OMISSIS] [France],

respondents in cassation.

The appellants, in support of their appeal, put forward a single ground of appeal on a point of law.

[OMISSIS].

[OMISSIS], [*Procedural elements*]

[T]he Cour de Cassation (Court of Cassation) (Commercial, Financial and Economic Division), [OMISSIS], after deliberating in accordance with the law, delivered the present judgment.

### **Facts and procedure**

- 1 According to the contested judgment ([Court of Appeal], Toulouse, 10 February 2020), Andorran importers, between 1988 and 1991, imported into Andorra, through the company Ysal, a customs agent established in France, goods originating in particular from third (non-European) countries. Those imports resulted in the payment of import duties in France.
- 2 On 23 January 1991, the Commission of the European Communities published an opinion invalidating the taxation on goods originating in third countries and destined for Andorra and ordering France to stop requiring, within 30 days, that goods destined for Andorra are to put be into free circulation in the Community when they cross French territory.
- 3 On 9 April 2002, Ysal brought proceedings against the French customs authorities seeking an order that it be paid damages corresponding to the customs duties alleged to have been wrongly paid between 1988 and 1991 on imports into Andorra. On 27 January 2004, a court of first instance dismissed the application.

- 4 On 20 May 2008, Ysal brought proceedings against the French customs authorities before a court of first instance seeking repayment of the customs duties alleged to have been wrongly paid on account of import declarations made between 1988 and 1991. By a judgment of 15 June 2010, a court of first instance dismissed the action brought by Ysal as inadmissible on the ground that it lacked standing or interest to bring proceedings. That judgment was confirmed by a judgment of a court of appeal of 13 December 2011. By judgment of 21 January 2014 [OMISSIS], the Cour de cassation (Court of Cassation) dismissed the appeal brought by Ysal.
- 5 After having repaid Ysal for the customs duties settled on their behalf, the Andorran importers, the legal predecessors of Logistica I Gestio Caves Andorrannes I Vidal (Caves andorrannes) and YX, brought, on 16 July 2015, proceedings against the French customs authorities seeking the payment of a sum corresponding to the customs duties wrongly paid.
- 6 On 4 July 2017, the tribunal de grande instance de Toulouse (Regional Court, Toulouse, France) rejected the action brought by Caves andorrannes and YX and, by judgment of 10 February 2020, the cour d'appel de Toulouse (Court of Appeal, Toulouse) upheld the judgment.
- 7 In rejecting the action brought by Caves andorrannes and YX, the cour d'appel de Toulouse (Court of Appeal, Toulouse) held that the customs authorities had to have, in order to repay on their own initiative, as provided for in Article 2 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties and in the third subparagraph of Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (the Community Customs Code), the information necessary for determining the amounts of duties to be repaid and the identity of every person liable without having to carry out disproportionate research.
- 8 Caves andorrannes and YX brought an appeal on a point of law against that judgment complaining that it refused to grant their requests.

### **Examination of the ground of appeal**

#### ***The first part of the ground of appeal***

- 9 [OMISSIS]. [*Aspects of national procedural law*]

#### ***The fourth part of the ground of appeal***

#### ***Statement of the ground of appeal***

- 10 Caves andorranes and YX complain that the judgment refused to grant their requests, although ‘customs authorities are required to repay import duties on their own initiative, as soon as they establish, within three years from the date of communication of those duties to the debtor, that the amount was not legally owed at the time of payment; [they submit] that by holding, in order to refuse all of the requests directed against the direction générale des douanes et des droits indirects de Midi-Pyrénées (Directorate-General of Customs and Indirect Taxes), that the customs authorities must, in order to make repayment on their own initiative, have all the information necessary for determining the amounts of duties to be repaid and the identity of every person liable without having to carry out disproportionate research, the Court of Appeal, which added a condition to the law, infringed Article 2 of Council Regulation No 1430/79, subsequently codified in essence in Article 236(2) of the Community Customs Code.
- 11 The appeal raises the question as to whether the application of Article 2(2) of Regulation No 1430/79, now Article 236(2) of the Community Customs Code, requires that the customs authorities have sufficient information relating to the person liable for payment of the customs duties and the customs debt without having to carry out disproportionate research.
- 12 [OMISSIS] The appeal also raises the question, out the outset, as to whether the repayment by customs authorities on their own initiative may take place beyond a period of three years from the date on which the customs duties were communicated to the debtor.
- 13 Those questions have not been previously addressed by the Cour de cassation (Court of Cassation).

#### **Relevant law**

##### EU law

- 14 The levying of customs duties by Member States on behalf of the Community on goods imported within the EU is subject only to European legislation under the principle of the primacy of Community law (now EU law) (judgment of 24 June 2019 in C-573/17, *Daniel Adam Poplawski*, paragraphs 58 and 61).
- 15 Article 2(1) of Regulation No 1430/79 provides that import duties are to be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts either relates to goods in respect of which a customs debt has either not arisen or has been settled other than by payment or prescription or exceeds for any reason the amount lawfully payable .
- 16 It states, in paragraph 2 thereof, that import duties are to be repaid or remitted for one of the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of three years from the date on which those duties were entered in the accounts by the authority responsible for their

collection and that where the competent authorities themselves discover within this period that one or other of the situations described in paragraph 1 obtains, they are to repay or remit on their own initiative .

- 17 Article 236(2) of the Community Customs Code, which applies from 1 January 1994, and which reproduces Article 2 of Regulation No 1430/79, states that import duties or export duties are to be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor. That period is to be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or force majeure. Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they are to repay or remit on their own initiative.

#### **Grounds for making the reference for a preliminary ruling**

- 18 On 28 June 1990, an agreement was concluded between the Principality of Andorra and the European Economic Community, Article 2 of which provides that a customs union is established between the European Economic Community and Andorra for the products covered by Chapters 25 to 97 of the Harmonized System in accordance with the procedure and conditions set out under Title I, and [which states] in Article 24 thereof that the agreement enters into force on 1 July 1990.
- 19 Caves andorrannes and YX submit that the obligation imposed on customs authorities to repay import and export duties on their own motion if they find that those duties have been wrongly paid, provided for in Article 2(2) of Regulation No 1430/79, is subject only to a time limit and that it is only if the authorities were to contest, more than three years after the duties were communicated to the debtor, that they had been wrongly paid that they would not be required [to repay or remit] on their own motion.
- 20 They submit that those provisions do not provide that, in order to repay the duties wrongly paid, the customs authorities must have all the information necessary for determining the amounts of duties to be repaid and the identity of every person liable without having to carry out disproportionate research.
- 21 They infer from this that the cour d'appel (Court of Appeal) added a condition to Article 2(2) of that regulation that it does not contain.
- 22 As for the French customs authorities, they submit that they can repay import and export duties on their own motion only if they have all the information necessary to establish that such duties have been wrongly paid and must be repaid.

- 23 They submit that, in the present case, they could have repaid the customs duties on their own motion only if they had all the information necessary to establish the need for such repayment. They add that they cannot be required to carry out extensive research to determine the amounts of duties to be repaid to each of the operators concerned.
- 24 The Court of Justice of the European Union does not appear to have adopted a decision relating to the conditions under which the authorities must repay the duties if it finds that they were not owed.
- 25 The Cour de cassation (Court of Cassation) asks whether Article 2(2) of Regulation No 1430/79 and Article 236(2) of the Community Customs Code, according to which the competent authorities are to repay the duties on their own motion if they find that they were not legally owed, must be interpreted as meaning that the competent authorities are required to repay such duties on their own motion only if, in order to do so, they have all the information necessary and, if not, they are not required to carry out disproportionate research.
- 26 With regard to the time limits within which duties wrongly paid must be repaid, the first Advocate General maintains that the obligation on the customs authorities to repay customs duties in a situation identical to that before the Cour de cassation (Court of Cassation) exists, pursuant to Article 2 of Regulation No 1403/79 or Article 236(2) of the Community Customs Code, only within a period of three years from the date on which the amount of the duties was communicated to the debtor.
- 27 The Court of Justice held, on the basis of the first subparagraph of Article 236(2) of the Community Customs Code, that following the Court's declaration of invalidity of an anti-dumping regulation, an economic operator is no longer able, in principle, to claim repayment of the anti-dumping duties which it has paid under that regulation and for which the three-year time limit laid down by Article 236(2) of the Customs Code has expired. Article 236(2) of the Customs Code imposes a three-year time limit on the repayment of customs duties not legally owed (judgment of 14 June 2012, *Civad*, C-533/10, paragraph 21).
- 28 The Cour de cassation asks whether that case-law is applicable in a case in which the competent authorities are required to repay on their own motion. It asks, in essence, whether the second subparagraph of Article 2(2) of Regulation No 1430/79, according to which the competent authorities are to repay on their own motion if they find during a period of three years from the date on which the customs duties were entered in the accounts that they were not legally owed, must be interpreted as meaning that the competent authorities can no longer, beyond that period, make repayment on their own motion, even if it were established during that period that the duties were not legally owed.

- 29 There is therefore doubt as to the interpretation of Article 2(2) of Regulation No 1430/79 relating to the automatic repayment of duties wrongly paid, which is incorporated into Article 236(2) of the Community Customs Code.
- 30 The questions thus arise as to whether the repayment of wrongly collected customs duties by customs authorities of their own motion (i) occurs within a period of three years [and], (ii) is subject to the latter knowing the identity of the operators concerned and the amounts to be repaid to each of them without it being necessary to carry out disproportionate research.
- 31 It is therefore necessary to make a reference to the Court of Justice of the European Union for a preliminary ruling.

**ON THOSE GROUNDS**, the Court hereby:

Having regard to Article 267 of the Treaty on the Functioning of the European Union;

REFERS the following questions to the Court of Justice of the European Union for a preliminary ruling:

1. Must Article 2(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, which is incorporated into the third subparagraph of Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, be interpreted as meaning that the repayment of wrongly collected customs duties by customs authorities on their own motion is limited to a period of three years from the date on which those duties were entered in the accounts by the authorities responsible for their collection or that the customs authorities must establish, during the three years following the chargeable event, that the duties were not legally owed?

2. Must Article 2(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, which is incorporated into the third subparagraph of Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, be interpreted as meaning that the repayment of wrongly collected customs duties by customs authorities on their own motion is subject to the latter knowing the identity of the operators concerned and the amounts to be repaid to each of them without it being necessary to carry out extensive or disproportionate research?

Stays the proceedings pending the decision of the Court of Justice of the European Union;

[OMISSIS]. [*Procedural considerations*]