

Case C-781/23

Request for a preliminary ruling

Date lodged:

18 December 2023

Referring court:

Högsta förvaltningsdomstolen (Sweden)

Date of the decision to refer:

12 December 2023

Appellant:

Malmö Motorrenovering AB

Respondent:

Allmänna ombudet hos Tullverket

HÖGSTA

RECORD

...

FÖRVALTNINGS-

12. 12. 23

...

DOMSTOLEN

...

...

APPELLANT

Malmö Motorrenovering AB ...

...

RESPONDENT

Allmänna ombudet hos Tullverket (General Representative of the Customs Authority, Sweden)

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ORDER

A preliminary ruling under Article 267 TFEU must be obtained from the Court of Justice of the European Union in accordance with the attached request for such a ruling (Annex to the record).

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ANNEX

Request for a preliminary ruling under Article 267 TFEU seeking interpretation of Article 251 of Regulation (EU) No 952/2013 laying down the Union Customs Code (Union Customs Code).

Introduction

- 1 By its reference for a preliminary ruling, the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) seeks clarity as to how Article 251 of the Union Customs Code is to be interpreted with regard to the conditions for extending a predetermined period during which goods may remain under the temporary admission procedure. The question for a preliminary ruling has arisen in the context of proceedings concerning the extinction of a customs debt under Article 124(1)(h) of the Union Customs Code.

Applicable provisions of EU law

- 2 Under Article 28(1)(b) of the Union Customs Code, favourable decisions are to be revoked or amended upon application by the holder of the decision.
- 3 Article 79(1)(a) provides that, for goods liable to import duty, a customs debt on import is to be incurred through non-compliance with an obligation under the customs legislation relating, inter alia, to the temporary admission of such goods within the customs territory of the Union.
- 4 A customs debt incurred pursuant to Article 79(1)(a) is to be extinguished under Article 124(1)(h) where (i) the failure which led to the incurrance of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at deception and (ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out.
- 5 Article 250(1) states that under the temporary admission procedure non-Union goods intended for re-export may be subject to specific use in the customs territory of the Union, with total or partial relief from import duty.
- 6 Article 251 lays down the period during which goods may remain under the temporary admission procedure.

- 7 Paragraph 1 of that article states that the customs authorities are to determine the period within which goods placed under the temporary admission procedure must be re-exported or placed under a subsequent customs procedure. It further states that such period is to be long enough for the objective of authorised use to be achieved.
- 8 Paragraph 2 states that, except where otherwise provided, the maximum period during which goods may remain under the temporary admission procedure for the same purpose and under the responsibility of the same authorisation holder is to be 24 months, even where the procedure was discharged by placing the goods under another special procedure and subsequently placing them under the temporary admission procedure again.
- 9 Under Paragraph 3, where, in exceptional circumstances, the authorised use cannot be achieved within the period referred to in paragraphs 1 and 2, the customs authorities may grant an extension, of reasonable duration of that period, upon justified application by the holder of the authorisation.
- 10 Lastly, paragraph 4 provides that the overall period during which goods may remain under the temporary admission procedure is not to exceed 10 years, except in the case of an unforeseeable event.
- 11 Under Article 103(a) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code – for the purposes of the application of Article 124(1)(h)(i) of the Code – exceeding a time limit by a period of time which is not longer than the extension of the time limit that would have been granted had that extension been applied for is to be considered a failure with no significant effect on the correct operation of the customs procedure.

Facts in the proceedings

- 12 The case concerns the company Malmö Motorrecovering AB and a temporary importation of a racing car from the United States to Sweden. The intention of the company's importation was to use the car in racing activities within the EU and subsequently to re-export it. The racing activities were to last until 8 September 2019. The company applied for and was granted authorisation for the use of the temporary admission procedure and on 30 April 2019 the company brought the car into the country. However, according to the conditions for the authorisation, the car had to be re-exported by 30 July 2019, that is to say before the end of the racing activities. Why that date, and not a later date, was decided upon is a matter of dispute between the company and the Tullverket (Customs Authority, Sweden).
- 13 It is common ground that the car was not re-exported until 19 September 2019 – that is to say, after the date laid down in the authorisation – and that that did not constitute an attempt at deception.

- 14 As the car was re-exported after the expiry date laid down in the authorisation, the Customs Authority decided to charge the company customs duty of SEK 101 959 and VAT of SEK 280 387.
- 15 The company lodged an action against the decision with the Förvaltningsrätten i Linköping (Administrative Court, Linköping, Sweden), which upheld the company's action and decided that the customs debt, including VAT, should be extinguished. The Förvaltningsrätten noted that the company had not stated a final date for re-exportation in its customs declaration, but that the intention had been to export the car only when the racing season had ended. In the view of the Förvaltningsrätten, there is nothing to indicate that the intention of the procedure had been deceptive, rather, it appeared to have been a matter of mere oversight. Against that background, and in view of the fact that the Customs Authority had not argued that there were reasons for not granting the company a period up to the date of the actual re-exportation of the car if that date had already been stated in the application, the Förvaltningsrätten found that there were grounds for allowing the customs debt to be extinguished under Article 124(1)(h) of the Union Customs Code.
- 16 The Customs Authority lodged an appeal with the Kammarrätten i Jönköping (Administrative Court of Appeal, Jönköping, Sweden), which upheld the appeal and confirmed the decision of the Customs Authority. The Kammarrätten held that, in order for relief to be granted under Article 124(1)(h) of the Union Customs Code and Article 103(a) of the Supplementing Regulation, it is necessary to examine whether and to what extent the company would have been granted an extension of the time limit for re-exporting the car if an application for an extension had been submitted to the Customs Authority. The company was not deemed to have demonstrated that the circumstances were such that it could be considered likely that it would have been granted an extension if such an application had been submitted. This was particularly true in view of the fact that an extension in this case would have required that the company be able to rely on exceptional circumstances as a reason for granting such an application. Consequently, there were no grounds for extinguishing the customs debt under Article 124(1)(h) of the Union Customs Code.
- 17 The company lodged an appeal against the judgment of the Kammarrätten with the Högsta förvaltningsdomstolen. The Högsta förvaltningsdomstolen may limit leave to appeal to a specific aspect of the case where review of that aspect is of particular importance for the uniform application of the law (referred to as a question of precedent). The Högsta förvaltningsdomstolen granted leave to appeal in respect of the question of precedent concerning the conditions for determining and subsequently extending the period during which goods may remain under the temporary admission procedure pursuant to Article 251 of the Union Customs Code. The issue of granting leave to appeal in respect of the remainder of the case was reserved.

- 18 In cases of this kind, the public action before the Högsta förvaltningsdomstolen is brought by the General Representative of the Customs Authority. The General Representative – rather than the Customs Authority – is thus a separate party before the Högsta förvaltningsdomstolen. However, the Customs Authority has nevertheless been given the opportunity to comment in the case.

Positions of the parties and the Customs Authority

Malmö Motorreovering AB

- 19 Malmö Motorreovering AB claims that the Högsta förvaltningsdomstolen should rule that there are grounds for allowing the customs debt imposed on the company to be extinguished. The company submits as follows.
- 20 The Customs Authority's view that exceptional circumstances are required for the application of the grounds for relief is incorrect in the light of both the wording and the purpose of Article 251 of the Union Customs Code. The exceptional circumstances referred to in paragraph 3 of the article relate to the 24-month time limit referred to in paragraph 2. Paragraph 3 also refers to paragraph 1 because that time limit may have been set from the outset at 24 months or more. The provision in paragraph 3 should therefore be read as meaning that the temporary admission procedure can last for up to 24 months and that a longer period requires exceptional reasons.

The General Representative of the Customs Authority

- 21 The General Representative of the Customs Authority submits that the case should be referred back to the Kammarrätten for re-examination on the basis that Article 251(3) of the Union Customs Code is not applicable and submits as follows.
- 22 The general rule laid down by Article 251(1) of the Union Customs Code is that the period determined by the customs authority is to be long enough for the objective of authorised use to be achieved. If the determined period for which goods may remain under the temporary admission procedure proves to be insufficient, the holder of the authorisation may, under Article 28(1)(b), apply for the decision to be amended so as to extend that period. A reasonable interpretation of the latter provision is that it may be limited by other rules, in so far as they are applicable. The question is whether Article 251(3) includes such a limitation in the present situation.
- 23 As regards extension of the period laid down in Article 251, it seems reasonable and appropriate that such an extension may be decided upon where the holder of the authorisation can demonstrate that the period determined is not sufficient to achieve the objective. A requirement that such an extension may be granted only in exceptional circumstances would undermine the purpose of the rules.

- 24 It is clear from the introductory part of Article 251(3) of the Union Customs Code that that provision is intended to apply in the event that the authorised use cannot be achieved within the period referred to in paragraphs 1 and 2. In the light of the purpose of those provisions, the reference to paragraphs 1 and 2 must be interpreted as meaning that paragraph 3 refers to an extension of the period laid down in paragraph 1, which exceeds the maximum period of 24 months laid down in paragraph 2.
- 25 Such an interpretation means that the limitation to exceptional circumstances in Article 251(3) applies only where an extension of the period during which the goods may remain under the temporary admission procedure (for the same purpose and under the responsibility of the same holder of the authorisation) would result in the period exceeding 24 months.

The Customs Authority

- 26 The Customs Authority argues that the appeal should be dismissed and states that Article 251(3) of the Union Customs Code is applicable in the present case. That provision refers to both paragraphs 1 and 2. If paragraph 3 were intended to apply only where a period exceeded the maximum period of 24 months applicable under paragraph 2, paragraph 3 would refer only to paragraph 2.

The need for a preliminary ruling

- 27 It is common ground that the period for re-exportation decided upon by the Customs Authority was not sufficient for the objective of the authorised use – that is to say use of the car to take part in races within the EU until the beginning of September 2019 – to be achieved. It is further common ground that the overall period needed for the company to achieve that objective was less than 24 months and that there was no attempt at deception.
- 28 The question in the case before the Högsta förvaltningsdomstolen is what conditions apply, in a situation such as that described above, for determining and subsequently extending the period during which goods may remain under the temporary admission procedure pursuant to Article 251 of the Union Customs Code.
- 29 Article 251(3) states that where, in exceptional circumstances, the authorised use cannot be achieved within the period referred to in paragraphs 1 and 2, the customs authorities may grant an extension, of reasonable duration of that period, upon justified application by the holder of the authorisation. The company and the General Representative interpret the provision differently from the Customs Authority.
- 30 Article 251(3) of the Union Customs Code can, as the company and the General Representative argue, be understood as meaning that it is applicable only if an application for an extension of the period means that the period already granted,

together with the extension applied, will exceed the time limit of 24 months referred to in paragraph 2. If that meaning is placed on paragraph 3, the requirement of exceptional circumstances is not applicable where, as in the present case, the period already granted, together with the extension applied for, is less than 24 months.

- 31 However, the Customs Authority interprets paragraph 3 differently and argues that the reference to paragraphs 1 and 2 means that paragraph 3 is always applicable when the authorised use cannot be achieved within the period already granted. If that meaning is placed on the provision, the requirement of exceptional circumstances also applies where a period already granted, together with an extension applied for, is less than 24 months.
- 32 The Högsta förvaltningsdomstolen finds that the wording of the article does not rule out either interpretation. The Högsta förvaltningsdomstolen takes the view that what the General Representative has stated regarding the purpose of the provisions is not sufficient to determine its meaning. The Court of Justice does not appear to have examined the matter and, in the view of the Högsta förvaltningsdomstolen, there is not therefore sufficient guidance for determining the matter in this case. It is therefore necessary to obtain a preliminary ruling from the Court of Justice.

Question

- 33 In the light of the foregoing, the Högsta förvaltningsdomstolen requests an answer to the following question.
- 34 Must Article 251 of the Union Customs Code be interpreted as meaning that the reference in paragraph 3 to paragraphs 1 and 2 means that the requirement for exceptional circumstances in paragraph 3 applies only where a period already granted, together with an extension applied for, would mean that the overall period during which the goods may remain under the procedure in question exceeds 24 months? Or must the article be interpreted as meaning that the requirement for exceptional circumstances in paragraph 3 is applicable to all applications for an extension, that is to say, even if the period already granted, together with the extension applied for, does not exceed the 24-month period laid down in paragraph 2?