

Case C-33/24

Request for a preliminary ruling

Date lodged:

18 January 2024

Referring court:

Fővárosi Törvényszék (Hungary)

Date of the decision to refer:

10 January 2024

Applicant:

ROSAS Logisztikai Kft.

Defendant:

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Authority)

[...]

Fővárosi Törvényszék (Budapest High Court)

...

Applicant: ROSAS Logisztikai Kft. (... Budapest ...)

...

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Authority) (... Budapest ...)

...

Subject matter of the dispute: challenge to the legality of an individual decision in customs matters ...

DECISION

The Fővárosi Törvényszék stays the proceedings and submits a request for a preliminary ruling to the Court of Justice of the European Union under subparagraph (b) of [the first paragraph of] Article 267 of the Treaty on the Functioning of the European Union, to which it refers the following question:

Must Article 173(3) of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code be interpreted as meaning that it allows an indirect customs representative – identified as such as a result of a typographical error – acting as customs declarant to amend a customs declaration already lodged and verified after the goods in question have been released for free circulation, so that, by changing the representative status code, he or she subsequently becomes the direct representative?

... [matters of national procedural law]

Grounds

Facts giving rise to these proceedings

- 1 First and foremost, the Fővárosi Törvényszék wishes to inform the Court of Justice of the European Union ('the Court of Justice') that, when asked, the applicant stated that it does not request anonymity in the context of these preliminary ruling proceedings.
- 2 The applicant applied for the release for free circulation of non-Union goods received on 30 May 2022 under air waybill number 235-47241261 ('the goods in question'). In the customs declaration lodged electronically under identification number HU12100024022ED6RT2 ('the customs declaration'), it stated that it wished to participate in the customs procedure as the indirect representative of PBT Hungary Kft. The Nemzeti Adó- és Vámhivatal Repülőtéri Igazgatósága (Airports Directorate of the National Tax and Customs Authority; 'the first-tier tax authority') accepted the customs declaration and, as requested, released the goods in question for free circulation by decision No 6651931509/2022/NAV of 30 May 2022, with the applicant as indirect representative. Subsequently, the applicant submitted to the first-tier tax authority an application, dated 1 June 2022 ('the application'), seeking to have the customs declaration amended, on grounds of a typographical error in the representative status code, so as to show the applicant as the direct representative [of PBT Hungary]. The applicant attached to the application a power of attorney, drawn up in its favour by PBT Hungary on 23 May 2022, relating to the grant of the right of direct customs representation for the purposes of the release for free circulation of the goods in question.
- 3 By decision ..., the first-tier tax authority refused the application. By decision ..., the defendant confirmed the first-tier decision. In its reasoning, it stated that the first-tier tax authority had rightly concluded that the application to change the declarant was inadmissible. It noted that, in accordance with Article 173(3) of Regulation (EU) No 952/2013 of the European Parliament and of the Council

laying down the Union Customs Code ('the Customs Code'), the declarant may, in principle, amend the particulars of the customs declaration but may not designate another declarant in his or her place, as he or she would thus 'exit' the procedure and be replaced as debtor by a person independent of him or her. The possibility of amending those particulars is justified by the need to comply with the rules governing the customs procedure. Consequently, although the content of the customs declaration could be amended, the identification of the declarant – in this case, the applicant – could not. The defendant notes in relation to the judgment of the Court of Justice in *Pfeifer & Langen* (C-97/19), relied on in this context by the applicant, that, in that judgment, the Court of Justice did not say that it is possible to change the identity of the declarant in the customs declaration. In that judgment, it simply held that the customs declaration must make clear the existence of a legal relationship of indirect representation, rather than one whereby the agent acts exclusively in his or her own name and on his or her own behalf.

Action and defence put forward by the defendant

- 4 The applicant brought against the defendant's decision an action seeking, principally, to have it amended in the manner set out in the application, that is to say, by having the form of customs representation recorded in the customs declaration changed to direct representation. In the alternative, that action seeks the annulment of the defendant's decision. [The applicant] considers that decision to be unlawful on several grounds, and refers to Articles 15(2), 77(3) and 173(3) of the Customs Code.
- 5 [The applicant] submits that it held a power of attorney as direct customs representative granted by PBT Hungary and made a typographical error when entering the representative status code in the customs declaration. This could have been remedied by way of [an application to revise the] customs declaration in the interests of the accuracy and validity of the information and particulars provided there, in accordance with Article 15(2) of the Customs Code. In its view, the defendant has therefore infringed Article 173 of the Customs Code by the interpretation that it has put forward and set out in its decision. In particular, the applicant submits that the defendant wrongly concluded that the customs declaration could not be amended in relation to the form of representation attaching to the applicant itself as declarant, given that such an amendment does not constitute an amendment of the particulars contained in the declaration. A completely opposite position was adopted in paragraphs 33 and 37 of the judgment in *Pfeifer & Langen*. In those paragraphs, the Court of Justice stated that information relating to the declarant can also be amended. In that context, the applicant refers to the reasoning contained, in relation to Article 173(3) of the Customs Code, in the document 'Commission Staff Working Document – Customs Expert Group – Section "Import and Export Formalities" – Guidance Document on Customs Formalities on Entry and Import into the European Union'.

- 6 [The applicant] also relies on the fact that the daily practice of the tax authority supports the legal interpretation that it is advocating in relation to the possibility of amending customs declarations as regards the right of customs representation. In this connection, it has also attached several decisions to this effect.
- 7 The defendant contends in its defence that the applicant’s action should be dismissed. It continues to assert that, in accordance with Article 173(3) of the Customs Code, the customs declaration may be amended only in order for the declarant to be able to comply with his or her obligations relating to the placing [of the goods] under the customs procedure. The content of the particulars may be amended, but not the particulars relating to the identity of the declarant. Consequently, the declarant may not later designate another declarant in his or her place, [since], in so doing, he or she ‘would effectively exit’ the procedure and be replaced as debtor by a person independent of him or her, which is a further justification for excluding amendment. The defendant does not consider *Pfeifer & Langen* to be relevant to the present case.

Relevant provisions of European Union law

In accordance with Article 173(1) of the Customs Code, the declarant may, on application, be permitted to amend one or more of the particulars of the customs declaration after this has been accepted by customs. The amendment may not render the customs declaration applicable to goods other than those that it originally covered.

In accordance with Article 173(3) of the Customs Code, upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration may be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.

Reasoning in the request for a preliminary ruling

- 8 In the present dispute, the Fővárosi Törvényszék asks whether the applicant was entitled under Article 173(3) of the Customs Code to request that the customs declaration be amended, after the goods in question had been released for free circulation, so as to change the form of representation from indirect to direct.
- 9 It should be noted that Article 173(3) of the Customs Code (further to the provisions of Article 173(1) thereof, which constitutes the general principle) makes it possible for the declarant to amend his or her previously lodged customs declaration even after the goods in question have been released for free circulation. The legal instrument of amendment is intended, in essence, to enable the declarant to comply with his or her obligations relating to the placing of the goods in question under the customs procedure concerned (judgment in *Zes Zollner Electronic*, C-640/21, paragraph 40). Nonetheless, the application of that

exception must be interpreted within strict limits (judgment in *Zes Zollner Electronic*, paragraph 43). That interpretation is also supported by the fact that the legislature ultimately adopted a form of words for Article 173(3) of the Customs Code which had been supplemented by comparison with that originally proposed and included in it a reference to ‘compl[iance] with [the] obligations relating to the placing [of the goods] under the customs procedure’. This restricts the possibility of amending customs declarations (judgment in *Zes Zollner Electronic*, paragraph 44).

- 10 The Fővárosi Törvényszék has doubts as to how EU law, [in particular] Article 173(3) of the Customs Code, is to be interpreted in relation to the possibility of amending the identity of the declarant. Consequently, in the context in which the declarant is an indirect representative acting in his or her own name but on behalf of another, the Fővárosi Törvényszék asks whether the declarant is entitled to ask the competent customs authority to change the form of representation, likely to have been indicated as a result of a typographical error (that is to say, with no intent to obstruct the fight against fraud as defined in recital 15 of the Customs Code), to direct representation. It should be noted that the practice of the Hungarian tax authorities is equally inconsistent when it comes to the interpretation of this question, in connection with which the applicant has in the course of these proceedings attached substantively divergent decisions, including in relation to its own identity, on the permissibility of making amendments.
- 11 The question of the possibility of amending the identity of the declarant has already been addressed by the Court of Justice in the judgment in *Pfeifer & Langen*, in which it held that customs authorities may grant an application to amend a customs declaration in relation to the identity of the declarant in the case where the declarant has mistakenly indicated that he or she is acting in his or her own name and not as an indirect representative (judgment in *Pfeifer & Langen*, paragraph 59). So far as concerns the interpretation of the legal question under consideration here, however, the judgment in *Pfeifer & Langen* cannot for a number of reasons be regarded as having been delivered in similar circumstances, and is not therefore entirely similar. On the one hand, the aforementioned judgment was delivered in order to provide an interpretation of the relevant provisions not of the Customs Code but of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (‘the former Customs Code’), some of the rules of which were different, inasmuch as the former Customs Code did not yet contain any provisions similar to Article 173(3) of the Customs Code. On the other hand, the facts in that case are not the same as those in the present case, since, in *Pfeifer & Langen*, the declarant did not ask for its status as indirect representative [to be changed to] that of direct representative, but for its own declaration, in which it had indicated that it was acting in its own name and on its own behalf, to be amended to record its status as indirect representative.
- 12 In the view of the Fővárosi Törvényszék, the Customs Code – as detailed in [paragraph 9 of this decision] – allows customs declarations to be amended, under

strict conditions. Although the Court of Justice confirmed in the judgment in *Pfeifer & Langen* that information relating to the declarant in the customs declaration can also be amended, the Court itself further noted that this cannot entail a risk of non-payment of the customs debt (judgment in *Pfeifer & Langen*, paragraph 50). However, the change from indirect to direct representation could entail such a risk – in the light of Article 18 of the Customs Code —. What is more, it is also doubtful whether amending information relating to the declarant is capable of satisfying the requirement as to ‘compl[iance] with [the] obligations relating to the placing [of the goods] under the customs procedure’, laid down in Article 173(3) of the Customs Code. On that basis, an interpretation which allowed the representative status code given in a customs declaration to be amended from indirect to direct might be problematic.

- 13 In the light of the foregoing considerations – in particular, the judgment in *Pfeifer & Langen* and the inconsistent practice of the national authorities – the Fővárosi Törvényszék considers that the resolution of this case calls for a request for a preliminary ruling to be made in order to obtain an answer to the question set out above. In this context, it has stayed the present proceedings, in accordance with Article 126(1)(a) of the a polgári perrendtartásról szóló 2016. évi CXXX. törvény (Law CXXX of 2016 on the Code of Civil Procedure), applicable pursuant to Article 32 of the a közigazgatási perrendtartásról szóló 2017. évi I. törvény (Law I of 2017 on the Code of Contentious Administrative Procedure), and has decided to make a request for a preliminary ruling.

... [matters of national procedural law]

Budapest, 10 January 2024.

... [signatures]