Case C-330/24

Request for a preliminary ruling

Date lodged:

6 May 2024

Referring court:

Nejvyšší správní soud (Czech Republic)

Date of decision to refer:

25 April 2024

Applicant:

Celní jednatelství Zelinka s. r. o.

Defendant:

Generální ředitelství cel

ORDER

The Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) […] has ruled in the case of the applicant: **Celní jednatelství Zelinka s. r. o**., […] v the defendant: **Generální ředitelství** cel, […] with respect to the defendant's decision of 21 November 2022, […] in proceedings concerning the applicant's appeal in cassation challenging the judgment of the Městský soud v Praze (Prague City Court, Czech Republic) of 13 July 2023, ref. no. 10 Af 2/2023-57,

as follows:

I. The following question is hereby **submitted** to the Court of Justice of the European Union for a preliminary ruling:

Must the term '*omyl*' [error] in [the Czech version of] Article 116(7) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code be interpreted as meaning that a customs debt is to be reinstated only in the event that the repayment of customs duty occurred due to an unintentional act on the part of the customs authority, or can error under that article extend to an

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incorrect assessment by the customs authority as to the tariff classification of the goods?

[…]

Grounds:

I. Background of the case

[1] Celní jednatelství Zelinka s. r. o. (‘the applicant’) imports AXIS electronic products, of the S20xx series, (‘the goods’) to the European Union for release under the customs procedure of free circulation. The applicant originally classified the goods under the tariff code 8521 90 00 90, which corresponds to a duty rate of 8.7%. The Celní úřad pro hlavní město Prahu (Customs Office for the City of Prague) assessed the duty for the applicant corresponding to the declared customs nomenclature code, which amounted to 1 541 018 Czech koruny (CZK).

[2] Subsequently, the applicant filed an application with the Customs Office for the City of Prague for a change in the tariff classification of the goods to subheading 8517 62 00 00 of the Combined Nomenclature, which corresponds to a duty rate of 0%. The application included a request for a repayment of duty. The applicant included in its application the binding information on tariff classification of goods from the Celní úřad pro Olomoucký kraj (Customs Office for the Olomouc Region) […], whereby the same goods were classified, at the request of another entity, under the tariff nomenclature code 8517 62 00 00. The Customs Office for the City of Prague granted that application and repaid the duty of CZK 1 541 018 to the applicant.

[3] On 8 June 2021, the Celní úřad pro Jihomoravský kraj (Customs Office for the South Moravian Region) initiated an inspection of the applicant following the release of goods, focusing on a verification of the tariff classification of goods declared in customs declarations. During that inspection, it concluded that the goods should actually have been classified under customs nomenclature code 8521 90 00 90, as they were classified originally. By means of subsequent payment assessments, it assessed the applicant for customs duty totalling CZK 1 541 018. The applicant appealed against the subsequent payment assessments to the Generální ředitelství cel (General Customs Directorate), which granted the appeal, stating in the grounds of its decision that the situation should be addressed by means of the reinstatement of a customs debt pursuant to Article 116(7) 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’), which permits the reinstatement of a customs debt where a customs duty repayment or remission has been granted in error.

[4] The Customs Office for the City of Prague subsequently rendered nine decisions on 17 March 2022 to reinstate the customs debt in an amount totalling CZK 1 541 018, as it concluded that, in the case at hand, the customs duty had been repaid due to an error committed by the customs authority, which had

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incorrectly classified the applicant's goods under customs nomenclature code 8517 62 00 00, corresponding to a customs rate of 0%. The applicant appealed against those decisions to the General Customs Directorate which, by decision of 21 November 2022, dismissed the appeal, upholding the decisions of the Customs Office for the City of Prague.

[5] The applicant challenged the decision of the General Customs Directorate by an action filed with the Prague City Court ('the City Court'), which dismissed it. The City Court concluded that Article 116(7) of the Customs Code is applicable to the case in question since that provision pertains to substantive defects in decisions made by customs authorities. Some language versions of the Customs Code use the term '*error*' (English) and '*errore*' (Spanish), which in legal language has more of a connotation with [the Czech word] *pochybení* (fault) rather than *omyl* (error). In the Czech translation of the provision, the broader concept of *neoprávněně* (unduly), namely, in contravention of the law, has been replaced with the narrower concept of *omylem* (in error), namely, wholly unintentionally. According to the City Court, Article 116(7) of the Customs Code therefore applies to situations when a customs debt has been repaid unduly, as has happened in the present case.

[6] The applicant has lodged an appeal in cassation against the judgment of the City Court with the Supreme Administrative Court, claiming that the term '*omyl*', as used in [the Czech version of] Article 116(7) of the Customs Code, does not apply to cases when customs duty has been repaid '*neoprávněně*' (unduly), but only to cases when it has been repaid '*omylem*' (in error). The purpose of the provision is to prevent situations where a customs repayment or remission has occurred due to an unintentional act of a customs authority, rather than to remedy a situation where a customs authority has assessed the relevant facts incorrectly. Article 116(7) of the Customs Code must be interpreted restrictively. If the only limitation to its application were the three-year limitation period laid down in Article 103 of the Customs Code, then every time customs duty has been repaid, the entity concerned would have to wait for several years to be certain that it would not again be liable for that repaid duty.

[7] In its statement on the appeal in cassation, the General Customs Directorate has stated that Article 116(7) of the Customs Code must be interpreted with the use of other methods than solely by reference to the literal linguistic terms, and, hence, it is to apply to the case at hand, where customs duty has been repaid on the basis of an incorrect assessment by a customs authority in classifying goods under a specific customs nomenclature code.

II. Applicable European Union law

[8] The Czech language version of Article 116(7) of the Customs Code states:

'*Jestliže celní orgány clo vrátí nebo prominou* ***omylem*** *a není-li původní celní dluh promlčen podle článku 103, původní celní dluh se obnoví. V takových*

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případech je nutno jakýkoli úrok zaplacený podle odst. 5 druhého pododstavce nahradit.'

*[In English: Where the customs authorities have granted repayment or remission **in error**, the original customs debt shall be reinstated in so far as it is not time-barred under Article 103. In such cases, any interest paid under the second subparagraph of paragraph 5 shall be reimbursed].*

[9] Paragraph 7 follows on from paragraph 1, which regulates the repayment or remission of customs, and which states:

> '*Subject to the conditions laid down in this Section, amounts of import or export duty shall be repaid or remitted on any of the following grounds:*
>
> *(a) overcharged amounts of import or export duty;*
>
> *(b) defective goods or goods not complying with the terms of the contract;*
>
> *(c) error (in Czech, 'chyba') by the competent authorities;*
>
> *(d) equity.*
>
> *Where an amount of import or export duty has been paid and the corresponding customs declaration is invalidated in accordance with Article 174, that amount shall be repaid.*'

[10] Article 79(5) of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code ('Regulation 450/2008'), which was in effect before the issuance of the customs code applicable to the present case, provided: '*Where the competent authority has granted repayment or remission in error (in Czech, omylem), the original customs debt shall be reinstated in so far as it is not time-barred under Article 68.*'

[11] Article 242 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ('Regulation 2913/92') stated that '*where a customs debt has been remitted or the corresponding amount of duty repaid in error (in Czech, neoprávněně), the original debt shall again become payable. Any interest paid under Article 241 must be reimbursed*'.

III. Analysis of the question referred

[12] The Supreme Administrative Court has concluded that, in order to assess whether the reinstatement of the customs debt that the customs authorities performed in the applicant's case was correct, it is essential to interpret the term '*omyl*' as used in the Czech language version of Article 116(7) of the Customs Code. However, the interpretation of that term is disputed by the parties. The applicant holds that a reinstatement of a customs debt pursuant to that provision may occur only if a repayment or remission of customs duty was granted by

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means of an action by a customs authority which the authority never intended to perform. According to the General Customs Directorate and the City Court, a customs debt may be reinstated even in cases when customs duty was repaid or remitted unduly, namely, as a result of a mistake of the customs authority consisting of an incorrect assessment of the question of the tariff classification of goods under the customs nomenclature code. If the applicant is correct, its customs debt could not be reinstated. If the defendant is right, that debt could be reinstated, subject to other conditions, in particular, the limitation period.

[13] From the case-law of the Court of Justice of the European Union ('the CJEU'), the Supreme Administrative Court has found that the term '*omyl*' (error) as used in the Customs Code, or in previous European Union regulations governing the same issues, has not been defined in any way. Even though the CJEU has used the term '*omyl*' (error) in some of its judgments (for example, in its judgments of 20 October 2005, in Case C-468/03, *Overland Footware*, of 5 October 2006, in Case C-100/05, *ASM Lithography*, or of 15 July 2010, in Case C-234/09, *DSV Road*), it did not use that term directly in relation to steps taken by customs authorities, but, rather, in relation to steps taken by an importer of goods. Even in those cases, however, the CJEU did not proceed directly to interpret that term. Nor is a definition of the term '*omyl*' (error) on the part of the competent authorities found in the CJEU's case-law in tax matters or in cases concerning subsidies.

[14] In terms of similar concepts, the case-law of the CJEU interprets, for example, the term 'incorrect and incomplete information' as including substantive errors and omissions as well as errors in the interpretation of the applicable law (compare judgment of 16 October 2014, Case C-387/13, *VAEX Varkens- en Veehandel*, paragraph 50, and the case-law cited). At times, CJEU case-law interchanges the term in question with the term '*chyba*' (error), which includes not only material errors, but also unintentional omissions and any declaration made in disregard of a customs rule (see judgment of 16 July 2020, Case C-97/19, *Pfeifer & Langen GmbH & Co. KG*, paragraph 54). Again, however, that case-law pertained to an error made by an importer of goods rather than by the customs authorities.

[15] As for an error committed by the customs authorities, the CJEU stated in paragraph 32 of the judgment of 18 October 2007, in Case C-173/06, *Agrover*, that the nature of the error of the competent customs authorities '*must be assessed in relation to the complexity or sufficient simplicity of the rules concerned and the period of time during which the authorities persisted in their error (Case C-499/03 P* Biegi Nahrungsmittel and Commonfood *v* Commission *[2005] ECR I-1751, paragraphs 47 and 48 and the case-law cited)*'. Furthermore, the CJEU examined an error of the customs authorities in its judgment of 10 December 2015, in Case C-427/14, *Veloserviss*, in which it stated that only errors attributable to acts of the competent authorities create entitlement to the waiver of subsequent recovery of customs duties. In that case, the importer can invoke legitimate expectations and good faith in the correctness of steps taken by the customs

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authorities. That judgement, however, concerned the application of Article 220(2)(b) of Regulation 2913/92, not Article 242, which regulated the reinstatement of a customs debt.

[16] Hence, the Supreme Administrative Court has found that the existing case-law of the CJEU does not provide an answer to the question of how to interpret the term '*omyl*' (error) within the meaning of [the Czech version] of Article 116(7) of the Customs Code. The Supreme Administrative Court tends to agree with the opinion of the General Customs Directorate and the City Court that a customs debt may be reinstated pursuant to that provision even if the error of the customs authority consisted of the authority carrying out an incorrect assessment in respect of the tariff classification of goods under a specific customs nomenclature code. That was undoubtedly the fact in the present case, as the Customs Authority for the City of Prague repaid customs to the applicant because it classified the applicant's goods under an incorrect nomenclature code, which corresponds to a zero customs rate, on the basis of binding information on the tariff classification of goods from the Customs Office for the Olomouc Region, which subsequently proved to be incorrect and was also contradicted by Commission Implementing Regulation (EU) 2021/532 of 22 March 2021 concerning the classification of certain goods in the Combined Nomenclature, whereby the customs classification of those particular goods was harmonised across the EU as falling under customs nomenclature code 8521 90 00, which corresponds to a duty rate of 8.7%.

[17] The interpretation of Article 116(7) of the Customs Code advanced by the applicant, that that article can be applied to cases only when a customs authority has repaid customs by means of a purely unintentional act, would entail a significant and undue restriction on the possibilities to use that article. In such a case, customs authorities could reinstate a customs debt only if they, for example, unintentionally repaid customs duty to the account of the incorrect entity or issued a decision on the repayment or remission of customs duty with respect to the wrong entity. The Supreme Administrative Court, however, holds that that was not the intention of the EU legislature. Even though Regulation 450/2008, which preceded the present Customs Code, also referred to '*omyl*' (error) on the part of the customs authorities in the repayment or remission of customs duty as a condition for the reinstatement of a customs debt, it follows from the Czech language version of Article 242 of Regulation 2913/92, which preceded both of the regulations referred to above, that the condition for the reinstatement of a customs debt was the repayment of customs duty that was [in Czech] '*neoprávněné*' ['in error'], namely the repayment of duty in breach of the law. It does not follow from the Customs Code or from other EU regulations governing the issue concerned that the EU legislature intended to restrict the condition for the reinstatement of a customs debt solely to cases where a duty has been repaid or remitted on the basis of unintentional acts of the customs authorities. The Supreme Administrative Court is, however, convinced that that is what the EU legislature would have done in the event that that condition were made stricter.

[18] Furthermore, the Supreme Administrative Court has found that, in certain language versions, Article 116(7) of the Customs Code does not make the reinstatement of a customs debt conditional on an unintentional error by a customs authority, as is the case in the Czech language version, but, rather, they use terms closer to the Czech term '*pochybení*' (fault), which has a broader meaning. That is the case, for example, in the English version of the customs code, which uses the term 'error', which in legal language is closer to the Czech terms '*pochybení*' or '*chyba*'). The Spanish version uses the term '*errore*', the Portuguese '*erradamente*', and the French version of the provision uses the expression '*ont accordé à tort*'. The German version of the provision uses the word '*unrecht*' which is closer to the Czech term '*nesprávně*' (incorrectly) than '*omylem*'. From those language versions, the Supreme Administrative Court infers that the purpose of Article 116(7) of the Customs Code is to reinstate a customs debt in those cases where the customs authorities have not proceeded correctly in returning a customs duty, for example, where they have erred in classifying goods under a customs nomenclature code, as was the situation in the present case.

[19] The Czech version of Article 116(7) of the Customs Code is, nevertheless, not the only one which uses a concept other than the term '*pochybení*' or '*chyba*'. The Slovak version of the provision uses the term '*omylom*' (in error), which fully corresponds to the Czech term '*omyl*'. The Polish version of the provision uses the term '*omyłkowo*', while Article 116(1) of the Polish version of the customs code uses a different term, '*błąd*', for an error of the customs authorities that warrants the repayment or remission of a customs duty. Hence, it cannot be said that the Czech version is the only one to differ from other language versions of the provision concerned.

[20] According to the case-law of the CJEU, all the language versions of EU legislative acts are equally authentic, and hence the Supreme Administrative Court has not been able to base itself on the fact that certain language versions of Article 116(7) of the Customs Code have used the same term as that used in Article 242 of Regulation 2913/92. In the judgment of 6 October 1982, in Case C-283/81, *Srl Cilfit*, paragraph 18, the CJEU stated that '*Community legislation is drafted in several languages and that the different language versions are all equally authentic*'. (Czech translation by the Supreme Administrative Court). In its judgment of 19 April 2007, in Case C-63/06, *UAB Profisa*, paragraph 13, the CJEU summarised that case-law as follows: '*According to settled case-law, the need for a uniform interpretation of the provisions of Community law makes it impossible for the text of a provision to be considered in isolation, but requires, on the contrary, that it be interpreted and applied in the light of the versions existing in the other official languages (Case 26/69* Stauder *v* Ulm *[1969] ECR 419, paragraph 3; Case 55/87* Moksel *[1988] ECR 3845, paragraph 15; and Case C-296/95 EM*U Tabac and Others *[1998] ECR I-1605, paragraph 36).*' Similarly, in its judgment of 13 September 2018, in case C-287/17, *Česká pojišťovna, a. s.,* v *WCZ, spol. s r. o.*, paragraph 24, the CJEU stated: '*It is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given*

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priority over the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages (judgment of 6 June 2018, Tarragó da Silveira*, C-250/17, EU:C:2018:398, paragraph 20).*'

[21] Hence, the Supreme Administrative Court has not been able to determine which of the terms used in the different language versions of Article 116(7) of the Customs Code is the correct one and whether those language versions that use the term '*omyl*' in that provision are not merely incorrect translations. Furthermore, the Supreme Administrative Court has found that the CJEU has yet to examine in its case-law the meaning of Article 116(7) of the Customs Code or of the articles that regulated that issue in the previous regulations. In addition, the CJEU has yet to interpret the term '*omyl*'. According to CJEU case-law, a national court or tribunal against whose decisions there is no judicial remedy under national law, which includes the Supreme Administrative Court, cannot be relieved of its obligation to approach the CJEU with a question concerning the interpretation of EU law that has arisen before it, unless it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (see CJEU judgment of 6 October 2021, in Case C-561/19, *Consorzio Italian Management and Catania Multiservizi*, and the older case-law cited therein, in particular the abovementioned CJEU judgment in Case C-283/81, *Cilfit*).

[22] In the present case, the interpretation of the term '*omyl*' within the meaning of Article 116(7) of the Customs Code is of the essence, as it is solely on the basis of that interpretation that the Supreme Administrative Court is able to assess whether the customs authorities were correct in reinstating the customs debt. According to the above considerations, that question cannot be deemed to be an *acte éclairé*, nor can it be viewed, given its ambiguity, as an *acte clair*.

[…]

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