

Case T-53/02

Ricosmos BV

v

Commission of the European Communities

(Customs law — External Community transit operation concerning cigarettes — Fraud — Application for remission of import duties — Regulation (EEC) No 2913/92 — Regulation (EEC) No 2454/93 — Fairness clause — Compliance with time-limits — Rights of the defence — Principle of proportionality — Concept of obvious negligence)

Judgment of the Court of First Instance (First Chamber), 13 September 2005 II - 3179

Summary of the Judgment

1. *Own resources of the European Communities — Repayment or remission of import or export duties — Submission of application for reimbursement to the Commission — Information supplied by the national authorities not sufficient — Request for additional information — Time-limit applicable to the Commission's decision — Possibility for the applicant to believe that the application has been accepted by the mere fact of the expiry of the period — None (Commission Regulation No 2454/93, Art. 907)*

2. *Own resources of the European Communities — Repayment or remission of import or export duties — Submission of application for reimbursement to the Commission — Information supplied by the national authorities not sufficient — Request for additional information — Commission's obligation to inform the applicant without delay — None (Commission Regulation No 2454/93, Art. 905(2) and 906(a))*
3. *Own resources of the European Communities — Repayment or remission of import or export duties — Submission of application for reimbursement to the Commission — Notification of objections to the applicant — Access to documents — Scope (Commission Regulation No 2454/93, Art. 906(a))*
4. *Own resources of the European Communities — Repayment or remission of import or export duties — Fairness clause established by Article 905 of Regulation No 2454/93 — Scope — Commission's decision-making power — Procedures for exercising (Council Regulation No 2913/92, Art. 239; Commission Regulation No 2454/93, Art. 905)*
5. *Own resources of the European Communities — Repayment or remission of import or export duties — Submission of application for reimbursement to the Commission — Commission decision not taking into account the extent of the financial loss entailed for the operator — Breach of principle of proportionality — None (Council Regulation No 2913/92, Art. 239; Commission Regulation No 2454/93)*
6. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 239 of the Community Customs Code — Fairness clause established by Article 905 of Regulation No 2454/93 — Scope — Competence of the Commission — Limits — Application of substantive customs law — Exclusive competence of the national authorities (Art. 234 EC; Council Regulation No 2913/92, Art. 239; Commission Regulation No 2454/93, Art. 905)*

1. Under the second paragraph of Article 907 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, in a

procedure concerning the repayment or remission of import or export duties, the Commission's decision regarding the repayment or remission must be adopted within nine months of the date

of receipt by it of the file concerning the application for remission and, where the Commission has had to request from the Member State supplementary information in order to enable it to reach a determination, the period of nine months is to be extended by a period equivalent to that between the date on which that request was sent by the Commission and the date of the receipt by it of the reply by the national authorities.

As the period allowed the Commission may thus be extended, the applicant for remission cannot be sure that simply because the period of nine months has expired his application has been accepted, notwithstanding the fact that he has not been informed that the period has been extended.

(see paras 54-55)

2. The customs rules do not provide that, in a procedure concerning the repayment or remission of import or export duties, the person concerned must be informed without delay that the Commission has requested further information from the national authorities under the third subparagraph of Article 905(2) of Regulation No 2454/93 laying down

provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code or must be informed of the replies of those authorities or must immediately be notified of the content of such exchanges.

Pursuant to Article 906a of the implementing regulation, it is only when the Commission, after examining the application for remission, has reached a preliminary view unfavourable thereto that it is to communicate its objections to the applicant in writing, together with all the documents on which it bases those objections.

Likewise, the first subparagraph of Article 905(2) of the implementing regulation which provides that the case sent to the Commission by the national authorities must, *inter alia*, include a statement, signed by the applicant certifying that he has read the case and stating either that he has nothing to add or listing all the additional information that he considers should be included, is intended only to ensure that the operator who seeks a remission and has not necessarily been involved in the pre-

paration of the case by the competent national authorities may exercise effectively his right to be heard during the first stage of the administrative procedure, which takes place at national level.

non-confidential documents on file containing sufficiently precise information for the applicant to assess, in full knowledge of the facts, whether the documents described are likely to be useful to it.

(see paras 61-63)

(see paras 72, 74)

3. According to the principle of observance of the rights of the defence, it cannot be for the Commission alone to decide, in a procedure concerning the repayment or remission of import or export duties, which documents are useful to the person concerned for the purposes of that procedure and to which he must be able to have access under Article 906(a) of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code where the Commission intends to take a decision unfavourable towards that party and communicate its objections to him.
4. Article 905 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, the provision which sets out and expands on the rule concerning the repayment or remission of import or export duties in Article 239 of the Customs Code, constitutes a general fairness clause intended in particular to cover exceptional situations which, in themselves, do not fall within any of the cases provided for in Articles 900 to 904 of the implementing regulation. The repayment of import duties is subject to two cumulative conditions, namely, first, the existence of a special situation and, secondly, the absence of deception or obvious negligence on the part of the economic operator. Furthermore, there must be a connection between the negligence of which the operator is accused and the special situation established. However, it is not necessary for

The Commission must therefore, at the time when it communicates its objections, give the applicant an opportunity to examine all the documents likely to be relevant in support of the request for remission or repayment; in order to do so it must at the very least provide the applicant with a complete list of the

the special situation to be the direct and immediate consequence of negligence on the part of the party concerned. In that connection it is sufficient for the negligence to have contributed to or facilitated the removal of goods from customs supervision.

When the Commission adopts a decision under that general rule as to fairness, it enjoys a margin of discretion. Furthermore, since the repayment or remission of import duties, which can be granted only in certain circumstances and in situations which are specifically provided for, is an exception to the normal rules applicable to imports and exports, the provisions under which such repayment or remission may be granted must be interpreted strictly.

munity transit operations at issue, in particular the amount of duties and taxes imposed on those goods. The fact that the amount claimed by way of import duties is considerable comes within the category of business risks to which the economic operator is exposed. Accordingly the extent of the debt whose remission is sought is not in itself a factor capable of influencing the assessment of the conditions to which such remission is subject.

(see para. 161)

(see paras 103, 150, 154)

5. In a procedure concerning the repayment or remission of import or export duties, the Commission does not infringe the principle of proportionality by not taking into consideration, in its examination of the application for remission, the extent of the financial loss that a decision to reject it would entail for the economic operator concerned. The amount of the customs debt imposed on an operator reflects the financial significance of the goods which formed the subject-matter of the Com-
6. The provisions of Article 239 of Regulation No 2913/92 establishing the Community Customs Code and of Article 905 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code have the sole objective of making it possible, where certain specific conditions are satisfied and in the absence of obvious negligence or deception, to exempt economic operators from the payment of the duties for which they are liable; their objective is not to enable the very principle of whether the customs debt has arisen to be called in question. In fact, determination of the existence and of the exact amount of the debt is a matter for the national authorities.

However, the applications submitted to the Commission under the abovementioned provisions do not concern the question whether the provisions of substantive customs law have been correctly applied by the national customs authorities. The decisions adopted

by those authorities may be contested before the national courts, those courts being able to bring a matter before the Court under Article 234 EC.

(see para. 165)