Case C-351/24

Request for a preliminary ruling

Date lodged:

15 May 2024

Referring court:

Veszprémi Törvényszék (Hungary)

Date of the decision to refer:

29 April 2024

Applicant:

C/C Vámügynöki Kft.

Defendant:

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Veszprémi Törvényszék (Veszprém High Court, Hungary)

…

In the administrative proceedings regarding the rejection of a claim for the remission of customs duty …, brought by **C/C Vámügynöki Kft.** (… Zalaegerszeg[, Hungary] …) (the applicant), against the **Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága** (Appeals Directorate of the National Tax and Customs Authority, Hungary) (… Budapest[, Hungary] …) (the defendant), the Veszprémi Törvényszék (Veszprém High Court, Hungary) makes the following

Order

The referring court … refers the following question to the Court of Justice of the European Union for a preliminary ruling:

1. Must Article 119(3) 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’) be interpreted as precluding a national practice whereby a proof of origin is declared to be incorrect without

recourse to the procedure laid down in Article 32 of Appendix I to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (‘the Convention’)?

[Element of national procedural law]

Reasoning

Facts

The applicant, acting on behalf of Best-Epil Kft. (importer) as its indirect customs representative, requested the release for free circulation of various fruits and vegetables on 20 occasions during the period between 17 December 2021 and 26 February 2022, from the Nemzeti Adó- és Vámhivatal Csongrád-Csanád Vármegyei Adó- és Vámigazgatósága (Csongrád-Csanád Provincial Tax and Customs Directorate, part of the National Tax and Customs Authority, Hungary; ‘the first-tier customs authority’). In general, the goods were sent from Albania, Türkiye or Kosovo, with their origin stated as Albania or Türkiye. At the time of their release for free circulation, preference code 300 was stated in box 36 of the customs declaration and, on the basis of the proofs of origin attached, the applicant requested that the customs duty be determined in accordance with preferential treatment. In the three cases relevant to the dispute, the fresh produce (mandarins) dispatched from Kosovo, with proof of Turkish origin based on EUR.1 origin documents with the numbers A0104738, A0104737 and A0104736, were released for free circulation on 26 February 2022 …, 22 February 2022 … and 3 February 2022 …, respectively.

Following the release for free circulation of the goods, on 5 May 2023, the first-tier customs authority ordered a post-release control, during which it declared that the movement certificates EUR.1 issued by the customs authority in Kosovo did not comply with the provisions of Commission notice 2021/C 418/12 ‘Commission notice concerning the application of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin or the protocols on rules of origin providing for diagonal cumulation between the Contracting Parties to this Convention’ (‘the Commission notice’), since preferential treatment cannot be granted for agricultural products [moving] between the European Union, Kosovo and Türkiye and nor can the customs authorities in Kosovo certify such a situation. In view of the above, by decisions of 16 August 2023, the first-tier customs authority determined an amount of additional customs duty totalling 2 580 000 forint (HUF) … and asked the applicant to pay that amount.

On 18 August 2023, on the basis of Article 116(1)(c) of the Customs Code, the applicant submitted a claim to the first-tier customs authority for the remission of the customs duty. In its claim, it stated that the conditions laid down in Article 119(3) of the Customs Code are satisfied; that is to say that, given that the error in the EUR.1 proof of origin issued under the Convention was a consequence of the error made by the customs authority, the examination required by

Article 119(1)(a) of the Customs Code and relating to whether the applicant was aware of the error should not be carried out.

Decision of the defendant

The first-tier customs authority rejected the applicant's claim … The defendant, which considered the internal appeal lodged by the applicant, confirmed the decision of the first-tier customs authority …

In the reasoning given for its decision, the defendant referred to Article 116(1)(c) of the Customs Code, as well as Article 119(1)(a) and Article 119(3) of that code. In that regard, it stated that the certificate of origin was not issued in the context of the administrative cooperation provided for in Article 31 of Appendix I to the Convention, so the exception provided for in Article 119(3) of the Customs Code is not applicable, and also that, in accordance with Article 119(1)(a) of that code, it was necessary to examine whether the applicant could reasonably have detected the error made by the customs authority. It also argued that, according to decision No 2/2022 of the Kúria (Supreme Court, Hungary), given in proceedings to unify case-law relating to administrative law, the possibility of detecting the error cannot be ruled out by claiming that the applicant itself had also made an error.

In its decision, the defendant stated that, even if the customs authority in Kosovo had made an error, the applicant could reasonably have detected it, in view of the fact that it carries on a professional activity in the customs field, it has the necessary customs authorisations and sufficient specialist knowledge, and it has experience in matters relating to customs clearance. The applicant should be aware of the rules relating to preferential treatment, of the legislation and conventions on customs duty and of the Commission notice, and, therefore, it should have noticed that the movement certificates EUR.1 had been issued incorrectly. In its opinion, the error in the certificates EUR.1 issued by the customs authority in Kosovo was such that it could be established unequivocally on the basis of the documents and could reasonably have been detected.

Positions of the parties to the dispute

Form of order sought by the applicant

The applicant brought an administrative action against the defendant's decision, seeking the annulment of that decision, as well as the decision of the first-tier customs authority, and asking the court to order the latter authority to carry out a new procedure. With regard to the infringement, the applicant, in its statement of case, states that, in accordance with Article 116(1)(c) of the Customs Code, the error by the competent authorities justifies the amounts of the import duty being refunded or remitted. According to Article 119(1) and (3) of the Customs Code, where the preferential treatment is granted on the basis of a system of administrative cooperation, if the certificate issued by the authority of a country or

territory outside the customs territory of the Union proves to be incorrect, such an error does not constitute an error which could have been detected by the applicant, within the meaning of Article 119(1)(a).

The applicant noted in particular that, in the context of the administrative cooperation provided for in Article 31 of Appendix I to the Convention, the authorities undertake to send [each other] specimen impressions of their stamps and their contact address. In its opinion, the fact that the customs authorities in Kosovo used that stamp specimen to issue a movement certificate EUR.1 indicates the existence of the administrative cooperation provided for in Article 119(3) of the Customs Code. Were the arguments of the defendant to be accepted, there would be no reason for Article 119(3) of the Customs Code to exist and its application would be impossible, as the provisions of Article 31 of Appendix I to the Convention would render it ineffective. The defendant should have carried out the verification procedure provided for in Article 32 of Appendix I to the Convention, raising the question of the accuracy of the proof of origin with the customs authority in Kosovo. The applicant, in good faith, relied on the customs authority located outside the customs territory of the Union, as a party to the Convention, having issued the proof of origin applying the Convention and its protocols correctly.

Response of the defendant

In its response, the defendant requested that the action be dismissed. With regard to the substance, it argued that the customs authority of the exporting country (Kosovo) could not, on the basis of the Commission notice and the Convention, legitimately certify the preferential origin of the goods (Türkiye). Considering, moreover, that the error in question emerged from the proof of origin itself, it was not necessary for the defendant to raise the question of the authenticity of the document with the customs authority of the exporting State, since the Convention does not contain any stipulation in that regard. It rejected the assertion that the fact that the customs authority issued the certificate EUR.1 using the stamp specimen should be regarded as administrative cooperation. In its opinion, Article 31 of Appendix I to the Convention does not contain any rule in that regard and cannot be interpreted broadly.

The customs authority in Kosovo was not able to certify the Turkish preferential origin. The verification referred to in Article 32 of Appendix I to the Convention may be carried out when the customs authority of the importing Contracting Party has reasonable doubts as to the authenticity of the document; however, such doubts did not arise for the defendant in this case, since it was possible to establish with complete certainty that the documents were incorrect and were not suitable to certify the place of origin, making it unnecessary to carry out the verification of proof of origin procedure.

The defendant stressed that the repayment of the customs duty on account of an error made by the authority, provided for in Article 116(1)(c) of the Customs

Code, could only apply if, in accordance with Article 119(1)(a) of the Customs Code, the defendant could not reasonably have detected the error. Given its sufficient expertise and experience in the customs field, the applicant should reasonably have detected the error, as it is reflected in the documents. Under Article 15(2)(b) of the Customs Code, the person lodging a customs declaration is responsible for the authenticity, accuracy and validity of the documents supporting that declaration.

The defendant also argued that, in accordance with Article 119(1)(b) of the Customs Code, the applicant's good faith must be examined separately and, therefore, the fact that the applicant acted in good faith does not exclude the possibility that it could reasonably have detected the error made by the customs authority.

European Union law

Article 116 of Regulation (EU) No 952/2013 laying down the Union Customs Code ('the Customs Code')

'1. 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 by the competent authorities;

(d) equity.

…'

Article 119 of the Customs Code

'1. In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 120, an amount of import or export duty shall be repaid or remitted where, as a result of an error on the part of the competent authorities, the amount corresponding to the customs debt initially notified was lower than the amount payable, provided the following conditions are met:

(a) the debtor could not reasonably have detected that error; and

(b) the debtor was acting in good faith.

…

3. Where the preferential treatment of the goods is granted on the basis of a system of administrative cooperation involving the authorities of a country or territory outside the customs territory of the Union, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of point (a) of paragraph 1.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

…'

Article 64 of the Customs Code

'…

2. In the case of goods benefiting from preferential measures contained in agreements which the Union has concluded with certain countries or territories outside the customs territory of the Union or with groups of such countries or territories, the rules on preferential origin shall be laid down in those agreements.

…'

Article 15 of Appendix I to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin ('the Convention')

'1. Products originating in one of the Contracting Parties shall, on importation into other Contracting Parties, benefit from the provisions of the relevant Agreements upon submission of one of the following proofs of origin:

(a) a movement certificate EUR.1, a specimen of which appears in Annex III a;

(b) a movement certificate EUR-MED, a specimen of which appears in Annex III b;

(c) in the cases specified in Article 21(1), a declaration (hereinafter referred to as the "origin declaration" or "the origin declaration EUR-MED") given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified. The texts of the origin declarations appear in Annexes IV a and b.

…'

Article 31 of Appendix I to the Convention (Administrative cooperation)

‘1. The customs authorities of the Contracting Parties shall provide each other, through the European Commission, with specimen impressions of stamps used in their customs offices for the issue of movement certificates EUR.1 and EUR-MED, and with the addresses of the customs authorities responsible for verifying those certificates, origin declarations and origin declarations EUR-MED.

2. In order to ensure the proper application of this Convention, the Contracting Parties shall assist each other, through the competent customs administrations, in checking the authenticity of the movement certificates EUR.1 and EUR-MED, the origin declarations and the origin declarations EUR-MED and the correctness of the information given in these documents.’

Article 32 of Appendix I to the Convention (Verification of proofs of origin)

‘1. Subsequent verifications of proofs of origin shall be carried out at random or whenever the customs authorities of the importing Contracting Party have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Convention.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing Contracting Party shall return the movement certificate EUR.1 or EUR-MED and the invoice, if it has been submitted, the origin declaration or the origin declaration EUR-MED, or a copy of these documents, to the customs authorities of the exporting Contracting Party giving, where appropriate, the reasons for the request for verification. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect shall be forwarded in support of the request for verification.

3. The verification shall be carried out by the customs authorities of the exporting Contracting Party. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter’s accounts or any other check considered appropriate.

…’

Commission notice concerning the application of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin or the protocols on rules of origin providing for diagonal cumulation between the Contracting Parties to this Convention 2021/C 418/12 (‘the Commission notice’)

‘…

It is recalled that diagonal cumulation can only be applied if the Parties of final manufacture and of final destination have concluded free trade agreements,

containing identical rules of origin, with all the Parties participating in the acquisition of originating status, i.e. with all the Parties from which the materials used originate. Materials originating in a Party which has not concluded an agreement with the Parties of final manufacture and/or of final destination shall be treated as non-originating. Specific examples are given in the Explanatory Notes concerning the pan-Euro-Mediterranean protocols on rules of origin.

…

In Table 3 the dates mentioned refer to the date of application of the protocols on rules of origin providing for diagonal cumulation attached to the free trade agreements between the EU, Turkey and the participants to the EU's Stabilisation and Association Process. Each time a reference to the Convention is made in a free trade agreement between Parties in this table, a date preceded by "(C)" has been added in Table 2.

It is also recalled that materials originating in Turkey covered by the EU-Turkey customs union can be incorporated as originating materials for the purpose of diagonal cumulation between the European Union and the countries participating in the Stabilisation and Association Process with which an origin protocol is in force.

…

… Diagonal cumulation between Turkey, Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia is possible. However, [please] see Table 3 for the possibility of diagonal cumulation between the European Union, Turkey, Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia.

…'

For goods covered by the EU-Türkiye customs union, the date of application is 27 July 2006, but that date does not apply to agricultural products or to coal and steel products. The start date for applicability between Türkiye and Kosovo is 1 September 2019.

Reasons for initiating preliminary ruling proceedings

In the present case, the [referring] court seeks clarification as to whether the defendant, in its capacity as the customs authority of the importing Contracting Party, is authorised to conclude, with regard to the proof of origin issued under Article 15 of Appendix I to the Convention, that, in issuing that proof of origin, the customs authority of the exporting Contracting Party infringed the rules of the Convention, or whether it must beforehand carry out the verification procedure provided for in Article 32 of Appendix I to the Convention.

This court has not found any case relating to the interpretation of Article 119(3) of the Customs Code in the case-law of the Court of Justice of the European Union.

The question referred is relevant to the present dispute because, in accordance with Article 119(3) of the Customs Code, exemption of the applicant from liability pursuant to Article 119(1)(a) of the Customs Code is based exclusively on the issuance of an incorrect certificate in the context of administrative cooperation. However, the issuance of proofs of origin does not normally take place in the context of the administrative cooperation provided for in Title VI of the Convention, but rather in that of the procedures provided for in Title V. And, therefore, the applicant's assertion that a restrictive interpretation of EU law renders ineffective Article 119(3) of the Customs Code could be well founded.

In the present case, it is unquestionable for the parties that diagonal cumulation could not be applied to the goods in question and, therefore, there is an error in the content of the EUR.1 proof of origin. In this dispute, the customs authority made its decision dispensing with the procedure provided for in Article 32 of Appendix I to the Convention and without asking the customs authority in Kosovo to examine the correctness of the proof of origin.

The procedure provided for in Article 32 of Appendix I to the Convention – which appears in Title VI – is carried out in a context of administrative cooperation and may be initiated when the customs authority of the importing Contracting Party has reasonable doubts. In accordance with Article 32(3) of Appendix I to the Convention, the customs authority of the exporting Contracting Party is responsible for carrying out the verification. In the present dispute, the customs authority argued that it can be stated beyond any reasonable doubt and with absolute certainty that the provisions of the Convention have been infringed and that the customs authority of the exporting Contracting Party was not able to certify an origin which justified preferential treatment.

In the opinion of the referring court, on the basis of Article 119(3) of the Customs Code, it is unclear whether, when an error is detected in the proof of origin, the customs authority of the importing Contracting Party is able to declare that proof incorrect, even if it dispenses with the proof of origin verification procedure. That implies that, according to Article 119(1)(a) of the Customs Code, whether the applicant could reasonably have detected the error must be examined. If, when an error is detected in the proof of origin, the customs authority necessarily and mandatorily has to carry out the verification provided for in Article 32 of Appendix I to the Convention, where the proof of origin is found to be incorrect, according to Article 119(3) of the Customs Code, the applicant must be considered not to have been able to detect the error. If, before making its decision, the customs authority mandatorily has to carry out the verification of proof of origin with the customs authority of the exporting country, in the present case, the facts established by the customs authority would be incomplete.

Accordingly, this court requests the interpretation of the Court of Justice regarding the question of whether a national practice is consistent with Article 119(3) of the Customs Code where, in accordance with that practice, in the event of an error in the proof of origin issued by the authorities of a country or territory outside the customs territory of the Union, the customs authority of the importing Contracting Party declares the existence of an error in the proof of origin without recourse to the procedure provided for in Article 32 of Appendix I to the Convention.

[Element of national procedural law]

Veszprém, 29 April 2024.

[Signatures]