Case C-376/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

15 June 2023

Referring court:

Augstākā tiesa (Senāts) (Latvia)

Date of the decision to refer:

14 June 2023

Applicant at first instance and appellant:

SIA BALTIC CONTAINER TERMINAL

Defendant at first instance and respondent:

Valsts ieņēmumu dienests

Subject matter of the main proceedings

Action for annulment of the decision of the Valsts ieņēmumu dienests (State Tax Authority; 'the VID'), imposing on the applicant limited liability company, BALTIC CONTAINER TERMINAL, the obligation to pay import duties and value added tax, in addition to the applicable late-payment penalty.

Subject matter and legal basis of the request for a preliminary ruling

Pursuant to Article 267 TFEU, the referring court asks (1) whether, in accordance with Delegated Regulation 2015/2446, in conjunction with the Union Customs Code, it is possible to discharge the 'free zone' special procedure without indicating the master reference number which identifies the declaration by which the goods are placed under the subsequent customs procedure; (2) whether the holder of that procedure is entitled to discharge the procedure relying solely on a note concerning the customs status of the goods made by a customs official on the transport document for the goods, without checking for itself the validity of that status or, where it is required to carry out such checks, the extent to which it must

do so; (3) whether it is possible for the holder of that procedure to have a legitimate expectation based on confirmation, by the customs authorities, of the change of customs status of the goods, even if that confirmation does not indicate the reason for that change of status or any information which allows that reason to be verified; and (4) whether, in the event that the holder of the procedure has infringed the provisions of the customs procedure laid down by EU law and does not have the legitimate expectation referred to above, the holder must, nevertheless, pursuant to the principle of *res judicata*, be exempt from the customs debt if, in other proceedings brought before a national court in relation to the same questions of fact and law, it was ruled by judgment that the holder did not commit any infringement with regard to the customs procedure.

Questions referred for a preliminary ruling

1. Under Article 178(1)(b) and (c) of Delegated Regulation 2015/2446, in conjunction with Article 214(1) of the Union Customs Code, is it possible to discharge the 'free zone' special procedure without having included in the electronic records system the master reference number (MRN) which identifies the customs declaration by which the goods are placed under the subsequent customs procedure?

2. Under Articles 214(1) and 215(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446, is it possible for the holder of the 'free zone' special procedure to discharge that procedure relying solely on a note concerning the customs status of the goods made by a customs authority official on the transport document for the goods (CMR), without checking for itself the validity of the customs status of those goods?

3. If the answer to question 2 is negative, what level of verification in accordance with Articles 214(1) and 215(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446 is sufficient in order to consider the 'free zone' special procedure to have been correctly discharged?

4. Was the holder of the 'free zone' special procedure entitled to have a legitimate expectation as a result of the confirmation by the customs authorities that the customs status of the goods had changed from 'non-Union goods' to 'Union goods', even though that confirmation did not indicate the reason for that change of status of the goods or any information which allowed that reason to be verified?

5. If the answer to question 4 is negative, may the fact that, in other proceedings brought before a national court, it was ruled, by final judgment, that, in accordance with the procedures laid down by the customs authorities, the holder of the customs procedure had not committed any infringement with regard to the 'free zone' customs procedure constitute a ground for exemption from the customs debt arising under Article 79(1)(a) and 3(a) of the Union Customs Code, in the light of the principle of *res judicata* laid down in national law and EU law?

Provisions of European Union law relied on

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast): Articles 79(1)(a) and (3)(a), 210(b), 214(1) and 215(1).

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: Article 178(1)(b) and (c) and 2(a).

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code: Articles 199(1)(b), 200(1) and (3), 211 and the first paragraph of Article 226.

Case-law of the Court of Justice and the General Court

Judgment of the Court of Justice of 7 April 2011, *Sony Supply Chain Solutions (Europe)*, C-153/10, EU:C:2011:224, paragraph 47.

Judgment of the Court of Justice of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission* (C-352/09 P, EU:C:2011:191, paragraph 123).

Judgment of the General Court of 1 July 2009, *ThyssenKrupp Stainless* v *Commission*, T-24/07, EU:T:2009:236, paragraph 140.

Judgment of the General Court of 8 February 2018, *Sony Interactive Entertainment Europe* v *EUIPO – Marpefa (Vieta)* (T-879/16, EU:T:2018:77, paragraph 31).

Provisions of national law relied on

Administratīvā procesa likums (Law on Administrative Procedure)

Article 153(3): Facts that are established in the grounds of a judgment which has acquired the force of *res judicata* do not have to be established again when an administrative case involving the same parties is examined.

Likums “Par tiesu varu” (Law on the Judiciary)

Article 16(3) and (4):

(3) Under the statutory procedure, a judgment is to be binding on the court when it examines other cases related to that case.

(4) Such judgments are to have the force of law, are binding *erga omnes* and must be treated with the same respect as statutes.

Ministru kabineta 2017.gada 22.augusta noteikumi Nr. 500 "Muitas noliktavu, pagaidu uzglabāšanas un brīvo zonu noteikumi" (Decree No 500 of the Council of Ministers of 22 August 2017 laying down rules relating to customs warehousing, temporary storage and free zones): paragraph 77 provides that anyone in whose free zone non-Union goods are stored must keep a record of goods stored in the free zone; paragraph 78 provides that records are to include the information mentioned, inter alia, in Article 178(1)(b) and (c) and (2) of Delegated Regulation 2015/2446; and paragraph 79 provides that records relating to non-Union goods are to include the number of the customs document or of the consignment note under which the goods entered and exited the free zone.

Succinct presentation of the facts and procedure in the main proceedings

1 The applicant, SIA BALTIC CONTAINER TERMINAL, is the holder of a permit to load, unload and store goods in the free zone of the free port of Riga and has a duty to keep a record of goods present in that zone.

2 The VID carried out checks on the goods in the applicant's free zone and found that, on three occasions in 2018 and 2019, goods that were in the free zone had exited that zone without being placed under a subsequent customs procedure and that, therefore, the 'free zone' special procedure had not been discharged. The VID concluded that those goods had actually been removed from customs supervision and therefore the applicant had incurred a customs debt under Article 79(1)(a) and (3)(a) of the Union Customs Code.

3 The goods in question were handed over for exit from the free zone on the basis of consignment notes ('CMR') describing the customs status of the goods as 'Union goods' ('C'), which an official of the customs authority confirmed with the customs office stamp and his signature. That conformed to existing practice whereby the VID would check the customs status of goods before those goods left the port and would make a note of this on the transport documents, even though the law did not provide for such a procedure. However, after the goods had exited from the free zone, customs officials established that they did not have any documents substantiating the change of customs status of the goods at issue from 'non-Union goods' ('N') to 'Union goods' ('C').

4 By decision of the VID of 19 July 2019, the applicant was required to pay to the public purse import duties and the applicable late-payment penalty, in addition to value added tax and the applicable late-payment penalty.

5 The applicant appealed to the courts against the decision of the VID.

6 The Administratīvā apgabaltiesa (Regional Administrative Court) dismissed the appeal.

7 That court stated that, under Article 210(b) of the Union Customs Code, a ‘free zone’ is a special customs procedure and that, therefore, in accordance with Article 215(1) of the Union Customs Code, that procedure is discharged when the goods are placed under a subsequent customs procedure. According to that court, under Article 214(1) of the Customs Code, the applicant should have kept records containing information and data which would enable the customs authorities to supervise the procedure, by indicating information about the customs status of the goods and the manner in which the special procedure was discharged; in other words, which subsequent procedure the goods had been placed under.

8 The Administratīvā apgabaltiesa (Regional Administrative Court) found that the fact that the CMR had been stamped and signed was not sufficient to certify the customs status of Union goods of goods which had been imported as non-Union goods and which, therefore, should have changed status, since the VID did not certify that status on the CMR and the goods only acquired the status of Union goods when they were placed under the appropriate customs procedure. In the view of the court, the applicant failed to act with the necessary diligence in the fulfilment of its obligations, since it should have ensured that the non-Union goods were placed under one of the appropriate customs procedures. In its view, the applicant could not rely solely on a CMR bearing the customs office stamp and the official’s signature, since it was not possible to deduce from the CMR alone which subsequent customs procedure the goods had been placed under, although the letter ‘C’ could have led the applicant to believe that the goods had been placed under a customs procedure which altered the status of the goods to that of Union goods. In that situation, a declaration including the master reference number (‘MRN’) or a CMR bearing the customs office stamp and the MRN number was necessary.

9 The applicant lodged an appeal in cassation with the Senāts (Supreme Court, Latvia) against the judgment of the [Administratīvā] apgabaltiesa (Regional Administrative Court).

10 In parallel, proceedings were brought before the Rīgas apgabaltiesas Krimināllietu kolēģija (Regional Court, Riga (Division of Criminal Cases)) in which the applicant contested the imposition of an administrative penalty in respect of the same acts. By judgment of 5 February 2021, the Krimināllietu kolēģija (Division of Criminal Cases) annulled the administrative penalty imposed on the applicant; it found that the applicant had not infringed customs procedure rules and had acted in accordance with the usual practice of the customs authorities, while the VID had been unable to indicate any legal provisions which imposed on the applicant the obligation to verify other details relating to the validity of the change of status of the goods other than the confirmation provided by the customs authorities.

Essential arguments of the parties in the main proceedings

11 The applicant, now appellant in cassation, submits that the lower court erred in applying Article 79(1)(a) and (3)(a) of the Union Customs Code. In its submission, it would be possible to consider that it was liable for the customs duties if a specific obligation existed which was laid down in the customs legislation and which it had failed to fulfil, but the [Administratīvā] apgabaltiesa (Regional Administrative Court) did not refer to any obligation of that kind. Nor did it find that the applicant had deliberately participated in the unlawful exit of the goods from the free zone or that the applicant knew or could have known that the goods were unlawfully exiting the free zone. The applicant relies on Article 178(1)(c) of Delegated Regulation 2015/2446, stating that, in accordance with that provision, it had an obligation to include in the records referred to in Article 214(1) of the Union Customs Code data that unequivocally allowed the identification of customs documents other than customs declarations, of any other documents relevant to the placing of goods under a special procedure and of any other documents relevant to the corresponding discharge of the procedure. The applicant claims that it kept the required records in accordance with the permit issued by the VID and that it handed the goods over to the carrier on the basis of the CMRs submitted, on which, in line with the usual practice of the VID, it was possible to see the status of the goods indicated by the customs official, in other words, that they were Union goods, the signature of the customs official and the customs office stamp. Accordingly, in the applicant's submission, it was entitled to consider that the customs procedure for the goods had been discharged and that the goods had been released for free circulation, which also discharged the 'free zone' special procedure for the goods, and that all the obligations under the legislation had been complied with. The current procedure approved by the customs authority provides that it is the customs authority official who, by connecting to the applicant's electronic records system, alters the customs status of the goods, in other words, he or she confirms the change of customs status of the goods, and the applicant, relying on that information, discharges the 'free zone' special procedure.

12 The VID submits that the applicant did not correctly discharge the 'free zone' special procedure because, when allowing the goods to exit the free zone, it did not ensure that those goods were placed under a subsequent customs procedure. The VID contends that, under Article 178(1)(b) of Delegated Regulation 2015/2446, the applicant was required to include in the records referred to in Article 214(1) of the Union Customs Code, the MRN or, where it does not exist, any other number or code identifying the customs declarations by means of which the goods are placed under the special procedure and, where the procedure has been discharged in accordance with Article 215(1) of the Code, information about the manner in which the procedure was discharged. The VID argues that it was not possible to certify the customs status of the goods by means of a note from the customs authority on the CMR. Consequently, the applicant had a duty to include the MRN in its records system, which would have made it possible to identify the customs declaration on which the change of customs status of the goods from

'non-Union goods' to 'Union goods' was based, and it should have ensured that that change of status had actually taken place.

Succinct presentation of the reasoning in the request for a preliminary ruling

13 In the present case, the Senāts (Supreme Court) must decide whether the applicant is liable for the customs debt incurred as a result of failure to comply with the obligations incumbent on it under Article 79(1)(a) and (3)(a) of the Union Customs Code. In order to settle that question, it is necessary to determine which obligations under the legislation the applicant, as the holder of a free zone permit, failed to comply with when it discharged the 'free zone' special procedure.

14 The Senāts (Supreme Court) is unsure whether the applicant would have been able to determine the customs procedure and the customs status of the goods or whether those checks would have been effective, since the applicant would have been required to carry out those checks extensively, it did not have access to the electronic customs data processing system and it would have been unable to establish at all, for example, the veracity of the T2L document, a document which is checked by the customs authorities themselves.

15 At the material time in the main proceedings, the usual practice of the VID was for customs authority officials to confirm customs status before goods left the port and to make the relevant notes (customs status of the goods, customs checkpoint stamp and signature of the customs official) on exit documents (generally CMRs). The current procedure also stipulates that it is the customs official that must confirm the change of customs status of the goods and the applicant, relying on the information provided by the official, is to discharge the 'free zone' special procedure.

16 Accordingly, the Senāts (Supreme Court) is uncertain whether the fact that the VID requires the MRN of the customs declaration to be indicated in the applicant's record system in order to show the change of customs status of the goods is justified and lawful. It wishes to clarify whether the 'free zone' special procedure can be discharged without including the MRN in the records system and whether the holder of the procedure may discharge it on the basis of a note relating to the customs status of the goods made by a customs authority official on the transport document for the goods (CMR), without verifying for itself that the application of the customs status to the goods is valid. In the event of a negative answer, the Senāts (Supreme Court) asks what the scope is of the checks that the applicant should have carried out.

17 If the applicant is found to have failed to fulfil its obligations in relation to the customs procedure, the Senāts (Supreme Court) wishes to clarify whether the applicant could have had a legitimate expectation that the customs status of the goods had been altered, based on the existing practice of the customs authorities. The Senāts (Supreme Court) has uncertainties regarding the case-law of the Court of Justice according to which the principle of the protection of legitimate

expectations cannot be relied upon against an unambiguous provision of European Union law; nor can the conduct of a national authority responsible for applying European Union law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to European Union law (judgment of 7 April 2011, *Sony Supply Chain Solutions (Europe)*, C-153/10, EU:C:2011:224, paragraph 47).

18 Lastly, the Senāts (Supreme Court) asks whether, if, nevertheless, it is found that the applicant breached the customs procedure and could not have had a legitimate expectation, in a situation like that in the present case, in which another judgment of a national court has ruled, in relation to the same parties and the same questions of fact and law, that the applicant did not breach the customs procedure, priority must be given to the principle of *res judicata*, thereby exempting the applicant from the customs debt, or whether the obligation, established in the Union's financial interests, to pay the customs debt must prevail.