

Case T-332/02

Nordspedizionieri di Danielis Livio & C. Snc and Others

v

Commission of the European Communities

(Customs union — Community transit operation — Fraud — Cigarette smuggling — Remission of import duties — Regulation (EEC) No 1430/79 — Article 13: equitable provision — Meaning of ‘special situation’)

Judgment of the Court of First Instance (Fifth Chamber), 14 December 2004 II - 4409

Summary of the Judgment

1. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 13 of Regulation No 1430/79 — Scope — Limits — Application of substantive customs law — Exclusive competence of the national authorities (Art. 234 EC; Council Regulation No 1430/79, Art. 13(1))*

2. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 13 of Regulation No 1430/79 — Scope — Commission's power of decision — Detailed rules for exercise*
(Council Regulation No 1430/79, Art. 13(1))
 3. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 13 of Regulation No 1430/79 — 'Special situation' — Definition — National authorities having deliberately allowed offences or irregularities to be committed in the course of an investigation, thereby giving rise to a customs debt at the expense of a person acting in good faith — Serious failures by the Commission or the national authorities — Included — Case in question not constituting a special situation*
(Council Regulation No 1430/79, Art. 13(1))
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1. The sole aim of Article 13(1) of Regulation No 1430/79 on the repayment or remission of import or export duties is to enable traders, when certain special conditions are satisfied and in the absence of deception or obvious negligence, to be exempted from payment of duties due from them and not to enable them to contest the actual principle of a customs debt's being due. The determination of the existence and precise amount of the debt falls within the competence of the national authorities. Moreover, the decisions adopted by the national customs authorities may be challenged before the national courts, which may make a reference to the Court of Justice pursuant to Article 234 EC.
 2. Article 13(1) of Regulation No 1430/79 on the repayment or remission of import or export duties constitutes a general equitable provision designed to cover situations other than those which arose most often in practice and for which special provision could be made when the regulation was adopted. That provision is intended to be applied where the circumstances characterising the relationship between an operator and the administration are such that it would be inequitable to require the operator to bear a loss which it normally would not have incurred.

(see paras 33-34, 101)

That provision makes the remission of import duties subject to the fulfilment of two cumulative conditions, namely the

existence of a special situation and the absence of deception or obvious negligence on the part of the economic operator.

The Commission has a margin of discretion in adopting a decision applying that general equitable provision. Moreover, repayment or remission of import duties constitute an exception to the usual body of rules governing import and export and, consequently, the provisions providing for such repayment or remission are to be interpreted strictly.

(see paras 40-42)

3. The failure by the national authorities to warn the economic operator liable for a customs debt, for the demands of an investigation conducted by the customs authorities or the police and aimed at identifying and apprehending the persons who have carried out or are planning a fraud, or the accomplices of those persons, that such an investigation is taking place constitutes, in the absence of any deception or negligence on the part of the person liable, a special situation within the meaning of the equitable provision in Article 13(1) of Regulation No 1430/79 on the repayment or remission of import or export duties. Although it is true that, in the

course of such an investigation, it is legitimate for the national authorities deliberately to allow offences or irregularities to be committed, to place on the person liable the burden of a customs debt arising from those choices relating to the prosecution of offences is inimical to the objective of the equitable provision, in that it puts the person liable in an exceptional situation by comparison with other operators engaged in the same business.

Although it is also true that the presentation by the person liable, even in good faith, of documents subsequently found to be falsified does not in itself constitute a special situation justifying remission of import duties, the finding of such a situation must apply if there are serious failures by the Commission or the national customs authorities, facilitating the fraudulent use of the documents.

With respect to customs brokers operating at a Community border having delivered Community transit certificates after a lorry left a location situated in a third country, neither operating at a border, rather than at the place of departure of the consignment, nor the impossibility of inspecting the lorry

constitutes a factor liable to place an operator in an exceptional situation as compared with other operators, since those factors affect an indefinite number of operators. Accordingly, they cannot

give rise to a special situation within the meaning of the abovementioned provision.

(see paras 51, 70, 72, 84)