JUDGMENT OF THE COURT (First Chamber)

15 May 2014 (*)

(Community Customs Code — Scope of Articles 203 and 204(1)(a) of Regulation (EEC) No 2913/92 — External transit procedure — Customs debt incurred through non-fulfilment of an obligation — Belated presentation of the goods at the office of destination — Sixth VAT Directive — Article 10(3) — Link between the incurring of customs debt and the incurring of VAT debt — Concept of taxable transactions)

In Case C?480/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decision of 12 October 2012, received at the Court on 25 October 2012, in the proceedings

Minister van Financiën

v

X BV,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet (Rapporteur), E. Levits, M. Berger and S. Rodin, Judges,

Advocate General: N. Jääskinen,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 November 2013,

after considering the observations submitted on behalf of:

– X BV, by A. Bal,

– the Netherlands Government, by C. S. Schillemans, C. Wissels and B. Koopman, acting as Agents,

– the Czech Government, by M. Smolek and J. Vlá?il, acting as Agents,

– the Greek Government, by M. Tassopoulou and I. Pouli, acting as Agents,

– the European Commission, by B.-R. Killmann and W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 February 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 203 and 204 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 13; 'the Customs Code'), read in conjunction with Articles 356 and 859(2)(c) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002 (OJ 2002 L 68, p. 11; 'the Implementing Regulation'), and also the interpretation of Article 7 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 2004/66/EC of 26 April 2004 (OJ 2004 L 168, p. 35; 'the Sixth Directive').

2 The request has been made in proceedings between Minister van Financiën and X BV ('X'), concerning that company's application seeking reimbursement of the customs duties and turnover tax due on account of the period for presentation of the goods in question being exceeded.

Legal context

European Union law

3 Article 4 of the Customs Code provides:

'For the purposes of this Code, the following definitions shall apply:

…

(13) "Supervision by the customs authorities" means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.

(14) "Customs controls" means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.

...'

4 Article 37 of the Customs Code provides:

'1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and without prejudice to Article 82(1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.'

5 Article 50 of the Customs Code provides:

‘Until such time as they are [assigned] a customs-approved treatment or use, goods presented to customs shall, following such presentation, have the status of goods in temporary storage. Such goods shall hereinafter be described as “goods in temporary storage”.’

6 Article 55 of the Customs Code provides:

‘Once non-Community goods which have moved under a transit procedure reach their destination in the customs territory of the Community and have been presented to customs in accordance with the rules governing transit, Article[s] 42 to 53 shall apply.’

7 Article 91 of the Customs Code provides:

‘1. The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

...

2. Movement as referred to in paragraph 1 shall take place in one of the following ways:

(a) under the external Community transit procedure;

...’

8 Article 92 of the Customs Code provides:

‘1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.’

9 Article 96 of the Customs Code provides:

‘1. The principal shall be the [holder] under the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time-limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.

…’

10 Article 203 of the Customs Code provides:

‘1. A customs debt on importation shall be incurred through:

– the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

3. The debtors shall be:

– the person who removed the goods from customs supervision,

– any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

– any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision, and

– where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.’

11 Article 204 of the Customs Code provides:

‘1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.’

12 Article 356 of the Implementing Regulation provides:

‘1. The office of departure shall set the time-limit within which the goods must be presented at the office of destination, taking into account the itinerary, any current transport or other legislation, and, where appropriate, the details communicated by the principal.

2. The time-limit prescribed by the office of departure shall be binding on the customs authorities of the Member States whose territory is entered during a Community transit operation and shall not be altered by those authorities.

3. Where the goods are produced at the office of destination after expiry of the time-limit prescribed by the office of departure and where this failure to comply with the time-limit is due to circumstances which are explained to the satisfaction of the office of destination and which are beyond the control of the carrier or the principal, the latter shall be deemed to have complied with the time-limit prescribed.'

13 Article 859 of the Implementing Regulation provides:

'The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204(1) of the [Customs] Code, provided:

– they do not constitute an attempt to remove the goods unlawfully from customs supervision,

– they do not imply obvious negligence on the part of the person concerned, and

– all the formalities necessary to regularise the situation of the goods are subsequently carried out:

(1) exceeding the time-limit allowed for assignment of the goods to one of the customs-approved treatments or uses provided for under the temporary storage or customs procedure in question, where the time-limit would have been extended had an extension been applied for in time;

(2) in the case of goods placed under a transit procedure, failure to fulfil one of the obligations entailed by the use of that procedure, where the following conditions are fulfilled:

(a) the goods entered for the procedure were actually presented intact at the office of destination;

(b) the office of destination has been able to ensure that the goods were assigned a customs-approved treatment or use or were placed in temporary storage at the end of the transit operation;

(c) where the time-limit set under Article 356 has not been complied with and paragraph 3 of that Article does not apply, the goods have nevertheless been presented at the office of destination within a reasonable time.

…'

14 Article 860 of the Implementing Regulation provides:

'The customs authorities shall consider a customs debt to have been incurred under Article 204(1) of the [Customs] Code unless the person who would be the debtor establishes that the conditions set out in Article 859 are fulfilled.'

15 Article 865 of the Implementing Regulation provides:

'The presentation of a customs declaration for the goods in question, or any other act having the same legal effects, and the production of a document for endorsement by the competent authorities, shall be considered as removal of goods from customs supervision within the meaning

of Article 203(1) of the [Customs] Code, where these acts have the effect of wrongly conferring on them the customs status of Community goods.

…'

16 Article 866 of the Implementing Regulation provides:

'Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant to Articles 202, 203, 204 or 205 of the [Customs] Code and the import duties have been paid, those goods shall be deemed to be Community goods without the need for a declaration for entry into free circulation.'

17 Article 2 of the Sixth Directive provided:

'The following shall be subject to value added tax [('VAT')]:

…

2. the importation of goods.'

18 Article 7 of the Sixth Directive provided:

'1. "Importation of goods" shall mean:

(a) the entry into the Community of goods which do not fulfil the conditions laid down in Articles [23 EC and 24 EC] or, where the goods are covered by the Treaty establishing the [ECSC], are not in free circulation;

(b) the entry into the Community of goods from a third territory, other than the goods covered by (a).

2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.

3. Notwithstanding paragraph 2, where goods referred to in paragraph 1(a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d), under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements.

Similarly, when goods referred to in paragraph 1(b) are placed, on entry into the Community, under one of the procedures referred to in Article 33a(1)(b) or (c), the place of import shall be the Member State within whose territory this procedure ceases to apply.'

19 Article 10(3) of the Sixth Directive provided:

'The chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7(3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by those arrangements.

…'

20 Article 16(1) of the Sixth Directive provided:

‘1. Without prejudice to other Community provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to relieve from [VAT] all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of [VAT] charged at entry for home use corresponds to the amount of the tax which should have been charged had each of these transactions been taxed on import or within the territory of the country

A. imports of goods which are intended to be placed under warehousing arrangements other than customs;

B. supplies of goods which are intended to be

(a) produced to customs and, where applicable, placed in temporary storage;

(b) placed in a free zone or in a free warehouse;

(c) placed under customs warehousing arrangements or inward processing arrangements;

…’

Netherlands law

21 Article 1 of the Law replacing turnover tax by the system of taxing added value (Wet houdende vervanging van de bestaande omzetbelasting door een omzetbelasting volgens het stelsel van heffing over de toegevoegde waarde), of 28 June 1968, provides:

‘A tax called “turnover tax” shall be levied on:

…

(d) the importation of goods.’

22 Article 18 of that law provides:

‘1. “Importation of goods” means:

(a) the entry into the Netherlands of goods which do not meet the conditions set out at Articles 23 [EC] and 24[EC];

(b) the entry into the Netherlands of goods coming from a third country, other than those referred to in subparagraph (a);

(c) the end of a customs procedure in the Netherlands or the removal of goods from a customs procedure in the Netherlands;

…

2. For the purposes of the application of this article, “customs procedure” means:

(a) the temporary storage within the meaning of Article 50 of the Customs Code …;

...

(c) the customs procedure within the meaning of Article 4(16)(b),(c),(d),(e), and, in the case of total exemption from import duty, (f) of the Customs Code …

3. The entry into the Netherlands of goods within the meaning of Paragraph 1(a) and (b), to which a customs procedure applies or which, after entry into the Netherlands, are placed under a customs procedure does not constitute importation. The end of a customs procedure, in the Netherlands, is not considered to be equivalent to an importation where it is followed by the application of another customs procedure.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

23 On 26 October 2005, X made an electronic application for a diesel engine to be placed under the external Community transit procedure. The deadline by which that engine should have been presented at the office of destination was set at 28 October 2005.

24 That engine was presented to that office only on 14 November 2005, that is to say, 17 days after expiry of the time-limit prescribed, and was placed under the inward processing customs procedure with the application of the drawback system. The customs office in question, after accepting that application, found that the previous customs procedure, namely, the external Community transit procedure, had not been properly terminated and invalidated that placement.

25 After apprising X of that situation, the inspector responsible ('the inspector') gave X the opportunity to provide proof that it had completed the customs procedure properly, proof which it could not provide. The inspector therefore concluded that the engine at issue in the main proceedings had been removed from customs supervision, within the meaning of Article 203(1) of the Customs Code. On that basis, it requested that X pay customs duties and turnover tax.

26 X brought an action before the Rechtbank te Haarlem (District Court, Haarlem), which granted the action and ordered the inspector to repay the amount of customs duties and turnover tax which X had paid. The inspector brought an appeal against that decision before the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam), which upheld the Rechtbank te Haarlem's decision.

27 The Minister van Financiën (Minister for Finance) brought an appeal on a point of law before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

28 The Hoge Raad der Nederlanden asks what legal consequences should be drawn from the time-limit laid down on the basis Article 356(1) of the Implementing Regulation being exceeded. In particular, according to that court, the question arises whether the failure to respect that time-limit should automatically be regarded as amounting to removal from customs supervision within the meaning of Article 203(1) of the Customs Code, resulting in customs dues being due, or if is it then a question of non-fulfilment of one of the obligations arising from the use of the customs procedure in question, in which case the levy of those duties should be waived if it is established that it is a failure with no significant effect on the correct operation of the customs procedure within the meaning of the final sentence of Article 204(1) of the Customs Code, read in conjunction with Article 859 of the Implementing Regulation. In addition, the referring court considers that if it is decided that a customs debt was incurred on the basis of Article 204(1) of the Customs Code, the question then arises whether turnover tax is due in addition to customs duties.

29 It was on that basis that the Hoge Raad der Nederlanden decided to stay proceedings and

to refer the following questions to the Court for a preliminary ruling:

‘(1) (a) Must Articles 203 and 204 of the Customs Code, read in conjunction with Article 859 (in particular Article 859(2)(c)) of the Implementing Regulation, be interpreted as meaning that (merely) exceeding the transportation time-limit set under Article 356(1) of the Implementing Regulation does not lead to a customs debt being incurred by reason of a removal from customs supervision within the meaning of Article 203 of the Customs Code, but to a customs debt being incurred on the basis of Article 204 of the Customs Code?

(b) For Question 1(a) to be answered in the affirmative, is it necessary that the persons concerned supply the customs authorities with information on the reasons for which the time-limit was exceeded or that they at least explain to the customs authorities where the goods were held during the time which elapsed between the time-limit set under Article 356 of the Implementing Regulation and the time at which they were actually presented at the customs office of destination?

(2) Must the Sixth Directive, in particular Article 7 of that directive, be interpreted as meaning that VAT is due when a customs debt is incurred exclusively on the basis of Article 204 of the Customs Code?’

The questions referred for a preliminary ruling

The first question

30 By its first question the referring court asks, in essence, whether the presentation of goods at the office of destination, after the time allowed has elapsed, gives rise to a customs debt pursuant to either Article 203 or Article 204 of the Customs Code. The court also asks whether, in order that a customs debt might be incurred under Article 204 of the Customs Code, the interested parties must supply information on the reasons for exceeding the time-limit set under Article 356(1) of the Implementing Regulation or on the location of the goods during the period concerned.

31 For the purposes of answering the first question, reformulated accordingly, it should be noted at the outset that Articles 203 and 204 of the Customs Code have different spheres of application. Whilst the first provision covers conduct leading to the goods being removed from customs supervision, the second covers failure to fulfil obligations and non-compliance with the conditions of the various customs schemes which have no effect on customs supervision (Case C?337/01 *Hamann International* EU:C:2004:90, paragraph 28).

32 It is clear from the wording of Article 204 of the Customs Code that it applies only to situations which do not fall within the scope of Article 203 of the same code (*Hamann International* EU:C:2004:90, paragraph 29).

33 It follows that, in order to determine which of those two articles forms the basis on which a customs debt on importation is incurred, it is necessary, first of all, to consider whether in the factual situation in question there was an unlawful removal from customs supervision within the meaning of Article 203(1) of the Customs Code. Only if that question has been answered in the negative is it possible that Article 204 of the Customs Code may apply (*Hamann International* EU:C:2004:90, paragraph 30).

34 As regards, more specifically, the concept of unlawful removal from customs supervision, referred to in Article 203(1) of the Customs Code, it should be borne in mind that, in accordance with the Court’s case-law, that concept must be interpreted as covering any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining

access to goods under customs supervision and from carrying out the monitoring required by Article 37(1) of the Customs Code (Case C?66/99 *D. Wandel* EU:C:2001:69, paragraph 47; Case C?371/99 *Liberexim* EU:C:2002:433, paragraph 55; and *Hamann International* EU:C:2004:90, paragraph 31).

35 In the light of that interpretation, it is clear that, as the Advocate General observed at points 42 and 43 of his Opinion, even though the location of the goods at issue in the main proceedings remained unknown for more than two weeks, which may mean that the inability to give access to those goods is more than merely temporary, nonetheless, according to case-law, the application of Article 203 of the Customs Code is justified where the disappearance of the goods entailed a risk of entry into the economic networks of the European Union (see, to that effect, *Liberexim* EU:C:2002:433, paragraph 56, and Case C?300/03 *Honeywell Aerospace* EU:C:2005:43, paragraph 20).

36 The presence, on the customs territory of the European Union, of non-Community goods carries the risk that those goods will end up forming part of the economic networks of the Member States without having been cleared through customs, a risk which Article 203 of the Customs Code contributes to preventing (see, by analogy, Case C?234/09 *DSV Road* EU:C:2010:435, paragraph 31).

37 As is clear from the order for reference, the goods in question were indeed presented to the office of destination 17 days late. Therefore, it is undisputed that those goods have not entered the economic networks without having been cleared through customs. It follows that, subject to verification by the referring court, it seems inconceivable that Article 203 of the Customs Code could apply to the facts at issue in the main proceedings.

38 In those circumstances, it must be, therefore, determined if the facts in the main proceedings could fall within Article 204(1)(a) of the Customs Code.

39 Under Article 204(1)(a) of the Customs Code, a customs debt on importation is incurred through non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from the use of the customs procedure under which they are placed, unless it is established that the failure has no significant effect on the correct operation of the procedure in question. Any circumstance not covered by this exception falls within the sphere of application of Article 204 of the Customs Code (see Case C?262/10 *Döhler Neuenkirchen* EU:C:2012:559, paragraph 35).

40 It should be borne in mind that Article 859 of the Implementing Regulation, read in conjunction with Article 860 thereof, establishes a procedure which provides for an exhaustive list of 10 failures, within the meaning of Article 204(1)(a) of the Customs Code, which ‘shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question’.

41 It must also be pointed out that Article 859(2)(c) of the Implementing Regulation expressly provides that, where the time-limit set under Article 356 thereof has not been complied with and the belated presentation of the goods at the office of destination cannot be justified under Article 356(3) thereof, exceeding the time?limit for presenting [the goods] is considered as having no significant effect on the correct operation of the temporary storage or customs procedure in question, where the goods were nevertheless presented to the office of destination within a reasonable time. In that respect, it is for the referring court to assess the explanation provided when applying Articles 356(3) and 859(2)(c) of the Implementing Regulation.

42 In addition, as the Advocate General observed at point 46 of his Opinion, since exceeding the time-limit is expressly provided for in Article 859 of the Implementing Regulation, which does

not apply to the cases referred to in Article 204 of the Customs Code, that provision would be ineffective if exceeding that time-limit had to be caught by the concept of ‘removal’, referred to in Article 203 of Customs Code.

43 As to whether, in order that a customs debt may be incurred under Article 204 of the Customs Code, the interested parties must supply information on the reasons for exceeding the time-limit set under Article 356(1) of the Implementing Regulation or on the location of the goods during the period concerned, Article 356(3) of the Implementing Regulation clearly provides that, where the goods are produced at the office of destination after expiry of the time-limit prescribed by the office of departure and where this failure to comply with the time-limit is due to circumstances which are explained to the satisfaction of the office of destination and which are beyond the control of the carrier or the principal, the latter is deemed to have complied with the time-limit prescribed.

44 Accordingly, the information which has to be provided by the interested parties on the reasons for exceeding the time-limit or on the location of the goods in question during the period in question is intended to avoid a customs debt being incurred under Article 204 of the Customs Code and does not in any way result in that article being triggered.

45 In the light of the foregoing, the answer to the first question is that Articles 203 and 204 of the Customs Code, read in conjunction with Article 859(2)(c) of the Implementing Regulation, must be interpreted as meaning that merely exceeding the time?limit for presentation, set under Article 356(1) of the Implementing Regulation, does not lead to a customs debt being incurred for removal from customs supervision of the goods in question within the meaning of Article 203 of the Customs Code, but to a customs debt being incurred on the basis of Article 204 of the Customs Code and that it is not necessary, for a customs debt to be incurred under Article 204 thereof, that the interested parties supply to the customs authorities information on the reasons for exceeding the time-limit set under Article 356 of the Implementing Regulation or on the location of the goods in question during the time which elapsed between that time?limit and the time at which they were actually presented at the customs office of destination.

The second question

46 By its second question, the referring court asks, in essence, whether Article 7 of the Sixth Directive must be interpreted as meaning that VAT is due where a customs debt is incurred exclusively on the basis of Article 204 of the Customs Code.

47 As a preliminary point, it should be remembered that, under Article 2 of the Sixth Directive, the importation of goods and the supplies of goods or services effected for consideration within the territory of the country by a taxable person acting as such are subject to VAT.

48 It needs to be verified, first, whether goods such as those at issue in the main proceedings have been subject to importation within the meaning of Article 2(2) of the Sixth Directive (Case C?165/11 *Profitube* EU:C:2012:692, paragraph 41).

49 According to Article 7(1)(a) of the Sixth Directive, ‘importation of goods’ means the entry into the Community of goods which do not fulfil the conditions laid down in Articles 23 EC and 24 EC.

50 Moreover Article 7(3) of the Sixth Directive provides that, where such goods are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B)(a),(b),(c) and (d) of that directive, or under the external transit procedure, the place of their import is the Member State within the territory of which they cease to be covered by those arrangements.

51 Furthermore, it follows from Article 866 of the Implementing Regulation that, where a customs debt on importation is incurred pursuant to, inter alia, Articles 203 or 204 of the Customs Code and the import duties have been paid, those goods are to be deemed to be Community goods without the need for a declaration for entry into free circulation.

52 In the present case, it will, therefore, be a matter for the referring court to ascertain, taking into account the points raised at paragraph 45 above, whether or not the goods at issue in the main proceedings have ceased to be covered by the external transit procedure, giving rise, as the case may be, to customs debt pursuant to Articles 203 or 204 of the Customs Code.

53 Were the referring court to reach the conclusion that, in respect of those goods, no customs debt is incurred pursuant to those provisions, it must be considered that those goods have been placed, on entry into the European Union, under the arrangements referred to in Article 7(3) and Article 16(1)(B)(a) of the Sixth Directive. In that case, VAT would not, consequently, be due.

54 However, those goods have already ceased to be covered by those arrangements on the date of their re-exportation on account of a customs debt being incurred, which it is for the referring court to determine, it must be considered as having been the subject of an ‘importation’ within the meaning of Article 2(2) of the Sixth Directive.

55 In light of the foregoing, the answer to the second question is that the first paragraph of Article 7(3) of the Sixth Directive must be interpreted as meaning that VAT is due where the goods in question are not covered by the arrangements provided for in that article, even where a customs debt is incurred exclusively on the basis of Article 204 of the Customs Code.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Articles 203 and 204 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, read in conjunction with Article 859(2)(c) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002 must be interpreted as meaning that merely exceeding the time-limit for presentation, set under Article 356(1) of Regulation No 2454/93, as amended by Regulation No 444/2002, does not lead to a customs debt being incurred for removal from customs supervision of the goods in question within the meaning of Article 203 of Regulation No 2913/92, as amended by Regulation No 648/2005, but to a customs debt being incurred on the basis of Article 204 of that regulation and that it is not necessary, for a customs debt to be incurred under Article 204 of that regulation, that the interested parties supply to the customs authorities information on the reasons for exceeding the time?limit set under Article 356 of Regulation No 2454/93, as amended by Article No 444/2002, or on the location of the goods during the time which elapsed between that time?limit and the time at which they were actually presented at the customs office of destination.**

2. **The first paragraph of Article 7(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council**

Directive 2004/66/EC of 26 April 2004 must be interpreted as meaning that value added tax is due where the goods in question are not covered by the arrangements provided for in that article, even where a customs debt is incurred exclusively on the basis of Article 204 of Regulation No 2913/92, as amended by Regulation No 648/2005.

[Signatures]

* Language of the case: Dutch.