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By PwC Deutschland | 10. Dezember 2019

Proof of VAT-exempt intra-Community supplies

For the purposes of establishing whether an VAT-exempt intra-Community supply had been made, where other evidence exists establishing that the motor vehicles had been sent to their destination in the other EU country, the assumption of the absence of documentary evidence could not contradict such other evidence.

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The proof of the customer's entrepreneurial status resulting from the VAT ID number cannot be refuted by the mere assumption of a letterbox address.

Background

In 2007, the appellant, a limited liability company, supplied three passenger cars (two Volvo cars and one Mercedes) to another EU country. According to written purchase agreements, the purchaser was N Ltd, a limited liability company under the law of the Slovak Republic, established in a town in the Slovak Republic. The appellant received an extract from the Slovak commercial register for N Ltd as well as a validated VAT identification number (VAT-ID). The managing director of N Ltd was a resident of Hungary. The letterhead of N Ltd showed a telephone number and a fax number, each with a Hungarian area code. The appllant treated the delivery of the three vehicle deliveries as VAT-exempt intra-Community supplies.

Following a multilateral audit carried out by the German, Austrian, Hungarian and Slovak tax authorities, the German tax auditor came to the conclusion that that N Ltd was a sham company, which had been used to dispatch the vehicles over the border tax free. Despite the fact that it had been given a VAT identification number, it was a sham company. Only an accounting office, which had received the post, had been active at the address of N Ltd. However, there was no storage space for vehicles. On 31 October 2008, the Slovak tax authority revoked the status of entrepreneur. The necessary economic, active business activity in the state of establishment was lacking. As a result, the tax office took the view that the supplies were taxable. The appellant’s appeal to the tax court was unsuccessful.

According to the judgment of the tax court the available documentation indicated a collection by the customer (collection delivery) in relation to all three vehicles. In fact, however, the vehicles had been transported by a commissioned independent forwarding agent; it had not been a collection delivery but a dispatch delivery. The tax court thus assumed that a VAT liability arose due to a lack of documentary evidence, even though a witness testified before the tax court that he had transported the vehicles to the specified destination in the Slovak Republic.

In addition, the tax court assumed that there was no accounting evidence, as N Ltd was a sham company, so that the existence of the VAT ID number did not demonstrate its entrepreneurial status.

Judgment

According to Paragraph 17 a(1) of the VAT Act Implementation Regulations the entrepreneur must prove by means of documentary evidence that he or the customer transported or dispatched the object of delivery to the other EU state; this "must result from the documentary evidence unambiguously and easily verifiable" Furthermore Paragraph 17a VAT Implementation Regulations set out different documentary rules for the cases in which the goods were transported and cases where they were dispatched.

In the case before it, the tax court wrongly assumed that it had not been proven that the dispatched vehicles had arrived at the place of destination in the Slovak Republic. Indeed, in the absence of proof of dispatch to

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the other EC state, the tax court is not obliged to collect evidence. If, however, the tax court has - as in the case in dispute - carried out an evidentiary inquiry, in which the dispatch to the stated destination is clearly evidenced from the examination of a witness, it must also base its judgment on this evidence. It would only be different if the testimony were not credible.

With regard to the entrepreneurial status of the customer as demonstrated by N Ltd's VAT ID number, this cannot be refuted by assuming the existence of a letterbox address.

According to the VAT implementation Regulations (Paragraph 17c (1)) the entrepreneur must show in its books – in a clearly and easily verifiable manner - that the conditions for the intra-community tax exemption - including VAT identification number of the customer – have been met.

In the case before the Court, the appellant had – through its recording of N Ltd 's VAT ID number in its accounts - proved that N Ltd as an entrepreneur had acquired the goods for its business and that the supply was subject to VAT in the other Member State (Section 6a (1) Sentence 1 No. 2 letters a and No. 3 VATA). Again, the mere assumption of a letterbox address is not the correct way to refute the proof of the customer's entrepreneurial status once the VAT ID number has been recorded.

The tax court rightly assumed that the person of the customer and his identity are of decisive importance for the tax exemption of intra-Community supplies. However, this does not mean that a mere "letterbox address" cannot be sufficient to identify a customer. This identification requirement also exists for the deduction of input VAT and according to the European Court of Justice (ECJ judgment in Geissel and Butin, C 374/16 & C 375/16), the conditions for the refund are met through the inclusion of the VAT ID number of the supplier in the invoice. The same should be true in the context of recording the VAT ID number of the customer in accordance with Paragraph 17c (1)) Sentence 1 VAT implementation in conjunction with the information on the name and address of the customer (Paragraph 17c (2) no. 1).

The Supreme Tax Court decided, however, that the matter had to be referred back to the tax court, as it was unclear who was actually the customer.

Source

Supreme Tax Court judgment of 26 September 2019 (V R 38/18) published on 5 December 2019-

Schlagwörter

Letter-Box Companies, VAT ID Number, intra-community dispatch, intra-community supply