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By PwC Deutschland | 22. Januar 2024

ECJ: No corresponding application of Article 215 (4) Customs Code to import VAT

Following a request for a preliminary ruling by the Hamburg Tax Court, the ECJ held that Article 215 (4) Customs Code, dealing with the determination of the place of origin of import VAT is not automatically applicable if goods were brought into the customs territory of the EU in breach of customs rules and if they are subsequently transported to another Member State.

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Background

The request for a preliminary ruling initiated by the Hamburg Tax Court concerned the levying of value added tax (VAT) on the unlawful importation of cigarettes into the EU.

Article 215(4) of the Community Customs Code (Customs Code) provides that “if a customs authority finds that a customs debt has been incurred under Article 202 in another Member State and the amount of that debt is lower than EUR 5 000, the debt shall be deemed to have been incurred in the Member State where the finding was made”.

On 29 September 2012 at a market in Poland, G.A., who is a polish resident, purchased some 43 800 cigarettes the packaging of which bore only Ukrainian and Belarusian tax stamps. Without informing the customs authorities, he transported those cigarettes to the region of Brunswick (Germany), where he delivered them to a German buyer on 2 October 2012. G.A. was arrested and the cigarettes were seized and subsequently destroyed.

“Is Directive 2006/112 and, in particular, Articles 30 and 60 thereof, infringed where Article 215(4) of the Customs Code is declared under a national provision to be applicable *mutatis mutandis* to import VAT?”

ECJ decision

precluding national legislation under which Article 215(4) Community Customs Code (…) applies *mutatis mutandis* to import VAT as regards the determination of the place where that import VAT is incurred.

The consequence of determining the place of importation of goods not by applying the provisions of Directive 2006/112 but by applying Article 215(4) of the Customs Code *mutatis mutandis* would be that, in such a case, revenue deriving from import VAT would accrue to the Member State in which a finding as to the incurrence of the customs debt was made by virtue of the legal fiction established by that provision, namely the Federal Republic of Germany, which would be at odds with the scope of the principle of territorial application of VAT.

The ECJ further pointed out that if the referring court were to find that the cigarettes at issue were intended for consumption in Poland, the competent German authority would be required, without prior request, to forward the information relating to the seizure of those cigarettes to the competent Polish authority to avoid the risk of tax loss in that other Member State.

Source:

ECJ, judgment of 18 January 2024 (**C?791/22**) *Hauptzollamt Braunschweig (Lieu de naissance de la TVA – III)*

Schlagwörter

customs duty, import VAT