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By PwC Deutschland | 01 December 2023

ECJ confirms customs fine corresponding to 50% of the shortfall in customs duties

In a Hungarian case the European Court of Justice had to review the obligation of the Member States to provide for effective, proportionate and dissuasive penalties for failure to comply with the customs legislation and held that a fine corresponding to 50% of the shortfall in customs duties is in accordance with the principle of proportionality.

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Background

In the case of dispute, the local customs authority found that, because of the inaccurate indication of the country of origin, the customs value of the goods concerned had been fixed at a significantly lower amount than the actual value of those goods, which resulted in a shortfall in customs duties. It took the view that this shortfall gave rise to the imposition of a fine at the rate of 50%, calculated on the basis of the total amount of the obligation established by the customs authorities, without there being any need to examine whether the infringement of the customs legislation was attributable to the plaintiff.

As a result, the Budapest High Court decided to stay the proceedings and to refer the following question to the ECJ for a preliminary ruling:

Does the requirement of proportionality laid down in Article 42(1) Regulation (EU) No 952/2013 prevent the customs administrative to issue a fine as a result of an offence relating to the correctness of information in the customs declaration, whereby a fine equal to 50% of the established customs deficit was imposed by the customs administrative, irrespective of the seriousness of the offence committed and the examination and assessment of the liability attributable to the trader?

ECJ decision

The ECJ answered the question in the negative and held that Article 42(1) of Regulation No 952/2013

must be interpreted as not precluding national legislation which provides, in the event of a shortfall in customs duties caused by the supply of incorrect information in a customs declaration relating to goods imported into the European Union, for an administrative fine which corresponds, in principle, to 50% of that shortfall and which is imposed notwithstanding the good faith of, and precautions taken by the operator concerned. This is justified since that rate of 50% is significantly lower than that provided for in the case of bad faith on the part of that operator (max. 200%) and is, moreover, considerably reduced in certain situations specified in that legislation, including the situation in which the operator acting in good faith corrects its customs declaration before the post-clearance control has been completed.

A penalty such as that at issue in the main proceedings, consisting in an administrative fine corresponding to 50% of the shortfall in customs duties caused by the incorrect information provided, **may be regarded as effective and dissuasive**, within the meaning of Article 42(1) of Regulation No 952/2013.

As regards the **proportionality of the penalty**, the administrative measures or the measures imposing penalties must not go beyond what is necessary in order to attain the objectives legitimately pursued by that legislation or be disproportionate to those objectives. The ECJ is of the opinion that the rate of 50% does not appear excessive in the light of the importance of the objective of EU customs legislation.

The **complete ECJ judgment** of 23 November 2023 in the case C?653/22 *J. P. Mali* to be found **here**.

Keywords

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customs duty, fine