III SA / Gl 1142/18 - Judgment of the Provincial Administrative Court in Gliwice

Date of judgment	2019-03-25 *the judgment is not final*
Date of receipt	2018-10-19
Court	Provincial Administrative Court in Gliwice
referees	Barbara Brandys-Kmiecik / chairman rapporteur /
Symbol with description	6110 Tax on goods and services 6560
Thematic entries	Tax on goods and services
The complained body	Director of the National Treasury Information
Content of the result	Complaint dismissed
Regulations cited	OJ 2017 item 1221 art. 15 paragraph 2, art. 28b paragraph 1 and 2 *The Act of 11 March 2004 on tax on goods and services - consolidated text* Journal of Laws of the European Union 2011 No. 77 item 1 art. 10, art. 11 paragraph 1 *Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 / EC on the common system of value added tax*

SENTENCE

Provincial Administrative Court in Gliwice in the following composition: Chairman Judge of the Provincial Administrative Court Krzysztof Kandut, Judge of the Provincial Administrative Court Barbara Brandys-Kmiecik (judge), Judge of the Provincial Administrative Court Małgorzata Herman, Specialist Protocol Specialist Ewa Olender, after examining the complaint from the hearing on March 15, 2019 "A" in B. for the individual interpretation of the Director of the National Tax Information of [...] No. [...,] regarding tax on goods and services dismisses the complaint.

SUBSTANTIATION

The contested individual interpretation of [...] No. [...] Director of the National Treasury Information after considering the application of "A" GmbH in B. (hereinafter referred to as the Company, Party or Applicant) for an interpretation of tax law provisions regarding tax on goods and services regarding the determination of a permanent place of business and the right to deduct input tax - deemed the position of the Party incorrect; and in the scope of recognition of WNT due to the movement of own materials - too correct.

In the justification, the authority indicated that in the application for the interpretation, the Company indicated that it was a producer of accessories for window systems and fire protection systems used in construction and manufacturing industries, including sealing foams for window systems, assembly adhesives, membranes, assembly structures; is registered as an active VAT taxpayer in Poland; has headquarters in Germany. Goods produced in production plants in B. and T. (in Niemcz) are sold by the Applicant only by distribution companies belonging to the international group "B". As a result of the reorganization, it transferred parts of the production processes to Poland. It was explained that the Company does not own (or rent) both warehouse and office space in Poland; "C" in L., a company belonging to the Applicant one, the international capital group "B" began providing production services to the Party. The raw materials used for production processes / goods owned by the Company are moved from the Company's warehouse in Germany to Poland as the Company's own goods and the Company buys raw materials in Germany or another EU country, which are transported by the Company's foreign suppliers directly to Poland (to the production plant " C '). Regardless of the source of the goods and the way they are delivered to the "C" production plant, they are all stored in the "C" production plant and are then used in the production process. Due to the complexity of production processes and due to the species identity of materials, The company is not able to identify the source of raw materials used for the production of individual final products. In other words, the Company is unable to recognize whether the final product was manufactured using raw materials shipped by the Company as the Company's own goods or raw materials supplied by the Applicant's foreign suppliers. Even when the Company manages to determine that a given finished product has been manufactured, e.g. from raw materials shipped to Poland by the Company, the Applicant is not able to link this final product with a specific past movement. The materials used by the

Company are largely of identical quality and it is virtually impossible to determine which of the raw materials delivered to Poland are used in a specific part of the production process. In addition, neither ready goods are sent to warehouse "D" in Germany, to the warehouse of another distribution company from group "A" or are sold to "C", which sells them in Poland on their own behalf. In addition, it happens that after processing, some goods are transported from Poland to Germany as part of transporting their own goods. At the same time, the Applicant indicates that all goods are used by him to perform taxable activities.

The entire production process is carried out by "C" employees in the Polish company. Due to the fact that the Applicant does not employ employees in Poland, in order to ensure the proper provision of services at the beginning of the cooperation, he posted his employee to Poland for a period of 12 months, which delegation has already been completed. The company indicated that this employee was responsible for providing support in the implementation and monitoring of the production process (until the process was fully implemented and production went smoothly), but did not perform production or management activities. At no stage of the activities undertaken did the delegated employee of the Company operate / set parameters of machines and equipment, nor was he authorized to give orders to employees "C". In addition, the posted employee did not have his own permanent workplace at the "C" production plant (he did not have his own room, desks were not available to him). A delegated employee of the Company was not involved in negotiating contracts on behalf of and for the benefit of the Company and did not have powers of attorney in this regard.

In fact, it has also been pointed out that "C" receives remuneration for its services, which covers expenses related to, inter alia, labor costs, depreciation, energy costs and mark-up. Economic risks related to the production process are borne entirely by "C" - in accordance with the contract concluded with the Applicant, "C" is charged for any deficiencies and defects in the products manufactured, including the production of goods of reduced quality.

The application emphasized that the applicant did not employ employees in Poland - in particular, the Company would not conclude employment contracts or civil law contracts in Poland under which any natural persons would work in Poland for the Company. The Company is also not a party to employment contracts (or other contracts) with "C" personnel performing work in Poland, therefore the Company is not able to determine the scope of duties of these personnel or manage their work, as well as to control it - in particular instructions to staff "C" had no right to be issued by an employee of the Company who was temporarily seconded to Poland in the past.

As a consequence of the presented facts, the Company asked questions:

Does all the circumstances presented in the description of the facts indicate that the Applicant will not have a permanent place of business in Poland within the meaning of Art. 11 paragraph 1 and 2 and art. 53 of the Council Implementing Regulation (EU) 282/2011 of 15 March 2011 establishing implementing measures to Directive 2006/112 / EC on the common system of value added tax (Journal of Laws EU series L of 2011 No. 11, p. 1; hereinafter: "Implementing Regulation") and therefore he will not be entitled to deduct VAT if invoices are issued by "C" for services purchased from it, the place of taxation of which is determined on the basis of art. 28b of the VAT Act?

Should the applicant state the intra-Community acquisition of goods (hereinafter referred to as "WNT") on the territory of Poland due to the transfer of own materials from Germany in order to produce finished products from them?

The company took the position that in the presented facts it does not have a permanent place of business in Poland within the meaning of Art. 11 paragraph 1 and 2 and art. 53 of the Implementing Regulation and therefore will not be entitled to deduct VAT if "C" issues invoices for services purchased from it, the place of taxation of which is determined on the basis of Art. 28b of the VAT Act. In addition, she stated that in the presented facts she should recognize WNT on the territory of Poland for moving her own materials from

Germany to produce finished products from them. She referred to tax interpretations in similar facts and to national and EU case law.

In the tax interpretation appealed against, the authority indicated that in the scope of:

- defining a permanent place of business, the Company's position is incorrect,

- the right to deduct input tax - the Company's position is incorrect,

- WNT recognition due to the shipment of own materials - the preview provided by the applicant is correct.

In the justification of the individual interpretation issued, the authority drew attention to the issues presented in the application for individual interpretation related to the applicant's operations in Poland, the activities and remuneration of "C" as an entity related to the Applicant, the origin of raw materials for production, the production process itself, the method of distribution of manufactured goods and the facilities technical and personnel websites in Poland. He submitted that the circumstances of the case presented by the Applicant indicate that the Company met the criteria for having a minimum size of activity characterized by a certain level of stability, in which the presence of human and technical resources necessary for conducting the taxable person's business takes place. According to the authority, the Applicant is able to use the said resources in an organized and continuous manner to carry out activities under which it carries out activities subject to value added tax. The authority decided that the use of technical infrastructure in Poland and personnel to perform part of the Company's business in an organized and continuous way qualifies its activities in the country as a permanent place of business in Poland.

The authority emphasized that since the Applicant - registered as an active taxpayer of value added tax, performing taxable activities - has a permanent place of business in the territory of the country, pursuant to art. 28b paragraph 2 of the VAT Act are services provided by "C" to the Applicant, whose place of taxation is determined on the basis of art. 28b of the VAT Act, will be subject to tax in Poland. It was emphasized that in the present case the conditions entitling to deduct input tax, referred to in art. 86 section 1 of the VAT Act. The authority explained that the services purchased by the Applicant (registered VAT payer) from "C" are related to taxable activities performed by the Applicant, as well as there are no negative premises, referred to in art. 88 clause 3a point 7 of the VAT Act. It was pointed out that the Applicant pursuant to art. 86 section 1 of the VAT Act, has the right to reduce the amount of tax due by the amount of input tax resulting from invoices documenting the purchase of services, the place of taxation of which is determined on the basis of art. 28b of the VAT Act.

In addition, the authority argued that in the analyzed case, for the transaction of moving the Company's own goods from the territory of Germany to the territory of the country, in order to subject them to processing services as a result of which a new finished product is being created, art. 11 paragraph 1 of the VAT Act, as there is a displacement by the Company being a taxpayer of value added tax of goods belonging to the Company, which are to serve the business of the Company from the territory of a Member State other than the territory of the country (Germany) on the territory of the country. The authority also indicated that, taking into account the information indicated in the description of the case by the Applicant, in the present case the conditions specified in art. 12 paragraph 1 point 6 of the VAT Act, allowing to exclude the recognition of the shipment as intra-Community acquisition of goods referred to in art. 11 paragraph 1 of the VAT Act. Therefore, the Applicant should recognize within the territory of Poland intra-Community acquisition of goods due to the movement of own materials (raw materials) from Germany in order to produce finished products from them, referred to in art. 11 paragraph 1 of the VAT Act.

As regards individual interpretations relied on by the Applicant in support of his own position regarding the determination of a permanent place of business, the authority stated that the taxpayer may "create" the required infrastructure based on renting, leasing and other similar forms. In addition, it was argued that the criterion of

having adequate human and technical resources for the purposes of the existence of a permanent place of business will also be met if the taxpayer does not employ the workers necessary for the production of goods in the given country and does not own real estate.

The authority emphasized that having a permanent place of business should be assessed in the light of a specific case. He explained that when deciding to have a permanent place of business, the necessary "organizational structure" varies depending on the sector concerned.

By questioning the above, the Company filed a complaint against the authority's interpretation to the extent that the authority considered the Applicant's position incorrect, demanding its repeal in the contested part. She alleged a violation:

- rules of procedure, i.e. art. 14c § 1 in connection with art. 14b § 3 O. p. - by the unauthorized extension of the facts over the scope indicated in the Company's application of 19 June 2018 for issuing an individual interpretation of tax law, i.e. taking as the basis the interpretation of circumstances not indicated by the applicant in the Application, and as a consequence assessing the applicant's position based on a different facts than the one indicated in the Application;

- art. 11 paragraph 1 and 2 and art. 53 of the Implementing Regulation by committing an incorrect assessment as to the application of the indicated substantive law provisions, i.e. by recognizing that in the facts described in the Application the Company has a permanent place of business in Poland for VAT purposes when the Company:

1. does not currently have any personnel base in Poland, and the Company's previous personnel base in Poland (one technical employee delegated) was not characterized by adequate stability or adequate structure enabling recognition that the Company has a permanent place of business in Poland; o does not have and did not have technical equipment in Poland that would be of adequate stability and structure enabling recognition that the Company has a permanent place of business in Poland;

2. does not conduct activities in Poland that would bear the hallmarks of stability and were independent to the extent that it would be possible to make decisions regarding deliveries from this place / for the needs of this place;

- art. 86 section 1 in connection with art. 28b of the VAT Act by making an incorrect assessment as to the application of the indicated substantive law provisions, i.e. by recognizing that the Company will have the right to deduct VAT in the case of invoices issued by "C" for services purchased from this entity, in a situation in which The company does not have a permanent place of business in Poland.

The justification emphasized the distortion by the authority of the facts described in the application, emphasizing the business relationship between both entities and outsourcing services provided by "C". It was emphasized that "C" and "A" GmbH as separate market entities have separate: capitals, production plants, management boards; The applicant has no right to any property in Poland and all management activities are undertaken in Germany, at the headquarters of "A" GmbH; does not employ any employees in Poland, either under employment contracts or under civil law contracts; he also has no authority to issue orders or commission work to employees employed by "C". Whereas "C" as an entity conducting business on its own risk and account, has its own product catalog, independent suppliers of goods and services and its own market for selling its goods. Services provided to "A" GmbH are one of the elements of "C "'s ordinary business; "C" produces for "A" GmbH only one of many types of products in the portfolio of "A" GmbH; "A" GmbH previously produced goods currently produced by "C" - ordering part of the production for the Polish plant was associated with the desire to increase the total quantity of manufactured goods (the desire to increase the scale of production and use the effects of cost synergies in group "B"); the impact of "C "'s production activities on

profits or the activities of" A "GmbH is small on the applicant's scale. National and EU case law were pointed out.

In response to the complaint, the Director of the National Tax Information requested that the complaint be dismissed and upheld his position, and found the allegations contained in the complaint to be wrong. It was explained that the authority made an assessment of the facts in the light of the cited legal provisions, referring to the Applicant's questions, and as a result of this assessment took a different position than the applicant. This does not mean, however, that he has distorted the description indicated in the application, which violated Art. 14c § 1 in connection with art. 14b § 3 Op Nadto further noted that the applicant, despite being charged with accepting a factual situation contrary to the actual state of law presented in her application, did not specifically indicate which elements of the description of the case the alleged modification refers to. On the other hand, in the explanatory statement, the Authority interpreted in detail the elements of the facts, which does not mean

Referring to the production process, he stated that the production of only one good (or one stage of production) in the scale of the entire activity of the entity can be treated quite differently from the activity in which the entity deals with the production of various types of goods, which production is actually the subject of the entity's general activity . He emphasized that in the interpretation he had referred directly to the description of the facts and stated that the applicant, due to the nature of the production and distribution of goods, had a permanent place of business in the territory of the country. He did not assess the activity which is carried out at the applicant's place of business, but focused on assessing the activities undertaken in the country. Therefore, the features and scale of the facilities in the country were important for the settlement. Therefore, it was sufficient to consider the applicant's activity in Poland to be recognized as a permanent place of business; the key to recognizing that the Company has a permanent place of business in Poland was to provide personnel and technical infrastructure for the needs of its operations, necessary to carry out tasks related to the production and distribution of goods.

At the court hearing, the party's representative upheld the allegations citing, among others on the judgment of the local court with reference number act III SA / Gl 800/18. However, the representative of the body, pointing to the legitimacy of the position contained in the contested interpretation, appealed, inter alia to the judgments of the Court, reference number act III SA / Gl 954 and 955/18.

The Provincial Administrative Court in Gliwice considered the following:

The complaint turned out to be unfounded.

In accordance with art. 1 § 1 and 2 of the Act of July 25, 2002 - Law on the structure of administrative courts (i.e., Journal of Laws of 2017, item 2188), administrative courts administer justice through control of public administration activities in terms of compliance with the law . Pursuant to art. 3 § 2 point 4a of the Act of 30 August 2002 Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended - hereinafter abbreviated: ppsa), the control exercised by administrative courts also includes adjudicating on complaints regarding written interpretations of tax law issued in individual cases. This means that the court examines the legality of the contested interpretation, i.e. its compliance with the substantive law determining the rights and obligations of the parties and procedural law governing proceedings before public administration bodies. Based on Article. 57a ppsa, the administrative court is bound by the charges of the complaint and the legal basis invoked. It should be noted that the specificity of the proceedings regarding the issue of a written interpretation is, inter alia, that the tax authority examines the case only within the framework of the facts presented by the Applicant and the legal assessment expressed by him.

The dispute in this case boils down to determining whether the Applicant's activities will lead or not to the establishment of a permanent place of business in Poland and whether the Company will / will not be entitled to deduct VAT in the event of invoices issued by "C" for the purchased services whose place of taxation is determined on the basis of art. 28B of the VAT Act?

Therefore, the subject of the dispute is the interpretation of the provisions of the VAT Act regarding the establishment of the place of business of the Company. The applicant states that the fact that some of the production processes were moved from Germany to Poland did not lead to the establishment of a permanent place of business in Poland; the invoice of the Polish contractor will not be subject to VAT deduction. The authority, however, concluded that the use by the Company of Poland of technical infrastructure and personnel of the Polish contractor to perform part of its business activities in an organized and continuous manner qualifies the applicant's planned activity in the territory of the country as a permanent place of business in Poland with the obligation to make appropriate settlements tax.

At the outset, it should be noted that the disputed issue has already been the subject of numerous judgments, also of the Court - the judgments relied on by both Parties to the dispute. However, each of the judgments concerned a specific facts and none of them was in a situation similar to the one presented by the Company in the application for interpretation.

However, in the dispute which is the subject of these considerations, the Court, in its adjudicating panel, admits that the authority is right.

The VAT Act does not define the concept of "the business establishment of the taxpayer". This definition is contained in the directly applicable Council Implementing Regulation No. 282/2011 of 15 March 2011 establishing implementing measures to Directive 2006/112 / EC on the common system of tax added value (Dz. U. E. L. 2011.77.1) In art. 10 of this regulation, it was decided that the place of business of the taxpayer is the place where the functions of the company's main management board are performed. It is common ground that the applicant is established in K.

The VAT Act also does not define the concept of "permanent establishment." According to art. 11 paragraph 1 above Council Regulation No. 282/2011 "a permanent place of business means any place - other than the place of business of the taxpayer, referred to in Article 10 of the abovementioned Regulation, which is characterized by sufficient stability and an appropriate structure in terms of personnel and technical facilities, to enable him to receive and use the services provided for his own needs of this permanent place of business "and such criteria are also met in the present case in relation to the Company Poland.

The applicant accuses the authority of incorrectly considering that the Company has a permanent place of business in Poland, which has committed an infringement of Art. 28b paragraph 1 and 2 of the VAT Act in connection with from art. 11 of the EU Council Implementing Regulation No. 282/2011 of 15 March 2011 establishing implementing measures for Directive 2006/112 / EC on the common system of value added tax. In the circumstances of the facts presented - in the Court's view - this allegation is totally misguided.

It should be noted that the issue of determining the conditions for recognizing what should be understood as a permanent place of business has been the subject of many judgments of the Court of Justice.

The Supreme Administrative Court, by decision of October 25, 2012, reference number Act I FSK 1993/11 asked the Court of Justice of the EU a question regarding the interpretation of EU law in this matter. The NSA asked TS: "Is the taxation of services provided by company A with its registered office in Poland to company B with its registered office in another EU Member State, when company B conducts business activity using company A's infrastructure, a permanent place of business in within the meaning of Article 44 of the Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax (Journal of Laws of the European Union L.06.347.1 as amended), the place where the company is based AND?"

In the judgment of 16 October 2014 in case C - 605/12 **Welmory**sp. z o.o. against the Director of the Tax Chamber in Gdańsk The Court of Justice of the European Union has ruled that a taxpayer established in one Member State who uses services provided by another taxpayer based in another Member State should be considered as having in another a "permanent establishment" within the meaning of the provisions of the VAT

Directive, if that permanent establishment has sufficient stability and an appropriate structure in terms of personnel and technical resources to enable it to receive services and use them for the purposes of its business. As indicated by the CJEU, the provisions of the Regulation implementing the VAT Directive provide that a permanent place of business means any place - other than the place of business of the taxpayer - characterized by sufficient stability and an appropriate structure in terms of personnel and technical resources to enable him to receive and use the services provided for his own needs of this permanent place of business. It is worth emphasizing that the fact that to recognize the existence of a permanent establishment in a given country it is not necessary for the taxpayer to have the personnel who is employed by him and the technical facilities which he owns, to be emphasized. Therefore, your own personnel and technical facilities are not necessary, as long as the availability of other facilities is comparable to the availability of your own facilities. However, this entity should exercise control over this personnel, both personnel and technical. In addition, according to the CJEU, it is also crucial that the place of business should be able to receive and use the services purchased for its own needs. As pointed out by the CJEU, it will be the sole competence of the national court to carefully examine the facts in terms of verifying whether the entity has the necessary personnel and technical resources in Poland to enable the receipt of services provided by a Polish company and whether the acquired services were used to carry out the principal's business activity. that the place of business has the opportunity to receive and use the purchased services for their own needs. As pointed out by the CJEU, it will be the sole competence of the national court to carefully examine the facts in terms of verifying whether the entity has the necessary personnel and technical resources in Poland to enable the receipt of services provided by a Polish company and whether the acquired services were used to carry out the principal's business activity. that the place of business has the opportunity to receive and use the purchased services for their own needs. As pointed out by the CJEU, it will be the sole competence of the national court to carefully examine the facts in terms of verifying whether the entity has the necessary personnel and technical resources in Poland to enable the receipt of services provided by a Polish company and whether the acquired services were used to carry out the principal's business activity.

The abovementioned judgment of the CJEU, despite the transfer to the national court of the right to assess the actual state of affairs, contains important guidelines for defining the concept of a permanent place of business.

It is also worth emphasizing that the CJEU in previous judgments also emphasized that a certain minimum scale of activity is necessary to determine the place of permanent establishment, which is an external hallmark that activity in this place is carried out constantly. Yes CJEU in judgment C-231/94 (Faaborg-Gelting Linien a / s v. Finanzamt Flensburg).

In addition, to recognize that a particular place of business is permanent - it is necessary to have there technical infrastructure (if it is necessary to perform services) and human staff. Such a personal - substantive structure in a permanent place of business should appear in a permanent, i.e. repetitive and lasting manner (CJEU in judgment 168/84 - Gunter Berkholz v. Finanzamt Hamburg-mitte-aitstadt).

Having regard to the provisions of art. 15 paragraph 2 of the VAT Act and art. 11 paragraph 1 of Regulation No. 282/2011 and in the jurisprudence of the CJEU criteria, one should agree with the interpretative body that an entity has a permanent place of business in the territory of the country, if it uses its infrastructure in an organized and continuous manner in the territory of that country, it conducts activities under which carries out activities subject to value added tax. It should therefore be assumed that technical infrastructure must be closely related to the performance of activities subject to value added tax.

It should also be noted that in the judgment of 28 June 2007 in the case Plan zer Luxembourg Sari v Bundeszentralamt fur Steuern (file reference number C-73/06), the CJEU stated that: "According to established case-law in the field of VAT, a permanent enterprise requires minimal sustainability, by accumulating permanent human and technical resources necessary for the provision of specific services (...) This minimum sustainability therefore means a sufficient degree of sustainability and a structure that, from the

point of view of human and technical resources, is capable of providing the services in question independent. " In the context of the above, reference should also be made to the judgment of the CJEU judgment C-260/95 in the case Commissioners of Customs and Excise v DFDS A / S.

Whereas in art. 28b paragraph 1 of the VAT Act, a general rule is stipulated that the place of providing services in the case of services rendered to the taxpayer is the place where the taxable person being the recipient of the service has its registered office. However, there are several exceptions to this rule.

In particular in art. 28 b paragraph 2 of the VAT Act, it was stated that if the services are provided for a permanent place of business of the taxpayer, which is located in a different place than the seat of his business, the place of rendering these services is the permanent place of business.

Referring to the above remarks to the facts presented by the applicant, which, as explained at the beginning, is the sole basis for judicial assessment in the case under consideration, it should be noted that the Company indicated that it had no personnel and technical resources in Poland. Its contractor - "C" being an economic entity performing its functions on its own behalf and on its own behalf, receives remuneration for production services rendered and for the provision of distribution services for products belonging to "A" GmbH in Poland - it has exclusive legal title and right managing the production site and employing employees. Independently makes decisions about how to implement production processes; decide on working hours, staff involvement and the order in which products are produced;

The applicant company, on the other hand, conducts its operations and management decisions, placing orders for production in "C", using manufactured products, negotiating and signing contracts for the supply of materials and raw materials for production - from Germany and the management board is located there. Only some production processes regarding the Company's products take place in a production plant in Poland and in accordance with the agreement, the Company provides "C" with instructions regarding the type and quantity of products ordered for production, conditions of their compliance with the required quality standards; the composition and structure of the products results from the specification which is part of the contract concluded between "C" and the Company. The applicant is not entitled to give instructions to employees "C";

In addition, it should be noted that - as indicated in the facts - for the production of goods for the Applicant and at his request, "C" uses raw materials and packaging owned by the Company. Materials, raw materials and packaging are the property of the Applicant throughout the entire production process. "C" does not use or add any raw materials other than those supplied by the applicant. For the production of "C", it uses both its own machinery and equipment stored at the plant in L., owned by the Company, which the Company purchased on its own account and use, and which then made available "C". The equipment belonging to the Company is used by "C" only for the purposes of producing products for the applicant. The entire production process is carried out at the premises of the "C" plant by its employees. The final product of the production process are, among others assembly foams, assembly adhesives, silicone sealants, insulating binders, structural steel fire protection products.

In the opinion of the Court, therefore, based on the presented legal regulations and views of the CJEU, it should be stated that this situation is similar enough to the economic realities in the scope of using by domestic entities the services of outsourcing companies in the country (also providing proper staff excluding the need to employ their own employees) that the assumption that the applicant does not have a permanent establishment due to the lack of her own (employees) employed or lack of ownership of the property and facilities where production is carried out - in the realities presented in the application - would be erroneous and could lead to to violate the principle of competitiveness in the economic market.

The issue of the applicant's representative seconded to Poland for a period of several months at the initial stage of cooperation is also significant in this case. He was not entitled to give orders to "C" employees directly, nor to operate or set parameters of machines and equipment at the "C" production plant - but he was responsible

for overseeing the proper organization of the production process and to guarantee the expected quality level of products manufactured for the Party by the Polish contractor. In addition, the materials, raw materials and packaging used in production - as it results from the application - are the property of the Company; similar to the equipment stored at the plant in L., which the applicant purchased on her own account and for use, and which subsequently made available 'C' to implement the production. Anyway, this equipment is used by "C" only for the purposes of producing products for the Company.

Consequently, having regard to the Company's production activity, which is based on the purchase of a specific raw material, its processing into a given product and its further distribution - the Court considered that the resources available to the applicant allow it to be assumed that the Company is de facto operating in the territory of Poland in a permanent, continuous and organized way; using equipment acquired by him, put into service to a Polish contractor; the infrastructure of the Polish contractor and his employees provide services directly related to his business.

Consequently, the court considered that in the present case the applicant as a VAT taxpayer within the meaning of art. 15 of the VAT Act, has a permanent place of business in Poland. Thus, the Court shared the position of the interpretative body regarding the place of rendering services rendered to the Party and the right to make tax deductions. According to art. 28b paragraph 1 of the VAT Act, the place of providing services in the case of services rendered to the taxpayer is the place where the taxable person being the recipient of the service has its registered office, subject to the Act. In turn, in paragraph 2 of this article states that if the services are provided for a permanent place of business of the taxpayer, which is located in a different place from his place of business,

Summing up the above conditions, the court considered that the applicant purchasing services from a contractor has a permanent place of business in Poland, since she purchases those services for the needs of her business activity. Therefore, the place of supply for such services is the territory of Poland.

Consequently, in the opinion of the Court, the interpretative body correctly interpreted the legal provisions being the subject of interpretation in the facts analyzed in this case.

Therefore, the pleas in law as unfounded could not have the effect desired by the applicant.

Having the above in mind, the Court, pursuant to art. 151 ppsa, dismissed the complaint