I SA / Gl 535/19 - Judgment of the Provincial Administrative Court in Gliwice

Date of judgment	2019-10-31 *the judgment is not final*
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Court	Provincial Administrative Court in Gliwice
referees	Adam Nita Bożena Pindel / rapporteur / Krzysztof Kandut / chairman /
Symbol with description	6110 Tax on goods and services
Thematic entries	Tax on goods and services
The complained body	Director of the Tax Administration Chamber
Content of the result	Complaint dismissed
Regulations cited	OJ 2018 item 2174 art. 28b paragraph 1 and 2 *Act of 11 March 2004 on tax on goods and services - consolidated text*

SENTENCE

Provincial Administrative Court in Gliwice, composed of: Chairman Judge of the Provincial Administrative Court Krzysztof Kandut, Judges of the Provincial Administrative Court Adam Nita, Bożena Pindel (trial), specialist clerk Anna Florek, after hearing at the hearing on October 31, 2019 cases from the complaint of the KF against the decision of the Director Chamber of Tax Administration in Katowice of [...] No. [...] regarding tax on goods and services for February 2015 dismisses the complaint.

SUBSTANTIATION

By decision of [...], No. [...], [...] Director of the Tax Administration Chamber in Katowice - acting pursuant to art. 233 § 1 item 1 of the Act of August 29, 1997 Tax Code (ie Journal of Laws of 2018, item 800 as amended, hereinafter referred to as "Op") and the provisions of the Act of March 11, 1994 on tax on goods and services (currently i.e. Journal of Laws of 2018, item 2174, as amended, hereinafter referred to as "uptu") - upheld the decision of the Head of the Tax Office in B. (hereinafter "the authority of the first instance") of [. ..] r. No. [...] specifying the KF taxpayer (hereinafter also "the complainant") the excess of input tax over the amount due in February 2015 in the amount of PLN [...], including refund to the bank account indicated by the taxpayer in the amount of [. ..] PLN and to be carried over to the next accounting period in the amount of [...] PLN.

In support of the decision, the appeal body presented the following factual and legal status.

The taxpayer, in accordance with the entry in the Central Register and Information on Economic Activity, conducts business activity under the name: A. from February 1, 2011 in the majority of cases - road transport of goods.

The authority of the first instance [...]. initiated a tax audit against the taxpayer in the field of value added tax for February 2015, which was completed [...]. The tax authority found irregularities in the settlement of tax due and irregularities in the intra-Community acquisition of a means of transport. After the inspection, the taxpayer on [...] submitted a correction of the VAT-7 value added tax declaration for February 2015, agreeing with the control findings regarding the intra-Community acquisition of a means of transport and showing an excess of input tax over the amount due in the amount of PLN [...], including for refund bank account indicated by the taxpayer within 60 days in the amount of [...] PLN and to be carried forward to the next accounting period in the amount of [...] PLN. The correction of the declaration did not include control findings in the field of taxation of service supplies at a rate of 23%. By order of [...] tax proceedings were instituted against the taxpayer regarding the value added tax for February 2015.

The authority of the first instance during the tax audit and during tax proceedings questioned the taxpayer's application of art. 28b of demand for fuel transport services from Germany to Poland for the following

companies:

- B., [...], [...], [...] L., Cyprus, NIP [...] (hereinafter "the Cypriot company"),

- C. [...], C., [...] USA (hereinafter "American company").

The taxpayer issued to the abovementioned VAT invoice companies applying the principle of "reverse charge" tax on goods and services. Invoices against the Cypriot company were issued for the total gross amount of PLN [...] and for the American company for the total amount of PLN [...] gross. The tax authority of the first instance excluded the application of art. 28b of the Act, which resulted in the decision of [...].

In the appeal, the taxpayer requested the amendment of the contested decision accusing her of, inter alia:

- error in the factual findings adopted as the basis for issuing the contested decision in that the locations of the parties' business premises are not the basis for determining the place of business in the sense of art. 28b uptu,

- violation of art. 28b paragraph 1 point with respect to the place of supply of services due to the seat of the taxpayer to whom the services are provided by assuming that the place of supply of transport services to Cypriot and American companies is not the seat of the abovementioned entrepreneurs in Cyprus and the USA, respectively, in a situation where the verification activities undertaken by the party confirmed as the actual place of providing the services of the abovementioned areas, at the same time, taking into account the fact that only several months of accurate arrangements made by the tax authority with the participation of numerous authorities of foreign countries led to the supposition that the place of supply of services is different from the seat of contractors, which the actions of the first instance body cannot be qualified or compared to activities characterizing up "

- violation of procedural law provisions leading to errors of factual findings.

The Director of the Tax Administration Chamber upheld the decision of the first instance authority.

He stated that the essence of the dispute boils down to determining whether the taxpayer could apply Art. 28b of the demand for fuel transport services from Germany to Poland performed for Cypriot and American companies using the principle of the "reverse charge" of goods and services tax. The contentious issue boils down in particular to determining whether the abovementioned the entities had their place of business, permanent place of business or usual place of residence in Cyprus and the USA, respectively, which determines the place of supply of services provided by the appellant, and thus the place of taxation of those services.

In terms of factual findings, he stated that in the sales register for February 2015 the taxpayer included:

- 5 invoices issued to the Cypriot company (B. - detailed on page 6 of the first instance authority's decisions) regarding transport services. Invoices bear the statement "reverse charge";

- 35 invoices issued to the US company (C. - detailed on pages 11-12 of the first instance authority's decisions) regarding transport services. Invoices were issued in Polish currency, VAT 0% "reverse charge".

In connection with the taxpayer's performance of transport services for the abovementioned of companies, the first instance body took steps to determine whether these activities actually took place. It was found that fuel suppliers were: D. from B, CMR documents were also analyzed. Based on the information obtained from the verification activities, it was established that the recipients of the goods (fuel) transported by the taxpayer confirmed the purchase. Therefore, the transport of fuel and its delivery to the final recipients of goods indicated in the waybills actually took place.

Explaining the legal status, the authority referred to the principle of territoriality regulated in art. 5 paragraph 1 point 1 of the Act. In addition, citing the provision of Art. 28b abovementioned of the Act indicated that the

legislator did not define the concept of the seat of economic activity, permanent place of business, permanent place of residence or ordinary place of stay. These definitions can be found in art. 10-13 of 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 (OJ EU L No. 77, p. 1). In accordance with art. 22 above EU Council regulation to determine the permanent place of business of the recipient for whom the service is provided, the service provider analyzes the nature and use of the service provided.

Referring to art. 29a paragraph 1 and 6 of the Act and Art. 41 section 1 of this Act stated that the tax rate is 22%, subject to paragraph 2-12c, art. 83, art. 119 section 7, art. 120 paragraph 2 and 3, art. 122, art. 129 section 1, and in accordance with art. 146a item 1 above of the Act from January 1, 2011 to December 31, 2016, subject to art. 146f, the tax rate is 23%.

Comparing the factual and legal status, the appeal body did not agree with the appeal that the locations of the premises of the taxpayer's contractors (Cypriot and American companies) constitute the basis for determining the place of business in the meaning of art. 28b utu. Accumulated evidence indicates that the place of providing transport services to the abovementioned companies, and hence the place of taxation of these services, could not be Cyprus and the USA as a place of business establishment, permanent establishment or habitual residence. Thus, there were no grounds to apply the reverse charge principle.

He found unfounded the claims of the appellant that the authority of the first instance contradicts itself because it indicates that fuel transport services were provided. The first instance authority did not question the actual performance of transport services, but stated that the entities appearing on the invoices at issue were not actual recipients. The performance of the services in question was confirmed by evidence from verification activities of other tax authorities. However, the evidence gathered indicates that the abovementioned the companies did not conduct actual business activity and were not recipients of services rendered by the taxpayer. The places of registration of these companies at the addresses resulting from the invoices issued by the appealing entity were not the actual business addresses. In the course of the evidentiary proceedings it was established that transport services were in fact performed by a taxpayer on behalf of Polish entities and should be taxed at the applicable rate in the country, i.e. 23% in accordance with art. 41 section 1 and art. 146a point 1 of the Act

The authority, analyzing the collected evidence, stated that the findings made resulted, inter alia, in from:

1) information obtained from the Cypriot tax administration indicating that:

- the directors of the Cypriot company did not conclude any contract with the taxpayer company and did not carry out any transactions with it,

- the company based in Cyprus as a disappearing taxpayer was unregistered with VAT on February 28, 2015,

- none of the transactions for Polish entities were available,

- none of them have been posted, declared or paid according to the Cyprus VAT register;

2) information from the US tax administration stating that:

- the American company is unknown and its registered office was the address of the registered agent who prepared the documents for establishing the company,

3) information from the Slovak tax administration that forwarded the statements of PL - a representative of an American company who:

- did not confirm the conclusion of any transport contract with the taxpayer and the financial agency contract with E.Sp. z o. o.

- testified that she did not sign anything on behalf of the American company and did not commission it to anyone,

- denied that the abovementioned the company ordered the taxpayer to make the transport,

- declared that the American company had not transferred to E. Sp. z o. o. any money;

4) lack of information from foreign tax administrations, after they have conducted the appropriate proceedings, to companies were present in the USA and Cyprus and conducted any business activities;

5) the fact of the economic activity of these companies on the territory of the country, as evidenced by the presence of people managing these companies in Poland, with the simultaneous lack of business activity outside Poland;

6) possession of bank accounts by entities organizing the operations of companies in Polish banks: the proof of payment presented by the appellant for issued invoices confirmed that the payments were made from bank accounts established in Polish banks.

According to the appeal body, the taxpayer could not provide transport services to foreign contractors by applying the "reverse charge" tax on goods and services, which he should have known (with a minimum of caution) or was fully aware of it. To exercise due diligence, the taxpayer should verify his contractor and the circumstances of the transaction concluded with him.

He stated in relation to the Cypriot company that the taxpayer:

- did not have personal contact with representatives of foreign entities,

- was not at the contractors' premises,

- does not know whether the offer of the Cypriot company was competitive in comparison with other companies on the market,

- he was also not in the place he was indicated for sending invoices,

- during telephone conversations he was not sure if he was talking to the right person,

- all contacts took place in Polish with Poles and in Poland,

- on invoices documenting the provision of services by him to a foreign contractor there was an annotation that the tax is settled by the buyer,

- verified only the contractor's European NIP number,

- does not know what this company does,

- there is no knowledge whether the above the company has a branch in Poland and does not know what is at: W., ul. [...]

- invoices were issued in Polish currency,

- services provided to this company in February 2015, i.e. after the expiry of an earlier written agreement with this company on December 1, 2014, were carried out further on the basis of, among others only oral arrangements,

- he never sent anything to the company's address in Cyprus, with the exception of calls for payment of arrears for invoices that were not answered,

- he did not file a lawsuit against the company regarding payment for overdue invoices (as reported by high costs),

- payments for invoices were made in Polish currency and from Polish bank accounts,

- invoices to the company were delivered via Poczta Polska to the following address: W., ul. [...]

- he stated that there were no documents confirmed by the company which would constitute the performance of the service on its behalf,

- does not know what function he held in the company LS,

- LS and TK's activities testify to their management and directing of the company's operations in Poland, and the taxpayer had to be aware of this.

However, in relation to the company based in the USA, he stated that:

- the taxpayer does not know what the company does,

- e-mail contact was from [...]; the person signing was AN, and the telephone number indicated was to contact the abovementioned the company indicates that it is a national contact,

- correspondence to the company was sent by post without a return acknowledgment, and the lack of its return was considered effective delivery,

- the taxpayer knew or should have known that he did not perform services for a contractor from the USA, since the e-mail correspondence was with the forwarder from Poland, the telephone contacts were made from national numbers, and the invoice payments issued to her from the number: [...] to number: [...] the party received from the domestic bank account from the company E. Sp. z o. o. in W,

- mail correspondence and confirmation of payment for invoices issued confirm the place of transport services and their place of taxation in Poland.

Continuing the authority, he assessed the due diligence of the taxpayer taking into account the professional nature of his business. He also noted that for due diligence the taxpayer should verify his contractor and the circumstances of the transaction. The customary principle in business trading is to precede cooperation with a new service buyer, conclude a written contract (for evidentiary purposes), check the company's credibility, discuss delivery and payment terms, and check that the contractor has the appropriate business permits, since on invoices documenting the provision of services by a taxable person to a foreign contractor, there was an annotation that the tax is settled by the buyer. Non-presentation of tax due for the provision of services, merely placing an annotation on the invoice that the tax settles the buyer means that the issuer of the invoice is certain that his contractor is a value added tax taxpayer and declares the tax due in the country in which he is established (permanent place of business). The correct recognition of the status of your contractor as a "taxpayer" is borne by this service provider and it must be made at the pre-invoice stage. The taxpayer did not indicate what verification activities led him to believe that the place of providing services to the abovementioned the contractors were Cyprus and the USA, respectively. where it has its registered office (permanent place of business). The correct recognition of the status of your contractor as a "taxpayer" is borne by this service provider and it must be made at the pre-invoice stage. The taxpayer did not indicate what verification activities led him to believe that the place of providing services to the abovementioned the contractors were Cyprus and the USA, respectively. where it has its registered office (permanent place of business). The correct recognition of the status of your contractor as a "taxpayer" is borne by this service provider and it must be made at the pre-invoice stage. The taxpayer did not indicate what verification activities led him to believe that the place of providing services to the abovementioned the contractors were Cyprus and the USA, respectively.

The appellate body - assessing the facts - stated that the conditions referred to in the abovementioned EU Council Regulation No. 282/2011 to recognize addresses in Cyprus and the US as the seat of the abovementioned companies or permanent places of business. Also, the condition of the company's headquarters or permanent place of business with the entity paying for the service was not met, as evidenced by proof of payment for invoices made from domestic bank accounts. As a result of the actions taken by the authority of the first instance, no confirmation was obtained that the Cypriot and American companies were entities conducting actual business activity, and were used to take advantage of the preferential method of taxation consisting in the reverse charge of goods and services tax.

Referring to allegations of violation of the provisions of procedural law (Article 193 § 1 and § 2 Op), he considered that the first instance authority did not challenge the entries contained in the books (records), but only considered that the supplies to the Cypriot and American companies shown in the records should be taxed at 23% as domestic deliveries. He stressed (allegation of violation of Articles 120-122 in conjunction with Articles 187-188 Op) that all steps had been taken to fully and exhaustively gather evidence and to make a legal decision. They were subject to an organ analysis, the results of which were described in detail and evaluated. Reacting to the allegation of violation of Art. 125 Op stated, the authority of first instance took actions to confirm transactions concluded in February 2015 between the taxpayer,

In the complaint, the taxpayer (represented by a lawyer) fully appealed the decision of the authority of the second instance, because when it was taken, the substantive law and procedural provisions that had a significant impact on the outcome of the case, i.e.

1) art. 127 Op by not applying it, and thus by the appeal body of the contested decision by merely reviewing the decision of the first instance authority without substantive consideration of the case, which is in fact a breach of the principle of two-stage proceedings,

2) art. 122 in connection from art. 187 § 1 Op by not taking all necessary actions necessary to obtain material truth as a result of, among others:

- failure to take evidence from the testimony of the president of the management board of E. Sp. z o. o. JK and the lack of another attempt to call the abovementioned witness by sending a summons, among others to the address of the witness's residence or application in accordance with art. 262 Op of the coercive measure in order to effectively take evidence from the interrogation of the abovementioned witness, while the 2nd instance authority did not respond to this omission and inconsistency of the 2nd instance authority,

- the lack of a comparative analysis of the evidence from the testimony of PL who is a member of C. with the taxpayer's testimonies, as well as with the evidence gathered in the case undoubtedly indicating the existence of a legal relationship between them, in particular with the transport contract, VAT invoices issued by the taxpayer, standing order forwarding, financial intermediation agreement concluded between C. and E.Sp. z o. o.

- failure to take evidence from the testimony of AN, the forwarder of company C., who contacted the taxpayer on behalf of C. by email and by phone, Of the second instance did not respond to this omission of the authority of the second instance at all,

3) art. 188 in relation from art. 180 § 1 and art. 181 Op through their improper application by the authority of the first instance and the authority of the second instance, which results in a non-exhaustive examination by the authority of all the factual and legal circumstances that are relevant to the case and by refusing to take evidence suggested by the appellant in the reservations to the report issued during the proceedings. Art. 188 Op allows the authority to refuse to accept evidence only if these circumstances are irrelevant or have already been established by other evidence;

4) art. 190 § 2 in connection from art. 180 Op by arbitrary acceptance by the first-instance authority that evidence from witness testimonies carried out by foreign administrative bodies constitutes a sufficient basis for issuing the contested decision while the applicant was unable to take part in the evidence, ask questions to witnesses and provide explanations, as a result of which the tax authority prevented the applicant's attitude, proof of his assertions and explanation of all circumstances of the case in connection with the testimony of witnesses;

5) art. 191 Op by crossing the limit of free assessment of evidence, which is expressed in assessing the evidence in a way that violates the principle of life experience and logical thinking by:

- an unlimited basis of its findings by the authority of the first instance on information obtained from the Cypriot and American tax administrations indicating that the companies (Cypriot and American) allegedly did not have any economic relations with the applicant's company while there was evidence of the existence of such relations, i.e. contracts, invoices, correspondence .

- erroneous assumption that the transport services were in fact carried out by the applicant for Polish entities based solely on the findings of the first instance authority stating that payment for invoices was made from Polish accounts and that talks regarding orders were carried out in Polish, while in the applicable provisions the law does not prohibit the provision of services with the participation or through third parties,

- an inconsistent assessment of the evidence gathered in the form of information obtained from the Cypriot tax administration and the US tax administration, because on the one hand the first instance authority indicates that the party did not conclude any contracts and did not carry out any transactions with B., and C., because none of the transactions for Polish entities were carried out by them, none of them were booked, declared or paid, and on the other hand, indicates that due to the fact of the economic activity of the above entities on the territory of Poland, the above confirms that the services transport services provided by the applicant were in fact made by the applicant for the benefit of Polish entities and should be taxed at the applicable rate in the country, i.e. 23% (p.13 reasons for the decision of [...]);

6) art. 120, 121 and 122 Op through their non-application and incorrect acceptance that:

- the applicant did not exercise due diligence in concluding transactions with contractors of the abovementioned companies, whereas none of the provisions of the generally applicable law imposes such an obligation on the entrepreneur, in particular the obligations indicated by the second instance authority, i.e. the need for the applicant to determine the actual facts about potential contractors, obtaining by the appellant documents regarding the tax status of a foreign contractor,

- the applicant's contractors were not actually running a business, while these findings are obviously in conflict with the conditions attached to the conclusion of contracts, e-mail and telephone correspondence, ongoing orders whose authenticity and actual implementation was confirmed by the first-instance authority and the applicant had no objective factual and legal grounds to question the reliability of its contractors;

7) violation of substantive law provisions, i.e. art. 28b of the Act with regard to the place of supply of services due to the seat of the taxpayer to whom the services are provided by assuming that the place of providing transport services to the abovementioned companies are not the registered offices of the entrepreneurs in Cyprus and the USA, respectively, in a situation in which the verification activities undertaken by the complainant confirmed as the actual place of rendering the services of the abovementioned areas, while taking into account the fact that it was only several months of accurate arrangements made by the tax authority of the first instance with the participation of numerous bodies of foreign countries that led to the supposition that these companies provide services in other places than the indicated offices,

8) violation of the principle of legality and the rule of law expressed in art. 120 Op in relation from art. 10 paragraph 1 of the Act of March 6, 2018, Entrepreneurs' Law by completely and unreasonably assumed that

the applicant had used the abovementioned companies to use the preferential method of taxation consisting in the reverse charge of the customer's goods and services tax, with the option of deducting input tax by the service provider, while there is no objective factual and legal basis for such a statement;

9) art. 194 § 1, art. 212 Op through erroneous and inconsistent with the disposition of these provisions action in the form of recognition by the authority of the first instance as proven circumstances regarding transactions in which the party participated, and challenged by the authorities based on the fact that such arrangements were adopted either by the tax administration authorities in Cyprus and USA, while in accordance with the above provisions any decisions issued in other administrative proceedings, or statements of given authorities as evidence in a given administrative case are only proof of the fact that they were issued by the competent authority and cannot bind other authorities to the arrangements adopted in a given decision, and, moreover, a given decision or statement is binding only on the authority that issued it without binding on other authorities,

In addition, he filed pursuant to art. 106 § 3 of the Act on the Law on Proceedings before Administrative Courts for Admission of Documentary Evidence, i.e. tax inspection reports for the months of April and July 2014 regarding factual findings and the results of inspections made by the authority of the first instance in April 2014 and July 2014. concerning the applicant's cooperation with identical entities for the subject of the present proceedings.

The justification of the complaint develops the abovementioned allegations. In addition, the body was accused of inconsistent assessment of the evidence gathered in the form of information obtained from the Cypriot tax administration and the US tax administration, because on the one hand the first instance authority indicates that the party did not conclude any contracts and did not carry out any transactions with Cypriot and American companies, because none of the transactions for Polish entities were carried out by them, none of them were booked, declared or paid, and on the other hand it indicates that due to the fact of the economic activity of the above entities on the territory of Poland, which confirms, that the transport services provided by the applicant were in fact carried out by the applicant for the benefit of Polish entities and should be taxed at the rate applicable in the country, ie 23%. Citing the case law of the CJEU, he stated that the tax authority by refusing the taxpayer the right to deduct VAT from invoices received from the contractor is required to prove and prove on the basis of objective evidence that it is beyond doubt that the taxpayer (recipient of the invoice) knew or at least could know that the transaction in which it participates is connected with a crime or abuse committed by an invoice issuer or by another entity involved in the supply chain of services (supply of goods), i.e. that the taxpayer failed to exercise due diligence. According to the attorney, the burden of proof is generally on tax authorities, which have control functions. The taxpayer is therefore not automatically deprived of the right to deduct VAT regardless of whether he knew or should have known that the transaction in which he participates is connected with a crime or abuse committed by the invoice issuer or by another entity involved in the supply chain of goods (provision of services).

He emphasized that the applicant had no real and legal possibilities to verify the correctness and legality of settling VAT by his contractors. The applicant complied with all his obligations, submitted to the authority documents showing that when concluding contracts with contractors he exercised due diligence, taking into account his options and tools.

In its defense, the authority requested that it be dismissed, maintaining in its entirety the position set out in the contested decision.

At the hearing, the applicant's lawyer, maintaining the complaint, drew, inter alia, the fact that the authority found that the contractors were dishonest only after several months of proceedings, and therefore it cannot be assumed that the applicant did not exercise diligence in verifying the contractors, although he did so in a much shorter time.

The representative of the body, maintaining the current position, pointed out that the questioned deliveries were made to Polish entities and not from the USA or Cyprus. There was no US or Cypriot element in the transactions, contracts were concluded in Polish and payments were made in PLN.

The Provincial Administrative Court considered the following.

The complaint is unfounded.

Court control based on art. 3 § 1 and § 2 point 1 of the Act of 30 August 2002 Law on Proceedings before Administrative Courts (i.e. goods and services for February 2015, specifying to the taxpayer the excess of input tax over tax in the amount of PLN [...], including to be refunded to the bank account indicated by the taxpayer in the amount of PLN [...] and to be carried over to the next period settlement fee in the amount of [...] PLN.

In the case under examination, it is assessed whether the tax authorities had sufficient grounds to conclude that the applicant had unjustifiably applied Art. 28b of the demand for transport services in February 2015, due to the non-payment of tax due on transport services provided to a Cypriot and American company, assuming at the same time using the "reverse charge" principle that the place of service was Cyprus and the USA, respectively.

According to the complainant, the authority inconsistently assumed that it had not concluded any contracts and had not carried out any transactions with the Cypriot and American companies and, on the other hand, considered that the transport services had actually been carried out. He emphasized that he had exercised due diligence in concluding contracts, and that during the tax audit for April and July 2014 settlements with the same entity, i.e. a Cypriot company, were not questioned. In the assessment of the appeal body, the scope of the proceedings conducted by the Head of the Complaint Office was complete and allowed for disqualification of the applicant's right to reverse taxation in goods and services tax. However, the applicant's performance of the fuel transport service from B. to recipients in Poland was not disputed.

In examining the legality of the contested decision, the Court adopted as correct findings of fact made in the appealed decision of the appeal body (cf. resolution of the Supreme Administrative Court of February 15, 2010, reference number II FPS 8/09).

The complaint alleges both violation of the rules of procedure and substantive law. First of all, the allegations concerning the provisions of the procedure are examined, because only after it has been determined that the facts of the case have been correctly determined, it is possible to examine the subsidization of the established facts under the legal provision applied.

Accusing the decision of violating Art. 127 Op the applicant's lawyer submitted that the contested decision was limited to reviewing the decision of the first instance authority.

The principle of two instances of proceedings referred to in art. 127 Op imposes on the appeal body the obligation to hear the matter as to its substance and issue a decision pursuant to Art. 233 § 1 items 1-3 Op, in a situation in which complete determination of the facts of the case was made in the first-instance proceedings and there is no need to supplement the evidence in the manner provided for in art. 229 Op (see the verdict of the Supreme Administrative Court of 9 August 2018, II FSK 2058/16; available, like other judgments indicated in the explanatory memorandum, in the online judgment database http://orzeczenia.nsa.gov.pl) The principle of two instances means that as a result of an appeal, the case as a whole will again be the subject of proceedings before the authority of the second instance, because the taxpayer should be guaranteed the right to have the same case examined twice. Therefore, only if the evidentiary proceedings have not been carried out by the authority of the first instance at all or if a significant part of the evidentiary proceedings is required beforehand, the appeal body should reverse the decision and refer the case to that body for reconsideration. This situation, however, did not occur in the examined case, because the authority did not limit itself to

reviewing the decision of the first instance, but in its entirety recognized it substantively again. the appeal body should quash the decision and refer the matter to that body for reconsideration. This situation, however, did not occur in the examined case, because the authority did not limit itself to reviewing the decision of the first instance, but in its entirety recognized it substantively again. the appeal body should quash the decision and refer the matter to that body for reconsideration. This situation, however, did not occur in the examined case, because the authority did not limit itself to reviewing the decision of the first instance, but in its entirety recognized it substantively again.

As regards allegations of violation of the procedural rules, the applicant pointed to the incorrect application of Art. 122 Op, which orders the tax authority to take all necessary actions to thoroughly clarify the facts and settle the matter in tax proceedings. He statues the so-called the principle of objective truth in tax proceedings, meaning that the tax authority is required to gather evidence as to the facts relevant to the resolution of the case, but as it should be noted, it is not absolute. The specification of the principle of objective truth is art. 187 § 1 Op, according to which the tax authority is obliged to collect and examine all evidence in an exhaustive manner.

It is argued in the jurisprudence that the taking of evidence should lead to the reconstruction of a specific factual tax law, i.e. it must include those facts and evidence that are of legal significance for the resolution of a tax case. In this respect, the Court found no faults in the present case with tax authorities. He considered unfounded the applicant's allegations indicating the need for further evidence (including from the testimonies of the witnesses mentioned in the complaint) which could have influenced the decision.

In constructing the facts, the authority took into account the explanations submitted by the taxpayer (the interview [...]) and above all documentary evidence.

According to the findings of the body regarding the Cypriot company, it was represented by LS acting as director, with whom the applicant concluded a fixed-term contract (until December 1, 2014), but only the taxpayer's signature was on the contract. The applicant's contact with representatives of LS and TK was only by e-mail, and he limited himself to verifying his European tax identification number. He did not decide to determine whether the address indicated in W. at ul. [...] is the address of the branch or branch of this company. He also did not send correspondence to the address of the company's headquarters, but admitted that the transfers were made from an account kept by a Polish bank. He also admitted that the company had not paid him invoices [...] - [...], which he eventually did not recover due to high costs.

Independently, the authority received explanations from the Cyprus tax administration, which show that its manager does not live in Cyprus, nor did he provide the requested documents (contracts, invoices, orders, payments, transport documentation as well as accounting documents); the company's accountant informed that no contracts were concluded with the Polish company, including the complainant's company, and the transactions listed by the Polish authority were not recorded by the Cypriot company and no goods and services tax was paid (explanations from [...]). At the request of the first instance authority again, the Cypriot tax administration did not send the requested information or documentation, as none of the transactions for Polish entities was available (they were not declared, booked and paid according to the Cyprus VAT register); it was stated that the company as a disappearing taxpayer was "de-registered with VAT" on February 28, 2015, and the accountants (company controllers) were no longer in possession of the documentation, and also did not have information, because the company was not a customer of their office (explanations from [...] r.).

In turn, in the analysis of the contract with the American company, it was established that she had contacted the applicant by email, but he himself did not know what he was doing (taxpayer's testimony). The forwarder AN - mail and phone contacted him on behalf of the company, although in a nameless form (i.e. as a forwarder) and in Polish. In the course of the proceedings, the authority was presented with a contract (without date), which the applicant signed [...], the company was represented by a Slovak citizen PL, the subject of which was the performance of transport services which were to take place on the basis of a forwarding order;

the contract also specified the amount and method of payment of the remuneration to be paid by E. Sp. z o. o. with headquarters in W. ul. [...]. The body was also presented with a financial intermediation agreement [...] concluded between the American company (represented by P. L.) and financial intermediary E. Sp. z o. o., which was to make settlements for the company (principal), existing, non-contractual and indisputable debts in connection with its liquid fuel sales activities. The applicant admitted that E. made payments for invoices issued to the American company, but did not provide her with any documents and did not provide any services. He delivered invoices to an American company by e-mail or post. but he did not provide her with any documents or services. He delivered invoices to an American company by e-mail or post. but he did not provide her with any documents or services. He delivered invoices to an American company by e-mail or post.

According to information from September 30, 2015 provided by the Head of the Tax Office [...] in W., it was not possible to question the President of the Management Board of EJK, who did not make the first call, while the second call was taken by the employee F. sc company, which operates under the address of this company in the form of a virtual office. The authority's letter also shows that E. under address does not conduct business or accounting.

The authority of the first instance also obtained information from the US tax administration (from September 1, 2016), which shows that the American company is unknown to it and the address provided is the address of its agent preparing documents for its establishment. It was established - based on the founding documents - that PL was a member.

In turn, the information obtained from the Slovak tax administration (from November 16, 2016) shows that PL was questioned [...], who testified that the American company was known to him and its founder was AB. In addition, he testified that the American company did not run a business, although it did have documents related to its establishment, but he needed it as a partner in his company; the company does not have a place of business or bank accounts in Slovakia. At the same time, he denied that the company had ordered the applicant to transport him and that she had concluded contracts with him. He also denied that he had entered into a financial intermediation contract with E. as well as that he had transferred money to her; he did not sign anything on behalf of the American company and did not commission anyone to do so.

The authority also made detailed arrangements, including at the relevant tax offices, that the fuel transport service was performed by the applicant for the benefit of the contractors indicated on the waybill (this is undisputed).

In the assessment of the adjudication panel, the authorities explained all the relevant facts in the matter, while maintaining the statutory standards of conduct, without prejudice to the provisions of Art. 180 § 1 Op, as evidence they admitted everything that could have contributed to the investigation of the case and was not unlawful. The tax authorities, implementing the principle of objective truth (Article 122 and Article 187 Op), collected all evidence that could contribute to a full explanation of the facts as evidenced by the search and admission of various sources of evidence. It should also be recalled that in the jurisprudence of administrative courts it clearly indicates that the taking of evidence in tax matters is not an end in itself, but is a search for an answer, whether in a given facts the taxpayer's situation falls, or does he fall under the hypothesis (and consequently, the disposition) of a specific norm of substantive tax law. Absolute application of the principle arising from art. 122 and art. 187 § 1 Op would lead to the actual impossibility of completing any tax proceedings for fear of omitting any evidence, regardless of its evidential value and in relation to the mutual expectations of the parties as to the need for evidence by the opponent in the case. There could be a situation in which evidentiary proceedings should be conducted even when all the circumstances disclosed in the case would be sufficient to make a decision, as well as when a proper assessment of the collected evidence would lead to the invariable conclusion that other evidence other than disclosed should not be expected (cf. .

Therefore, the facts indicated entitled the tax authorities to disregard the evidence requested by the applicant's attorney, including hearings of witnesses, regarding the performance of services for the taxpayer's foreign

contractors as having no impact on the resolution of the case. From the evidence, as indicated above, it follows that the transport services indicated in the invoiced invoices, although indisputably performed, could not be commissioned by a company that in February 2015 no longer carried out any activity (a Cypriot company) or not at all was a registered entity (American company). Therefore, there were no grounds for issuing invoices including preferential VAT.

The considerations of the appeal body are complete, factual and do not raise any objections. At this point, it should be noted that the fact that the tax authorities made findings different from those presented by the applicant on the basis of the evidence gathered does not yet indicate a breach of the rules governing the taking of evidence. The mere fact that the evidence gathered in the case was assessed by the tax authorities differently than expected by the party does not determine a violation of the rules of tax proceedings

In sum, the applicant failed to successfully challenge the facts found in the case, since the justification of the complaint in this regard boils down to a simple denial of the authorities' argument, without pointing to specific and verifiable evidence and circumstances contradicting the position contained in the contested decision. Furthermore, the applicant did not refer in any way to the activities carried out by the authority to control the abovementioned companies, except for the contradictions in the application mentioned above, which could not affect the assessment made.

Therefore, the authority is right that the method of verification of contractors adopted by the applicant is unacceptable in the realities of economic life and may not, as a consequence, result in tax burdens being transferred to the state budget.

As regards allegations of violation of substantive law, the applicant pointed to a violation of Art. 28b uptu Pursuant to this provision (in the version in force in the tax period in question), 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 paragraph 2-4 and art. 28e, art. 28f paragraph 1 and 1a, art. 28g paragraph 1, art. 28i, art. 28j paragraph 1 and 2 and art. 28n (paragraph 1). Where the services are provided for a permanent place of business of a taxable person which is located elsewhere than his place of business, the place of supply of these services is the permanent place of business (paragraph 2).

The provision of art. 28b paragraph 1 and 2 uptu is the implementation of art. 44 of Directive 2006/112 / EC. The notion of the place of business of the taxpayer is defined in art. 10 of Council Implementing Regulation (EU) No. 282/2011. Pursuant to the content of this provision, this is the place where the functions of the company's management board are performed (paragraph 1). As stated in paragraph 2 of this provision: in determining this place, account shall be taken of the place where important decisions regarding general management of the enterprise are taken, the address of the registered office of the enterprise and the place of meetings of the management board of the enterprise. If these criteria do not allow to determine with absolute certainty the place of business of the taxpayer, the decisive criterion is the place, in which significant decisions are made regarding the overall management of the company. In addition, it was noted (paragraph 3 of Article 10) that the postal address alone cannot be considered as the place of business of the taxable person. Pursuant to the ruling of the CJEU C-73/06, the seat for the purposes of conducting business activity of a given company is the place where significant decisions regarding the general management of that company are made and in which its central administrative tasks are performed.

The regulation also contains in art. 11 paragraph 1 legal definition of "permanent establishment". Pursuant to this provision, 'for the purposes of applying Article 44 of Directive 2006/112 / EC, the place of business is any place - other than the place of business of the taxable person referred to in Article 10 of this Regulation - which is sufficiently stable and an appropriate structure in terms of personnel and technical facilities to enable it to receive and use the services provided for its own needs in this permanent establishment. " In the judgment of the CJEU of 16 October 2014, C-605/12 **Welmory**, The Tribunal reminded that in view of the multitude and diversity of the facts of the cases, the assessment of whether we are dealing with a permanent place of

business is rather a matter of fact, therefore this assessment should be taken mainly by national authorities and national courts, not by the Court (cf. judgment of the Supreme Administrative Court of October 18, 2017, I FSK 100/16). In the above the Court ruling that a taxpayer established in one country who uses services provided by another taxpayer established in another country should be considered as having a "permanent place of business" in that country within the meaning of Art. 44 of Directive 2006/112 on the common system of value added tax, as amended by Directive 2008/8, to determine the place of taxation of these services,

The above-mentioned findings show that the Cypriot company in February 2015 did not conduct business and did not settle the value added tax in connection with invoices issued by the taxpayer, and the American company did not start it at all. Regardless of these circumstances - in connection with the taxpayer's application of Art. 28b uptu - his duty was to examine not only whether the actual headquarters of the companies were Cyprus and the USA and whether they were active and registered taxpayers, but also whether there were their primary places of activity and payment of value added tax. The circumstances determining the business establishment of an entrepreneur are objective and should be taken into account not only by the authority as part of verifying the correctness of settling the value added tax,

The applicant, deciding to apply the services provided by him in tax, art. 28b should be aware that the companies with which it cooperates are not only formally registered abroad, but also their economic activity was conducted there. In the present case, despite the lack of verification of his contractors, the applicant abandoned any arrangements regarding the place of supply of services, assuming that they were in Cyprus and the USA.

The contested decision also does not violate the principle of neutrality in the settlement of value added tax. The principle of neutrality of taxation with this tax assumes that it should be economically imperceptible (neutral) for an entrepreneur who is not the final consumer of a good or service, while the concept of neutrality should be translated not only as a phenomenon or as activities that do not involve the necessity of incurring any costs on the part of the entrepreneur, but they also do not involve any benefits (cf. judgment of the Supreme Administrative Court of October 3, 2019, I FSK 980/17). The applicant had obtained such an advantage in the facts of the case. It was a real and noticeable benefit from the transactions made, thanks to the mechanism provided for in art. 28b uptu

In accordance with the principle of territoriality expressed in art. 5 paragraph 1 point 1 of the Act - taxable goods and services tax are subject to paid delivery of goods and paid services within the territory of the country - the tax authorities correctly applied Art. 29a paragraph 1 uptu Pursuant to this provision, the tax base, subject to para. 2-5, art. 30a-30c, art. 32, art. 119 and art. 120 paragraph 4 and 5, is everything that constitutes payment that the supplier of goods or the service provider has received or is to receive from the sale from the buyer, recipient or third party, including received subsidies, subsidies and other subsidies of a similar nature having a direct impact on the price of goods provided or services rendered by the taxpayer. In accordance with art. 41 section 1 uptu tax rate is 22%, subject to paragraph 2-12c, art. 83, Art. 119 section 7, art. 120 paragraph 2 and 3, art. 122 and art. 129 section 1. However, in the period from January 1, 2011 to December 31, 2018, subject to art. 146f of the Act, the tax rate is 23%, in accordance with Art. 146a item 1 of the Act.

Therefore, the allegation of violation of the provision of Art. 28b of the Act and related allegations of violation of procedural provisions, including Art. 121 and art. 191 Op Authority of the second instance applied on the basis of all collected evidence, however, the limits of this freedom towards individual evidence, as well as its entirety, were not exceeded. He made a thorough assessment of them in accordance with the rules of logic, knowledge, experience, in mutual connection, taking into account all relevant circumstances of the case.

The court did not accept the evidentiary request from the document submitted in the complaint pursuant to art. 106 § 3 of the Ppsa, i.e. tax audit reports for the months of April and July 2014 due to factual findings and the results of audits made by the authority of the first instance regarding the applicant's cooperation with identical

entities, as not relevant to the examination of the present case. It is necessary to agree with the appeal body that the said protocols reflect the state of knowledge of the inspection body on the basis of evidence gathered in those proceedings. On the other hand, the documentary evidence conducted in these proceedings in the form of the results of information exchange between tax administration authorities allowed for different findings, described above and approved by the Court. The other grounds of the complaint were not divided, as the court was not obliged to refer to each of the arguments which, in the applicant's opinion, were to prove the merits of the given complaint, since the arguments show why there was no violation of the procedural and substantive law provisions mentioned in the complaint.

The court acting pursuant to art. 151 Ppsa dismissed the complaint