AWB

SUBJECTS

RESTRICTION OF THE TAX EXEMPTION FOR CROSS-BORDER TRANSPORT ACCORDING TO § 4 NO. 3 LETTER A USTG BASED ON THE ECJ RULING. C-288/16

Comment on: BMF-Schr. v. 02/06/2020

practice problem

With its judgment of 29.06.2017, C-288/16, LC, decided that the tax exemption under Article 146 (1) (e) of the VAT Regulation does not apply to cross-border transport in connection with exports or imports if the transport service is not directly to the shipper or is provided to the recipient of the export items. In the case in question, a carrier was subcontracted by a main carrier to actually carry out a transit freight transport from the port of Riga to Belarus (from Latvia's point of view, therefore, to the third country). The subcontractor took care of the control of the means of transport, the repairs, the refueling, the customs formalities at the border crossing points, the monitoring of the freight, the handover to the recipient and the necessary loading and unloading work. Due to the lack of appropriate licenses, he had no carrier status under Latvian law. The Latvian tax authority had refused to grant the subcontractor tax exemption for the transport services it performed, because there was no legal relationship between it and the sender or recipient of the goods and, due to a lack of a corresponding license, it was not i. S. d. Latvian Road Transport Act can be viewed. The ECJ had confirmed the refusal of the tax exemption. From the wording and the purpose of Article 146 (1) (e) VAT Regulation, to ensure taxation at the place of destination, it follows that a direct connection not only presupposes

decision

The administration dealt with BMF letters from 06.02.2020 expressed on the application of the ECJ case law and follows this legal view. The tax exemption for transport services i. R. d. Cross-border freight transport is therefore only considered if the carrier delivers it directly to the sender or recipient of the goods. Services of a carrier as a subcontractor include B. no longer tax exempt according to § 4 No. 3 letter a UStG if the performance of the subcontractor actually. consists in the transportation of export goods to the third country.

practice Note

Due to the changed administrative view, subcontractors in the freight forwarding industry have to change in the case of cross-border freight transport in connection with exports and imports. The tax exemption according to § 4 No. 3 letter a UStG for taxable goods transport from a so-called sub-carrier to the main carrier is no longer an option because the sub-carrier provides its services to the main carrier and therefore not directly to the shipper or recipient of the transported goods. Such services to clients other than the importers or exporters or, in the case of exports, to the purchaser of the goods will in future be taxable. However, a transitional arrangement applies to sales generated before July 1st, 2020. After that, the tax authorities do not object

There have been no changes in assessing the performance of the main carrier.

The administrative view has not changed on the question of tax exemption for services in the area of loading and unloading a seagoing ship at an earlier stage. Sect. 8.1 Paragraph 1 Clauses 4 and 5 UStAE still apply here. According to this, services in the area of loading and unloading a seagoing vessel can be tax-free if they are not provided directly to the operator of a seagoing vessel, but at a previous stage, such as a loading or unloading service provided by a subcontractor to a client, which the latter then does forwarded to a forwarding or transport company. Loading and unloading services provided to those authorized to dispose of the ship's cargo, such as its exporter or importer, may also be tax-free.

There could be residual doubts as to whether the changed administrative view, according to which all services of a sub-carrier to the main carrier are taxable, which is the case decided by the ECJ. The tax exemption for cross-border transport in connection with exports or imports is part of the concept of the so-called border adjustment. Goods should arrive tax-free in the third country area, also with regard to the additional costs. This principle is broken at the latest when a

main carrier (whose cross-border transport service is in turn tax-free) is charged by his subcontractor with sales tax that he cannot deduct as input tax (e.g. because he is resident in a country, that is not on the positive list of reciprocity in the input tax rebate procedure). In this case, the main carrier will pass on the non-deductible input tax to his client. The ECJ ruling was based on a special case in that the subcontractor who actually carried out the goods transport did so with his client's vehicles and did not himself have a license as a carrier required under Latvian law. The Latvian tax authority based the refusal of the VAT exemption not only on the fact that the subcontractor was not itself in contractual relationships with the exporter of the goods, but also on the fact that the subcontractor could not be regarded as a carrier due to the lack of a license and was therefore not authorized to transport the goods , The ECJ also took this up in its judgment as an additional argument for decision. Since experience has shown that the case law of the ECJ is very case-by-case, it cannot be ruled out that the particularities of the dispute were also important for the decision. In any case, it was not the standard case of services provided by a sub-carrier to a main carrier.

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