CJEU 02-07-2020 Terracult C-835/18

By **Editors** - July 2, 2020

CJEU Terracult judgment

From 10 to 14 October 2013, the Romanian Terracult delivered rapeseed to Almos, Germany . It considered the transactions in question to be intra-Community supplies. On 4 March 2014, the Romanian tax authorities imposed an additional assessment at the normal VAT rate on Terracult because no evidence could be submitted showing that the rapeseed delivered had left Romanian territory. Terracult has not contested this tax assessment and it has therefore become final. On March 27, 2014, Terracult issued corrective invoices in accordance with the tax assessment of March 4, 2014.

On March 28, 2014, Almos informed Terracult that it had established that these corrective invoices contained its German tax identification number and requested that those invoices be corrected with its identification data in Romania. Almoshas also indicated to Terracult that the oilseed rape had not left Romanian territory and that the VAT transfers had to be applied to the

supplies in question. On March 31, 2014, Terracult therefore issued new corrective invoices in which the VAT reverse charge mechanism applies. As these new corrective invoices were included in the March 2014 VAT return, Terracult deducted the VAT on these invoices from the VAT payable for that current period. Since a negative VAT amount was calculated, Terracult has requested a VAT refund in accordance with the VAT assessment mentioned in the tax assessment of 4 March 2014.

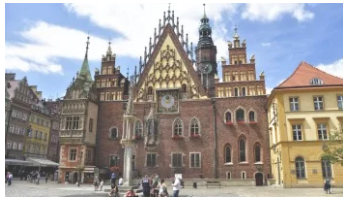
After first verifying this request for a refund, the tax authorities imposed a tax assessment on Terracult on February 10, 2017, on VAT assessment of the rapeseed deliveries made in October 2013. According to that tax authority, the reclassification of these rapeseed deliveries and their classification in the category of supplies of goods subject to the VAT reverse charge mechanism unlawfully nullified the effects of the tax assessment of 4 March 2014, when that assessment had become definitive.

According to the CJEU, the VAT Directive and, inter alia, the principle of neutrality, preclude a national regulation under which a taxable person who has carried out transactions which were subsequently found to be covered by the VAT reverse charge mechanism cannot correct the invoices for these transactions and, with the for the purpose of a refund of wrongly invoiced and unduly paid VAT by that taxable person, he cannot rely on that correction by rectifying an earlier tax return or filing a new tax return incorporating that correction, on the ground that those transactions were carried out during a period which has already been subject to a tax audit after which the competent tax authority had issued an assessment,which has not been contested by the said taxable person and has therefore become final.

Operative part Judgment Conclusion Request

Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2013/43 / EU of 22 July 2013, and the principles of fiscal neutrality, effectiveness and proportionality should be interpreted as opposing a national rule or a national administrative practice under which a taxable person has carried out transactions which were found to be subject to the reverse charge value added tax (VAT) regime, the invoices for those transactions cannot correct and, with a view to the refund of wrongly invoiced and VAT unduly paid by this taxable person,cannot rely on that correction by rectifying an earlier tax return or filing a new tax return incorporating that correction, on the ground that those transactions were carried out during a period for which a tax audit has already taken place, after which the competent tax authority has completed an assessment which has not been contested by that taxable person and has therefore become final.

Related



CJEU 20-03-2014 Gmina Wroclaw C-72/13
March 20, 2014
In "Taxpayers"

CJEU 21-03-2013 Commission-France C-197/12
21 March 2013
In "Court of Justice"

CJEU 15-09-2016 Senatex C-518/14
September 15, 2016
In "Billing"