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VAT Alert

Court of Justice rules on import VAT recovery

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Summary

The Court of Justice of the European Union (CJEU) has issued a reasoned order in the case of Weindel Logistik Service SR spol. s r.o.

The case concerns the recovery of VAT paid on the importation of goods by a person who does not own the goods in question or does not use the goods for the purposes of his taxable transactions.

The Court has confirmed that the Provisions of the VAT Directive relating to the right of deduction must be interpreted such that VAT paid on importation of goods cannot be reclaimed where the importer does not acquire the right to dispose of the goods as owner or incorporate the cost of the goods in his downstream taxable transactions.

The CJEU's Order confirms the policy adopted by HMRC in the UK in its Revenue & Customs Brief 02/2019 dated 11 April 2019.

Court of Justice – Case C-621/19 – Weindel Logistik Service SR spol. S.r.o.

This case, a referral to the Court of Justice by the Slovak Supreme Court, concerns the recoverability of VAT paid on the importation of goods into a Member State from a third country. In normal circumstances, the VAT Directive allows for VAT paid on such importations to be reclaimed.

In this case, Weindel Logistiks – a company established in Slovakia – imported goods from Switzerland, Hong Kong and China into Slovakia in order to recondition them on behalf of its Swiss customer. The company became liable (as importer of the goods) to pay VAT on the importation of the goods into Slovakia. The company then reconditioned the goods and then despatched them either to other EU Member States or by export to third countries. The cost of the reconditioning service was then invoiced to the Swiss customer who, at all times, was the legal owner of the goods.

The Slovakian tax authority refused to repay Weindel Logistiks' claim to recover the import VAT. This was on two grounds. Firstly, the tax authority refused repayment on the basis that Weindel Logistiks was not the legal owner of the goods and it did not acquire the right to dispose of the goods as if it were the owner. Secondly, the cost of the goods were not incorporated into the price of its own taxable activities. The company's taxable activities merely comprised a service of reconditioning the goods which were, in fact, owned by its Swiss customer. Accordingly, the tax authority refused to repay the import VAT claim.

Weindel Logistiks appealed against that decision and the matter proceeded through the Slovakian courts ending up at the Supreme Court. The Supreme Court considered that it required assistance with the interpretation of the VAT Directive from the Court of Justice and referred the case.

On 29 October, the CJEU issued a 'Reasoned Order' disposing of the case. (This procedure is adopted when the court considers that a question referred for a preliminary ruling is identical to a question on which the Court has already ruled, when the answer to such a question can be clearly deduced from the case law or when the answer to the question referred for a preliminary ruling leaves no room for any reasonable doubt).

In essence, the CJEU has confirmed that import VAT may only be reclaimed where the person making the claim has acquired the right to dispose of the goods as if it were the owner or if the upstream cost of the goods are incorporated into the persons downstream taxable supplies. As was clear in this case, neither of these conditions were met and Weindel Logistiks was, therefore, not entitled to reclaim the import VAT in question.

Comment – the CJEU has confirmed the policy adopted by HMRC in its Revenue & Customs Brief 02/2019. There was some doubt over HMRC's interpretation of the VAT Directive but the Court's judgment makes it clear that HMRC's policy change was correct. Businesses involved in the importation of goods need to ensure that they understand and implement the new rules and do not reclaim import VAT that they are not entitled to.

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