Non-retrospective entry in the accounts of the customs debt, and VAT taxable base

Education and languages

Graduate in Law. University of Zaragoza (1984-1989)
Master's Degree in Business Tax Consultancy. Business Institute.
Master's Degree in Account Auditing. University of Zaragoza.
Master in Customs Tax Law. University of Valencia.
Spanish, English.

Career

Lawyer since 1992, he has spent most of his professional career at Cuatrecasas. He has advised both national (family businesses) and international business groups on matters such as tax consolidation and VAT groups. Expert in foreign trade taxation (Customs and VAT on international sales and services, DTA, expatriate/impatriate workers regime).
Recommended lawyer in Legal 500 for the Transport category, and for the Trust and Estate and Transport practice in Best Lawyers.

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Resolution 954/2018, dated 19/11/2020, of the Spanish Central Economic Administrative Court (TEAC) addresses a question of tariff classification of goods. However, the interesting thing about the aforementioned resolution is not the conclusion it reaches on that issue, but the analysis of the possible coordination between the customs debt, and VAT.

More specifically, between the cases of no subsequent entry in the accounts of the customs debt (art. 220.2.b)) of the Community Customs Code (CCC), and the taxable amount of VAT on importation.

The TEAC resolves that, even if it is agreed that the customs debt is not entered in the accounts by virtue of the provisions of article 220.2.b) of the CCC, this does not have as a consequence that they lose their status of "legally owed" duties and therefore, they must be incorporated in the taxable base of the import VAT (ECJ, Transport Maatschappij Traffic BV, of 20 October 2005, case C-247/04).

This is based on the coordination of art. 83 of the Spanish VAT Law (art. 85 of the Directive 2006/112/CE), which determines the taxable base for import VAT, with article 220.2b) of the CCC, which determines the requirements for the refund or remission of the customs duties no entered in account at the moment of acceptance of the declaration of goods for a customs procedure.

Art. 220.2.b) of the CAC distinguishes two cases of refund/remission of customs duties; (i) one that takes place when the customs duties were not legally due, and another (ii) the one applicable to the case under analysis, which occurs when the customs duties have taken place contrary to the provisions of article 220.2.b) of the CCC (as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration).

Thus, since in the present case the customs duties were legally owed, even if they were subsequently remitted or not incurred, they must be added to the customs value for the calculation of the taxable amount of the import VAT.