



No extinguishment of import VAT and excise duties upon extinguishment of customs debts

1 Background

The ECJ has already ruled several times on the link between VAT and customs (see KMLZ Customs Newsletter 04 | 2019, 01 | 2021). As a rule, the issue has always been whether import VAT also automatically arises when a customs debt is incurred. In its new judgment of 7 April 2022 (C-489/20 – *UB*), the ECJ was asked to decide as to whether, in the event of a customs debt being extinguished, both import VAT and excise duties, incurred at the same time as the customs debt, were also to be extinguished.

2 Facts of the case

The plaintiff had unlawfully brought cigarettes from Belarus to Lithuania. He and others involved in the offence had thrown the cigarettes over the border fence and subsequently collected them in a car on Lithuanian territory. Shortly after, border officials carried out a search of the vehicle and confiscated the cigarettes. Within the framework of the criminal proceedings initiated, the cigarettes were confiscated, and their destruction ordered. In addition, the customs authorities assessed excise duties and import VAT. However, the customs authorities did not assess a customs debt on importation. This was based on the fact that the customs debt had been extinguished in accordance with Art. 124 para. 1 lit. e of the UCC.

3 Incurrence of duties

The introduction of the cigarettes into the territory of Lithuania, and thus into the customs and VAT territory of the Union, gave rise to the imposition of import duties, VAT and tobacco tax (Art. 79 para. 1 lit. a) of the UCC; Art. 2 para. 1 lit. d), Art. 70 of the VAT Directive; Art. 7 para. 1, 2 lit. d) of the Directive concerning the general arrangements for excise duty (2008/118/EC)).



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According to the consistently held jurisprudence of the ECJ, it is equally necessary for import duties and import VAT to be imposed on those goods imported into the Union, which goods are subsequently introduced into the economic cycle of the Member States. This parallel nature is, moreover, confirmed by the fact that the second subparagraph of Art. 71 para. 1 of the VAT Directive authorises Member States to link the chargeable event and the date on which the import VAT becomes chargeable with those laid down for customs duties (see ECJ, judgment of 10 July 2019 - *FedEx - C-26/18*). In the current judgment, the ECJ assumes, without any additional grounds insofar, that the smuggled cigarettes may have undergone consumption and had entered, from a VAT perspective, the economic cycle. As a result, the import VAT became chargeable.

4 Extinguishment of the customs debt

Customs debts are extinguished where goods liable to import duties are confiscated. This also applies if they are initially seized and subsequently confiscated (Art. 124 para. 1 lit. e) of the UCC). In the case referred, this condition was met. The customs debt incurred was therefore extinguished. In this context, the ECJ states that, despite the change in the wording of the extinguishment provision when the UCC was introduced (see. Art. 233 para. 1 lit. d of the CC), the content remained unchanged. Customs debts are also extinguished if goods were previously unlawfully introduced into the Union.

5 Extinguishment of import VAT and excise duty

In VAT and excise duty law, there are no extinguishment provisions comparable to Art. 124 para. 1 lit. e) of the UCC. However, it was necessary for the ECJ to decide whether VAT and excise duty are also to be extinguished when a customs debt is extinguished. One reasoning for this link to the extinguishment of duties under customs law could be derived, in principle, from the fact that both VAT and excise duty law link the incurrance of duties to the “importation” of goods. The importation of goods is basically defined in accordance with customs law. In this respect, good reasons would exist for a treatment similar to that under customs law. This is also reflected in Art. 71 of the VAT Directive, which links the chargeable event and the chargeable VAT to the incurrance of the customs debts.

Despite these references to customs law, the ECJ denied any extinguishment of VAT and tobacco tax. Excise duty claims continue to exist even if goods are seized and confiscated after their importation. The ECJ also justified this based on the fact that, once (unlawful) importation of goods has taken place, even if the goods are subsequently entered into a customs warehousing procedure, it does not have any effect on the chargeability of the excise duties once these duties have been incurred.

As regards VAT, the ECJ simply states that the chargeable event for the incurrance of the VAT had already been fulfilled. Thus, there is a VAT liability. Since there is also no regulation that provides for extinguishment in the case of extinguishment of customs debts in accordance with Art. 124 para. 1 lit. e) of the UCC, the VAT liability continues to exist.

6 Opinion

The ECJ understandably rejects the application of the extinguishment provision from customs law to excise law and VAT law within the framework of the development of the law for lack of a legal basis. This is understandable. Nevertheless, in practice, an extinguishment provision comparable to the provisions of the UCC would, in many cases, help to find a result in line with the interests of the parties. This case should encourage the Union legislator to create a corresponding legal basis.