



ECJ: Subsequent amendment of declarant in customs declarations now possible

1 Background

Once a customs declaration has been lodged, it is not easy to amend or invalidate it. In any event, once the customs authorities have released the goods, a unilateral amendment by the parties involved is not possible. This used to be regulated in Art. 78 of the CC, today it is to be found in Art. 173 of the UCC.

On 20 December 2017 (4K 240/16), the Tax Court in Hamburg decided - making use of quite strong arguments and without referring to the ECJ - that the declarant, as identified in box 14 of a customs declaration, could not be amended. The possibilities for amendment in accordance with Art. 78 of the CC were limited by the definitions of the customs declaration and the declarant in Art. 4 Nos. 17, 18 of the CC and the provision on representation in Art. 5 of the CC and, in addition, Art. 78 para. 1 of the CC itself. A customs declaration is intrinsically linked to the person of the declarant. The declarant plays a key role in the procedure, on the basis of which, a replacement of the declarant does not serve to amend the declaration lodged by the original declarant, but would, instead, replace it. Art. 78 para. 1 of the CC only allows for the declarant to file a request for an amendment of the declaration. This shows that the identity of the declarant himself does not belong to the category of information in the customs declaration, which can be amended. The declarant cannot eliminate himself from the declaration by means of a request in accordance with Art. 78 para. 1 of the CC.

Art. 5 para 4 subparagraph 2 of the CC also provides that persons who do not disclose an existing relationship of representation, or who do not have a power of representation, are deemed to be acting in their own name and on their own account. This legal consequence of the second subparagraph of Art. 5 para. 4 of the CC cannot be amended or overruled by an application under Art. 78 of the CC. There have been identical judgments in the Netherlands.



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2 ECJ judgment - facts

In the case, which has just now been decided by the ECJ, an agent applied for the release of goods for free circulation. In doing so, the agent only indicated his own name in box 14, without any reference to the representation. He did, however, attach the power of attorney, which had been granted to him, to the customs declaration. The declaration referred to the import licence issued to the principal, from which the customs authorities deducted the quantity of goods imported, and thus assessed reduced import duties for the respective goods. Following a re-examination of the import procedure, the customs authorities subsequently assessed the difference between the reduced rate of duty and the normal rate of duty, since the declarant was not entitled to benefit from the reduced rate because he was not the holder of the import licence. The customs authorities refused to amend the customs declaration in such a way as to include the relationship of representation in box 14 so that the holder of the licence would have become the declarant. The Tax Court in Düsseldorf referred the question of a possible amendment of the customs declarant to the ECJ. It assumed the existence of the conditions defined in the previous ECJ case law on the amendment of customs declarations.

3 ECJ judgment

In its judgment of 16 July 2020 the ECJ held that Art. 78 of the CC is to be interpreted to the effect that the declarant could be amended in cases where it can be proven that a power of attorney existed prior to the customs declaration being lodged. The ECJ justified its decision by stating that Art. 78 para. 3 of the CC did not explicitly exclude individual components of the customs declaration from amendment, such as the identity of the declarant. In addition, Art. 78 para. 3 of the CC grants the authorities "simply the power to correct incorrect documents where this [...] is appropriate". The cases recognised by the ECJ, in which the customs authorities were empowered to refuse such a request for review, were found not to be comparable to the present case: in previous cases, either the amended information could no longer be verified or the grounds for refusal already resulted from the prohibition of abuse of rights. Either the objectives pursued by the customs legislation were affected or the original information was deliberately provided. However, there would be no abuse of rights if the name provided for the declarant, was given in error or due to a misunderstanding. In the ECJ's opinion, the presentation of a power of attorney was sufficient to prove an error had been made, in circumstances where it was evident that the person giving the power of attorney was aware that he was to become a declarant, within the meaning of the Customs Code, and had undertaken to bear all costs. Nor was there any risk of fraud, since the quantities of the imported goods were set off against the importer's import licences. By deducting the quantity from the licence, the customs authorities had already implicitly assumed that the authorised declarant was acting as a representative.

4 Conclusion

The current provision in Art. 173 para. 3 of the UCC is more restrictive. The customs declaration can only be amended after release of the goods in order for the declarant to comply with his obligations relating to the placing of the goods under the customs procedure concerned. In this respect, the case constellations, to which the judgment may apply, are not likely to be many. However, if the conditions are met, the arguments brought forward by the ECJ seem to suggest that the declarant may still be amended. This is also not explicitly excluded in the UCC's current provision. However, the circumstances of the individual case are significant. Rarely, will it be so obvious that it was merely an oversight not to indicate the relationship of representation. In particular, however, suppliers of services who usually make customs declarations in their capacity as agents could benefit from the judgment. Any incorrect indication or omission of the relationship of representation can, according to the judgment, at least in principle, be corrected. It is particularly important in this respect that, at the time the declaration is made, a power of attorney from the person represented has already been issued and that no abuse of rights is found to exist.