



CUSTOMS
NEWSLETTER

Interest in the case of violation of Union law – German Federal Fiscal Court jurisprudence consolidates

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National customs authorities are obliged to pay interest if they levy import duties in violation of EU law. Both the jurisprudence of the ECJ and the German fiscal courts has already, on several occasions, confirmed this entitlement. Most recently, this was also confirmed by the German Federal Fiscal Court (BFH) in its decision of 7 August 2024, VII B 168/22 (KMLZ Customs Newsletter 05 | 2024). In its decision of 30 December 2024, VII B 96/23, the BFH reinforced this jurisprudence with welcome clarity. The decision is based on a remarkable ruling in the first instance.

1 Decision in the first instance

The plaintiff imported various technical devices, including monitors, into the EU. There was disagreement between the plaintiff and the Main Customs Office (HZA) handling the clearance regarding the commodity code. The plaintiff argued for a classification that would have resulted in a customs duty rate of 0%. The HZA took a different view and assessed import duties accordingly. As part of the classification check, the Education and Science Centre (BWZ) prepared an expert opinion in which it supported the tax authorities' view. An identical binding tariff information (BTI) was also issued.

After several appeal proceedings and a second BTI confirming the plaintiff's view, the HZA finally ruled in favour of the plaintiff. It refunded the import duties levied, but continued to contest its obligation to pay interest. Inter alia, it argued that a claim for interest was not applicable in the case of a refund in a free appeal procedure. Furthermore, there was no claim for interest if no BTI existed for the goods at the time of registration. Furthermore, there was no claim if the plaintiff had the



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option of applying for suspension of operation. Ultimately, it was not sufficient that the HZA had made a simple error in applying the law with regard to the classification of the goods.

None of the HZA's arguments were successful. The fiscal court already clarified, in the first instance, that an interest claim exists if an HZA levies import duties due to an error in the application of the law and must refund them. The procedural modalities put forward by the HZA are irrelevant. In particular, it is irrelevant whether a BTI existed or not. It is noteworthy that, in its ruling, the fiscal court did not merely express the obligation to issue a corresponding interest assessment. Instead, it ordered the HZA to pay the corresponding interest amount. As grounds for its decision, it stated that it was well known that the HZA sometimes failed to implement fiscal court judgments. The plaintiff was able to support its application with several examples of cases in which rulings on the issuance of interest assessments were not implemented.

The fiscal court did not allow an appeal. The defendant HZA lodged an appeal against denial of leave to appeal.

2 BFH decision

The BFH rejected the appeal against denial of leave to appeal as unfounded. The substance of the judgement was not subject to a review, as the BFH did not consider the matter to be of fundamental importance. There were therefore no grounds for appeal. The BFH referred to detailed jurisprudence, confirming interest claims in various constellations. The requirements of the ECJ had already been incorporated into national jurisprudence and had also been elaborated upon by the BFH itself.

Finally, the BFH reiterated that an exception to the obligation to pay interest, pursuant to Art. 116 para. 6 of the Union Customs Code only applies in cases where the unlawful levying of duties is directly attributable to the necessary rapidity and associated susceptibility to errors of the customs clearance procedure. This finding is also not new, but already follows from previous ECJ judgments. The legal situation is clear in this respect (*acte clair*), so that there is no need for further clarification.

3 Consequences for the practice

The BFH had already made its opinion clear in its previous decision of 7 August 2024, VII B 168/22 (KMLZ Customs Newsletter 05 | 2024). It took the case concerning the denial of leave to appeal in question here as another opportunity to emphasise that the question of interest claims does not require further clarification.

It can be assumed that the customs offices will, in future, follow the jurisprudence. In the meantime, the German Federal Ministry of Finance has also cleared the way for the application of the jurisprudence with administrative guidelines. Disputes over interest – at least on the merits – should therefore be a thing of the past.

Taxable persons who are refunded for import duties paid should therefore always remember to claim the interest. This applies regardless of whether a customs office refunds the import duties *ex officio* or in an appeal or refund procedure. The assessment period for interest is two years, beginning at the end of the calendar year in which the refund or grant of the excess import duties was made.