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ECJ on returned goods: no import VAT in the event of formal breaches of customs legislation

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Goods that are exported from the customs territory of the Union and then subsequently re-imported within three years of that time, in the same condition (returned goods) are exempt from import duties (customs and VAT) upon re-importation in accordance with Article 203 of the UCC and Article 143 para. 1 lit. e of the VAT Directive. Upon re-importation, a customs declaration must be lodged for the goods, the goods must be presented to the customs authorities and exemption from import duties must be applied for. If no customs declaration is lodged, a customs debt will be incurred in accordance with Article 79 para. 1 lit. a of the UCC. However, this does not automatically mean that import VAT is also incurred. The ECJ has now clarified this in its judgment of 12 June 2025, Case C-125/24 – *Palmstråle*.

1 Facts and question referred

The plaintiff brought two horses from Sweden to Norway to take part in competitions there. It then re-imported the horses to Sweden. When crossing the border into Sweden, the plaintiff did not lodge a customs declaration or present the horses for inspection and also did not apply for an exemption from import duties on the grounds that they were returned goods. The Swedish customs authorities imposed import duties pursuant to Article 79 para. 1 lit. a of the UCC for non-compliance with the customs regulations. Due to the 0% duty rate, the assessment only included import VAT.

The plaintiff brought legal action against the assessment in the Swedish administrative courts, but was unsuccessful in both the first and second instances. The latter took the view that, in order to be exempt from import duties, a customs declaration and a corresponding application for exemption were necessary. The Swedish Supreme Administrative Court, as the court

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of third instance, expressed doubts about this view. It recognised that exemption from import duties, (in accordance with Article 86 para 6 of the UCC), was also possible in cases where a customs debt, (in accordance with Article 79 of the UCC), had been incurred in the absence of any attempt to deceive. However, it expressed doubts as to whether the exemption from import duties extends to import VAT if no customs declaration has been filed and no corresponding application for exemption has been made. Accordingly, it referred this question to the ECJ.

2 Decision

The ECJ unequivocally answered the question referred to it for a preliminary ruling. Non-compliance with the customs provisions does not preclude an exemption from import VAT where the substantive conditions are met and on condition that the failure did not constitute an attempt at deception. The ECJ justified its decision on the grounds that this was the intended application of Article 86 para. 6 of the UCC. This applies precisely when a customs debt is incurred in accordance with Article 79 para. 1 lit. a of the UCC due to a failure to satisfy formal requirements (eg failure to lodge a customs declaration). In this regard, the ECJ also refers to recital 38 of the UCC, according to which the adverse consequences of negligent non-compliance with customs legislation must be mitigated, to a minimum. It is for the national courts, in each case, to decide as to whether there was an attempt to deceive, which prevents exemption from import duties.
Article 143 para. 1 lit. e of the EU VAT Directive reflects the interpretations of the customs legislation in this respect. The provision refers to the “re-importation of goods subject to an exemption from customs duties”. Since the customs exemption applies pursuant to Article 86 para. 6 of the UCC, this assessment also extends to import VAT.

3 Opinion

The ECJ judgment strengthens the position of taxable persons who often suffer from the high degree of formalisation of customs legislation. Firstly, it clarifies that, due to the regulation in Article 86 para. 6 of the UCC, not every infringement of customs obligations gives rise to a customs debt. Furthermore, the difference between customs and import VAT is, once again, made clear. It is not uncommon for national customs administrations to apply customs regulations, without restriction, to import VAT. However, it is now established ECJ jurisprudence that customs regulations can only be applied mutatis mutandis to import VAT (see ECJ, judgment of 10 July 2019, C-26/18 – *Federal Express*). This detail is also highly relevant for imports into Germany. This is because the German customs administration often applies the customs duty provisions to import VAT in a parallel nature, rather than mutatis mutandis. It justifies this using the provision of Section 21 para. 2 of the German VAT Act.

The fact that this would lead to a particularly inappropriate result in the present case is also referred to in the Opinion of the ECJ’s Advocate General Kokott. A mere infringement of customs procedural law would lead to the assessment of import VAT in the present case, even though VAT law does not recognise a chargeable event due to procedural violations, such as Article 79 para. 1 lit. a of the UCC. At the same time, it would not affect the assessment of customs duties because the customs duty rate is 0%. It would therefore have a greater impact on a foreign regulatory regime. The ECJ has previously recognised this issue. It has long since only referred to a “connection” or “link” between customs duties and import VAT. This is intended to make it clear that, when applying customs provisions, the VAT system, with its own assessments, must always be taken into account. The ECJ judgment is a further step towards the actual application of customs provisions, in accordance with their meaning, to VAT, by national customs administrations.

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