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Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

3 March 2021 (\*)

(Reference for a preliminary ruling – Customs union – Union Customs Code – Regulation (EU) No 952/2013 – Article 87(4) – Place where the customs debt is incurred – Value added tax (VAT) – Directive 2006/112/EC – Article 2(1) – Articles 70 and 71 – Chargeable event and place where the import VAT becomes chargeable – Place where the tax debt is incurred – Finding of a failure to comply with an obligation imposed by EU customs legislation – Goods which were physically introduced into the customs territory of the Union in a Member State but entered the economic network of the Union in the Member State where that finding was made)

In Case C-77/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 11 December 2019, received at the Court on 9 January 2020, in the proceedings

**VS**

v

**Hauptzollamt Münster,**

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, and N. Jääskinen, Judge,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Hauptzollamt Münster, by K. Thode, acting as Agent,
- the European Commission, by F. Clotuche-Duvieusart, J. Jokubauskaitė and R. Pethke, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the second subparagraph of Article 71(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

(OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2 The request has been made in proceedings between VS and the Hauptzollamt Münster (Principal Customs Office, Münster, Germany) concerning the payment of customs duties and import value added tax (VAT) on a private vehicle registered in Turkey and imported by VS into the territory of the European Union.

## **Legal context**

### ***EU law***

#### *The VAT directive*

3 Article 2(1)(d) of the VAT Directive provides that the importation of goods is subject to VAT. Under the first paragraph of Article 30 of that directive, ‘importation of goods’ means the entry into the Union of goods which are not in free circulation.

4 Under Article 60 of that directive, the place of importation of goods is the Member State within whose territory the goods are located when they enter the Union.

5 Article 62 of that directive provides:

‘For the purposes of this Directive:

(1) “chargeable event” shall mean the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled;

...’

6 In accordance with Article 70 of the VAT Directive, the chargeable event for VAT occurs and VAT becomes chargeable when the goods are imported.

7 Article 71(1) of that directive provides:

‘Where, on entry into the [Union], goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.’

#### *The Customs Code*

8 Article 79 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; ‘the Customs Code’), headed ‘Customs debt incurred through non-compliance’, provides:

‘1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of

non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

...

3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:

(a) any person who was required to fulfil the obligations concerned;

...'

9 Article 87 of the Customs Code, headed 'Place where the customs debt is incurred', provides in paragraph 4:

'If a customs authority establishes that a customs debt has been incurred under Article 79 or Article 82 in another Member State and the amount of import or export duty corresponding to that debt is lower than EUR 10 000, the customs debt shall be deemed to have been incurred in the Member State where the finding was made.'

10 Article 135 of the Customs Code, headed 'Conveyance to the appropriate place', states in paragraph 1:

'The person who brings goods into the customs territory of the Union shall convey them without delay, by the route specified by the customs authorities and in accordance with their instructions, if any, to the customs office designated by the customs authorities, or to any other place designated or approved by those authorities, or into a free zone.'

11 Article 139 of the Customs Code, headed 'Presentation of goods to customs', provides in paragraph 1 that goods brought into the customs territory of the Union are to be presented to customs immediately after their arrival at the designated customs office or at any other place designated or approved by the customs authorities or in the free zone by, inter alia, the person who brought the goods into the customs territory of the Union.

### **German law**

12 According to Article 21(2) of the Umsatzsteuergesetz (Law on turnover tax) of 21 February 2005 (BGB1. 2005 I, p. 386), in the version applicable to the dispute in the main proceedings:

'The rules applicable to customs duties shall apply *mutatis mutandis* to import VAT, with the exception of the rules relating to inward processing under the drawback system and those relating to outward processing.'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

13 VS, who is resident in Germany, brought his passenger car from Turkey, where it was registered, into Germany, passing through Bulgaria, Serbia, Hungary and Austria. The importation of that vehicle was discovered in Germany during a police check on 26 February 2018. In March 2018, VS drove the vehicle back to Turkey and sold it there.

14 Following that check, the Principal Customs Office, Münster, taking the view that VS had failed to convey the vehicle to an import customs office and present it to customs, declared that VS was liable to import customs duties of EUR 1 589 and import VAT of EUR 3 021.01.

15 VS brought an appeal before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), the referring court, arguing that he had used the vehicle only for a short period of time and exclusively as a means of transport for private journeys. The vehicle should not, therefore, have been subject to import customs duties.

16 At the outset, the referring court points out that, contrary to what is implicitly suggested by VS in his appeal, he cannot use the customs procedure for temporary admission since he is resident in the territory of the Union.

17 The referring court considers that, by importing the vehicle at issue in the main proceedings into the territory of the Union, VS infringed certain customs law provisions, in particular Article 135(1) of the Customs Code relating to the obligation to convey goods to a customs office, and Article 139(1) of that code, concerning the obligation to present them to customs. A customs debt on import was therefore incurred, pursuant to Article 79(1)(a) of that code, in respect of which the applicant in the main proceedings is the debtor under Article 79(3)(a) of that code.

18 According to the referring court, it is common ground that, in accordance with Article 87(4) of the Customs Code, the customs debt was incurred in Germany. First, although the vehicle physically entered the territory of the Union through Bulgaria and should therefore have been conveyed and presented to customs in that Member State, it is the German authorities which established that the customs debt had been incurred. Secondly, the amount of the duty corresponding to that debt is lower than EUR 10 000.

19 In those circumstances, it remains to be determined whether Article 87(4) of the Customs Code can be applied by analogy to import VAT, which, if so, would mean that that tax should also be deemed to have been incurred in Germany.

20 In that regard, the referring court points out that, under the second subparagraph of Article 71(1) of the VAT Directive, where the goods in question are subject to customs duties, the chargeable event occurs and VAT becomes chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.

21 Accordingly, in the present case, since, under Article 79(1)(a) and Article 87(4) of the Customs Code, the customs debt in respect of the vehicle in the main proceedings was incurred in Germany, it could be concluded that the VAT debt was also incurred in Germany, even though the vehicle physically entered the territory of the Union via Bulgaria.

22 Moreover, according to the referring court, the other conditions necessary for a VAT debt to arise are met in the present case. The vehicle at issue in the main proceedings was used for several months in the territory of the Union without being placed under any customs procedure. Therefore, in accordance with the Court's case-law, it can be presumed from the non-compliance with the customs provisions that the vehicle entered the economic network of the Union and may therefore have undergone consumption.

23 However, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) has expressed doubts as to whether the rules laid down in Article 87(4) of the Customs Code can be applied by analogy to the incurrance of an import VAT debt. First, the competence to recover customs duty, excise duty and VAT must be analysed separately (see, to that effect, judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*

, C-26/18, EU:C:2019:579, paragraph 44). Secondly, Article 71 of the VAT Directive concerns only the issue of when the VAT is incurred and makes no reference to the criteria, set out by Articles 60 and 61 of that directive, for determining the place of importation.

24 In those circumstances, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the second subparagraph of Article 71(1) of [the VAT Directive] to be interpreted as meaning that Article 87(4) of [the Customs Code] can be applied by analogy to the incurrence of [a VAT debt] (import turnover tax)?'

### **Consideration of the question referred**

25 By its question, the referring court asks, in essence, whether the second subparagraph of Article 71(1) of the VAT Directive must be interpreted as meaning that import VAT on goods subject to customs duties may arise in the Member State in which it is established that there has been a failure to comply with an obligation imposed by EU customs legislation.

26 In that regard, it should be noted that, under Article 2(1)(d) of the VAT Directive, the importation of goods is subject to VAT and that, under the first paragraph of Article 30 of that directive, importation of goods means the entry into the Union of goods which are not in free circulation.

27 Several factors point to the existence of a link between import VAT and customs duties.

28 First, while, under Article 60 of the VAT Directive, the place of importation of goods is the Member State within whose territory the goods are located when they enter the Union, the second subparagraph of Article 71(1) of that directive provides that, where imported goods are subject to customs duties, the chargeable event occurs and VAT becomes chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.

29 Next, import VAT and customs duties display comparable essential features since they arise from the fact of importation of goods into the Union and the subsequent distribution of those goods through the economic channels of the Member States. That parallel nature is confirmed by the fact that the second subparagraph of Article 71(1) of the VAT Directive authorises Member States to link the chargeable event and the date on which the VAT on importation becomes chargeable with those laid down for customs duties (judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 41).

30 Lastly, in accordance with the Court's case-law, in addition to the customs debt, there may also be a requirement to pay VAT where, on the basis of the particular unlawful conduct which gave rise to the customs debt, it can be presumed that the goods entered the economic network of the Union and, consequently, that they may have undergone consumption, that is, the act on which VAT is levied (judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 44 and the case-law cited).

31 However, such a presumption may be rebutted if it is established that, despite failures to comply with customs legislation which result in the incurrence of a customs debt on importation in the Member State where those failures occurred, goods have been introduced into the economic network of the Union via the territory of another Member State, where they were intended for consumption. In that case, the chargeable event for VAT on importation occurs in that other Member State (judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*,

C-26/18, EU:C:2019:579, paragraph 48).

32 In that regard, it should be pointed out that, in the case giving rise to the judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung* (C-26/18, EU:C:2019:579), although the goods in question had been the subject of a failure to comply with customs legislation in Germany, they had only been transhipped from one aircraft to another in Germany, before being transported to Greece. It is in fact Greece that was the place of final destination and where those goods were consumed.

33 In those circumstances, the Court found that the goods in question had entered the economic network of the Union in the Member State of their final destination and that, consequently, the import VAT relating to those goods had arisen in that Member State (see, to the effect, judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 53).

34 In the present case, it is apparent from the information before the Court that, similar to the circumstances giving rise to the judgment of 10 July 2019 (*Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579), the vehicle at issue in the main proceedings physically entered the territory of the Union through Bulgaria, so that it was in that Member State that there was a failure to comply with the customs obligations.

35 Nevertheless, it is apparent from that information, which it is for the referring court to determine, that, even if, on its way from Turkey to Germany, the vehicle at issue first entered the customs territory of the Union in Bulgaria and, after transiting through the territory of a non-member country, namely Serbia, then re-entered the customs territory of the Union in Hungary, that vehicle was actually used in Germany, VS' Member State of residence. Accordingly, inasmuch as the vehicle entered the economic network of the Union in Germany, it is in that Member State that the import VAT was incurred.

36 In the light of all the foregoing, the answer to the question referred is that the second subparagraph of Article 71(1) of the VAT Directive must be interpreted as meaning that import VAT on goods subject to customs duties arises in the Member State in which it is established that an obligation imposed by EU customs legislation has not been complied with, where the goods in question, even if they have been physically introduced into the customs territory of the Union in another Member State, entered the economic network of the Union in the Member State where that finding was made.

### **Costs**

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

**The second subparagraph of Article 71(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that import VAT on goods subject to customs duties arises in the Member State in which it is established that an obligation imposed by EU customs legislation has not been complied with, where the goods in question, even if they have been physically introduced into the customs territory of the Union in another Member State, entered the economic network of the Union in the Member State where that finding was made.**

[Signatures]

\* Language of the case: German.