

Other parties to the proceedings: European Union Intellectual Property Office, Wallmax Srl

By order of 12 March 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 12 February 2020 — Wilo Salmson France SAS v Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București, and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Nerezidenți

(Case C-80/20)

(2020/C 279/23)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: Wilo Salmson France SAS

Defendants: Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București, and Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Nerezidenți

Questions referred

1. As regards the interpretation of **Article 167 of Directive 2006/112/EC, ⁽¹⁾ read in conjunction with Article 178 thereof**, is there a distinction between the moment the right of deduction arises and the moment it is exercised with regard to the way in which the system of VAT operates?

To that end, it is necessary to clarify whether the right to deduct VAT may be exercised where no (valid) tax invoice has been issued for purchases of goods.

2. As regards the interpretation of **Articles 167 and 178 of Directive 2006/112/EC, read in conjunction with the first sentence of Article 14(1)(a) of Directive 2008/9/EC, ⁽²⁾ what is the procedural point of reference for determining the lawfulness of the exercise of the right to a refund of VAT?**

To that end, it is necessary to clarify whether an application for a refund may be made in respect of VAT which became chargeable prior to the 'refund period' but which was invoiced during the refund period.

3. As regards the interpretation of **the first sentence of Article 14(1)(a) of Directive 2008/9/EC, read in conjunction with Article 167 and Article 178 of Directive 2006/112/EC**, what are the effects of the annulment of invoices and the issuing of new invoices in respect of purchases of goods made before the 'refund period' on the exercise of the right to a refund of the VAT relating to those purchases?

To that end, it is necessary to clarify whether, in the event of the annulment, by the supplier, of the invoices initially issued for the purchase of goods and the issuing of new invoices by that supplier at a later date, the exercise of the right of the recipient to apply for a refund of the VAT relating to the purchases is to be linked to the date of the new invoices, in a situation where the annulment of the initial invoices and the issuing of the new invoices is not within the recipient's control but is exclusively at the supplier's discretion.

4. May national legislation make the refund of VAT granted under [Directive 2008/9/EC] conditional upon the chargeability of the VAT in a situation where a corrected invoice is issued during the application period?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

⁽²⁾ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 12 February 2020 — SC Mitliv Exim SRL v Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

(Case C-81/20)

(2020/C 279/24)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: SC Mitliv Exim SRL

Defendants: Agenția Națională de Administrare Fiscală and Direcția Generală de Administrare a Marilor Contribuabili

Questions referred

1. Do Articles 2 and 273 of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax, ⁽¹⁾ Article 50 of the Charter of Fundamental Rights of the European Union and Article 325 TFEU, in circumstances such as those in the main proceedings, preclude national legislation, such as that at issue in the main proceedings, which permits the adoption or implementation of sanctioning measures in relation to a taxpayer who is a legal person, in both administrative and criminal proceedings which are conducted in parallel in relation to that taxpayer, for the same specific acts of tax evasion, in a situation where the penalty applied in the administrative proceedings may also be classified as a criminal penalty, in accordance with the criteria identified by the Court of Justice of the European Union in its case-law, and to what extent are all of those events, taken together, excessive with regard to the taxpayer concerned?
2. In the light of the answer to Question 1, should EU law be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits a State, through its tax authorities, to disregard, in administrative proceedings, in respect of the same specific acts of tax evasion, the sum already paid by way of criminal damages which at the same time also constitutes the sum covering the tax loss, thereby making that amount unavailable for a certain period, in order subsequently also to establish in respect of that taxpayer, in the administrative proceedings, ancillary tax obligations in respect of the debt which has already been cleared?

⁽¹⁾ OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Romania) lodged on 24 February 2020 — Siebenburgisches Nugat Srl, Hans Draser Internationales Marketing v Direcția Generală Regională a Finanțelor Publice Brașov, Agenția Națională de Administrare Fiscală — Direcția Generală a Vămirilor — Direcția Regională Vamală Brașov — Biroul Vamal de Interior Sibiu

(Case C-99/20)

(2020/C 279/25)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia