Reports of Cases

Case C‑563/12

BDV Hungary Trading Kft.
v
Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

(Request for a preliminary ruling from the Kúria)

(VAT — Directive 2006/112/EC — Article 146 — Exemptions on exportation — Article 131 — Conditions laid down by Member States — National legislation requiring that property intended to be exported leave the customs territory of the European Union within a fixed period of 90 days after supply)

Summary — Judgment of the Court (Fifth Chamber), 19 December 2013

Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Exemptions on exportation — Supplies of goods dispatched or transported outside the European Union — National legislation which makes the exemption subject to the completion of the transport operation outside of the European Union within a period of 90 days after supply — Unlawful

(Council Directive 2006/112, Arts 131 and 146(1))

Articles 146(1) and 131 of Directive 2006/112 on the common system of value added tax must be interpreted as precluding national legislation under which, in the context of a supply for export, goods intended to be exported from the European Union must have left the territory of the European Union within a fixed period of three months or 90 days following the date of supply, where merely exceeding that time-limit results in the definitive loss for the taxable person of the right to exemption in relation to that supply.

In that regard, the term ‘dispatched’ in Article 146(1)(b) means that the export of goods is effected and the exemption of the supply of goods for export becomes applicable when the right to dispose of the goods as owner has been transferred to the purchaser and the supplier establishes that those goods have been dispatched or transported outside the European Union and that, as a result of that dispatch or that transport, they have physically left the territory of the European Union. That article does not lay down a condition that the goods intended for export must have left the territory of the European Union within a specified period in order for the export exemption provided for in that article to be applicable.

However, the exemptions provided for in Chapters 2 to 9 of Title IX of that directive, which includes Article 146, apply in accordance with conditions which the Member States are to lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse. Furthermore, the Member States must respect the general principles of law that form part of the legal order of the European Union, including, in particular, the principles of legal certainty and proportionality and the principle of protection of legitimate expectations.

Therefore, Member States are entitled, in principle, to fix a reasonable time-limit for export in order to check whether goods supplied for export have in fact left the European Union. Imposing a specific time-limit on the vendor of goods intended for export, after which those goods must have left the customs territory of the European Union, is an appropriate measure for that purpose. However, such a time-limit, the expiry of which allows the supply of goods for export to be taxed, must not go beyond what is necessary for that purpose.

(see paras 24-29, 34-36, 42, operative part)