Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

25 June 2015*

(Reference for a preliminary ruling — Community Customs Code — Regulation (EEC) No 2913/92 — Articles 203 and 204 — Regulation (EEC) No 2454/93 — Article 859 — External transit procedure — Incurrence of a customs debt — Removal or not from customs supervision — Failure to perform an obligation — Late submission of the goods at the office of destination — Goods refused by the consignee and returned without having been submitted to the customs office — Goods again placed under the external transit procedure via a fresh declaration — Directive 2006/112/EC — Article 168(e) — Deduction of VAT on import by the carrier)

In Case C-187/14,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Østre Landsret (Denmark), made by decision of 4 April 2014, received at the Court on 16 April 2014, in the proceedings

Skatteministeriet

v

DSV Road A/S,

intervening party:

Danske Speditører,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— DSV Road A/S, by A. Hedetoft, advokat,

— Danske Speditører, by R. Køie, advokat,

— the Danish Government, by C. Thorning, acting as Agent, assisted by D. Auken, advokat,

* Language of the case: Danish.

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the Greek Government, by G. Skiani and M. Germani, acting as Agents,

— the European Commission, by C. Soulay and L. Grønfeldt, 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 interpretation of Articles 203(1) and 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1; 'the Customs Code'), Article 859 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007 (OJ 2007 L 62, p. 6; 'the Implementing Regulation'), and Article 168(e) 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 the Skatteministeriet (Ministry of Taxation and Excise) and DSV Road A/S ('DSV') concerning the payment of customs duties and value added tax (VAT) on goods which were transported under a number of external transit procedures.

Legal context

EU law

3 Article 37 of the Customs Code provides:

'1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and without prejudice to Article 82 (1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.'

4 Article 91(1) of that Code is worded as follows:

'1. The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

…'

5 Article 92 of that Code states:

‘1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.’

6 Article 96(1) of the Code provides:

‘1. The principal shall be the [holder of the procedure] under the external Community transit procedure. He shall be responsible for:

(a) presentation of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.’

7 Article 203 of the Customs Code provides:

‘1. A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

3. The debtors shall be:

— the person who removed the goods from customs supervision,

…’

8 Under Article 204(1) of that Code:

‘1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

…

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.’

9 Article 356 of the Implementing Regulation is worded as follows:

‘1. The office of departure shall set the time limit within which the goods must be presented at the office of destination, taking into account the itinerary, any current transport or other legislation, and, where appropriate, the details communicated by the principal.

…

3. Where the goods are produced at the office of destination after expiry of the time limit prescribed by the office of departure and where this failure to comply with the time limit is due to circumstances which are explained to the satisfaction of the office of destination and which are beyond the control of the carrier or the principal, the latter shall be deemed to have complied with the time limit prescribed.'

10 Article 859 of that regulation provides:

'The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204 (1) of the Code, provided:

— they do not constitute an attempt to remove the goods unlawfully from customs supervision,

— they do not imply obvious negligence on the part of the person concerned, and

— all the formalities necessary to regularise the situation of the goods are subsequently carried out:

…

(2) in the case of goods placed under a transit procedure, failure to fulfil one of the obligations entailed by the use of that procedure, where the following conditions are fulfilled:

(a) the goods entered for the procedure were actually presented intact at the office of destination;

(b) the office of destination has been able to ensure that the goods were assigned a customs-approved treatment or use or were placed in temporary storage at the end of the transit operation;

(c) where the time limit set under Article 356 has not been complied with and paragraph 3 of that Article does not apply, the goods have nevertheless been presented at the office of destination within a reasonable time;

…'

11 According to Article 168 of the VAT Directive:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

…

(e) the VAT due or paid in respect of the importation of goods into that Member State.'

12 Under Article 201 of that directive:

'On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation.'

Danish law

13 Paragraph 39(1) of the Law on Customs (toldloven), in the consolidated version codified by Law no 867 (Lovbekendtgørelse nr. 867) of 13 September 2005 ('the Customs Law), is worded as follows:

'The following persons shall pay duties and taxes on goods:

(1) a person who imports or causes to be imported into the Danish customs territory goods which are not in free circulation in the customs territory of the European Union;

…

(4) the driver or owner of the means of transport transporting bonded goods or conditionally duty-free and tax-exempt goods. The same applies to a person who possesses such a means of transport.'

14 Paragraph 37 of the VAT Law (Momsloven) provides that:

'An undertaking registered by virtue of Paragraphs 47, 49, 51 or 51a may, when calculating the input tax for the purpose of Paragraph 56(3), deduct the tax provided for by the present Law for purchases and other transactions carried out by the undertaking relating to goods and services exclusively used for the purposes of the undertaking's non-tax-exempt deliveries.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 On 23 April 2007 and 10 April 2008, DSV, a Danish transport and logistics undertaking, initiated, as the principal, two external Community transit procedures ('the transit procedures') for the transport of 148 and 703 packages, respectively, of electronic goods between the customs office of departure located in the free port of Copenhagen (Denmark) and the customs office of destination in Jönköping (Sweden). Without carrying out a physical check of the goods, the Danish customs office of departure authorities ordered their release with time-limits for their presentation at the customs office of destination until 31 August 2007 and 13 April 2008 respectively.

16 In both cases, DSV transported the goods to Jönköping, where, however, the consignee refused to accept the goods. Consequently, on 4 September 207 and 14 April 2008 respectively, DSV brought those goods back to the free port of Copenhagen without their having been presented to the Jönköping or Copenhagen free port customs offices and without the transit documents having been cancelled.

17 DSV argues that the same 148 and 703 packages of electronic goods were dispatched a second time to Jönköping on 13 September 2007 and 17 April 2008 respectively with other electronic goods. DSV had initiated a new transit procedure and a new transit document in respect of each of those deliveries, of a total of 573 and 939 packages of electronic goods respectively. Those second transit procedures were correctly discharged on 13 September 2007 and 23 April 2008 respectively. However, Skatteministeriet disputes the fact that the 148 and 703 packages of electronic goods covered by the first transit procedures were also included in the second transit procedures.

18 In respect of each of the first undischarged transit procedures, Den danske told- og skatteforvaltning (the Danish Tax and Customs Authority) demanded payment from DSV for customs duties under Article 203 of the Customs Code and, in the alternative, under Article 204 of that Code. In addition, Den danske told- og skatteforvaltning demanded payment of VAT on the import of the goods which were subject to those procedures, on the basis of Paragraph 39(1)(4) of the Customs Law, in the version codified by Law No 867 of 13 September 2005. It is apparent from the file before the Court

that DSV paid the VAT on import but that its right to deduct that VAT was refused. Since DSV contested those decisions, the case is presently pending before the Østre Landsret (Eastern Regional Court of Appeal).

19 In those circumstances, the Østre Landsret decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 203(1) of the Customs Code to be interpreted as meaning that there is removal from customs supervision in a situation such as that of the main proceedings, if it is assumed that (a) each of the two generated transits in 2007 and 2008 respectively concerned the same goods, or (b) it cannot be documented that they were the same goods?

(2) Is Article 204 of the Customs Code to be interpreted as meaning that customs debt arises in a situation such as that of the main proceedings, if it is assumed that (a) each of the two generated transits in 2007 and 2008 respectively concerned the same goods, or (b) it cannot be documented that they were the same goods?

(3) Is Article 859 of the [Implementing Regulation] to be interpreted as meaning that, in the circumstances of the main proceedings, there is an infringement of obligations which has had no significant effect on the proper course of the customs procedure, if it is assumed that (a) each of the two generated transits in 2007 and 2008 respectively concerned the same goods, or (b) it cannot be documented that they were the same goods?

(4) Can the first Member State into which the goods were imported refuse the taxable person designated by the Member State a deduction of the import VAT pursuant to Article 168(e) of the VAT Directive, where the import VAT is charged to a carrier of the goods in question who is not the importer and owner of the goods but has simply transported and been in charge of the customs dispatch of the consignment as part of its freight forwarding operations, which are subject to VAT?'

Consideration of the questions referred

The first question

20 By its first question, the referring court asks, in essence, whether Article 203(1) of the Customs Code must be interpreted as meaning that a customs debt is incurred on the basis of the sole fact that the goods placed under a transit procedure are, after an unsuccessful delivery attempt, brought back to the free port of departure without having been presented to either the customs office of destination or the customs of the free port.

21 The referring court asks that question in the light of two different factual situations, namely, firstly, where it is established that the same goods were subsequently transported again to their destination under a second correctly discharged transit procedure and, secondly, where it is not possible to establish that the goods covered by the first and second transit procedures are the same goods.

22 It should be noted at the outset that Articles 203 and 204 of the Customs Code have different spheres of application. Whilst the first provision covers conduct leading to the goods being removed from customs supervision, the second covers failure to fulfil obligations and non-compliance with the conditions of the various customs schemes which have no effect on customs supervision (judgment in *X*, C-480/12, EU:C:2014:329, paragraph 31).

23 It is clear from the wording of Article 204 of the Customs Code that it applies only to situations which do not fall within the scope of Article 203 of that code (judgment in *X*, C-480/12, EU:C:2014:329, paragraph 32).

24 It follows therefrom that, in order to determine which of those two articles forms the basis on which a customs debt on importation is incurred, it is necessary first of all to consider whether in the factual situation in question there was an unlawful removal from customs supervision within the terms of Article 203(1) of the Customs Code. Only if that question is answered in the negative is it possible that Article 204 of the Customs Code may apply (judgment in *X*, C-480/12, EU:C:2014:329, paragraph 33).

25 With regard more particularly to the concept of removal from customs supervision provided for in Article 203(1) of the Customs Code, it must be borne in mind, in accordance with the Court's case-law, that that concept is to be interpreted as covering any act or omission the result of which is to prevent the competent customs authority, if only for a short time, from gaining access to goods under customs supervision and from carrying out the monitoring required under Article 37(1) of the Customs Code (judgment in *X*, C-480/12, EU:C:2014:329, paragraph 34).

26 In the present case, with regard, firstly, to the situation where it cannot be established that the goods transported under the first and second transit procedures are the same goods, it must be noted that the conditions for a customs debt to be incurred on the basis of Article 203(1) of the Customs Code are met. In that situation, it is not established that the goods were presented to the customs office of destination, as required under Article 96(1)(a) of the Customs Code. In such a situation, the competent customs authority is prevented from establishing, in accordance with Article 92(2) of the Customs Code, that the transit procedure was correctly discharged.

27 Secondly, in the situation where it is established that the goods transported under the first and second transit procedures are the same, those goods have effectively been presented to the customs office of destination as part of their second dispatch. With regard to that situation, it is appropriate to note that a failure to present those goods to the Jönköping customs office as part of their first dispatch and to present them to the customs office of the free port of Copenhagen after their return, their placement under the second transit procedure and the delay in their presentation to the customs office of destination are not facts which are sufficient, as such, to constitute removal from customs supervision.

28 In the absence of closure of the first transit procedure and the change in the customs destination and customs procedure of the goods in question, those goods remained under the first transit procedure at the time of their return and placing in the free port of Copenhagen. As the European Commission has noted, under a transit procedure, customs supervision is, naturally, carried out at a distance. It covers goods which are not in a particular place but which are transported from one place to another, without the customs authorities being able to ascertain their exact location at every point in the transport.

29 That supervision at a distance is not hindered by the mere fact of an omission to present the goods in question at the customs offices of destination or of a free port, if all other conditions connected with the transit procedure are met. In such a situation, the goods in question, despite that omission, remain in transport under an authorised transit procedure accompanied by the corresponding transit documents, so that the customs authorities are still able to access those goods and check them.

30 The placing of the goods in question under the second transit procedure, with the consequence that the presentation of those goods at the customs office of destination was finally made not under the first but under only the second transit procedure, is not sufficient either to be regarded as a removal from customs supervision. In fact, after the goods had been placed under the second transit procedure, they were still under customs supervision, the only change being that that supervision no longer took place as part of the first transit procedure but as part of the second.

31 Nor can the fact that DSV finally presented the goods at the customs office of destination outside the time-limit for presentation set under the first transit procedure be regarded as meaning that the goods were removed from customs supervision. The Court has previously held that merely exceeding the time-limit for presentation of the goods in question set under Article 356(1) of the Implementing Regulation does not lead to a customs debt being incurred for removal from customs supervision within the meaning of that article (see, to that effect, judgment in *X*, C-480/12, EU:C:2014:329, paragraph 45).

32 Having regard to the foregoing considerations, the answer to the first question is that Article 203 of the Customs Code must be interpreted as meaning that a customs debt is not incurred on the basis of the sole fact that the goods placed under a transit procedure are, after an unsuccessful delivery attempt, brought back to the free port of departure without having been presented to either the customs office of destination or the customs of the free port if it is established that the same goods were subsequently transported again to their destination under a second correctly discharged transit procedure. However, if it is not possible to establish that the goods covered by the first and second transit procedures are the same goods, a customs debt is incurred under that provision.

The second and third questions

33 Having regard to the answer given to the first question, there is a need to answer the second and third questions only if it can be established that the goods transported under the first and second transit procedures are the same goods.

34 Although it is true that, in those circumstances, DSV presented those goods to the customs office of destination under the second transit procedure, the fact remains that that presentation was made outside the time-limit for presentation set under the first transit procedure. The nature of the situation is therefore that the goods placed under a first transit procedure were presented to the customs office of destination only late and under a second transit procedure.

35 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 204 of the Customs Code, read in conjunction with Article 859 of the Implementing Regulation, must be interpreted as meaning that the late presentation at the customs office of destination under a second transit procedure of goods placed under a first transit procedure constitutes an omission which leads to a customs debt being incurred.

36 Firstly, as regards whether, in such a situation, the condition for a customs debt to be incurred on the basis of Article 204(1)(a) of the Customs Code, that is to say, failing to perform one of the obligations under the transit procedure, is met, the Court has previously held that exceeding the time-limit for presentation, set under Article 356(1) of the Implementing Regulation, leads to a customs debt being incurred on the basis of Article 204 of the Customs Code (see, to that effect, judgment in *X*, C-480/12, EU:C:2014:329, paragraph 45). Accordingly, in principle, that condition is met in the main proceedings.

37 That conclusion is not called into question by the judgment in *DSV Road* (C-234/09, EU:C:2010:435), relied on to that effect by DSV. In that judgment, the Court considered, in essence, that Article 204 of the Customs Code did not apply to a situation where an authorised consignor had, by mistake, generated two external transit procedures for one and the same consignment of goods. The reasoning adopted in that judgment cannot be transposed to the main proceedings, given that the facts underlying the two cases are substantially different.

38 Firstly, unlike the facts at issue in the case which gave rise to the judgment in *DSV Road* (C-234/09, EU:C:2010:435), it follows from the order for reference that, in the main proceedings, the dispatches in question were not made by DSV as authorised consignor. Secondly, in the case which gave rise to

the judgment in *DSV Road* (C-234/09, EU:C:2010:435), the goods at issue were never transported under the first transit procedure while, in the main proceedings, the goods in question were not only transported to their destination and returned to their departure point, but also deposited in a free port under the first transit procedure.

39 However, Article 356(3) of the Implementing Regulation provides that, where the goods are produced at the office of destination after expiry of the time-limit prescribed by the office of departure and where this failure to comply with the time-limit is due to circumstances which are explained to the satisfaction of the office of destination and which are beyond the control of the carrier or the principal, the latter is to be deemed to have complied with the time-limit prescribed. It is for the referring court to ascertain whether those conditions are satisfied in the present case.

40 Secondly, as regards whether the negative conditions laid down in Article 204 of the Customs Code, which excludes a customs debt being incurred where the 'failures have no significant effect on the correct operation of the temporary storage or customs procedure in question' is satisfied, it must be borne in mind that Article 859 of the Implementing Regulation gives an exhaustive list of the situations likely to satisfy that condition (see, to that effect, judgment in *Söhl & Söhlke* (C-48/98, EU:C:1999:548, paragraph 43).

41 In the present case, it is apparent from the order for reference and the written observations of the parties to the main proceedings that what is particularly at issue in the main proceedings are the conditions laid down in the second and third indents of Article 859 of the Implementing Regulation and in point 2(a) and (c) of that article.

42 As regards, firstly, the third indent and point 2(a) of Article 859 of that regulation, those provisions require all the formalities necessary to regularise the situation of the goods to be subsequently carried out and the goods entered for the procedure to have actually been presented intact at the office of destination.

43 The Danish Government submits, in essence, that those conditions are not satisfied in the main proceedings, since the goods at issue were not presented initially and were mixed with other goods before a new transit procedure was initiated.

44 It is appropriate to hold that, if it is established that the goods transported under the first and second transit procedures are the same and the second procedure was correctly discharged, those conditions are satisfied. In the first place, the mere fact that the first transit procedure was not correctly discharged is irrelevant to the answer to whether the necessary formalities to regularise the situation of the goods were subsequently completed. In the second, in that situation, the goods under consideration were actually presented intact to the office of destination.

45 Secondly, Article 859(2)(c) of the Implementing Regulation requires, when the time-limit set under Article 356 of that regulation has been exceeded and paragraph (3) thereof does not apply, the goods none the less to be presented to the office of destination within a reasonable period. It is for the referring court to assess whether those conditions are satisfied in the main proceedings.

46 With regard, thirdly, to the second indent of Article 859 of the Implementing Regulation, which lays down the condition that the failures under consideration must not imply obvious negligence by the person concerned, it is apparent from the case-law of the Court that the concept of 'obvious negligence' must be assessed taking account in particular of the complexity of the provisions non-compliance with which has resulted in the customs debt being incurred, and the professional experience of, and care taken by, the trader (see, to that effect, judgment in *Söhl & Söhlke*, C-48/98, EU:C:1999:548, paragraphs 50 and 56). It is for the referring court to assess, on the basis of those criteria and having regard to the facts of the main proceedings, whether or not there is obvious negligence on the part of DSV.

47 Having regard to all the foregoing considerations, the answer to the second and third questions is that Article 204 of the Customs Code, read in conjunction with Article 859 of the Implementing Regulation, must be interpreted as meaning that the late presentation at the customs office of destination under a second transit procedure of goods placed under a first transit procedure constitutes an omission which leads to a customs debt being incurred, unless the conditions laid down in Article 356(3) or the second indent of Article 859 and point 2(c) thereof of that regulation are satisfied, which it is for the referring court to ascertain.

The fourth question

48 By its fourth question, the referring court asks, in essence, whether Article 168(e) of the VAT Directive must be interpreted as precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay.

49 In that regard, it must be noted that, under the wording of Article 168(e) of the VAT Directive, a right to deduct exists only in so far as the goods imported are used for the purposes of the taxed transactions of a taxable person. In accordance with the settled case-law of the Court concerning the right to deduct VAT on the acquisition of goods or services, that condition is satisfied only where the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities (see judgments in *SKF*, C-29/08, EU:C:2009:665, paragraph 60, and *Eon Aset Menidjmunt*, C-118/11, EU:C:2012:97, paragraph 48).

50 Since the value of the goods transported does not form part of the costs making up the prices invoiced by a transporter whose activity is limited to transporting those goods for consideration, the conditions for application of Article 168(e) of the VAT Directive are not satisfied in the present case.

51 It follows from all the foregoing considerations that the answer to the fourth question is that Article 168(e) of the VAT Directive must be interpreted as not precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay.

Costs

52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fifth Chamber) hereby rules:

1. **Article 203 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 must be interpreted as meaning that a customs debt is not incurred on the basis of the sole fact that the goods placed under an External Community transit procedure are, after an unsuccessful delivery attempt, brought back to the free port of departure without having been presented to either the customs office of destination or the customs of the free port if it is established that the same goods were subsequently transported again to their destination under a second correctly discharged External**

Community transit procedure. However, if it is not possible to establish that the goods covered by the first and second External Community transit procedures are the same goods, a customs debt is incurred under that provision.

2. **Article 204 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, read in conjunction with Article 859 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007, must be interpreted as meaning that the late presentation at the customs office of destination under a second External Community transit procedure of goods placed under a first External Community transit procedure constitutes an omission which leads to a customs debt being incurred, unless the conditions laid down in Article 356(3) or the second indent of Article 859 and point 2(c) thereof of that regulation are satisfied, which it is for the referring court to ascertain.**

3. **Article 168(e) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay.**

[Signatures]