Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 November 2012*

(Sixth VAT Directive — Applicability — Community customs code — Goods from a non-member State placed under the customs warehousing procedure in the territory of a Member State — Processing of the goods under inward processing arrangements in the form of a system of suspension — Goods sold and placed once again under the customs warehousing procedure — Goods kept in the same customs warehouse during all the transactions — Supply of goods effected for consideration in national territory — Chargeable event for VAT)

In Case C-165/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Slovakia), made by decision of 22 March 2011, received at the Court on 4 April 2011, in the proceedings

Daňové riaditeľstvo Slovenskej republiky

v

Profitube spol. s r.o.,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits and J.-J. Kasel and M. Safjan (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— Daňové riaditeľstvo Slovenskej republiky, by V. Paňko, acting as Agent,

— Profitube spol. s r.o., by M. Čižmárik, advokát,

— the Slovak Government, by B. Ricziová, acting as Agent,

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

— European Commission, by L. Lozano Palacios and P. Pecho, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2012,

* Language of the case: Slovak.

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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 European Parliament and Council Regulation (EC) No 648/2005 of 13 April 2005 (OJ 2005 L 117, p. 13; 'the customs code') and of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 2004/66/EC of 26 April 2004 (OJ 2004 L 168, p. 35; 'the Sixth Directive').

2 The reference was submitted in the context of a dispute between the Daňové riaditeľstvo Slovenskej republiky (Tax Directorate of the Slovak Republic; 'the Daňové riaditeľstvo') and Profitube spol. s r.o. ('Profitube'), a company established in Košice (Slovakia), concerning the payment of value added tax ('VAT') in respect of the sale of goods originating in a non-member State and placed in a customs warehouse situated in the territory of the Slovak Republic, successively under the arrangements of customs warehousing and inward processing in the form of a system of suspension.

Legal context

EU law

The customs code

3 The customs code was repealed and replaced by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1). However, given the date of the facts of the dispute in the main proceedings, the latter remains governed by the customs code.

4 Article 3 of the customs code stated:

'1. The customs territory of the Community shall comprise:

...

— the territory of the Slovak Republic,

...

3. The customs territory of the Community shall include the territorial waters, the inland maritime waters and the airspace of the Member States, and the territories referred to in paragraph 2, except for the territorial waters, the inland maritime waters and the airspace of those territories which are not part of the customs territory of the Community pursuant to paragraph 1.'

5 Article 84(1) of the customs code read:

‘In Articles 85 to 90:

(a) where the term “procedure” is used, it is understood as applying, in the case of non-Community goods, to the following arrangements:

...

— customs warehousing;

— inward processing in the form of a system of suspension;

...’

6 Article 98(1) and (2) of the customs code provided:

‘1. The customs warehousing procedure shall allow the storage in a customs warehouse of:

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

...

2. “Customs warehouse” means any place approved by and under the supervision of the customs authorities where goods may be stored under the conditions laid down.’

7 Article 99, first and second subparagraphs, of the customs code provided:

‘A customs warehouse may be either a public warehouse or a private warehouse.

— “Public warehouse” means a customs warehouse available for use by any person for the warehousing of goods;

— “Private warehouse” means a customs warehouse reserved for the warehousing of goods by the warehousekeeper.’

8 Article 114(1) and (2)(a) of the customs code provided:

‘1. Without prejudice to Article 115, the inward processing procedure shall allow the following goods to be used in the customs territory of the Community in one or more processing operations:

(a) non-Community goods intended for re-export from the customs territory of the Community in the form of compensating products, without such goods being subject to import duties or commercial policy measures;

...

2. The following expressions shall have the following meanings:

(a) suspension system: the inward processing relief arrangements as provided for in paragraph 1 (a).’

The Sixth Directive

9 The Sixth Directive was repealed and replaced by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). However, given the date of the facts of the dispute in the main proceedings, the latter remains governed by the Sixth Directive.

10 Article 2 of the Sixth Directive provided:

'The following shall be subject to [VAT]:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

11 Article 3(1) to (3) of the Sixth Directive provided:

'1. For the purposes of this Directive:

— "territory of a Member State" shall mean the territory of the country as defined in respect of each Member State in paragraphs 2 and 3;

— "Community" and "territory of the Community" shall mean the territory of the Member States as defined in respect of each Member State in paragraphs 2 and 3;

— "third territory" and "third country" shall mean any territory other than those defined in paragraphs 2 and 3 as the territory of a Member State.

2. For the purposes of this Directive, the "territory of the country" shall be the area of application of the [EC Treaty] as defined in respect of each Member State in Article [299 EC].

3. The following territories of individual Member States shall be excluded from the territory of the country:

— Federal Republic of Germany:

the Island of Heligoland,

the territory of Büsingen,

— Kingdom of Spain:

Ceuta,

Melilla,

— Republic of Italy:

Livigno,

Campione d'Italia,

the Italian waters of Lake Lugano.

The following territories of individual Member States shall be excluded from the territory of the country:

— Kingdom of Spain:

the Canary Islands,

— French Republic:

the overseas departments,

— Hellenic Republic:

Άγιο Όπος.'

12 According to Article 5(1) of the Sixth Directive, '[s]upply of goods' shall mean the transfer of the right to dispose of tangible property as owner.

13 Article 7(1) to (3), first subparagraph, of the Sixth Directive provided:

'1. Importation of goods' shall mean:

(a) the entry into the Community of goods which do not fulfil the conditions laid down in Articles [23 EC and 24 EC] or, where the goods are covered by the Treaty establishing the [ECSC Treaty], are not in free circulation;

(b) the entry into the Community of goods from a third territory, other than the goods covered by (a).

2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.

3. Notwithstanding paragraph 2, where goods referred to in paragraph 1(a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d), under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements.'

14 According to Article 10(1) to (3), first subparagraph, of the Sixth Directive:

'1. ...

(a) "Chargeable event" shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled;

(b) The tax becomes "chargeable" when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.

2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed.

...

3. The chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7(3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by those arrangements.'

15 In its version arising from Article 28c(E)(1) of the Sixth Directive, Article 16 of the latter, headed 'Special exemptions linked to international goods traffic', provided:

'1. Without prejudice to other Community tax provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to exempt all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of [VAT] due on cessation of the arrangements on situations referred to at A to E corresponds to the amount of tax which would have been due had each of these transactions been taxed within the territory of the country:

...

B. supplies of goods which are intended to be:

...

(c) placed under customs warehousing arrangements or inward processing arrangements;

...

The places referred to in (a), (b), (c) and (d) shall be as defined by the Community customs provisions in force.

...

D. supplies of goods and of services carried out:

(a) in the places listed in B(a), (b), (c) and (d) and still subject to one of the situations specified therein;

(b) in the places listed in B(e) and still subject, within the territory of the country, to the situation specified therein.

Where they exercise the option provided for in (a) for transactions effected in customs warehouses, Member States shall take the measures necessary to ensure that they have defined warehousing arrangements other than customs warehousing which permit the provisions in (b) to be applied to the same transactions concerning goods listed in Annex J which are effected in such warehouses other than customs warehouses.

...'

National law

16 According to Article 46(1) of the Constitution of the Slovak Republic, any person may claim his rights, in accordance with the law, before an independent and impartial tribunal.

17 Law No 222/2004 of 6 April 2004 on value added tax (No 1/2004 Z. z), in the version applicable to the dispute in the main proceedings ('the law on VAT'), is designed to transpose the Sixth Directive into Slovak law.

18 Article 2(1)(a) of that law provides that the supply of goods for consideration in national territory by a taxable person is subject to VAT.

19 Article 2(2)(a) of the same law states that, for VAT purposes, 'national territory' means that of the Slovak Republic.

20 Article 8(1)(a) of the law on VAT provides that 'supply of goods' is to be understood as the supply of a chattel which involves a modification of property rights.

21 According to Article 12 of that law, 'importation of goods' means the introduction of goods from the territory of non-member States into the territory of the European Union and, in the case of the importation of goods into national territory, the provisions of the customs regulations apply save where that law provides otherwise.

22 According to Article 13(1)(a) of the same law, the place of supply of goods, if the supply is linked to a delivery or transport of goods, is the place where the item is situated at the time of the departure of the delivery or transport towards the acquirer, subject to the exception referred to in Article 13(1)(b), Article 13(2) and Article 14 of that law.

23 Article 18(2) of the law on VAT provides that if imported goods, on their introduction to Union territory, are in temporary storage or placed in a customs-free area or customs-free warehouse, or are placed under the customs warehousing procedure, the inward processing procedure, under arrangements for temporary importation with total exemption from import duty or where they are admitted on the territorial sea, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements.

24 Article 19(1) of that law provides that VAT becomes chargeable on the day of delivery of the goods, that day being the day on which the acquirer acquires the right to dispose of the goods as owner.

25 Article 69(1) of the same law provides that the taxable person who supplies goods or provides services in national territory is liable to VAT.

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

26 It is apparent from the order for reference and the observations submitted to the Court that the Daňový úrad pre vybrané daňové subjekty (Tax administration for certain taxpayers; 'the Daňový úrad') carried out a VAT audit for Profitube for the months of July, August, September and October 2005 and January, February, April, May and December 2006.

27 That tax audit revealed that, during the period under inspection, the company SSIM a.s., established in Košice, brought in from Ukraine semi-finished steel goods, namely hot-rolled coils, which it sold to Profitube. Those coils, stored in a public customs warehouse used by the latter and situated in the territory of the Slovak Republic, were placed under the customs warehousing procedure, within the meaning of Article 98 of the customs code.

28 The hot-rolled coils were then placed under inward processing arrangements in the form of a system of suspension, within the meaning of Article 114 of the customs code, to be processed into steel sections.

29 Profitube sold those steel sections ('the goods at issue') to the company Mercurius s r.o., established in Košice and registered for VAT ('the sale at issue'). The goods at issue were again placed under the customs warehousing procedure. Profitube took the view that the sale at issue was not subject to VAT.

30 During all those transactions carried out during the tax years 2005 and 2006, the goods at issue remained in the same public customs warehouse.

31 By decisions of 27 June 2006, the Daňový úrad ruled that, by not paying VAT on the sale at issue, Profitube had infringed Article 69(1) of the law on VAT, read in combination with Articles 2(1)(a), 2(2)(a), 8(1)(a), 13(1)(a) and 19(1) of that law.

32 In that regard, the Daňový úrad took the view that, by the sale of goods stored in a public customs warehouse situated in the territory of the Slovak Republic, Profitube had made a supply of goods which, pursuant to Article 2(1)(a) of the law on VAT, was subject to the tax.

33 By decisions of 25 October 2007, the Daňové riaditeľstvo confirmed the decisions of the Daňový úrad.

34 By judgment of 23 July 2008, the Krajský súd v Bratislave (Regional Court, Bratislava) upheld the action brought by Profitube against the decisions of the Daňové riaditeľstvo and referred the matter back to the latter. The Krajský súd v Bratislave took the view, in particular, that goods from a non-member country had to be placed in free circulation to be subject to VAT.

35 The Daňové riaditeľstvo having appealed against that judgment, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), by judgment of 20 October 2009, varied the judgment of the Krajský súd v Bratislave by holding that a customs warehouse situated in the territory of a Member State legally forms part of that territory. The Daňové riaditeľstvo was therefore right to hold that the sale at issue constituted a supply of goods for consideration in national territory, for the purposes of Article 2(1)(a) of the law on VAT. Moreover, the goods at issue had not been the subject on an importation, within the meaning of Article 12 of that law.

36 Profitube lodged an appeal against the judgment of the Najvyšší súd Slovenskej republiky before the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic). By judgment of 27 October 2010, the latter court annulled the judgment of the Najvyšší súd Slovenskej republiky and referred the matter back before the latter for a fresh ruling.

37 The Ústavný súd Slovenskej republiky took the view that the Najvyšší súd Slovenskej republiky had infringed Profitube's fundamental right to legal protection, for the purposes of Article 46(1) of the Constitution of the Slovak Republic, and its right to a fair trial, within the meaning of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950. The Ústavný súd Slovenskej republiky took the view, in particular, that the Najvyšší súd Slovenskej republiky had not examined the question of the application of Article 12 of the law on VAT, according to which, in the case of an importation, customs rules must take priority over that law.

38 In those circumstances, the Najvyšší súd Slovenskej republiky decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In a situation where, in 2005 and 2006, goods from a non-Member State of the European Union (Ukraine) were placed in a public customs warehouse in the territory of a Member State of the European Union by an importer from that Member State, were subsequently processed in an inward processing suspension procedure in that customs warehouse, and the resulting product was not immediately exported within the meaning of Article 114 of Regulation No 2913/92 but instead was sold in that same warehouse by the processor of the goods to another company from

that Member State, which did not to release it from the customs warehouse for free circulation, but subsequently returned it to the customs warehousing procedure, is the said sale of goods within the same customs warehouse still subject solely to Community customs rules, or has the legal situation been changed by the said sale to the extent that the transaction is now subject to the system under the [Sixth Directive], i.e. is it possible, for the purpose of the system of [VAT] under the Sixth Directive, to regard a public customs warehouse located in the territory of a Member State as part of the territory of the Community, or the territory of that Member State, in accordance with the definitions provided in Article 3 of the Sixth Directive?

(2) In the light of the doctrine of abuse of rights developed by the Court of Justice of the European Union and concerning the application of the Sixth Directive [Case C-255/02 *Halifax and Others* [2006] ECR I-1609], is it possible to treat the above as a situation where the applicant, by selling goods in a public customs warehouse located in the territory of the Slovak Republic, has already made supply for consideration in the Slovak Republic?

(3) If the reply to the first question is in the affirmative, in that the transaction in question is now subject to the system under the Sixth Directive, is that transaction then a chargeable event:

(a) under Article 10(1) and (2) of the Sixth Directive, with the tax becoming chargeable as a result of the delivery of the goods in the customs warehouse located in the territory of the Slovak Republic; or

(b) on the ground that, after the goods were imported from a third country (Article 10(3) of the Sixth Directive), the customs procedure ended while the goods were held in storage in that customs warehouse upon sale thereof to another person from the Member State?

(4) Are the objectives of the Sixth Directive as expressed in the preamble thereof, or the objectives [of the General Agreement on Tariffs and Trade 1994 (GATT)] [Agreement appearing in Annex 1A of the Agreement establishing the World Trade Organization (WTO) approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1) fulfilled if the sale of goods imported from a third country to a customs warehouse and then processed therein and sold to another person from that Member State in the customs warehouse in the territory of the Member State of the European Community is not subject to [VAT] in that Member State?'

The questions referred for a preliminary ruling

The first and third questions

39 By its first and third questions, which it will be convenient to examine together, the national court asks, in essence, whether, when goods from a non-member country are placed under the customs warehousing procedure in a Member State, and are then processed under inward processing arrangements in the form of a system of suspension and have subsequently been sold and placed once again under the customs warehousing procedure, remaining throughout the whole of those transactions in the same customs warehouse situated in the territory of that Member State, the sale of such goods is subject to VAT and, if so, what is the chargeable event.

40 As a preliminary observation, it should be noted that, under Article 2 of the Sixth Directive, VAT is charged on the importation of goods and the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such.

41 It needs to be verified, first, whether goods such as those at issue in the main proceedings have been subject to importation within the meaning of Article 2(2) of the Sixth Directive.

42 According to Article 7(1)(a) of the Sixth Directive, 'importation of goods' means the entry into the Community of goods which do not fulfil the conditions laid down in Articles 23 EC and 24 EC.

43 Article 7(3) of the Sixth Directive provides that, where such goods are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d) of that directive, their importation is effected in the Member State within the territory of which they cease to be covered by those arrangements.

44 In this case, the goods in question, coming from a non-member country, were placed under the customs warehousing procedure of a Member State, then under inward processing arrangements in the form of a system of suspension, and were sold before being once again placed under the customs warehousing procedure of that same Member State.

45 Consequently, those goods have been placed since their entry into the Community under the two arrangements referred to in Article 16(1)(B)(c) of the Sixth Directive.

46 Since the goods at issue had not yet left those arrangements at the date of the sale at issue, even though they had been physically introduced into the territory of the Union, they cannot have been the subject-matter of an 'importation' within the meaning of Article 2(2) of the Sixth Directive (see, to that effect, Case C-305/03 *Commission* v *United Kingdom* [2006] ECR I-1213, paragraph 41).

47 In that respect, the fact that those goods changed customs arrangement does not confer on them the status of imported goods, the two customs arrangements concerned being referred to in Article 7(3) of the Sixth Directive.

48 Consequently, in the absence of importation at the date of the facts of the dispute in the main proceedings, the goods at issue were not subject to VAT under Article 2(2) of the Sixth Directive.

49 In those circumstances, it needs to be examined, secondly, whether the sale of goods such as those at issue in the main proceedings constitutes a supply of goods effected for consideration within the territory of the country by a taxable person acting as such, within the meaning of Article 2(1) of the Sixth Directive.

50 In that respect, first, it should be noted that, according to Article 5(1) of the Sixth Directive, 'supply of goods' means the transfer of the right to dispose of tangible property as owner. The case-law of the Court of Justice states that that term covers any transfer of tangible property by one party who empowers the other party actually to dispose of it as if he were the owner of the property (see, in particular, Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285, paragraph 7; Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09 *Bog and Others* [2011] ECR I-1457, paragraph 59).

51 Second, a supply of goods or services 'for consideration', within the meaning of Article 2(1) of the Sixth Directive, presupposes the existence of a direct link between the goods or service provided and the consideration received (Case 102/86 *Apple and Pear Development Council* [1988] ECR 1443, paragraph 12; Case C-53/09 and C-55/09 *Loyalty Management UK and Baxi Group* [2010] ECR I-9187, paragraph 51).

52 Third, the supply of goods must be effected by a 'taxable person acting as such'. A taxable person acts in that capacity where he carries out transactions in the course of his taxable activity (Case C-587/10 *VSTR* [2012] ECR, paragraph 49). In this case, it is apparent from the order for reference that Profitube is a taxable person registered for VAT.

53 It follows that a sale such as that at issue constitutes a supply of goods effected for consideration by a taxable person acting as such. In the case at issue in the main proceedings, the place of supply was the place where the goods were located at the date of that sale, namely the public customs warehouse used by Profitube, situated in Slovak territory.

54 Fourth, the referring court asks, more particularly, whether a customs warehouse situated in the territory of a Member State is located 'within the territory of the country' within the meaning of Article 2(1) of the Sixth Directive.

55 In that regard, it should be recalled that, according to Article 3(2) of the Sixth Directive, 'within the territory of the country' corresponds to the territorial scope of the EC Treaty, as defined, for each Member State, in Article 299 EC.

56 Article 299 EC lists, in paragraph 1, the Member States to which the Treaty is to apply, while providing, in the following paragraphs, special provisions for certain specific territories.

57 Article 3(3) of the Sixth Directive expressly excludes certain national territories from the scope of that directive.

58 In this case, none of the provisions mentioned in paragraphs 56 and 57 of this judgment or any other provision of the Sixth Directive provides that customs warehouses, be they public or private, are not 'within the territory of the country' if they are situated in the territory of a Member State, as specified by Article 3(1) of the Sixth Directive. The customs code, with regard to its scope, does not establish a special status for customs warehouses.

59 Consequently, for the purposes of Article 2(1) of the Sixth Directive, a customs warehouse is 'within the territory of the country' where it is situated in the territory of a Member State.

60 Moreover, it should be noted that Article 2(1) of the Sixth Directive does not make any distinction according to whether a supply concerns Community goods or not. Therefore, contrary to what Profitube maintains in its written pleadings, the fact that the goods in question have not given rise to an importation did not, in itself, exclude the existence of a supply in the territory of a Member State.

61 Having regard to the foregoing, it must be held that, in principle, a sale such as that at issue is subject to VAT under Article 2(1) of the Sixth Directive, the chargeable event taking place at the date on which the supply of goods is effected, in accordance with Article 10(2) of that directive.

62 However, Article 16(1) of the Sixth Directive, with regard to the arrangements referred to in (B) and (D) of that paragraph, provides that Member States may exempt from VAT supplies of goods intended to be placed under a customs warehousing procedure or inward processing arrangements, or supplies carried out at the places listed in (B), (a) to (d), where one of those situations is maintained, provided those transactions are not aimed at final use and/or consumption and that the amount of VAT due on cessation of the arrangement corresponds to the amount of tax which would have been due had each of those transactions been taxed within the territory of the country.

63 Member States may therefore exempt certain transactions carried out within the country in respect of goods placed under the arrangements or situations referred to in Article 16(1), (B) and (D), including the customs warehousing procedure, inward processing arrangements and transactions carried out in a customs warehouse (see, to that effect, *Commission* v *United Kingdom*, paragraph 40).

64 As the Advocate General has pointed out in points 29 and 30 of his Opinion, Article 16(1) of the Sixth Directive clearly confirms the interpretation that, in principle, a supply of goods placed under a suspensory customs arrangement, effected for consideration by a taxable person in a customs warehouse situated in the territory of a Member State, is subject to VAT under Article 2(1) of the Sixth Directive.

65 In this case, as the applicant in the main proceedings, the Member States who have submitted written observations and the European Commission have maintained, the sale at issue is subject to VAT, unless the Slovak Republic has used the facility opened to it under Article 16(1) of the Sixth Directive to exempt that sale from VAT.

66 It is for the national court to verify whether the Slovak Republic has made use of that facility.

67 Therefore, the answer to the first and third questions is that, where goods from a non-member State have been placed under the customs warehousing procedure in a Member State, and have then been processed under inward processing arrangements in the form of a system of suspension and subsequently sold and placed once again under the customs warehousing procedure, remaining throughout all those transactions in the same customs warehouse situated in the territory of that Member State, the sale of such goods is subject to VAT under Article 2(1) of the Sixth Directive, unless the said Member State has made use of the facility opened to it to exempt that sale from the tax under Article 16(1) of that directive, which it is for the national court to verify.

The second and fourth questions

68 Having regard to the answer given to the first and third questions, there is no need to answer the second and fourth questions referred by the national court.

Costs

69 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 (First Chamber) hereby rules:

Where goods from a non-member State have been placed under the customs warehousing procedure in a Member State, and have then been processed under inward processing arrangements in the form of a system of suspension and subsequently sold and placed once again under the customs warehousing procedure, remaining throughout all those transactions in the same customs warehouse situated in the territory of that Member State, the sale of such goods is subject to value added tax under Article 2(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2004/66/EC of 26 April 2004, unless the said Member State has made use of the facility opened to it to exempt that sale from the tax under Article 16(1) of that directive, which it is for the national court to verify.

[Signatures]