



Customs Flash Belgium

CJEU ruling clarifies when customs debt and import VAT occur

The European Court of Justice ("CJEU") published a Court ruling on 2 June 2016 (C-226/14, C-228/14) regarding the joint cases "Eurogate Distribution GmbH" and "DHL Hub Leipzig GmbH" (Eurogate/DHL). The ruling relates to import-VAT with respect to a customs debt incurrence following the non-fulfilment of customs procedure obligations.

Introduction

Certain customs procedures allow the suspension of customs duties when the final destination or the imported products' use is not yet determined. There are criteria which must be fulfilled in order to use such a customs procedure. If these criteria are not met, a customs debt on import is incurred. The late recording of goods removal from a customs warehouse for example, constitutes unfulfilled criteria. In a previous Court ruling (X BV (CJEU C-480/12)), additional guidance was provided on when a customs debt would be incurred through non-compliance with conditions arising from the customs procedure. It was also determined that non-compliance qualifies as a VAT-taxable event (importation).

While in practice the previous Court ruling was understood to mean that non-compliance leads to a customs debt as well as a VAT liability, the most recent Court rulings altered this perspective. It was determined that while non-compliance resulted in a customs debt, this does not necessarily result in import-VAT being due. For VAT purposes, it is relevant to

determine whether the products have entered the European Union's economic network when determining whether import-VAT is due.

Facts

Both Eurogate/ DHL cases concerned goods that were re-exported outside the EU. Before this re-export, the goods were placed under a customs procedure. The respective parties did not fulfil their obligations arising from the customs procedure under which the goods were placed before re-export (i.e. a late or incorrect declaration). Consequently, a customs debt on import was incurred. In these cases, non-compliance was discovered after the goods were moved outside the EU. Therefore, the goods remain under the customs procedure until the re-exportation outside the EU. The main question is whether import-VAT was due, since a customs debt was incurred but the goods were not physically in the EU.

Judgment

For Eurogate/ DHL, the CJEU ruled that since non-compliance was noticed after the goods had been re-exported, the goods were covered by the customs procedure until they were re-exported. However, the non-compliance did result in a customs debt. The CJEU ruled that the goods were not 'imported'. As the goods never entered the EU economic network, no import-VAT is due. Thus, regardless of the customs debt incurrence, the conditions for levying import-VAT were not satisfied, since the goods did not enter the EU economic network.

In practice

For customs purposes, a customs debt is incurred when non-compliance is detected. Previously and in practice, a customs debt following non-compliance also resulted in a VAT liability. The import-VAT aspect changes after the most recent Court rulings. It depends on the moment upon which non-compliance is discovered and the location of the goods is decisive. If the goods are not physically within the EU and have not entered into its economic network, there is no VAT liability. Thus, the question on whether import-VAT is due depends on the facts and circumstances of each case.

To conclude, if a company or the customs authorities detect non-compliance with respect to a customs procedure, attention should be paid to where the goods are located upon this discovery. The occurrence of a customs debt is independent of the goods' location since this is the result of non-compliance. However, the goods' location and whether the goods have entered the EU economic network do determine whether import-VAT is due.

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