Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

8 May 2025 *

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 143(1)(b) – Exemptions on importation – Directive 2006/79/EC – Small consignments of goods of a non-commercial character from third countries – Consignee residing in a Member State other than the Member State of importation)

In Case C-405/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 26 March 2024, received at the Court on 11 June 2024, in the proceedings

L. s.c.

v

Dyrektor Krajowej Informacji Skarbowej,

interested party:

Rzecznik Małych i Średnich Przedsiębiorców,

THE COURT (Eighth Chamber),

composed of S. Rodin, President of the Chamber, O. Spineanu-Matei and N. Fenger (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Dyrektor Krajowej Informacji Skarbowej, by M. Kowalewska, K. Nowicka and T. Tratkiewicz,

– the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Polish.

– the European Commission, by Ł. Habiak and M. Herold, 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 Article 143(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2009/69/EC of 25 June 2009 (OJ 2009 L 175, p. 12) ('Directive 2006/112'), and of Article 1 of Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (OJ 2006 L 286, p. 15).

2 The request has been made in proceedings between L. s.c. and the Dyrektor Krajowej Informacji Skarbowej (Director of National Tax Information, Poland) ('the tax authority') concerning the legality of a tax ruling dated 22 February 2019.

Legal context

European Union law

Directive 78/1035/EEC

3 Article 1(1) of Council Directive 78/1035/EEC of 19 December 1978 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (OJ 1978 L 366, p. 34) provided:

'Goods in small consignments of a non-commercial character sent from a third country by private persons to other private persons in a Member State shall be exempt on importation from turnover tax and excise duty.'

Regulation (EEC) No 918/83

4 The first subparagraph of Article 29(1) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1) provided:

'Subject to Articles 30 and 31, goods in small consignments of a non-commercial nature sent from a third country by a private person to another private person living in the customs territory of the [European Economic] Community shall be admitted free of import duties.'

Directive 2006/79

5 Recital 3 of Directive 2006/79 is worded as follows:

‘To that end the limits within which such exemption is to be applied should, for practical reasons, be as far as possible the same as those laid down for the Community arrangements for exemption from customs duties in Regulation [No 918/83].’

6 Article 1 of that directive provides:

‘1. Goods in small consignments of a non-commercial character sent from a third country by private persons to other private persons in a Member State shall be exempt on importation from turnover tax and excise duty.

2. For the purposes of paragraph 1, “small consignments of a non-commercial character” shall mean consignments which:

(a) are of an occasional nature;

(b) contain only goods intended for the personal or family use of the consignees, the nature and quantity of which do not indicate that they are being imported for any commercial purpose;

(c) contain goods with a total value not exceeding EUR 45;

(d) are sent by the sender to the consignee without payment of any kind.’

Directive 2006/112

7 Article 32 of Directive 2006/112 provides:

‘Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins.

However, if dispatch or transport of the goods begins in a third territory or third country, both the place of supply by the importer designated or recognised under Article 201 as liable for payment of VAT and the place of any subsequent supply shall be deemed to be within the Member State of importation of the goods.’

8 Article 86(1) of that directive is worded as follows:

‘The taxable amount shall include the following factors, in so far as they are not already included:

…

(b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the Member State of importation as well as those resulting from transport to another place of destination within the Community, if that other place is known when the chargeable event occurs.’

9 Article 143(1) of that directive provides:

‘Member States shall exempt the following transactions:

…

(b) the final importation of goods governed by [Directive 2006/79];

…’

10 Under Article 163 of Directive 2006/112:

‘If the goods cease to be covered by the arrangements or situations referred to in this Section, thus giving rise to importation for the purposes of Article 61, the Member State of importation shall take the measures necessary to prevent double taxation.’

Regulation (EC) No 1186/2009

11 The first subparagraph of Article 25(1) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ 2009 L 324, p. 23) is worded as follows:

‘Subject to Articles 26 and 27, goods contained in consignments sent from a third country by a private individual to another private individual living in the customs territory of the Community shall be admitted free of import duties, provided that such importations are not of a commercial nature.’

12 Under Article 133(1) of that regulation:

‘Regulation (EEC) No 918/83, as amended by the acts listed in Annex V, is repealed.’

Polish law

13 Article 2(1) of the ustawa o podatku od towarów i usług (Law on the tax on goods and services) of 11 March 2004 (Dz. U. of 2018, item 2174), in the version applicable to the dispute in the main proceedings (‘the Law on VAT’), provides:

‘For the purposes of the following provisions, all references to “national territory” shall mean the territory of the Republic of Poland, subject to Article 2a.’

14 Article 52(1) of the Law on VAT provides:

‘The importation, subject to paragraph 2, of goods in a consignment dispatched from the territory of a third country by a private person to a private person residing in the national territory shall be exempt if the following conditions are met:

1. the quantity and nature of the goods do not indicate their commercial intent;

2. the consignee is not required to pay any fees to the consignor in respect of the receipt of the consignment;

3. the consignments are of an occasional nature.'

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

15 L. is a company that provides freight forwarding and customs clearance services.

16 That company filed an application to the tax authority for a tax ruling to determine whether the importation into Poland of goods in a consignment between private persons may be exempt from value added tax (VAT) under Article 52 of the Law on VAT where the consignee of that consignment is in a Member State other than the Republic of Poland.

17 By a tax ruling of 22 February 2019, the tax authority took the view that the situation described by L. in its application did not fall within the scope of the exemption provided for in Article 52 of the Law on VAT, on the ground that that exemption did not apply to the importation into Poland of goods sent to a private person in a Member State other than the Republic of Poland.

18 L. brought an action against that tax ruling before the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw, Poland).

19 By judgment of 12 December 2019, that court dismissed that action. It held that it is apparent from both Article 143(1)(b) of Directive 2006/112 and Article 52 of the Law on VAT that the exemption from VAT at issue applies only where the consignment is sent to a private person residing in the Member State into which the goods are imported.

20 L. brought an appeal on a point of law against that judgment before the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), which is the referring court.

21 That court takes the view that it could be considered, in the light of the judgment of 2 July 2009, *Har Vaessen Douane Service* (C-7/08, EU:C:2009:417), that the fact that the imported goods entered the territory of the European Union in a Member State other than that in which their consignee is located has no bearing on the goods' exemption from VAT. Therefore, consignments of goods of negligible value dispatched from a third country to a private person in the European Union should be exempt.

22 However, it is apparent from Polish case-law that the exemption from VAT provided for in Article 52 of the Law on VAT does not apply to the importation of goods sent to a private person residing in the territory of a Member State other than the Republic of Poland. According to that case-law, it must be held that the provisions of Directive 2006/79 make a distinction according to the place of residence of the final consignee of the goods, provided that the place of importation referred to is 'a Member State'. Thus, both the imposition of tax on the importation of goods and the exemption from VAT on that importation for small consignments between private persons of a non-commercial character are linked to the place of residence of the final consignee of the goods.

23 In those circumstances, the Naczelny Sąd Administracyjny (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must the provisions of Article 143[(1)](b) of [Directive 2006/112] and Article 1 of Directive 2006/79 … in the context of recital [3] of Directive 2006/79 and Article 25 of [Regulation No 1186/2009] be interpreted as being contrary to a regulation such as Article 52(1) of [the Law on VAT], according to which the importation of goods placed in a consignment sent from the territory of a third country by an individual and intended for an individual residing in the territory of a Member State of the European Union other than the territory of the [Member State] where the importation takes place is not exempt from VAT?’

Consideration of the question referred

24 By its question, the referring court asks, in essence, whether Article 143(1)(b) of Directive 2006/112 and Article 1 of Directive 2006/79 must be interpreted as precluding legislation of a Member State which excludes from the exemption from VAT provided for in those provisions small consignments of a non-commercial character sent from a third country by private persons to private persons residing in another Member State.

25 It is apparent from Article 143(1)(b) of Directive 2006/112 that the Member States are to exempt the final importation of goods governed, inter alia, by Directive 2006/79.

26 Article 1(1) of Directive 2006/79 provides that goods in small consignments of a non-commercial character sent from a third country by private persons to other private persons in a Member State are to be exempt on importation from turnover tax and excise duty.

27 In order to answer the question raised, it is necessary to determine whether the exemption from VAT provided for in those provisions applies only to consignments sent to private persons residing in the Member State of importation or whether it applies to consignments sent to private persons in any Member State, including a Member State other than that of importation.

28 According to the Court’s settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 14 May 2024, *Stachev*, C-15/24 PPU, EU:C:2024:399, paragraph 72 and the case-law cited).

29 As regards, in the first place, the wording of the provisions whose interpretation is sought by the referring court, it should be noted that Article 143(1)(b) of Directive 2006/112 expressly refers to the exemptions from VAT provided for, inter alia, by Directive 2006/79.

30 Article 1(1) of Directive 2006/79 provides that the exemption that it lays down applies to small consignments of a non-commercial character sent to private persons in a Member State.

31 It should be noted, in that regard, that the Polish version of that provision uses the words ‘Member State’ without further clarification. Furthermore, in the Danish-, Dutch-, English-, French-, German-, Italian-, Romanian-, Spanish- and Swedish-language versions of that provision, in particular, those words are preceded by an indefinite article.

32 Since Article 1(1) of Directive 2006/79 does not refer to a specific Member State and does not mention, in particular, the Member State of importation, the wording of that provision tends to indicate that the exemption from VAT which it provides for applies to consignments sent to private persons in any of the Member States.

33 As regards, in the second place, the context of Article 143(1)(b) of Directive 2006/112 and Article 1(1) of Directive 2006/79, it should be noted, first of all, that the reference to consignments sent to private persons in a Member State already appeared in both Article 1(1) of Directive 78/1035, which corresponds to Article 1(1) of Directive 2006/79, and in Article 1(1) of the Proposal for a Council Directive on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (OJ 1975 C 18, p. 6).

34 It is apparent from the *travaux préparatoires* for Directive 78/1035, which was repealed and replaced by Directive 2006/79, in accordance with Article 6 of Directive 2006/79, that the EU legislature did not intend to make the application of the exemption from VAT of small consignments of a non-commercial character subject to a condition relating to a specific place of destination of the consignment concerned within the European Union. It follows from the explanatory memorandum to that proposal that its purpose was to provide that low-value consignments sent by private persons in a third country to other private persons in the European Union are eligible for exemption from import tax, provided that the goods concerned satisfy a number of conditions.

35 Next, recital 3 of Directive 2006/79 states that, for practical reasons, the limits within which the exemption from VAT on the importation of small consignments of a non-commercial character from third countries is to be applied should, for practical reasons, be as far as possible the same as those laid down for exemptions from import duties by Regulation No 918/83.

36 In that regard, it should be noted that Article 29(1) of that regulation, the wording of which was, in essence, reproduced in Article 25 of Regulation No 1186/2009, provided for an exemption from import duties for consignments with characteristics similar to those consignments referred to in Article 1(1) of Directive 78/1035 and provided that that exemption applied to consignments sent to a private person in the customs territory of the European Union, without referring to a specific Member State.

37 Lastly, in contrast to Article 1(1) of Directive 2006/79, other provisions of Directive 2006/112, such as Articles 32, 86 and 163 of that directive, expressly mention the Member State of importation.

38 As regards, in the third place, the purpose of the exemption from VAT provided for in Article 143(1)(b) of Directive 2006/112 and Article 1 of Directive 2006/79, it is apparent from the explanatory memorandum to the proposal referred to in paragraph 34 above that the objective of Directive 78/1035, which was repealed and replaced by Directive 2006/79, was to relax the arrangements applicable to small consignments of a non-commercial character from third countries between private parties, since those consignments are essentially of an emotional character, have only a low value and have, in principle, already been subject to a tax in the country of dispatch. From that perspective, there is no difference between goods in consignments of a non-commercial character sent from third countries by private persons to other private persons, depending on the Member State of residence of the consignee of the consignment.

39 It thus follows not only from a literal interpretation but also from a contextual and teleological interpretation of Article 143(1)(b) of Directive 2006/112 and Article 1 of Directive 2006/79 that the exemption from VAT provided for in those provisions applies irrespective of whether the consignee of the consignment resides in the Member State of importation or in another Member State.

40 In the light of the foregoing considerations, the answer to the question raised is that Article 143(1)(b) of Directive 2006/112 and Article 1 of Directive 2006/79 must be interpreted as precluding legislation of a Member State which excludes from the exemption from VAT provided for in those provisions small consignments of a non-commercial character sent from a third country by private persons to private persons residing in another Member State.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby rules:

Article 143(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, and Article 1 of Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries

must be interpreted as precluding legislation of a Member State which excludes from the exemption from value added tax provided for in those provisions small consignments of a non-commercial character sent from a third country by private persons to private persons residing in another Member State.

[Signatures]