

News Flash

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VAT Exemption in Respect of Export of Goods

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Exempted from the tax shall be the supply of goods dispatched or transported by the vendor or for his account **to the place of destination within the territory of a third country.**

In this News Flash we would like to draw your attention to this year's judgment of the European Court of Justice (ECJ) in the case C-275/18 – Vins. In this case, the ECJ dealt with the question whether **non-compliance with a formal obligation for tax exemption in respect of export of goods** causes the definitive withdrawal of the right to apply exemption for the export of goods.

The proving of export of goods

The subject of the assessment was if the Article 146 (1) (a) in conjunction with Article 131 of the Directive 2006/112/EC ('the Directive') must be interpreted as precluding a national legislative provision from making the exemption from VAT for goods intended to be exported outside the European Union conditional on the goods being placed under the export customs procedure in a situation in which it is established that the substantive conditions of exemption, in particular the condition that the goods concerned actually leave the territory of the European Union, are satisfied.

The failure to meet formal requirements

From 2012 to 2014 Mr Vinš **sent by post each month 400 to 500 collectors' items** of military memorabilia outside the European Union. He did not submit VAT declarations for those goods, since he considered that the supplies in question were exempted from VAT because they concerned goods intended for export.

The Tax Directorate of the Czech republic did not accept tax exemption in respect of export of goods and ordered to pay VAT on the supplies of goods in question, on the ground that **it had not been shown that it had been placed the goods under the export customs procedure**

and the goods could not benefit from the exemption on export in accordance with the Czech VAT Act.

Mr. Vinš appealed on a point of law to the referring court where he stated that to satisfy the conditions of tax exemption in respect of export of goods what matters is the fact **that the goods have left the territory of the European Union** and, consequently, have actually been supplied to a third country.

The importance of fulfilment of the substantive requirements

The ECJ noted that a national measure of the Czech Republic goes beyond what is necessary to ensure the correct collection of the tax if, in essence, it makes the right of exemption from VAT subject to compliance with formal obligations, without any account being taken of the substantive requirements and, in particular, without any consideration being given as to whether those requirements have been satisfied.

It follows from the ECJ judgments that a breach of a formal requirement may lead to the refusal of an exemption from VAT if, as a result of that breach, it is not possible to provide of conclusive evidence that the substantive requirements have been satisfied.

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