



Press and Information

Court of Justice of the European Union

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Judgment in Case C-273/11

Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális
Adó Főigazgatósága

A company which has sold goods for transport to another Member State may be refused the VAT exemption if it has failed to prove that the supply is an intra-Community transaction

On the other hand, if the company has produced the requisite proof and acted in good faith, it cannot be refused the VAT exemption on the ground that the purchaser did not transport the goods to a destination outside the Member State of dispatch

Under the VAT Directive¹, the sale in a Member State of goods dispatched or transported to a destination in another Member State, for a purchaser which is itself liable for VAT in a Member State other than that in which dispatch or transport of the goods began, is exempt from VAT in the former Member State. In such cases, it is the purchaser which is liable for VAT in the country of destination.

Mecsek-Gabona is a Hungarian company engaged in the wholesale supply of cereals, tobacco, seeds and fodder. In August 2009, Mecsek-Gabona sold to a company established in Italy – which, at the time, had a VAT identification number – 1 000 tonnes of rapeseed which, under the contract of sale, the purchaser had to transport to another Member State. The goods were handed over to the purchaser at Mecsek-Gabona's premises in Hungary and, from a postal address in Italy, the Italian purchasing company returned to the vendor a number of CMRs² proving that the rapeseed had been transported to a destination outside Hungary.

Mecsek-Gabona issued two invoices in respect of that transaction. In the belief that the operation was an intra-Community transaction exempt from VAT in Hungary, Mecsek-Gabona did not invoice the VAT to the purchaser and did not pay it to the Hungarian tax authority.

However, the Italian tax authority discovered that the purchasing company could not be found and that it had never paid VAT in Italy. Consequently, in January 2010, the Italian company's VAT identification number was removed from the register with retroactive effect from 17 April 2009. The Hungarian tax authority accordingly took the view that the rapeseed sold by Mecsek-Gabona had never been transported to another Member State and that, as a consequence, the transaction in question was not a VAT-exempt intra-Community supply of goods. For that reason, the Hungarian tax authority ordered Mecsek-Gabona to pay the VAT in respect of that transaction and imposed on it a fine and a late-payment penalty.

Mecsek-Gabona contested the Hungarian tax authority's arguments before the Baranya Megyei Bíróság (Baranya County Court, Hungary), which asked the Court of Justice to determine what constitutes satisfactory evidence that a tax-exempt supply of goods has taken place. The Baranya Megyei Bíróság also asked the Court to define the extent to which the vendor, if it does not arrange the transport itself, is answerable for the conduct of the purchaser if it has not been established that the goods sold have arrived in the Member State of destination.

¹ 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 2010/88/EU of 7 December 2010 (OJ 2010 L 326, p. 1).

² Consignment notes drawn up in accordance with the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956.

In its judgment delivered today, the Court notes, first of all, the three conditions which must be satisfied if a VAT exemption is to be granted for an intra-Community supply of goods: (i) the right to dispose of the goods as owner must have been transferred to the purchaser; (ii) the vendor must establish that the goods have been dispatched or transported to another Member State; and (iii) as a result of that dispatch or transport, the goods must have physically left the territory of the Member State of supply.

In the present case, since the first condition was satisfied, the Court examines the obligations which the vendor must meet as regards proof that the goods have been dispatched or transported to another Member State. In that context, the Court finds that, in the absence of any specific provision in the VAT Directive as to the evidence capable of establishing that an intra-Community supply of goods has been carried out, it is for the Member States to determine what constitutes satisfactory evidence, but in accordance with the general principles of EU law, such as the principles of legal certainty and proportionality. In that regard, the Court states that the obligations with regard to evidence must accordingly be determined in the light of national law and in accordance with the general practice established in respect of similar transactions. However, a Member State may not require the taxable person to provide conclusive proof that the goods have physically left its territory.

The Court also observes that, **in respect of an intra-Community supply, the VAT Directive enables Member States to refuse to grant a vendor the right to the VAT exemption where that vendor has failed to fulfil its obligations as regards evidence.**

In the present case, the Hungarian court must determine whether Mecsek-Gabona met its obligations as regards evidence in the light of Hungarian law and general practice.

Next, the Court points out that, where the purchaser has the right to dispose of the goods as owner in the Member State of supply and assumes the obligation of transportation of those goods to the Member State of destination, the evidence that the vendor might submit to the tax authorities depends essentially on information that it receives for those purposes from the purchaser. Accordingly, the Court observes that, **once the vendor has fulfilled, in accordance with national law and general practice, its obligations in relation to evidence, it cannot be held liable for the VAT in the Member State of supply where the contractual obligation to dispatch or to transport the goods out of that Member State has not been met by the purchaser.** In such circumstances, it is the purchaser which must be held liable for the VAT in the Member State of supply.

However, the Court points out that a vendor may not be granted the VAT exemption attaching to an intra-Community transaction if it knew or should have known that the transaction was part of a tax fraud committed by the purchaser and had not taken every step which could reasonably be asked of it to prevent that fraud from being committed.

Lastly, the Court finds that Mecsek-Gabona may not be refused the right to a VAT exemption solely on the ground that the purchaser's Italian VAT identification number had been removed, with retroactive effect, from the register. Irregularities affecting the register, the management of which is the responsibility of the national authorities, cannot be imputed to a taxable person who has relied on the information entered in that register.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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