

Case C-435/03

British American Tobacco International Ltd
and
Newman Shipping & Agency Company NV
v
Belgische Staat

(Reference for a preliminary ruling from the Hof van beroep te Antwerpen)

(Sixth VAT Directive — Articles 2 and 27(5) — Turnover tax — Scope — Chargeable event and taxable amount — Supply of goods for consideration — Theft of goods from a tax warehouse)

Opinion of Advocate General Poiares Maduro delivered on 25 May 2005 . . . I - 7079

Judgment of the Court (Third Chamber), 14 July 2005 I - 7091

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable transactions — Supplies of goods for consideration — Concept — Theft of goods — Excluded — Goods subject to excise duty — Not relevant*
(Council Directive 77/388, Art. 2)

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable amount — National derogating measures — Legislation subjecting to tax transactions other than those set out in Article 2 of the Sixth Directive, such as the theft of goods from a tax warehouse — Not permitted*
(Council Directive 77/388, Art. 27(5))

1. The theft of goods does not constitute a supply of goods for consideration within the meaning of Article 2 of Sixth Directive 77/388 and therefore cannot as such be subject to value added tax. The circumstance that the stolen goods are subject to excise duty does not affect that conclusion.
2. An authorisation to apply measures facilitating monitoring of the charging of value added tax, granted to a Member State on the basis of Article 27(5) of Sixth Directive 77/388, does not empower that State to subject transactions to that tax other than those set out in Article 2 of the directive. Such an authorisation thus cannot provide a legal basis for national legislation subjecting to value added tax the theft of goods from a tax warehouse.

(see para. 42, operative part 1)

(see para. 49, operative part 2)