

CJEU 06-06-2020 CHEP Equipment Pooling C-242/19

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CJEU CHEP Equipment Pooling judgment

CHEP Equipment Pooling (hereinafter: CHEP) is a Belgium-based company active in pallet rental. To this end, CHEP buys pallets in different Member States for resale to other entities of the CHEP group established in each Member State, which sublet these to customers in their respective Member State. CHEP has bought pallets from a Romanian supplier. The sales prices invoiced by this supplier included VAT. The pallets were transported from the supplier's company in Romania to another destination in Romania. CHEP then leased these pallets and pallets that it had purchased in other Member States and transported to Romania for rental purposes to CHEP Romania. CHEP Romania has sub-leased these different pallets to Romanian customers who transport them to Romania, other Member States or third countries. The pallets used to transport goods declared for export were then returned to CHEP Romania and CHEP Romania declared them for import and invoiced their value as well as the relevant VAT to CHEP.

CHEP has applied to the Romanian tax authorities for a refund of the VAT charged by the Romanian pallet supplier and the VAT invoiced by CHEP Romania. The Romanian tax authorities have refused this refund and rejected the objection, because under Romanian law CHEP was obliged to identify itself for VAT purposes in Romania. Indeed, the Romanian tax authorities found that CHEP rented to CHEP Romania not only pallets purchased in Romania, but also pallets which it had purchased in other Member States and which had been transported to Romania for that lease. The shipment of pallets purchased in other Member States is equated in Romania with an intra-Community acquisition, so that CHEP had to identify itself for VAT purposes in Romania.

CHEP has appealed and argued that it:

1. Under Directive 2008/9, as a company established in Belgium, was entitled to a VAT refund, regardless of whether it had to identify itself for VAT purposes in Romania
2. It was not obliged to do so to identify for VAT purposes in Romania because the shipment of pallets could not be assimilated to an intra-Community acquisition, and
3. fulfilled the legal conditions to qualify for VAT refund.

CHEP also points out that Directive 2008/9 has been incorrectly transposed into Romanian law, since the VAT refund has been made subject to the condition not included in this Directive that the taxable person is not identified for VAT purposes in Romania.

According to the CJEU, Article 17 (2) (g) of the VAT Directive must be interpreted in such a way that the transfer by a taxable person of goods from a Member State to the Member State of refund for the purpose of the rental by that taxable person of these goods in the latter Member State is not should be treated as an intra-Community supply when the use of those goods for those services is temporary and they are dispatched or transported from the Member State in which that taxable person is established.

The provisions of Directive 2008/9 preclude a Member State from refusing to grant a taxable person entitled to a VAT refund established in the territory of another Member State on the sole ground that that taxable person is or should have been identified for VAT in the Member State of refund. , according to the CJEU.

Operative part Judgment Request

1) Article 17 (2) (g) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8 / EC of 12 February 2008, it should be interpreted as meaning that the transfer by a taxable person of goods from a Member State to the Member State of refund for the lease by that taxable person of those goods in the latter Member State should not be treated as an intra-Community supply if the use of these goods for those services is temporary and they are dispatched or transported from the Member State in which that taxable person is established.

2) The provisions of Council Directive 2008/9 / EC of 12 February 2008 laying down detailed rules for the refund of value added tax, laid down in Directive 2006/112 / EC, to taxable persons not resident in the Member State of refund but are established in another Member State, they must be interpreted as precluding a Member State from denying a taxable person established in the territory of another Member State a right to a refund of value added tax on the sole ground that that taxable person is subject to the Member State of refund for value added tax has been or should have been identified.

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