Downloaded via the EU tax law app / web

Arrêt de la Cour
??????? C-307/01

Peter d'Ambrumenil ??? Dispute Resolution Services Ltd
????
Commissioners of Customs & Excise

(?????? ??? VAT and Duties Tribunal, London, ??? ??? ?????? ????????????? ?????????)

«???? ?????? ???? ??? – ???????? ??? ??????? ???????? ??????????? ??? ??????? ??? ???????? ???????? ??? ???????????? ????????????»

????????? ??? ??????? ?????????? C. Stix-Hackl ??? 30?? ?????????? 2003 ??????? ??? ??????????? (?????? ?????) ??? 20?? ????????? 2003
???????? ??? ?????????
??????????? ????????? – ?????????? ??? ?????????? – ????? ?????? ???????? – ????? ??????? ????? ????????????? ????? – ????????? ????????????? ??? ??? ???? ?????? – ???????? ??? ??????? ???????? ??????????? ??? ??????? ??? ???????? ???????? ??? ???????????? ???????????? – ???????????
(?????? 77/388 ??? ??????????, ????? 13, ?, § 1, ?????. ??) T? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? 77/388, ?? ????? ????? ??? ???????? ????????? ??????? ???????? ????????? ??? ??? ???? ????????????? ?????, ??? ?????????? ??? ??? ??? ?? ?????? ??? ??????? ????????? ??? ??????? ?? ???????????????? ??? ??????? ??? ???????? ??? ???????? ??? ???????????? ????????????, ???? ????? ??? ??????? ???????? ??????????.???????, ??????? ???????? ??? ?? ????????????? ?? ?????? ???????? ????????? ?????? ?? ????????? ??? ??? ???? ????? ? ?????? ??? ?? ???? ??????? ????????. ???? ????????, ??? ??? ?????? ?????? ????????? ?????????????????? ????? ???????? ??? ?? ????? ????????? ??? ? ?????? ?????? ??? ??????? ??? ?? ??? ????????? ??? ????? ? ?????????, ????????????????????? ??? ?????????? ? ??? ????????????????, ??? ??????, ???? ? ?????? ????????????? ??? ?????????? ???? ??? ??? ?????? ????????? ? ????? ??????? ?????? ???????????, ? ???????? ??? ???? ???????? ??? ??? ?? ??? ??????? ?????????.????, ?? ????? 13, ?, ?????????? 1, ???????? ??, ?????? ?? ?????????? ??? ??? ?????? ??? ? ???????????? ??? ??? ?? ???? ??????? ???????? ??? ??? ???? ???????????? ????? ?????????? ??? ??? ??????? ???????? ????????? ?? ?????? ??????????:? ??? ?????????? ???????? ????????? ?? ???????, ???? ??? ??????? ?????? ????????? ? ???????????? ????????,? ??? ???? ??????? ? ????? ????????? ????????? ??? ??? ????????? ??? ????????? ???, ????????? ? ????? ????????? ???? ??? ??????? ?????? ????????? ? ???????????? ????????, ?? ???? ?????? ???????? ????????????????? ??????????, ?.?. ?????????? ??? ????????????? ????????,???? ?? ?? ??? ??????? ????????? ?????????? ?????? ???? ????????? ??? ?????? ??? ?????????????.?????????, ? ?? ???? ???????? ??? ?????????? ??? ??? ????????? ??????? ?????????, ?? ?????? ???????????????? ??? ??????? ??? ???????? ??? ???????? ???????????:? ?????? ???????? ????????????? ??? ??????? ??? ?????????? ????????? ???????,? ?????????? ???????? ????????? ?? ????? ??? ????????? ??????? ???????? ??????????? ???????? ???????? ??????? ??? ??? ???????????? ??? ?????? ??? ????????? ??????? ?? ?????? ?????????? ?? ???????? ????? ???????????? ???? ????????? ??????,? ?????????, ??????? ??? ????????? ??? ?????????? ???? ?????????? ?????????, ???????? ???????????? ???????????? ?? ???????? ??????????, ?????, ????, ?? ????????????

???????? ?????????,? ?????????? ???????? ????????? ?? ????? ??? ????????? ??????? ???????? ???????????? ??????? ?? ??????????? ???????? ?????????, ???? ??? ??????? ?????? ???????? ?? ????? ??????????? ?? ?????????? ??? ??????????,? ?????????, ??????? ??? ????????? ??? ??????????? ???? ??????????? ?????????, ???????? ???????????? ???????????? ?? ???????? ??????????, ?????, ????, ?? ???????????? ???????? ?????????.??. ??????? 53, 60, 68-69, ???????. 1-2

??????? ??? ??????????? (?????? ?????)
??? 20?? ????????? 2003 (1)

???? ?????? ???? ??? – ???????? ??? ??????? ???????? ??????????? ??? ??????? ??? ???????? ???????? ??? ???????????? ????????????

???? ??????? C-307/01,

??? ???? ?? ??????????? ?????? ??? VAT and Duties Tribunal, London (??????? ????????), ???? ?? ??????????, ???' ????????? ??? ?????? 234 ??, ?? ??? ????? ????????, ??? ??????? ??? ???????? ??? ???????? ??????? ??? ????????? ??????????? ??????
Peter d'Ambrumenil, Dispute Resolution Services Ltd
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Commissioners of Customs & Excise,
? ?????? ???????????? ????????? ?? ???? ??? ???????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???? ???????????? ??? ?????????? ??? ?????? ?????, ??? ???????? ?? ???? ?????? ?????? ???????? ? ????? ??????? ????? ????????????? ?????: ?????????? ?????????? ???? (?? ???. ???. 09/001, ?. 49),

?? ?????????? (?????? ?????),,

?????????? ??? ???? A. Rosas (????????), ???????????? ??? ??????? ????????, D. A. O. Edward ??? A. La Pergola, ????????,
?????? ???????????: C. Stix-Hackl
??????????: L. Hewlett, ????? ????????? ??????????,
??????????? ????? ??? ??????? ???????????? ??? ?????????:

??? P. d'Ambrumenil ??? Dispute Resolution Services Ltd, ?????????????? ??? ??? P. d'Ambrumenil, ????????????? ??? ??? M. Conlon, QC,
?? ????????? ??? ???????? ?????????, ????????????? ??? ??? J. E. Collins,
????????????? ??? ??? N. Paines, QC,
?? ???????? ??? ?????????? ??????????, ????????????? ??? ??? R. Lyal,
??????? ????? ??? ?????? ???????????,

???? ?????? ??? ?????????? ???????????? ??? P. d'Ambrumenil ??? Dispute Resolution Services Ltd, ??? ??????????? ??? ???????? ????????? ??? ??? ?????????, ???? ?? ?????????? ??? 20?? ????????? 2002,

???? ?????? ?? ?????? ?????????? ??? ???????? ??? ????????? ??? ???? ?? ?????????? ??? 30?? ?????????? 2003,

??????? ??? ????????

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1 ?? ??????? ??? 6?? ??????? 2001, ??? ???????? ??? ?????????? ???? 6 ????????? 2001, ?? VAT and Duties Tribunal, London, ???????, ???' ????????? ??? ?????? 234 ??, ??? ??????????? ??????? ?? ???? ??? ???????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???? ???????????? ??? ?????????? ??? ?????? ?????, ??? ???????? ?? ???? ?????? ?????? ???????? ? ????? ??????? ????? ????????????? ?????: ?????????? ?????????? ???? (?? ???. ???. 09/001, ?. 49, ??? ????: ???? ??????).
2 ?? ??????? ???? ??????? ??? ??????? ???????? ??????, ??????, ??? P. d'Ambrumenil, ? ?????? ????? ??????, ??? ??? ???????? Dispute Resolution Services Ltd (??? ????: DRS) ???, ????????, ??? Commissioners of Customs & Excise, ???????? ????? ??? ??????? ???????? ???? ????? ??? ????? ????????????? ????? (??? ????: ???), ??????? ?? ?? ?????????? ???????????, ???? ????? ??? ?? ???? ????, ??? ???????? ????????? ??? ?????????? ???? ??? ?????? ??? ???? ??? ??????? ???? ??? ???? ??? ??????.
?? ?????? ???????
?? ????????? ??????
3 ??????? ?? ?? ????? 2, ?????? 1, ??? ????? ???????, ???? ??? ?????????? ?? ?????????? ?????? ??? ?? ??????? ?????????, ??? ???????????????? ?? ???????? ?????? ??? ????????? ??? ????? ??? ?????????? ??? ????, ??? ??????? ??? ??? ???????? ??? ?????.
4 ?? ????? 4, ?????????? 1 ??? 2, ??? ????? ??????? ????????? ?? ????:
1.????????? ?? ?????????? ???? ???? ??????????? ?????, ???? ?????
?????????? ??? ?? ??????????? ????, ??? ??? ??? ?????????? ?????????????
??? ?????????? ???? ????????? 2, ?????????? ??? ????????????? ?????? ? ???
????????????? ??? ?????????????? ?????.
2.?????????? ?????????????, ???? ??? ?????? ??? ?????????? 1, ????? ???? ??
????????????? ??? ?????????, ??? ??????? ? ??? ?????????? ?????????,
???????????????? ??? ??? ????????????? ?????????, ??? ?????????
????????????? ????? ??? ??? ????????????? ??? ????????? ??????????? ? ???
????????????? ???? ????. ?? ?????????? ??????????? ????????? ?????? ?
??????????? ????????? ? ????? ??????, ???? ??? ????? ????????? ??????
???????? ??????????.
5 ?? ????? 13, ?, ?????????? 1, ???????? ?? ??? ??, ??? ????? ??????? ????????? ??
????: ?? ??? ????????? ????? ?????????? ?????????, ?? ????? ???? ??????????,
??? ??? ??????????? ??? ??????? ???? ?? ????????????? ? ???? ??? ????
???????? ??? ????????????? ???????? ????????? ??? ?? ??????????? ????
?????????? ???????????, ??????????? ??? ?????????:[...]
?)?? ??????????? ??? ??????? ?????????, ????? ??? ??? ????? ??????????? ??
????? ???????, ?? ?????? ?????????? ??? ??????????? ???????? ??????? ? ???
?????????? ???????? ??????????? ???? ??? ????????? ??? ???? ???????????
??????, ??? ??????????? ????????, ?????? ???????? ??????????? ??? ??????????,
????? ??? ??? ???? ???????? ??? ????? ??????, ??????? ?????????????

?)??? ??????? ???????? ???????????, ?? ?????? ???????????????? ??? ??????? ??? ???????? ???????? ??? ???????????? ????????????, ???? ???????????? ??? ?? ????????????? ?????? ?????.
6 ???? ??????? ??? 14?? ???????????? 2000, C-384/98, D. (??????? 2000, ?. ?-6795), ?? ?????????? ???????? ??? ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ???? ??? ?????? ??? ??? ????????? ??? ????? ????????? ??? ????????? ????? ?? ???????? ????????? ??? ???????????? ??? ???? ????????? ????????, ?? ???????? ??? ???????? ????????? ? ???? ????? ????????? ??? ??????, ???? ???? ????????, ???? ?????????? ?????????, ??? ????????? ?????????? ??????.
? ?????? ???????
7 ??????? ?? ?? ????? 9, ????? 7, ?????? 1, ???????? (a), ??? Value Added Tax Act 1994 (????? ???? ????? ????????????? ?????, ??? ????: VATA 1994), ?? ????????? ?? ?? ????? 31 ??? ????? ?????, ?? ????????? ??? ?????????? ??? ??????? ???????????? ??? ?????? ??? ?????? ????????????? ??? ??? ???.
8 ? ??????? ?? ?? ????? ???? ???????????? ???????? 2 ????????? ?? ????: ?? [????????? ??? ???????? (a)] ??? ??????? 1 ???????????? ??? ??????? ????????? ?? ?????? ???????????????? ??? ??????? ??? ??? ????? ???????????? ?? ?????? ??? ?? ?????? [...] ??? ????????????????? ??? [?? ??? ?????????] ???? ?? ?? ???? ????????? ?????????? ?? ????????? ? ???????????? ????? ??? ??????? ??? ????? ???????????? ?? ??? ??? ?? ?? ??? ??????.
? ??????? ??? ?????? ????? ??? ?? ???????????? ???????
9 ? ?????? ?????????? ??? ?????? ?????, P. d'Ambrumenil, ????? ?????????? ???????? ??? ?? 1975. ???? ????????? ??? National Health Service (?????? ??????? ??????) ?? ??????? ?????? ??? ?? 1978 ??? ?? 1987, ???????? ?? ????? ?? ????????? ??? ??????, ?? ????????? ????????????, ??? ???????? ??? ???????.
??? ??????? ??? ????????????? ????????????? ???, ? P. d'Ambrumenil ?????????? ?? ????????????? ?????? ??? ??????? ?????????? ??? ?? ?????? ?????? ????????? ??? ?????????, ?????? ?????, ??????? ????????, ????????? ?????? ??? ?????????? ???????????. ? P. d'Ambrumenil ????? ?????? ???????????? ???????????? ?? ????????? ??? ??????????????.
10 ? ??????? ???????????? ??? ?????? ?????, DRS, ????? ??? ??????? ?????????? ??? ??? P. d'Ambrumenil ?? 1994. ??? ????????? ????? ??? ????????????? ????????????? ??? P. d'Ambrumenil, ? ?????? ?????? ?? 1997 ?? ????? ??? ??????? ??? ???????? ??? ???????, ???????????????? ??? ???? ????? ??? ???????? ??? DRS. ?? ???????? ????????????? ?????????? ???? ?????? ????????? ??? ???????? ??????? ??????? ???? ???? ????? ??? ??????? ??? ??? ???? ????? ??? ????????, ????? ?? ????????? ?????????? ??? ??????????????.
11 ?? ??????? ??? ???????????? ???? P. d'Ambrumenil ???? 29 ?????????? 1997, ?? Commissioners of Customs & Excise ??????? ??? ?????? ??? ??? ????????? ??? ?????????? ???? ??? ?????? ??? ???? ??? ???????????? ??? ?????? ????? ???? ??? ???? ??? ?????? ????????? ??? ????? ????????? ??? ?????? 9, ????? 7, ?????? 1, ??? VATA 1994 ???, ????????, ????????????? ??? ??? ???.
12 ? P. d'Ambrumenil ?????? ???????? ???? ??? ?? ??? ????????? ??????? ??? VAT and Duties Tribunal, London, ?? ????? ??????? ??? ???????????? ??? DRS ?? ????????? ????????. ?? ???????????? ??????? ??? 16?? ??????? 1999, ?? ?? ???? ?????????? ???????? ??? ??????? ??? ?????????? ???? ???????????? ?????????? ?? ???? ??? ???????? ??? ?????? ?? ????? ???? ???????? ??? ?????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????, ??????????? ????? ??? ???????????? ??? ????? ???????? ??????? ??? ?? ????????. ????????, ???????? ? ??????? ??? ?? ??? ?????????? ??? ??????????, ?? ??????? ??? ???????? ??? ????????????????? ????????? D. ??? ??????????.
13 ??? ??? ??????? ???? ??????????, ?????????? ?? ??? ??? ???????????? ??????? ??? ???? ?????????? ?' ?????, ????????? ??? ?? ???????? ??? ?????? ????? ????????? ??? ????????? ??????? ????????? ??? ???????????????? ???

??? P. d'Ambrumenil, ??' ??????? ??? ????? ? ??' ??????? ??? DRS, ?????????? ????
???. ??????, ???? ????? ????? ??????? ????????? ??? ???????????????? ???
???? ???????????? ??? ?????? ?????, ?? ?????????? ?????????? ??? ????????
??? Commissioners of Customs & Excise, ?? ?????? ???????????? ??? ?? ????
????????? ?? ??????? ???????? ??????????? ???? ??? ?????? ??? ?????? 13, ?,
?????????? 1, ???????? ??, ??? ????? ???????. ???? ???? ???????????? ???
?????? ?????, ?? ?????????? ????? ??????? ?????????, ???????? ???????????
??? ?????? ??????? ???????? ???????, ??? ??????????? ??? ??? ???????????
???? ?? ???? ??????? ????????, ? ????? ????? ????? ??? ???????? ???????????
??? ?????????? ??? ????????, ???? ???????????? ???, ?? ????? ???????, ???? ????
???? ????????? ? ???? ??????????? ??????.
14 ???? ????????????? ??????? ???, ?? VAT and Duties Tirbunal ???????? ??????
????? ??? ?? ???? ??? ??????????? ?? Commissioners of Customs & Excise, ???????
?? ??? ????? ?? ???????? ???? ????? ???? ??????? ????????? ????? ???????
????????? ??? ????????????? ??? ??? ??? ????? ??? ?????? 13, ?, ?????????? 1,
???????? ??, ??? ????? ???????. ??????, ?? VAT and Duties Tribunal ?????? ???, ????
??? ??????????? ?? ??? ?????????????? ??????? D. ??????????? ??? ?????????
?? ?? ??????? ????????? ???? ?????? ? ?????? ????????? ?? ??????? ??????? ??
?????????? ?????????? ??? ?????????? ??????? ?????? ?????????? ???? ???, ?
???????? ??? ??????????? ??????????? ?? ????? ???????? ??????????? ??
???????? ?????? ? ?????? ????????? ?? ???? ?? ?????????? ??????????? ???
??????? ????????? ??? ????? ???????? ??? ??????? ??? ???????? ??? ??????
?????.
15 ??? ??? ???????? ?????, ?? VAT and Duties Tirbunal, London, ????????? ??
?????????? ?? ?????????? ??? ?? ???????? ??? ?????????? ?? ????????
??????????? ???????: ???? ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? [?????]
??????? ??? ?????? ??? ???????? ??? ????????? ??????????????, ???? ?????????
??? ??????? ??? ???????? ???????? ??????????? ???? ????????????? ??? ??
????o? ?????:
?)?????????? ???????? ????????? ?? ??????? ??? ????????? ? ???????????
????????,
?)???? ??????? ? ????? ????????? ????????? ??? ??? ????????? ??? ?????????
???, ????????? ? ????? ????????? ??? ?????????? ????????? ? ??????????,
?)??????????? ?????????? ???? ????? ??? ????????? ??? ??????, ????,
???????????? ?????, ?????????? ??? ????????????? ????????,
?)?????? ????????????? ???? ????? ??? ????????? ??? ?????? ???????? ???
??????? ???? ? ???? ????????? ???????,
?)???????? ????????? ??? ???????? ?? ????? ??? ????????? ??????? ????????
??????????? ???????? ???????? ??????? ??? ??? ???????????? ??? ?????? ???
??????? ??? ??????????? ?? ???????? ????? ???? ????????? ??????,
??)? ????????? ???????? ????????????
i)??????? ??? ????????? ??? ??????????? ??????? ??? (?) ???
ii)???????????? ?? ???????? ??????????, ?????, ????, ?? ??????????? ???????
???????,
?)???????? ????????? ??? ????????????? ?? ????? ??? ????????? ???????
???????? ???????????, ???????? ?? ???????????? ??????? ??????, ??? ???????
??? ??????????? ?? ?????????? ??? ??????????, ???
?)? ????????? ???????? ????????????
i)??????? ??? ????????? ??? ??????????? ??????? ??? (?) ???
ii)???????????? ?? ???????? ??????????, ?????, ????, ?? ??????????? ???????
???????;
??? ??? ???????????? ?????????

16 ?? ?? ???????????? ???????, ?? VAT and Duties Tirbunal ????? ??? ?? ?????????? ?? ??? ???????? ???????? ????????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ??? ?? ????????? ?????? ??? ??????????? ??? ?????????? ????????????, ???? ????? ??? ???, ???????? ??????? ????????? ??? ??????? ?? ???????????????? ??? ??????? ??? ???????? ??? ???????? ???????????. ??????????, ?? ?????? ????????? ???????? ?? ???????????? ?? ? ???????? ??? ?????????? ??? ??? ?? ??? ??????? ?????????? ??? ??? ???????? ????????????? ??? ???????????? ??? ???????????? ???????. ???????????? ??? ?????????? ??? ??????????

17 ?? ????????????? ??? ?????? ????? ???????????? ??? ?? ??????? ????????? ??? ???????????? ??? ???????????? ??????? ??? ????????? ??? ????? ????????? ??? ????????? ??? ??? ??? ??? ?????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????. ? ???????? ???? ????????? ????? ??? ??? ??????? ??? 23?? ?????????? 1988, 353/85, ???????? ???? ???????? ????????? (??????? 1988, ?. 817), ??? ??? ??? ????????????? ??????? D.

18 ???? ???? ????????????? ??? ?????? ?????, ?? ?????????? ??????????, ???? ????????????? ??????? ???????? ???? ???????? ?????????, ??? ? ??????? ??????? ????????? [soins à la personne] ??? ????????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ???? ?????????? ??????? ??? ????????? ?????????? ??? ??? ??????? ??????? ????????? [soins médicaux] ??? ????????????? ???? ???? ?????????, ???????? ??. ???????????, ???? ??? ??, ???? ??????? ???????? ??????? ??? ????? ???????, ? ??????? medical care ????????????? ???? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ??? ???? ???? ?????????, ???????? ??, ?? ?????????? ???????? ??? ?????????? ??? ?? ??????? ???? ???????????????? ??? ???????? ? ????????? ??? ???????? ????????? ?????????? ?? ????????? ??? ?????? ???????????? ?????? ??? ???????????? ??? ????????? ??? ???????????? ???? ??? ????? ?????????. ??????????, ???? ??????? ??? ?????? ?????, ??? ???????????? ??? ? ????? ???????? ?????????. ????????, ?? ?? ???? ????????? ?????????? ??? ??? P. d'Ambrumenil ??? ??? ???????? ??? ??????. ??????, ? ??????? ???????? ??? ?????????, ??????? ?? ?? ??? ????????? ??? ????????????? ?????? ???????? ???????????.

22 ?? ???????????? ??? ?????? ????? ???????????? ???, ??? ? ??????? ??????? ????????? ?????? ?? ?????????? ?? ?????????? ?? ???? ??? ????????? ??? ?????????? ??? ??????? ??? ???????? ??? ???????? ???????????, ? ??????? ???????? ??? ?? ???? ????? ???? ????????. ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ?? ?????? ???? ?? ?????????? ??? ??? ??? ??? ??????? ????????? ??? ???????????????? ??? ???? ??????? ??? ??????? ??? ??????????? ????. ??? ??????? ????, ?? ???????????? ??? ?????? ????? ????????? ??? ??????? ??? ?????????? ??? ?? ???

????????? ????? ??????????? ??? ?????? ??? ????????? ??? ????? ??????????, ???????? ??, ????? ??? ?????? ????????????? ?? ??????? ?????????, ?? ?????? ???????????????? ??? ???? ????????????? ??? ??????? ??? ??????????? ????. 23 ? ??????? ??????? ????????? ?????????? ???' ??????? ?? ??? ???????????? ??? ????????? ???? ????????? ??? ?????????? ?????? ??? ??????????? ?????? ????????? ?? ???? ??????, ?????? ??? ????? ??????? ?? ??? ?????????? ???????? ??? ?????? 13, ?, ??? ????? ???????. ? ???????? ????????? ??? ??????????? ??? ?????????? ??? ?????????? ??????, ?????? ??? ???????????? ?? ???????? ??? ??? ????????? ??? ???????????????? ?? ????? ?? ????????????? ?? ??? ??????? ???????? ??? ??? ???????? ??? ?? ???????????, ?? ????? ???????, ? ???? ??? ????????? ?????, ???? ??? ???????????? ?? ???????? ??? ??? ????????? ??? ???????????????? ?? ?????? ???????, ???? ????? ??????? ??? ????????????? ??? ??????????? ??? ?????? ?? ?????????? ??? ??????? ????????? ?????????. 24 ?? ????????????? ??? ?????? ????? ???????????? ??? ????? ??? ??? ????????? ??? ????????????? ???? ??????? ???? ?????????? ??? ????????? ?? ????? ??? ????????? ??? ?????? ???? ????????, ?? ???????? ??? ? ??? ??????????? ?????????? ??????????? ??????. 25 ?? ???????? ????????? ??? ? ???? ??????? ? ????? ????????? ????????? ??? ??? ????????? ??? ????????? ???, ????????? ? ????? ????????? ??????? ???????? ??? ????????? ? ???????????? ???????? ??? ????? ??????????? ?????. ?? ?? ??? ????????? ?????????? ??? ?? ????????????? ?? ??? ??????? ????? ????? ?? ???????? ? ??? ?? ????????????? ?? ???? ??? ?????? ?? ?????????? ??????? ????????? ??????????.
26 ????????, ?? ????????? ??? ???????????????? ??????????? ?? ??????????? ??? ????????????? ?????????? ??? ?????????? ???? ???? ?????????? ??????????? ??????, ???? ????? ??? ?? ????????????? ?? ?? ??????? ??? ?????????? ????? ????? ?? ?????????. ??????, ? ?????? ????????????????? ???? ????? ??? ????????? ??? ?????? ???????? ?? ????? ?? ???????? ????????? ??????? ???? ????? ?? ????? ??? ???????????? ??? ?? ?? ??????? ???? ?????????? ?? ????? ??? ?????? ???????.
27 ????????, ???? ???? ????????????? ??? ?????? ?????, ?? ???????? ????????? ??? ????????????? ??? ?? ???????? ??? ????????????? ?? ????? ??? ?????? ?????? ??????? ??????????? ??? ?????? ?? ????????? ??? ????????? ??????? ?????????. ? ?????? ??? ?? ??? ????????? ?????????? ???? ??????????? ??? ????? ??? ???????????? ??? ????? ?????, ???????????, ?? ??????? ? ?????????????.
28 ? ????????? ??? ???????? ????????? ?????? ??? ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ?????? ?? ?????????? ??? ??? ?????? ??? ???? ???????? ??? ??? ??????? ????????? ??? ????????????? ??? ??????????? ???????, ???? ????? ????? ?????????????? ??? ??????? ??? ???????? ???????? ???????????, ???? ???? ???????? ?? ??? ?????? ?????.
29 ? ?? ??? ????????? ????????? ??? ? ??????? ??????? ????? ???????? ??? ????? ????? ?? ?????? ??? ??????? ??? ??????? ??? ????????? Unterpertinger (C-212/01). ???? ?? ????????? ??? ????? ???????? ???? ??? ????? ????????? ?????????? ??? ??????? ?? ????? ????????? ??????? ??????? ???? ????? ??? ???????? ??? ?????????? ???? ?????? ???????????? ?? ???? ??? ????????? ??? ?????? ???? ????????. ? ??????? ?????? ??? ???????? ????????? ??? ??? ?????????????? ????????? Unterpertinger ???????? ??? ??? ? ????? ??? ????? ??? ????????? ?????????????? ? ?????? ?????????? ??? ??????????.
30 ???? ??? ????????? ??? ???????? ?????????, ?? ????????????? ??? ????????? ?????????? ??? ???????????? ?????????? ???????????? ????????? ??? ??????? ???? ?????? ??? ???????? ???????????, ???? ????? ? ????????? ???????? ????????? ??? ??? ???????????? ??? ?????????? ??? ?????? ???? ????????, ?????? ??? ???????????, ???? ?????????????, ?? ????????? ????????

?????????. ?? ?? ??? ????????? ????????? ?????? ??? ????? ????????? ??? ????????? ??? ??????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????. ???? ??????? ???? ????????????? ??????? Unterpertinger, ?? ??????? ??? ??????? ?? ?????? ?????????? ????? ?? ?????? ?? ?? ?????????? ???? ????????? ???? ??????? ?? ??? ????? ??? ?????????? ???/? ??? ????????? ??? ?????????, ???? ??????? ?? ??? ????????? ??? ???????? ?? ????? ?????? ?? ????????? ????. ? ????????? ??? ???????? ????????? ????????? ??? ??? ?????? ?? ????? ??????? ???????? ????? ??? ???? ? ??? ????? ??? ?? ???????? ????.

31 ? ?? ??? ????????? ??????????? ???, ???? ??????? 21 ??? 23 ??? ????????????? ????????? ???????? ???? ???????, ?? ?????????? ?????? ???, ?????? ?? ????????? ??? ??? ??? ?????? ?? ??????????? ??????????, ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ??? ?????? ?? ?????????? ???? ????? ?????????? ?????, ??????????? ????? ??? ?????? ??? ?? ???? ?????????, ??? ?????????? ??? ?????????? ??? ??? ?? ???????? ?????? ??? ?? ???? ? ??????? ??? ???????????? ?????????, ?? ???????? ???? ???, ??? ?? ??? ?????????? ????????. ???? ??? ????????? ??? ???????? ?????????, ? ???????? ??? ?????????? ???? ???? ?????????, ???????? ??, ?????????? ?? ????????? ?????. 32 ????????, ? ????????? ??? ???????? ????????? ??????????? ??? ? ???????? ??? ????????? ??????? ????????? ?????? ?? ????? ????? ?? ??????? ??? ?? ????????????? ??? ????????????? ??? ??????? ??? ???????? ??? ???????? ??? ??????????? ???????????? ????? ???????????? ??? ?????????? ??? ???? ???????? ???????. ???????, ??????????? ?? ????? ????????? ???? ????????? ??? ?????????? ??? ???????? ???????????? ??? ???????? ??? ??? ?????? 93/16/??? ??? ??????????, ??? 5?? ???????? 1993, ??? ?? ??????????? ??? ????????? ??????????? ??? ?????? ??? ??? ????????? ??????????? ??? ????? ?????? ???? (?? L 165, ?. 1). ?? ??? ??????? ??? 25?? ??????????? 1999, C-349/96, CPP (??????? 1999, ?. ?-973, ????? 18), ?? ?????????? ?????? ??? ? ???????? ??? ???? ??? ???????????????? ???? ???? ?????? ?????? ?? ???????? ????? ?? ??????? ??? ?? ???? ???? ?? ????? ?????????? ???????. ???? ??? ????????? ??? ???????? ?????????, ? ?????? ??? ???????? ??????????? ???? ?? ?????? ??? ????? ??????? ??????, ?? ???? ??????????, ?? ???????????? ??? ?????? ????????? ???? ????? ??? ????? ? ?????? 93/16.

33 ???? ??? ?? ??? ?????????, ?????? ??? ???????? ????????? ??? ????? ?????? ??? ??? ??????? ??????? ????????? ?? ???? ??? ?????, ????????? ??? ????? ????????????? ?? ?????? ?????????? ????? ?? ??? ?????? ??? ???????? ???????????, ???? ?? ?????? ??? ??????? ?????? ?? ???????? ????????? ??? ????? ??????????. ?? ?? ???? ????????????? ????????????, ?.?., ????????? ?????????? ????????, ???? ????? ? ??????????? ??? ? ???????????, ???????? ?????? ???????? ??????????? ??? ?????????? ?? ?? ?????????? ??? ???????? ??? ?? ?? ?????????, ????? ??? ??? ????????? ???????????.

34 ? ????????? ??? ???????? ????????? ??????????? ???, ???? ????????? ??? ??? ?????? 93/16, ??? ????????? ????? ??? ????????? ??? ????????? ??? ??? ??????? ?????????? ??? ?????? ????? ? ?????????? ?????????? ????????? ??? ????????, ??????????? ?? ??????????? ?? ????? ???????? ???? ????????? ? ?? ??????????? ? ??????? ????. ?? ???????? ??? ??? ??? ??????????? ?? ??????? ????????? ??? ??????, ???????, ?? ????????? ?? ????????? ?? ?? ?????????? ??? ?? ???? ????????? ??? ???????? ??? ?? ????? ??????? ?? ??? ??????? ???????? ??? ????? ??????. ????????, ? ?????? ??? ??????? ??? ?? ??? ????????? ???? ??? ???????? ???? ???? ??? ?????????? ???? ??? ????? ???? ????? ?????????? ?? ?????????? ??? ????? 23 ??? ????????????? ????????? ???????? ???? ???????. 35 E??????, ? ????????? ??? ???????? ????????? ???????? ?? ??????????, ??????????? ?? ????? ???????? ??? ??????????? ???????, ???????? ???????? ??? ??????????? ??? ?????? ????????????? ?? ????????????? ??? ?????? ????? ??????? ??? ????????? ???????????. ? ?? ??? ????????? ??????????? ??? ?

??????? ??? ??? ?????? ???????? ? ?????????????? ??????? ???????? ????
???????? ????????? ??? ???????? ?????????, ???? ???????? ?? ?????? ?? ?
???????? ??? ??????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ?????
??????? ???????? ??? ???????? ??????. ????????, ? ?????????????? ??? ????? 33
??? ?? ???? ????????? ????????? ??? ??????? ????????? ??? ?????? ?? ??????
???????????? ??????? ??? ?? ??? ?????? ??? ???? ?????????? ?????????. ??
??????????, ??????????? ???? ????????? ??? ?????????? ????? ?????????? ???
??? ??????? ??????? ???????????? ?????? ??? ?????? ??? ??? ????????, ??? ????
??? ??????? ?? ?????????? ??? ?? ?????????? ??? ????????? ??? ????????
?????????? ??? ?????????? ?? ??? ?????????? ??? ????????? ????? ? ??????
??????? ????????? ??? ?? ???? ??????????. ????????, ? ?????? ??????????
???????????? ?????? ??? ?????? ??? ??? ???????? ??? ?????? ?? ???????
???????? ????????? ??? ?????????.
36 ? ????????? ??? ???????? ????????? ??????? ??? ? ??????? ??? 24?? ?????
1988, 122/87, ???????? ???? ??????? (??????? 1988, ?. 2685), ???? ????? ??
?????????? ?????? ??? ? ???????? ??? ??????????? ??? ????? 13, ?, ?????????? 1,
???????? ??, ??? ????? ??????? ??? ???????????? ??? ???????????? ?????????,
??? ??????????? ??? ??? ?????? ????????? ??? ?? ???? ?????? ???? ????? ???
????? ??? ????????. ? ??????? ??? 16?? ??????????? 1997, C-145/96, Von Hoffmann
(??????? 1997, ?. ?-4857), ? ????? ???????? ??? ??????? ???? ??? ??? ???????
????????? ???? ????????, ????? ???????? ??????? ??????????? ??? ?????? ???
??????? ???? ??????? ???????.
37 ???? ????? ??? ?????????????? ??????? D., ? ????????? ??? ????????
????????? ??????????? ??? ??????? ??? ??????????? ???? ?? ???????????? ???
?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ????? ??? ????????
????????????? ???? ????? ??? ?????? ??? ???????? ??? ??? ? ?????? ?????????
??? ???? ??????? ???? ??????? ??? ??? ?????? ???????? ? ?? ??? ??????? ??? ????
????? ????? ?? ??? ????? ??? ????????. ? ????????? ??? ?????????????? ???
????? 18 ??? ?? ???? ????????? ?? ???????? ?? ?????????? ??? ??? ????????????
???? ?? ???? ??????? ???????? ????????? ????????? ??? ?????????? ???
??????????? ?????? ??? ??????? ? ??? ???? ??? ???????????? ????????????.
??????, ? ?? ???? ????????? ?????? ??? ????? ???? ??????? ?? ?????????? ??
?????????? ?? ?????????? ??? ??? ???????? ????????????? ???? ? ???????????
? ?? ????????? ??? ??????????? ???? ?????? ????????? ??????? ?? ??? ???????
??? ????????? ??? ??? ????????? ??? ??????, ??? ??????????? ??? ???????? ???
??????? 93/16.
38 ?? ???? ??????????, ? ?? ??? ????????? ??????????? ??? ?? ?????????????
??? ????? ???????? ???? ??????? ??? ?????? ????? ??? ???????? ?? ??????? ???
???? ???????? ???? ??????? ??? ??? ?????? ???????? ? ????????????? ???????
D.? ??????? ?? ???????? ????????? ? ????????? ??? ??????. ? ????? 18 ??? ?? ???
????????? ???????????? ??? ? ??????? ???????? ?????????? ??? ??? ????????
??? ??????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????.
39 ? ????????? ??? ???????? ????????? ????????? ??? ???? ?? ?????????????
??? ????????????? ???? ??????? ???? ?????????? ????????????? ???????
???????? ? ????? ??????????? ??????????? ?? ??????????? ?? ?????, ???? ?????
???? ????????? ? ??? ??????????? ???????, ??????? ???????? ???? ??? ??????
???? ??? ????? ??? ????????. ????????, ?? ???????????? ??????? ???????????
??? ????????? ????????????? ??? ????????????? ???????? ??????? ???
????????, ???? ????? ?? ?????? ???????? ??????????. ? ????????? ??? ????????
????????? ????????? ??? ? ???????? ?????? ?? ???????? ?? ????????????? ???
??????? ??????? ???? ????? ??? ???????? ?? ???? ??? ???????????, ??????? ?
??????????? ??? ???????? ??? ???????? ?? ???????? ??? ?????? ?? ???????????
??? ??? ??????? ??? ???????? ? ??? ???????? ?? ??? ????????? ??? ?????? ???
??????????.

40 ??????, ? ?? ??? ????????? ??????????? ??? ?? ???????? ??? ????? ??? ???? ??????? ???????? ??? ???????? ??? ??????? ?? ?????????? ?? ?????????????? ??? ?????? ??? ?????? ???????? ?????? ??? ????????? ??? ???????????? ??? ??????? ??? ??? ?????????????. ?? ???? ????? ????? ?? ????????? ? ?????????? ??????????? ?? ????????? ???? ?? ?? ???????????? ??? ???????? ????????? ???? ?? ??? ???? ??? ??? ????? ???????? ? ?? ??? ???????. ?? ?? ??? ????????????? ?? ???????? ?? ???????????, ?.?., ?? ??????????? ??????????? ??? ???????? ????????????? ??? ?????? ????????. ? ??????? ??????? ??????? ????????? ???? ??? ?? ??? ?????????? ??? ?? ??????????? ??????? ???? ???? ????? ?? ???? ???????? ???? ??? ????? ??? ??? ??????? ?????????.
41 ??????, ? ????????? ??? ???????? ??? ????? ??? ?????? ????????? ??? ??????, ???? ??? ????????? ??? ???????? ?????????, ?? ????? ??????? ??? ??? ??????????? ?????????? ??? ??????????? ???? ??????? ????????. ? ?? ??? ????????? ??????????? ??? ?? ?????? ?????? ????? ?? ????????? ??????? ????????? ??? ????? ???? ??? ??? ????????? ??? ????????? ???? ??? ??? ??????. ????????, ??????????? ???????? ????? ??? ?????? ?? ???????? ?????? ?? ???????????????. 42 ??????, ? ????????? ??? ???????? ????????? ??????????? ?? ??????? ???, ?????? ?????? ????????? ??? ???????????? ??? ????? 13, ? ??? ?, ??? ????? ??????? ?????????? ??? ??? ????????? ??? ?????????? ????? ??? ????????? ? ??? ????? ?????, ????? ?????????? ??????? ?? ??? ????????? ??? ????? ??? ????????? ??? ???? ?????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ?? ??? ???????. ???? ?? ????????, ?? ?????????? ???? ?????????? ??? ??????? ??????????? ??????? ?? ??? ????????? ??? ?????????? ??? ???????? ? ????? ???????????? ? ??? ????? ????? ???? ?? ???????? ????????? ???? ????????? ??? ????????? ? ????? ?????????? ???????? ???????????? (????????? ??? 27?? ????????? 1993, C-281/91, Muys' en De Winter's Bouw- en Aannemingsberdrijf, ??????? 1993, ?. ?-5405, ????? 13, ??? ??? 5?? ??????? 1997, C-2/95, SDC, ??????? 1997, ?. ?-3017, ????? 32).
43 ? ????????? ??? ???????? ????????? ????????? ??? ? ?????????? ???? ???? ??????? ????????? ??? ???????? ??? ????? ????????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ??? ???????????? ?? ????????? ?? ?? ??????? ??? ????? ??? ?????? ??? ?? ???? ?????????. ???? ??? ?? ??? ????????, ?? ?? ???????????? ??? ? ?? ???? ??????? ?????????? ????? ???? ????????? ??? ?????? ? ????? ? ??????? ????? ??? ?????? ?? ????????, ???? ?? ????????? ??? ????????????? ?? ?????????? ??? ????? 56 ??? ????????????? ????????? SDC, ??? ?? ?????????? ??? ???????? ???? ????? ??? ??? ?????????? ??? ?????? ??? ???????? ?????????.
44 ? ???????? ?????????? ?? ????? ?? ???? ?????????? ??? ????????? ??????? ??? ????????? ?????????? ?? Commissioners of Customs & Excise ??? ?? ????? ?? ???????? ??? ????????? ?? ???????????? ??? ?????? ?????. ???? ?????????? ?? ????????? ??? ?????????? ??????? ?? ??? ???????? ??? ????????? ??? ???????????? ??? ????? 13 ??? ????? ???????, ????? ???? ????? ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ??????? ?????, ? ???????? ?????????? ??? ? ????????? ??? ???????? ??? ????? ??? ?????? ???????? ????????? ??? ????? ??????? ???????? ??? ??? ???????????? ??? ?????????? ?????????? ??? ?? ???? ??????? ?????????. ?????????, ? ???????? ?????????? ?? ??????? ??? ????????? ?? Commissioners of Customs & Excise ??? ???????????? ??? ???????? ???????. ? ???????? ??????, ???? ??? ?? ???????????? ??? ?????? ?????, ??? ? ?????? ??? ???????? ?????????? ???? ????????? ?????????? ??? ?????? ??? ???????? ??? ???????? ???????????? ?? ?????. ??? ??? ???? ????, ? ?????? 93/16 ??? ????? ?????????? ?? ????? ???????? ??? ???????????? ???????.

45 ? ???????? ????????? ??? ?? ?????? ??? ????????? ??????? ????????? ??? ??? ??? ??? ???, ???' ?????, ?????????? ???? ??? ???? ??? ???? ????? ?? ???? ??????? ?????????? ????????????? ?? ?????? ???????? ?????????, ??????? ??? ?????? 4, ?????????? 2, ??? ????? ???????. ??????????? ????????? ??? ??? ??? ????????? ????? ?? ??????? ???????? ???????????. ? ???????? ??????????? ??? ?? ?????? ?????????? ????? ???????, ???? ????????????? ??????? ??? ??? 16?? ??????? 1999, ??? ? ??????? ????????? ????? ??? ???????? ??? ????????? ??? ??????? ??????? ?????? ??? ?????? ??? ??? ???????? ? ????? ????? ??????? ?? ???????? ??? ?????????? ????? ??? ?? ???? ????????. ? ??????? ????? ????????????? ???? ?????? ??? ???????????? ?????, ???? ????? ?????????? ?? ??????????. 46 ??? ?? ?????? ??? ?? ??? ?????????, ? ???????? ?????? ??? ?? ???????? ????????? ??? ? ????????? ???????? ??? ?????????? ???? ???????? ??? ??????????? ??? ?????? ???? ???????? ?? ????? ??????, ???? ????????????, ???????? ????? ? ?????? ???? ???????? ????????? ??? ????????? ??????? ???????? ???????????, ??????????? ???? ? ??????? ????? ??? ?????????????. ?? ?? ??? ????????? ?????????? ??? ?? ?????????? ? ????????? ??? ? ?????????? ???? ??????. ?? ????????? ????? ??? ????? ????? ????? ????? ?? ??? ??????? ???????? ??? ????????? ??? ???????????. ???? ????????, ? ?????????? ??????? ????????? ??? ?? ???? ????? ???????? ???????? ??? ??? ?????????? ???? ??????? ????????? 47 ???? ??? ????????, ?? ????? ??????????? ??????? ??? ??? ??????, ?.?., ????????????? ?????????? ??? ????????????? ???????? ? ????????????? ??????? ?? ??? ????????? ??? ?????? ???????? ??? ??????? ???? ? ???? ????????? ???????. ?? ?? ???? ??????? ????????? ??? ????? ????? ????? ?? ?? ???????? ???? ??????????? ??????????? ????, ???????, ?? ??? ?????? ????????? ???? ????? ??? ??????. ???????, ? ???????? ??????????? ??? ?? Commissioners of Customs & Excise ???????? ??? ? ?????? ????????????? ????????? ????? ???????? ?????? ????????? ??? ????????? ???? ???. 48 ??????, ? ???????? ??????? ???, ?? ????????? ???????????, ????????????? ?????????? ??? ????????????? ???????? ? ??? ???????? ???? ????????? ?????????? ??? ??? ?????? ????? ??? ?????????????, ??? ??????? ???? ??????????? ?????????? ???? ?????, ???? ?????????? ???????? ??????? ? ???????? ??????????? ??? ????????? ??????? ???? ????????????. ??? ??? ??????????? ?????, ? ???????? ????????? ??? ? ?????? ???????? ????????????? ?????? ?? ???????? ?? ?????? ????????????? ?? ????? ?? ??? ????? ????? ??? ??????????? ?????????, ? ?????? ?????????? ???? ?????? ??????????? ???? ??????. ???????? ?? ????????????? ??? P. d'Ambrumenil, ???? ?????????? ???? ??????? ???? ??????????, ??? ???????? ?? ??????? ??? ?? ??? ???????????, ??? ?????? ?????????? ????????? ?? ????????? ???? ?? ?????????? ????????. 49 ???? ????? ??? ???????? ?????????, ?? ???? ??????? ??? ?? ???? ????????? ????????? ??? ???????????????? ??????? ???????? ????????? ? ??????????? ????????, ? ???????? ????????? ??? ?? ??????? ????????? ????? ??? ??????, ?? ?????? ??????????? ??? ??????? ??? ??????????? ?????? ????????? ??? ??? ???????? ? ??? ??? ??????????? ???????, ?????? ?? ????????? ??? ?????????? ???? ???, ????? ???? ???????????????? ??? ????? ??? ????? ????????? ?? ?? ??? ??????. ???????????, ?? ?? ???? ??????? ????????? ??? ?????????? ??? ???????? ??? ??????????? ???? ???????????? ??????????? ??? ? ??????? ???? ???? ??? ??? ????????? ??? ???????? ???? ??????? ????????.
50 ?????????, ?? ? ????????????? ????? ????????? ?? ?????? ??? ?????????? ??? ?? ??? ????????? ???? ??? ????? ??? ??????, ? ???????? ??? ????????? ?? ?????????? ?? ???????? ??? ?? ?? ???? ????????? ????????? ??????????? ????? ??? ??????????? ??? ??? ????????? ???????.

51 ???? ????? ???? ?????????? ????????? ???????? ??? ??????????????? ??????? ???????? ???? ???????? ? ???? ???????????? ????????, ? ???????? ?????????? ??? ?? ?? ???? ??????? ??????? ??? ??????? ???????????? ??? ?????????????. ????????, ?????? ?? ??????? ????? ??????????????? ???? ?? ???????? ??? ???????? ? ??? ???????????? ????????, ????? ?????????? ????? ??? ????????? ??? ????? ????????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????. ?? ?? ???? ???????, ????? ??? ? ???? ??????? ??? ????? ????????? ????????? ??? ??????????????? ??' ???????? ??? ??????? ?????, ???????? ????? ????????????? ?? ?????????? ?? ?????????? ?? ??? ????? ??????? ?? ??? ????????? ??? ?????? ???? ??? ?? ?????? ??? ????????? ??? ???????????. ??? ??????? ????, ???????????? ??? ????? ?????? ??? ?????? ??? ??? ?????????????, ? ????? ??? ????????? ???' ??????? ??? ??????? ????????? ??? ?????? ? ????????? ???????? ?? ???? ????? ??? ???????????? ??? ?????????? ???? ??????? ? ??? ???????? ???? ???????????? ???????? ??? ?????? ?? ????????.

???????? ??? ??????????

52 ???? ?? ????????? ??? ??????????, ?? ????????? ??? ?????? 13 ??? ????? ??????? ?????? ?? ???????????? ?????, ????????? ??? ????????? ???????????? ??? ?? ?????? ???? ??????? ?? ??? ????? ? ??? ??????????? ?? ???? ?????? ????????? ??? ???????????????? ?? ???????? ?????? ??? ?????????? ???? ???? (??., ?????? ?????, ??? ????????????? ??????? SDC, ????? 20, ??? ??? ??????? ??? 10?? ??????????? 2002, C-141/00, Kügler, ??????? 2002, ?. ?-6833, ????? 28). ?? ?? ???? ????????? ????????? ?????????? ??????? ??? ?????????? ???????, ?? ?????? ??????? ???? ??????? ??? ?????????? ???? ??? ???????? ??? ?????????? ??? ??? ??? ??? ??? ?????? ????? ?? ???? (?????????????? ????????? CPP, ????? 15, ??? ???????? ???? ???????, ????? 21).

53 ???? ????? ????????? ? ????????, ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ??? ?????????? ??? ??? ??? ?? ?????? ??? ??????? ????????? ??? ??????? ?? ???????????????? ??? ??????? ??? ???????? ??? ???????? ??? ??????????? ???????????, ???? ????? ??? ??????? ???????? ???????????, ?????? ??? ??????? ???????? ?????? ??? ?????????? ???????. ????????, ?? ??????? ????????? ??? ???????????????? ??? ??????? ??? ???????? ??? ?? ??? ??????????? ???????????? ?? ?????????? ???? ???????????? ??? ?? ????? 2, ?????? 1, ??? ????? ??????? ?????? ?????? ???????? ???? ???, ??? ??? ????????? ???? ?????? ??? ??????? ???????? ??????????? ? ??? ??? ???????????? ????? ????? ???????????? ????? ????????? ???? ????????? ??? ?????????? ??? ??? ?? ???? ??????.

54 ????????????, ???? ??? ?? ????? ??????? ????????? ??? ??????????????? ??? ??????? ????????? ?? ????? ?????? ????????? ????????????? ??????? ??????????, ??? ?? ????????? ??? ?????????? ????????? ??? ?? ????? 13, ?, ??? ????? ??????? ??? ?????????? ??? ??? ??? ???? ??? ????????????? ??????? ??????????, ???? ????? ????? ??? ???????????? ??? ???????????? ???? ???? ????????? ????? (????????? ??? 12?? ????????? 1998, C-149/97, Institute of the Motor Industry, ??????? 1998, ?. ?-7053, ????? 18 ??? D., ??????????????, ????? 20).

55 ???? ????????, ?????? ?? ?????????? ? ???????????????? ??? ?????????? ??? ???????? ????????? ??? ????????? ???? ???????? ??? ?????? ????????? ??? ????????? ??? ?????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ??? ?????? ??? ????????????? ?? ?????? ????????????? ??????? ??? ????????? ??? ?????? ??? ???? ?????? ?????????? ? ?????? 93/16. ?? ?????? ??? ????????? ? ?? ???? ??????, ? ????? ????????? ??? ?? ?????????? ??? ???????? ?????????? ??? ?????? ??? ??? ???????? ?????????? ??? ??????????, ????????????? ??? ????? ?????? ????, ???????? ?? ???????????? ???? ?????? ???? ?? ????????????? ??? ?????? ???? ????? ???? ?? ????????? ?? ?????? ??? ????????????? ??? ?????? ??? ??? ??????? ????? ????, ??? ? ??????? ???

**????????????? ??? ?????? ????? ? ?? ??? ????????, ? ????? ??????? ????????
??? ??? ???? ??? ???????? ???? ???, ????????? ????????????? ???????.**
**56 ????????, ?????? ?? ?????????? ??? ?? ??????? ??? ?? ???? ??????? ??????? ??
???????? ????????? ????????? ??? ????????????? ??? ??? ??? ??? ????????? ???
?????????? ???? ?? ??? ???? ??? ??????? ??????? ????????? ??? ??????? ???
????????? ????????? ??? ???????? ? ???? ??????, ??????? ?? ????? 17,
?????????? 5, ??? 19 ??? ?? ???? ??????? ????????? ?????? ??? ????????? ????.**
**57 ???? ????? ??? ?????? ??? ??????? ???????? ??????????, ?? ?????????? ????
??? ??????, ??? ????? 18 ??? ?????????????? ????????? D., ??? ????
???????????, ??? ????? 38 ??? ?????????????? ????????? Kügler, ??? ? ??????
???? ??? ?????? ?? ?????????? ???? ????? ???? ?? ??????????? ????????
?????????? ??? ???????????????? ?? ????? ?????????? ??? ?????? ???
??????????, ??? ?????????? ???, ??? ????? ??? ???????, ??? ?????????
????????? ? ????????? ??? ??????.**
**58 ?????? ??? ??? ?? ??? ????????? ????????? ??? ?? ??????? ????????
?????????? ?????? ?? ????? ?????????? ?????, ??? ????????? ???' ??????? ???
? ???????????? ?????? ???? ??????? ????????? ?????????? ????????? ?????
???????? (??., ??' ????? ??? ??????, ??? ????????????? ??????? ???????? ????
???????, ????? 23). ????????????, ??? ?? ????? 40 ??? ?????????????? ?????????
Kügler ????????? ??? ?? ???????? ????????? ??? ?????????? ?? ????? ??? ???????
??????? ?? ????????? ????????????? ????? ??? ?????? 13, ?, ?????????? 1,
???????? ??, ??? ????? ???????. ????? ??? ???? ?????????? ??? ????????????
??? ?? ????? ??? ??????????? ?? ???????? ????????? ? ??? ?????????
?????????? ????? ???????? ?????????? ?????????? ????????? ??? ???????
??? ????? ???????? ? ???????? ??? ??????, ?? ??????? ??? ?? ?? ???? ???????
????????? ????????? ???? ?????? ??? ??????? ???????? ?????????? ?????
??????? ?? ??? ????? ??? ???????? ??? ??????? ??? ???????? ??????????, ?
?????? ????? ?????? ???? ??? ??? ???????? ??? ?????????? ??? ????? 13,
?????????? 1, ???????? ??, ??? ????? ??????? ??? ??? ??? ??? ???????? ???
?????????? ???? ???? ?????????, ???????? ?? (??. ??? ??????????????
????????? ???????? ???? ???????, ????? 23, ??? Kügler, ????? 29).
**59 ?????????, ?? ???????? ????????? ??? ?????????? ?? ????? ?????????? ???
?????? ??? ??????????, ????????????????? ??? ?????????? ? ???
?????????????, ??? ?????? ??? ???????? ??? ???????, ???? ??? ???? ?????????,
?? ?????? ??? ????????????? ??? ?????????? ??? ????? 13, ?, ?????????? 1,
???????? ??, ??? ????? ???????. ?????????? ? ?????????? ???, ???????????
????? ??? ?????? ??? ?? ??? ??????? ?????????, ? ??????? ??? ?? ???? ???????
????????? ???? ??? ??? ?????????? ???? ????? ?? ??????? ?? ?????? ???
???????? ?????????? ??? ?? ???????? ? ?? ???? ????????? ??? ??????? ?????
???????.**
**60 ???? ????? ????????? ? ?????? ?????????? ??? ?????? 66 ??? 68 ??? ?????????
???, ??????? ???????? ??? ?? ????????????? ?? ?????? ???????? ?????????
?????? ?? ????????? ??? ??? ??? ????? ? ?????? ??? ?? ???? ??????? ?????????.
???? ????????, ??? ?? ???????? ????????? ?????????? ????? ???????? ??? ??
????? ????????? ??? ? ?????? ?????? ??? ??????? ??? ?? ??? ????????? ??? ?????
? ?????????, ????????????????????? ??? ?????????? ? ??? ?????????????, ???
??????, ???? ? ?????? ????????????? ??? ?????????? ???? ??? ??? ??????
????????? ? ????? ??????? ?????? ???????????, ? ???????? ??? ?????????? ???
????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ??? ???? ???????? ???
??? ?? ??? ??????? ?????????.**
**61 ???????????, ???? ? ?????? ????????? ????????? ??? ????????? ????????
??????????????????, ????????? ?????? ???, ???????? ? ?? ??? ?????? ?????????
??????? ??? ????????????? ????????? ??? ????????? ????????? ???? ?????
??? ???????? ??? ?????? ?? ???????????? ??? ???????? ???????? ??? ?????**

???????? ???? ??? ?????? ??? ???????? ???????????, ???? ????? ? ???????? ??????? ??? ???????? ? ? ??????? ??? ???????? ??? ???????, ? ?????? ?????? ???? ??????? ??????? ????????? ??? ????? ? ?????????, ????????????????? ??? ?????????? ? ??? ?????????????, ??? ?????? ??? ???????? ??? ????? ? ????????????????. ??? ?????? ?????? ?????????, ??? ???? ?? ?????????? ?? ????? ???????? ??? ????????? ??? ????????????????? ??? ??????? ??? ???????? ??? ?? ????????? ??????????????????, ???????????????? ?? ????? ?? ?????????? ?? ????? ? ?????????? ?? ????? ??? ??????? ? ????? ??????? ?????? ??????????? ?????? ??? ????????????? ? ?????? ????? ????????. ?????? ????? ?????? ??? ? ????????? ???????? ????????????????? ?????? ?????? ?? ??????? ??? ??? ???? ??? ???????????? ??? ??? ? ?? ???? ???????????????? ?????? ?? ???????? ??????? ???? ????????? ??? ?????? ??? ?????????????, ??????????? ??? ??? ???????? ? ???????????? ??? ???????????? ????????, ? ?????? ?????? ??? ????????? ???? ?????? ????????? ????? ??? ?????? ?????????? ?? ????? ? ??????? ???? ????????????? ??? ??? ???? ? ??? ??????? ???????????? ??? ??????? ??? ?????????? ?????? ????????? ????? ???????. ????????, ??? ?????? ?????? ????????? ??? ?????? ?? ???????? ??? ????????? ??? ?????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????.
62 ???????, ??????? ????????? ???? ????? ????? ??? ?????????? ??? ?????????? ??? ???????? ?? ??? ?? ??? ???????????? ??????????, ?????? ???????????????? ??? ??????? ??? ???????? ??? ???????? ???????????? ??? ??????? ??? ???????? ??? ???????? ????????????, ??? ????????? ??????? ???????? ?????????? ???? ??? ?????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????. ????????????, ?? ?? ??? ??????? ????????? ????? ?? ????? ??? ????????? ???????? ???????????????? ??????? ??? ????????? ??? ?????? ???????? ?? ??? ????????? ??? ?????? ????????, ?? ?????? ??????? ????? ?? ???????? ? ??? ????????? ??? ??? ?????? ?????? ?? ??????? ????, ?????????? ?? ?????????? ???????? ?????????? ??????, ???? ????? ?? ???????? ??? ?? ???????? ????????? ??????, ? ?? ???????? ?????? ????????????, ???? ????? ?? ?????? ???????????? ??? ????????? ?? ???????? ???????? ????????? ????????.
63 ???? ????? ??? ??????? ????????? ??? ?????????? ???? ?????? ???????? ????????????? ??????????, ?.?. ??? ????????????? ?????????? ??? ????????????? ???????? ??? ???????????? ??? ????????? ??? ???????? ?? ??? ???????????? ??????????, ?????? ?? ?????????? ????? ?? ??????? ????? ??? ?????? ???????????????? ?? ?? ??? ??????? ?????????, ?????????? ?? ?????????? ? ?????? ?????? ????.
64 ???? ????????? ???? ????????????? ?????????? ??? ?????? ? ?????????? ?????????? ??? ????? ?? ?????????? ??? ??? ??????, ?? ?????? ??? ?????????????, ???? ???????????? ????????????? ????????????? ? ??? ??? ?????? ????????? ????????????? ??? ???????? ???? ???????? ?????????, ? ?????? ?????? ??? ????????? ??? ??????? ? ?????? ????? ? ?????? ?? ????? ???? ????????? ??? ????? ???????? ??? ??? ?? ?????? ??? ?????? ???? ????????. ?? ?? ???? ??????? ???????? ????????? ??? ?????????? ?????? ???? ????????? ??? ?????? ??? ???????? ?? ????? ????????? ?? ???????? ????????? ????????????? ???, ????????, ??? ??????? ?? ?????? ????????? ????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????.
65 ??????, ???? ? ?????? ???? ????????????? ????????? ????????? ????????? ??? ?? ???????? ?????? ?? ????? ???????? ?????? ?????? ??? ??? ? ????????? ??? ?????? ???? ???????? ????????? ??????????? ?? ????????? ????????????? ? ??????? ?? ????????? ?? ?? ???? ????????????? ??? ??????? ????????, ?????? ?? ???????? ??? ? ?????? ?????? ??? ?? ??? ??????? ????????? ????? ? ????????? ??? ?????? ??? ?????????????. ???? ????????, ? ??????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ???????? ?????? ?? ????????? ?? ??? ?????? ?????? ?????????.

66 ??????? ???????? ?? ??????? ??? ???????????? ???? ??????? 63 ??? 65 ??? ???????? ????????? ??????? ???? ????? ??? ??????? ????????? ??? ?????????? ??? ?????????? ??? ???????? ?? ??? ?? ??? ???????????? ??????????. ???? ???????? ????????? ????? ??? ???? ??????? ? ????? ????????? ????????? ???????????????? ?? ????? ?? ?????????? ?? ???????? ? ?????????? ?? ????? ????????? ??????? ?? ??? ???????? ?????????? ? ??????? ?? ?? ????????? ??? ?????? ?? ????? ???? ?????????? ? ?? ????? ?? ?????????? ?? ??? ?????????? ??????? ? ?????????? ?? ???????????? ?? ?????????? ??? ?????? ?? ?????????? ??? ??????????, ?? ???????? ??????? ????????? ?????????? ?????? ??? ?? ????????? ???? ?? ??? ???????? ? ???? ?? ??? ?????????? ??????? ??? ???????? ?? ????? ????????????? ??? ???? ????????? ?? ?????? ??? ?? ???? ???????? ? ??? ?? ???? ???????????? ????????. ????????, ?? ?? ??? ??????? ????????? ??? ????????? ???? ??????? ???????? ?????????? ??? ???????????? ??????? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????.
67 ?????????, ?? ???????? ???????? ??????? ??? ????? ?????????? ????????? ????????? ??? ????????? ???????????? ???????? ???????? ?? ??????? ??? ???????????? ??? ????????? ??? ?????????? ??? ????????? ??? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ???????, ????? ?? ?? ???? ??????? ?? ?????????? ?????? ??? ?? ???????? ?????? ? ??????? ??? ? ????????? ????????? ????? ??? ? ????????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????? ???????? ??????? ???????? ?? ??????? ??? ??????? ???????? ??????? ???? ??? ??? ??????? ?????? ?? ?????????? ?? ?????????? ??? ????? ??? ? ??? ???????????? ???????? ??? ????????? ?? ???????? ??? ?? ?? ???? ??????? ????? ?? ????? ????? ??? ????????? ??? ??????.
68 ??????? ??? ??????? ???????, ??? ???????????? ??????? ?????? ?? ????? ? ???????? ??? ?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? ?????? ?? ?????????? ??? ??? ?????? ??? ? ???????????? ??? ??? ??? ?????????? ??? ??? ??????? ???????? ????????? ?? ?????? ???????? ??? ??? ??? ?????????? ??? ??? ??????? ???????? ????????? ?? ?????? ??????????:
???? ?????????? ???????? ????????? ?? ???????, ???? ??? ??????? ?????? ????????? ? ???????????? ????????,
???? ???? ??????? ? ????? ????????? ????????? ??? ??? ????????? ??? ????????? ???, ????????? ? ????? ????????? ???? ??? ??????? ?????? ????????? ? ???????????? ????????, ?
????? ?????? ???????? ????????????? ??????????, ?.?. ?????????? ??? ????????????? ????????,
???? ?? ?? ??? ??????? ????????? ?????????? ?????? ???? ????????? ??? ?????? ??? ????????????.
69 ? ?? ???? ???????? ??? ??????????? ??? ??? ????????? ??????? ?????????, ?? ?????? ???????????????? ??? ??????? ??? ???????? ??? ???????? ???????????: ??????? ???????? ????????????? ??? ??????? ??? ?????????? ????????? ???????,
??????????? ???????? ????????? ?? ????? ??? ????????? ??????? ???????? ??????????? ???????? ???????? ??????? ??? ??? ???????????? ??? ?????? ??? ????????? ??????? ?? ?????? ??????????? ?? ???????? ????? ???????????? ???? ????????? ?????? ??? ?????????? ??? ?????????? ???? ?????????? ?????????, ????? ??? ????????? ???????? ???????????? ???????????? ?? ???????? ??????????, ?????, ????, ?? ???????????? ????????? ?????????,
??????????? ???????? ????????? ?? ????? ??? ????????? ??????? ???????? ??????????? ??????? ?? ??????????? ???????? ????????, ???? ??? ??????? ?????? ???????? ?? ????? ??????????? ?? ?????????? ??? ??????????,

?????????? ???????? ???????????? ??????? ??? ????????? ??? ?????????? ???? ?????????? ?????????, ????? ??? ????????? ???????? ???????????? ???????????? ?? ???????? ??????????, ?????, ????, ?? ???????????? ???????? ?????????.

??? ??? ?????????? ??????
70 ?? ????? ??? ????? ?????????? ? ????????? ??? ???????? ????????? ??? ? ????????, ??? ????????? ???????????? ??? ??????????, ??? ??????????. ????????? ??? ? ??????? ?????????? ???? ?? ???? ???? ????????? ??? ?????? ????? ??? ????????? ????????????? ??? ??????? ??????? ??? ????????? ??????????, ?' ???? ?????????? ?? ????????? ??? ??? ?????????? ??????. ??? ???? ?????? ??????,

?? ?????????? (?????? ?????),

????????? ??? ??? ?????????? ??? ??? ??????? ?? ??????? ??? 6?? ??????? 2001 ?? VAT and Duties Tribunal, London, ???????????:
1)?? ????? 13, ?, ?????????? 1, ???????? ??, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???? ???????????? ??? ?????????? ??? ?????? ?????, ??? ???????? ?? ???? ?????? ?????? ???????? ? ????? ??????? ????? ???????????? ?????: ?????????? ?????????? ????, ?????? ?? ?????????? ??? ??? ?????? ??? ? ???????????? ??? ??? ?? ???? ??????? ???????? ??? ??? ???? ???????????? ????? ?????????? ??? ??? ??????? ???????? ????????? ?? ?????? ???????????:
???? ?????????? ???????? ????????? ?? ???????, ???? ??? ??????? ?????? ????????? ? ???????????? ????????,
???? ???? ??????? ? ????? ????????? ????????? ??? ??? ????????? ??? ????????? ???, ????????? ? ????? ????????? ???? ??? ??????? ?????? ????????? ? ???????????? ????????, ?
????? ?????? ???????? ????????????? ??????????, ?.?. ?????????? ??? ????????????? ????????,
???? ?? ?? ??? ??????? ????????? ?????????? ?????? ???? ????????? ??? ?????? ??? ??????????????.
2)? ?? ???? ???????? ??? ???????????? ??? ??? ????????? ??????? ?????????, ?? ?????? ???????????????? ??? ??????? ??? ???????? ??? ???????? ????????????:
??????? ???????? ????????????? ??? ??????? ??? ?????????? ????????? ???????,
?????????? ???????? ????????? ?? ????? ??? ????????? ??????? ???????? ???????????? ???????? ???????? ??????? ??? ??? ???????????? ??? ?????? ??? ????????? ??????? ?? ?????? ???????????? ?? ???????? ????? ???????????? ???? ????????? ??????,
?????????? ???????? ???????????? ??????? ??? ????????? ??? ?????????? ???? ?????????? ?????????, ????? ??? ????????? ???????? ???????????? ???????????? ?? ???????? ?????????, ?????, ????, ?? ???????????? ???????? ?????????,
?????????? ???????? ????????? ?? ????? ??? ????????? ??????? ???????? ???????????? ??????? ?? ?????????? ???????? ?????????, ???? ??? ??????? ?????? ???????? ?? ????? ???????????? ?? ?????????? ??? ??????????,
?????????? ???????? ???????????? ??????? ??? ????????? ??? ?????????? ???? ?????????? ?????????, ????? ??? ????????? ???????? ???????????? ???????????? ?? ???????? ?????????, ?????, ????, ?? ???????????? ???????? ?????????.

Rosas

Edward

La Pergola

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R. Grass

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1 – ?????? ???????????: ? ???????.