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Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság — Hungary) lodged on 4 September 2019 — BAKATI PLUS Kereskedelmi és Szolgáltató Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-656/19)

(2020/C 95/09)

Language of the case: Hungary

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: BAKATI PLUS Kereskedelmi és Szolgáltató Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Is it compatible with Article 147 of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax (‘the VAT Directive’) for a Member State to operate a practice whereby the concept of ‘personal luggage’, defined as forming part of the concept of the supply of goods to foreign travellers, which is exempt from value added tax, is treated in the same way as both the concept of personal effects used in the Convention concerning Customs Facilities for Touring, done at New York on 4 June 1954, and the Additional Protocol thereto, and the concept of ‘luggage’ defined in Article 1(5) of Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code?

2.

In the event of a negative answer to the previous question, how is the concept of ‘personal luggage’ in Article 147 of the VAT Directive to be defined, given that that directive does not define it? Is the national practice whereby the tax authorities of a Member State take into account only the ‘normal meaning of terms’ compatible with the provisions of Community law?

3.

Must Articles 146 and 147 of the VAT Directive be interpreted as meaning that, where a taxable person does not qualify for the exemption for the supply of goods to foreign travellers under Article 147 of that directive, it must be examined, where appropriate, whether the exemption for the supply of goods for export under Article 146 of that directive is applicable, even if the customs procedures laid down in the Union Customs Code and in delegated legislation have not been carried out?

4.

If the answer given to the previous question is that, where the exemption for foreign travellers is not applicable, the transaction qualifies for a VAT exemption on the ground that the goods are for export, can the legal transaction be classified as a supply of goods for export that is exempt from VAT contrary to the intention expressed by the customer at the time of placing the order.

5.

In the event of an affirmative answer to the third and fourth questions, in a situation such as that in the case at issue, in which the issuer of the invoice knew at the time of supplying the goods that they had been purchased for the purposes of resale but the foreign buyer nonetheless wished to remove them from the territory under the scheme applicable to foreign travellers, with the result that the issuer of the invoice acted in bad faith in issuing the tax refund application form available for that purpose under that scheme, and in refunding the output VAT pursuant to the exemption for foreign travellers, is it compatible with Articles 146 and 147 of the VAT Directive and the EU law principles of fiscal neutrality and proportionality for a Member State to operate a practice whereby the tax authority refuses to refund tax incorrectly declared and paid on supplies of goods to foreign travellers without classifying such transactions as supplies for goods for export and without making a correction to that effect, notwithstanding that it is indisputable that the goods left Hungary as traveller’s luggage?

(1) OJ 2006 L 347, p. 1.