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Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 22 November 2019 — G. Sp. z o.o. v Dyrektor Izby Administracji Skarbowej w Bydgoszczy

(Case C-855/19)

(2020/C 61/22)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: G. Sp. z o.o.

Defendant: Dyrektor Izby Administracji Skarbowej w Bydgoszczy

Questions referred

1.

Do Article 110 of the Treaty on the Functioning of the European Union and Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added (1) not preclude a provision such as Article 103(5a) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on the tax on goods and services), (2) which stipulates that, in the case of an intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of the customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty:

(a)

within 5 days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit — if the goods are the subject of intra-Community acquisition within the meaning of the Ustawa z dnia 6 grudnia 2008 r. o podatku akcyzowym (Law of 6 December 2008 on excise duty) by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty;

(b)

within 5 days of the date on which such goods enter a tax warehouse from the territory of a

Member State other than Poland;

(c)

upon the movement of these goods within the territory of Poland — if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty?

2.

Does Article 69 of Directive 2006/112/EC preclude a provision such as Article 103(5a) of the VAT Law, which stipulates that, in the case of the intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of a customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty:

(a)

within 5 days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit — if the goods are the subject of intra-Community acquisition within the meaning of the Law of 6 December 2008 on excise duty by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty;

(b)

within 5 days of the date on which such goods enter a tax warehouse from the territory of a Member State other than Poland;

(c)

upon the movement of these goods within the territory of Poland — if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty:

where the above amounts are interpreted as not constituting interim VAT payments within the meaning of Article 206 of Directive 2006/112/EC?

3.

Does an interim VAT payment within the meaning of Article 206 of Directive 2006/112/EC which is not paid on time lose its legal status at the end of the tax period for which it is to be paid?

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

(2) Journal of Laws [Dz. U.] of 2016, item 710, as amended; 'the VAT Law'.