

Communication concerning the decision of the Curia of Hungary in
administrative case number Kfv.V.35.739/2017

The plaintiff, an authorised warehouse-keeper using a simplified authorisation, transported self-produced grape wine to the tax warehouse of an Austrian company where the wine was supplemented by tirage liqueur and yeast during the separate process of champagnization and was filled into pressure resistant fermenting bottles, and then the latter were sealed with special crown corks. Later on, the final product was brought back to and stored at the plaintiff's site in Hungary.

The first instance customs authority carried out an on-the-spot check at the plaintiff's site. As a result of its investigation, the authority imposed an excise penalty on the plaintiff for the unlawful importation, from another European Union Member State, of goods subject to excise duty, in addition, it ordered the confiscation and destruction of the excise goods concerned. Based on the provisions of section 114, subsections (2)-(3) of Act number CXXVII of 2003 on Excise Duties and the Special Rules on the Marketing of Excise Goods (hereinafter referred to as the Excise Duties Act), the first instance authority found that the plaintiff had stored, under a duty suspension arrangement, sparkling wine originating from another European Union Member State in his simplified tax warehouse without any prior authorisation by the relevant customs authority. The bottles of sparkling wine stored by the plaintiff were therefore qualified as goods unlawfully removed from taxation.

Proceeding upon the plaintiff's appeal, the second instance authority, the defendant to the present case, upheld the first instance decision.

In his legal action, the plaintiff requested the court to quash the first and second instance administrative decisions. The plaintiff argued that – by virtue of section 88 of the Excise Duties Act and Article 47 of Council Regulation number 1493/1999/EC – the excise goods in question did not qualify as sparkling wine, but were to be considered as grape wine.

As a result of its reopened proceedings, the court of first instance quashed the first and second instance administrative decisions.

In its petition for judicial review, the defendant requested the Curia of Hungary either to quash the first instance judgement and reject the plaintiff's claim or to order the court of first instance to reopen its proceedings.

The Curia upheld the first instance judgement – with the exception of part III of the judgement's reasoning which had been quashed – and ordered the first instance authority to reopen its proceedings.

According to the Curia's procedural order rendered in case number Kfv.V.35.669/2015, the decision on the issue of whether the plaintiff's storage was lawful or not has to be preceded by the qualification of the excise goods, falling under the material scope of the Excise Duties Act [section 3, subsection (2) of the said Act], stored by him. For the above purposes, the court of first instance had to provide both parties with the possibility to put forward their evidence. Section 275, subsection (3) of the Code of Civil Procedure stipulates that only judgements that have been delivered without any procedural irregularities may be subject to on-the-merits judicial review. The Curia established that the court of first instance had complied with the Curia's previous decision that had ordered it to reopen its proceedings, therefore the first instance judgement rendered in the court's reopened proceedings could be reviewed by the supreme judicial forum.

Based on section 163, subsection (1) of the Code of Civil Procedure, the court of first instance took extensive evidence and gave way to the defendant's offers of evidence as well. The plaintiff transported wine to Austria where, as the expert opinion rightly pointed out, the transported goods underwent a special process. The defendant breached the provisions of section 72, subsection (1), point ea) of the Code of Administrative Proceedings and violated an essential procedural requirement by examining only the transportation of the excise goods back to Hungary and failing to assess the prior stages of the plaintiff's actions. On the basis of the expert opinion, the court of first instance correctly pointed out that no lawful decision could be made by taking into account only the transportation of the goods back to Hungary, since section 221, subsection (1) of the Code of Civil Procedure required a detailed description of the case's relevant facts, namely what kind of product – wine – had been transported to Austria, what type of process had been applied there and when the sparkling wine had been brought back to Hungary. In addition, the defendant's decision failed to give any adequate reasons for the qualification of the excise goods as sparkling wine.

The court of first instance took extensive evidence, properly assessed, pursuant to section 206, subsection (1) of the Code of Civil Procedure, the various pieces of evidence by involving a forensic expert specialised in viticulture and winery as well, and rightly concluded that the excise goods brought back to Hungary had to be considered as grape wine, hence, it lawfully decided to quash the first and second instance administrative decisions.

The second instance decision did not include any tariff classification. In the judicial review proceedings, the defendant has no right to hold the court responsible for failing to carry out an administrative action that should otherwise have been performed by the defendant. In an administrative lawsuit, the court is entitled – pursuant to the special provisions of Chapter XX of the Code of Civil Procedure – to decide only on the lawfulness of the impugned administrative decision and – in the absence of statutory authorisation – has no competence to classify the excise goods under a tariff heading instead of the defendant. Since the subject matter of the legal dispute did not extend to any tariff classification issue [section 121, subsection (1) of the Code of Civil Procedure], the court of first instance was not in a position to address such issue in its judgement in accordance with section 215 of the Code of Civil Procedure.

The Curia found that the authority's decision had referred to the excise goods in question as sparkling wine, however, it had been demonstrated that they had to be qualified as grape wine, therefore the court of first instance should have disregarded the defendant's findings. Consequently, the Curia quashed part III of the first instance judgement.

With regard to the above and on the basis of section 275, subsection (3) of the Code of Civil Procedure, the Curia upheld the first instance judgement – with the exception of part III of the judgement's reasoning which had been quashed – and ordered the first instance authority to reopen its proceedings. The Curia instructed the customs authority to fully establish the case's factual background and deliver a new decision based on the expert opinion of the wine expert appointed by the court of first instance.

Budapest, the 14th of December 2018

Administrative and Labour Department of the Curia of Hungary