Reports of Cases

Case C-322/25

SWEDISH MATCH – FÓSFOROS DE PORTUGAL, S.A.
v
Autoridade Tributária e Aduaneira

(Request for a preliminary ruling from the Supremo Tribunal Administrativo)

Judgment of the Court (Sixth Chamber) of 13 May 2026

(Reference for a preliminary ruling – General arrangements for products subject to excise duty – Directive 92/12/EEC – Tax markings – Article 21 – National legislation limiting the automatic justification of the destruction of 2% of the tax markings used annually during the production process to the destruction which occurred on the national territory – Proportionality)

1. *Tax provisions – Harmonisation of laws – Excise duties – Directive 92/12 – Option for Member States to require tax markings to be affixed to products released for consumption in their territory – Option for Member States to make provision for the consequences of the disappearance of the tax markings – National legislation placing the financial responsibility for such disappearance on their purchaser – Whether permissible – Option for Member States to lay down detailed rules justifying the destruction of those markings – Condition – No barrier to the free movement of products subject to excise duty*
(Council Directive 92/12)

(see paragraphs 22-24)

2. *Tax provisions – Harmonisation of laws – Excise duties – Directive 92/12 – Option for Member States to require tax markings to be affixed to products released for consumption in their territory – National legislation limiting the automatic justification of the destruction of 2% of the tax markings used annually during the production process to the destruction which occurred on the national territory – Obstacle to the free movement of products subject to excise duty – Whether justified – Assessment by the national court – The fact that it is impossible to verify the destruction of tax markings which occurred outside the national territory – No such verification in the national territory – Treating losses which occurred outside the national territory in the same way as those which occurred on the national territory exceeding the 2% limit – Losses subject to stricter supervision – Prohibition of the general presumption of fraud and abuse – Contested national legislation not permissible*
(Council Directive 92/12, as amended by Directive 94/74, Art. 21(2), second subpara.)

(see paragraphs 26-34, 36, 37, 39, operative part)

See the text of the decision.