

DENMARK

As my answer to the questionnaire 2005, I will provide some details of a judgment from The Supreme Court of Denmark, pronounced May 17th. 2004 (# 428/2003 2nd. Section):

During many years a danish cast iron foundry in its production had used sand, which afterwards had been transported to a dump in a Danish municipality ("kommune" in danish).

In 1990 the municipality got an environmental approval to use the used sand from the cast iron foundry to establish a waterproof surface in connection to a final cover of the dump. Henceforth the municipality informed the danish tax authorities, that the municipality because of the approval had exempted the cast iron foundry from paying waste tax of the sand which was reused to establish the surface.

The danish tax authorities informed the municipality, that it had no competence to do so, and decided instead, that the reused sand could not be exempted from paying waste tax.

The case was then brought before the danish courts of law.

The High Court of Western Denmark found, that the used sand was a remain product from the cast iron production, which the foundry had to part with. Because of that the court found, that the reused sand was waste according to EU-law and national danish law - even though it could be reused to establish the waterproof surface on the dump. The issue of payment of waste tax fell under the danish tax authorities, and the high court found, that the decision of the tax authorities was in accordance with danish tax law.

The Supreme Court (five judges) agreed unanimously, that the sand which was reused to establish the surface of the dump was waste.

Three judges voted for affirming the judgment from the high court.

Two judges found, that the sand which was reused to establish the surface of the dump was not "deposited" at the dump, and because of that it was not in accordance with the law to collect the waste tax.

The result of the case was, because of the votes in The Supreme Court, that the judgment from The High Court of Western Denmark became affirmed.

Yours sincerely

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