

61980J0154

Judgment of the Court (Second Chamber) of 5 February 1981. - Staatssecretaris van Financiën v Association coopérative "Coöperatieve Aardappelenbewaarplaats GA". - Reference for a preliminary ruling: Hoge Raad - Netherlands. - VAT - Provision of services. - Case 154/80.

European Court reports 1981 Page 00445

Swedish special edition Page 00023

Finnish special edition Page 00023

Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

TAX PROVISIONS - HARMONIZATION OF LEGISLATION - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - PROVISION OF SERVICES - BASIS OF ASSESSMENT - CONSIDERATION , DIRECTLY LINKED TO THE SERVICE , CAPABLE OF BEING EXPRESSED IN MONEY AND HAVING A SUBJECTIVE VALUE

(COUNCIL DIRECTIVE 67/228 , ARTS 2 AND 8 (A): ANNEX A , POINT 13)

Summary

A PROVISION OF SERVICES IS TAXABLE WITHIN THE MEANING OF THE SECOND DIRECTIVE ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES , WHEN THE SERVICE , IN THE TERMS OF ART . 2 OF THAT INSTRUMENT , IS PROVIDED AGAINST PAYMENT AND THE BASIS OF ASSESSMENT FOR SUCH A SERVICE CONSISTS , IN THE TERMS OF ARTICLE 8 (A) AS AMPLIFIED BY POINT 13 OF ANNEX A , OF EVERYTHING RECEIVED IN RETURN FOR THE PROVISION OF THE SERVICE . THERE MUST THEREFORE BE A DIRECT LINK BETWEEN THE SERVICE PROVIDED AND THE CONSIDERATION RECEIVED . SUCH CONSIDERATION MUST BE CAPABLE OF BEING EXPRESSED IN MONEY AND HAVE A SUBJECTIVE VALUE SINCE THE BASIS OF ASSESSMENT FOR THE PROVISION OF SERVICES IS THE CONSIDERATION ACTUALLY RECEIVED AND NOT A VALUE ASSESSED ACCORDING TO OBJECTIVE CRITERIA .

THEREFORE THERE CAN BE NO QUESTION OF ANY CONSIDERATION WITHIN THE MEANING OF ARTICLE 8 (A) OF THE DIRECTIVE IN THE CASE OF A COOPERATIVE ASSOCIATION RUNNING A WAREHOUSE FOR THE STORAGE OF GOODS WHICH DOES NOT IMPOSE ANY STORAGE CHARGE ON ITS MEMBERS FOR THE SERVICE PROVIDED .

Parties

IN CASE 154/80

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

STAATSSECRETARIS VAN FINANCIEN (SECRETARY OF STATE FOR FINANCE)

AND

COOPERATIEVE AARDAPPELENBEWAARPLAATS GA , A COOPERATIVE ASSOCIATION , HEINKENSZAND ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 8 OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16),

Grounds

1 BY A JUDGMENT OF 25 JUNE 1980 WHICH WAS RECEIVED AT THE COURT ON 2 JULY 1980 THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION AS TO THE INTERPRETATION OF ARTICLE 8 OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX (OFFICIAL

2 THAT QUESTION WAS RAISED IN THE CONTEXT OF A DISPUTE BETWEEN THE STAATSSECRETARIS VAN FINANCIEN (SECRETARY OF STATE FOR FINANCE) AND AN AGRICULTURAL COOPERATIVE ASSOCIATION WHICH RUNS A POTATO WAREHOUSE , OVER THE FACT THAT , HAVING DECIDED NOT TO COLLECT ANY STORAGE CHARGE FOR 1975 AND 1976 FROM ITS MEMBERS FOR THE STORAGE OF POTATOES , THE ASSOCIATION CONSIDERED THAT SINCE THOSE SERVICES WERE PROVIDED FOR NO PAYMENT THEY SHOULD NOT BE SUBJECT TO TURNOVER TAX .

3 HOWEVER THE FISCAL AUTHORITIES TOOK THE VIEW THAT THE COOPERATIVE HAD NEVERTHELESS CHARGED ITS MEMBERS SOMETHING IN RETURN OWING TO THE REDUCTION IN THE VALUE OF THEIR SHARES AS A RESULT OF THE NON-COLLECTION OF THE STORAGE CHARGES FOR THE TWO YEARS IN QUESTION AND HAVING ASSESSED WHAT WAS RECEIVED IN RETURN TO BE THE STORAGE CHARGE ORDINARILY IMPOSED IT ISSUED A NOTICE OF ASSESSMENT TO ADDITIONAL TAX .

4 THE COOPERATIVE REFERRED THAT NOTICE OF ASSESSMENT TO THE GERECHTSHOF , THE HAGUE , ARGUING THAT , SINCE THE TERM CONSIDERATION (VERGOEDING) AS DEFINED IN ARTICLE 8 OF THE WET OP DE OMZETBELASTING (LAW ON TURNOVER TAX) HAS A SUBJECTIVE CHARACTER , THE COOPERATIVE HAD PROVIDED ITS SERVICES FOR NO CONSIDERATION BECAUSE IT HAD NOT REQUIRED ANYTHING IN RETURN .

5 THE GERECHTSHOF UPHELD THE APPLICATION AND THE STAATSSECRETARIS VAN FINANCIEN APPEALED AGAINST THAT JUDGMENT .

6 IN ORDER TO RESOLVE THE DISPUTE THE HOGE RAAD PUT THE FOLLOWING QUESTION :

'' A COOPERATIVE ASSOCIATION INCORPORATED UNDER NETHERLANDS LAW RUNS IN ACCORDANCE WITH ITS STATED OBJECTS A POTATO STORAGE DEPOT . THE MEMBERS OF THE ASSOCIATION HAVE THE RIGHT AGAINST IT AND THE OBLIGATION TOWARDS IT TO PUT IN STORE EACH YEAR 1 000 KILOGRAMS OF POTATOES FOR EACH SHARE CERTIFICATE ISSUED BY THE ASSOCIATION IN THEIR POSSESSION IN RETURN FOR A STORAGE CHARGE FIXED EACH YEAR BY THE ASSOCIATION PAYABLE AT THE END OF THE SEASON . PURSUANT TO A DECISION BY THE ASSOCIATION , IN A GIVEN YEAR , NO STORAGE CHARGE MAY BE IMPOSED .

IN SUCH A CASE IS THERE CONSIDERATION WITHIN THE MEANING OF THE OPENING WORDS AND PARAGRAPH (A) OF ARTICLE 8 OF THE SECOND DIRECTIVE?

''

7 BY THAT QUESTION THE HOGE RAAD IS IN SUBSTANCE ASKING WHAT IS THE CORRECT INTERPRETATION OF THE TERM '' CONSIDERATION '' CONTAINED IN ARTICLE 8 (A) OF THE SECOND DIRECTIVE .

8 THE QUESTION WHICH IS THUS RAISED MUST BE RESOLVED IN THE LIGHT OF THE ENTIRE PROVISIONS OF THE SECOND DIRECTIVE .

9 IT SHOULD BE NOTED IN THE FIRST PLACE THAT THE EXPRESSION IN ISSUE IS PART OF A PROVISION OF COMMUNITY LAW WHICH DOES NOT REFER TO THE LAW OF THE MEMBER STATES FOR THE DETERMINING OF ITS MEANING AND ITS SCOPE ; IT FOLLOWS THAT THE INTERPRETATION , IN GENERAL TERMS , OF THE EXPRESSION MAY

NOT BE LEFT TO THE DISCRETION OF EACH MEMBER STATE .

10 FURTHERMORE THE COMMUNITY LEGISLATURE HAS BEEN CAREFUL TO CLARIFY THE EXPRESSION ' ' CONSIDERATION ' ' IN ANNEX A - WHICH BY ARTICLE 20 OF THE SECOND DIRECTIVE IS AN INTEGRAL PART THEREOF - UNDER POINT 13 REGARDING ARTICLE 8 (A) IN SO FAR AS THE TERM SHOULD BE UNDERSTOOD AS MEANING ' ' EVERYTHING RECEIVED IN RETURN FOR . . . THE PROVISION OF SERVICES , INCLUDING INCIDENTAL EXPENSES (PACKING , TRANSPORT , INSURANCE , ETC .) THAT IS TO SAY NOT ONLY THE CASH AMOUNTS CHARGED , BUT ALSO , FOR EXAMPLE , THE VALUE OF THE GOODS RECEIVED IN EXCHANGE OR , IN THE CASE OF GOODS OR SERVICES SUPPLIED BY ORDER OF A PUBLIC AUTHORITY , THE AMOUNT OF THE COMPENSATION RECEIVED ' ' .

11 IT SHOULD THEN BE EMPHASIZED THAT ARTICLE 8 (A) , WHICH DEFINES THE BASIS OF ASSESSMENT OF VALUE-ADDED TAX STATING THAT IS SHALL BE IN THE CASE OF THE PROVISION OF SERVICES ' ' EVERYTHING WHICH MAKES UP THE CONSIDERATION FOR THE PROVISION OF SERVICES ' ' , AND CLARIFIED AS JUST STATED ABOVE , MUST BE COMPARED TO ARTICLE 2 WHICH STIPULATES AS BEING SOLELY CAPABLE OF BEING SUBJECT TO VALUE-ADDED TAX ' ' THE PROVISION OF SERVICES WITHIN THE TERRITORY OF THE COUNTRY BY A TAXABLE PERSON AGAINST PAYMENT ' ' .

12 SO A PROVISION OF SERVICES IS TAXABLE , WITHIN THE MEANING OF THE SECOND DIRECTIVE , WHEN THE SERVICE IS PROVIDED AGAINST PAYMENT AND THE BASIS OF ASSESSMENT FOR SUCH A SERVICE IS EVERYTHING WHICH MAKES UP THE CONSIDERATION FOR THE SERVICE ; THERE MUST THEREFORE BE A DIRECT LINK BETWEEN THE SERVICE PROVIDED AND THE CONSIDERATION RECEIVED WHICH DOES NOT OCCUR IN A CASE WHERE THE CONSIDERATION CONSISTS OF AN UNASCERTAINED REDUCTION IN THE VALUE OF THE SHARES POSSESSED BY THE MEMBERS OF THE COOPERATIVE AND SUCH A LOSS OF VALUE MAY NOT BE REGARDED AS A PAYMENT RECEIVED BY THE COOPERATIVE PROVIDING THE SERVICES .

13 WHAT IS MORE IT FOLLOWS FROM THE USE OF THE EXPRESSIONS ' ' AGAINST PAYMENT ' ' AND ' ' EVERYTHING RECEIVED IN RETURN ' ' FIRST THAT THE CONSIDERATION FOR THE PROVISION OF A SERVICE MUST BE CAPABLE OF BEING EXPRESSED IN MONEY , WHICH IS FURTHER CONFIRMED BY ARTICLE 9 OF THE SECOND DIRECTIVE WHICH STIPULATES THAT ' ' THE STANDARD RATE OF VALUE-ADDED TAX SHALL BE FIXED . . . AT A PERCENTAGE OF THE BASIS OF ASSESSMENT ' ' , THAT IS TO SAY AT A CERTAIN PROPORTION OF THAT WHICH CONSTITUTES THE CONSIDERATION FOR THE PROVISION OF SERVICES , WHICH IMPLIES THAT SUCH CONSIDERATION IS CAPABLE OF BEING EXPRESSED IN AN AMOUNT ASSESSED IN MONEY ; SECONDLY THAT SUCH CONSIDERATION IS A SUBJECTIVE VALUE SINCE THE BASIS OF ASSESSMENT FOR THE PROVISION OF SERVICES IS THE CONSIDERATION ACTUALLY RECEIVED AND NOT A VALUE ASSESSED ACCORDING TO OBJECTIVE CRITERIA .

14 CONSEQUENTLY A PROVISION OF SERVICES FOR WHICH NO DEFINITE SUBJECTIVE CONSIDERATION IS RECEIVED DOES NOT CONSTITUTE A PROVISION OF SERVICES ' ' AGAINST PAYMENT ' ' AND IS THEREFORE NOT TAXABLE WITHIN THE MEANING OF THE SECOND DIRECTIVE .

15 IT FOLLOWS THEREFROM THAT THERE CAN BE NO QUESTION OF ANY CONSIDERATION WITHIN THE MEANING OF THE OPENING WORDS AND SUBPARAGRAPH (A) OF ARTICLE 8 OF THE SECOND DIRECTIVE 67/228 OF THE COUNCIL OF 11 APRIL 1967 IN THE CASE OF A COOPERATIVE ASSOCIATION RUNNING A WAREHOUSE FOR THE STORAGE OF GOODS WHICH DOES NOT IMPOSE ANY STORAGE CHARGE ON ITS MEMBERS FOR THE SERVICE PROVIDED .

Decision on costs

16 THE COSTS INCURRED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . AS THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED , A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT (SECOND CHAMBER)

IN ANSWER TO THE QUESTION REFERRED TO IT BY THE HOGE RAAD DER NEDERLANDEN BY JUDGMENT OF 25 JUNE 1980 , HEREBY RULES :

THERE CAN BE NO QUESTION OF ANY CONSIDERATION WITHIN THE MEANING OF THE OPENING WORDS OF SUBPARAGRAPH (A) OF ARTICLE 8 OF THE SECOND DIRECTIVE 67/228 OF THE COUNCIL OF 11 APRIL 1967 , ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX , (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16) IN THE CASE OF A COOPERATIVE ASSOCIATION RUNNING A WAREHOUSE FOR THE STORAGE OF GOODS WHICH DOES NOT IMPOSE ANY STORAGE CHARGE ON ITS MEMBERS FOR THE SERVICE PROVIDED .