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Judgment of the Court (First Chamber) of 10 June 1982. - R.A. Grendel GmbH v Finanzamt für Körperschaften de Hambourg. - Reference for a preliminary ruling: Finanzgericht Hamburg - Germany. - Direct effect of directives - Value-added tax - Exemption. - Case 255/81.

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Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS PROVIDED FOR IN THE SIXTH DIRECTIVE - EXEMPTION FOR CREDIT NEGOTIATION TRANSACTIONS - POSSIBILITY OF INDIVIDUALS ' RELYING ON THE APPROPRIATE PROVISION IN THE EVENT OF THE DIRECTIVE ' S NOT BEING IMPLEMENTED - CONDITIONS (COUNCIL DIRECTIVE 77/388 , ART . 13 B (D) 1 .)

Summary

AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 . OF DIRECTIVE 77/388 TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY AND THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .

Parties

IN CASE 255/81

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE FINANZGERICHT (FINANCE COURT) HAMBURG FOR A PRELIMINARY RULING IN THE CASE PENDING BEFORE THAT COURT BETWEEN

R . A . GRENDL GMBH , REPRESENTED BY ITS MANAGER , RENATE GRENDL , RESIDING IN HAMBURG ,

V

FINANZAMT FÜR KORPORATIONEN IN HAMBURG (TAX OFFICE FOR CORPORATIONS IN HAMBURG), HAMBURG ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 13 B (D) 1 . OF THE SIXTH COUNCIL DIRECTIVE 77/388 OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT ,

Grounds

1 BY ORDER OF 4 SEPTEMBER 1981 , WHICH WAS RECEIVED AT THE COURT ON 18 SEPTEMBER 1981 , THE FINANZGERICHT (FINANCE COURT) HAMBURG REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION ON THE INTERPRETATION OF ARTICLE 13 B (D) 1 . OF THE SIXTH COUNCIL DIRECTIVE 77/388/EEC OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977 , L 145 , P . 1).

2 ACCORDING TO ARTICLE 1 OF THE DIRECTIVE THE MEMBER STATES HAS TO ADOPT THE NECESSARY LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS BY 1 JANUARY 1978 AT THE LATEST . SINCE SEVERAL MEMBER STATES INCLUDING THE FEDERAL REPUBLIC OF GERMANY WERE NOT IN A POSITION TO MAKE , IN GOOD TIME , THE NECESSARY ADAPTATIONS TO THEIR SYSTEM OF VALUE-ADDED TAX , THE COUNCIL , BY THE NINTH COUNCIL DIRECTIVE 77/583 OF 26 JUNE 1978 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES , EXTENDED THE SAID PERIOD UNTIL 1 JANUARY 1979 .

3 IT WAS NOT UNTIL THE ADOPTION OF THE LAW OF 26 NOVEMBER 1979 (BUNDESGESETZBLATT I , P . 1953), WHICH TOOK EFFECT ON 1 JANUARY 1980 , THAT THE FEDERAL REPUBLIC OF GERMANY IMPLEMENTED THE SIXTH DIRECTIVE .

4 IT IS APPARENT FROM THE ORDER MAKING THE REFERENCE THAT THE UNDERTAKING GRENDL , WHICH CARRIES ON BUSINESS IN GERMANY AS A CREDIT NEGOTIATOR , WAS BY NOTICE OF ASSESSMENT OF 3 SEPTEMBER 1980 ISSUED BY THE FINANZAMT FÜR KORPORATIONEN (TAX OFFICE FOR CORPORATIONS) IN HAMBURG , ASSESSED TO TURNOVER TAX ON THE INCOME RECEIVED IN 1979 BY WAY OF COMMISSION FOR THAT ACTIVITY , IN ACCORDANCE WITH THE GERMAN LAW IN FORCE UNTIL 31 DECEMBER 1979 .

5 THE UNDERTAKING OBJECTED AND CLAIMED EXEMPTION FROM THE TAX , RELYING ON ARTICLE 13 OF THE SIXTH COUNCIL DIRECTIVE WHICH , IT ALLEGED , WAS DIRECTLY APPLICABLE . ARTICLE 13 B (D) 1 . THEREOF PROVIDES THAT ' ' THE GRANTING AND THE NEGOTIATION OF CREDIT ' ' AND ' ' THE MANAGEMENT OF CREDIT BY THE PERSON GRANTING IT ' ' ARE TO BE EXEMPT FROM TAX . THE FINANZAMT TOOK THE VIEW THAT THE DIRECTIVE DID NOT CREATE A RIGHT CAPABLE OF BEING ASSERTED DIRECTLY BY AN INDIVIDUAL AND REFUSED TO GRANT THE EXEMPTION .

6 THE FINANZGERICHT HAMBURG BEFORE WHICH THE MATTER WAS BROUGHT STAYED THE PROCEEDINGS AND REFERRED THE FOLLOWING QUESTION TO THE COURT FOR A PRELIMINARY RULING :

' ' IS ARTICLE 13 B (D) 1 . OF THE SIXTH COUNCIL DIRECTIVE OF 17 MAY 1977 (77/388/EEC) TO BE INTERPRETED AS CONFERRING ON A TAXABLE PERSON , AS FROM THE DATE ON WHICH IT TOOK EFFECT , A DIRECT LEGAL RIGHT TO EXEMPTION FROM TAX IN RESPECT OF THE TRANSACTIONS REFERRED TO THEREIN , EVEN WHERE EXEMPTION IS (NOT YET) PROVIDED FOR UNDER NATIONAL LAW ON TURNOVER TAX?

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7 THE PLAINTIFF IN THE MAIN ACTION DID NOT APPEAR IN THE PROCEEDINGS BEFORE THE COURT . ITS VIEW WAS SUPPORTED BY THE COMMISSION WHICH ARGUED BEFORE THE COURT TO THE EFFECT THAT INDIVIDUALS ARE ENTITLED TO CLAIM THE RELEVANT EXEMPTION FROM TAX . THE COUNCIL TOO , WHICH TOOK PART IN THE ORAL PROCEDURE , SUPPORTED THE PLAINTIFF ' S VIEW , ALBEIT WITH CERTAIN RESERVATIONS .

8 ON THE OTHER HAND THE FINANZAMT , SUPPORTED BY THE GOVERNMENTS OF THE FRENCH AND ITALIAN REPUBLICS EXPOUNDED A NUMBER OF ARGUMENTS DESIGNED TO SHOW THAT FOR THE PERIOD , NAMELY THE TAX YEAR 1979 , DURING WHICH THE NATIONAL LEGAL PROVISIONS IMPLEMENTING THE DIRECTIVE IN THE FEDERAL REPUBLIC OF GERMANY HAD NOT YET ENTERED INTO FORCE , IT WAS NOT POSSIBLE TO RELY ON THE PROVISION IN QUESTION .

9 IT MUST BE POINTED OUT THAT THE QUESTIONS RAISED IN THIS CASE HAVE ALREADY BEEN RESOLVED BY THE COURT IN ITS JUDGMENT OF 19 JANUARY 1982 IN CASE 8/81 BECKER (1982) ECR , WHICH WAS CONCERNED WITH THE SAME ISSUE .

10 THE FRENCH GOVERNMENT AND THE COMMISSION HAVE CONFINED THEMSELVES TO REPEATING THEIR OBSERVATIONS IN CASE 8/81 . THE PARTIES WHO WERE NOT INVOLVED IN CASE 8/81 , NAMELY THE ITALIAN GOVERNMENT AND THE DEFENDANT IN THE MAIN ACTION , HAVE NOT PUT FORWARD IN THEIR PLEADINGS NEW ARGUMENTS WHICH WERE NOT CONSIDERED IN THE ABOVE-MENTIONED JUDGMENT .

11 IN THOSE CIRCUMSTANCES IT IS NECESSARY TO REFER TO THE COURT ' S RULING IN ITS JUDGMENT OF 19 JANUARY 1982 , NAMELY THAT AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 OF DIRECTIVE 77/388 TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , AND THAT THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .

12 THE JUDGMENT OF THE COURT OF 19 JANUARY 1982 IN CASE 8/81 BECKER IS TO BE ANNEXED TO THE PRESENT JUDGMENT BY WAY OF SUPPLEMENT .

Decision on costs

COSTS

13 THE COSTS INCURRED BY THE GOVERNMENT OF THE FRENCH REPUBLIC , THE GOVERNMENT OF THE ITALIAN REPUBLIC , THE COUNCIL AND 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 , IN THE NATURE OF 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 (FIRST CHAMBER)

IN ANSWER TO THE QUESTION SUBMITTED TO IT BY THE FINANZGERICHT HAMBURG BY ORDER OF 4 SEPTEMBER 1981 , HEREBY RULES :

AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 . OF THE SIXTH DIRECTIVE 77/388 OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT - TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , AND THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .