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Judgment of the Court (Fourth Chamber) of 6 July 1988. - Ministère public and Ministre des Finances du royaume de Belgique v Yves Ledoux. - Reference for a preliminary ruling: Cour d'appel de Liège - Belgium. - Value-added tax - Temporary importation of a motor vehicle for business and private use. - Case 127/86.

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Keywords

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Tax provisions - Harmonization of laws - Turnover tax - Common system of value-added tax - Exemptions provided for in the Sixth Directive - Exemption for temporary importation - Temporary importation by a frontier worker, for business and private use, of a motor vehicle belonging to his employer - Levying of tax - Not permissible

(Council Directive 77/388, Art . 14 (1) (c))

Summary

Where there is no indication of tax evasion, abuse or avoidance, a Member State cannot refuse to grant the exemption provided for in respect of temporary imports under Article 14 (1) (c) of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes

(Directive 77/388) where a motor vehicle belonging to an employer established in another Member State in which value-added tax has been paid is used by a frontier worker residing in the first Member State for the performance of his duties under his contract of employment and secondarily for leisure purposes .

Parties

In Case 127/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d' appel (Court of Appeal), Liège, for a preliminary ruling in the proceedings pending before that court between

Ministère public (Public Prosecutor)

Ministre des finances du Royaume de Belgique (Minister for Finance of the Kingdom of Belgium)

v

Yves Ledoux,

on the interpretation of the Community rules concerning taxation, and in particular the rules concerning value-added tax, in order to determine whether Belgian legislation on value-added tax is consistent with the provisions of Community law,

THE COURT (Fourth Chamber)

composed of : G.C . Rodríguez Iglesias, President of the Chamber, T . Koopmans and C . Kakouris, Judges,

Advocate General : J . Mischo

Registrar : B . Pastor, Administrator

after considering the observations submitted on behalf of

the Minister for Finance of the Kingdom of Belgium, the plaintiff in the main proceedings, by J . Herbiet, avocat, and Mr Neckebroeck, acting as Agent, during the oral procedure,

the Danish Government, by L . Mikaelsen, Legal Adviser, during the written and oral procedures,

the Commission of the European Communities, by H . Etienne, Principal Legal Adviser, acting as Agent, during the written and oral procedures,

having regard to the Report for the Hearing and further to the hearing on 10 December 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 9 February 1988,

gives the following

Judgment

Grounds

1 By a judgment of 12 March 1986, which was received at the Court on 26 May 1986, the cour d' appel, Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the intepretation of the Community rules on value-added tax (hereinafter referred to as "VAT ") in order to be able to determine the consistency with those rules of the Belgian legislation on VAT .

2 The question arose in the context of criminal proceedings brought by the Ministère public and the Ministry of Finance of the Kingdom of Belgium against Yves Ledoux, a frontier worker residing in Belgium and employed by a company established in France . That company had provided him

with a car, belonging to it and registered in France, on which VAT had been paid . Under his contract of employment, Mr Ledoux used that car for the performance of his duties under the said contract and for leisure purposes .

3 The Belgian customs and excise authorities have long tolerated the use by a frontier worker resident in Belgium of a vehicle placed at his disposal by his employer, established in another Member State, for the purpose of travelling from his place of work to his home in Belgium . That practice was approved by a circular of the Belgian administration of 1 May 1984 . However, the circular in question covers only the use of the car for the purpose of travelling to work, to the exclusion of all other use for private purposes .

4 Questioned on 22 February 1983 as he crossed the frontier at a point other than that which he used to go to work, Mr Ledoux was charged with having unlawfully imported a motor vehicle, which is punishable by either the confiscation of the vehicle or payment of its value .

5 Having decided that Mr Ledoux' s case was not covered by specific rules, the tribunal correctionnel (Criminal Court), Neufchâteau, acquitted him . The Minister for Finance lodged an appeal before the cour d' appel, Liège, against that decision and in order to resolve that dispute, the latter court stayed the proceedings and referred the following question to the Court of Justice :

"Do the Community rules concerning taxation, and in particular the rules concerning value-added tax, permit the Belgian State, under the Law of 3 July 1969 establishing the Value-Added Tax Code and the decrees implementing that Law and in accordance with the interpretation of its provisions by the Minister for Finance of the Kingdom of Belgium, in proceedings brought against Yves Ledoux, residing at 32 rue Leroy, Marcinelle, to levy value-added tax on a motor vehicle which is owned by a company incorporated under French law with its registered office in France and is subject to value-added tax in France, where the tax has been paid, in so far as the vehicle is used by an employee of the company, who is resident in Belgium, for the performance of his duties under his contract of employment and for leisure purposes, taking account of the fact that the vehicle remains the property of the French employer and that the importation into Belgium is only temporary and of a provisional nature?"

6 Reference is made to the Report for the Hearing for a fuller account of the facts in the main proceedings, the Community and national provisions at issue, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

7 It must be pointed out that when the facts at issue in the main proceedings took place, Council Directive 83/182 of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (Official Journal L 105, p . 59) had not yet been adopted . Consequently, the applicable Community rules were contained in the Sixth Council Directive of 17 May 1977 (Directive 75/388 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 L 145, p . 1), hereinafter referred to as "the Sixth Directive ".

8 The question put by the national court seeks to determine whether that directive prevents a Member State from levying VAT when a motor vehicle belonging to an employer established in another Member State, in which VAT has been paid, is used by a frontier worker residing in the first Member State for the performance of his duties under his contract of employment and for leisure purposes .

9 Article 14 (1) of the Sixth Directive provides that, without prejudice to other Community provisions, Member States are to exempt under conditions which they are to lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for and of preventing any possible evasion, avoidance or abuse, inter alia, the importation of goods

declared to be under temporary importation arrangements . Article 14 (2) provides for the subsequent laying down of Community tax rules clarifying the scope of the exemptions referred to in paragraph 1 and detailed rules for their implementation . Until the entry into force of those rules, the Member States may maintain their national provisions in force on matters related to the provisions of the directive or adapt them in order to minimize, in particular, double imposition of value-added tax within the Community .

10 In the light of those provisions, the conditions required by the legislation of the Member States for granting exemption from VAT for vehicles imported under temporary arrangements must take account, on the one hand, of the objectives of harmonization of the rules relating to VAT which are, as is indicated in the recitals in the preamble to the Sixth Directive, the abolition of the imposition of tax on imports and the remission of tax on exports, further progress in the effective removal of restrictions on the movement of persons and goods and the integration of national economies and, on the other hand, the objective of preventing evasion, avoidance or abuse in cases of temporary importation .

11 It should be pointed out in that regard, as the Court decided in its judgment of 3 October 1985 (Case 249/84 Ministère public v Profant ((1985)) ECR 3237), that the authorities of the Member States do not enjoy a complete discretion in implementing the exemptions for imports under Article 14 of the Sixth Directive, for they must observe the fundamental objectives of the harmonization of value-added tax, such as, in particular, the encouragement of free movement of persons and goods and the prevention of double taxation . It follows that Article 14 of the Sixth Directive must be interpreted in the light of all of the fundamental rules of the Community .

12 In the light of those considerations, a Member State would infringe the general obligation to cooperate imposed on the Member States by Article 5 of the Treaty if it contributed, through a national measure, to the maintenance or introduction of an obstacle to the free movement of workers who, although residing on its territory, pursue their occupations in another Member State .

13 In order to consider whether such might be the case in the circumstances set out in the question referred to the Court, the case of the use for business purposes of a motor vehicle by a frontier worker residing in the Member State of importation must first be considered .

14 It should be observed in that regard that when the Member States lay down the conditions for exemption from VAT in cases of temporary importation, provided for under Article 14 (1) (c), they must respect the aim of the exemption for temporary imports .

15 The mere fact that the vehicle has been imported into the country of residence of the user does not cause such importation to cease to be temporary where the vehicle has been placed at the disposal of the frontier worker by his employer for the duration of his contract of employment, belongs to the employer, who is established in a neighbouring Member State in which VAT has been paid, is regularly re-exported to that Member State and will definitively return there not later than upon the termination of the contract of employment with the frontier worker and where, on the other hand, there is no indication of tax evasion, abuse or avoidance .

16 It is true that the Court, in its judgments of 9 October 1980 (Case 823/79 Carciati ((1980)) ECR 2773) and of 11 December 1984, (Case 134/83 Abbink ((1984)) ECR 4097), decided that in granting an exemption from VAT in respect of the temporary importation of a motor vehicle, the importing Member State is entitled to require, as a condition of the exemption, that the importer should not reside on its territory . That rule is justified by the fact that it is generally the resident of the Member State of importation who, being usually also the owner of the vehicle, imports it permanently for his personal use . However, that justification does not apply when a frontier resident of a Member State, without being the owner of the vehicle, actually imports it temporarily in the course of his employment .

17 It now remains to consider cases in which the contract of employment of a frontier worker permits him to use the temporarily imported motor vehicle not only for the purposes of his employment, but also for private purposes .

18 It should be observed in that regard that private use, being ancillary to business use and provided for in the contract of employment, and thus forming from an economic point of view part of the worker' s remuneration, must be subject to the same conditions as business use . If it were not, frontier workers would be effectively prevented from benefiting from certain advantages granted to them by their employers merely because they resided in the Member State into which the vehicle was temporarily imported . Such workers would thereby be placed at a disadvantage in regard to working conditions compared to their colleagues residing in the country of their employer, which would have a direct effect on the exercise of their right to free movement within the Community .

19 It is for the national court to decide in each case whether a use which is not strictly a business use is ancillary to the business use, on the basis of all the relevant factors in each case .

20 The reply to the question referred to the Court by the cour d' appel, Liège, must therefore be that the Sixth Council Directive of 17 May 1977 (Directive 77/388 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax : uniform basis of assessment) prevents a Member State from levying value-added tax on a motor vehicle which is owned by an employer established in another Member State where value-added tax has been paid, and which is used by a frontier worker residing in the first Member State for the performance of his duties under his contract of employment and, secondarily, for leisure purposes .

Decision on costs

Costs

21 The costs incurred by the Belgian Government, the Danish Government 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 proceedings are concerned, a step in the proceedings pending before the national court, the decision as to costs is a matter for that court .

Operative part

On those grounds,

THE COURT (Fourth Chamber)

in answer to the question referred to it by the cour d' appel, Liège, by judgment of 12 March 1986, hereby rules :

The Sixth Council Directive of 17 May 1977 (Directive 77/388 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax : uniform basis of assessment) prevents a Member State from levying value-added tax on a motor vehicle which is owned by an employer established in another Member State where value-added tax has been paid, and which is used by a frontier worker residing in the first Member State for the performance of his duties under his contract of employment and, secondarily, for leisure purposes .