JUDGMENT OF THE COURT (Eighth Chamber)

26 April 2012 (*)

(VAT — Directive 2006/112 — Exemptions — Article 151(1)(c) — Supply of services of dismantling obsolete US Navy ships in the territory of a Member State)

In Case C?225/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom), made by decision of 9 May 2011, received at the Court on 13 May 2011, in the proceedings

The Commissioners for Her Majesty's Revenue and Customs

v

Able UK Ltd,

THE COURT (Eighth Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, K. Schiemann and L. Bay Larsen, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the United Kingdom Government, by L. Seeboruth, acting as Agent,

– the Polish Government, by M. Szpunar, acting as Agent,

– the European Commission, by R. Lyal and C. Soulay, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 151(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1. 'the VAT Directive').

2 The reference has been made in the course of proceedings between the Commissioners for Her Majesty's Revenue and Customs ('the Commissioners') and Able UK Ltd ('Able') concerning value added tax ('VAT') on services of dismantling obsolete United States Navy ('US Navy') ships.

Legal context

International law

3 The North Atlantic Treaty was signed in Washington (United States) on 4 April 1949.

4 The Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, signed in Paris on 28 August 1952 ('the Protocol on Military Headquarters'), provides in Article VIII(1):

'1. For the purpose of facilitating the establishment, construction, maintenance and operation of Allied Headquarters, these Headquarters shall be relieved, so far as practicable, from duties and taxes, affecting expenditures by them in the interest of common defence and for their official and exclusive benefit, and each Party to the present Protocol shall enter into negotiations with any Allied Headquarters operating in its territory for the purpose of concluding an agreement to give effect to this provision.'

European Union law

5 Under Article 151(1) of the VAT Directive:

'Member States shall exempt the following transactions:

...

(c) the supply of goods or services within a Member State which is a party to the North Atlantic Treaty, intended either for the armed forces of other States party to that Treaty for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort;

(d) the supply of goods or services to another Member State, intended for the armed forces of any State which is a party to the North Atlantic Treaty, other than the Member State of destination itself, for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort;

...'

The dispute in the main proceedings and the question referred

6 According to the order for reference, Able had secured a contract with the United States Department of Transportation Maritime Administration to dismantle thirteen vessels which were in the service of the US Navy, but had latterly been consigned to the US Navy's Reserve Fleet and moored in the James River in Virginia (United States). The contract was in two distinct parts; firstly the ships had to be prepared and then towed from the United States to the United Kingdom. Secondly, once they were secured at Able's facility on Teesside (United Kingdom), they were to be dismantled. United States Government inspectors were to have a presence on the site throughout the duration of the contract.

7 In a letter dated 27 August 2008 Able sought a ruling from the Commissioners as to the VAT liability of the dismantling service which it provided. Able argued that the supply was exempt pursuant to the third indent of Article 15(10) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), subsequently

replaced by Article 151(1)(c) of the VAT Directive.

8 The HMRC gave a ruling on 15 October 2008 that Able's dismantling services were standard rated. Able sought a reconsideration of that decision on 21 October 2008. The Commissioners confirmed their ruling on 18 November 2008 and Able then appealed against that decision to the First-tier Tribunal (Tax Chamber), which, by a decision of 24 November 2009, held that the services supplied by Able of dismantling ships were exempt.

9 The Commissioners appealed against that decision before the referring court. In their view, Article 151(1)(c) of the VAT Directive applies only to armed forces of a State party to the North Atlantic Treaty visiting a Member State which is another party to the same treaty and only where those forces take part in an activity directly related to the common defence effort.

10 Taking the view that, in order to decide the dispute before it, it required an interpretation of Article 151(1)(c) of the VAT Directive, the Upper Tribunal (Tax and Chancery Chamber) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 151(1)(c) of the [VAT Directive] to be interpreted as exempting a supply in the UK of services of dismantling obsolete US Navy ships for the US Department of Transportation Maritime Administration in either or both of the following circumstances:

(a) where that supply was not made to a part of the armed forces of a NATO member taking part in the common defence effort or to civilian staff accompanying them;

(b) where that supply was not made to a part of the armed forces of a NATO member stationed in or visiting the UK or to civilian staff accompanying such forces?'

The question referred for a preliminary ruling

11 According to the order for reference, the origin of the first part of the question referred is to be found in the wording of Article 151(1)(c) of the VAT Directive. That wording allowed the last clause of that provision, that is, the words 'when such forces take part in the common defence effort', to be taken to qualify only the part of the sentence immediately preceding them, namely '[the supply of goods or services] for supplying their messes or canteens' and not as qualifying that provision as a whole. The absence, in certain language versions, such as the English and French versions, of a comma before that last clause, bears out such a reading.

12 In that connection, it must be pointed out that there is a comma in that place in certain other language versions of that provision, such as the Spanish, Danish and Dutch versions. Accordingly, the presence or absence of a comma cannot be taken as decisive in the interpretation of Article 151(1)(c) of the VAT Directive.

13 It is settled case?law that the wording used in one language version of a provision of European Union ('EU') law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement for uniform application of EU law. Where there is divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, inter alia, Case C?41/09 *Commission* v *Netherlands* [2011] ECR I?831, paragraph 44 and the case?law cited).

14 Here, it should be borne in mind that, according to settled case?law, VAT exemptions, which include that provided for by Article 151(1)(c) of the VAT Directive, must be interpreted strictly,

since they constitute exceptions to the general principle that such tax is to be levied on each service supplied for consideration by a taxable person (see, to that effect, inter alia, Case C?116/10 *Feltgen and Bacino Charter Company* [2010] ECR I?14187, paragraph 19 and the case?law cited).

15 An interpretation according to which the last phrase of Article 151(1)(c) of the VAT Directive qualifies only the part of the sentence which immediately precedes it would result in giving the exemption provided for by that provision a scope which was not only wide but also illogical, as the United Kingdom government correctly pointed out.

16 If such an interpretation were accepted, supplies of goods and services in the Member States party to the North Atlantic Treaty and intended for the armed forces of other States party to that treaty for the use of those forces or of the civilian staff accompanying them would be exempt from VAT in any circumstances, whereas supplies of goods and services for supplying their messes or canteens would be exempt only when those forces take part in the common defence effort. To make such a distinction as regards the scope of the exemption provided for by Article 151(1)(c) of the VAT Directive appears to make no sense.

17 Moreover, that provision must be understood in the light of the objective of the exemption it establishes. There is no evidence that that objective was, as argued before the referring court, to prevent the Member States party to the North Atlantic Treaty from enjoying a tax advantage as a result of their membership of NATO. For the rest, as the referring court itself observed, such an objective would imply the existence of a general exemption for supplies of goods and services for the purposes of commitments made under the auspices of NATO, including by the armed forces of the Member State in which that supply of goods or services took place. However, it is clear that Article 151(1)(c) of the VAT Directive does not provide for such a wide-ranging exemption.

18 However, it appears that the objective pursued by the Union legislature in adopting that provision must, rather, be understood, as the Commission argued, as being to allow the Member States to honour certain commitments made under the auspices of NATO. Nothing in the documents in the case that have been submitted to the Court indicates that the interpretation of Article 151(1)(c) outlined in paragraph 15 of the present judgment is required so that such commitments can be honoured.

19 On the contrary, Article VIII of the Protocol on the Status of International Military Headquarters, which, as the Commission points out, the European Union legislature had in mind when it adopted Article 151(1)(c) of the VAT Directive, refers precisely to an exemption from duties and taxes relating to expenditure ‘in the interest of common defence’.

20 Article 151(1)(c) of the VAT Directive must therefore be interpreted as meaning that a supply of services such as that at issue in the main proceedings, made in a Member State party to the North Atlantic Treaty and consisting in dismantling obsolete ships of the Navy of another State party to that treaty, is exempt from VAT under that provision only where those services are supplied for staff of the armed forces of that other State taking part in the common defence effort or for the civilian staff accompanying them.

21 As regards the second part of the question asked by the referring court, it must be observed that the wording of Article 151(1)(c) of the VAT Directive does not, in itself, indicate whether a supply of services such as that at issue in the main proceedings, made in a Member State party to the North Atlantic Treaty, must, in order to be exempt from VAT, be made for members of the armed forces of another State party to that treaty who are stationed in or visiting the Member State concerned or for the civilian staff accompanying them.

22 However, according to the Court’s settled case?law, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, *Feltgen and Bacino Charter Company*, paragraph 12 and the case?law cited).

23 As regards the context of Article 151(1)(c) of the VAT Directive, account should be taken, as the United Kingdom and Polish Governments rightly observe, of Article 151(1)(d). Whereas the first of those provisions exempts supplies of goods and services in Member States party to the North Atlantic Treaty for the armed forces of other States party to that treaty from VAT under certain conditions, the second provision exempts, under the same conditions, supplies of goods and services to another Member State and intended for the armed forces of any State party to the North Atlantic Treaty other than the Member State of destination itself.

24 It is apparent from those two provisions that, as stated in paragraph 17 of the present judgment, the legislature of the European Union wished to exclude from VAT exemption supplies of goods and services for the armed forces of the Member State in which those goods or services are supplied.

25 First, that exclusion, in that it is intended precisely for armed forces which are stationed in or are visiting their own Member State, already suggests, as such, that the place where the armed forces are stationed or which they are visiting is relevant for the application of those provisions.

26 Second, if Article 151(1)(c) of the VAT Directive were interpreted as exempting from VAT supplies of goods and services in a Member State party to the North Atlantic Treaty and intended for the armed forces of another State party to that treaty, even if those forces were not stationed in or visiting that Member State, those supplies of goods or services could, ultimately, be for the benefit, without having been subject to VAT, of the armed forces of another Member State which are stationed in or visiting that State. Such an interpretation of that provision would be contrary to the intention of the Union legislature outlined in paragraph 24 of the present judgment.

27 Accordingly, taking account of the foregoing observations and, moreover, of the need to interpret VAT exemptions strictly, noted in paragraph 14 of the present judgment, Article 151(1)(c) of the VAT Directive must be interpreted as exempting, under the conditions it lays down, supplies of goods and services in a Member State party to the North Atlantic Treaty for the armed forces of another State party to that treaty, provided that those forces are stationed in or visiting the Member State concerned.

28 It does not appear from the documents submitted to the Court that an interpretation of that provision other than that upheld in the previous paragraph might be called for in order to allow the Member States to honour the commitments made under the auspices of NATO.

29 On the contrary, it is apparent from Article VIII of the Protocol on the Status of International Military Headquarters that, by providing for an exemption from duties and taxes in order to facilitate the establishment, construction, maintenance and operation of Allied Headquarters on the territory of a State party to the North Atlantic Treaty, that article implies that, by definition, it concerns armed forces stationed in or visiting that State.

30 Accordingly, the answer to the question referred is that Article 151(1)(c) of the VAT Directive must be interpreted as meaning that a supply of services such as that at issue in the main proceedings, made in a Member State party to the North Atlantic Treaty and consisting in dismantling obsolete ships of the Navy of another State party to that treaty, is exempt from VAT under that provision only where

– those services are supplied for staff of the armed forces of that other State taking part in the common defence effort or for the civilian staff accompanying them, and

– those services are supplied for members of the armed forces who are stationed in or visiting the Member State concerned or for the civilian staff accompanying them.

Costs

31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 151(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a supply of services such as that at issue in the main proceedings, made in a Member State party to the North Atlantic Treaty and consisting in dismantling obsolete ships of the Navy of another State party to that treaty, is exempt from VAT under that provision only where

– those services are supplied for staff of the armed forces of that other State taking part in the common defence effort or for the civilian staff accompanying them, and

– those services are supplied for members of the armed forces who are stationed in or visiting the Member State concerned or for the civilian staff accompanying them.

[Signatures]

* Language of the case: English.