

JUDGMENT OF THE COURT (Sixth Chamber)

13 June 2013 (*)

(VAT – Directive 2006/112/EC – Article 199(1)(g) – Voluntary insolvency proceedings – Person liable for payment of tax – Liability of the person who is the recipient of certain transactions – Concept of ‘compulsory sale procedure’)

In Case C-125/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 1 de Granada (Spain), made by decision of 24 February 2012, received at the Court on 8 March 2012, in the proceedings

Promociones y Construcciones BJ 200 SL,

THE COURT (Sixth Chamber),

composed of M. Berger, President of the Chamber, A. Borg Barthet (Rapporteur) and E. Levits, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Promociones y Construcciones BJ 200 SL, by B.S. Sánchez Pozo, procuradora, and E. Osuna Martínez, abogado,
- I. Alba Muñoz, abogado, acting in his capacity as administrator of the insolvency of Promociones y Construcciones BJ 200 SL, representing himself,
- the Spanish Government, by N. Díaz Abad, acting as Agent,
- the Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,
- the European Commission, by L. Lozano Palacios, acting as Agent,

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

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in the context of voluntary insolvency proceedings concerning

Promociones y Construcciones BJ 200 SL ('Promociones y Construcciones'), during which the sale of two properties belonging to that company gave rise to liability for value added tax ('VAT').

Legal context

European Union law

3 Recital 42 in the preamble to Directive 2006/112 is worded as follows:

'Member States should be able, in specific cases, to designate the recipient of supplies of goods or services as the person liable for payment of VAT. This should assist Member States in simplifying the rules and countering tax evasion and avoidance in identified sectors and on certain types of transactions.'

4 Under Article 199(1)(g) of Directive 2006/112, Member States may provide that the person liable for the payment of VAT is the taxable person who is supplied with immovable property sold by a judgment debtor in a compulsory sale procedure.

Spanish law

5 Article 84(1) of Law 37/1992 on value added tax (Ley 37/1992 del Impuesto sobre el Valor Añadido), of 28 December 1992 (BOE No 312 of 29 December 1992, p. 44247), as modified by Law 38/2011 amending Law 22/2003 of 9 July 2003 on insolvency proceedings (Ley 38/2011 de reforma de la Ley 22/2003, de 9 de julio 2003, Concursal), of 10 October 2001 (BOE No 245, of 11 October 2011, p. 106745), is worded as follows:

'The following shall be liable to the tax:

1. natural or legal persons who supply goods or services subject to the tax and who have the status of business undertakings or professional status, subject to the provisions of the following paragraphs;

2. businesses or professional persons for the benefit of whom transactions subject to the tax are carried out in the following cases:

...

(e) in the case of supplies of immovable property carried out as a result of insolvency proceedings.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

6 By order of 22 February 2010, Promociones y Construcciones was declared insolvent and voluntary insolvency proceedings ('proceso concursal voluntario') were instituted.

7 During the general stage of those proceedings, the insolvency administrator provided a report on the assets and liabilities of Promociones y Construcciones to its creditors and to the referring court.

8 The opportunity to sell two of the company's properties subsequently arose. On 31 January 2012, the company, on the basis of a favourable report from the insolvency administrator and with the consent of the purchaser, Banesto SA, requested authorisation to carry out that sale under Law 22/2003 on insolvency proceedings (Ley 22/2003, Concursal), of 9 July 2003 (BOE No 164 of

10 July 2003, p. 26905).

9 By order of 1 February 2012, which has become final and has not been challenged, the Juzgado de lo Mercantil No 1 de Granada (Granada No 1 Commercial Court) declared that that sale was timely and conducive to the interests of the general body of creditors and consequently authorised it.

10 The authorisation of that sale, which is an integral part of Promociones y Construcciones's commercial activity, gave rise to a chargeable event for purposes of VAT, triggering the obligation to pay to the Agencia Estatal de Administración Tributaria (State tax administration) the corresponding sum owed in respect of VAT.

11 The referring court expresses doubts as to the identity of the debtor liable for payment of that tax debt, namely whether it is Promociones y Construcciones or the purchaser of the properties. The referring court considers that that question is relevant for the purposes of determining precisely the terms on which the sale, as authorised, is to be carried out.

12 In those circumstances, the Juzgado de lo Mercantil No 1 de Granada decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 199(1)(g) of Directive [2006/112/EC], providing as it does that "Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made: ... (g) the supply of immovable property sold by a judgment debtor in a compulsory sale procedure", be interpreted, in court proceedings that are creditor proceedings initiated by a declaration of insolvency of that debtor, as referring only to transfers which strictly reflect the fact that the proceedings are liquidation proceedings or that they have reached the phase of liquidation, with the result that the disposal of such immovable property must take place as a consequence of the liquidation of all the debtor's assets, or, given that insolvency proceedings may end, among other possibilities, with the liquidation of the insolvent undertaking, does it also cover any transfers of immovable property carried out in the course of insolvency proceedings by a debtor declared insolvent?

(2) Must Article 199(1)(g) of Directive [2006/112] be interpreted to the effect that the "compulsory sale procedure" to which it refers includes a collective judicial insolvency procedure in which there has been a voluntary sale, unconnected with any phase of compulsory liquidation of the debtor's assets and which has been carried out merely for reasons of timeliness, of any one or more of its assets; or, on the contrary, does it refer only to sales ordered in enforcement proceedings intended to liquidate the assets of the judgment debtor?

(3) In the latter case, if Article 199(1)(g) of Directive [2006/112] refers strictly to sales in enforcement proceedings intended to liquidate the assets of a judgment debtor, may that provision be interpreted as excluding reversal of the position regarding the taxable person for VAT purposes in any case where immovable property is transferred by a debtor who has been declared insolvent because such transfer is timely and conducive to the interests of the insolvency and the transfer is unconnected with any procedure for liquidation of all the debtor's assets, with the result that it is necessary to disapply a national law which has extended the material scope of Article 199(1)(g) of Directive 2006/112 to cases which that provision does not contemplate?'

Admissibility of the questions referred

13 The Spanish Government contests the admissibility of the questions referred on several grounds. In the first place, it claims, the referring court lacks jurisdiction to refer to the Court of Justice questions relating to a rule which can be interpreted solely by the administrative courts. In

the second place, it submits, those questions are hypothetical and bear no relation to the purpose of the main action in so far as they relate to a fiscal relationship between the purchaser of the property and the tax authorities and are therefore unconnected to the insolvency proceedings. In the third place, it contends, the order for reference is vitiated by a failure to provide adequate reasons as to why an answer to those questions is necessary to enable the referring court to give judgment.

14 In relation to the first argument, alleging that the referring court lacks jurisdiction, it should be recalled that it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure (see Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 24, and Case C-213/04 *Burstcher* [2005] ECR I-10309, paragraph 30).

15 In addition, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is, in principle, bound to give a ruling (see, inter alia, the judgment in Case C-470/11 *Garkalns* [2012] ECR, paragraph 17 and the case-law cited). Questions concerning European Union law therefore enjoy a presumption of relevance (*Garkalns*, paragraph 18).

16 In relation to the second argument, concerning the hypothetical character of the questions referred, it is clear that that argument is irrelevant. First of all, that argument is based on the premise that it is for the purchaser of the immovable property to pay the VAT. However, the purpose of those questions is precisely to determine who is the person liable for payment of the VAT in the context of insolvency proceedings: the insolvent company, namely the seller of the immovable property, or the purchaser. Second, as the referring court points out in its decision, the questions referred are relevant for the purposes of determining exactly the conditions under which the authorised sale must be carried out.

17 As regards the third argument, alleging failure to state adequate reasons in the order for reference, it is clear that this argument too must be rejected. It is evident from that decision that the authorisation of the sale of the immovable property by the referring court gave rise to a chargeable event for VAT, triggering the obligation to pay to the tax authorities the corresponding sum. Since the referring court expresses doubts as to the identity of the entity liable for payment of that tax, it has, as a result, decided to suspend implementation of the authorisation granted and to refer the present questions to the Court for a preliminary ruling.

18 It follows from the foregoing considerations that the questions referred for a preliminary ruling are admissible.

Consideration of the questions referred

19 By its first two questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 199(1)(g) of Directive 2006/112 is to be interpreted as meaning that every sale of immovable property carried out by the debtor in the course of insolvency proceedings comes within the concept of 'compulsory sale procedure', including where the sale is carried out in the course of the first phase which does not form part of the liquidation proceedings and is carried out pursuant to a voluntary agreement between the parties.

20 Under Article 199(1)(g) of Directive 2006/112, Member States may provide that the person

liable for the payment of VAT is the taxable person who is supplied with immovable property sold by a judgment debtor in a compulsory sale procedure.

21 It must first be pointed out that, although the Spanish-language version of Directive 2006/112 uses the term ‘liquidation’ (‘liquidación’), an examination of different language versions reveals that the most commonly used expression is ‘compulsory sale procedure’ (namely, in the Czech-language version ‘?ízení o nuceném prodeji’, in the German-language version ‘Zwangsversteigerungsverfahren’, in the French-language version ‘procédure de vente forcée’, in the Lithuanian-language version ‘priverstinio pardavimo’, in the Maltese-language version ‘pro?edura ta’ bejg? obligatorju’, in the Portuguese-language version ‘um processo de venda coerciva’, and in the Slovak-language version ‘konanie o nútenom predaji’). Such a concept encompasses a broader scope than the term ‘liquidation’ by itself.

22 It is settled case-law that the wording used in one language version of a provision of European Union 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 of the uniform application of European Union law. Where there is a divergence between the various language versions, the provision in question must then be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16, and Case C-451/08 *Helmut Müller* [2010] ECR I-2673, paragraph 38).

23 With regard, first of all, to the general scheme of Article 199(1)(g) of Directive 2006/112, it must be noted that it constitutes an exception to the principle, set out in Article 193 of that directive, according to which VAT is payable by any taxable person carrying out a taxable supply of goods or services. Article 199 allows Member States to introduce a reverse charge mechanism, in the situations referred to in paragraphs 1(a) to (g) of that article, whereby the person liable for the payment of VAT is the taxable person who is the recipient of the transaction subject to VAT.

24 As the European Commission and the Hungarian Government have pointed out in their observations to the Court, Article 199(1)(g) of Directive 2006/112 was inserted for the first time by Council Directive 2006/69/EC of 24 July 2006 amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain decisions granting derogations (OJ 2006 L 221, p. 9) into the text of 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).

25 As stated in recital 1 in the preamble to Directive 2006/69, the purpose of that directive was to allow all Member States to apply derogating measures which had been previously granted to certain Member States with a view to combatting tax evasion and avoidance.

26 The derogations which served as the basis for the drafting of Article 199(1)(g) of Directive 2006/112 were justified by the fact that taxable persons, in the situations referred to by those derogations, were generally unable to pay the VAT imposed because of the financial difficulties that they faced.

27 It should also be observed that, while Article 21(2), in the version set out in point (c)(vii) of Article 28g of Directive 77/388/EEC, as amended by Directive 2006/69, refers to a ‘compulsory sale procedure’, the proposal for a Council Directive amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion and avoidance, and repealing certain decisions granting derogations, [COM(2005) 89 final] referred to a more restrictive concept, namely that of ‘judicial liquidation’. The intention of the

legislature was, consequently, not to limit the application of the reverse charge mechanism to the liquidation of the assets and liabilities of the debtor in the strict sense, but indeed to give it a broader scope.

28 Second, as regards the objective pursued by Article 199(1)(g) of Directive 2006/112, it must be pointed out that, according to recital 42 in the preamble thereto, Member States should be able to introduce a reverse charge mechanism in certain sectors or for certain transactions in order to simplify the rules and counter tax evasion and avoidance. That provision thus allows the tax authorities to collect VAT imposed on the transactions at issue in cases where the debtor's ability to pay that tax is compromised.

29 Given that a debtor's ability to pay the VAT imposed on the sale of immovable property to the tax authorities is called into question once insolvency proceedings have been opened because those proceedings have been triggered by the declaration of insolvency made by that debtor, the implementation of the reverse charge mechanism cannot be limited to transfers of immovable property carried out solely in the context of proceedings for the liquidation of an insolvent debtor's assets. Where, in the course of insolvency proceedings which do not result in liquidation being triggered, which is the case in the main proceedings, the debtor is obliged to sell those assets either to settle creditors' claims or to enable the debtor to re-establish its economic or professional activities, recourse to the reverse charge mechanism is justified.

30 Accordingly, the reverse charge mechanism can be applied to the sale of immovable property carried out by the judgment debtor in the context of any insolvency proceedings, no matter whether those proceedings involve liquidation or not, provided that such a sale is necessary either to settle creditors' claims or to enable the debtor to re-establish its economic or professional activities.

31 It is true that Article 199(1)(g) of Directive 2006/112 is an exception to the normal rules of that directive and must, for that reason, be strictly interpreted, in accordance with settled case-law. However, that strict interpretation must not have the result that that provision is deprived of its effectiveness (see C-395/11 *BLV Wohn- und Gewerbebau* [2012] ECR, paragraph 33 and the case-law cited). Limiting the application of the reverse charge mechanism to the sale of immovable property carried out only during proceedings for the liquidation of the debtor's assets would not help to ensure the full achievement of the objective pursued since the risk of tax evasion and avoidance exists from the moment at which the debtor has been declared insolvent.

32 Consequently, the answer to the first and second questions is that Article 199(1)(g) of Directive 2006/112 must be interpreted as meaning that every sale of immovable property by a judgment debtor carried out not only in the course of the liquidation of the debtor's assets but also in the course of insolvency proceedings occurring before such liquidation comes within the concept of a compulsory sale procedure, provided that such a sale is necessary in order either to settle creditors' claims or to enable the debtor to re-establish its economic or professional activities.

33 In view of the answer to the first and second questions, it is unnecessary to reply to the third question.

Costs

34 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 (Sixth Chamber) hereby rules:

Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that every sale of immovable property by a judgment debtor carried out not only in the course of the liquidation of the debtor's assets but also in the course of insolvency proceedings occurring before such liquidation comes within the concept of a compulsory sale procedure, provided that such a sale is necessary in order either to settle creditors' claims or to enable the debtor to re-establish its economic or professional activities.

[Signatures]

* Language of the case: Spanish.