

# 61975J0111

Judgment of the Court of 20 May 1976. - Impresa Costruzioni comm. Quirino Mazzalai v Ferrovia del Renon. - Reference for a preliminary ruling: Tribunale civile e penale di Trento - Italy. - Case 111-75.

*European Court reports 1976 Page 00657*

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## Keywords

1 . QUESTIONS REFERRED FOR A PRELIMINARY RULING - JURISDICTION OF THE COURT - LIMITS .

( EEC TREATY , ARTICLE 177 )

2 . TAXATION - LEGISLATION OF THE MEMBER STATES - HARMONIZATION - TURNOVER TAX - VALUE-ADDED TAX - CHARGEABLE EVENT - OCCURRENCE - MOMENT

( SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 , ARTICLE 6 ( 4 ) ON THE HARMONIZATION OF LEGISLATION )

## Summary

1 . UNDER ARTICLE 177 , THE COURT OF JUSTICE HAS JURISDICTION TO GIVE PRELIMINARY RULINGS CONCERNING THE INTERPRETATION OF ACTS OF THE INSTITUTIONS OF THE COMMUNITY , REGARDLESS OF WHETHER THEY ARE DIRECTLY APPLICABLE .

IT IS NOT FOR THE COURT TO APPRAISE THE RELEVANCE OF QUESTIONS REFERRED UNDER ARTICLE 177 , WHICH IS BASED ON A CLEAR SEPARATION OF JURISDICTIONS AND LEAVES TO THE NATIONAL COURTS THE TASK OF DECIDING WHETHER THE PROCEDURE OF A REFERENCE FOR A PRELIMINARY RULING IS HELPFUL FOR THE

*PURPOSES OF THE DECISION IN THE PROCEEDINGS PENDING BEFORE THEM .*

*2 . ARTICLE 6 ( 4 ) OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 CANNOT BE INTERPRETED AS PERMITTING THE MOMENT WHEN THE SERVICE IS PROVIDED TO BE IDENTIFIED WITH THAT WHEN THE INVOICE IS ISSUED OR A PAYMENT ON ACCOUNT IS MADE IF THESE TRANSACTIONS TAKE PLACE AFTER THE SERVICE HAS BEEN CARRIED OUT .*

## **Parties**

*IN CASE 111/75*

*REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE TRIBUNALE DI TRENTO FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN*

*IMPRESA COSTRUZIONI COMM . QUIRINO MAZZALAI*

*AND*

*FERROVIA DEL RENON*

## **Subject of the case**

*ON THE INTERPRETATION OF ARTICLE 6 ( 4 ) 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 ( 67/228/EEC ), OJ , ENGLISH SPECIAL EDITION 1967 , P . 16 ,*

## **Grounds**

*1 BY AN ORDER OF 30 JUNE 1975 , RECEIVED BY THE COURT REGISTRY ON 24 OCTOBER 1975 , THE TRIBUNALE DI TRENTO REFERRED TO THE COURT OF JUSTICE FOR A PRELIMINARY RULING THE QUESTION WHETHER ' ARTICLE 6 ( 4 ) OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ( OJ , ENGLISH SPECIAL EDITION 1967 , P . 16 ) ' MUST BE INTERPRETED ' AS MEANING THAT , IN THE CASE OF THE PROVISION OF SERVICES AND , IN PARTICULAR , CONTRACTS FOR WORKS , THE CHARGEABLE EVENT OCCURS AT THE MOMENT WHEN THE SERVICE IS PROVIDED AND THAT EACH OF THE MEMBER STATES HAS CONTINUING AUTHORITY TO IDENTIFY THE CHARGEABLE EVENT WITH THE ISSUE OF AN INVOICE OR WITH A PAYMENT ON ACCOUNT , WHETHER THE ISSUE OF THE INVOICE OR THE PAYMENT ON ACCOUNT TAKES PLACE BEFORE COMPLETION OF THE WORK OR , AS IN THE PRESENT CASE , THEY TAKE PLACE AFTER THE SAID COMPLETION ' .*

*2/3 THE QUESTION HAS BEEN RAISED IN PROCEEDINGS CONCERNING THE AMOUNT DUE EITHER IN RESPECT OF TURNOVER TAX OR IN RESPECT OF VALUE-ADDED TAX ON THE BALANCE PAID IN 1973 BY FERROVIA DEL RENON , THE DEFENDANT IN THE MAIN ACTION , TO THE MAZZALAI UNDERTAKING , THE PLAINTIFF IN THE MAIN ACTION , FOR WORKS IN RELATION TO THE CONSTRUCTION OF THE BOLZANO-SOPRA BOLZANO CABLE RAILWAY COMPLETED IN 1967 . THE PLAINTIFF IN THE MAIN ACTION WHO HAD*

PAID VALUE-ADDED TAX AT THE RATE OF 12 % ON THE SUM CHARGED PURSUANT TO THE NATIONAL LEGISLATION WHICH ENTERED INTO FORCE ON 1 JANUARY 1973 , APPLIED TO THE DEFENDANT IN THE MAIN ACTION FOR REIMBURSEMENT OF THE TAX PAID , BUT ENCOUNTERED THE OBJECTION THAT BECAUSE THE WORKS HAD BEEN CARRIED OUT AS LONG AGO AS 1967 , ONLY TURNOVER TAX , WHICH AT THAT TIME WAS APPLICABLE AT THE RATE OF 4 % , COULD BE TAKEN INTO CONSIDERATION .

4/5 IN ACCORDANCE WITH THE COMMUNITY DIRECTIVES , VALUE-ADDED TAX WAS INTRODUCED IN ITALY AS FROM 1 JANUARY 1973 IN APPLICATION OF DELEGATING LAW NO 825 OF 9 OCTOBER 1971 ( GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA NO 263 OF 16 OCTOBER 1971 ) AND THE CORRESPONDING PRESIDENTIAL DECREE NO 633 OF 26 OCTOBER 1972 ( GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA NO 292 OF 11 NOVEMBER 1972 ). ALTHOUGH ARTICLE 76 OF THIS DECREE PROVIDES THAT THE TAX APPLIES TO THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES ( WORKS CARRIED OUT UNDER A CONTRACT FOR WORKS ARE TREATED AS SUCH ) AFTER 31 DECEMBER 1972 , THE THIRD PARAGRAPH OF ARTICLE 6 PROVIDES THAT ' SERVICES SHALL BE DEEMED TO HAVE BEEN PROVIDED AT THE MOMENT WHEN THE CONSIDERATION IS PAID ' .

6 DURING THE PROCEDURE THE ITALIAN GOVERNMENT CALLED IN QUESTION BOTH THE RELEVANCE OF THE QUESTION TO THE OUTCOME OF THE MAIN ACTION AND THE COURT ' S JURISDICTION , ESPECIALLY BECAUSE , IT CLAIMED , ON THE ONE HAND THE COMMUNITY RULE , IN THE PRESENT CASE THE SECOND DIRECTIVE , IS NOT DIRECTLY APPLICABLE AND CANNOT THEREFORE PRODUCE DIRECT EFFECTS , AND , ON THE OTHER , THE PROCEEDINGS ARE IN SUBSTANCE CONCERNED WITH PROBLEMS OF TRANSITIONAL LAW ON WHICH THE COMMUNITY RULE IS SILENT AND WHICH COME ONLY UNDER NATIONAL LAW .

7/9 UNDER ARTICLE 177 , THE COURT OF JUSTICE HAS JURISDICTION TO GIVE PRELIMINARY RULINGS CONCERNING THE INTERPRETATION OF ACTS OF THE INSTITUTIONS OF THE COMMUNITY , REGARDLESS OF WHETHER THEY ARE DIRECTLY APPLICABLE . THE QUESTION REFERRED EXCLUSIVELY CONCERNS THE INTERPRETATION OF ARTICLE 6 ( 4 ) OF THE DIRECTIVE AND THE COURT THEREFORE HAS JURISDICTION . FURTHERMORE IT IS NOT FOR THE COURT TO APPRAISE THE RELEVANCE OF QUESTIONS REFERRED UNDER ARTICLE 177 , WHICH IS BASED ON A CLEAR SEPARATION OF JURISDICTIONS AND LEAVES TO THE NATIONAL COURTS THE TASK OF DECIDING WHETHER RECOURSE TO THE PROCEDURE OF A REFERENCE FOR A PRELIMINARY RULING IS HELPFUL FOR THE PURPOSES OF THE DECISION IN THE PROCEEDINGS PENDING BEFORE THEM .

10/11 IN ADDITION , REGARDLESS OF THE EFFECTS OF THE DIRECTIVE , IN CASES SUCH AS THE PRESENT , AN INTERPRETATION OF THE DIRECTIVE MAY BE HELPFUL TO THE NATIONAL COURT SO AS TO ENSURE THAT THE LAW ADOPTED FOR THE IMPLEMENTATION OF THE DIRECTIVE IS INTERPRETED AND APPLIED IN A MANNER WHICH CONFORMS TO THE REQUIREMENTS OF COMMUNITY LAW ( FRIEDRICH HAAGA GMBH , CASE 32/74 , ( 1974 ) ECR 1201 ). THE SAME MAY BE TRUE OF THE PROBLEMS OF TRANSITIONAL LAW RAISED BY THE PROCEEDINGS .

12/14 AS FOR THE QUESTION RAISED , UNDER ARTICLE 6 ( 4 ) 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 ' THE CHARGEABLE EVENT SHALL OCCUR AT THE MOMENT WHEN THE SERVICE IS PROVIDED . IN THE CASE , HOWEVER , OF THE PROVISION OF SERVICES OF INDETERMINATE LENGTH OR

EXCEEDING A CERTAIN PERIOD OR INVOLVING PAYMENTS ON ACCOUNT , IT MAY BE PROVIDED THAT THE CHARGEABLE EVENT SHALL ALREADY HAVE OCCURRED AT THE MOMENT OF ISSUE OF THE INVOICE OR , AT THE LATEST , AT THE MOMENT OF THE RECEIPT OF THE PAYMENT ON ACCOUNT , IN RESPECT OF THE WHOLE OF THE AMOUNT INVOICED OR RECEIVED ' . WHILST THE FIRST SENTENCE OF THE PARAGRAPH LAYS DOWN THE GENERAL RULE , THE SECOND SENTENCE MAKES PROVISION FOR THE POSSIBILITY OF CERTAIN DEROGATIONS FROM THAT RULE . THESE DEROGATIONS APPLY , HOWEVER , ONLY TO CASES IN WHICH PAYMENTS ON ACCOUNT ARE MADE BEFORE THE SERVICE OR SERVICES HAVE BEEN FULLY PROVIDED AND THEREFORE ENVISAGE ONLY AN ANTICIPATION OF THE MOMENT WHEN , ACCORDING TO THE FIRST SENTENCE , THE TAX IS PAYABLE .

15/16 ON THE CONTRARY , THE PARAGRAPH IN QUESTION MAKES NO MENTION OF THE POSSIBILITY OF DEFERRING THAT MOMENT BEYOND THE MOMENT WHEN THE SERVICE OR SERVICES ARE PROVIDED IN FULL . CONSEQUENTLY , NATIONAL PROVISIONS WHICH MAKE THE MOMENT WHEN THE SERVICE IS PROVIDED COINCIDE WITH THAT WHEN THE CONSIDERATION IS PAID GO BEYOND THE LIMITS LAID DOWN BY THE PARAGRAPH IN QUESTION .

17 THEREFORE IT IS NECESSARY TO REPLY THAT ARTICLE 6 ( 4 ) OF THE DIRECTIVE CANNOT BE INTERPRETED AS PERMITTING THE MOMENT WHEN THE SERVICE IS PROVIDED TO BE IDENTIFIED WITH THAT WHEN THE INVOICE IS ISSUED OR A PAYMENT ON ACCOUNT IS MADE IF THOSE TRANSACTIONS TAKE PLACE AFTER THE SERVICE HAS BEEN CARRIED OUT .

## **Decision on costs**

### **COSTS**

18 THE COSTS INCURRED BY THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH SUBMITTED THEIR 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

IN ANSWER TO THE QUESTION REFERRED TO IT BY THE TRIBUNALE DI TRENTO BY ORDER OF 30 JUNE 1975 HEREBY RULES :

ARTICLE 6 ( 4 ) OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES CANNOT BE INTERPRETED AS PERMITTING THE MOMENT WHEN THE SERVICE IS PROVIDED TO BE IDENTIFIED WITH THAT WHEN THE INVOICE IS ISSUED OR A PAYMENT ON ACCOUNT IS MADE IF THESE TRANSACTIONS TAKE PLACE AFTER THE SERVICE HAS BEEN CARRIED OUT .