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Judgment of the Court (Second Chamber) of 5 February 1981. - Staatssecretaris van Financiën v Association coopérative "Coöperatieve Aardappelenbewaarplaats GA". - Reference for a preliminary ruling: Hoge Raad - Netherlands. - VAT - Provision of services. - Case 154/80.

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Keywords

TAX PROVISIONS - HARMONIZATION OF LEGISLATION - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - PROVISION OF SERVICES - BASIS OF ASSESSMENT - CONSIDERATION , DIRECTLY LINKED TO THE SERVICE , CAPABLE OF BEING EXPRESSED IN MONEY AND HAVING A SUBJECTIVE VALUE

(COUNCIL DIRECTIVE 67/228 , ARTS 2 AND 8 (A): ANNEX A , POINT 13)

Summary

A PROVISION OF SERVICES IS TAXABLE WITHIN THE MEANING OF THE SECOND DIRECTIVE ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES , WHEN THE SERVICE , IN THE TERMS OF ART . 2 OF THAT INSTRUMENT , IS PROVIDED AGAINST PAYMENT AND THE BASIS OF ASSESSMENT FOR SUCH A SERVICE CONSISTS , IN THE TERMS OF ARTICLE 8 (A) AS AMPLIFIED BY POINT 13 OF ANNEX A , OF EVERYTHING RECEIVED IN RETURN FOR THE PROVISION OF THE SERVICE . THERE MUST THEREFORE BE A DIRECT LINK BETWEEN THE SERVICE PROVIDED AND THE CONSIDERATION RECEIVED . SUCH CONSIDERATION MUST BE CAPABLE OF BEING EXPRESSED IN MONEY AND HAVE A SUBJECTIVE VALUE SINCE THE BASIS OF ASSESSMENT FOR THE PROVISION OF SERVICES IS THE CONSIDERATION ACTUALLY RECEIVED AND NOT A VALUE ASSESSED ACCORDING TO OBJECTIVE CRITERIA .

THEREFORE THERE CAN BE NO QUESTION OF ANY CONSIDERATION WITHIN THE MEANING OF ARTICLE 8 (A) OF THE DIRECTIVE IN THE CASE OF A COOPERATIVE ASSOCIATION RUNNING A WAREHOUSE FOR THE STORAGE OF GOODS WHICH DOES NOT IMPOSE ANY STORAGE CHARGE ON ITS MEMBERS FOR THE SERVICE PROVIDED .

Parties

IN CASE 154/80

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

STAATSSECRETARIS VAN FINANCIEN (SECRETARY OF STATE FOR FINANCE)

AND

COOPERATIEVE AARDAPPELENBEWAARPLAATS GA , A COOPERATIVE ASSOCIATION , HEINKENSZAND ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 8 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 (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16),

Grounds

1 BY A JUDGMENT OF 25 JUNE 1980 WHICH WAS RECEIVED AT THE COURT ON 2 JULY 1980 THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION AS TO THE INTERPRETATION OF ARTICLE 8 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 (OFFICIAL

2 THAT QUESTION WAS RAISED IN THE CONTEXT OF A DISPUTE BETWEEN THE STAATSSECRETARIS VAN FINANCIEN (SECRETARY OF STATE FOR FINANCE) AND AN AGRICULTURAL COOPERATIVE ASSOCIATION WHICH RUNS A POTATO WAREHOUSE , OVER THE FACT THAT , HAVING DECIDED NOT TO COLLECT ANY STORAGE CHARGE FOR 1975 AND 1976 FROM ITS MEMBERS FOR THE STORAGE OF POTATOES , THE ASSOCIATION CONSIDERED THAT SINCE THOSE SERVICES WERE PROVIDED FOR NO PAYMENT THEY SHOULD NOT BE SUBJECT TO TURNOVER TAX .

3 HOWEVER THE FISCAL AUTHORITIES TOOK THE VIEW THAT THE COOPERATIVE HAD NEVERTHELESS CHARGED ITS MEMBERS SOMETHING IN RETURN OWING TO THE REDUCTION IN THE VALUE OF THEIR SHARES AS A RESULT OF THE NON-COLLECTION OF THE STORAGE CHARGES FOR THE TWO YEARS IN QUESTION AND HAVING ASSESSED WHAT WAS RECEIVED IN RETURN TO BE THE STORAGE CHARGE ORDINARILY IMPOSED IT ISSUED A NOTICE OF ASSESSMENT TO ADDITIONAL TAX .

4 THE COOPERATIVE REFERRED THAT NOTICE OF ASSESSMENT TO THE GERECHTSHOF , THE HAGUE , ARGUING THAT , SINCE THE TERM CONSIDERATION (VERGOEDING) AS DEFINED IN ARTICLE 8 OF THE WET OP DE OMZETBELASTING (LAW ON TURNOVER TAX) HAS A SUBJECTIVE CHARACTER , THE COOPERATIVE HAD PROVIDED ITS SERVICES FOR NO CONSIDERATION BECAUSE IT HAD NOT REQUIRED ANYTHING IN RETURN .

5 THE GERECHTSHOF UPHELD THE APPLICATION AND THE STAATSSECRETARIS VAN FINANCIEN APPEALED AGAINST THAT JUDGMENT .

6 IN ORDER TO RESOLVE THE DISPUTE THE HOGE RAAD PUT THE FOLLOWING QUESTION :

'' A COOPERATIVE ASSOCIATION INCORPORATED UNDER NETHERLANDS LAW RUNS IN ACCORDANCE WITH ITS STATED OBJECTS A POTATO STORAGE DEPOT . THE MEMBERS OF THE ASSOCIATION HAVE THE RIGHT AGAINST IT AND THE OBLIGATION TOWARDS IT TO PUT IN STORE EACH YEAR 1 000 KILOGRAMS OF POTATOES FOR EACH SHARE CERTIFICATE ISSUED BY THE ASSOCIATION IN THEIR POSSESSION IN RETURN FOR A STORAGE CHARGE FIXED EACH YEAR BY THE ASSOCIATION PAYABLE AT THE END OF THE SEASON . PURSUANT TO A DECISION BY THE ASSOCIATION , IN A GIVEN YEAR , NO STORAGE CHARGE MAY BE IMPOSED .

IN SUCH A CASE IS THERE CONSIDERATION WITHIN THE MEANING OF THE OPENING WORDS AND PARAGRAPH (A) OF ARTICLE 8 OF THE SECOND DIRECTIVE?

''

7 BY THAT QUESTION THE HOGE RAAD IS IN SUBSTANCE ASKING WHAT IS THE CORRECT INTERPRETATION OF THE TERM '' CONSIDERATION '' CONTAINED IN ARTICLE 8 (A) OF THE SECOND DIRECTIVE .

8 THE QUESTION WHICH IS THUS RAISED MUST BE RESOLVED IN THE LIGHT OF THE ENTIRE PROVISIONS OF THE SECOND DIRECTIVE .

9 IT SHOULD BE NOTED IN THE FIRST PLACE THAT THE EXPRESSION IN ISSUE IS PART OF A PROVISION OF COMMUNITY LAW WHICH DOES NOT REFER TO THE LAW OF THE MEMBER STATES FOR THE DETERMINING OF ITS MEANING AND ITS SCOPE ; IT FOLLOWS THAT THE INTERPRETATION , IN GENERAL TERMS , OF THE EXPRESSION MAY

NOT BE LEFT TO THE DISCRETION OF EACH MEMBER STATE .

10 FURTHERMORE THE COMMUNITY LEGISLATURE HAS BEEN CAREFUL TO CLARIFY THE EXPRESSION '' CONSIDERATION '' IN ANNEX A - WHICH BY ARTICLE 20 OF THE SECOND DIRECTIVE IS AN INTEGRAL PART THEREOF - UNDER POINT 13 REGARDING ARTICLE 8 (A) IN SO FAR AS THE TERM SHOULD BE UNDERSTOOD AS MEANING '' EVERYTHING RECEIVED IN RETURN FOR . . . THE PROVISION OF SERVICES , INCLUDING INCIDENTAL EXPENSES (PACKING , TRANSPORT , INSURANCE , ETC .) THAT IS TO SAY NOT ONLY THE CASH AMOUNTS CHARGED , BUT ALSO , FOR EXAMPLE , THE VALUE OF THE GOODS RECEIVED IN EXCHANGE OR , IN THE CASE OF GOODS OR SERVICES SUPPLIED BY ORDER OF A PUBLIC AUTHORITY , THE AMOUNT OF THE COMPENSATION RECEIVED '' .

11 IT SHOULD THEN BE EMPHASIZED THAT ARTICLE 8 (A) , WHICH DEFINES THE BASIS OF ASSESSMENT OF VALUE-ADDED TAX STATING THAT IS SHALL BE IN THE CASE OF THE PROVISION OF SERVICES '' EVERYTHING WHICH MAKES UP THE CONSIDERATION FOR THE PROVISION OF SERVICES '' , AND CLARIFIED AS JUST STATED ABOVE , MUST BE COMPARED TO ARTICLE 2 WHICH STIPULATES AS BEING SOLELY CAPABLE OF BEING SUBJECT TO VALUE-ADDED TAX '' THE PROVISION OF SERVICES WITHIN THE TERRITORY OF THE COUNTRY BY A TAXABLE PERSON AGAINST PAYMENT '' .

12 SO A PROVISION OF SERVICES IS TAXABLE , WITHIN THE MEANING OF THE SECOND DIRECTIVE , WHEN THE SERVICE IS PROVIDED AGAINST PAYMENT AND THE BASIS OF ASSESSMENT FOR SUCH A SERVICE IS EVERYTHING WHICH MAKES UP THE CONSIDERATION FOR THE SERVICE ; THERE MUST THEREFORE BE A DIRECT LINK BETWEEN THE SERVICE PROVIDED AND THE CONSIDERATION RECEIVED WHICH DOES NOT OCCUR IN A CASE WHERE THE CONSIDERATION CONSISTS OF AN UNASCERTAINED REDUCTION IN THE VALUE OF THE SHARES POSSESSED BY THE MEMBERS OF THE COOPERATIVE AND SUCH A LOSS OF VALUE MAY NOT BE REGARDED AS A PAYMENT RECEIVED BY THE COOPERATIVE PROVIDING THE SERVICES .

13 WHAT IS MORE IT FOLLOWS FROM THE USE OF THE EXPRESSIONS '' AGAINST PAYMENT '' AND '' EVERYTHING RECEIVED IN RETURN '' FIRST THAT THE CONSIDERATION FOR THE PROVISION OF A SERVICE MUST BE CAPABLE OF BEING EXPRESSED IN MONEY , WHICH IS FURTHER CONFIRMED BY ARTICLE 9 OF THE SECOND DIRECTIVE WHICH STIPULATES THAT '' THE STANDARD RATE OF VALUE-ADDED TAX SHALL BE FIXED . . . AT A PERCENTAGE OF THE BASIS OF ASSESSMENT '' , THAT IS TO SAY AT A CERTAIN PROPORTION OF THAT WHICH CONSTITUTES THE CONSIDERATION FOR THE PROVISION OF SERVICES , WHICH IMPLIES THAT SUCH CONSIDERATION IS CAPABLE OF BEING EXPRESSED IN AN AMOUNT ASSESSED IN MONEY ; SECONDLY THAT SUCH CONSIDERATION IS A SUBJECTIVE VALUE SINCE THE BASIS OF ASSESSMENT FOR THE PROVISION OF SERVICES IS THE CONSIDERATION ACTUALLY RECEIVED AND NOT A VALUE ASSESSED ACCORDING TO OBJECTIVE CRITERIA .

14 CONSEQUENTLY A PROVISION OF SERVICES FOR WHICH NO DEFINITE SUBJECTIVE CONSIDERATION IS RECEIVED DOES NOT CONSTITUTE A PROVISION OF SERVICES '' AGAINST PAYMENT '' AND IS THEREFORE NOT TAXABLE WITHIN THE MEANING OF THE SECOND DIRECTIVE .

15 IT FOLLOWS THEREFROM THAT THERE CAN BE NO QUESTION OF ANY CONSIDERATION WITHIN THE MEANING OF THE OPENING WORDS AND SUBPARAGRAPH (A) OF ARTICLE 8 OF THE SECOND DIRECTIVE 67/228 OF THE COUNCIL OF 11 APRIL 1967 IN THE CASE OF A COOPERATIVE ASSOCIATION RUNNING A WAREHOUSE FOR THE STORAGE OF GOODS WHICH DOES NOT IMPOSE ANY STORAGE CHARGE ON ITS MEMBERS FOR THE SERVICE PROVIDED .

Decision on costs

16 THE COSTS INCURRED BY 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 , 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 (SECOND CHAMBER)

IN ANSWER TO THE QUESTION REFERRED TO IT BY THE HOGE RAAD DER NEDERLANDEN BY JUDGMENT OF 25 JUNE 1980 , HEREBY RULES :

THERE CAN BE NO QUESTION OF ANY CONSIDERATION WITHIN THE MEANING OF THE OPENING WORDS OF SUBPARAGRAPH (A) OF ARTICLE 8 OF THE SECOND DIRECTIVE 67/228 OF THE COUNCIL 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 , (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16) IN THE CASE OF A COOPERATIVE ASSOCIATION RUNNING A WAREHOUSE FOR THE STORAGE OF GOODS WHICH DOES NOT IMPOSE ANY STORAGE CHARGE ON ITS MEMBERS FOR THE SERVICE PROVIDED .