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Judgment of the Court of 5 May 1982. - Gaston Schul Douane Expediteur BV v Inspecteur der Invoerrechten en Accijnzen, Roosendaal. - Reference for a preliminary ruling: Gerechtshof 's-Hertogenbosch - Netherlands. - Turnover tax on the importation of goods supplied by private persons. - Case 15/81.

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Keywords

1 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - VALUE-ADDED TAX LEVIED ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON - NATURE OF INTERNAL TAXATION - DISCRIMINATORY CHARACTER - CONDITIONS

(EEC TREATY , ARTS 12 , 13 (2) AND 95)

2.TAX PROVISIONS - HARMONIZATION OF LAWS - VALUE-ADDED TAX - COMMON SYSTEM OF VALUE-ADDED TAX - VALUE-ADDED TAX LEVIED ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON - COMPATIBILITY WITH THE TREATY - CONDITIONS

(EEC TREATY , ART . 95 ; COUNCIL DIRECTIVE NO 77/388 , ART . 2 , POINT 2)

3.TAX PROVISIONS - INTERNAL TAXATION - DISCRIMINATION - PROHIBITION - VALUE-ADDED TAX LEVIED ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON - UNLAWFULNESS - CRITERIA

(EEC TREATY , ART . 95)

Summary

1 . VALUE-ADDED TAX WHICH A MEMBER STATE LEVIES ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION DOES NOT CONSTITUTE A CHARGE HAVING AN EFFECT EQUIVALENT TO A CUSTOMS DUTY ON IMPORTS WITHIN THE MEANING OF ARTICLES 12 AND 13 (2) OF THE TREATY BUT MUST BE CONSIDERED AS AN INTEGRAL PART OF A GENERAL SYSTEM OF INTERNAL TAXATION AND ITS COMPATIBILITY WITH COMMUNITY LAW MUST BE CONSIDERED IN THE CONTEXT OF ARTICLE 95 . VALUE-ADDED TAX CONSTITUTES INTERNAL TAXATION IN EXCESS OF THAT IMPOSED ON SIMILAR DOMESTIC PRODUCTS WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT ON IMPORTATION IS NOT TAKEN INTO ACCOUNT . THE BURDEN OF PROVING FACTS WHICH JUSTIFY THE TAKING INTO ACCOUNT OF THE TAX FALLS ON THE IMPORTER .

2.ARTICLE 2 , POINT 2 , OF THE SIXTH COUNCIL DIRECTIVE NO 77/388 , ACCORDING TO WHICH ' ' THE IMPORTATION OF GOODS ' ' IS TO BE SUBJECT TO VALUE-ADDED TAX , IS COMPATIBLE WITH THE TREATY AND THEREFORE VALID SINCE IT MUST BE INTERPRETED AS NOT CONSTITUTING AN OBSTACLE TO THE OBLIGATION UNDER ARTICLE 95 OF THE TREATY TO TAKE INTO ACCOUNT , FOR THE PURPOSE OF APPLYING VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION AND STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED .

3.ARTICLE 95 OF THE TREATY PROHIBITS MEMBER STATES FROM IMPOSING VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION AND STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED IS NOT TAKEN INTO ACCOUNT .

Parties

IN CASE 15/81

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE GERECHTSHOF (REGIONAL COURT OF APPEAL), ' S-HERTOGENBOSCH , FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

GASTON SCHUL DOUANE EXPEDITEUR BV

AND

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN (INSPECTOR OF CUSTOMS AND EXCISE), ROOSENDAAL ,

Subject of the case

ON THE INTERPRETATION OF ARTICLES 13 AND 95 OF THE EEC TREATY AND THE VALIDITY OF ARTICLE 2 , POINT 2 , OF THE SIXTH COUNCIL DIRECTIVE OF 17 MAY 1977 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),

Grounds

1 BY JUDGMENT OF 19 DECEMBER 1980 , RECEIVED AT THE COURT ON 30 JANUARY 1981 , THE GERECHTSHOF (REGIONAL COURT OF APPEAL), ' S-HERTOGENBOSCH , REFERRED FOUR QUESTIONS TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY ON THE INTERPRETATION OF ARTICLES 13 AND 95 OF THE EEC TREATY AND THE VALIDITY OF ARTICLE 2 , POINT 2 , OF THE SIXTH COUNCIL DIRECTIVE NO 77/388 OF 17 MAY 1977 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).

2 THE LIMITED LIABILITY COMPANY GASTON SCHUL DOUANE EXPEDITEUR BV , CUSTOMS FORWARDING AGENTS , IMPORTED A SECOND-HAND PLEASURE AND SPORTS BOAT INTO THE NETHERLANDS ON THE INSTRUCTIONS AND ON BEHALF OF A PRIVATE PERSON RESIDING IN THE NETHERLANDS WHO HAD BOUGHT IT IN FRANCE FROM ANOTHER PRIVATE PERSON . THE NETHERLANDS REVENUE AUTHORITY LEVIED ON THAT IMPORTATION VALUE-ADDED TAX AT THE RATE OF 18% ON THE SALE PRICE WHICH WAS THE NORMAL RATE APPLIED WITHIN THE COUNTRY ON THE SALE OF GOODS FOR VALUABLE CONSIDERATION . THE LEVYING OF THAT TAX IS THE SUBJECT OF THE MAIN ACTION .

3 THE NETHERLANDS AUTHORITY RELIED ON THE NETHERLANDS LAW OF 1968 ON TURNOVER TAX AND IN PARTICULAR ARTICLE 1 THEREOF . ACCORDING TO THAT PROVISION TURNOVER TAX IS CHARGEABLE ON THE ONE HAND ON GOODS DELIVERED AND SERVICES PROVIDED WITHIN THE COUNTRY BY TRADERS IN THE COURSE OF THEIR BUSINESS AND ON THE OTHER HAND ON THE IMPORTATION OF GOODS . THE PROVISION GIVES EFFECT TO ARTICLE 2 OF THE SECOND COUNCIL DIRECTIVE NO 67/228 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), AN ARTICLE WHOSE PROVISIONS WERE SUBSTANTIALLY INCORPORATED INTO THE ABOVE-MENTIONED ARTICLE 2 OF THE SIXTH COUNCIL DIRECTIVE NO 77/388 AF 17 MAY 1977 .

4 WHEN THE OBJECTION TO THAT DECISION WAS DISMISSED ON THE GROUND THAT THE TAX HAD BEEN LEVIED IN CONFORMITY WITH THE NETHERLANDS LEGISLATION THE COMPANY GASTON SCHUL BROUGHT THE MATTER BEFORE THE GERECHTSHOF , ' S-HERTOGENBOSCH . IT CLAIMS THAT THE TAX IS CONTRARY TO THE PROVISIONS OF

THE EEC TREATY , IN PARTICULAR ARTICLES 12 AND 13 ON THE ONE HAND AND ARTICLE 95 ON THE OTHER .

5 IN ORDER TO BE ABLE TO ASSESS THAT SUBMISSION THE GERECHTSHOF REFERRED TO THE COURT THE FOLLOWING QUESTIONS FOR A PRELIMINARY RULING :

' ' 1 . MUST THE CHARGING BY A MEMBER STATE OF TURNOVER TAX ON THE IMPORTATION OF GOODS FROM ANOTHER MEMBER STATE WHICH ARE SUPPLIED BY A PRIVATE PERSON BE REGARDED AS A CHARGE HAVING AN EFFECT EQUIVALENT TO CUSTOMS DUTIES WITHIN THE MEANING OF ARTICLE 13 (2) OF THE TREATY (ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY) IF , ON THE SUPPLY BY A PRIVATE PERSON OF GOODS WHICH ARE ALREADY IN THAT MEMBER STATE , NO CHARGE TO TURNOVER TAX IS MADE?

2.IF QUESTION 1 IS ANSWERED IN THE NEGATIVE , THEN , WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY , MUST THE CHARGING BY A MEMBER STATE OF TURNOVER TAX ON THE IMPORTATION OF GOODS FROM ANOTHER MEMBER STATE WHICH ARE SUPPLIED BY A PRIVATE PERSON BE REGARDED AS INTERNAL TAXATION IN EXCESS OF THAT IMPOSED ON SIMILAR DOMESTIC PRODUCTS IF NO TURNOVER TAX IS CHARGED ON THE SUPPLY OF GOODS WHICH ARE ALREADY IN THAT MEMBER STATE IF THEY ARE SUPPLIED BY A PRIVATE PERSON?

3.SHOULD ONE OF THE TWO FOREGOING QUESTIONS BE ANSWERED IN THE AFFIRMATIVE , MUST IT BE ASSUMED THAT POINT 2 OF ARTICLE 2 OF THE SIXTH (COUNCIL) DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES IS INCOMPATIBLE WITH THE TREATY AND THEREFORE INVALID IN SO FAR AS THAT PROVISION REQUIRES MEMBER STATES TO SUBJECT THE IMPORTATION OF GOODS FROM OTHER MEMBER STATES TO VALUE-ADDED TAX WITHOUT MAKING ANY EXCEPTION FOR GOODS SUPPLIED BY PRIVATE PERSONS WHICH , WHEN SUPPLIED WITHIN THE MEMBER STATE CONCERNED , WOULD NOT BE SUBJECT TO THAT TAX?

4.DOES AN AFFIRMATIVE ANSWER TO QUESTION 3 MEAN THAT A MEMBER STATE IS PROHIBITED FROM SUBJECTING TO VALUE-ADDED TAX THE IMPORTATION OF GOODS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON IF THE SUPPLY OF THOSE GOODS WITHIN THE MEMBER STATE BY A PRIVATE PERSON IS NOT SUBJECT TO THAT TAX?

' '

6 THE QUESTIONS PUT BY THE NATIONAL COURT ARE ESSENTIALLY AIMED AT ASCERTAINING WHETHER IT IS COMPATIBLE WITH THE PROVISIONS OF THE TREATY , AND IN PARTICULAR WITH ARTICLES 12 AND 13 ON THE ONE HAND AND 95 ON THE OTHER , FOR A MEMBER STATE TO LEVY , PURSUANT TO COMMUNITY DIRECTIVES , TURNOVER TAX IN THE FORM OF VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A NON-TAXABLE PERSON (HEREINAFTER REFERRED TO AS A ' ' PRIVATE PERSON ' ').

7 THE PLAINTIFF IN THE MAIN ACTION ALLEGES THAT THE TAX IS INCOMPATIBLE WITH THE TREATY BECAUSE SIMILAR SUPPLIES WITHIN THE TERRITORY OF A MEMBER STATE BY A PRIVATE PERSON ARE NOT SUBJECT TO VALUE-ADDED TAX . IT MAINTAINS FURTHER THAT THE LEVYING OF VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON GIVES RISE TO AN OVERLAPPING OF TAXES SINCE , UNLIKE SUPPLIES MADE BY TAXABLE PERSONS , THERE IS NO REMISSION IN RESPECT OF VALUE-ADDED TAX LEVIED IN THE

MEMBER STATE OF EXPORTATION . CONSEQUENTLY , THE VALUE-ADDED TAX LEVIED ON THE IMPORTATION OF SUCH PRODUCTS MUST BE CONSIDERED AS A CHARGE HAVING AN EFFECT EQUIVALENT TO A CUSTOMS DUTY OR AS DISCRIMINATORY INTERNAL TAXATION .

THE COMMON SYSTEM OF VALUE-ADDED TAX

8 IN ORDER TO EVALUATE THE CONTENT OF THOSE ARGUMENTS AND TO SUPPLY THE FACTORS REQUIRED FOR AN ANSWER TO THE QUESTIONS PUT TO THE COURT IT IS NECESSARY TO RECORD BRIEFLY THE CHARACTERISTICS , RELEVANT IN THIS CASE , OF THE SYSTEM OF TURNOVER TAX IN THE FORM OF THE COMMON SYSTEM OF VALUE-ADDED TAX .

9 THE COMMON SYSTEM WAS ESTABLISHED ON THE BASIS OF ARTICLES 99 AND 100 OF THE TREATY BY THE FIRST COUNCIL DIRECTIVE NO 67/227 OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 14). IT WAS SUPPLEMENTED BY THE SECOND COUNCIL DIRECTIVE NO 67/228 OF THE SAME DATE WHICH IN TURN WAS REPLACED BY THE SIXTH COUNCIL DIRECTIVE NO 77/388 OF 17 MAY MENTIONED ABOVE .

10 BY VIRTUE OF ARTICLE 2 OF THE FIRST DIRECTIVE THE PRINCIPLE OF THE COMMON SYSTEM OF VALUE-ADDED TAX CONSISTS IN THE APPLICATION TO GOODS AND SERVICES UP TO AND INCLUDING THE RETAIL STAGE OF A GENERAL TAX ON CONSUMPTION WHICH IS EXACTLY PROPORTIONAL TO THE PRICE OF THE GOODS AND SERVICES , IRRESPECTIVE OF THE NUMBER OF TRANSACTIONS WHICH TAKE PLACE IN THE PRODUCTION AND DISTRIBUTION PROCESS BEFORE THE STAGE AT WHICH THE TAX IS CHARGED . HOWEVER , VALUE-ADDED TAX IS CHARGEABLE ON EACH TRANSACTION ONLY AFTER DEDUCTION OF THE AMOUNT OF VALUE-ADDED TAX BORNE DIRECTLY BY THE COST OF THE VARIOUS PRICE COMPONENTS . THE PROCEDURE FOR DEDUCTION IS SO ARRANGED BY ARTICLE 17 (2) OF THE SIXTH DIRECTIVE THAT ONLY TAXABLE PERSONS ARE AUTHORIZED TO DEDUCT FROM THE VALUE-ADDED TAX FOR WHICH THEY ARE LIABLE THE VALUE-ADDED TAX WHICH THE GOODS HAVE ALREADY BORNE .

11 THAT IS THE BACKGROUND TO ARTICLE 2 OF THE SIXTH DIRECTIVE WHICH PROVIDES THAT THE FOLLOWING ARE TO BE SUBJECT TO VALUE-ADDED TAX : ON THE ONE HAND ' ' THE SUPPLY OF GOODS OR SERVICES EFFECTED FOR CONSIDERATION WITHIN THE TERRITORY OF THE COUNTRY BY A TAXABLE PERSON ACTING AS SUCH ' ' (POINT 1) AND ON THE OTHER ' ' THE IMPORTATION OF GOODS ' ' (POINT 2). ARTICLE 4 OF THE DIRECTIVE DEFINES ' ' TAXABLE PERSON ' ' AS MEANING ANY PERSON WHO INDEPENDENTLY CARRIES OUT IN ANY PLACE ANY ECONOMIC ACTIVITY SUCH AS THAT OF PRODUCER , TRADER , AND PERSON SUPPLYING SERVICES INCLUDING MINING AND AGRICULTURAL ACTIVITES AND ACTIVITIES OF THE PROFESSIONS . ARTICLE 5 DEFINES ' ' SUPPLY OF GOODS ' ' AS ' ' THE TRANSFER OF THE RIGHT TO DISPOSE OF TANGIBLE PROPERTY AS OWNER ' ' WHEREAS ' ' IMPORTATION OF GOODS ' ' IS DEFINED IN ARTICLES 7 AS ' ' THE ENTRY OF GOODS INTO THE TERRITORY OF THE COUNTRY ' ' .

12 THE SIXTH DIRECTIVE ALSO HARMONIZES THE CONCEPTS OF CHARGEABLE EVENT AND CHARGEABILITY OF TAX (ARTICLE 10) AND THE TAXABLE AMOUNT (ARTICLE 11). EXEMPTIONS ARE PROVIDED BOTH FOR TRANSACTIONS WITHIN THE COUNTRY AND IMPORTS (ARTICLES 13 AND 14). EXPORTS AND LIKE TRANSACTIONS ARE EXEMPTED FROM TAX (ARTICLE 15).

13 IT IS RIGHT TO STRESS THAT THE DIRECTIVES BRING ABOUT ONLY A PARTIAL HARMONIZATION OF THE SYSTEM OF VALUE-ADDED TAX . AT THE PRESENT STAGE OF COMMUNITY LAW MEMBER STATES ARE FREE INTER ALIA TO FIX THE RATE OF VALUE-ADDED TAX , PROVIDED ALWAYS THAT THE RATE APPLICABLE ON THE IMPORTATION OF GOODS MUST BE THAT APPLIED TO THE SUPPLY OF LIKE GOODS WITHIN THE TERRITORY OF THE COUNTRY (ARTICLE 12 OF THE SIXTH DIRECTIVE).

14 IT MAY BE CONCLUDED FROM AN ANALYSIS OF THE CHARACTERISTICS OF THE COMMON SYSTEM OF VALUE-ADDED TAX , AS SET OUT ABOVE , ON THE ONE HAND THAT , AS REGARDS TRANSACTIONS WITHIN A MEMBER STATE THE CHARGEABLE EVENT IS CONSTITUTED BY THE SUPPLY OF GOODS FOR VALUABLE CONSIDERATION BY A TAXABLE PERSON ACTING AS SUCH WHEREAS AS REGARDS IMPORTS THE CHARGEABLE EVENT IS CONSTITUTED BY THE MERE ENTRY OF THE GOODS INTO THE TERRITORY OF A MEMBER STATE WHETHER OR NOT THERE IS A TRANSACTION , AND IRRESPECTIVE OF WHETHER THE TRANSACTION IS CARRIED OUT FOR VALUABLE CONSIDERATION OR FREE OF CHARGE , BE IT BY A TAXABLE PERSON OR A PRIVATE PERSON .

15 IT FOLLOWS FURTHER THAT ALTHOUGH DELIVERIES FOR EXPORT ARE THEMSELVES EXEMPT FROM VALUE-ADDED TAX , WHETHER CARRIED OUT BY TAXABLE PERSONS OR PRIVATE PERSONS , ONLY TAXABLE PERSONS ARE AUTHORIZED TO EXERCISE THE RIGHT TO DEDUCT . AS A RESULT , ONLY GOODS DELIVERED FOR EXPORT BY TAXABLE PERSONS OR ON THEIR BEHALF MAY BE EXEMPTED FROM ALL VALUE-ADDED TAX APPLIED IN THE COUNTRY OF EXPORTATION , WHEREAS GOODS DELIVERED FOR EXPORT BY PRIVATE PERSONS REMAIN LIABLE TO VALUE-ADDED TAX TO THE EXTENT PROPORTIONATE TO THEIR VALUE AT THE TIME OF EXPORT . SINCE ALL IMPORTS ARE SUBJECT TO VALUE-ADDED TAX IN THE IMPORTING COUNTRY THERE IS IN SUCH A CASE AN OVERLAPPING OF TAXES BOTH OF THE STATE OF EXPORTATION AND THE STATE OF IMPORTATION .

16 THE PRELIMINARY QUESTIONS MUST BE CONSIDERED ON THE BASIS OF THOSE ASPECTS OF THE COMMON SYSTEM .

THE FIRST QUESTION : THE INTERPRETATION OF ARTICLES 12 AND 13 OF THE TREATY

17 THE FIRST QUESTION WHICH THE GERECHTSHOF SUBMITS IS ESSENTIALLY WHETHER IT IS COMPATIBLE WITH ARTICLES 12 AND 13 OF THE TREATY TO LEVY VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON IF NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR GOODS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE IMPORTING MEMBER STATE .

18 ACCORDING TO ESTABLISHED CASE-LAW OF THE COURT THE PROHIBITION , IN RELATIONS BETWEEN MEMBER STATES , OF CHARGES HAVING AN EFFECT EQUIVALENT TO CUSTOMS DUTIES , COVERS ANY TAX WHICH IS PAYABLE ON OR BY REASON OF IMPORTATION AND WHICH , AS IT APPLIES SPECIFICALLY TO AN IMPORTED PRODUCT TO THE EXCLUSION OF A SIMILAR DOMESTIC PRODUCT , ULTIMATELY PRODUCES , BY ADVERSELY AFFECTING THE COST PRICE OF THE FORMER PRODUCT , THE SAME EFFECT UPON THE FREE MOVEMENT OF GOODS AS A CUSTOMS DUTY .

19 THE ESSENTIAL CHARACTERISTIC OF A CHARGE HAVING AN EFFECT EQUIVALENT TO A CUSTOMS DUTY , AND THE ONE WHICH DISTINGUISHES IT FROM INTERNAL TAXATION , IS THEREFORE THAT IT AFFECTS ONLY IMPORTED PRODUCTS AS SUCH WHEREAS INTERNAL TAXATION AFFECTS BOTH IMPORTED PRODUCTS AND DOMESTIC PRODUCTS .

20 THE COURT HAS NEVERTHELESS RECOGNIZED THAT A PECUNIARY CHARGE PAYABLE ON A PRODUCT IMPORTED FROM ANOTHER MEMBER STATE AND NOT ON AN IDENTICAL OR SIMILAR DOMESTIC PRODUCT DOES NOT CONSTITUTE A CHARGE HAVING EQUIVALENT EFFECT BUT INTERNAL TAXATION WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY IF IT IS PART OF A GENERAL SYSTEM OF INTERNAL DUES APPLICABLE SYSTEMATICALLY TO CATEGORIES OF PRODUCTS ACCORDING TO OBJECTIVE CRITERIA APPLIED WITHOUT REGARD TO THE ORIGIN OF THE PRODUCTS .

21 IT IS APPARENT FROM THOSE CONSIDERATIONS THAT A TAX OF THE KIND REFERRED TO BY THE NATIONAL COURT DOES NOT HAVE THE INGREDIENTS OF A CHARGE HAVING AN EFFECT EQUIVALENT TO CUSTOMS DUTIES ON IMPORTS WITHIN THE MEANING OF ARTICLES 12 AND 13 (2) OF THE TREATY . SUCH A TAX IS PART OF THE SYSTEM OF VALUE-ADDED TAX THE STRUCTURE OF WHICH , AND THE ESSENTIAL TERMS GOVERNING ITS APPLICATION , HAVE BEEN LAID DOWN BY THE COUNCIL IN HARMONIZING DIRECTIVES . THOSE DIRECTIVES HAVE ESTABLISHED A UNIFORM TAXATION PROCEDURE COVERING SYSTEMATICALLY AND ACCORDING TO OBJECTIVE CRITERIA BOTH TRANSACTIONS CARRIED OUT WITHIN THE TERRITORY OF THE MEMBER STATES AND IMPORT TRANSACTIONS . IT SHOULD BE POINTED OUT IN PARTICULAR IN THAT RESPECT THAT THE COMMON SYSTEM MAKES IMPORTS AND SUPPLIES OF LIKE GOODS WITHIN THE TERRITORY OF A MEMBER STATE SUBJECT TO THE SAME RATE OF TAX . AS A RESULT THE TAX IN QUESTION MUST BE CONSIDERED AS AN INTEGRAL PART OF A GENERAL SYSTEM OF INTERNAL TAXATION FOR THE PURPOSES OF ARTICLE 95 OF THE TREATY AND ITS COMPATIBILITY WITH COMMUNITY LAW MUST BE CONSIDERED IN THE CONTEXT OF THAT ARTICLE AND NOT OF THAT OF ARTICLES 12 ET SEQ . OF THE TREATY .

22 THE FIRST QUESTION MUST THEREFORE BE ANSWERED TO THE EFFECT THAT VALUE-ADDED TAX WHICH A MEMBER STATE LEVIES ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON , WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , DOES NOT CONSTITUTE A CHARGE HAVING AN EFFECT EQUIVALENT TO A CUSTOMS DUTY ON IMPORTS WITHIN THE MEANING OF ARTICLES 12 AND 13 (2) OF THE TREATY .

SECOND QUESTION : THE INTERPRETATION OF ARTICLE 95 OF THE TREATY

23 IN ITS SECOND QUESTION THE GERECHTSHOF ASKS IN SUBSTANCE WHETHER THE LEVYING OF VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON IS COMPATIBLE WITH ARTICLE 95 OF THE TREATY WHERE NO SUCH TAX IS PAYABLE ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION .

24 THE PLAINTIFF IN THE MAIN ACTION CONSIDERS THAT SUCH DIFFERENCE IN TREATMENT IS CONTRARY TO ARTICLE 95 SINCE ON THE ONE HAND IT IS DETRIMENTAL TO THE SUPPLY OF PRODUCTS BETWEEN PRIVATE PERSONS RESIDENT IN DIFFERENT MEMBER STATES AS COMPARED TO SUPPLY BY PRIVATE PERSONS RESIDENT IN THE MEMBER STATE OF IMPORTATION AND ON THE OTHER HAND IT GIVES RISE TO AN

OVERLAPPING OF TAXES AS REGARDS PRODUCTS DELIVERED BY PRIVATE PERSONS ACROSS THE FRONTIER FOR WHICH , UNLIKE PRODUCTS SUPPLIED BY TAXABLE PERSONS , THERE IS NO REMISSION OF TAX ON EXPORTATION .

25 THE MEMBER STATES WHICH HAVE TAKEN PART IN THESE PROCEEDINGS , THE COUNCIL AND COMMISSION CONTEND THAT THE ELIMINATION OF THE OVERLAPPING OF TAXES WITHIN THE COMMUNITY , HOWEVER DESIRABLE IT MAY BE , CAN BE ACHIEVED ONLY BY MEANS OF THE GRADUAL HARMONIZATION OF THE NATIONAL TAXATION SYSTEMS UNDER ARTICLE 99 OR 100 OF THE TREATY AND NOT BY APPLYING ARTICLE 95 . IN SUPPORT OF THAT ARGUMENT IT WAS ALLEGED THAT THE OVERLAPPING OF TAXES IS A COROLLARY OF THE FACT THAT THE TREATY , BY RESERVING POWER IN RELATION TO INTERNAL TAXATION TO THE MEMBER STATES , HAS ALLOWED TAX FRONTIERS TO REMAIN .

26 UNDER THE SYSTEM OF THE TREATY THE PURPOSE OF THE PROVISIONS OF ARTICLE 95 IN CONJUNCTION WITH THE PROVISIONS ON THE ABOLITION OF CUSTOMS DUTIES AND CHARGES HAVING EQUIVALENT EFFECT IS TO ENSURE FREE MOVEMENT OF GOODS WITHIN THE COMMUNITY UNDER NORMAL CONDITIONS OF COMPETITION BY ELIMINATING ALL FORMS OF PROTECTION WHICH MAY ARISE FROM THE APPLICATION OF DISCRIMINATORY INTERNAL TAXATION AGAINST PRODUCTS FROM OTHER MEMBER STATES .

27 ARTICLE 95 OF THE TREATY IS ESSENTIALLY BASED ON A COMPARISON OF THE INTERNAL TAXATION APPLICABLE TO IMPORTED PRODUCTS WITH THAT DIRECTLY OR INDIRECTLY APPLICABLE TO SIMILAR DOMESTIC PRODUCTS . FOR THE CORRECT APPLICATION OF THAT ARTICLE IT IS NECESSARY TO COMPARE THESE PRODUCTS FROM THE TAXATION POINT OF VIEW TAKING INTO ACCOUNT AT EACH PRODUCTION OR MARKETING STAGE THE RATE OF TAX , ITS BASIS OF ASSESSMENT AND THE PROCEDURES FOR LEVYING IT .

28 ARTICLE 95 DOES NOT PREVENT VALUE-ADDED TAX FROM BEING CHARGEABLE ON THE IMPORTATION OF A PRODUCT WHERE THE SUPPLY OF A SIMILAR PRODUCT WITHIN THE TERRITORY OF THE COUNTRY IS ALSO CHARGEABLE TO THAT TAX . IT IS ACCORDINGLY NECESSARY TO CONSIDER WHETHER THE IMPORTATION OF A PRODUCT MAY BE LIABLE TO VALUE-ADDED TAX WHERE THE SUPPLY OF A SIMILAR PRODUCT WITHIN THE TERRITORY OF THE COUNTRY , IN THE PRESENT CASE SUPPLY BY A PRIVATE PERSON , IS NOT SO LIABLE .

29 IN THAT RESPECT THE MEMBER STATES WHICH HAVE TAKEN PART IN THE PROCEEDINGS , THE COUNCIL AND THE COMMISSION MAINTAIN THAT VALUE-ADDED TAX MAY BE CHARGEABLE UPON IMPORTS PROVIDED THAT THE RATE OF THE VALUE-ADDED TAX , ITS BASIS OF ASSESSMENT AND THE PROCEDURES FOR LEVYING IT ARE THE SAME AS THOSE FOR THE SUPPLY OF A SIMILAR PRODUCT BY A TAXABLE PERSON WITHIN THE TERRITORY OF THAT MEMBER STATE . THEY CONTEND THAT THE TAXATION SIMPLY PLACES THE IMPORTED PRODUCTS IN THE SAME POSITION AS SIMILAR DOMESTIC PRODUCTS WITH REGARD TO THE TAX BURDENS BORNE BY THE TWO CATEGORIES . THE DOMESTIC PRODUCTS HAVE ALREADY BEEN SUBJECTED TO VALUE-ADDED TAX WITHIN THE TERRITORY OF THE MEMBER STATE WHEN DELIVERED NEW . SINCE THAT TAX IS REFLECTED IN THE MARKET PRICE OF SECOND-HAND GOODS THE EFFECT OF VALUE-ADDED TAX CHARGED ON IMPORTATION IS MERELY TO COMPENSATE FOR THE RESIDUE OF THAT TAX AND THUS TO ESTABLISH , FROM THE POINT OF VIEW OF PERFECT NEUTRALITY WITH REGARD TO INTRA-COMMUNITY TRADE , EQUALITY OF TREATMENT BETWEEN THE DOMESTIC AND FOREIGN PRODUCTS .

30 ON THE OTHER HAND THE PLAINTIFF IN THE MAIN ACTION CLAIMS THAT THERE IS A BREACH OF THE PRINCIPLE OF EQUAL TREATMENT SINCE THE PRODUCTS IMPORTED BY PRIVATE PERSONS ARE ALREADY BURDENED WITH VALUE-ADDED TAX IMPOSED IN THE MEMBER STATE OF EXPORTATION , THERE BEING NO REMISSION OF TAX ON EXPORTATION .

31 IT MAY BE OBSERVED THAT AT THE PRESENT STAGE OF COMMUNITY LAW THE MEMBER STATES ARE FREE , BY VIRTUE OF ARTICLE 95 , TO CHARGE THE SAME AMOUNT ON THE IMPORTATION OF PRODUCTS AS THE VALUE-ADDED TAX WHICH THEY CHARGE ON SIMILAR DOMESTIC PRODUCTS . NEVERTHELESS , THIS COMPENSATION IS JUSTIFIED ONLY IN SO FAR AS THE IMPORTED PRODUCTS ARE NOT ALREADY BURDENED WITH VALUE-ADDED TAX IN THE MEMBER STATE OF EXPORTATION SINCE OTHERWISE THE TAX ON IMPORTATION WOULD IN FACT BE AN ADDITIONAL CHARGE BURDENING IMPORTED PRODUCTS MORE HEAVILY THAN SIMILAR DOMESTIC PRODUCTS .

32 THAT VIEW DERIVES IN THE FIRST PLACE FROM THE TERMS OF ARTICLE 95 OF THE TREATY WHICH PROHIBITS NOT ONLY THE DIRECT BUT ALSO THE INDIRECT IMPOSITION OF INTERNAL TAXATION ON PRODUCTS FROM OTHER MEMBER STATES IN EXCESS OF THAT ON SIMILAR DOMESTIC PRODUCTS . THAT PROHIBITION WOULD NOT BE COMPLIED WITH IF IMPORTED PRODUCTS COULD BE SUBJECT TO THE VALUE-ADDED TAX APPLICABLE TO SIMILAR DOMESTIC PRODUCTS WITHOUT ACCOUNT BEING TAKEN OF THE PROPORTION OF VALUE-ADDED TAX WITH WHICH THOSE PRODUCTS ARE STILL BURDENED AT THE TIME OF THEIR IMPORTATION .

33 SUCH AN INTERPRETATION ACCORDS WITH THE NEED TO TAKE ACCOUNT OF THE OBJECTIVES OF THE TREATY WHICH ARE LAID DOWN IN ARTICLES 2 AND 3 AMONG WHICH APPEARS , IN THE FIRST PLACE , THE ESTABLISHMENT OF A COMMON MARKET . THE CONCEPT OF A COMMON MARKET AS DEFINED BY THE COURT IN A CONSISTENT LINE OF DECISIONS INVOLVES THE ELIMINATION OF ALL OBSTACLES TO INTRA-COMMUNITY TRADE IN ORDER TO MERGE THE NATIONAL MARKETS INTO A SINGLE MARKET BRINGING ABOUT CONDITIONS AS CLOSE AS POSSIBLE TO THOSE OF A GENUINE INTERNAL MARKET . IT IS IMPORTANT THAT NOT ONLY COMMERCE AS SUCH BUT ALSO PRIVATE PERSONS WHO HAPPEN TO BE CONDUCTING AN ECONOMIC TRANSACTION ACROSS NATIONAL FRONTIERS SHOULD BE ABLE TO ENJOY THE BENEFITS OF THAT MARKET .

34 CONSEQUENTLY , IT IS NECESSARY ALSO TO TAKE INTO ACCOUNT THE VALUE-ADDED TAX LEVIED IN THE MEMBER STATE OF EXPORTATION FOR THE PURPOSE OF DETERMINING THE COMPATIBILITY WITH THE REQUIREMENTS OF ARTICLE 95 OF A CHARGE TO VALUE-ADDED TAX ON PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY PRIVATE PERSONS WHERE THE SUPPLY OF SIMILAR PRODUCTS WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION IS NOT SO LIABLE . ACCORDINGLY , IN SO FAR AS SUCH AN IMPORTED PRODUCT SUPPLIED BY A PRIVATE PERSON MAY NOT LAWFULLY BENEFIT FROM A REMISSION OF TAX ON EXPORTATION AND SO REMAINS BURDENED UPON IMPORTATION WITH PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION THE AMOUNT OF VALUE-ADDED TAX PAYABLE ON IMPORTATION MUST BE REDUCED BY THE RESIDUAL PART OF THE VALUE-ADDED TAX OF THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED . THE AMOUNT OF THIS REDUCTION MAY NOT , HOWEVER , BE GREATER THAN THE AMOUNT OF VALUE-ADDED TAX ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION .

35 THE MEMBER STATES WHICH HAVE TAKEN PART IN THESE PROCEEDINGS HAVE OBJECTED TO THIS INTERPRETATION ON THE GROUND THAT THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION IS DIFFICULT TO CHECK SINCE BOTH THE RATE OF THE TAX AND ITS BASIS OF ASSESSMENT MAY HAVE VARIED IN THE COURSE OF TIME .

36 IN THAT REGARD IT SHOULD BE POINTED OUT THAT IT IS FOR THE PERSON WHO SEEKS EXEMPTION FROM OR A REDUCTION IN THE VALUE-ADDED TAX NORMALLY LEVIED ON IMPORTATION TO ESTABLISH THAT HE SATISFIES THE CONDITIONS FOR SUCH EXEMPTION OR REDUCTION . ACCORDINGLY IT IS OPEN TO THE MEMBER STATE OF IMPORTATION TO REQUIRE SUCH AN IMPORTER TO PROVIDE THE NECESSARY DOCUMENTARY PROOF THAT THE VALUE-ADDED TAX WAS LEVIED IN THE MEMBER STATE OF EXPORTATION AND STILL BURDENS THE PRODUCT ON IMPORTATION .

37 FURTHER , THE MEMBER STATES MAINTAINED THAT THE ESTABLISHMENT OF A SYSTEM ENSURING THE COMPLETE NEUTRALITY OF INTERNAL TAXATION WITH REGARD TO INTRA-COMMUNITY TRADE COULD TAKE PLACE ONLY BY STRICT APPLICATION OF THE PRINCIPLE OF TAXATION IN THE MEMBER STATE OF DESTINATION AND THAT WOULD MEAN FULL REMISSION OF TAX ON ALL PRODUCTS AT THE TIME OF EXPORTATION . IT IS FOR THE POLITICAL INSTITUTIONS OF THE COMMUNITY TO ADOPT SUCH A SOLUTION SINCE IT INVOLVES A POLITICAL CHOICE .

38 NEVERTHELESS ALTHOUGH THE ESTABLISHMENT OF A SYSTEM OF COMPLETE NEUTRALITY IN THE FIELD OF COMPETITION INVOLVING FULL REMISSION OF TAX ON EXPORTATION IS INDEED A MATTER FOR THE COMMUNITY LEGISLATURE , SO LONG AS SUCH A SYSTEM IS NOT ESTABLISHED ARTICLE 95 OF THE TREATY PREVENTS AN

IMPORTING MEMBER STATE FROM APPLYING ITS SYSTEM OF VALUE-ADDED TAX TO IMPORTED PRODUCTS IN A MANNER CONTRARY TO THE PRINCIPLES EMBODIED IN THAT ARTICLE .

39 FINALLY , IT IS ALSO NECESSARY TO DISMISS THE OBJECTIONS BASED ON POSSIBLE DIFFICULTIES OF A TECHNICAL AND ADMINISTRATIVE NATURE WHICH MAY RESULT FROM TAKING INTO ACCOUNT THE VALUE-ADDED TAX OF THE MEMBER STATE OF EXPORTATION AND THOSE BASED ON THE NEED TO PREVENT FRAUDULENT CIRCUMVENTIONS AND DISTORTIONS IN COMPETITION WITHIN THE COMMUNITY . THE FIRST CATEGORY OF OBJECTIONS MUST BE DISMISSED SINCE IT IS FOR THE INDIVIDUAL WHO SEEKS TO CLAIM THE BENEFIT OF EXEMPTION FROM OR REDUCTION IN VALUE-ADDED TAX ON IMPORTATION TO PROVIDE PROOF THAT THE CONDITIONS ARE SATISFIED . THE SECOND CATEGORY OF OBJECTIONS IS IRRELEVANT SINCE THE LEVYING OF THE DIFFERENTIAL AMOUNT OF VALUE-ADDED TAX REMOVES ANY INCENTIVE TO DEFLECT TRADE .

40 THE SECOND QUESTION MUST ACCORDINGLY BE ANSWERED TO THE EFFECT THAT VALUE-ADDED TAX WHICH A MEMBER STATE LEVIES ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON , WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , CONSTITUTES INTERNAL TAXATION IN EXCESS OF THAT IMPOSED ON SIMILAR DOMESTIC PRODUCTS WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY , TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT ON IMPORTATION IS NOT TAKEN INTO ACCOUNT . THE BURDEN OF PROVING FACTS WHICH JUSTIFY THE TAKING INTO ACCOUNT OF THE TAX FALLS ON THE IMPORTER .

THIRD QUESTION : THE VALIDITY OF ARTICLE 2 , POINT 2 , OF THE SIXTH DIRECTIVE

41 THE THIRD QUESTION CONCERNS THE VALIDITY OF ARTICLE 2 , POINT 2 , OF THE SIXTH DIRECTIVE IN SO FAR AS IT IMPOSES VALUE-ADDED TAX ON PRODUCTS IMPORTED FROM ANOTHER MEMBER STATE AND SUPPLIED BY A PRIVATE PERSON .

42 THE REQUIREMENTS OF ARTICLE 95 OF THE TREATY ARE OF A MANDATORY NATURE AND DO NOT ALLOW DEROGATION BY ANY MEASURE ADOPTED BY AN INSTITUTION OF THE COMMUNITY . NEVERTHELESS IT FOLLOWS FROM THE FOREGOING CONSIDERATIONS THAT THAT ARTICLE DOES NOT PROHIBIT IN A GENERAL WAY THE IMPOSITION OF VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS EVEN THOUGH THE SUPPLY OF SIMILAR DOMESTIC PRODUCTS IN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION IS NOT SO SUBJECT BUT IT SIMPLY REQUIRES THAT THE PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION AND STILL BURDENING THE PRODUCT ON IMPORT SHOULD BE TAKEN INTO ACCOUNT .

43 CONSEQUENTLY , THERE ARE NO GROUNDS FOR CONSIDERING ARTICLE 2 , POINT 2 , OF THE SIXTH DIRECTIVE , ACCORDING TO WHICH ' ' THE IMPORTATION OF GOODS ' ' IS TO BE SUBJECT TO VALUE-ADDED TAX , TO BE INVALID . IT IS SIMPLY NECESSARY TO DEFINE THE SCOPE OF THAT PROVISION AND INTERPRET IT IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THE TREATY AS INDICATED ABOVE .

44 THE THIRD QUESTION MUST THEREFORE BE ANSWERED TO THE EFFECT THAT ARTICLE 2 , POINT 2 , OF THE SIXTH COUNCIL DIRECTIVE NO 77/388 OF 17 MAY 1977 IS COMPATIBLE WITH THE TREATY AND THEREFORE VALID SINCE IT MUST BE INTERPRETED AS NOT CONSTITUTING AN OBSTACLE TO THE OBLIGATION UNDER

ARTICLE 95 OF THE TREATY TO TAKE INTO ACCOUNT , FOR THE PURPOSE OF APPLYING VALUE-ADDED TAX TO IMPORTS OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED .

FOURTH QUESTION : THE DIRECT EFFECT OF ARTICLE 95 OF THE TREATY

45 ACCORDING TO ITS WORDING THE FOURTH QUESTION IS CONCERNED ONLY WITH THE CONSEQUENCES ARISING SHOULD ARTICLE 2 , POINT 2 , OF THE SIXTH DIRECTIVE BE HELD TO BE INVALID . HOWEVER , IT IS APPARENT FROM AN ANALYSIS OF THE QUESTION , ESPECIALLY IN THE LIGHT OF THE ANSWERS GIVEN TO THE FIRST THREE QUESTIONS , THAT THE NATIONAL COURT IS ESSENTIALLY REFERRING TO THE DIRECT EFFECT OF ARTICLE 95 OF THE TREATY AND THE CONSEQUENCES OF THAT EFFECT ON NATIONAL LAWS AND ON THE TERMS OF THEIR APPLICATION .

46 ACCORDING TO ESTABLISHED CASE-LAW OF THE COURT THAT PROVISION CONTAINS A PROHIBITION OF DISCRIMINATION WHICH CONSTITUTES A CLEAR AND WHOLLY UNCONDITIONAL OBLIGATION AND ITS IMPLEMENTATION AND EFFECTS ARE NOT SUBJECT TO THE ADOPTION OF ANY MEASURE BY THE INSTITUTIONS OF THE COMMUNITY OR THE MEMBER STATES . THE PROHIBITION THUS PRODUCES DIRECT EFFECTS AND CREATES FOR INDIVIDUALS PERSONAL RIGHTS WHICH THE NATIONAL COURTS ARE BOUND TO PROTECT .

47 CONSEQUENTLY IN SO FAR AS THAT PROVISION , AS INTERPRETED BY THE COURT , RESTRICTS THE CONDITIONS UNDER WHICH VALUE-ADDED TAX MAY BE IMPOSED ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON , THE MEMBER STATES ARE BOUND TO COMPLY THEREWITH AND NOT TO APPLY ANY PROVISION TO THE CONTRARY WHICH MAY BE CONTAINED IN THEIR NATIONAL LAW .

48 THE FOURTH QUESTION MUST THEREFORE BE ANSWERED TO THE EFFECT THAT ARTICLE 95 OF THE TREATY PROHIBITS MEMBER STATES FROM IMPOSING VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM OTHER MEMBER STATES SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION AND STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED IS NOT TAKEN INTO ACCOUNT .

Decision on costs

COSTS

THE COSTS INCURRED BY THE NETHERLANDS , FRENCH AND ITALIAN GOVERNMENTS AND BY THE COUNCIL AND COMMISSION , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THE 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 QUESTIONS REFERRED TO IT BY THE GERECHTSHOF , ' S-HERTOGENBOSCH BY JUDGMENT OF 19 DECEMBER 1980 , HEREBY RULES :

1 . VALUE-ADDED TAX WHICH A MEMBER STATE LEVIES ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION DOES NOT CONSTITUTE A CHARGE HAVING AN EFFECT EQUIVALENT TO A CUSTOMS DUTY ON IMPORTS WITHIN THE MEANING OF ARTICLES 12 AND 13 (2) OF THE TREATY .

2.VALUE-ADDED TAX WHICH A MEMBER STATE LEVIES ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION CONSTITUTES INTERNAL TAXATION IN EXCESS OF THAT IMPOSED ON SIMILAR DOMESTIC PRODUCTS WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY , TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT ON IMPORTATION IS NOT TAKEN INTO ACCOUNT . THE BURDEN OF PROVING FACTS WHICH JUSTIFY THE TAKING INTO ACCOUNT OF THE TAX FALLS ON THE IMPORTER .

3.ARTICLE 2 , POINT 2 , OF THE SIXTH COUNCIL DIRECTIVE NO 77/388 OF 17 MAY 1977 IS COMPATIBLE WITH THE TREATY AND THEREFORE VALID SINCE IT MUST BE INTERPRETED AS NOT CONSTITUTING AN OBSTACLE TO THE OBLIGATION UNDER ARTICLE 95 OF THE TREATY TO TAKE INTO ACCOUNT , FOR THE PURPOSE OF APPLYING VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION AND STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED .

4.ARTICLE 95 OF THE TREATY PROHIBITS MEMBER STATES FROM IMPOSING VALUE-ADDED TAX ON THE IMPORTATION OF PRODUCTS FROM OTHER MEMBER STATES SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION , TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION AND STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT IS IMPORTED IS NOT TAKEN INTO

ACCOUNT .