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Judgment of the Court of 10 July 1984. - Dansk Denkavit ApS v Ministeriet for Skatter og Afgifter. - Reference for a preliminary ruling: Østre Landsret - Denmark. - Turnover tax (VAT): Internal system - Rules applicable to imports. - Case 42/83.

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Keywords

TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE ADDED TAX - DIFFERENT ACCOUNTING PERIODS AND TIME-LIMITS FOR PAYMENT PRESCRIBED BY A MEMBER STATE FOR VAT ON IMPORTS AND VAT ON DOMESTIC TRANSACTIONS - PERMISSIBILITY - COMPATIBILITY WITH ARTICLE 95 OF THE TREATY

(EEC TREATY , ART . 95 ; COUNCIL DIRECTIVE 77/388)

Summary

1 . THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES DOES NOT PREVENT A MEMBER STATE FROM LAYING DOWN , IN RESPECT OF VALUE-ADDED TAX ON IMPORTS , ACCOUNTING PERIODS AND PERIODS FOR PAYMENT WHICH ARE DIFFERENT FROM THE PERIODS ALLOWED FOR PAYMENT OF THE NET TAX LIABILITY UNDER THE INTERNAL SYSTEM .

2.DIFFERENCES IN THE TIME-LIMITS PRESCRIBED BY NATIONAL LEGISLATION WITH REGARD TO THE TAXATION OF IMPORTS AND TAXATION OF DOMESTIC TRANSACTIONS MAY , IN CERTAIN CIRCUMSTANCES , CON STITUTE AN INFRINGEMENT OF ARTICLE 95 OF THE TREATY . NEVERTHELESS , TAX PERIODS WHICH SERVE AS A BASIS FOR

CALCULATING THE NET TAX POSITION OF EACH TAXABLE PERSON UNDER THE INTERNAL SYSTEM NEED NOT , AS COMMUNITY LEGISLATION STANDS AT PRESENT , BE TAKEN INTO CONSIDERATION IN THE COMPARISON OF THE PERIODS FOR PAYMENT . THUS , LEGISLATION WHICH LAYS DOWN IN RESPECT OF VALUE-ADDED TAX ON IMPORTS ACCOUNTING PERIODS AND PERIODS FOR PAYMENT WHICH ARE DIFFERENT FROM THE PERIODS ALLOWED FOR PAYMENT OF THE NET TAX LIABILITY UNDER THE INTERNAL SYSTEM DOES NOT ENTAIL DISCRIMINATION WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY .

Parties

IN CASE 42/83

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE OESTRE LANDSRET (EASTERN DIVISION OF THE DANISH HIGH COURT) FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN

DANSK DENKAVIT APS

AND

MINISTERIET FOR SKATTER OG AFGIFTER (MINISTRY FOR FISCAL AFFAIRS)

Subject of the case

ON THE INTERPRETATION OF THE SIXTH COUNCIL DIRECTIVE OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES (77/388/EEC) AND ARTICLE 95 OF THE EEC TREATY ,

Grounds

1 BY ORDER OF 2 MARCH 1983 , WHICH WAS RECEIVED AT THE COURT ON 17 MARCH 1983 , THE OESTRE LANDSRET (EASTERN DIVISION OF THE DANISH HIGH COURT) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY SEVERAL QUESTIONS ON THE INTERPRETATION OF ARTICLE 95 OF THE EEC TREATY AND OF THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES (OFFICIAL JOURNAL L 145 , P . 1 , HEREINAFTER REFERRED TO AS ' ' THE SIXTH DIRECTIVE ' ') IN ORDER TO ENABLE IT TO DECIDE WHETHER THE DANISH LEGISLATION ON VALUE-ADDED TAX IS COMPATIBLE WITH THOSE PROVISIONS .

2 THE QUESTIONS WERE RAISED IN PROCEEDINGS BROUGHT AGAINST THE DANISH MINISTRY FOR FISCAL AFFAIRS BY DANSK DENKAVIT APS , WHICH IS REGISTERED AS AN IMPORTER AND THEREFORE PAYS IMPORT VAT IN ACCORDANCE WITH THE NATIONAL LEGISLATION APPLICABLE TO PERSONS WHO IMPORT BY WAY OF TRADE .

3 THE NATIONAL COURT ' S ORDER INDICATES THAT , UNDER ARTICLE 29 OF THE DANISH LAW ON VALUE-ADDED TAX , THE CODIFIED VERSION OF WHICH WAS PUBLISHED ON 1 JULY 1982 UNDER NO 369 , IMPORT VAT IS PAID ON GOODS AT THE TIME OF THEIR IMPORTATION ; IT IS CALCULATED IN ACCORDANCE WITH THE RULES CONTAINED IN CHAPTER 8 OF THE DANISH CUSTOMS LAW (ARTICLES 69 TO 95).

ARTICLE 85 OF THAT LAW , THE CODIFIED VERSION OF WHICH WAS PUBLISHED ON 15 DECEMBER 1982 UNDER NO 659 , PRESCRIBES AN ACCOUNTING PERIOD OF ONE MONTH FOR TAXES ON CONSUMPTION IN RESPECT OF GOODS IMPORTED WITH A VIEW TO PROFIT BY CONSIGNEES REGISTERED IN ACCORDANCE WITH ARTICLE 82 OF THE LAW . THE TAX ON CONSUMPTION IN RESPECT OF GOODS CLEARED THROUGH CUSTOMS DURING THE ACCOUNTING PERIOD MUST BE PAID TO THE CUSTOMS ADMINISTRATION BEFORE THE END OF THE MONTH FOLLOWING THE ACCOUNTING PERIOD .

4 AS REGARDS VAT ON DOMESTIC TRANSACTIONS , UNDERTAKINGS SUBJECT TO VAT MUST , BY VIRTUE OF ARTICLE 20 (1) OF THE LAW ON VALUE-ADDED TAX , NOTIFY THE AUTHORITIES OF THE AMOUNT OF INPUT AND OUTPUT TAX WHICH THEY HAVE BORNE AND CHARGED DURING EACH TAX PERIOD , WHICH , BY VIRTUE OF ARTICLE 20 (2), IS USUALLY A QUARTER . ARTICLE 22 OF THE LAW PROVIDES THAT THE TAX DEBT RESULTING FROM THE DIFFERENCE BETWEEN THE INPUT TAX AND THE OUTPUT TAX DURING THE TAX PERIOD (NET TAX LIABILITY) IS DUE ONE MONTH AFTER THE END OF THE TAX PERIOD AND MUST BE PAID NO LATER THAN 20 DAYS THEREAFTER .

5 ACCORDING TO THE NATIONAL COURT ' S ORDER , IT IS APPARENT FROM THE AFOREMENTIONED PROVISIONS THAT , IN THE CASE OF INTERNAL VAT , UNDERTAKINGS ENJOY AN AVERAGE CREDIT PERIOD OF TWO AND A HALF MONTHS , PLUS 20 DAYS , AS FROM THE DELIVERY OR INVOICING OF GOODS SOLD DOMESTICALLY ; IN THE CASE OF IMPORT VAT , THE AVERAGE CREDIT PERIOD IS ONE AND A HALF MONTHS AS FROM CLEARANCE OF THE IMPORTED GOODS THROUGH CUSTOMS .

6 HAVING NOTED THAT DIFFERENCE , DANSK DENKAVIT ASKED THE DEFENDANT IN THE MAIN PROCEEDINGS TO ALLOW IT TO PAY IMPORT VAT ON THE BASIS OF THE SAME ACCOUNTING AND CREDIT PERIODS AS THOSE AVAILABLE TO PERSONS REQUIRED TO PAY INTERNAL VAT . THE REFUSAL OF THAT REQUEST , BY DECISION OF 27 JULY 1981 , ON THE GROUND THAT DANISH NATIONAL LEGISLATION DID NOT ALLOW OTHERWISE , GAVE RISE TO THE PROCEEDINGS BEFORE THE NATIONAL COURT .

7 IN THOSE PROCEEDINGS , DANSK DENKAVIT CLAIMED THAT THE DANISH LEGISLATION WAS INCOMPATIBLE WITH COMMUNITY LAW ON THE GROUND THAT IT WAS CONTRARY TO THE SIXTH DIRECTIVE TO PRESCRIBE DIFFERENT ACCOUNTING AND PAYMENT PERIODS FOR INTERNAL VAT AND IMPORT VAT , SINCE THE PROVISIONS OF THAT DIRECTIVE COULD NOT BE INTERPRETED AS REQUIRING OR ALLOWING A DIFFERENCE BETWEEN THE PERIODS IN QUESTION .

8 MOREOVER , DANSK DENKAVIT MAINTAINED THAT , IF SUCH A DIFFERENCE WERE PERMITTED BY THE PROVISIONS OF THE DIRECTIVE , THOSE PROVISIONS WOULD HAVE TO BE CONSIDERED INVALID AS BEING INCOMPATIBLE WITH ARTICLE 95 OF THE EEC TREATY , BECAUSE THE DIFFERENCE BETWEEN THE PERIODS IN QUESTION GIVES RISE TO A DIFFERENCE IN THE ACTUAL BURDEN TO WHICH THE GOODS ARE SUBJECT AS A RESULT OF THOSE TAXES , BY REASON OF THEIR ECONOMIC EFFECTS IN TERMS OF INTEREST .

9 BEFORE THE NATIONAL COURT , THE DANISH ADMINISTRATION SUBMITTED THAT THE NATIONAL LEGISLATION IN FORCE IS COMPATIBLE WITH THE DIRECTIVE AND WITH ARTICLE 95 OF THE TREATY . IT CONTENDED THAT THE DIRECTIVE PROVIDES FOR TAXES WHICH ARE DIFFERENT BY REASON OF THEIR NATURE AND THE STAGE OF MARKETING OF THE PRODUCTS ON WHICH THEY ARE CHARGED AND THEREFORE AUTHORIZES DIFFERENT PERIODS FOR INTERNAL VAT AND IMPORT VAT .

10 IN ORDER TO RESOLVE THE CONFLICT BETWEEN THOSE DIVERGENT INTERPRETATIONS OF THE PROVISIONS OF COMMUNITY LAW IN QUESTION , THE OESTRE LANDSRET SUBMITTED THE FOLLOWING QUESTIONS TO THE COURT ;

' ' 1 . MUST THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES , IN PARTICULAR ARTICLES 10 , 22 AND 23 THEREOF , BE INTERPRETED IN SUCH A WAY THAT THE DIRECTIVE PRECLUDES A MEMBER STATE FROM LAYING DOWN ACCOUNTING PERIODS AND PERIODS WITHIN WHICH PAYMENT MUST BE MADE IN RESPECT OF VALUE-ADDED TAX CHARGEABLE ON THE IMPORTATION OF GOODS FROM ANOTHER MEMBER STATE (IMPORT VAT) WHICH ARE IN CONFORMITY WITH THE PERIODS PRESCRIBED BY ARTICLE 22 (4) OF THE DIRECTIVE BUT WHICH MEAN THAT REGISTERED IMPORTERS OBTAIN A SHORTER AVERAGE PERIOD OF CREDIT FOR MAKING PAYMENT OF THAT TAX TO THE REVENUE AUTHORITIES THAN THE AVERAGE PERIOD OF CREDIT WHICH THE SAME MEMBER STATE GENERALLY PERMITS REGISTERED UNDERTAKINGS , INCLUDING IMPORTERS , IN RESPECT OF PAYMENT TO THE REVENUE AUTHORITIES OF THE NET AMOUNT OF VALUE-ADDED TAX ON THE GENERAL TURNOVER (NET TAX LIABILITY)?

2.WHAT SIGNIFICANCE MUST BE ATTACHED IN DECIDING QUESTION 1 TO THE FACT THAT THE PROVISIONS OF THE MEMBER STATE IN QUESTION ON THE RENDERING OF ACCOUNTS AND PAYMENT OF IMPORT VAT MAY BE REGARDED AS ENTAILING AN AVERAGE PERIOD OF CREDIT FOR IMPORTERS WHICH CONSTITUTES A REASONABLE COUNTERPART TO THE AVERAGE PERIOD OF CREDIT WHICH PURCHASERS AT THE SAME COMMERCIAL AND INDUSTRIAL STAGE CAN OBTAIN FROM SUPPLIERS , FOR THE PAYMENT OF THE PURCHASE PRICE , INCLUSIVE OF VALUE-ADDED TAX , WHEN THEY PURCHASE PRODUCTS MANUFACTURED IN THE MEMBER STATE IN QUESTION?

3.MUST ARTICLE 95 OF THE EEC TREATY BE INTERPRETED IN SUCH A WAY THAT IT PRECLUDES A MEMBER STATE FROM LAYING DOWN , IN RESPECT OF IMPORT VAT , ACCOUNTING PERIODS AND PERIODS WITHIN WHICH PAYMENT MUST BE MADE IN THE MANNER DESCRIBED IN QUESTIONS 1 AND 2?

4.IF THE ANSWER TO QUESTION 3 IS IN THE AFFIRMATIVE , MUST THE PROVISIONS OF THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 BE TREATED AS INAPPLICABLE IN THE JUDGMENT IN THE CASE BEFORE THE DANISH COURT , AND IF SO TO WHAT EXTENT?

' '

THE COMMON SYSTEM OF VAT

11 IN ORDER TO ANSWER THE QUESTIONS SUBMITTED , IT IS NECESSARY BRIEFLY TO REVIEW THE CHARACTERISTICS OF TURNOVER TAX , AS EMBODIED IN THE COMMON SYSTEM OF VAT , IN SO FAR AS THEY ARE RELEVANT TO THIS CASE .

12 THAT COMMON SYSTEM WAS CREATED , ON THE BASIS OF ARTICLES 99 AND 100 OF THE TREATY , BY THE FIRST COUNCIL DIRECTIVE (67/227/EEC) 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 (67/228/EEC) OF THE SAME DATE , WHICH WAS REPLACED BY THE SIXTH DIRECTIVE .

13 BY VIRTUE OF ARTICLE 2 OF THE FIRST DIRECTIVE , THE PRINCIPLE OF THE COMMON SYSTEM CONSISTS IN CHARGING ON GOODS AND SERVICES , UP TO AND INCLUDING THE RETAIL STAGE , A GENERAL TAX ON CONSUMPTION WHICH IS EXACTLY PROPORTIONAL TO THE PRICE OF THE GOODS AND SERVICES , IRRESPECTIVE OF THE NUMBER OF TRANSACTIONS INVOLVED IN THE PRODUCTION AND DISTRIBUTION PROCESS BEFORE THE STAGE OF TAXATION . HOWEVER , ON EACH TRANSACTION , VAT IS PAYABLE ONLY AFTER DEDUCTION OF THE AMOUNT OF VAT CHARGED DIRECTLY ON THE COST OF THE VARIOUS PRICE COMPONENTS . BY VIRTUE OF ARTICLE 17 (2) OF THE SIXTH DIRECTIVE THE MACHINERY FOR SUCH DEDUCTIONS ALLOWS TAXABLE PERSONS TO DEDUCT FROM THE VAT OWED BY THEM THE INPUT VAT ALREADY CHARGED ON THE GOODS .

14 THAT IS THE GENERAL FRAMEWORK FOR THE OPERATION OF ARTICLE 2 OF THE SIXTH DIRECTIVE , WHICH SUBJECTS 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 ' ' (PARAGRAPH 1) AND , ON THE OTHER HAND , ' ' THE IMPORTATION OF GOODS ' ' (PARAGRAPH 2). ' ' SUPPLY OF GOODS ' ' IS DEFINED IN ARTICLE 5 AS ' ' THE TRANSFER OF THE RIGHT TO DISPOSE OF TANGIBLE PROPERTY AS OWNER ' ' , WHEREAS ' ' THE IMPORTATION OF GOODS ' ' IS DEFINED , IN ARTICLE 7 , AS ' ' THE ENTRY OF GOODS INTO THE TERRITORY OF THE COUNTRY ' ' .

15 THE SIXTH DIRECTIVE ALSO HARMONIZES THE CONCEPTS OF ' ' CHARGEABLE EVENT ' ' AND ' ' CHARGEABILITY ' ' OF THE TAX ; IN THE CASE OF INTERNAL VAT THESE OCCUR ' ' WHEN THE GOODS ARE DELIVERED OR THE SERVICES ARE PERFORMED ' ' (ARTICLE 10 (2)); IN THE CASE OF IMPORTED GOODS , HOWEVER , THEY OCCUR ' ' AT THE TIME WHEN THE GOODS ENTER THE TERRITORY OF THE COUNTRY ' ' (ARTICLE 10 (3)).

16 AS REGARDS THE OBLIGATIONS OF TAXABLE PERSONS IN CONNECTION WITH TAX PERIODS , ACCOUNTING PERIODS AND TIME-LIMITS FOR PAYMENT , PARAGRAPHS (4) AND (5) OF ARTICLE 22 OF THE SIXTH DIRECTIVE PROVIDE AS FOLLOWS WITH REGARD TO INTERNAL VAT :

' ' 4 . EVERY TAXABLE PERSON SHALL SUBMIT A RETURN WITHIN AN INTERVAL TO BE DETERMINED BY EACH MEMBER STATE . THIS INTERVAL MAY NOT EXCEED TWO MONTHS FOLLOWING THE END OF EACH TAX PERIOD . THE TAX PERIOD MAY BE FIXED BY MEMBER STATES AS A MONTH , TWO MONTHS OR A QUARTER . HOWEVER , MEMBER STATES MAY FIX DIFFERENT PERIODS PROVIDED THAT THESE DO NOT EXCEED A YEAR .

. . .

5 . EVERY TAXABLE PERSON SHALL PAY THE NET AMOUNT OF THE VALUE-ADDED TAX WHEN SUBMITTING THE RETURN . A MEMBER STATE MAY , HOWEVER , FIX A DIFFERENT DATE FOR THE PAYMENT OF THE AMOUNT OR MAY DEMAND AN INTERIM PAYMENT . ' '

17 WITH RESPECT TO IMPORT VAT , ARTICLE 23 OF THE SIXTH DIRECTIVE PROVIDES AS FOLLOWS :

' ' AS REGARDS IMPORTED GOODS , MEMBER STATES SHALL LAY DOWN THE DETAILED RULES FOR THE MAKING OF THE DECLARATIONS AND PAYMENTS .

IN PARTICULAR , MEMBER STATES MAY PROVIDE THAT THE VALUE-ADDED TAX PAYABLE ON IMPORTATION OF GOODS BY TAXABLE PERSONS OR PERSONS LIABLE TO TAX OR CERTAIN CATEGORIES OF THESE TWO NEED NOT BE PAID AT THE TIME OF IMPORTATION , ON CONDITION THAT THE TAX IS MENTIONED AS SUCH IN A RETURN TO BE SUBMITTED UNDER ARTICLE 22 (4) ' ' .

THE FIRST QUESTION

18 IN THE FIRST QUESTION , THE OESTRE LANDSRET ASKS , ESSENTIALLY , WHETHER , WITHIN THE FRAMEWORK LAID DOWN BY ITS PROVISIONS , THE SIXTH DIRECTIVE ALLOWS NATIONAL LEGISLATION TO DISTINGUISH BETWEEN INTERNAL VAT AND IMPORT VAT BY PRESCRIBING DIFFERENT ACCOUNTING PERIODS AS THE BASIS FOR THE TAX LIABILITY AND DIFFERENT PERIODS FOR PAYMENT OF THE TAX .

19 AS IS APPARENT FROM THE PROVISIONS OF ARTICLE 22 (4) AND (5) AND ARTICLE 23 OF THAT DIRECTIVE , THE FRAMEWORK WITHIN WHICH MEMBER STATES MAY EXERCISE THEIR LEGISLATIVE POWER IN ORDER TO FIX THE PERIODS WITHIN WHICH THE TAX MUST BE PAID FOLLOWING THE CHARGEABLE EVENT IS DIFFERENT FOR IMPORT VAT AND FOR INTERNAL VAT . IT CANNOT THEREFORE BE INFERRED EITHER FROM THOSE PROVISIONS OR FROM ITS OTHER PROVISIONS THAT THE SIXTH DIRECTIVE REQUIRES NATIONAL LEGISLATION TO MAKE THE PERIODS IN QUESTION EITHER UNIFORM OR DIFFERENT ; ON THE CONTRARY , THE DIRECTIVE LEAVES THE MEMBER STATES FREE TO FORMULATE , WITHIN THE FRAMEWORK WHICH IT LAYS DOWN , THE DETAILED ARRANGEMENTS REGARDING THE PERIODS IN QUESTION .

20 CONSEQUENTLY , THE PROVISIONS OF THE DIRECTIVE DO NOT PRECLUDE A MEMBER STATE FROM LAYING DOWN , IN RESPECT OF IMPORT VAT , ACCOUNTING PERIODS AND PERIODS FOR PAYMENT WHICH ARE DIFFERENT FROM THE PERIODS WHICH APPLY TO THE PAYMENT OF THE NET TAX LIABILITY UNDER THE INTERNAL SYSTEM .

THE SECOND QUESTION

21 IN VIEW OF THE ANSWER GIVEN TO THE FIRST QUESTION , AN ANSWER TO THE SECOND QUESTION SUBMITTED BY THE OESTRE LANDSRET IS UNNECESSARY .

THE THIRD QUESTION

22 IN THIS QUESTION THE NATIONAL COURT ASKS WHETHER , NOTWITHSTANDING THE PROVISIONS OF THE SIXTH DIRECTIVE , ARTICLE 95 OF THE EEC TREATY PROHIBITS THE FIXING OF DIFFERENT ACCOUNTING AND PAYMENT PERIODS .

23 THE PLAINTIFF IN THE MAIN PROCEEDINGS CONSIDERS THAT THE DIFFERENCE IN TREATMENT IS CONTRARY TO ARTICLE 95 OF THE TREATY BECAUSE THE DIFFERENCE BETWEEN THE PERIODS IN QUESTION FAVOURS DOMESTIC PRODUCTS , IN PARTICULAR BECAUSE , INASMUCH AS THE CREDIT PERIODS ARE LONGER FOR SELLERS UNDER THE INTERNAL SYSTEM , THOSE SELLERS ARE ABLE DURING THAT PERIOD TO USE THE LIQUID FUNDS CORRESPONDING TO THE AMOUNT OF THE TAX , WHICH GIVES THEM AN ADVANTAGE IN TERMS OF INTEREST AND ENABLES THEM TO

REDUCE THE SALE PRICE OF THEIR PRODUCTS .

24 IN ADDITION , THE PLAINTIFF IN THE MAIN PROCEEDINGS MAINTAINS THAT DOMESTIC PRODUCTS ARE ALSO FAVOURED BY THE FACT THAT , BY VIRTUE OF THE VERY PRINCIPLE OF VAT , A DOMESTIC PRODUCT IS NOT ACTUALLY TAXED UNTIL THE FINAL MOMENT WHEN THE PRODUCT IS SUPPLIED TO THE CONSUMER BECAUSE , UNTIL THAT MOMENT , THE VAT PAID TO THE REVENUE AUTHORITY BY EACH OF THE SUCCESSIVE SELLERS IS SIMULTANEOUSLY OFFSET BY THE DEDUCTION MADE BY THE TAXABLE PERSON WHO PURCHASES THE PRODUCT FROM HIM , WHEREAS IMPORT VAT MUST BE PAID WITHIN AN AVERAGE PERIOD OF 45 DAYS , EVEN THOUGH THE DEDUCTION IS NOT MADE UNTIL THE IMPORTER DISCHARGES HIS NET TAX LIABILITY , FOR WHICH HE HAS AN AVERAGE PERIOD OF 95 DAYS . IT CONCLUDES FROM THIS THAT THE IMPORTED PRODUCT MUST BEAR THE INTEREST ON THE IMPORT VAT FOR AN AVERAGE PERIOD OF 50 DAYS , WHEREAS THE DOMESTIC PRODUCT DOES NOT BEAR ANY SIMILAR BURDEN .

25 THE DANISH GOVERNMENT MAINTAINS THAT THE DECISIVE CRITERION FOR COMPATIBILITY WITH ARTICLE 95 OF THE TREATY IS THE ACTUAL INCIDENCE OF EACH TAX ON DOMESTIC AND IMPORTED PRODUCTS WHICH ARE IN A COMPARABLE SITUATION AS REGARDS THE TRANSACTIONS CONCERNED . THAT HOWEVER , IS NOT THE POSITION IN THE CASE OF PRODUCTS SUBJECT TO THE SYSTEMS OF INTERNAL AND IMPORT VAT , BECAUSE IMPORT VAT , BEING A COMPENSATING CHARGE WHICH IS NECESSARY AT THE PRESENT STAGE OF DEVELOPMENT OF COMMUNITY LAW , HAS NO EQUIVALENT IN THE INTERNAL SYSTEM , HAVING REGARD IN PARTICULAR TO THE PURCHASER ' S OBLIGATION TO PAY THE VAT TO THE REVENUE AUTHORITIES AND TO THE FACT THAT THE TAX IS CALCULATED ON THE TOTAL SALE VALUE OF THE GOODS . ACCORDING TO THE DANISH GOVERNMENT , IMPORT VAT REPRESENTS A SPECIAL SITUATION SINCE , WHILST IT IS AN ELEMENT OF THE INTERNAL TAX SYSTEM OF THE STATE , IT IS NEVERTHELESS IMPOSSIBLE TO FIND ANY COMPARABLE SITUATION WITHIN THE FRAMEWORK OF A MARKETING TRANSACTION UNDER THE INTERNAL SYSTEM , SINCE IMPORT VAT IS LINKED TO THE CROSSING OF A FRONTIER .

26 THE COMMISSION MAINTAINS THAT ARTICLE 95 OF THE TREATY CANNOT BE APPLIED IN THIS CASE BECAUSE IMPORT VAT AND INTERNAL VAT DO NOT RELATE TO THE SAME STAGE OF MARKETING , SINCE THE TRANSACTIONS UNDER THE INTERNAL SYSTEM RELATE TO SALES WHEREAS IN THE CASE OF IMPORTS THEY RELATE TO PURCHASES ; MOREOVER , FOR ECONOMIC REASONS , THE TWO TAXES DIFFER IN SEVERAL RESPECTS ; CONSEQUENTLY , A COMPARISON OF THE TWO SITUATIONS WITH A VIEW TO ENSURING THE CORRECT APPLICATION OF ARTICLE 95 WOULD BE HAZARDOUS , IF NOT IMPOSSIBLE .

27 IT MUST BE STATED , IN THE FIRST PLACE , THAT THE FACT THAT THE SIXTH DIRECTIVE PROVIDES FOR PARTIAL HARMONIZATION OF THE NATIONAL TAX LAWS DOES NOT EXCLUDE THE APPLICATION OF ARTICLE 95 OF THE TREATY .

28 IT MUST BE ADDED THAT , UNDER THE SCHEME OF THE TREATY , THE PROVISIONS OF ARTICLE 95 , IN CONJUNCTION WITH THOSE ON THE ABOLITION OF CUSTOMS DUTIES AND CHARGES HAVING EQUIVALENT EFFECT , ARE INTENDED TO ENSURE THE FREE MOVEMENT OF GOODS WITHIN THE COMMUNITY UNDER NORMAL CONDITIONS OF COMPETITION , BY REMOVING ALL FORMS OF PROTECTION WHICH MAY RESULT FROM THE APPLICATION OF DISCRIMINATORY INTERNAL TAXES TO PRODUCTS COMING FROM OTHER MEMBER STATES .

29 IN NUMEROUS PREVIOUS CASES THE COURT HAS HELD THAT THE APPLICATION OF ARTICLE 95 OF THE TREATY IS BASED ESSENTIALLY ON A COMPARISON OF THE

INTERNAL TAXES IMPOSED ON IMPORTED PRODUCTS WITH THOSE WHICH ARE IMPOSED DIRECTLY OR INDIRECTLY ON SIMILAR DOMESTIC PRODUCTS AND THAT , WITH A VIEW TO ENSURING THE CORRECT APPLICATION OF THAT PROVISION , A COMPARISON MUST BE MADE OF THE TAX BURDEN IMPOSED ON THOSE PRODUCTS , BY TAKING INTO CONSIDERATION , AT EACH STAGE OF PRODUCTION OR MARKETING , THE RATE OF THE TAX , ITS BASIS OF ASSESSMENT AND THE DETAILED RULES FOR ITS COLLECTION .

30 IT IS THEREFORE POSSIBLE THAT DIFFERENCES IN TIME-LIMITS LAID DOWN BY NATIONAL LEGISLATION REGARDING THE TAXATION OF IMPORTS AND TAXATION OF DOMESTIC TRANSACTIONS MAY , IN CERTAIN CIRCUMSTANCES , CONSTITUTE AN INFRINGEMENT OF ARTICLE 95 OF THE TREATY , AS THE COURT HELD IN ITS JUDGMENT OF 27 FEBRUARY 1980 (CASE 55/79 , COMMISSION V IRELAND , (1980) ECR 481).

31 AS REGARDS DOMESTIC TRANSACTIONS , ARTICLE 22 (4) OF THE SIXTH DIRECTIVE PROVIDES THAT SO-CALLED ' ' TAX PERIODS ' ' ARE TO BE LAID DOWN , BY REFERENCE TO WHICH THE NET TAX LIABILITY OF THE TAXABLE PERSON IS TO BE ESTABLISHED , ACCOUNT BEING TAKEN OF THE OFTEN NUMEROUS TRANSACTIONS TO WHICH THE VAT MACHINERY GIVES RISE DURING THE PERIOD IN QUESTION . AT THE END OF EACH TAX PERIOD , TAXABLE PERSONS HAVE A FURTHER PERIOD IN WHICH TO PREPARE THEIR RETURN AND A PERIOD WITHIN WHICH PAYMENT MUST ACTUALLY BE MADE . THE TAX PERIODS CANNOT HOWEVER BE ASSIMILATED TO SUCH PERIODS FOR COLLECTION OR PAYMENT OF THE TAX , BUT CONSTITUTE SOLELY A REFERENCE PERIOD FOR CALCULATING THE NET TAX POSITION OF EACH TAXABLE PERSON .

32 IN THOSE CIRCUMSTANCES , IMPORTED PRODUCTS ARE , AS REGARDS TAX PERIODS , IN A POSITION WHICH CANNOT BE COMPARED WITH THAT OF PRODUCTS SUBJECT TO THE INTERNAL SYSTEM , SINCE THEIR TAX POSITION IS NET AS FROM THE TIME OF IMPORTATION .

33 CONSEQUENTLY , THE COURT CONSIDERS THAT SUCH TAX PERIODS NEED NOT , AS COMMUNITY LEGISLATION STANDS AT THE PRESENT TIME , BE TAKEN INTO CONSIDERATION IN THE COMPARISON OF THE PAYMENT AND COLLECTION PERIODS GRANTED IN RESPECT OF IMPORTS AND IN RESPECT OF DOMESTIC TRANSACTIONS .

34 THE REPLY TO THE QUESTION SUBMITTED MUST THEREFORE BE THAT DIFFERENCES IN TIME-LIMITS LAID DOWN BY NATIONAL LEGISLATION WITH REGARD TO THE TAXATION OF IMPORTS AND TAXATION OF DOMESTIC TRANSACTIONS MAY , IN CERTAIN CIRCUMSTANCES , CONSTITUTE AN INFRINGEMENT OF ARTICLE 95 OF THE TREATY . NEVERTHELESS , TAX PERIODS WHICH SERVE AS A BASIS FOR CALCULATING THE NET TAX POSITION OF EACH TAXABLE PERSON UNDER THE INTERNAL SYSTEM NEED NOT , AS COMMUNITY LEGISLATION STANDS AT THE PRESENT TIME , BE TAKEN INTO CONSIDERATION IN THE COMPARISON OF THE PERIODS FOR PAYMENT . THUS , THERE IS NOTHING IN LEGISLATION SUCH AS THAT DESCRIBED BY THE NATIONAL COURT WHICH IS CAPABLE OF CONSTITUTING DISCRIMINATION WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY .

THE FOURTH QUESTION

35 IN VIEW OF THE REPLY TO THE THIRD QUESTION , NO REPLY TO THE FOURTH QUESTION SUBMITTED BY THE OESTRE LANDSRET IS NECESSARY .

Decision on costs

COSTS

36 THE COSTS INCURRED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAS SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . AS THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED , IN THE NATURE OF A STEP IN THE PROCEEDINGS PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT ,

IN REPLY TO THE QUESTIONS SUBMITTED TO IT BY THE OESTRE LANDSRET BY ORDER OF 2 MARCH 1983 , HEREBY RULES :

1 . THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES DOES NOT PREVENT A MEMBER STATE FROM LAYING DOWN IN RESPECT OF VAT ON IMPORTS ACCOUNTING PERIODS AND PERIODS FOR PAYMENT WHICH ARE DIFFERENT FROM THE PERIODS ALLOWED FOR PAYMENT OF THE NET TAX LIABILITY UNDER THE INTERNAL SYSTEM .

2.DIFFERENCES IN TIME-LIMITS LAID DOWN BY NATIONAL LEGISLATION WITH REGARD TO THE TAXATION OF IMPORTS AND TAXATION OF DOMESTIC TRANSACTIONS MAY , IN CERTAIN CIRCUMSTANCES , CONSTITUTE AN INFRINGEMENT OF ARTICLE 95 OF THE TREATY . NEVERTHELESS , TAX PERIODS WHICH SERVE AS A BASIS FOR CALCULATING THE NET TAX POSITION OF EACH TAXABLE PERSON UNDER THE INTERNAL SYSTEM NEED NOT , AS COMMUNITY LEGISLATION STANDS AT PRESENT , BE TAKEN INTO CONSIDERATION IN THE COMPARISON OF THE PERIODS FOR PAYMENT . THUS , THERE IS NOTHING IN LEGISLATION SUCH AS THAT DESCRIBED BY THE NATIONAL COURT WHICH IS CAPABLE OF CONSTITUTING DISCRIMINATION WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY .