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Judgment of the Court of 22 February 1984. - Gerda Kloppenburg v Finanzamt Leer. - Reference for a preliminary ruling: Finanzgericht Niedersachsen - Germany. - Effect of directives - Retroactive effect of an amendment. - Case 70/83.

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Keywords

1 . COMMUNITY LAW - PRINCIPLES - LEGAL CERTAINTY

2 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS PROVIDED FOR IN THE SIXTH DIRECTIVE - EXEMPTION FOR TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT - POSSIBILITY OF INDIVIDUALS ' RELYING ON THE APPROPRIATE PROVISION IN THE EVENT OF THE DIRECTIVE ' S NOT BEING IMPLEMENTED - EXTENSION OF THE PERIOD FOR TRANSPOSING THE DIRECTIVE INTO NATIONAL LAW - EFFECTS

(COUNCIL DIRECTIVES 77/388 , ART . 13 B (D) 1 AND 78/583 , ART . 1)

Summary

1 . COMMUNITY LEGISLATION MUST BE UNEQUIVOCAL AND ITS APPLICATION MUST BE PREDICTABLE FOR THOSE WHO ARE SUBJECT TO IT . POSTPONEMENT OF THE DATE OF ENTRY INTO FORCE OF A MEASURE OF GENERAL APPLICATION , ALTHOUGH THE DATE INITIALLY SPECIFIED HAS ALREADY PASSED , IS IN ITSELF LIABLE TO UNDERMINE THAT PRINCIPLE .

2 . IN THE ABSENCE OF THE IMPLEMENTATION OF DIRECTIVE 77/388/EEC , THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF THE NEGOTIATION

OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 OF THAT DIRECTIVE COULD BE RELIED UPON BY A CREDIT NEGOTIATOR IN RELATION TO TRANSACTIONS CARRIED OUT BETWEEN 1 JANUARY AND 30 JUNE 1978 WHERE HE HAD REFRAINED FROM PASSING THE TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY . DIRECTIVE 78/583 OF 26 JUNE 1978 , EXTENDING THE PERIOD FOR IMPLEMENTING DIRECTIVE 77/388 , DOES NOT HAVE RETROACTIVE EFFECT IN RELATION TO TRANSACTIONS CARRIED OUT BY ECONOMIC OPERATORS PRIOR TO ITS ENTRY INTO FORCE .

Parties

IN CASE 70/83

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE NIEDERSACHSISCHES FINANZGERICHT (FINANCE COURT , LOWER SAXONY), FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN

GERDA KLOPPENBURG

AND

FINANZAMT (TAX OFFICEL) LEER ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 13 B (D) 1 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 1977 , L 145 , P . 1) AND OF ARTICLE 1 OF THE NINTH COUNCIL DIRECTIVE , 78/583/EEC , OF 26 JUNE 1978 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES (OFFICIAL JOURNAL 1978 , L 194 , P . 16),

Grounds

1 BY ORDER OF 3 MARCH 1983 , WHICH WAS RECEIVED AT THE COURT ON 28 APRIL 1983 , THE NIEDERSACHSISCHES FINANZGERICHT (FINANCE COURT , LOWER SAXONY) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION ON THE INTERPRETATION OF ARTICLE 13 B (D) 1 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 - COMMON SYSTEM OF VALUE-ADDED TAX ; UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977 L 145 , P . 1) AND OF ARTICLE 1 OF THE NINTH COUNCIL DIRECTIVE , 78/583/EEC , OF 26 JUNE 1978 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES (OFFICIAL JOURNAL 1978 L 194 , P . 16) IN ORDER TO ASCERTAIN WHETHER THE ABOVE-MENTIONED PROVISION OF THE SIXTH DIRECTIVE COULD BE RELIED UPON BY A CREDIT NEGOTIATOR IN THE FIRST SIX MONTHS OF 1978 .

2 IT MUST BE REMEMBERED THAT , UNDER ARTICLE 1 OF THE SIXTH DIRECTIVE OF 17 MAY 1977 , THE MEMBER STATES WERE TO ADOPT BY 1 JANUARY 1978 AT THE LATEST THE NECESSARY LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS IN ORDER

TO BRING THEIR VALUE-ADDED TAX SYSTEMS INTO LINE WITH THE REQUIREMENTS OF THE DIRECTIVE . A NUMBER OF MEMBER STATES , INCLUDING THE FEDERAL REPUBLIC OF GERMANY , WERE UNABLE TO MAKE THE NECESSARY ADJUSTMENTS WITHIN THE PRESCRIBED PERIOD AND THEREFORE ON 26 JUNE 1978 THE COUNCIL ADOPTED THE NINTH DIRECTIVE WHICH WAS ADDRESSED TO THOSE MEMBER STATES AND AUTHORIZED THEM TO IMPLEMENT THE SIXTH DIRECTIVE ON 1 JANUARY 1979 AT THE LATEST . THE NINTH DIRECTIVE WAS NOTIFIED TO ITS ADDRESSEES ON 30 JUNE 1978 .

3 IT WAS NOT UNTIL THE ADOPTION OF THE LAW OF 26 NOVEMBER 1979 (BUNDESGESETZBLATT I , P . 1953), AND WITH EFFECT FROM 1 JANUARY 1980 , THAT THE FEDERAL REPUBLIC OF GERMANY IMPLEMENTED THE SIXTH DIRECTIVE . IN ITS JUDGMENTS OF 19 JANUARY 1982 IN CASE 8/81 BECKER (1982) ECR 53 AND OF 10 JUNE 1982 IN CASE 255/81 GREDEL (1982) ECR 2301 , THE COURT RULED THAT AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 OF THE SIXTH DIRECTIVE TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , AND THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .

4 IT IS APPARENT FROM THE DOCUMENTS BEFORE THE COURT THAT THE PLAINTIFF IN THE MAIN ACTION , MRS GERDA KLOPPENBURG , CARRIES ON A CREDIT AND MORTGAGE BUSINESS IN THE FEDERAL REPUBLIC OF GERMANY . FOR THE FIRST SIX MONTHS OF 1978 SHE CLAIMED EXEMPTION FROM TURNOVER TAX ON THE BASIS OF ARTICLES 1 AND 13 B (D) 1 . OF THE SIXTH DIRECTIVE .

5 THE FINANZAMT LEER REJECTED THAT CLAIM AND ASSESSED THE PLAINTIFF ' S TRANSACTIONS AT THE NORMAL RATE , IN ACCORDANCE WITH THE NATIONAL LEGISLATION WHICH HAD NOT YET BEEN AMENDED AT THE TIME .

6 RELYING UPON THE ABOVE-MENTIONED JUDGMENTS , THE PLAINTIFF LODGED AN APPEAL AGAINST THAT DECISION WITH THE FINANZGERICHT WHICH STAYED THE PROCEEDINGS AND REFERRED TO THE COURT OF JUSTICE THE FOLLOWING QUESTION FOR A PRELIMINARY RULING :

'' IN THE PERIOD FROM 1 JANUARY 1978 TO 30 JUNE 1978 , WAS IT POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 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 - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , EVEN THOUGH UNDER ARTICLE 1 OF THE NINTH COUNCIL DIRECTIVE , 78/583/EEC , OF 26 JUNE 1978 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES , THE MEMBER STATES REFERRED TO IN THAT ARTICLE WERE AUTHORIZED TO IMPLEMENT DIRECTIVE 77/388/EEC BY 1 JANUARY 1979 AT THE LATEST?

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7 IN ORDER TO ANSWER THAT QUESTION IT IS APPROPRIATE IN THE FIRST PLACE TO CONSIDER THE LEGAL POSITION OF ECONOMIC OPERATORS IN THE FIRST SIX MONTHS OF 1978 , THAT IS TO SAY BEFORE THE NINTH DIRECTIVE TOOK EFFECT FOLLOWING ITS

NOTIFICATION TO THE MEMBER STATES TO WHICH IT WAS ADDRESSED .

8 DURING THAT PERIOD , ECONOMIC OPERATORS ESTABLISHED IN ONE OF THE MEMBER STATES WHICH HAD FAILED TO COMPLY WITH THE OBLIGATION TO BRING THEIR LEGISLATION INTO LINE WITH THE PROVISIONS OF THE SIXTH DIRECTIVE BEFORE 1 JANUARY 1978 WERE CONFRONTED WITH A FAILURE TO IMPLEMENT THE DIRECTIVE WITH THE PROBABLE RESULT THAT THE TAX AUTHORITIES WOULD NOT APPLY THE EXEMPTIONS PROVIDED FOR BY THE DIRECTIVE FOR THE BENEFIT OF CERTAIN OF THOSE OPERATORS . THE SITUATION WAS IDENTICAL TO THAT WHICH GAVE RISE TO THE ABOVE-MENTIONED JUDGMENTS OF 19 JANUARY 1982 AND 10 JUNE 1982 .

9 IT FOLLOWS THAT , DURING THE SAID PERIOD , A CREDIT NEGOTIATOR WHO HAD NOT PASSED ON THE TAX TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY WAS JUSTIFIED IN RELYING ON THE EXCEPTION PROVIDED FOR BY ARTICLE 13 B (D) 1 OF THE SIXTH DIRECTIVE AND A MEMBER STATE WHICH HAD FAILED TO FULFIL ITS OBLIGATIONS COULD NOT CLAIM , AS AGAINST THAT PERSON , THAT IT HAD NOT IMPLEMENTED THE DIRECTIVE .

10 ACCORDINGLY , THE ONLY NEW PROBLEM WHICH ARISES IN THE PRESENT CASE IS WHETHER THE LEGAL POSITION OF SUCH AN ECONOMIC OPERATOR HAS BEEN ALTERED , WITH RETROACTIVE EFFECT , BY THE NINTH DIRECTIVE . IT IS THEREFORE APPROPRIATE , IN THE SECOND PLACE , TO EXAMINE THAT DIRECTIVE IN ORDER TO ESTABLISH WHETHER IT IS INTENDED TO PRODUCE SUCH AN EFFECT AND , IF SO , WHETHER IT WAS ABLE TO DO SO LAWFULLY .

11 IN THAT REGARD , IT IS NECESSARY TO EMPHASIZE , AS THE COURT HAS ALREADY DONE ON SEVERAL OCCASIONS , THAT COMMUNITY LEGISLATION MUST BE UNEQUIVOCAL AND ITS APPLICATION MUST BE PREDICTABLE FOR THOSE WHO ARE SUBJECT TO IT . POSTPONEMENT OF THE DATE OF ENTRY INTO FORCE OF A MEASURE OF GENERAL APPLICATION , ALTHOUGH THE DATE INITIALLY SPECIFIED HAS ALREADY PASSED , IS IN ITSELF LIABLE TO UNDERMINE THAT PRINCIPLE . IF THE PURPOSE OF AN EXTENSION IS TO DEPRIVE INDIVIDUALS OF THE LEGAL REMEDIES WHICH THE FIRST MEASURE HAS ALREADY CONFERRED UPON THEM , SUCH AN EFFECT IN PRACTICE RAISES THE QUESTION OF THE VALIDITY OF THE AMENDING MEASURE .

12 HOWEVER , SUCH A QUESTION OF VALIDITY COULD ARISE ONLY IF THE INTENTION TO PRODUCE THE ABOVE-MENTIONED EFFECT WERE EXPRESSLY STATED IN THE AMENDING MEASURE . THAT IS NOT SO IN THE CASE OF THE NINTH DIRECTIVE . THE TEXT OF THAT DIRECTIVE MERELY EXTENDS THE PERIOD FOR TRANSPOSING THE SIXTH DIRECTIVE INTO NATIONAL LAW IN FAVOUR OF THOSE MEMBER STATES WHICH WERE UNABLE TO COMPLETE , WITHIN THE PERIOD INITIALLY PRESCRIBED , THE LEGISLATIVE PROCEDURE REQUIRED FOR AMENDING THEIR LEGISLATION ON VALUE-ADDED TAX . IT CONTAINS NOTHING TO INDICATE THAT THE EXTENSION ALTERS THE POSITION OF ECONOMIC OPERATORS IN RELATION TO TRANSACTIONS CARRIED OUT BY THEM PRIOR TO THE ENTRY INTO FORCE OF THE MEASURE ALTERING THE PERIOD ALLOWED FOR IMPLEMENTATION .

13 IT FOLLOWS THAT THE NINTH DIRECTIVE MUST BE INTERPRETED AS NOT HAVING RETROACTIVE EFFECT IN THAT REGARD .

14 THE ANSWER TO THE QUESTION RAISED SHOULD THEREFORE BE THAT IN THE ABSENCE OF THE IMPLEMENTATION 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 - COMMON SYSTEM OF VALUE-ADDED TAX ; UNIFORM

BASIS OF ASSESSMENT , IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 OF THAT DIRECTIVE TO BE RELIED UPON BY A CREDIT NEGOTIATOR IN RELATION TO TRANSACTIONS CARRIED OUT BETWEEN 1 JANUARY AND 30 JUNE 1978 WHERE HE HAD REFRAINED FROM PASSING THE TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY .

Decision on costs

COSTS

15 THE COSTS INCURRED BY THE ITALIAN GOVERNMENT AND 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 , 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

HEREBY RULES :

IN THE ABSENCE OF THE IMPLEMENTATION 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 TAX - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT , IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 OF THAT DIRECTIVE TO BE RELIED UPON BY A CREDIT NEGOTIATOR IN RELATION TO TRANSACTIONS CARRIED OUT BETWEEN 1 JANUARY AND 30 JUNE 1978 WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY .