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Judgment of the Court of 10 July 1985. - Commission of the European Communities v Ireland. - VAT - Taxable amount in the case of movable goods traded in by way of part-payment. - Case 17/84.

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Keywords

TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - TAXABLE AMOUNT - TRADE-IN OF SECOND-HAND GOODS BY WAY OF PART-PAYMENT - NATIONAL RULES PROVIDING THAT THE VALUE OF THE GOODS TRADED IN IS NOT PART OF THE TAXABLE AMOUNT - PERMISSIBILITY - CONDITIONS

(COUNCIL DIRECTIVE NO 77/388 , ARTS 11 A 1 (A) AND 32)

Summary

A NATIONAL SYSTEM OF VALUE-ADDED TAX WHICH WAS IN EXISTENCE WHEN THE SIXTH DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES ENTERED INTO FORCE AND WHICH , AS REGARDS THE DETERMINATION OF THE TAXABLE AMOUNT IN THE CASE OF THE SUPPLY OF MOVABLE GOODS WHERE SECOND-HAND GOODS ARE TRADED IN , PROVIDES THAT THE VALUE OF THE TRADE-IN IS NOT INCLUDED IN THE CONSIDERATION PAYABLE BY THE PURCHASER , DOES NOT INFRINGE ARTICLE 11 A 1 (A) OF THE DIRECTIVE BECAUSE IT IS IN PRINCIPLE COVERED BY ARTICLE 32 OF THE SAME DIRECTIVE , WHICH PENDING THE INTRODUCTION OF A COMMON SYSTEM OF TAXATION OF SECOND-HAND GOODS RE-ESTABLISHING COMPETITIVE NEUTRALITY IN SALES OF SUCH GOODS BETWEEN DIRECT SALES FROM ONE CONSUMER TO ANOTHER AND TRANSACTIONS THROUGH COMMERCIAL CHANNELS , AUTHORIZES MEMBER STATES TO RETAIN NATIONAL SYSTEMS HAVING THE SAME OBJECTIVE . THE OBJECT AND EFFECT OF SUCH A SYSTEM IS TO OFFSET THE RESIDUAL PART OF THE VAT ALREADY BORNE BY THE

SECOND-HAND GOODS TRADED IN , SO THAT ON RESALE THOSE GOODS MAY BE SUBJECT TO THE GENERAL SYSTEM OF VAT , AND IS NOT TO EXEMPT FROM TAX PART OF THE CONSIDERATION OBTAINED BY THE TAXABLE PERSON WISHING TO RESELL FOR THE SUPPLY OF THE NEW GOODS .

Parties

IN CASE 17/84

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY ITS LEGAL ADVISER , D . R . GILMOUR , ACTING AS AGENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF M . BESCHEL , A MEMBER OF ITS LEGAL SERVICE , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

V

IRELAND , REPRESENTED BY L . J . DOCKERY , CHIEF STATE SOLICITOR , ACTING AS AGENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT ITS EMBASSY , 28 ROUTE D ' ARLON ,

DEFENDANT ,

Subject of the case

APPLICATION FOR A DECLARATION THAT , BY CONTINUING TO APPLY SECTION 10 (2) OF THE VALUE ADDED TAX ACT 1972 , WHICH REDUCES THE TAXABLE AMOUNT OF GOODS SOLD IN CONJUNCTION WITH A TRADE-IN , CONTRARY TO ARTICLE 11 OF COUNCIL DIRECTIVE NO 77/388/EEC OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977 , L 145 , P . 1), IRELAND HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE DIRECTIVE ,

Grounds

1 BY AN APPLICATION LODGED AT THE COURT REGISTRY ON 18 JANUARY 1984 THE COMMISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT , BY CONTINUING TO APPLY SECTION 10 (2) OF THE VALUE ADDED TAX ACT 1972 , WHICH REDUCES THE TAXABLE AMOUNT OF GOODS SOLD IN CONJUNCTION WITH A TRADE-IN , CONTRARY TO ARTICLE 11 OF THE SIXTH COUNCIL DIRECTIVE , NO 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) (HEREINAFTER REFERRED TO AS ' THE SIXTH DIRECTIVE ') IRELAND HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE DIRECTIVE .

2 ARTICLE 11 A 1 (A) OF THE SIXTH DIRECTIVE PROVIDES THAT THE TAXABLE AMOUNT IS TO BE EVERYTHING WHICH CONSTITUTES THE CONSIDERATION WHICH HAS BEEN OR IS TO BE OBTAINED FROM THE PURCHASER OR A THIRD PARTY FOR THE GOODS OR SERVICES SUPPLIED . SECTION 10 (2) OF THE VALUE ADDED TAX ACT 1972 , IN

CONTRAST , PROVIDES THAT , IN COMPUTING THE TOTAL AMOUNT ON WHICH TAX IS CHARGEABLE , A DEDUCTION MAY BE MADE FOR THE VALUE OF SECOND-HAND MOVABLE GOODS ACCEPTED IN EXCHANGE OR PART-EXCHANGE FOR THE GOODS SUPPLIED .

3 IT SHOULD BE REMEMBERED THAT THE REINTRODUCTION OF SECOND-HAND GOODS INTO COMMERCIAL CIRCULATION HAS ALREADY BEEN THE SUBJECT OF SEVERAL COMMUNITY PROPOSALS . THUS THE PROPOSAL FOR A SIXTH DIRECTIVE (OFFICIAL JOURNAL 1973 , C 80 , P . 1) CONTAINED A PROVISION WHICH WAS INTENDED TO REDUCE THE TAX ON SECOND-HAND GOODS IN ORDER TO AVOID PENALIZING CERTAIN BRANCHES OF TRADE . AS THAT PROVISION WAS NOT ADOPTED BY THE COUNCIL , ARTICLE 32 OF THE SIXTH DIRECTIVE PROVIDED THAT BEFORE 31 DECEMBER 1977 THE COUNCIL , ACTING UNANIMOUSLY ON A PROPOSAL FROM THE COMMISSION , WAS TO ADOPT A COMMUNITY TAXATION SYSTEM TO BE APPLIED INTER ALIA TO USED GOODS AND THAT UNTIL THAT COMMUNITY SYSTEM BECAME APPLICABLE , MEMBER STATES APPLYING A SPECIAL SYSTEM AT THE TIME WHEN THE SIXTH DIRECTIVE CAME INTO FORCE COULD RETAIN THAT SYSTEM . ON 11 JANUARY 1978 THE COMMISSION SUBMITTED TO THE COUNCIL A PROPOSAL FOR A SEVENTH DIRECTIVE (OFFICIAL JOURNAL 1973 , C 26 , P . 2) PROVIDING FOR A COMMON SYSTEM OF VALUE-ADDED TAX TO BE APPLIED TO USED GOODS , BUT THAT PROPOSAL HAS NOT YET BEEN ACTED UPON .

4 THE COMMISSION CLAIMS THAT THE VALUE OF SECOND-HAND MOVABLE GOODS ACCEPTED IN EXCHANGE FOR NEW GOODS SUPPLIED IS PART OF THE CONSIDERATION FOR THE SUPPLY OF THE NEW GOODS OBTAINED BY THE SUPPLIER FROM THE PURCHASER . THAT VALUE THEREFORE FORMS PART OF THE TAXABLE AMOUNT OF THE GOODS , IN ACCORDANCE WITH ARTICLE 11 OF THE SIXTH DIRECTIVE . ACCORDING TO THE COMMISSION , ARTICLE 32 REFERS TO SPECIAL SYSTEMS APPLICABLE TO SECOND-HAND GOODS AND CERTAINLY DOES NOT PERMIT ANY DEROGATION FROM THE RULES RELATING TO THE TAXABLE AMOUNT OF NEW GOODS . FURTHERMORE , NONE OF THE PROPOSALS MADE BY THE COMMISSION WITH A VIEW TO ESTABLISHING A COMMON SYSTEM FOR THE TAXATION OF SECOND-HAND GOODS PERMITS A DEROGATION OF THAT KIND . UNLIKE THOSE PROPOSALS , THE IRISH SYSTEM DOES NOT BENEFIT THE ULTIMATE PURCHASER OF THE SECOND-HAND GOODS SO MUCH AS THE PURCHASER OF THE NEW GOODS , WHO IS THEREBY DIRECTLY ACCORDED A REDUCTION IN VAT .

5 ACCORDING TO THE COMMISSION , THE IRISH PROVISION AT ISSUE CANNOT BE REGARDED AS A SPECIAL SYSTEM WHICH PREVENTS SECOND-HAND GOODS FROM BEING TAXED TWICE , IN ACCORDANCE WITH THE OBJECTIVES OF ARTICLE 32 OF THE SIXTH DIRECTIVE . IT DOES NOT APPLY TO THE WHOLE SECOND-HAND MARKET , BUT SOLELY TO CASES IN WHICH SECOND-HAND GOODS ARE TRADED IN ON THE OCCASION OF THE SUPPLY OF OTHER GOODS . THAT SITUATION IS DEALT WITH IN ARTICLE 11 OF THE SIXTH DIRECTIVE AND CANNOT AT THE SAME TIME BE GOVERNED BY A SPECIAL SYSTEM WITHIN THE MEANING OF ARTICLE 32 .

6 LASTLY THE COMMISSION POINTS OUT THAT THE IRISH SYSTEM RESULTS IN A LOSS OF REVENUE FOR THE EXCHEQUER AND THUS A DIMINUTION OF THE COMMUNITIES ' S OWN RESOURCES WHERE THE RESALE PRICE OF THE SECOND-HAND GOODS IS LOWER THAN THE TRADE-IN PRICE .

7 IRELAND EXPLAINS THAT THE SALE OF NEW GOODS INVOLVING A TRADE-IN OF SECOND-HAND GOODS IS BY FAR THE MOST COMMON WAY IN WHICH USED GOODS OF CERTAIN KINDS , PARTICULARLY MOTOR CARS , RE-ENTER COMMERCIAL CIRCULATION

IN IRELAND . THE IRISH PROVISION AT ISSUE THUS REGULATES THE MAJOR PART OF TRADE IN SECOND-HAND GOODS AND ENABLES THAT PART OF THE MARKET TO AVOID THE DOUBLE TAXATION TO WHICH SECOND-HAND GOODS WOULD OTHERWISE BE LIABLE IN VIEW OF THEIR LIABILITY TO VAT ON RESALE . IT IS INDEED , THEREFORE , A SPECIAL SYSTEM WITHIN THE MEANING OF ARTICLE 32 OF THE SIXTH DIRECTIVE . ALTHOUGH IT IS TRUE THAT THAT SYSTEM APPLIES IN THE CASE OF A SUPPLY WHICH IS SUBJECT TO THE RULES SET OUT IN ARTICLE 11 OF THAT DIRECTIVE , THAT IS BECAUSE THE SUPPLY OF GOODS BY THE TAXABLE PERSON IS INSEPARABLE FROM THE SIMULTANEOUS ACQUISITION BY HIM OF THE USED GOODS TRADED IN . IF THE DEDUCTION PERMITTED IN SUCH A CASE BY THE CONTESTED PROVISION WERE NOT AUTHORIZED BY COMMUNITY LAW , A TAXABLE DEALER WOULD NOT BE ABLE TO DEAL IN USED MOTOR CARS BELONGING TO NON-TAXABLE CUSTOMERS EXCEPT AT A LOSS .

8 ACCORDING TO IRELAND , THE INTERPRETATION OF ARTICLE 32 OF THE SIXTH DIRECTIVE PUT FORWARD BY THE COMMISSION IS NOT IN ACCORDANCE WITH THE OBJECTIVES OR THE WORDING OF THAT ARTICLE AND IS INDEED SO RESTRICTIVE AS TO TEND TO DEFEAT THE CLEAR PURPOSE OF THE AUTHORIZATION CONTAINED IN THAT ARTICLE . NOR IS IT CONSISTENT WITH THE COMMISSION ' S OWN PROPOSALS IN RESPECT OF USED GOODS IN THE PROPOSALS FOR SIXTH AND SEVENTH DIRECTIVES ON VALUE ADDED TAX . IN THAT CONNECTION IRELAND SEEKS TO DEMONSTRATE , BY MEANS OF WORKED EXAMPLES , THAT THE SYSTEM AT PRESENT IN FORCE IN IRELAND LEADS TO THE SAME RESULTS AS THE COMMON SCHEMES CONTAINED IN THE PROPOSAL FOR A SEVENTH DIRECTIVE , EXCEPT AS REGARDS THE TIME AT WHICH RELIEF IS GIVEN ON THE RESIDUAL PART OF THE VAT BURDENING SECOND-HAND GOODS , A PROBLEM WHICH IS NOT DEALT WITH IN ARTICLE 32 OF THE SIXTH DIRECTIVE .

9 IRELAND CONCEDES , HOWEVER , THAT BY COMPARISON WITH THE SCHEMES PROPOSED BY THE COMMISSION THE IRISH SYSTEM INVOLVES A LOSS OF REVENUE FOR THE EXCHEQUER WHEN THE SECOND-HAND GOODS ARE RESOLD AT A PRICE LOWER THAN THE TRADE-IN PRICE . HOWEVER , THAT MUST BE EQUATED WITH A DISCOUNT ORIGINALLY GIVEN BY THE TAXABLE PERSON AND AUTHORIZED BY ARTICLE 11 A 3 (B) OF THE SIXTH DIRECTIVE OR AN ALLOWABLE INPUT ON GOODS ACQUIRED FOR THE PURPOSES OF THE TAXABLE PERSON ' S BUSINESS .

10 IN ORDER TO RESOLVE THIS DIVERGENCE OF VIEWS , IT IS NECESSARY FIRST TO EXAMINE MORE CLOSELY THE DIFFICULTIES ENSUING FROM THE VAT SYSTEM ESTABLISHED BY THE GENERAL RULES SET OUT IN THE COMMUNITY DIRECTIVES FOR THE MARKET IN SECOND-HAND GOODS AND THE VARIOUS MEASURES PROPOSED OR IMPLEMENTED TO OVERCOME THEM .

11 BY VIRTUE OF ARTICLE 2 OF THE FIRST COUNCIL DIRECTIVE , NO 67/227/EEC OF 11 APRIL 1967 (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 14), 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 TAX IS CHARGED . HOWEVER , VAT IS CHARGEABLE ON EACH TRANSACTION ONLY AFTER DEDUCTION OF THE AMOUNT OF VAT BORNE DIRECTLY BY THE COST OF THE VARIOUS PRICE COMPONENTS . AS REGARDS GOODS , THE CHARGEABLE EVENT IS THE SUPPLY OF GOODS FOR VALUABLE CONSIDERATION BY A TAXABLE PERSON ACTING AS SUCH AND ONLY TAXABLE PERSONS ARE AUTHORIZED TO DEDUCT FROM THE VAT FOR WHICH THEY ARE LIABLE THE TAX ALREADY CHARGED

ON THE GOODS AT A PREVIOUS STAGE .

12 IT FOLLOWS THAT THE GOODS ARE IN FACT TAXED AT EACH STAGE OF PRODUCTION AND DISTRIBUTION ONLY ON THE BASIS OF THE VALUE ADDED AT THAT STAGE . AFTER REACHING THE FINAL CONSUMER WHO IS NOT A TAXABLE PERSON , THE GOODS REMAIN BURDENED WITH AN AMOUNT OF VAT PROPORTIONAL TO THE PRICE PAID BY THAT CONSUMER TO HIS SUPPLIER .

13 IF THE CONSUMER SUBSEQUENTLY SUPPLIES THE GOODS TO ANOTHER NON-TAXABLE CONSUMER , NO TAX IS CHARGED OR DEDUCTED IN RESPECT OF THAT TRANSACTION . IF THE CONSUMER SUPPLIES THE GOODS TO A TAXABLE TRADER , SUCH SUPPLY DOES NOT GIVE RISE TO A CHARGE TO TAX EITHER , BUT WHERE THE GOODS ARE RESOLD BY THE TAXABLE PERSON AN AMOUNT OF VAT PROPORTIONAL TO THE RESALE PRICE IS CHARGED , WITHOUT THE TAXABLE PERSON BEING ENTITLED TO ANY DEDUCTION OF THE VAT WHICH THE GOODS HAVE ALREADY BORNE .

14 SECOND-HAND GOODS WHICH ARE REINTRODUCED INTO COMMERCIAL CIRCULATION ARE THEREFORE TAXED ONCE AGAIN , WHEREAS SECOND-HAND GOODS WHICH PASS DIRECTLY FROM ONE CONSUMER TO ANOTHER REMAIN BURDENED SOLELY BY THE TAX IMPOSED ON THE OCCASION OF THE FIRST SALE TO A NON-TAXABLE CONSUMER . ESPECIALLY WHERE THE RATE OF VAT IS HIGH , THAT DIFFERENCE IN TREATMENT DISTORTS COMPETITION BETWEEN DIRECT SALES FROM ONE CONSUMER TO ANOTHER AND TRANSACTIONS PASSING THROUGH ORDINARY COMMERCIAL CHANNELS , AND THUS PLACES AT A DISADVANTAGE BRANCHES OF TRADE IN WHICH A LARGE NUMBER OF TRANSACTIONS INVOLVE SECOND-HAND GOODS , SUCH AS THE MOTOR-CAR TRADE IN PARTICULAR .

15 ARTICLE 32 OF THE SIXTH DIRECTIVE PROVIDES THAT THE COUNCIL WILL AT A LATER STAGE ADOPT A COMMON SYSTEM TO PREVENT SUCH DISTORTION IN COMPETITION AND , PENDING THE IMPLEMENTATION OF SUCH A COMMON SYSTEM , AUTHORIZES THE RETENTION OF EXISTING NATIONAL SYSTEMS HAVING THE SAME OBJECTIVE .

16 FOR ITS PART , THE COMMISSION HAS ACTED UPON ARTICLE 32 OF THE SIXTH DIRECTIVE BY SUBMITTING TO THE COUNCIL ITS PROPOSAL FOR A SEVENTH DIRECTIVE WHICH SETS OUT TWO METHODS OF ACHIEVING THE DESIRED RESULT . AS REGARDS SECOND-HAND GOODS IN GENERAL , THE PROPOSAL PROVIDES THAT , IN THE CASE OF THE SUPPLY EFFECTED BY A TAXABLE PERSON WISHING TO RESELL GOODS WHICH HE ACQUIRED FROM A NON-TAXABLE PERSON , THE TAXABLE AMOUNT IS TO BE A FIXED PROPORTION OF THE RESALE PRICE WHICH IS DEEMED TO CORRESPOND TO THE VALUE ADDED BY THE TAXABLE PERSON WISHING TO RESELL . IN RELATION TO CERTAIN SECOND-HAND GOODS WHICH PLAY AN IMPORTANT PART IN TRADE , IN PARTICULAR MOTOR CARS , THE PROPOSAL PUTS FORWARD A SCHEME WHICH IS MORE SPECIFIC AS TO THE RESULTS TO BE ACHIEVED . UNDER THAT SYSTEM , WHEN A TAXABLE PERSON RESELLS SUCH GOODS HE IS ENTITLED TO DEDUCT AN AMOUNT OF VAT CALCULATED ON THE BASIS OF THE PRICE AT WHICH THE GOODS WERE ACQUIRED FROM A NON-TAXABLE PERSON . THE TWO SCHEMES PROPOSED THUS HAVE ONE FEATURE IN COMMON , NAMELY THAT IT IS AT THE TIME OF RESALE THAT THE RESIDUAL PART OF THE VAT BORNE BY THE SECOND-HAND GOODS IS TAKEN INTO ACCOUNT .

17 UNDER THE IRISH SYSTEM , ACCOUNT IS TAKEN OF THAT RESIDUAL PART AT AN EARLIER STAGE , WHEN THE SECOND-HAND GOODS ARE ACQUIRED BY THE TAXABLE PERSON BY MEANS OF A TRADE-IN . THAT SYSTEM ONLY GIVES THE APPEARANCE OF RESULTING IN A REDUCTION OF THE CHARGEABLE AMOUNT FOR THE NEW GOODS .

THE REDUCTION IS EXACTLY PROPORTIONAL TO THE PRICE PAID BY THE TAXABLE PERSON FOR THE SECOND-HAND GOODS WHICH HE BUYS FROM THE NON-TAXABLE PERSON AND IN FACT OFFSETS THE RESIDUAL PART OF THE VAT WHICH THE SECOND-HAND GOODS HAVE ALREADY BORNE . AS THE GOODS HAVE ALREADY BENEFITED FROM A REMISSION OF TAX ON THE OCCASION OF THEIR ACQUISITION BY THE TAXABLE PERSON WISHING TO RESELL , TAX MAY BE CHARGED IN THE NORMAL MANNER WHEN THE GOODS ARE RESOLD WITHOUT DISTORTING COMPETITION WITH DIRECT SALES BETWEEN CONSUMERS .

18 IT IS IMMATERIAL THAT , STRICTLY SPEAKING , THAT COMPENSATION DIRECTLY BENEFITS THE PURCHASER OF THE NEW GOODS , WHO IS ALSO THE SELLER OF THE SECOND-HAND GOODS , WHEREAS IN THE SCHEMES PROPOSED BY THE COMMISSION THE REDUCTION OF TAX ON THE OCCASION OF RESALE DIRECTLY BENEFITS THE NON-TAXABLE PURCHASER OF THE SECOND-HAND GOODS . AS HAS BEEN SHOWN BY THE WORKED EXAMPLES SUBMITTED TO THE COURT BY IRELAND , THE PRICES AGREED BETWEEN THE PARTIES TO THE TWO TRANSACTIONS INVOLVING SUCH GOODS TEND TO BE ADJUSTED ACCORDING TO THE SYSTEM APPLIED SO AS TO LEAD GENERALLY TO THE SAME RESULT BOTH FOR THE THREE PARTIES TO THE TRANSACTIONS AND FOR THE EXCHEQUER ; THE ONLY DIFFERENCES CONCERN THE TIME AT WHICH THE SECOND-HAND GOODS BENEFIT FROM REMISSION OF THE RESIDUAL PART OF VAT AND THE BREAK-DOWN OF THE PRICES . EQUALLY , ALL THREE SYSTEMS EXAMINED RE-ESTABLISH NEUTRALITY OF COMPETITION BETWEEN DIRECT SALES FROM ONE CONSUMER TO ANOTHER AND TRANSACTIONS THROUGH COMMERCIAL CHANNELS .

19 IT IS IN THE LIGHT OF THOSE CONSIDERATIONS THAT IT MUST BE DECIDED WHETHER , AS THE COMMISSION MAINTAINS , THE IRISH SYSTEM CONSTITUTES A DEROGATION FROM ARTICLE 11 OF THE SIXTH DIRECTIVE WHICH CANNOT BE JUSTIFIED UNDER ARTICLE 32 OF THAT DIRECTIVE . IT FOLLOWS FROM THE EXAMINATION SET OUT ABOVE THAT THAT SYSTEM IS NOT DESIGNED TO EXEMPT FROM TAX PART OF THE CONSIDERATION OBTAINED BY THE TAXABLE PERSON WISHING TO RESELL FOR THE SUPPLY OF NEW GOODS , NOR DOES IT HAVE SUCH AN EFFECT . ON THE CONTRARY , THE OBJECT AND EFFECT OF THE IRISH SYSTEM IS TO OFFSET THE RESIDUAL PART OF THE VAT ALREADY BORNE BY THE SECOND-HAND GOODS TRADED IN , SO THAT ON RESALE THOSE GOODS MAY BE SUBJECT TO THE GENERAL SYSTEM OF VAT . IT FOLLOWS THAT THE IRISH SYSTEM IS IN PRINCIPLE COVERED , BOTH AS REGARDS ITS OBJECT AND ITS EFFECTS , BY ARTICLE 32 OF THE SIXTH DIRECTIVE AND THAT IT DOES NOT INFRINGE ARTICLE 11 OF THE DIRECTIVE .

20 THAT CONCLUSION IS NOT AFFECTED BY THE FACT THAT THE IRISH SYSTEM APPLIES ONLY TO CASES IN WHICH THE TAXABLE PERSON WISHING TO RESELL ACQUIRES THE SECOND-HAND GOODS BY MEANS OF A TRADE-IN WHEN HE SUPPLIES OTHER GOODS , WHICH MAY BE NEW OR SECOND-HAND . THAT IS IN FACT THE MOST COMMON WAY IN WHICH SECOND-HAND GOODS ARE REINTRODUCED INTO COMMERCIAL CIRCULATION , AND ARTICLE 32 OF THE SIXTH DIRECTIVE DOES NOT REQUIRE A NATIONAL SYSTEM WHICH REMAINS IN FORCE TO COVER ALL TRANSACTIONS INVOLVING SECOND-HAND GOODS .

21 THE FACT THAT THE IRISH SYSTEM RESULTS IN A LOSS OF REVENUE FOR THE EXCHEQUER IN CASES IN WHICH THE RESALE PRICE IS LOWER THAN THE TRADE-IN PRICE IS NOT A DECISIVE FACTOR EITHER . BY PROVIDING THAT SUPPLIES EFFECTED BY A TAXABLE PERSON ARE SUBJECT TO TAX AND THAT THE TAX PAID BY HIM AT AN EARLIER STAGE MAY BE DEDUCTED , THE GENERAL RULES SET OUT IN THE DIRECTIVES ALSO REDUCE THE REVENUE PAID TO THE EXCHEQUER WHEN NEW GOODS ARE SOLD AT A LOSS . THE IRISH PROVISIONS CONCERNING THE TRADE-IN OF

SECOND-HAND GOODS THEREFORE DO NOT INFRINGE THE GENERAL RULES CONTAINED IN THE COMMUNITY DIRECTIVES IN THAT RESPECT EITHER .

22 IT FOLLOWS THAT THE COMMISSION ' S APPLICATION MUST BE DISMISSED IN ITS ENTIRETY .

Decision on costs

COSTS

23 UNDER ARTICLE 69 (2) OF THE RULES OF PROCEDURE THE UNSUCCESSFUL PARTY IS TO BE ORDERED TO PAY THE COSTS . AS THE APPLICANT HAS FAILED IN ITS SUBMISSIONS , IT MUST BE ORDERED TO PAY THE COSTS .

Operative part

ON THOSE GROUNDS ,

THE COURT

HEREBY :

(1) DISMISSES THE APPLICATION ; AND

(2) ORDERS THE COMMISSION TO PAY THE COSTS .