|

61984J0047

Judgment of the Court (Fourth Chamber) of 21 May 1985. - Staatssecretaris van Financiën v Gaston Schul Douane-Expediteur BV. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - Turnover tax on the importation of goods supplied by private persons. - Case 47/84.

European Court reports 1985 Page 01491
Spanish special edition Page 00601
Swedish special edition Page 00183
Finnish special edition Page 00193

Keywords

1 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - SIXTH DIRECTIVE - DOUBLE TAXATION IN INTRA-COMMUNITY TRADE - INCOMPATIBLE WITH ARTICLE 95 OF THE TREATY - ELIMINATION - ROLE DEVOLVING UPON THE COURT PENDING ACTION BY THE COMMUNITY LEGISLATURE

(EEC TREATY , ART . 95 ; COUNCIL DIRECTIVE NO 77/388/EEC , ARTS 2 AND 11)

2 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - VAT CHARGED ON THE IMPORTATION , FROM ANOTHER MEMBER STATE , OF GOODS SUPPLIED BY A NON-TAXABLE PERSON - METHOD OF CALCULATION

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

Summary

1 . THE PRACTICAL APPLICATION OF THE COMMON SYSTEM OF VAT INTRODUCED BY THE SIXTH DIRECTIVE HAS GIVEN RISE TO INSTANCES OF DOUBLE TAXATION IN INTRA-COMMUNITY TRADE . ALTHOUGH IT IS FOR THE COMMUNITY LEGISLATURE TO ESTABLISH A SYSTEM OF COMPLETE COMPETITIVE NEUTRALITY INVOLVING , IN CASES

WHERE GOODS ARE SUPPLIED BY ONE PRIVATE PERSON TO ANOTHER PRIVATE PERSON RESIDING IN ANOTHER MEMBER STATE , FULL REMISSION OF TAX ON EXPORTATION , UNTIL SUCH A SYSTEM HAS BEEN ESTABLISHED ARTICLE 95 OF THE TREATY PREVENTS AN IMPORTING MEMBER STATE FROM APPLYING ITS VAT RULES TO IMPORTED GOODS IN A MANNER CONTRARY TO THE PRINCIPLES EMBODIED IN THAT ARTICLE . CONSEQUENTLY , PENDING THE ADOPTION OF A LEGISLATIVE SOLUTION , IN CHARGING VAT ON IMPORTS ACCOUNT MUST BE TAKEN OF THE EFFECT OF ARTICLE 95 OF THE TREATY . IT IS THEREFORE FOR THE COURT TO LAY DOWN GUIDELINES COMPATIBLE WITH ARTICLE 95 OF THE TREATY , CONSISTENT WITH THE GENERAL SCHEME OF THE SIXTH DIRECTIVE AND SUFFICIENTLY SIMPLE TO BE ABLE TO BE APPLIED IN A UNIFORM MANNER THROUGHOUT THE MEMBER STATES .

2 . WHERE A MEMBER STATE CHARGES VAT ON THE IMPORTATION , FROM ANOTHER MEMBER STATE , OF GOODS SUPPLIED BY A PRIVATE PERSON , BUT DOES NOT CHARGE VAT ON THE SUPPLY BY A PRIVATE PERSON OF SIMILAR GOODS WITHIN ITS OWN TERRITORY , THE VAT PAYABLE ON IMPORTATION MUST BE CALCULATED BY TAKING INTO ACCOUNT THE AMOUNT OF VAT PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE GOODS AT THE TIME OF IMPORTATION IN SUCH A WAY THAT THAT AMOUNT IS NOT INCLUDED IN THE TAXABLE AMOUNT AND IS IN ADDITION DEDUCTED FROM THE VAT PAYABLE ON IMPORTATION .

THE AMOUNT OF VAT PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE GOODS AT THE TIME OF IMPORTATION IS EQUAL :

IN CASES IN WHICH THE VALUE OF THE GOODS HAS DECREASED BETWEEN THE DATE ON WHICH VAT WAS LAST CHARGED IN THE MEMBER STATE OF EXPORTATION AND THE DATE OF IMPORTATION : TO THE AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION , LESS A PERCENTAGE REPRESENTING THE PROPORTION BY WHICH THE GOODS HAVE DEPRECIATED ;

IN CASES IN WHICH THE VALUE OF THE GOODS HAS INCREASED OVER THAT SAME PERIOD : TO THE FULL AMOUNT OF THE VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION .

Parties

IN CASE 47/84

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), THE HAGUE ,

AND

GASTON SCHUL DOUANE-EXPEDITEUR BV , WERNHOUT , THE NETHERLANDS ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 95 OF THE TREATY ,

Grounds

1 BY A JUDGMENT DATED 15 FEBRUARY 1984 , WHICH WAS RECEIVED AT THE COURT ON 28 FEBRUARY 1984 , 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 TWO QUESTIONS ON THE INTERPRETATION OF ARTICLE 95 OF THE TREATY AND 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).

2 AN APPEAL IN CASSATION HAS BEEN BROUGHT BEFORE THE HOGE RAAD BY THE STAATSSECRETARIS VAN FINANCIEN (SECRETARY OF STATE FOR FINANCE) AGAINST THE JUDGMENT GIVEN BY THE GERECHTSHOF (REGIONAL COURT OF APPEAL), ' S-HERTOGENBOSCH , ON 18 FEBRUARY 1983 FOLLOWING THE PRELIMINARY RULING OF THIS COURT OF 5 MAY 1982 IN CASE 15/81 (SCHUL V INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN (1982) ECR 1409).

3 THE DISPUTE WHICH GAVE RISE TO THAT RULING CONCERNED THE VAT TO BE CHARGED ON THE IMPORTATION INTO THE NETHERLANDS OF A SECOND-HAND PLEASURE AND SPORTS BOAT , ON THE INSTRUCTIONS AND ON BEHALF OF A PRIVATE PERSON RESIDING IN THE NETHERLANDS WHO HAD BOUGHT IT IN FRANCE FROM ANOTHER PRIVATE PERSON . IN ACCORDANCE WITH NATIONAL LEGISLATION , THE NETHERLANDS TAX AUTHORITIES HAD CHARGED VAT ON THAT IMPORTATION 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 .

4 IN ITS RULING THE COURT , AFTER SETTING OUT THE CHARACTERISTICS OF THE COMMON SYSTEM OF VAT , ANALYSED WHETHER ARTICLE 95 OF THE TREATY PERMITTED THE IMPOSITION OF VAT ON THE IMPORTATION FROM ANOTHER MEMBER STATE OF GOODS SUPPLIED BY ONE PRIVATE PERSON TO ANOTHER , IN VIEW OF THE FACT THAT GOODS IMPORTED BY PRIVATE PERSONS ARE ALREADY BURDENED WITH VAT CHARGED IN THE MEMBER STATE OF EXPORTATION , THERE BEING NO REMISSION OF TAX ON EXPORTATION . AS A RESULT OF ITS ANALYSIS THE COURT CONCLUDED THAT ARTICLE 2 , POINT 2 , OF THE SIXTH DIRECTIVE , WHICH PROVIDES THAT ' THE IMPORTATION OF GOODS ' IS TO BE SUBJECT TO VAT , MUST BE INTERPRETED IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THE TREATY , IN PARTICULAR THOSE ARISING FROM ARTICLE 95 THEREOF .

5 THE COURT RULED THAT ' THE VAT 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 VAT PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT ON IMPORTATION IS NOT TAKEN INTO ACCOUNT . '

6 ON THAT POINT THE COURT EXPLAINED THAT , IN SO FAR AS AN IMPORTED PRODUCT SUPPLIED BY A PRIVATE PERSON COULD NOT LAWFULLY BENEFIT FROM A REMISSION OF TAX ON EXPORTATION AND HENCE REMAINED BURDENED UPON IMPORTATION WITH PART OF THE VAT PAID IN THE MEMBER STATE OF EXPORTATION , THE AMOUNT OF VAT PAYABLE ON IMPORTATION SHOULD BE REDUCED BY THE RESIDUAL PART OF THE VAT OF THE MEMBER STATE OF EXPORTATION WHICH WAS STILL CONTAINED IN THE VALUE OF THE PRODUCT WHEN IT WAS IMPORTED . IT ADDED THAT THAT REDUCTION COULD NOT , HOWEVER , BE GREATER THAN THE AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION .

7 THE GERECHTSHOF , ' S-HERTOGENBOSCH , CONSIDERING THE CASE ONCE AGAIN , ESTABLISHED THAT THE BOAT IN QUESTION , WHICH WAS BUILT IN MONACO , HAD BEEN IMPORTED INTO FRANCE AND THAT THE FRENCH TAX AUTHORITIES HAD AT THAT TIME CHARGED VAT IN RESPECT OF ITS IMPORTATION . THE BOAT WAS DECLARED TO THE FRENCH AUTHORITIES AS HAVING A VALUE OF FF 269 571 , AND THE FRENCH VAT , PAYABLE AT THE RATE OF 17.6% , AMOUNTED TO FF 47 444.49 . A YEAR LATER THE BOAT WAS SOLD TO A NETHERLANDS NATIONAL RESIDING IN THE NETHERLANDS FOR FF 365 000 , AN AMOUNT WHICH EXCEEDED THE PRICE OF THE BOAT , INCLUDING TAX , AT THE TIME OF ITS IMPORTATION INTO FRANCE . THE RATE OF VAT APPLICABLE IN THE NETHERLANDS WAS 18% AT THE TIME WHEN THE BOAT WAS IMPORTED INTO THAT STATE .

8 UNDER THOSE CIRCUMSTANCES THE GERECHTSHOF CONSIDERED THAT THE VAT PAID IN FRANCE WAS STILL WHOLLY CONTAINED IN THE VALUE OF THE BOAT AT THE TIME OF ITS IMPORTATION INTO THE NETHERLANDS , SINCE IT WAS SOLD TO A PURCHASER IN THE NETHERLANDS FOR A PRICE HIGHER THAN THE VALUE DECLARED TO THE FRENCH TAX AUTHORITIES . THE GERECHTSHOF TOOK THE VIEW THAT , ACCORDING TO THE RULING OF THE COURT OF 5 MAY 1982 , THE SUM OF THE FRENCH VAT AND THE VAT PAYABLE ON IMPORTATION SHOULD NOT EXCEED THE VAT CHARGED IN THE NETHERLANDS ON A SIMILAR BOAT OF EQUAL VALUE , NET OF TAX , SUPPLIED TO AN INDIVIDUAL ON NETHERLANDS TERRITORY . FOR THAT PURPOSE THE VALUE ON IMPORTATION SHOULD BE CALCULATED BY DEDUCTING THE FRENCH VAT ACTUALLY PAID FROM THE PRICE ON IMPORTATION INTO THE NETHERLANDS ; ON THAT BASIS NETHERLANDS VAT OF 18% SHOULD BE CALCULATED , AND THE FRENCH VAT PAID SHOULD BE DEDUCTED FROM THE RESULTING AMOUNT .

9 BEFORE THE HOGE RAAD , THE STAATSSECRETARIS VAN FINANCIEN CLAIMED THAT ARTICLE 95 OF THE TREATY , AS INTERPRETED BY THE COURT IN ITS RULING OF 5 MAY 1982 , REQUIRED THE TAX AUTHORITIES TO DEDUCT FROM THE VAT PAYABLE ON IMPORTATION THE RESIDUAL VAT CHARGED IN THE EXPORTING STATE WITH WHICH THE GOODS WERE STILL BURDENED . HOWEVER , IT REQUIRED NO SUCH REDUCTION OF THE TAXABLE AMOUNT , WHICH , AS WAS CLEAR BOTH FROM THE NETHERLANDS LEGISLATION AND FROM THE SIXTH DIRECTIVE (ARTICLE 11 B PARAGRAPH 1 (A)), HAD TO BE THE PRICE PAID ON IMPORTATION . FOR THAT REASON THE METHOD OF CALCULATION APPLIED BY THE GERECHTSHOF WAS INCORRECT .

10 THE HOGE RAAD DECIDED THAT THE SOLUTION TO THE PROBLEM RAISED DEPENDED UPON THE INTERPRETATION OF COMMUNITY LAW AND THAT QUESTIONS SHOULD BE REFERRED TO THE COURT FOR A PRELIMINARY RULING . THOSE QUESTIONS ARE WORDED AS FOLLOWS :

' 1 . WHERE A MEMBER STATE CHARGES VAT ON THE IMPORTATION , FROM ANOTHER MEMBER STATE , OF A PRODUCT WHICH IS SUPPLIED BY A NON-TAXABLE (PRIVATE) PERSON , BUT DOES NOT CHARGE VAT ON THE SUPPLY OF SIMILAR PRODUCTS BY A

PRIVATE PERSON WITHIN ITS OWN TERRITORY , SHOULD THAT MEMBER STATE , IN ORDER TO PREVENT THE TAX FROM CONSTITUTING INTERNAL TAXATION IN EXCESS OF THAT IMPOSED ON SIMILAR DOMESTIC PRODUCTS AS REFERRED TO IN ARTICLE 95 OF THE TREATY , TAKE ACCOUNT OF THE AMOUNT OF THE VAT PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE PRODUCT AT THE TIME OF IMPORTATION :

(A) IN SUCH A WAY THAT THAT AMOUNT IS NOT INCLUDED IN THE TAXABLE AMOUNT FOR THE PURPOSES OF VAT PAYABLE ON IMPORTATION AND IS IN ADDITION DEDUCTED FROM THE VAT PAYABLE ON IMPORTATION ,

OR ELSE

(B)IN SUCH A WAY THAT THAT AMOUNT IS DEDUCTED ONLY FROM THE VAT PAYABLE ON IMPORTATION?

2.IN THE CASE DEFINED IN THE FIRST QUESTION , HOW SHOULD THE AMOUNT REFERRED TO THEREIN BE CALCULATED?

,

11 IN ITS FIRST QUESTION THE HOGE RAAD ASKS ESSENTIALLY WHETHER THE RESIDUAL PART OF THE TAX WITH WHICH THE IMPORTED GOODS ARE STILL BURDENED IN THE EVENT OF A SALE BY ONE PRIVATE PERSON TO ANOTHER MUST BE TAKEN INTO ACCOUNT SOLELY IN THE CALCULATION OF THE VAT PAYABLE ON IMPORTATION OR ALSO IN DETERMINING THE TAXABLE AMOUNT . THE SECOND QUESTION IS DESIGNED TO ASCERTAIN HOW THAT RESIDUAL PART SHOULD BE CALCULATED .

GENERAL CONSIDERATIONS

12 THE COMMISSION OBSERVES THAT THE APPROACH ADOPTED BY THE COURT IN ITS RULING OF 5 MAY 1982 IS LIKELY TO GIVE RISE TO DIFFICULTIES IN THE PRACTICAL APPLICATION OF THE RULES CONCERNING VAT PAYABLE ON THE IMPORTATION OF GOODS SUPPLIED BY ONE PRIVATE PERSON TO ANOTHER . THE COMMISSION , IN CLOSE COLLABORATION WITH THE TAX ADMINISTRATIONS OF THE MEMBER STATES , HAS ENDEAVOURED TO FIND LEGISLATIVE SOLUTIONS FOR CERTAIN PRACTICAL PROBLEMS . ON THE BASIS OF ITS STUDIES , IT DREW UP A PROPOSAL FOR A NEW DIRECTIVE AND SUBMITTED IT TO THE COUNCIL ON 23 JULY 1984 (PROPOSAL FOR A SIXTEENTH COUNCIL DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : COMMON SCHEME FOR CERTAIN GOODS ON WHICH VALUE-ADDED TAX HAS BEEN FINALLY PAID AND WHICH ARE IMPORTED BY A FINAL CONSUMER IN ONE MEMBER STATE FROM ANOTHER MEMBER STATE (OFFICIAL JOURNAL 1984 , C 226 , P . 2)).

13 THE COMMISSION STATES THAT THE PRACTICAL PROBLEMS TO BE SOLVED ARE IN PARTICULAR THE FOLLOWING : BY WHAT METHOD SHOULD ACCOUNT BE TAKEN OF THE VAT PAID IN ANOTHER MEMBER STATE WITHOUT DEPRIVING THE MEMBER STATE OF IMPORTATION OF TAX REVENUE ; HOW SHOULD THE RESIDUAL AMOUNT OF TAX CONTAINED IN THE PURCHASE PRICE BE CALCULATED ; HOW CAN THE AUTHORITIES IN THE MEMBER STATE OF IMPORTATION ASCERTAIN THE RATES OF VAT APPLICABLE AT THE TIME OF THE INITIAL PURCHASE IN THE COUNTRY OF EXPORTATION ; HOW SHOULD THE AMOUNT OF THE RESIDUAL TAX CONTAINED IN THE SALE PRICE BE CALCULATED WHERE DIFFERENT TRANSACTIONS HAVE TAKEN PLACE IN THREE OR FOUR DIFFERENT MEMBER STATES ; WHAT FORM OF PROOF SHOULD BE REQUIRED ;

WHAT RULE SHOULD BE APPLIED WHERE THE PRICE OF THE SECOND-HAND GOODS IS HIGHER THAN THE PRICE OF THE GOODS NEW ; AND , LASTLY , SHOULD AN EXEMPTION BE PROVIDED FOR?

14 ON THE BASIS OF THE STUDIES AND CONSULTATIONS WHICH IT HAS UNDERTAKEN , THE COMMISSION HAS REACHED THE CONCLUSION THAT THE ONLY SOLUTION CONSISTENT WITH THE SPIRIT OF THE RULING OF 5 MAY 1982 WOULD BE TO REQUIRE THE MEMBER STATE FROM WHICH THE GOODS WERE EXPORTED TO REFUND TO THE EXPORTER THE RESIDUAL PART OF THE TAX WITH WHICH THE GOODS WERE STILL BURDENED , SO AS TO PERMIT THE VAT CHARGEABLE ON IMPORTATION TO BE CALCULATED ON THE BASIS OF THE SAME AMOUNT AS THE REFUND . ON THE OTHER HAND , A DIFFERENT SOLUTION SHOULD BE ENVISAGED FOR THE CASE IN WHICH THE GOODS CONCERNED HAVE INCREASED IN VALUE : THE COMMISSION CONSIDERS THAT IN SUCH A CASE NO VAT SHOULD BE REFUNDED ON EXPORTATION BUT ON IMPORTATION VAT SHOULD BE CHARGED SOLELY ON THE DIFFERENCE BETWEEN THE PRICE OF THE SECOND-HAND GOODS AND THE GOODS NEW . HOWEVER , ALL THOSE SOLUTIONS CAN ONLY BE ACHIEVED BY LEGISLATIVE MEANS , THAT IS TO SAY BY THE AMENDMENT OF THE NATIONAL LAWS CONCERNING VAT PAYABLE ON IMPORTS ON THE BASIS OF A NEW COUNCIL DIRECTIVE .

15 IN THAT REGARD THE COURT WOULD POINT OUT THAT THE PRACTICAL APPLICATION OF THE COMMON SYSTEM OF VAT INTRODUCED BY THE SIXTH DIRECTIVE HAS GIVEN RISE IN CERTAIN INSTANCES TO DOUBLE TAXATION IN INTRA-COMMUNITY TRADE , AS IS ILLUSTRATED BY THE PRESENT CASE . INDEED , IN THE CASE OF THE SUPPLY OF GOODS BY ONE PRIVATE PERSON TO ANOTHER PRIVATE PERSON RESIDING IN ANOTHER MEMBER STATE , IF ARTICLES 2 AND 11 OF THE SIXTH DIRECTIVE WERE APPLIED WITHOUT TAKING ACCOUNT OF THE EFFECT WHICH THE PRINCIPLES SET FORTH IN ARTICLE 95 OF THE TREATY HAVE ON THE CHARGING OF VAT , TAX WOULD BE CHARGED AT THE FULL RATE ON THE IMPORTATION OF SUCH GOODS , IN SPITE OF THE FACT THAT THEY WERE STILL BURDENED WITH VAT PAID IN THE EXPORTING MEMBER STATE .

16 THE COURT HAS ALREADY STATED IN ITS RULING OF 5 MAY 1982 THAT , ALTHOUGH THE ESTABLISHMENT OF A SYSTEM OF COMPLETE COMPETITIVE NEUTRALITY INVOLVING FULL REMISSION OF TAX ON EXPORTATION IS A MATTER FOR THE COMMUNITY LEGISLATURE , UNTIL SUCH A SYSTEM HAS BEEN ESTABLISHED ARTICLE 95 OF THE TREATY PREVENTS AN IMPORTING MEMBER STATE FROM APPLYING ITS VAT RULES TO IMPORTED GOODS IN A MANNER CONTRARY TO THE PRINCIPLES EMBODIED IN THAT ARTICLE .

17 CONSEQUENTLY , PENDING THE ADOPTION OF A LEGISLATIVE SOLUTION , IN CHARGING VAT ON IMPORTS ACCOUNT MUST BE TAKEN OF THE EFFECT OF ARTICLE 95 OF THE TREATY . IT IS THEREFORE FOR THE COURT TO LAY DOWN GUIDELINES COMPATIBLE WITH ARTICLE 95 OF THE TREATY , CONSISTENT WITH THE GENERAL SCHEME OF THE SIXTH DIRECTIVE AND SUFFICIENTLY SIMPLE TO BE ABLE TO BE APPLIED IN A UNIFORM MANNER THROUGHOUT THE MEMBER STATES .

THE TAXABLE AMOUNT (FIRST QUESTION)

18 IN ITS OBSERVATIONS THE NETHERLANDS GOVERNMENT SUBMITS THAT ON IMPORTATION VAT IS PAYABLE ON THE VALUE OF THE GOODS AT THE TIME OF IMPORTATION , AND THAT THAT VALUE INCLUDES VAT AND ANY OTHER TAXES PREVIOUSLY PAID . IT ADDS THAT THE SAME RULES ARE APPLIED TO DOMESTIC TRANSACTIONS , SINCE TRANSACTIONS BETWEEN PRIVATE PERSONS AND TAXABLE PERSONS RELATING TO SECOND-HAND GOODS ARE SUBJECT TO VAT CALCULATED ON

THE BASIS OF THE PURCHASE PRICE INCLUDING ALL TAXES .

19 ACCORDING TO THE FRENCH GOVERNMENT , IT FOLLOWS FROM THE GENERAL RULES ON THE APPLICATION OF VAT THAT THE TAXABLE AMOUNT CAN ONLY BE A VALUE NET OF TAX . THE ONLY QUESTION REMAINING IS THUS WHETHER THE VAT PREVIOUSLY PAID IN ANOTHER MEMBER STATE MAY BE REGARDED BY THE TAX AUTHORITIES AS A TAX WITH WHICH THE GOODS ARE STILL BURDENED ; THAT QUESTION , HOWEVER , WAS ANSWERED IN THE AFFIRMATIVE IN THE RULING OF 5 MAY 1982 .

20 SCHUL AND THE COMMISSION TAKE THE VIEW THAT THE RULING WAS FOUNDED ON A COMPARISON OF THE POSITION OF GOODS IMPORTED BY A PRIVATE PERSON WITH THAT OF GOODS MANUFACTURED AND MARKETED IN THE IMPORTING MEMBER STATE AND THEN PURCHASED BY A PRIVATE PERSON . SUCH A COMPARISON LEADS TO THE CONCLUSION THAT THE TAXABLE AMOUNT IS THE SAME IN EACH CASE , NAMELY THE VALUE NET OF TAX .

21 IN THE RULING IN QUESTION THE COURT STATED THAT THE PROHIBITION LAID DOWN IN ARTICLE 95 WOULD NOT BE COMPLIED WITH IF IMPORTED PRODUCTS COULD BE SUBJECT TO THE VAT APPLICABLE TO SIMILAR DOMESTIC PRODUCTS WITHOUT ACCOUNT BEING TAKEN OF THE VAT WITH WHICH THOSE PRODUCTS WERE STILL BURDENED AT THE TIME OF THEIR IMPORTATION . IT FOLLOWS THAT THAT RESIDUAL VAT DOES NOT FORM PART OF THE TAXABLE AMOUNT FOR THE PURPOSES OF VAT PAYABLE ON IMPORTATION , SINCE THE TAXABLE AMOUNT FOR SIMILAR DOMESTIC PRODUCTS IS ALSO AN AMOUNT NET OF TAX .

22 AS THE NATIONAL COURT INDICATED IN PART (A) OF THE FIRST QUESTION , IT THEREFORE FOLLOWS THAT THE AMOUNT OF RESIDUAL TAX WITH WHICH THE PRODUCT IS BURDENED DOES NOT FORM PART OF THE TAXABLE AMOUNT FOR THE PURPOSES OF THE VAT PAYABLE ON IMPORTATION AND IS IN ADDITION DEDUCTED FROM THE VAT PAYABLE ON IMPORTATION .

23 THE ANSWER WHICH MUST BE GIVEN TO THE FIRST QUESTION IS THEREFORE THAT WHERE A MEMBER STATE CHARGES VAT ON THE IMPORTATION , FROM ANOTHER MEMBER STATE , OF GOODS SUPPLIED BY A NON-TAXABLE PERSON , BUT DOES NOT CHARGE VAT ON THE SUPPLY BY A PRIVATE PERSON OF SIMILAR GOODS WITHIN ITS OWN TERRITORY , THE VAT PAYABLE ON IMPORTATION MUST BE CALCULATED BY TAKING INTO ACCOUNT THE AMOUNT OF VAT PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT AT THE TIME OF IMPORTATION , IN SUCH A WAY THAT THAT AMOUNT IS NOT INCLUDED IN THE TAXABLE AMOUNT AND IS IN ADDITION DEDUCTED FROM THE VAT PAYABLE ON IMPORTATION .

THE RESIDUAL PART OF THE VAT WITH WHICH THE PRODUCT IS BURDENED (SECOND QUESTION)

24 THE SECOND QUESTION CONCERNS THE CALCULATION OF THE RESIDUAL PART OF THE VAT PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE GOODS AT THE TIME OF THEIR IMPORTATION .

25 IN ITS RULING OF 5 MAY 1982 THE COURT STATED THAT THE AMOUNT OF THAT RESIDUAL PART COULD NOT BE GREATER THAN THE AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION . FROM THAT STATEMENT THE GERECHTSHOF CONCLUDED THAT , WHERE THE GOODS INCREASED IN VALUE BETWEEN THE TIME WHEN THEY WERE LAST SUBJECT TO VAT IN THE EXPORTING

STATE AND THE TIME WHEN THEY WERE IMPORTED , THE RESIDUAL PART OF THE VAT STILL CONTAINED IN THE VALUE OF THE GOODS WAS EQUAL TO THE AMOUNT OF VAT ACTUALLY PAID IN THE EXPORTING STATE .

26 THE NETHERLANDS AND FRENCH GOVERNMENTS CONSIDER THAT IT IS NOT POSSIBLE TO REGARD THE ENTIRE AMOUNT OF THE VAT CHARGED IN THE EXPORTING STATE AS STILL CONTAINED IN THE VALUE OF THE GOODS , BECAUSE THEY HAVE SINCE BEEN USED . IN THEIR VIEW THE RESIDUAL PART REFERRED TO IN THE RULING OF 5 MAY 1982 IS THEREFORE SOLELY THAT PART OF THE VAT CHARGED IN THE EXPORTING STATE WHICH DOES NOT CORRESPOND TO THE USE OF THE PRODUCT IN THAT STATE .

27 FOR THAT REASON THE TWO GOVERNMENTS SUGGEST THAT A RULE SHOULD BE APPLIED WHEREBY THE TAX CHARGED IN THE EXPORTING STATE IS WRITTEN OFF . TO WRITE OFF THE TAX ON THE BASIS OF THE USEFUL LIFE OF THE IMPORTED GOODS WOULD BE TOO UNCERTAIN TO BE ACCEPTABLE , IN VIEW OF THE DIFFERENT PRACTICES IN THE VARIOUS MEMBER STATES AND SECTORS CONCERNED ; THEREFORE , AN APPROACH SHOULD BE ADOPTED SIMILAR TO THE SYSTEM LAID DOWN IN ARTICLE 20 (2) OF THE SIXTH DIRECTIVE FOR ADJUSTMENT OF DEDUCTIONS IN THE CASE OF CAPITAL GOODS WHICH HAVE BEEN SOLD AFTER BEING USED . SUCH A SYSTEM WOULD INVOLVE WRITING OFF THE GOODS OVER FIVE YEARS AND WOULD THUS MEAN THAT THE RESIDUAL PART OF THE VAT CONTAINED IN THE VALUE OF THE IMPORTED GOODS WOULD CORRESPOND TO THE VAT ACTUALLY CHARGED IN THE MEMBER STATE OF EXPORTATION LESS ONE-FIFTH PER CALENDAR YEAR OR PART OF A CALENDAR YEAR WHICH HAD ELAPSED SINCE THE DATE ON WHICH THE VAT WAS CHARGED .

28 THE COMMISSION IS OPPOSED TO THAT VIEW . IT ARGUES THAT THE METHOD PROPOSED AMOUNTS TO A STANDARD PROCEDURE FOR CALCULATING THE RESIDUAL PART OF THE TAX , WHEREAS THE SIXTH DIRECTIVE IS FOUNDED ON THE PRINCIPLE THAT THE VAT PAYABLE ON IMPORTATION IS BASED ON THE ACTUAL PRICE ON IMPORTATION . FURTHERMORE , THE CAPITAL GOODS COVERED BY ARTICLE 20 OF THE SIXTH DIRECTIVE ARE A SPECIAL CASE WHICH CANNOT BE EQUATED WITH SECOND-HAND GOODS IMPORTED BY A PRIVATE PERSON .

29 SCHUL CONSIDERS THAT THE AMORTIZATION OF THE TAX CHARGED IN THE COUNTRY OF EXPORTATION WILL , IN THE MAJORITY OF CASES , BE REFLECTED BY A REDUCTION IN THE VALUE OF THE GOODS . FOR THAT REASON THE RESIDUAL PART SHOULD IN ITS VIEW BE CALCULATED ON THE BASIS OF THE VAT RATE APPLIED IN THE MEMBER STATE OF EXPORTATION , PROVIDED THAT THE RESULTING AMOUNT DOES NOT EXCEED THE AMOUNT ACTUALLY PAID IN THAT STATE . WHERE THE VALUE OF THE GOODS HAS INCREASED , THE RESIDUAL AMOUNT WILL THUS CORRESPOND TO THE AMOUNT ACTUALLY PAID , AS THE GERECHTSHOF HAS ALREADY HELD IN ITS JUDGMENT OF 18 FEBRUARY 1983 .

30 EVENTUALLY , AT THE HEARING , THE COMMISSION ADOPTED THE SAME OPINION .

31 HAVING CONSIDERED THE VARIOUS ARGUMENTS , THE COURT SHARES THAT VIEW . ANY STANDARD METHOD , SUCH AS THAT SUGGESTED BY THE NETHERLANDS AND FRENCH GOVERNMENTS , WOULD HAVE THE DISADVANTAGE OF DIVERGING TOO FAR FROM THE RULES OF THE SIXTH DIRECTIVE TO BE DEVELOPED BY JUDICIAL INTERPRETATION . IRRESPECTIVE OF ITS INTRINSIC MERITS , THE METHOD ADOPTED BY THE GERECHTSHOF STAYS CLOSE TO THOSE RULES , WHILST BEING PRACTICABLE AND OBSERVING THE PROVISIONS OF ARTICLE 95 OF THE TREATY .

32 THE METHOD IS CONSISTENT WITH ARTICLE 95 OF THE TREATY AND THE PROVISIONS OF THE SIXTH DIRECTIVE , AS INTERPRETED IN THE COURT ' S RULING OF 5 MAY 1982 . IT CAN BE APPLIED BY THE TAX AUTHORITIES WITHOUT GIVING RISE TO SERIOUS PRACTICAL DIFFICULTIES SINCE , IN CASES IN WHICH THE VALUE OF THE GOODS HAS DECREASED , THE RESIDUAL PART OF THE TAX THAT IS STILL CONTAINED IN THAT VALUE AT THE TIME OF IMPORTATION IS CALCULATED BY REDUCING THE AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION BY A PERCENTAGE REPRESENTING THE PROPORTION BY WHICH THE GOODS HAVE DEPRECIATED , WHEREAS IN CASES IN WHICH THE VALUE OF THE GOODS HAS INCREASED , THAT RESIDUAL PART SIMPLY CORRESPONDS TO THE AMOUNT OF TAX ACTUALLY CHARGED .

33 IN THAT CONNECTION IT SHOULD BE REMEMBERED THAT , AS THE COURT HAS ALREADY STATED IN ITS RULING OF 5 MAY 1982 , THE BURDEN OF PROVING FACTS WHICH JUSTIFY THE TAKING INTO ACCOUNT OF THE TAX PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE GOODS ON IMPORTATION FALLS ON THE IMPORTER .

34 IT FOLLOWS FROM THE FOREGOING THAT THE AMOUNT OF VAT PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE GOODS AT THE TIME OF THEIR IMPORTATION IS EQUAL :

- IN CASES IN WHICH THE VALUE OF THE GOODS HAS DECREASED BETWEEN THE DATE ON WHICH VAT WAS LAST CHARGED IN THE MEMBER STATE OF EXPORTATION AND THE DATE OF IMPORTATION : TO THE AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION , LESS A PERCENTAGE REPRESENTING THE PROPORTION BY WHICH THE GOODS HAVE DEPRECIATED ;

- IN CASES IN WHICH THE VALUE OF THE GOODS HAS INCREASED OVER THAT SAME PERIOD : TO THE FULL AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION .

Decision on costs

COSTS

35 THE COSTS INCURRED BY THE NETHERLANDS AND FRENCH GOVERNMENTS AND BY THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS 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 (FOURTH CHAMBER),

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE HOGE RAAD DER NEDERLANDEN BY JUDGMENT OF 15 FEBRUARY 1984 , HEREBY RULES :

(1) WHERE A MEMBER STATE CHARGES VAT ON THE IMPORTATION , FROM ANOTHER MEMBER STATE , OF GOODS SUPPLIED BY A PRIVATE PERSON , BUT DOES NOT CHARGE VAT ON THE SUPPLY BY A PRIVATE PERSON OF SIMILAR GOODS WITHIN ITS OWN TERRITORY , THE VAT PAYABLE ON IMPORTATION MUST BE CALCULATED BY TAKING INTO ACCOUNT THE AMOUNT OF VAT PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE GOODS AT THE TIME OF IMPORTATION IN SUCH A WAY THAT THAT AMOUNT IS NOT INCLUDED IN THE TAXABLE AMOUNT AND IS IN ADDITION DEDUCTED FROM THE VAT PAYABLE ON IMPORTATION .

(2)THE AMOUNT OF VAT PAID IN THE MEMBER STATE OF EXPORTATION THAT IS STILL CONTAINED IN THE VALUE OF THE GOODS AT THE TIME OF IMPORTATION IS EQUAL :

IN CASES IN WHICH THE VALUE OF THE GOODS HAS DECREASED BETWEEN THE DATE ON WHICH VAT WAS LAST CHARGED IN THE MEMBER STATE OF EXPORTATION AND THE DATE OF IMPORTATION : TO THE AMOUNT OF VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION , LESS A PERCENTAGE REPRESENTING THE PROPORTION BY WHICH THE GOODS HAVE DEPRECIATED ;

IN CASES IN WHICH THE VALUE OF THE GOODS HAS INCREASED OVER THAT SAME PERIOD : TO THE FULL AMOUNT OF THE VAT ACTUALLY PAID IN THE MEMBER STATE OF EXPORTATION .