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Judgment of the Court (Fourth Chamber) of 27 November 1985. - SA Rousseau Wilmot v Caisse de compensation de l'Organisation autonome nationale de l'industrie et du commerce (Organic). - Reference for a preliminary ruling: Cour d'appel de Douai - France. - National levies based on turnover. - Case 295/84.

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Keywords

1 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - DUTIES OR CHARGES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES - CHARGE CALCULATED ON THE BASIS OF TOTAL ANNUAL TURNOVER AND COLLECTED FOR THE PURPOSE OF PROVIDING FINANCE FOR SOCIAL SECURITY SCHEMES

(COUNCIL DIRECTIVE 77/388 , ART . 33)

Summary

THE EXPRESSION ' DUTIES OR CHARGES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES ' IN ARTICLE 33 OF THE SIXTH DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES , WHICH PERMITS THE MEMBER STATES TO MAINTAIN OR INTRODUCE DUTIES OR CHARGES WHICH MAY NOT BE SO CHARACTERIZED , MUST BE INTERPRETED AS INCLUDING A CHARGE OF A NON-FISCAL NATURE WHICH IS LEVIED ON COMPANIES OR CERTAIN CATEGORIES OF COMPANIES TO PROVIDE FINANCE FOR SOCIAL SECURITY SCHEMES AND WHICH IS CALCULATED ON THE BASIS OF THE TOTAL ANNUAL TURNOVER OF THE COMPANIES CONCERNED .

Parties

IN CASE 295/84

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE COUR D ' APPEL (COURT OF APPEAL), DOUAI , FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN

ROUSSEAU WILMOT SA , CAUDRY ,

AND

CAISSE DE COMPENSATION DE L ' ORGANISATION AUTONOME NATIONALE DE L ' INDUSTRIE ET DU COMMERCE (COMPENSATION FUND OF THE NATIONAL INDEPENDENT ORGANIZATION FOR TRADE AND INDUSTRY) (ORGANIC), VALBONNE ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 33 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),

Grounds

1 BY A JUDGMENT OF 29 NOVEMBER 1984 , WHICH WAS RECEIVED AT THE COURT ON 10 DECEMBER 1984 , THE COUR D ' APPEL , DOUAI , REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION ON THE INTERPRETATION OF ARTICLE 33 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 .

2 THAT QUESTION AROSE IN PROCEEDINGS BETWEEN ROUSSEAU WILMOT SA , A COMPANY WHICH IS THE SUBJECT OF JUDICIAL COMPOSITION PROCEEDINGS , AND ITS RECEIVER , ON THE ONE HAND , AND THE CAISSE DE COMPENSATION DE L ' ORGANISATION AUTONOME NATIONALE DE L ' INDUSTRIE ET DU COMMERCE (HEREINAFTER REFERRED TO AS ' ORGANIC '), A BODY RESPONSIBLE FOR COLLECTING THE SOLIDARITY LEVY AND THE MUTUAL ASSISTANCE CHARGE , ON THE OTHER . ORGANIC FOUND THAT THE COMPANY WAS LIABLE TO PAY PART OF THOSE TWO

LEVIES FOR THE 1981 FINANCIAL YEAR AND THEIR FULL AMOUNT FOR THE 1982 FINANCIAL YEAR , BUT THE COMPANY AND ITS RECEIVER FILED A NOTICE OF OBJECTION TO ORGANIC ' S CLAIM . WHEN THE OBJECTION WAS DISMISSED AS UNFOUNDED BY THE TRIBUNAL DE COMMERCE (COMMERCIAL COURT), CAMBRAI , THE COMPANY AND ITS RECEIVER LODGED AN APPEAL .

3 BEFORE THE COUR D ' APPEL , ROUSSEAU WILMOT CLAIMED THAT THE SOLIDARITY LEVY WAS CALCULATED AT 0.1% OF TURNOVER , WHEREAS THE COMMUNITY RULES GOVERNING THE HARMONIZATION OF LAWS RELATING TO TURNOVER TAXES LIMITED THE POWERS OF THE MEMBER STATES TO INTRODUCE OR MAINTAIN SUCH TAXES . IN PARTICULAR , IT RELIED ON ARTICLE 33 OF THE SIXTH DIRECTIVE . ORGANIC OBJECTED THAT THE PURPOSE OF THE SOLIDARITY LEVY AND THE MUTUAL ASSISTANCE CHARGE WAS TO PROVIDE ADDITIONAL FUNDS FOR THE OLD-AGE AND SICKNESS BENEFIT SCHEMES FOR TRADERS AND SELF-EMPLOYED CRAFTSMEN . THUS , IN ITS VIEW , THE LEVIES CONCERNED WERE IN THE NATURE OF SOCIAL SECURITY CONTRIBUTIONS WHEREAS ARTICLE 33 OF THE SIXTH DIRECTIVE RELATED PURELY TO FISCAL MATTERS .

4 IN THOSE CIRCUMSTANCES , THE NATIONAL COURT ASKED THE COURT OF JUSTICE TO GIVE A PRELIMINARY RULING ON THE QUESTION WHETHER ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE INTERPRETED AS MAKING INAPPLICABLE LEGISLATION OF A MEMBER STATE INTRODUCING A ' SOLIDARITY LEVY AND MUTUAL ASSISTANCE CHARGE ' ON UNDERTAKINGS IN THE PRIVATE AND PUBLIC SECTORS , CALCULATED ON THE BASIS OF THEIR TOTAL ANNUAL TURNOVER BEFORE TAX , THE PROCEEDS OF WHICH ARE USED IN FINANCING THE SICKNESS AND MATERNITY BENEFIT SCHEME FOR SELF-EMPLOYED PERSONS IN SECTORS OTHER THAN AGRICULTURE AND THE OLD-AGE PENSION SCHEMES FOR TRADERS AND SELF-EMPLOYED CRAFTSMEN .

5 OBSERVATIONS WERE SUBMITTED BY ORGANIC , THE FRENCH GOVERNMENT AND THE COMMISSION . ROUSSEAU WILMOT WAS REPRESENTED AT THE HEARING .

6 IT CAN BE SEEN FROM THE DOCUMENTS BEFORE THE COURT THAT THE SOLIDARITY LEVY WAS INTRODUCED BY ORDER 67/828 (JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE OF 28 SEPTEMBER 1967) TO PROVIDE FINANCE FOR SICKNESS AND MATERNITY BENEFIT SCHEMES AND OLD-AGE PENSION SCHEMES FOR SELF-EMPLOYED PERSONS IN SECTORS OTHER THAN AGRICULTURE . SINCE THE ENTRY INTO FORCE OF LAW NO 70-L3 (JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE OF 6 JANUARY 1970), THE LEVY IS CHARGEABLE ON THE VARIOUS CLASSES OF COMMERCIAL COMPANIES , SUBJECT TO CERTAIN EXEMPTIONS . IT IS ANNUAL AND ITS RATE IS FIXED BY DECREE UP TO A MAXIMUM OF 0.1% OF THE COMPANY ' S TURNOVER . IT IS NOT LEVIED WHEN TURNOVER IS LESS THAN FF 500 000 . DISPUTES RELATING TO THE LEVY ARE MATTERS FOR THE COURTS HAVING JURISDICTION UNDER THE CODE DE LA SECURITE SOCIALE (SOCIAL SECURITY CODE). PAYMENT OF THE LEVY IS SECURED BY A CHARGE ON THE DEBTOR ' S MOVEABLE AND IMMOVEABLE PROPERTY , SUBJECT TO THE CONDITIONS LAID DOWN BY THE CODE DE LA SECURITE SOCIALE .

7 THE MUTUAL ASSISTANCE CHARGE WAS INTRODUCED BY LAW NO 72-657 (JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE OF 14 JULY 1972) IN ORDER TO FINANCE SUPPORT FOR CERTAIN CLASSES OF ELDERLY TRADERS AND CRAFTSMEN . THAT CHARGE , WHICH REPRESENTED A SPECIFIC PORTION OF THE SOLIDARITY LEVY , WAS ABOLISHED AS FROM 31 DECEMBER 1984 BY LAW NO 84-1208 (JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE OF 31 DECEMBER 1984).

8 ARTICLE 33 OF THE SIXTH DIRECTIVE READS AS FOLLOWS :

' WITHOUT PREJUDICE TO OTHER COMMUNITY PROVISIONS , THE PROVISIONS OF THIS DIRECTIVE SHALL NOT PREVENT A MEMBER STATE FROM MAINTAINING OR INTRODUCING TAXES ON INSURANCE CONTRACTS , TAXES ON BETTING AND GAMBLING , EXCISE DUTIES , STAMP DUTIES AND , MORE GENERALLY , ANY TAXES , DUTIES OR CHARGES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES . '

9 THE REPLY TO BE GIVEN TO THE COUR D ' APPEL THEREFORE DEPENDS ON THE QUESTION WHETHER LEVIES , SUCH AS THE SOLIDARITY LEVY AND THE MUTUAL ASSISTANCE CHARGE , THE RATE OF WHICH IS BASED ON COMPANIES ' TURNOVER , CAN BE CHARACTERIZED AS TURNOVER TAXES WITHIN THE MEANING OF THE SIXTH DIRECTIVE .

10 IN THAT REGARD , ROUSSEAU WILMOT CLAIMS THAT THE TWO FRENCH LEVIES IN QUESTION ARE MANIFESTLY ' DUTIES OR CHARGES ' WITHIN THE MEANING OF THE AFOREMENTIONED ARTICLE 33 AND THAT THEY ARE BASED ON TURNOVER . THE PROVISION MAKES IT CLEAR THAT SUCH TAXES MAY NO LONGER BE INTRODUCED OR MAINTAINED BY A MEMBER STATE . IN ITS VIEW , THE QUESTION WHETHER THE CHARGES IN QUESTION ARE FISCAL OR ARE MORE ACCURATELY DESCRIBED AS SOCIAL SECURITY CONTRIBUTIONS IS IRRELEVANT SINCE THEY CONSTITUTE IN ANY EVENT COMPULSORY LEVIES IN THE NATURE OF TURNOVER TAXES .

11 ORGANIC EMPHASIZES FIRST THE NON-FISCAL CHARACTER OF THE SOLIDARITY LEVY AND THEN CONTENDS THAT THE PRINCIPAL CHARACTERISTICS OF TURNOVER TAXES , AS DEFINED IN THE HARMONIZING DIRECTIVES AND THE CASE-LAW OF THE COURT , ARE NOT PRESENT IN A CHARGE SUCH AS THE SOLIDARITY LEVY . A TURNOVER TAX WITHIN THE MEANING OF THE COMMUNITY DIRECTIVES IS A GENERAL TAX LEVIED ON A TRANSACTION . THE CHARGEABLE EVENT IS THE SALE OF GOODS OR THE PROVISION OF A SERVICE . THE TAXABLE AMOUNT IS THE PRICE OF THE TRANSACTION . THE TAX IS DIRECTLY INCLUDED IN THE PRICE OF THE GOODS OR THE SERVICE .

12 THE FRENCH GOVERNMENT PUTS FORWARD SIMILAR ARGUMENTS . UNLIKE TURNOVER TAXES , THE SOLIDARITY LEVY IS NOT A TAX ON CONSUMPTION WHICH IS PROPORTIONAL TO THE PRICE OF GOODS OR SERVICES , BUT A LEVY CHARGED ANNUALLY ON THE PRE-TAX TURNOVER FOR THE PRECEDING YEAR .

13 ACCORDING TO THE COMMISSION , ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE INTERPRETED IN THE CONTEXT OF THE PROCESS OF HARMONIZING TURNOVER TAXES INITIATED BY THE FIRST DIRECTIVE ON THAT SUBJECT , ADOPTED IN 1967 (DIRECTIVE 67/227/EEC , OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 14) . IT IS CLEAR FROM THE PREAMBLE TO THE FIRST DIRECTIVE THAT THE PURPOSE OF THAT HARMONIZATION IS TO BRING ABOUT THE ABOLITION OF CUMULATIVE MULTI-STAGE TAXES AND THE ADOPTION BY ALL MEMBER STATES OF A COMMON SYSTEM OF VALUE-ADDED TAX . CONSEQUENTLY , THE TURNOVER TAXES WHICH ARE THE SUBJECT OF THE HARMONIZING DIRECTIVES ARE TAXES LEVIED ON THE MOVEMENT OF GOODS AND SERVICES . THEY DO NOT INCLUDE A SOCIAL SECURITY LEVY WHICH IS NOT DIRECTLY CHARGEABLE ON TRANSACTIONS .

14 IT MUST FIRST BE OBSERVED THAT , AS THE COMMISSION HAS RIGHTLY POINTED OUT , THE SCOPE OF ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE DETERMINED IN THE LIGHT OF THE ROLE OF THAT PROVISION IN THE HARMONIZED SYSTEM OF TURNOVER TAX , WHICH TAKES THE FORM OF A COMMON SYSTEM OF VALUE-ADDED

TAX .

15 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 COSTS OF THE VARIOUS PRICE COMPONENTS . THE PROCEDURE FOR DEDUCTION IS SO ARRANGED BY ARTICLE 17 (2) OF THE SIXTH DIRECTIVE THAT 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 .

16 IN LEAVING THE MEMBER STATES FREE TO MAINTAIN OR INTRODUCE CERTAIN INDIRECT TAXES SUCH AS EXCISE DUTIES ON THE CONDITION THAT THEY ARE NOT TAXES WHICH CAN BE ' CHARACTERIZED AS TURNOVER TAXES ' , ARTICLE 33 OF THE SIXTH DIRECTIVE SEEKS TO PREVENT THE FUNCTIONING OF THE COMMON SYSTEM OF VALUE-ADDED TAX FROM BEING COMPROMISED BY FISCAL MEASURES OF A MEMBER STATE LEVIED ON THE MOVEMENT OF GOODS AND SERVICES AND CHARGED ON COMMERCIAL TRANSACTIONS IN A WAY COMPARABLE TO VALUE-ADDED TAX . THE PURPOSE OF THAT PROVISION CANNOT THEREFORE BE TO PROHIBIT THE MEMBER STATES FROM MAINTAINING OR INTRODUCING DUTIES OR CHARGES WHICH ARE NOT FISCAL BUT HAVE BEEN INTRODUCED SPECIFICALLY IN ORDER TO FINANCE SOCIAL FUNDS AND WHICH ARE BASED ON THE ACTIVITY OF UNDERTAKINGS OR CERTAIN CATEGORIES OF UNDERTAKINGS AND CALCULATED ON THE BASIS OF THE TOTAL ANNUAL TURNOVER WITHOUT DIRECTLY AFFECTING THE PRICE OF GOODS OR SERVICES .

17 THE REPLY TO THE QUESTION REFERRED TO THE COURT MUST THEREFORE BE THAT THE EXPRESSION ' DUTIES OR CHARGES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES ' IN ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE INTERPRETED AS INCLUDING A CHARGE OF A NON-FISCAL NATURE WHICH IS LEVIED ON COMPANIES OR CERTAIN CATEGORIES OF COMPANIES TO PROVIDE FINANCE FOR SOCIAL SECURITY SCHEMES AND WHICH IS CALCULATED ON THE BASIS OF THE TOTAL ANNUAL TURNOVER OF THE COMPANIES CONCERNED .

Decision on costs

COSTS

18 THE COSTS INCURRED BY THE FRENCH REPUBLIC 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 PROCEEDINGS ARE CONCERNED , IN THE NATURE OF A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT , THE DECISION AS TO COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT (FOURTH CHAMBER)

IN ANSWER TO THE QUESTION REFERRED TO IT BY THE COUR D ' APPEL , DOUAI , BY ORDER OF 29 NOVEMBER 1984 , HEREBY RULES :

THE EXPRESSION ' DUTIES OR CHARGES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES ' IN ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE INTERPRETED AS INCLUDING A CHARGE OF A NON-FISCAL NATURE WHICH IS LEVIED ON COMPANIES OR CERTAIN CATEGORIES OF COMPANIES TO PROVIDE FINANCE FOR SOCIAL SECURITY SCHEMES AND WHICH IS CALCULATED ON THE BASIS OF THE TOTAL ANNUAL TURNOVER OF THE COMPANIES CONCERNED .