

## 61985J0353

Judgment of the Court of 23 February 1988. - Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. - Value added tax - Goods supplied in the exercise of a medical or paramedical profession. - Case 353/85.

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### Keywords

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*TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS PROVIDED FOR BY THE SIXTH DIRECTIVE - EXEMPTION IN RESPECT OF THE PROVISION OF MEDICAL CARE IN THE EXERCISE OF THE MEDICAL AND PARAMEDICAL PROFESSIONS - SUPPLY OF GOODS DISSOCIABLE FROM THE SERVICE - TAXABLE NATURE*

*( COUNCIL DIRECTIVE 77/388/EEC, ART . 13 A ( 1 ) ( C ) )*

### Summary

*ARTICLE 13 A ( 1 ) ( C ) OF DIRECTIVE 77/388, RELATING TO THE EXEMPTION FROM VALUE-ADDED TAX OF THE PROVISION OF MEDICAL CARE IN THE EXERCISE OF THE MEDICAL AND*

*PARAMEDICAL PROFESSIONS, MUST BE INTERPRETED AS MEANING THAT THE EXEMPTION FOR WHICH IT PROVIDES DOES NOT COVER, WITHOUT PREJUDICE TO MINOR PROVISIONS OF GOODS WHICH ARE INDISSOCIABLE FROM THE SERVICE PROVIDED, THE SUPPLY OF MEDICINES AND OTHER GOODS, SUCH AS CORRECTIVE SPECTACLES PRESCRIBED BY A DOCTOR OR BY OTHER AUTHORIZED PERSONS; THE SUPPLY OF MEDICINES AND OTHER GOODS IS PHYSICALLY AND ECONOMICALLY DISSOCIABLE FROM THE PROVISION OF THE SERVICE .*

# Parties

IN CASE 353/85

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 G . KREMLIS, JEAN MONNET BUILDING, KIRCHBERG,

APPLICANT,

V

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, REPRESENTED BY S . J . HAY, TREASURY SOLICITOR, ACTING AS AGENT, ASSISTED BY DAVID VAUGHAN Q . C ., WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE BRITISH EMBASSY, 28 BOULEVARD ROYAL,

DEFENDANT,

APPLICATION FOR A DECLARATION THAT, BY EXEMPTING FROM VALUE-ADDED TAX THE SUPPLY OF CERTAIN GOODS PROVIDED IN CONNECTION WITH THE EXERCISE OF THE MEDICAL AND PARAMEDICAL PROFESSIONS, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 13 A ( 1 ) ( C ) 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 ( 77/388/EEC OFFICIAL JOURNAL 1977, L 145, P . 1 ),

THE COURT,

COMPOSED OF : LORD MACKENZIE STUART, PRESIDENT, G . BOSCO, O . DUE AND J . C . MOITINHO DE ALMEIDA ( PRESIDENTS OF CHAMBERS ), U . EVERLING, K . BAHLMANN, R . JOLIET, T . F . O' HIGGINS AND F . SCHOCKWEILER, JUDGES,

ADVOCATE GENERAL : G . F . MANCINI

REGISTRAR : D . LOUTERMAN, ADMINISTRATOR

HAVING REGARD TO THE REPORT FOR THE HEARING AND FURTHER TO THE HEARING ON 8 APRIL 1987,

AFTER HEARING THE OPINION OF THE ADVOCATE GENERAL DELIVERED AT THE SITTING ON 7 JULY 1987,

GIVES THE FOLLOWING

JUDGMENT

## Grounds

1 BY APPLICATION LODGED AT THE COURT REGISTRY ON 19 NOVEMBER 1985, THE COMMISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT, BY EXEMPTING SUPPLIES OF

GOODS, PURSUANT TO THE PROVISIONS OF THE VALUE-ADDED TAX ACT 1983, SCHEDULE 6, GROUP 7 ( HEALTH ), CONTRARY TO THE PROVISIONS OF ARTICLE 13 A ( 1 ) ( C ) OF DIRECTIVE 77/388/EEC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND HAS FAILED TO FULFIL THE OBLIGATIONS INCUMBENT UPON IT PURSUANT TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY .

2 ARTICLE 13 A ( 1 ) OF 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 ( HEREINAFTER REFERRED TO AS "THE SIXTH DIRECTIVE ") PROVIDES AS FOLLOWS :

"WITHOUT PREJUDICE TO OTHER COMMUNITY PROVISIONS, MEMBER STATES SHALL EXEMPT THE FOLLOWING UNDER CONDITIONS WHICH THEY SHALL LAY DOWN FOR THE PURPOSE OF ENSURING THE CORRECT AND STRAIGHTFORWARD APPLICATION OF SUCH EXEMPTIONS AND OF PREVENTING ANY POSSIBLE EVASION, AVOIDANCE OR ABUSE :

( A ) ...

( B ) HOSPITAL AND MEDICAL CARE AND CLOSELY RELATED ACTIVITIES UNDERTAKEN BY BODIES GOVERNED BY PUBLIC LAW OR, UNDER SOCIAL CONDITIONS COMPARABLE TO THOSE APPLICABLE TO BODIES GOVERNED BY PUBLIC LAW, BY HOSPITALS, CENTRES FOR MEDICAL TREATMENT OR DIAGNOSIS AND OTHER DULY RECOGNIZED ESTABLISHMENTS OF A SIMILAR NATURE;

( C ) THE PROVISION OF MEDICAL CARE IN THE EXERCISE OF THE MEDICAL AND PARAMEDICAL PROFESSIONS AS DEFINED BY THE MEMBER STATE CONCERNED;

( D ) SUPPLIES OF HUMAN ORGANS, BLOOD AND MILK;

( E ) SERVICES SUPPLIED BY DENTAL TECHNICIANS IN THEIR PROFESSIONAL CAPACITY AND DENTAL PROSTHESES SUPPLIED BY DENTISTS AND DENTAL TECHNICIANS;

..."

3 THE UNITED KINGDOM TRANSPOSED THAT DIRECTIVE INTO NATIONAL LAW BY MEANS OF THE VALUE-ADDED TAX ACT 1983 WHICH PROVIDES, INTER ALIA, FOR THE EXEMPTION OF CERTAIN TRANSACTIONS FROM VALUE-ADDED TAX . GROUP 7 ( HEALTH ) OF SCHEDULE 6 TO THE ACT EXTENDS THE EXEMPTION TO THE FOLLOWING TRANSACTIONS :

"1 . THE SUPPLY OF SERVICES AND, IN CONNECTION WITH IT, THE SUPPLY OF GOODS, BY A PERSON REGISTERED OR ENROLLED IN ANY OF THE FOLLOWING :

( A ) THE REGISTER OF MEDICAL PRACTITIONERS OR THE REGISTER OF MEDICAL PRACTITIONERS WITH LIMITED REGISTRATION;

( B ) THE DENTISTS' REGISTER;

( C ) EITHER OF THE REGISTERS OF OPHTHALMIC OPTICIANS OR THE REGISTER OF DISPENSING OPTICIANS KEPT UNDER THE OPTICIANS ACT 1958 OR EITHER OF THE LISTS KEPT UNDER SECTION 4 OF THAT ACT OF BODIES CORPORATE CARRYING ON BUSINESS AS OPHTHALMIC OPTICIANS OR AS DISPENSING OPTICIANS;

( D ) ANY REGISTER KEPT UNDER THE PROFESSIONS SUPPLEMENTARY TO MEDICINE ACT 1960;

( E ) THE REGISTER OF QUALIFIED NURSES, MIDWIVES AND HEALTH VISITORS KEPT UNDER SECTION 10 OF THE NURSES, MIDWIVES AND HEALTH VISITORS ACT 1979;

( F ) ANY ROLL OF ANCILLARY DENTAL WORKERS ESTABLISHED UNDER SECTION 41 OF THE DENTISTS ACT 1957;

( G ) THE REGISTER OF DISPENSERS OF HEARING AIDS OR THE REGISTER OF PERSONS EMPLOYING SUCH DISPENSERS MAINTAINED UNDER SECTION 2 OF THE HEARING AID COUNCIL ACT 1968 ."

4 PURSUANT TO THAT PROVISION, THE SUPPLY OF GOODS BY MEMBERS OF THE MEDICAL AND PARAMEDICAL PROFESSIONS IS EXEMPT FROM VALUE-ADDED TAX WHEN THE GOODS ARE SUPPLIED IN CONNECTION WITH THE PROVISION OF SERVICES . THAT APPLIES IN PARTICULAR TO THE SUPPLY OF CORRECTIVE SPECTACLES BY REGISTERED OPTICIANS .

5 TAKING THE VIEW THAT, BY EXEMPTING THOSE SUPPLIES OF GOODS FROM THE IMPOSITION OF VALUE-ADDED TAX, THE UNITED KINGDOM HAD INFRINGED ARTICLE 13 A ( 1 ) ( C ) OF THE SIXTH DIRECTIVE, THE COMMISSION, BY A LETTER OF 3 AUGUST 1982, GAVE THE UNITED KINGDOM FORMAL NOTICE PURSUANT TO THE FIRST PARAGRAPH OF ARTICLE 169 OF THE EEC TREATY TO SUBMIT ITS OBSERVATIONS .

6 AS THE UNITED KINGDOM REFUSED TO ACKNOWLEDGE THAT IT WAS IN BREACH OF ITS OBLIGATIONS, THE COMMISSION SENT IT A REASONED OPINION ON 14 JUNE 1984 PURSUANT TO THE FIRST PARAGRAPH OF ARTICLE 169 OF THE EEC TREATY . THE UNITED KINGDOM WAS REQUESTED TO COMPLY WITH THE REASONED OPINION WITHIN TWO MONTHS .

7 BY A LETTER OF 8 OCTOBER 1984 THE UNITED KINGDOM MAINTAINED ITS POSITION . THE COMMISSION THEREFORE BROUGHT THE PRESENT ACTION .

8 REFERENCE IS MADE TO THE REPORT FOR THE HEARING FOR A FULLER ACCOUNT OF THE FACTS OF THE CASE, THE COURSE OF THE PROCEDURE AND THE SUBMISSIONS AND ARGUMENTS OF THE PARTIES, WHICH ARE MENTIONED OR DISCUSSED HEREINAFTER ONLY IN SO FAR AS IT IS NECESSARY FOR THE REASONING OF THE COURT .

#### ADMISSIBILITY OF THE APPLICATION

9 THE UNITED KINGDOM SUBMITS IN LIMINE THAT THE COMMISSION' S APPLICATION IS INADMISSIBLE .

10 FIRST, THE COMMISSION HAS FAILED TO DEFINE PRECISELY THE EXTENT OF ITS COMPLAINTS AGAINST THE UNITED KINGDOM . THE COMMISSION HAS NOT CLEARLY INDICATED WHETHER IT WAS REFERRING TO ALL THE CATEGORIES OF TRANSACTIONS COVERED BY GROUP 7 ( HEALTH ) OF SCHEDULE 6 TO THE VALUE-ADDED TAX ACT 1983, OR TO SOME OF THEM, OR ONLY TO THE SUPPLY OF CORRECTIVE SPECTACLES BY OPTICIANS IN THE EXERCISE OF THEIR PROFESSION .

11 SECONDLY, THE COMMISSION HAS CONTRADICTED ITSELF BY MAINTAINING, IN ITS FORMAL NOTICE, THAT NO SUPPLY OF GOODS MAY BE EXEMPTED FROM VALUE-ADDED TAX UNDER ARTICLE 13 A ( 1 ) ( C ) OF THE SIXTH DIRECTIVE, WHILST ACCEPTING, IN ITS

REASONED OPINION, THAT CERTAIN SUPPLIES OF GOODS MAY BE REGARDED AS FALLING WITHIN THE SCOPE OF THE TERM "MEDICAL CARE" USED IN THE AFORESAID PROVISION .

12 THE UNITED KINGDOM WAS THEREFORE UNABLE TO ASCERTAIN THE TRUE SCOPE OF THE COMMISSION' S COMPLAINTS AND THEREFORE HAD NO OPPORTUNITY TO ANSWER THEM FROM THE OUTSET .

13 THE COMMISSION MAINTAINS THAT THE CONTENTS OF THE FORMAL NOTICE AND THE REASONED OPINION MAKE IT QUITE CLEAR THAT ITS COMPLAINT CONCERNED THE INFRINGEMENT OF ARTICLE 13 A ( 1 ) ( C ) OF THE SIXTH DIRECTIVE . MOREOVER, THE COMMISSION HAS ALWAYS BEEN AT PAINS TO STRESS THAT THE SUPPLY OF CORRECTIVE SPECTACLES WAS MENTIONED MERELY AS AN EXAMPLE OF A SUPPLY OF GOODS WHICH COULD NOT, IN ITS OPINION, BE EXEMPTED FROM VALUE-ADDED TAX PURSUANT TO ARTICLE 13 A ( 1 ) ( C ). IT FOLLOWS THAT THE COMMISSION' S COMPLAINT IS NOT LIMITED TO THE SUPPLY OF CORRECTIVE SPECTACLES BY OPTICIANS IN THE EXERCISE OF THEIR PROFESSION .

14 THE COMMISSION ALSO DENIES THAT ITS ARGUMENTS ARE CONTRADICTORY . ALTHOUGH IT POINTED OUT IN ITS REASONED OPINION THAT EXEMPTION FROM VALUE-ADDED TAX MAY ALSO COVER MINOR PROVISIONS OF GOODS WHICH ARE INDISSOCIABLE FROM THE SERVICE AND, IN A FREE MARKET SYSTEM OF MEDICINE, ARE NORMALLY INCLUDED IN THE PRICE OF THE SERVICE, THE REASON IS THAT IT HAS TAKEN THE OBSERVATIONS OF THE UNITED KINGDOM INTO ACCOUNT AND HAS DEFINED THE SCOPE OF ITS COMPLAINTS ACCORDINGLY .

15 IN VIEW OF THAT ISSUE, IT IS NECESSARY TO CONSIDER FIRST OF ALL WHETHER, DURING THE PRE-LITIGATION PROCEDURE, THE COMMISSION GAVE THE UNITED KINGDOM AN OPPORTUNITY TO ASCERTAIN THE ESSENTIAL POINTS OF THE BREACH OF OBLIGATIONS WITH WHICH IT WAS CHARGED .

16 IT IS CLEAR FROM THE DOCUMENTS BEFORE THE COURT THAT, BOTH IN ITS FORMAL NOTICE AND IN ITS REASONED OPINION, THE COMMISSION MADE KNOWN THE ESSENTIAL POINTS OF THE DISPUTE BY INDICATING THAT THE ALLEGED BREACH OF OBLIGATIONS CONCERNED THE INFRINGEMENT OF ARTICLE 13 A ( 1 ) ( C ) OF THE SIXTH DIRECTIVE INASMUCH AS THE VALUE-ADDED TAX ACT 1983 EXEMPTS FROM VALUE-ADDED TAX, CONTRARY TO THE AFORESAID PROVISION, GOODS WHICH, IN CONNECTION WITH THE PROVISION OF MEDICAL AND PARAMEDICAL SERVICES, ARE NOT NECESSARILY CONNECTED WITH "MEDICAL CARE " . EVEN THOUGH THE COMMISSION SPECIFICALLY CHALLENGED THE EXEMPTION GRANTED IN RESPECT OF THE SUPPLY OF CORRECTIVE SPECTACLES, IT IS CLEAR THAT CORRECTIVE SPECTACLES WERE MENTIONED BY WAY OF EXAMPLE IN ORDER TO IDENTIFY THE CATEGORY OF GOODS WHICH ARE SUPPLIED BY MEMBERS OF THE MEDICAL AND PARAMEDICAL PROFESSIONS IN CONNECTION WITH THE SERVICES PROVIDED BY THOSE PROFESSIONS .

17 MOREOVER, IT IS CLEAR FROM THE REPLIES GIVEN BY THE UNITED KINGDOM TO THE FORMAL NOTICE AND THE REASONED OPINION THAT THE UNITED KINGDOM WAS AWARE OF THE NATURE OF THE COMMISSION' S COMPLAINTS . INDEED, IN ITS REPLIES, THE UNITED KINGDOM SUMMARIZED THE COMMISSION' S COMPLAINTS AND REFUTED THEM POINT BY POINT .

18 THE NEXT POINT TO CONSIDER IS THE ALLEGED CONTRADICTION BETWEEN THE COMMISSION' S INITIAL POSITION AND THE POSITION WHICH IT ADOPTED IN ITS REASONED OPINION .

19 IN THAT REGARD, IT MUST BE POINTED OUT THAT, UNDER THE PROCEDURE BASED ON ARTICLE 169 OF THE EEC TREATY, THE FORMAL NOTICE IS INTENDED TO INFORM THE STATE TO WHICH IT IS ADDRESSED OF THE ESSENTIAL POINTS OF THE BREACH OF OBLIGATIONS WITH WHICH IT IS CHARGED AND TO REQUEST THAT STATE TO SUBMIT ITS OBSERVATIONS . IF THE DISPUTE IS NOT SETTLED IN THAT INITIAL STAGE OF THE PROCEDURE, THE COMMISSION, HAVING REGARD TO THE OBSERVATIONS MADE BY THE STATE CONCERNED, ISSUES A REASONED OPINION WHICH DEFINES CONCLUSIVELY THE SUBJECT-MATTER OF THE DISPUTE ( SEE THE JUDGMENT OF 27 MAY 1981 IN JOINED CASES 142 AND 143/80 AMMINISTRAZIONE DELLE FINANZE DELLO STATO V ESSEVI SPA AND CARLO SALENGO (( 1981 )) ECR 1413, OF 15 DECEMBER 1982 IN CASE 211/81 COMMISSION V DENMARK (( 1982 )) ECR 4547, OF 31 JANUARY 1984 IN CASE 74/82 COMMISSION V IRELAND (( 1984 )) ECR 317, AND OF 18 MARCH 1986 IN CASE 85/85 COMMISSION V BELGIUM (( 1986 )) ECR 1149 ). THE FACT THAT IN THIS CASE THE COMMISSION LIMITED THE SCOPE OF ITS COMPLAINTS BY POINTING OUT, AFTER THE UNITED KINGDOM HAD SUBMITTED ITS OBSERVATIONS, THAT THE TERM "MEDICAL CARE" IN ARTICLE 13 A ( 1 ) ( C ) OF THE DIRECTIVE INCLUDES MINOR PROVISIONS OF GOODS WHICH ARE INDISSOCIABLE FROM THE SERVICE IS NOT AT VARIANCE WITH THE COMPLAINT CONCERNING THE EXEMPTION FROM VALUE-ADDED TAX OF GOODS WHICH ARE NOT NECESSARILY CONNECTED WITH THE PROVISION OF A MEDICAL OR PARAMEDICAL SERVICE .

20 THE OBJECTION OF INADMISSIBILITY RAISED BY THE UNITED KINGDOM MUST THEREFORE BE REJECTED .

#### SUBSTANCE

21 THE PARTIES AGREE THAT THE ESSENCE OF THE PROBLEM IN THIS CASE IS THE INTERPRETATION OF THE TERM "MEDICAL CARE" IN THE CONTEXT OF ARTICLE 13 A ( 1 ) OF THE SIXTH DIRECTIVE .

22 THE UNITED KINGDOM MAINTAINS THAT THE EXEMPTION FOR "MEDICAL CARE" PROVIDED IN ARTICLE 13 A ( 1 ) ( C ) COVERS GOODS SUPPLIED IN CONNECTION WITH THE SERVICES PROVIDED BY CERTAIN RECOGNIZED MEDICAL AND PARAMEDICAL PROFESSIONS . IT THEREFORE TAKES THE VIEW THAT EVEN THE SUPPLY OF CORRECTIVE SPECTACLES, EITHER BY AN OPHTHALMIC OPTICIAN OR BY A DISPENSING OPTICIAN, IS CLOSELY CONNECTED WITH THE SERVICE PROVIDED .

23 IN THAT REGARD, THE UNITED KINGDOM DRAWS A PARALLEL BETWEEN INDENTS ( B ) AND ( C ) OF ARTICLE 13 A ( 1 ). SINCE INDENT ( B ) GRANTS EXEMPTION IN RESPECT OF BOTH "MEDICAL CARE" OF A PATIENT IN HOSPITAL AND "CLOSELY RELATED ACTIVITIES", THE UNITED KINGDOM DRAWS THE CONCLUSION THAT THE SUPPLY OF GOODS IN HOSPITALS IS ALSO COVERED BY THE EXEMPTION . LOGICALLY, THE SAME TREATMENT SHOULD APPLY TO GOODS SUPPLIED IN CONNECTION WITH THE "MEDICAL CARE" REFERRED TO IN ARTICLE 13 A ( 1 ) ( C ) (" SOINS A LA PERSONNE" IN THE FRENCH VERSION ).

24 IN ITS VIEW, THAT CONCLUSION IS ALSO DICTATED BY THE WORDING OF INDENTS ( B ) AND ( C ) OF THE AFORESAID PROVISION, WHICH, IN THE ENGLISH VERSION OF THE DIRECTIVE, BOTH USE THE TERM "MEDICAL CARE", WHILST IN THE FRENCH VERSION THE TERM "SOINS MEDICAUX" IS USED IN INDENT ( B ) AND THE TERM "SOINS A LA

PERSONNE" IN INDENT ( C ). THE UNITED KINGDOM MAINTAINS THAT, AS THE SAME CONCEPT IS INVOLVED IN BOTH CASES, IT FOLLOWS THAT INDENTS ( B ) AND ( C ) MUST BE INTERPRETED IN THE SAME MANNER, SO THAT THE EXEMPTION GRANTED BY THE FIRST OF THOSE PROVISIONS IN RESPECT OF BOTH THE PROVISION OF MEDICAL SERVICES AND THE SUPPLY OF GOODS MUST ALSO BE GRANTED IN RESPECT OF GOODS SUPPLIED IN CONNECTION WITH THE MEDICAL OR PARAMEDICAL SERVICES REFERRED TO IN INDENT ( C ).

25 THE COMMISSION MAINTAINS THAT THE TERM "SOINS A LA PERSONNE" MUST BE INTERPRETED AS BEING LIMITED TO THE PROVISION OF SERVICES, WITHOUT PREJUDICE TO MINOR PROVISIONS OF GOODS WHICH ARE INDISSOCIABLE FROM THE SERVICES PROVIDED .

26 THE COMMISSION ARGUES, IN THE FIRST PLACE, THAT THE EXEMPTIONS UNDER ARTICLE 13 A ( 1 ), WHICH CONSTITUTE AN EXCEPTION TO THE PRINCIPLE THAT ALL SUPPLIES OF GOODS AND SERVICES ARE TAXABLE, MUST BE INTERPRETED RESTRICTIVELY . IN THIS CASE, THE TERM "SOINS A LA PERSONNE" MAY NOT BE EXTENDED SO AS TO COVER THE SUPPLY OF GOODS AS WELL .

27 THE COMMISSION ALSO POINTS OUT THAT, WHEN THE DRAFTSMEN OF THE SIXTH DIRECTIVE INTENDED TO EXEMPT BOTH THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES, THEY MADE EXPRESS PROVISION TO THAT EFFECT, AS IN INDENTS ( G ), ( H ), ( I ), ( L ) AND ( N ). IN INDENT ( C ), HOWEVER, EXEMPTION IS GRANTED ONLY IN RESPECT OF "THE PROVISION OF MEDICAL CARE ".

28 ACCORDING TO THE COMMISSION, THAT CONCLUSION CANNOT BE SHAKEN BY A COMPARISON BETWEEN THE EXEMPTION UNDER INDENT ( C ) AND THE EXEMPTION UNDER INDENT ( B ) OF THE SAME PROVISION . IN THE CONTEXT OF THE SIXTH DIRECTIVE, AND HAVING REGARD TO OTHER LANGUAGE VERSIONS ( CURE MEDICHE/PRESTAZIONI MEDICHE, MEDISCHE VERZORGING / GEZONDHEITSKUNDIGE VERZORGING ), THE TERMS "SOINS MEDICAUX" AND "SOINS A LA PERSONNE" USED IN INDENTS ( B ) AND ( C ) RESPECTIVELY ARE DIFFERENT IN SCOPE . THE TERM "SOINS MEDICAUX" INCLUDES ACTIVITIES STRICTLY RELATED TO MEDICAL CARE FORMING PART OF TREATMENT IN HOSPITAL, WHILST THE TERM "SOINS A LA PERSONNE" COVERS ONLY SERVICES PROVIDED FOR CONSIDERATION BY MEMBERS OF THE MEDICAL AND PARAMEDICAL PROFESSIONS IN THEIR CONSULTING ROOMS AND DOES NOT THEREFORE EXTEND TO THE SUPPLY OF GOODS .

29 THE COMMISSION ARGUES THAT THAT DISTINCTION FOR TAX PURPOSES BETWEEN INDENTS ( B ) AND ( C ) IS RECOGNIZED BY MOST OF THE MEMBER STATES, WHICH EXEMPT SUPPLIES OF GOODS THAT FORM AN INTEGRAL PART OF TREATMENT INSIDE HOSPITAL WITHIN THE MEANING OF INDENT ( B ), WHILST THEY DO NOT GRANT THE SAME EXEMPTION FOR GOODS SUPPLIED IN CONNECTION WITH THE PROVISION OF THE MEDICAL CARE REFERRED TO IN INDENT ( C ).

30 IT IS APPROPRIATE TO BEGIN BY CONSIDERING THE UNITED KINGDOM' S ARGUMENT TO THE EFFECT THAT THERE IS A PARALLEL BETWEEN INDENTS ( B ) AND ( C ) OF ARTICLE 13 A ( 1 ) SO THAT THE SAME FISCAL TREATMENT, NAMELY EXEMPTION FROM TAX, SHOULD BE APPLIED BOTH TO GOODS SUPPLIED IN CONNECTION WITH THE PROVISION OF THE HOSPITAL SERVICES REFERRED TO IN INDENT ( B ) AND TO GOODS SUPPLIED IN CONNECTION WITH THE PROVISION OF THE MEDICAL CARE REFERRED TO IN INDENT ( C ).

31 THAT ARGUMENT CANNOT BE ACCEPTED .

32 INDENT ( B ) PROVIDES THAT THE MEMBER STATES ARE TO EXEMPT FROM VALUE-ADDED TAX "HOSPITAL AND MEDICAL CARE AND CLOSELY RELATED ACTIVITIES UNDERTAKEN BY BODIES GOVERNED BY PUBLIC LAW OR, UNDER SOCIAL CONDITIONS COMPARABLE TO THOSE APPLICABLE TO BODIES GOVERNED BY PUBLIC LAW, BY HOSPITALS, CENTRES FOR MEDICAL TREATMENT OR DIAGNOSIS AND OTHER DULY RECOGNIZED ESTABLISHMENTS OF A SIMILAR NATURE ". THE SERVICES INVOLVED THEREFORE ENCOMPASS A WHOLE RANGE OF MEDICAL CARE NORMALLY PROVIDED ON A NON-PROFIT-MAKING BASIS IN ESTABLISHMENTS PURSUING SOCIAL PURPOSES SUCH AS THE PROTECTION OF HUMAN HEALTH .

33 ON THE OTHER HAND, INDENT ( C ) PROVIDES THAT THE MEMBER STATES ARE TO EXEMPT FROM VALUE-ADDED TAX "THE PROVISION OF MEDICAL CARE IN THE EXERCISE OF THE MEDICAL AND PARAMEDICAL PROFESSIONS ". IT IS CLEAR FROM THE POSITION OF THAT INDENT, DIRECTLY FOLLOWING THE INDENT CONCERNING HOSPITAL CARE, AND FROM ITS CONTEXT, THAT THE SERVICES INVOLVED ARE PROVIDED OUTSIDE HOSPITALS AND SIMILAR ESTABLISHMENTS AND WITHIN THE FRAMEWORK OF A CONFIDENTIAL RELATIONSHIP BETWEEN THE PATIENT AND THE PERSON PROVIDING THE CARE, A RELATIONSHIP WHICH IS NORMALLY ESTABLISHED IN THE CONSULTING ROOM OF THAT PERSON . IN THOSE CIRCUMSTANCES, APART FROM MINOR PROVISIONS OF GOODS WHICH ARE STRICTLY NECESSARY AT THE TIME WHEN THE CARE IS PROVIDED, THE SUPPLY OF MEDICINES AND OTHER GOODS, SUCH AS CORRECTIVE SPECTACLES PRESCRIBED BY A DOCTOR OR BY OTHER AUTHORIZED PERSONS, IS PHYSICALLY AND ECONOMICALLY DISSOCIABLE FROM THE PROVISION OF THE SERVICE .

34 IT FOLLOWS THAT THE EXEMPTION FROM TAX OF GOODS SUPPLIED IN CONNECTION WITH THE MEDICAL CARE REFERRED TO IN INDENT ( C ) CANNOT BE JUSTIFIED BY INDENT ( B ), AS THE UNITED KINGDOM MAINTAINS .

35 IN ORDER TO DETERMINE THE SCOPE OF THE EXEMPTION FROM TAX PROVIDED FOR IN INDENT ( C ) IN RESPECT OF "THE PROVISION OF MEDICAL CARE", IT MUST BE POINTED OUT THAT, ALTHOUGH ARTICLE 13 GRANTS EXEMPTION EVEN IN CERTAIN CASES WHERE THE SUPPLY OF GOODS IS CONNECTED WITH THE PROVISION OF SERVICES, THE FACT REMAINS THAT IT EXPRESSLY LISTS THE CASES IN WHICH THE SUPPLY OF GOODS IS EXEMPT SINCE THEY CONSTITUTE DEROGATIONS FROM THE GENERAL PRINCIPLE LAID DOWN BY ARTICLE 2 ( 1 ) OF THE DIRECTIVE, ACCORDING TO WHICH THE SUPPLY OF GOODS OR SERVICES EFFECTED FOR CONSIDERATION IS TO BE SUBJECT TO VALUE-ADDED TAX . IN SOME CASES THOSE DEROGATIONS ARE GRANTED BY ARTICLE 13 A ( 1 ) IN RESPECT OF THE PROVISION OF SERVICES ONLY AND IN OTHERS IN RESPECT OF THE SUPPLY OF GOODS AS WELL . SUCH IS ESPECIALLY SO FOR EXAMPLE IN THE CASE ENVISAGED IN INDENT ( E ), WHICH GRANTS EXEMPTION IN RESPECT OF BOTH THE PROVISION OF SERVICES AND THE SUPPLY OF DENTAL PROSTHESES BY DENTISTS AND DENTAL TECHNICIANS . INDENT ( C ), ON THE OTHER HAND, COVERS ONLY THE PROVISION OF MEDICAL CARE IN THE EXERCISE OF THE MEDICAL AND PARAMEDICAL PROFESSIONS AND EXCLUDES THE SUPPLY OF GOODS, AS DEFINED IN ARTICLE 5 OF THE DIRECTIVE, WITHOUT PREJUDICE TO MINOR PROVISIONS OF GOODS WHICH ARE INDISSOCIABLE FROM THE SERVICE PROVIDED .

36 IT MUST THEREFORE BE HELD THAT, BY EXEMPTING SUPPLIES OF GOODS FROM THE IMPOSITION OF VALUE-ADDED TAX, PURSUANT TO THE PROVISIONS OF THE VALUE-ADDED TAX ACT 1983, SCHEDULE 6, GROUP 7 ( HEALTH ), THE UNITED KINGDOM OF



*GREAT BRITAIN AND NORTHERN IRELAND HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 13 A ( 1 ) ( C ) OF COUNCIL DIRECTIVE 77/388/EEC OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES .*

## **Decision on costs**

*COSTS*

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

## **Operative part**

*ON THOSE GROUNDS,*

*THE COURT*

*HEREBY :*

*( 1 ) DECLARES THAT, BY EXEMPTING SUPPLIES OF GOODS FROM THE IMPOSITION OF VALUE-ADDED TAX, PURSUANT TO THE PROVISIONS OF THE VALUE-ADDED TAX ACT 1983, SCHEDULE 6, GROUP 7 ( HEALTH ), THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 13 A ( 1 ) ( C ) OF COUNCIL DIRECTIVE 77/388/EEC OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES;*

*( 2 ) ORDERS THE UNITED KINGDOM TO PAY THE COSTS .*