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Judgment of the Court (Second Chamber) of 15 March 1989. - Philippe Lambert and others v Directeur des services fiscaux de l'Orne and others. - References for a preliminary ruling: Tribunal de grande instance d'Argentan - France. - VAT - Automatic games machines. - Joined cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88.

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Summary
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Keywords

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1 . Tax provisions - Harmonization of laws - Turnover taxes - Common system of value-added tax - Levying of other national taxes which can be characterized as turnover taxes on transactions subject to value-added tax - Not permissible

(Council Directive 77/388, Art . 33)

2 . Tax provisions - Harmonization of laws - Turnover taxes - Common system of value-added tax - Taxes which can be characterized as turnover taxes - Fixed-rate tax levied on the making available of an article to the public - Criteria for classification

(Council Directive 77/388, Art . 33)

3 . Tax provisions - Internal taxation - Article 95 of the Treaty - Scope - Taxes on the use of imported products - Inclusion - Conditions

(EEC Treaty, Art . 95)

4 . Tax provisions - Internal taxation - Graduated system of taxation - Progressive tax on automatic games machines - Whether permissible - Conditions

(EEC Treaty, Art . 95)

5 . Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Article 30 of the Treaty - Scope - Measures covered by Article 95 - Exclusion

(EEC Treaty, Arts 30 and 95)

Summary

1 . Article 33 of Directive 77/388 on the harmonization of the laws of the Member States relating to turnover taxes must be interpreted as meaning that as from the introduction of the common system of value-added tax the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to that tax, other taxes, duties or charges which can be characterized as turnover taxes .

2 . A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax levied on the prices charged for services . Although a fixed-rate tax may, in certain circumstances, be regarded as a flat-rate tax on receipts, classifiable as a tax on turnover, it may only be so regarded if, on the one hand, the rate was fixed on the basis of an objective evaluation of the foreseeable receipts by reference to the number of occasions on which a service was likely to be provided and the price charged for the service and, on the other, if it established that the tax may be passed on in the price of the service so that it will finally be borne by the consumer .

3 . Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose .

4 . A system of taxation of automatic games machines graduated according to the various categories into which these machines are divided, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95 of the Treaty .

5 . Article 30 of the Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof .

(In this judgment the Court gives the same answer as it gave in the judgment of 3 March 1988 in Case 252/86 Bergandi v Directeur général des impôts ((1988)) ECR 1343 to questions which are substantially the same .)

Parties

In Joined Cases 317/86, 48, 49, 285 and 363 to 367/87, 65 and 78 to 80/88

REFERENCES to the Court under Article 177 of the EEC Treaty

(1) in Case 317/86 by the tribunal de grande instance (Regional Court), Argentan, for a preliminary ruling in the proceedings pending before that court between

Philippe Lambert, a trader, residing in Flers,

and

Directeur des services fiscaux de l' Orne,

(2) in Cases 48 and 49/87 by the tribunal de grande instance, Verdun, for a preliminary ruling in the proceedings pending before that court between

Marie-Thérèse Charbonelle, a trader, residing in Flize (Case 48/87),

Willot SARL, whose registered office is in Vandoeuvre-les-Nancy (Case 49/87),

and

Directeur des services fiscaux de la Meuse,

(3) in Case 285/87 by the tribunal de grande instance, Nîmes, for a preliminary ruling in the proceedings pending before that court between

Etablissements Dico SARL, whose registered office is in Avignon,

and

Directeur des services fiscaux du Gard,

(4) in Cases 363 to 367/87 and 78 to 80/88 by the tribunal de grande instance, Bonneville, for a preliminary ruling in the proceedings pending before that court between

Sofel SARL, whose registered office in in Sallanches (Cases 363 and 366/87 and 79/88),

Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87),

Pellerey Display SARL, whose registered office is in Sallanches (Cases 367/87 and 78/88),

Jean Mentreau, a trader, residing in Chatel (Case 80/88),

and

Directeur des services fiscaux de la Haute-Savoie,

(5) in Case 65/88 by the tribunal de grande instance, Nîmes, for a preliminary ruling in the proceedings pending before that court between

Louis Garcia, a trader, residing in Nîmes,

and

Directeur des services fiscaux du Gard,

on the interpretation of Article 33 of the Sixth Council Directive on value-added tax and Articles 30 and 95 of the EEC Treaty,

THE COURT (Second Chamber),

composed of : T . F . O' Higgins, President of Chamber, G . F . Mancini and F . A . Schockweiler, Judges,

(the grounds of the judgment are not reproduced)

in answer to the questions submitted to it by the tribunaux de grande instance, Argentan, Verdun, Nîmes and Bonneville, by judgments of 6 November 1986, 12 February 1987, 29 June 1987, 24 July 1987, 28 October 1987 and 13 January 1988, hereby rules :

Operative part

(1) 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 (VAT): uniform basis of assessment - must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes .

(2) A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax .

(3) Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose .

(4) A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95 of the EEC Treaty .

(5) Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof .