

61988J0126

Judgment of the Court of 27 March 1990. - Boots Company plc v Commissioners of Customs and Excise. - Reference for a preliminary ruling: High Court of justice, Queen's Bench Division - United Kingdom. - Value added tax - Sixth directive - Taxable amount. - Case C-126/88.

European Court reports 1990 Page I-01235

Summary

Parties

Grounds

Decision on costs

Operative part

Keywords

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Tax provisions - Harmonization of legislation - Turnover taxes - Common system of value-added tax - Taxable amount - Price discounts and rebates - Concept - Reduction in sale price granted upon the surrender of a coupon obtained free of charge by the customer upon a previous purchase -Included

(Council Directive 77/388, Art . 11 A 3(b))

Summary

Article 11 A 3 of the Sixth Directive (77/388/EEC), laying down the items not to be included, within the territory of the country, in the taxable amount for the purposes of value-added tax, must be interpreted as meaning that the expression "price discounts and rebates allowed to the customer and accounted for at the time of supply" covers the difference between the normal retail selling price of the goods supplied and the sum of money actually received by the retailer for those goods where the retailer accepts from the customer a coupon given free of charge by the retailer to the customer upon a previous purchase made at the normal retail selling price .

Parties

In Case C-126/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice for a preliminary ruling in the proceedings pending before that Court between

The Boots Company PLC

and

The Commissioners of Customs and Excise

on the interpretation 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),

THE COURT

composed of : O . Due, President, Sir Gordon Slynn, C . N . Kakouris, F . A . Schockweiler (Presidents of Chambers), T . Koopmans, G . F . Mancini, R . Joliet, T . F . O' Higgins, G . C . Rodríguez Iglesias, Judges,

Advocate General : W . Van Gerven

Registrar : H . A . Ruehl, Principal Administrator

after considering the written observations on behalf of

the United Kingdom of Great Britain and Northern Ireland, by Susan Hay, acting as Agent, assisted by John Laws and Robert Jay, barristers,

the Commission of the European Communities, by Johannes Fons Buhl, Legal Adviser, acting as Agent,

the Boots Company PLC, by J . P . Lawton QC, instructed by Lovell White Durrant, solicitors,

having regard to the Report for the Hearing,

after hearing oral argument presented by The Boots Company PLC, the United Kingdom of Great Britain and Northern Ireland and the Commission at the hearing on 30 November 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 24 January 1990,

gives the following

Judgment

Grounds

1 By an order of 17 December 1987, which was received at the Court on 25 April 1988, the High Court of Justice referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty six questions on the interpretation of certain provisions 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, hereinafter referred to as "the Sixth Directive ").

2 The questions were raised in proceedings in which The Boots Company PLC and its subsidiaries (hereinafter referred to as "Boots ") are challenging decisions of the Commissioners of Customs

and Excise (hereinafter referred to as "the Commissioners ") relating to the assessment of value-added tax (VAT) which Boots must pay on certain promotional sales effected in 1984 .

3 It appears from the order for reference and the documents relating to the case that Boots retails various kinds of goods through stores located throughout the United Kingdom . It uses inter alia a promotion scheme involving coupons printed on the packaging of certain goods which it distributes (hereinafter referred to as "premium goods "). The coupons, obtained free of charge by customers upon the purchase of those goods, entitle the persons presenting them upon a subsequent purchase from Boots of the same or different goods specified on the coupons (hereinafter referred to as "redemption goods ") to a price reduction equal to the nominal value indicated on them .

4 The cost of the promotions conducted by Boots is, depending on the case, borne either entirely by Boots or by its suppliers, in which case pursuant to contracts concluded with Boots they reimburse to Boots the nominal value of the coupons returned to them, or partly by Boots and partly by its suppliers .

5 In its tax return made in accordance with Section 29 of the Value-Added Tax Act 1983, Boots included, in respect of the coupons, in its "gross takings" only the sums received from its suppliers in exchange for the coupons which had been surrendered to it upon sales in respect of which the suppliers bore all or part of the promotion costs . It did not include in its gross takings the nominal value of the coupons, which it destroyed when all or part of the promotion costs were borne by itself, since it took the view that the consideration for redemption goods was limited to the amount actually paid by the purchaser .

6 The Commissioners, however, took the view that the consideration for redemption goods comprised not only the sum of money paid but also the value of the coupon surrendered . They considered that Section 10(3) of the Value-Added Tax Act 1983 was applicable . That section provides that : "If the supply is not for a consideration or is for a consideration not consisting or not wholly consisting of money, the value of the supply shall be taken to be its open market value " . Pursuant to that section, the Commissioners adopted with regard to Boots decisions requiring it to adjust its "gross takings" by adding to its cash receipts the differences between the cash takings from sales of redemption goods and their open market value . In their decisions the Commissioners assessed the tax adjustment imposed on Boots at UKL 10 727.03 for the calendar year 1984 .

7 In a judgment of 18 March 1986 the London Value-Added Tax Tribunal, to which Boots had appealed against the decisions of the Commissioners, upheld the Commissioners' assessment . Against that judgment Boots appealed to the High Court of Justice disputing that it was subject to VAT on the open market value of redemption goods in so far as the cost of those promotions was borne entirely or partly by itself .

8 Before the High Court of Justice Boots argued that, as far as sales of redemption goods were concerned, it ought to have been assessed to tax on the basis of the reduced price actually paid by the purchaser . It submitted in particular that since the coupons had no value to it, they did not form part of the consideration for the purposes of the Sixth Directive and that the reduction on the price of redemption goods was a "rebate" or "discount" within the meaning of Article 11 A 3(b) of the Sixth Directive . It also argued that Section 10(3) of the Value-Added Tax Act 1983, pursuant to which the Commissioners had assessed VAT, was incompatible with Article 11 of the Sixth Directive .

9 Taking the view that the case involved an interpretation of the relevant Community legislation, the High Court of Justice decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court had ruled on the following questions :

"(1) Is Article 11 A 1(a) of the Sixth Council Directive to be interpreted so that 'everything which constitutes consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party' consists only of the payment of money by the customer?"

(2) Does a retailer obtain consideration from a customer within the meaning of Article 11 A 1(a) of the Sixth Council Directive when he accepts from the customer a coupon entitling him to a price reduction on a purchase of the goods specified on the coupon, which coupon was given by the retailer to the customer at the time of purchase of other goods from the retailer at their normal retail selling price?"

(3) Is the expression 'price discounts and rebates allowed to the customer and accounted for at the time of supply' in Article 11 A 3(b) of the Sixth Council Directive to be interpreted to cover the difference between the normal retail selling price of the goods supplied and the sum of money actually received by the retailer for those goods where a coupon, obtained as above, is surrendered at the same time?"

(4) Where a retailer supplies redemption goods to a customer for a sum of money which is less than the normal retail selling price of the goods because at the time of the supply the customer surrenders a coupon acquired at the time of purchase of other goods from the same retailer,

(a) is the taxable amount in Article 11 A 1(a) of the Sixth Council Directive the sum of money received by the retailer for the redemption goods, or

(b) the sum of money received by the retailer for the redemption goods together with the value of the coupon, and if that is the case, how is the value of the coupon to be determined, or

(c) if neither of the above applies, what is the taxable amount in these circumstances?"

(5) If 'consideration' may include not only the payment of money but also the surrender of the coupon to the supplier of the goods in question do the provisions of Article 11 A 1(a) prevent a Member State from evaluating the taxable amount by reference to the price which the customer would have to pay to obtain the goods for a consideration wholly in money?"

(6) Does a national rule, in existence on 1 January 1978, providing that 'if the supply of a good is not for a consideration or is for a consideration not consisting or not wholly consisting of money, the value of the supply shall be taken to be its open market value' , constitute a derogation from the provisions of Article 11 of the Sixth Council Directive which should, under Article 27 of the Sixth Council Directive, have been notified to the Commission of the European Communities before 1 January 1978?"

10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case before the national court, the relevant provisions of Community law and national law, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

Characteristics of the coupons

11 In order to provide a helpful answer to the problem of interpretation raised by the questions submitted to the Court, that problem must be defined with reference to the national court' s findings of fact as to what the coupons represent in the relations between Boots and its customers from the economic and legal point of view .

12 According to the documents before the Court, by the coupon given to the customer upon the sale of premium goods, Boots engages to grant the bearer of the coupon, upon the subsequent purchase of one of the articles indicated on it, a price reduction equal to the nominal value also

indicated on the coupon . Thus the coupon is constitutive of the bearer' s right to a price reduction equal to the amount indicated on the coupon .

13 From the economic point of view, since the obligation assumed by Boots forms part of a promotion scheme the cost of which is borne by Boots itself, it affords Boots no advantage other than the prospect of increasing its turnover by increasing the volume of its sales of premium goods and redemption goods . It is only where the coupon surrendered to Boots is then recovered by its supplier, when the latter bears all or part of the promotion costs, that the coupon has monetary value for Boots equal to the amount actually paid by the supplier to Boots pursuant to their own contract . In the case in question, the coupon represents for Boots only an obligation to grant a reduction, which is allowed with the aim of attracting the customer .

14 In the lights of those facts, it is now appropriate to recall what the rules of the Sixth Directive relating to the basis of assessment essentially provide .

The taxable amount

15 According to Article 11 A 1(a) of the Sixth Directive, the taxable amount within the territory of the country is to be, in respect of supplies of goods, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser . Paragraphs 2 and 3 of Article 11 A enumerate certain items which are to be included in the taxable amount and other items which are not to be included . Paragraph 3(b) of Article 11 A provides that the taxable amount is not to include "price discounts and rebates allowed to the customer and accounted for at the time of the supply " . Thus, the items referred to in paragraph 2 of Article 11 A are treated by the directive itself as constituting the "consideration" and therefore the taxable amount and the items referred to in paragraph 3 are excluded, likewise ex lege, from that concept of consideration .

16 It follows that each time the question of classifying a specific item arises, it is first necessary to examine whether the item falls within one of the categories referred to in paragraphs 2 and 3 and it is only when the answer to that question is in the negative that reference must be made to the general concept in paragraph 1(a) .

17 In the present case, having regard to the factual circumstances described by the national court and the arguments put forward by Boots, which maintains that the promotion scheme based on coupons constitutes nothing other than a rebate or discount, it is necessary to examine first the third preliminary question .

The third question

18 "Discounts and rebates" which, according to Article 11 A 3(b) of the Sixth Directive, are not to be included in the taxable amount, constitute a reduction of the price at which an article is lawfully offered to the customer, since the seller agrees to forego the sum represented by the rebate in order precisely to induce the customer to buy the article .

19 That provision is merely an application of the rule laid down in Article 11 A 1(a) of the Sixth Directive, as interpreted by the Court in its decisions (for the most recent, see the judgment of 23 November 1988 in Case 230/87 *Naturally Yours Cosmetics Limited v Commissioners of Customs and Excise* ((1988)) ECR 6365), according to which the taxable amount is the consideration actually received .

20 The United Kingdom states that the promotion scheme used by Boots should be distinguished from the typical case of a price discount or rebate since the reduction allowed to the purchaser is granted in exchange for the coupon which has a value .

21 That viewpoint cannot be accepted . It is clear from the coupon' s legal and economic characteristics described above that, although a "nominal value" is indicated on it, the coupon is not obtained by the purchaser for consideration and is nothing other than a document incorporating the obligation assumed by Boots to allow to the bearer of the coupon, in exchange for it, a reduction at the time of purchase of redemption goods . Therefore, the "nominal value" expresses only the amount of the reduction promised .

22 The answer to the third question must therefore be that Article 11 A 3(b) of the Sixth Directive must be interpreted as meaning that the expression "price discount and rebates allowed to the customer and accounted for at the time of the supply" covers the difference between the normal retail selling price of the goods supplied and the sum of money actually received by the retailer for those goods where the retailer accepts from the customer a coupon which he gave to the customer upon a previous purchase made at the normal retail selling price .

The other questions

23 Having regard to the answer given to the third question, the other questions do not call for a reply .

Decision on costs

Costs

24 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable . Since the proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court .

Operative part

On those grounds,

THE COURT,

in answer to the questions submitted to it by the High Court of Justice, by order of 17 December 1987, hereby rules :

Article 11 A 3(b) 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, must be interpreted as meaning that the expression "price discounts and rebates allowed to the customer and accounted for at the time of the supply" covers the difference between the normal retail selling price of the goods supplied and the sum of money actually received by the retailer for those goods where the retailer accepts from the customer a coupon which he gave to the customer upon a previous purchase made at the normal retail selling price .

