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Judgment of the Court (Fifth Chamber) of 26 June 1990. - Staatssecretaris van Financiën v Velker International Oil Company Ltd NV. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - VAT - Sixth directive relating to turnover taxes - Exemption. - Case C-185/89.

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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 in the Sixth Directive - Exemption of the supply of goods for the fuelling and provisioning of vessels - Conditions

(Council Directive 77/388, Art . 15(4))

Summary

Article 15(4) of the Sixth Directive (77/388) exempting from value-added tax the supply of goods for the fuelling and provisioning of vessels must be construed to the effect that only supplies to a vessel operator of goods to be used by that operator for fuelling and provisioning are to be regarded as such, and not supplies of those goods effected at a previous marketing stage . However, there is no requirement that the goods should be actually loaded on board the vessels at the time of their supply to the operator, so that the storage of the goods after delivery and before the actual fuelling and provisioning operation does not cause the benefit of the exemption to be lost .

Parties

In Case C-185/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden for a preliminary ruling in the proceedings pending before that court between

Staatssecretaris van Financiën

and

Velker International Oil Company Ltd NV, Rotterdam,

on the interpretation of Article 15 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 (Fifth Chamber)

composed of : Sir Gordon Slynn, President of Chamber, M . Zuleeg, President of Chamber, R . Joliet, J . C . Moitinho de Almeida and F . Grévisse, Judges,

Advocate General : C . O . Lenz

Registrar : H . A . Ruehl, Principal Administrator

after considering the observations submitted on behalf of

the Government of the Federal Republic of Germany, by E . Roeder, Regierungsdirektor at the Federal Ministry of Economic Affairs, acting as Agent;

the Government of the Kingdom of the Netherlands, by B . R . Bot, Secretary-General of the Ministry of Foreign Affairs, acting as Agent;

the Government of the Portuguese Republic, by L . Fernandes, Director of the European Communities Directorate-General, and A . Correia, Assistant Director-General of the VAT Administration, acting as Agents,

the Government of the United Kingdom, by J . A . Gensmantel, Treasury Solicitor, acting as Agent,

the Commission of the European Communities, by J . F . Buehl, Legal Adviser, and B . J . Drijber, a member of the Legal Department, acting as Agents,

having regard to the Report for the Hearing,

having heard the oral observations of the defendant in the main proceedings, represented by C . G . Verheij, acting as Agent, of the Netherlands Government, represented by J . W . De Zwaan, acting as Agent, of the German Government and of the Commission of the European Communities at the hearing on 8 March 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 2 May 1990,

gives the following

Judgment

Grounds

1 By judgment of 24 May 1989, which was received at the Court on 29 May 1989, 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 concerning the interpretation of Article 15 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).

2 The questions were raised in the course of proceedings between the Staatssecretaris van Financiën (Netherlands State Secretary for Finance) and Velker International Oil Company Ltd NV, Rotterdam, (hereinafter referred to as "Velker ") following an additional assessment in respect of turnover tax issued on Velker .

3 The documents in the case show that Velker sold to Forsythe International BV, The Hague, (hereinafter referred to as "Forsythe ") two consignments of bunker oil, the invoices for which were dated 14 November 1983 and 16 November 1983 .

4 The consignments of oil had been acquired by Velker from Handelmaatschappij Verhoeven BV, Rotterdam, (hereinafter referred to as "Verhoeven ") which had itself bought one of the consignments from Olie Verwerking Amsterdam BV (hereinafter referred to as "OVA ").

5 On Forsythe' s instructions, the two consignments were delivered, by OVA on 5 November 1983 and by Verhoeven on 11 November 1983, to tanks rented by Forsythe from a company called De Nieuwe Matex, and then loaded on to sea-going vessels on 6, 7 and 8 November 1983 and 17 and 18 November 1983 .

6 The invoice raised by OVA on Verhoeven did not include any turnover tax . The invoices raised by Verhoeven on Velker were marked "VAT-0 rate ". In turn Velker applied a zero VAT rate to the two sales invoiced to Forsythe .

7 The Netherlands tax authorities considered that the supplies of oil made by Velker to Forsythe did not qualify for VAT exemption and issued an additional turnover tax assessment notice for 1983 on Velker .

8 The case came before the Gerechtshof (Court of Appeal), The Hague, which annulled the assessment notice, taking the view that the oil supplied by Velker was for the fuelling and provisioning of sea-going vessels and that such supply ought to be exempt from VAT by virtue of the combined provisions of Article 9(2), first subparagraph and (b), of the Wet op de Omzetbelasting (Netherlands Law on Turnover Tax) and the first subparagraph of Heading 4(a) of Table II annexed to that law .

9 The Netherlands State Secretary for Finance appealed to the Hoge Raad against that judgment of the Gerechtshof . He maintained that only the supply of goods coinciding with the fuelling and provisioning of vessels and followed by exportation of those goods could be considered to be a supply of goods for the fuelling and provisioning of vessels within the meaning of the aforesaid provisions of the Netherlands legislation .

10 In its judgment of 24 May 1989 referring questions to the Court, the Hoge Raad explained that when it adopted the legislation the Netherlands legislature had intended to implement the provisions of Article 15(4) of the Sixth Directive and that consequently the term "for the fuelling and provisioning of vessels" which appears in the Netherlands legislation must be given a meaning identical to that of the same term which appears in the Community directive .

11 Consequently, the Hoge Raad decided to suspend the proceedings and refer the following questions to the Court for a preliminary ruling :

"(1) Must Article 15(4) of the Sixth Directive be construed as meaning that only supplies which coincide with fuelling and provisioning can be regarded as supplies of goods for the fuelling and provisioning of the vessels defined in that provision?

(2) If that provision of the Sixth Directive does not have a meaning which is as restrictive as that defined in Question 1, must the following also be regarded as supplies within the meaning of that provision :

only the supply of goods to an undertaking which will later use them for fuelling and provisioning vessels,

or also goods supplied in a previous transaction, that is to say, to an undertaking which does not itself use the goods for fuelling and provisioning vessels but supplies them to another undertaking which does use them for that purpose?"

12 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

13 Under the terms of Article 15 of the Sixth Directive :

"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 evasion, avoidance or abuse :

(1) the supply of goods dispatched or transported to a destination outside the territory of the country as defined in Article 3 by or on behalf of the vendor;

(2) ...

(3) ...

(4) the supply of goods for the fuelling and provisioning of vessels :

(a) used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities;

..."

14 For the purpose of interpreting the provisions of the Sixth Directive at issue, the national court' s second question should be examined first .

15 In that question the national court is asking whether the exemption laid down by those provisions applies solely to the supply of goods to a vessel operator who is going to use those goods for fuelling and provisioning or whether it also extends to supplies effected at previous stages in the commercial chain on condition that the goods are ultimately used for the fuelling and provisioning of vessels .

16 The term "supply of goods for the fuelling and provisioning of vessels" is capable of bearing several literal meanings . It could refer to the supply of goods which the recipient will use for the fuelling and provisioning of his vessels or the supply, at whatever stage it takes place, of goods which will subsequently be used for that purpose .

17 In order to interpret the term, recourse must therefore be had to the context in which it occurs, bearing in mind the purpose and structure of the Sixth Directive .

18 As the Court has stated on many occasions (for example, in the judgment of 15 June 1989 in Case 348/87 Stichting Uitvoering Financiële Acties ((1989)) ECR 1737), the Sixth Directive confers a very wide scope on value-added tax comprising all economic activities of producers, traders and persons supplying services .

19 The provisions in the directive which grant exemption from tax must be interpreted strictly since they constitute exceptions to the general principle that turnover tax is levied on all goods or services supplied for consideration by a taxable person .

20 A strict interpretation is required in particular when the provisions in issue constitute exceptions to the rule that transactions taking place "within the territory of the country" are subject to the tax .

21 With regard to Article 15(4), it should be noted that the operations of fuelling and provisioning vessels mentioned therein are exempted because they are equated with exports .

22 Just as, in the case of export transactions, the mandatory exemption provided for in Article 15(1) applies exclusively to the final supply of goods exported by the seller or on his behalf, likewise the exemption laid down in Article 15(4) applies only to the supply of goods to a vessel operator who will use those goods for fuelling and provisioning and cannot therefore be extended to the supply of those goods effected at a previous stage in the commercial chain .

23 In its observations before the Court the German Government submitted, however, that such an interpretation of the provisions in question would be contrary to their purpose . According to the German Government, the exemption at issue is designed to allow administrative simplification, not to grant a fiscal benefit . In view of that objective, the exemption should, in its view, be extended to all commercial stages .

24 That argument cannot be accepted . The extension of the exemption to stages prior to the final supply of the goods to the vessel operator would require Member States to set up systems of supervision and control in order to satisfy themselves as to the ultimate use of the goods supplied free of tax . Far from bringing about administrative simplification, such systems would amount to constraints on the Member States and the traders concerned which it would be impossible to reconcile with the "correct and straightforward application of such exemptions" prescribed in the first paragraph of Article 15 of the Sixth Directive .

25 In view of the reply that must be given to the second question, it remains for the Court to examine the Hoge Raad' s first question, which is whether, in order to qualify for exemption, the goods should be actually loaded on board the vessel at the time of their supply to the vessel operator .

26 Under Article 5(1) of the Sixth Directive, by "supply of goods" is meant "the transfer of the right to dispose of tangible property as owner ".

27 In view of that definition, it needs merely to be said that nothing in the wording of the relevant provisions of Article 15(4), nor the context in which they appear, nor the objective which they pursue, justifies a construction of those provisions to the effect that storage of the goods after delivery and before the actual fuelling and provisioning operation causes the benefit of the

exemption to be lost .

28 It is true, as the United Kingdom Government pointed out in its observations before the Court, that such a construction would ensure that traders did not subsequently use the goods supplied free of tax for purposes other than the fuelling and provisioning of vessels .

29 However, that ground alone cannot justify such a construction given that, by virtue of the first paragraph of Article 15 of the Sixth Directive, it is in any event for the Member States to lay down conditions for exemption suitable for "preventing any evasion, avoidance or abuse ".

30 The reply to the questions referred to the Court by the Hoge Raad der Nederlanden must therefore be that Article 15(4) of the Sixth Council Directive of 17 May 1977 must be construed to the effect that only supplies to a vessel operator of goods to be used by that operator for fuelling and provisioning are to be regarded as supplies of goods for the fuelling and provisioning of vessels, but there is no requirement that the goods should be actually loaded on board the vessels at the time of their supply to the operator .

Decision on costs

Costs

31 The costs incurred by the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom 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 action are concerned, in the nature of a step in the proceedings before the national court, the decision on costs is a matter for that court .

Operative part

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden, by judgment of 24 May 1989, hereby rules :

Article 15(4) 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) must be construed to the effect that only supplies to a vessel operator of goods to be used by that operator for fuelling and provisioning are to be regarded as supplies of goods for the fuelling and provisioning of vessels, but there is no requirement that the goods should be actually loaded on board the vessels at the time of their supply to the operator .