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Judgment of the Court (Fifth Chamber) of 29 February 1996. - Jürgen Mohr v Finanzamt Bad Segeberg. - Reference for a preliminary ruling: Bundesfinanzhof - Germany. - VAT - Definition of supply of services - Definitive discontinuation of milk production - Compensation received under Regulation (EEC) No 1336/86. - Case C-215/94.

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Keywords

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Tax provisions ° Harmonization of laws ° Turnover tax ° Common system of value added tax ° Taxable transactions ° Supply of services ° Definitive discontinuation, by means of compensation, of milk production ° Excluded

(Council Regulation No 1336/86; Council Directive 77/388, Arts 6(1) and 11(A)(1)(a))

Summary

Articles 6(1) and 11(A)(1)(a) of the Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes, in respect of the definition of a supply of services and the constitution of the taxable amount, respectively, are to be interpreted as meaning that an undertaking to discontinue milk production given by a farmer under Regulation No 1336/86 does not constitute a supply of services. Consequently, any compensation received for that purpose is not subject to turnover tax.

Where it grants such compensation, the Community is not in the situation of a consumer who remunerates a service supplied by a farmer who gives such an undertaking, but is acting in the common interest of promoting the proper functioning of the Community milk market.

Parties

In Case C-215/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

Juergen Mohr

and

Finanzamt Bad Segeberg,

*on the interpretation of Articles 6(1) and 11(A)(1)(a) 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 (OJ 1977 L 145, p. 1),*

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, President of the Chamber, J.-P. Puissechot, J.C. Moitinho de Almeida, C. Gulmann (Rapporteur) and L. Sevón, Judges,

Advocate General: F.G. Jacobs,

Registrar: H.A. Ruehl, Principal Administrator,

after considering the written observations submitted on behalf of:

° the German Government, by Ernst Roeder, Ministerialrat at the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat at the same ministry, acting as Agents,

° the French Government, by Catherine de Salins, Assistant Director at the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Louis Falconi, Secretary of Foreign Affairs in that directorate, acting as Agents,

° the Italian Government, by Umberto Leanza, Head of the Department for Legal Affairs of the Ministry of Foreign Affairs, and Maurizio Fiorilli, Avvocato dello Stato, acting as Agents,

° the Commission of the European Communities, by Juergen Grunwald, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Mohr, represented by Ronald Hansen, tax consultant at Hamburg; the Finanzamt Bad Segeberg, represented by Rolf Karl Krauss, Ministerialrat at the Ministry of Finance and Energy of Land Schleswig-Holstein, at Kiel, acting as Agent; the German Government, represented by Bernd Kloke; the French Government, represented by Frédéric Pascal, chargé de mission at the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; and the Commission, represented by Juergen Grunwald, at the hearing on 12 October 1995,

after hearing the Opinion of the Advocate General at the sitting on 23 November 1995,

gives the following

Judgment

Grounds

1 By order of 21 April 1994, received at the Court on 25 July 1994, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 6(1) and 11(A)(1)(a) 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 (OJ 1977 L 145, p. 1, hereinafter "the Directive").

2 Those questions were raised in proceedings between Juergen Mohr and the Finanzamt Bad Segeberg (hereinafter the Finanzamt).

3 Mr Mohr was the owner of an agricultural holding on which he kept dairy cattle. In March 1987 he applied to the Bundesamt fuer Ernaehrung und Forstwirtschaft (Federal Office for Food and Forestry) for a grant under Council Regulation (EEC) No 1336/86 of 6 May 1986 fixing compensation for the definitive discontinuation of milk production (OJ 1986 L 119, p. 21). In his application he undertook definitively to discontinue milk production and not to make any claim for a milk reference quantity under the common organization of the market.

4 On 23 September 1987 the Bundesamt upheld his application and granted him a single payment of DM 385 980. Subsequently, Mr Mohr sold his cattle and converted the business into a horse-riding centre, thus ceasing all milk production during that same year.

5 In his turnover tax declaration for 1987 Mr Mohr did not mention the amount received by way of compensation for discontinuation of milk production.

6 The Finanzamt decided to treat such compensation as consideration for a taxable supply, namely the discontinuation of milk production, and to make it subject to turnover tax.

7 Mr Mohr unsuccessfully challenged the Finanzamt's decision before the Finanzgericht. He then brought the matter before the Bundesfinanzhof.

8 The Bundesfinanzhof decided to stay the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

"1. Does a farmer who is a taxable person and definitively discontinues milk production thereby make a supply of services within the meaning of Article 6(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 (the Sixth Directive)? and

2. Is the compensation received for such discontinuation under Council Regulation (EEC) No 1336/86 of 6 May 1986 a monetary payment which is taxable under Article 11(A)(1)(a) of the Sixth Directive?"

9 By those two questions the national court essentially seeks to ascertain whether Articles 6(1) and 11(A)(1)(a) of the Directive are to be interpreted as meaning that an undertaking to discontinue milk production given by a farmer under Regulation No 1336/86 constitutes a supply of services so that the compensation received for that purpose is subject to turnover tax.

10 According to Article 2(1) of the Directive, "the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such" is to be subject to value added tax.

11 Article 6(1) provides:

"Supply of services' shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

Such transactions may include inter alia:

...

° obligations to refrain from an act or to tolerate an act or situation,

..."

12 Article 11(A)(1)(a) provides that the taxable amount is to be, "in respect of supplies of goods and services ..., everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies".

13 As Advocate General Jacobs observes at points 12 to 19 of his Opinion, Regulation No 1336/86 is part of a series of measures adopted by the Community with a view to limiting milk production.

14 According to the third recital of the preamble to that regulation, in order to facilitate the reduction of deliveries and direct sales involved in reducing guaranteed global quantities, a Community system should be established to finance the discontinuation of milk production by granting any producer, at the latter's request and provided that he fulfils certain eligibility requirements, compensation in return for his undertaking to discontinue definitively all milk production.

15 The first paragraph of Article 1(1) of the regulation thus provides that: "At the request of the party concerned and subject to the conditions defined in this Regulation ... compensation shall be granted to any producer ... who undertakes to discontinue milk production definitively." Article 2(2) provides that, within the limits of the amounts referred to in Annex II, "Member States are authorized to pay maximum compensation of 4 ECU per year and per 100 kilograms of milk or milk equivalent ...". According to Article 2(3), Member States may contribute to the financing of the measure by increasing the level of compensation.

16 The German and Italian Governments submit that a milk producer who undertakes definitively to discontinue his production supplies a service for consideration within the meaning of Articles 2 and 6(1) of the Directive.

17 Both Governments state in this regard that payment of compensation and an undertaking to discontinue milk production are mutually dependent, thus establishing the direct link between the service provided and consideration for it, as required by the case-law of the Court (Case 154/80 *Staatsecretaris van Financiën v Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445 and Case C-16/93 *Tolsma v Inspecteur der Omzetbelasting* [1994] ECR I-743). The service consists in an obligation to refrain from an act, within the meaning of the second indent of Article 6(1) of the Directive, namely to refrain from continuing milk production, and the compensation paid is in the nature of consideration for that undertaking, thus constituting a taxable amount within the meaning of Article 11(A)(1)(a) of the Directive.

18 That interpretation of the Directive cannot be accepted.

19 It should be recalled that, according to Article 2(1) of the First Council Directive (67/227/EEC) of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (OJ,

English Special Edition 1967 (I), p. 14), VAT is a general tax on the consumption of goods and services.

20 In a case such as the present one, there is no consumption as envisaged in the Community VAT system.

21 As the Advocate General notes at point 27 of his Opinion, by compensating farmers who undertake to cease their milk production, the Community does not acquire goods or services for its own use but acts in the common interest of promoting the proper functioning of the Community milk market.

22 In those circumstances, the undertaking given by a farmer that he will discontinue his milk production does not entail either for the Community or for the competent national authorities any benefit which would enable them to be considered consumers of a service. The undertaking in question does not therefore constitute a supply of services within the meaning of Article 6(1) of the Directive.

23 The answer to the questions referred to the Court for a preliminary ruling should therefore be that Articles 6(1) and 11(A)(1)(a) of the Directive must be interpreted as meaning that an undertaking to discontinue milk production given by a farmer under Regulation No 1336/86 does not constitute a supply of services. Consequently, any compensation received for that purpose is not subject to turnover tax.

Decision on costs

Costs

24 The costs incurred by the German, French and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Fifth Chamber)

in answer to the questions referred to it by the Bundesfinanzhof by order of 21 April 1994, hereby rules:

Articles 6(1) and 11(A)(1)(a) 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, are to be interpreted as meaning that an undertaking to discontinue milk production given by a farmer under Regulation No 1336/86 of 6 May 1986 fixing compensation for the definitive discontinuation of milk production does not constitute a supply of services. Consequently, any compensation received for that purpose is not subject to turnover tax.