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Judgment of the Court (Fifth Chamber) of 18 December 1997. - Landboden-Agrardienste GmbH & Co. KG v Finanzamt Calau. - Reference for a preliminary ruling: Finanzgericht des Landes Brandenburg - Germany. - VAT - Supply of services - National compensation for the extensification of potato production. - Case C-384/95.

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Parties

In Case C-384/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht des Landes Brandenburg, Germany, for a preliminary ruling in the proceedings pending before that court between

Landboden-Agrardienste GmbH & Co. KG

and

Finanzamt Calau

on the interpretation of Articles 6(1), 11(A)(1)(a) and 12(3)(a) of and Annex H to 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: C. Gulmann (Rapporteur), President of the Chamber, M. Wathelet, J.C. Moitinho de Almeida, J.-P. Puissochet and L. Sevón, Judges,

Advocate General: F.G. Jacobs,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in the same ministry, acting as Agents, and

- the Commission of the European Communities, by Jürgen Grunwald, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Finanzamt Calau, represented by Andreas Damm, Regierungsdirektor in the Ministry of Finance of the Land of Brandenburg, acting as Agent; the German Government, represented by Ernst Röder, assisted by Ferdinand Huschens, Oberamtsrat in the Federal Ministry of Finance, acting as Agent; and the Commission, represented by Jürgen Grunwald, at the hearing on 15 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 25 September 1997,

gives the following

Judgment

Grounds

1 By order of 8 November 1995, received at the Court on 8 December 1995, the Finanzgericht des Landes Brandenburg (Finance Court of the Land of Brandenburg), Germany, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Articles 6(1), 11(A)(1)(a) and 12(3)(a) of and Annex H to 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 Sixth Directive').

2 Those questions were raised in proceedings between Landboden-Agrardienste GmbH & Co. KG (`Landboden-Agrardienste') and the Finanzamt Calau (the Tax Office, Calau; `the Finanzamt') concerning the question whether compensation for the extensification of potato production paid under a national scheme is subject to turnover tax.

3 On 1 January 1991 Landboden-Agrardienste became the successor in title to Landwirtschaftliche Produktionsgenossenschaft (P) Bronkow.

4 In 1990 the latter undertaking had received compensation from the Kreisverwaltung Calau, Amt für Ernährung, Landwirtschaft und Forsten (Food, Agriculture and Forestry Office of the Calau local authority) pursuant to the order of 13 July 1990 promoting the extensification of agricultural production. The compensation, totalling DM 348 660, was granted in return for a 20% reduction in its annual potato production. In its tax declaration for 1990 it treated that compensation as not subject to turnover tax.

5 Following an investigation, however, the Finanzamt considered that the compensation should have been included as taxable turnover; on 1 June 1992 it thus determined that additional tax was due and sent Landboden-Agrardienste an amended notice of assessment.

6 The application made by Landboden-Agrardienste for amendment of that assessment was refused, so it brought proceedings before the Finanzgericht des Landes Brandenburg in which it contended that compensation for the extensification of potato production could not be regarded as paid under an exchange transaction. It pointed out in particular that it was impossible to identify a specific recipient of the service provided in return for the compensation payments.

7 The Finanzgericht considered that the outcome of the case turned on the interpretation of the Sixth Directive and therefore decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

`(1) Must a taxable farmer, who in 1990 extensified his potato production in Brandenburg (Federal Republic of Germany) to such an extent that at least 20% of his potato crop was not harvested by him, be regarded as having supplied to a specific recipient a service within the meaning of Article 6(1) of the Sixth Council Directive of 17 May 1977 (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes?

(2) Does a subsidy paid for the extensification of potato production on the basis of the decree of 13 July 1990 promoting the extensification of agricultural production constitute a cash payment taxable pursuant to Article 11(A)(1)(a) of the Sixth Directive?

(3) If the answer to question 1 is in the affirmative:

Is the service supplied to be taxed at the reduced rate provided for by the fourth sentence of Article 12(3)(a) of the Sixth Directive, in conjunction with Annex H thereto?'

8 By its first two questions, the national court essentially asks whether, on a proper construction of Articles 6(1) and 11(A)(1)(a) of the Sixth Directive, an undertaking given by a farmer under a national compensation scheme not to harvest at least 20% of his potato crop constitutes a supply of services for the purposes of the Sixth Directive, so that compensation received for that purpose is subject to turnover tax.

9 Article 2(1) of the Sixth Directive states that `the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such' is subject to VAT.

10 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,

...'

11 Under Article 11(A)(1)(a) 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'.

12 In Case C-215/94 Mohr v Finanzamt Bad Segeberg [1996] ECR I-959, the Court ruled on the question whether an undertaking to discontinue milk production given by a farmer under a

Community regulation fixing compensation for the definitive discontinuation of such production constitutes a supply of services for the purposes of the Sixth Directive.

13 The Court answered that question in the negative, noting that VAT was a general tax on the consumption of goods and services and that, in a case such as the one before it, there was no consumption as envisaged in the Community VAT system. It held that, by compensating farmers who undertook to cease their milk production, the Community did not acquire goods or services for its own use but acted in the common interest of promoting the proper functioning of the Community milk market. In those circumstances, the undertaking given by a farmer that he would discontinue his milk production did 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 and therefore did not constitute a supply of services within the meaning of Article 6(1) of the Sixth Directive (paragraphs 19 to 22).

14 The German Government and the Commission rightly agree that the main proceedings in Mohr and in this case must both have the same outcome as regards the interpretation of the Sixth Directive. It is irrelevant that in Mohr the compensation originated from the Community while in this case it originates from the Member State. In both situations it is necessary to decide whether an undertaking given by a farmer to reduce production in return for compensation under an intervention scheme constitutes a supply of services for the purposes of the Sixth Directive, with the result that the compensation must be subject to VAT.

15 However, while the Commission takes the view, as it did in Mohr, that there is no supply of services for the purposes of the Sixth Directive in such situations, the German Government and the Finanzamt challenge the interpretation given in the judgment in Mohr.

16 They acknowledge that the compensation at issue in the main proceedings cannot be regarded as consideration for a supply of goods falling within Article 11(A)(1)(a) of the Sixth Directive but consider that it is caught by that directive as consideration for the supply of a service. In their view, a farmer's act of limiting production or refraining from marketing certain products is a service in its own right, separate from the supply of products to consumers and entailing separate consideration. By requiring, in Mohr, that the public authority must acquire goods or services for its own use, the Court added a condition not laid down in the Sixth Directive.

17 They state in particular that the fact that VAT is a general tax on consumption cannot be used as a basis for determining whether there is a supply of services. For that purpose recourse should be had solely to the wording of Article 6 of the Sixth Directive, from which it is apparent that any transaction which does not constitute a supply of goods must be regarded as a supply of services when it is economic in nature and does not fall exclusively within the private sphere. The question of who benefits from a supply of services or of its economic impact is therefore entirely irrelevant to the meaning of that term.

18 According to the German Government and the Finanzamt, this case is concerned with an exchange transaction, because the farmer is paid for a specific service. The link between the service supplied and the compensation is so close that the attachment between the payment and the service cannot be regarded as purely technical. Since the public authority pays compensation only if production is reduced, the related obligation constitutes a supply of services for consideration. Nor does it really matter whether the recipient of the service is the public at large or the authority as representative of the public at large, since that is not one of the factors laid down by Articles 2, 6 and 11 of the Sixth Directive.

19 As the Advocate General has pointed out in paragraphs 21 to 29 of his Opinion, the arguments put forward by the German Government and the Finanzamt do not undermine the reasoning adopted by the Court in Mohr.

20 Contrary to their submissions, that reasoning does not mean that a payment made by a public authority in the common interest cannot constitute consideration for a supply of services for the purposes of the Sixth Directive, or that the concept of a supply of services depends on the use made of a service by the person who pays for it. Only the nature of the undertaking given is to be taken into consideration: for such an undertaking to be covered by the common system of VAT it must imply consumption.

21 Thus, in order to determine whether a supply of services is caught by the Sixth Directive, it is necessary to examine the transaction in the light of the objectives and nature of the common system of VAT.

22 In that regard, Article 2 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, p. 14) provides:

`The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.

On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components.

...'

23 A transaction such as that at issue in the main proceedings, namely the undertaking given by a farmer to reduce production, does not fall within the scope of that principle because it does not give rise to any consumption. As the Advocate General has pointed out in paragraph 26 of his Opinion, the farmer does not provide services to an identifiable consumer or any benefit capable of being regarded as a cost component of the activity of another person in the commercial chain.

24 Since the undertaking given by a farmer to reduce production does not entail either for the competent national authorities or for other identifiable persons any benefit which would enable them to be considered to be consumers of a service, it cannot be classified as a supply of services within the meaning of Article 6(1) of the Sixth Directive.

25 The answer to the first two questions referred to the Court for a preliminary ruling must therefore be that, on a proper construction of Articles 6(1) and 11(A)(1)(a) of the Sixth Directive, an undertaking given by a farmer under a national compensation scheme not to harvest at least 20% of his potato crop does not constitute a supply of services for the purposes of the Sixth Directive. Consequently, compensation received for that purpose is not subject to turnover tax.

26 In view of the answer given to the first two questions there is no need to consider the third question.

Decision on costs

Costs

27 The costs incurred by the German Government and by 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 action 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 Finanzgericht des Landes Brandenburg by order of 8 November 1995, hereby rules:

On a proper construction 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, an undertaking given by a farmer under a national compensation scheme not to harvest at least 20% of his potato crop does not constitute a supply of services for the purposes of that directive. Consequently, compensation received for that purpose is not subject to turnover tax.