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Judgment of the Court of 17 September 1997. - Finanzamt Osnabrück-Land v Bernhard Langhorst. - Reference for a preliminary ruling: Bundesfinanzhof - Germany. - Value added tax - Interpretation of Articles 21(1)(c) and 22(3)(c) of the Sixth Directive 77/388/EEC - Document serving as an invoice - Credit note issued by the buyer and not contested by the seller as regards the amount of tax shown. - Case C-141/96.

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Keywords

Tax provisions - Harmonization of laws - Turnover taxes - Common system of value added tax - Deduction of input tax - Obligations of the taxable person - Possession of an invoice - Invoice - Definition - Credit note issued by the recipient of the goods or services - Included - Conditions - Amount stated not contested by the taxable person - No effect

(Council Directive 77/388, Arts 21(1)(c) and 22(3)(c))

Summary

Article 22(3)(c) of the Sixth Directive 77/388 on the harmonization of the laws of the Member States relating to turnover taxes authorizes Member States to regard a credit note issued by the recipient of the goods or services as a `document serving as an invoice', where it includes the information prescribed for invoices by the directive, it is drawn up with the agreement of the taxable person who supplies the goods or services, and the latter is able to contest the amount of value added tax mentioned. In such circumstances a taxable person who has that power of control may be regarded as the author of the credit note even if it is drawn up by the recipient of the goods or services.

Moreover, a taxable person who has not contested the mention in such a credit note of an amount of value added tax greater than that owed by reason of taxable transactions must be regarded as the person who has mentioned that amount, and is consequently liable to pay the amount shown, within the meaning of Article 21(1)(c) of the Sixth Directive. Any other interpretation would give scope for possible fraud or collusion, contrary to the proper functioning of the common system of

value added tax and its objective of ensuring that value added tax is levied and collected under the supervision of the tax authorities.

Parties

In Case C-141/96,

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

Finanzamt Osnabrück-Land

and

Bernhard Langhorst

on the interpretation of Articles 21(1)(c) and 22(3)(c) 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,

composed of: G.C. Rodríguez Iglesias, President, G.F. Mancini, J.C. Moitinho de Almeida (Rapporteur), J.L. Murray and L. Sevón (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, D.A.O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: P. Léger,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

- the United Kingdom Government, by S. Ridley, of the Treasury Solicitor's Department, acting as Agent, and S. Lee, Barrister,

- the Commission of the European Communities, by J. Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, represented by E. Röder; of the Greek Government, represented by V. Kontolaimos, Deputy Legal Adviser in the State Legal Service, and A. Rokofyllou, Special Adviser to the Deputy Minister of Foreign Affairs, acting as Agents; of the United Kingdom Government, represented by S. Ridley and S. Richards, Barrister; and of the Commission, represented by J. Sack, at the hearing on 15 April 1997,

after hearing the Opinion of the Advocate General at the sitting on 27 May 1997,

gives the following

Judgment

Grounds

1 By order of 14 March 1996, received at the Court on 29 April 1996, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Articles 21(1)(c) and 22(3)(c) 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 Sixth Directive').

2 Those questions were raised in proceedings between the Finanzamt (Tax Office) Osnabrück-Land and Mr Langhorst concerning the question whether Mr Langhorst is liable to pay the amount of value added tax (`VAT') mentioned on a credit note issued by a customer, which he did not contest, even though the amount is higher than that owed by reason of the taxable transactions.

The Sixth Directive

3 Article 21(1)(a) and (c) of the Sixth Directive provides:

`The following shall be liable to pay value added tax:

1. under the internal system:

(a) taxable persons who carry out taxable transactions other than those referred to in Article 9(2)(e) and carried out by a taxable person resident abroad. ...

...

(c) any person who mentions the value added tax on an invoice or other document serving as invoice'.

4 Article 22(3) of the Sixth Directive further provides:

`3. (a) Every taxable person shall issue an invoice, or other document serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof.

Every taxable person shall likewise issue an invoice in respect of payments on account made to him by another taxable person before the supply of goods or services is effected or completed.

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

(c) The Member States shall determine the criteria for considering whether a document serves as an invoice.'

German law

5 Paragraph 14(1) of the Umsatzsteuergesetz (Law on Turnover Tax, hereinafter `the UStG') of 26 November 1979, as amended by the Law of 18 August 1980, provides:

`(1) If a trader carries out taxable supplies or other services under Paragraph 1(1)(1), he is entitled and, where he carries out the transactions to another trader for the latter's undertaking, obliged on request by the latter, to issue invoices in which the tax is shown separately. Such invoices must include the following information:

1. the name and address of the trader providing the services,

2. the name and address of the recipient of the services,

3. the quantity and the usual commercial description of the subject-matter of the supply or the type and extent of the other service,

4. the date of the supply or other service,

5. the consideration for the supply or other service (Paragraph 10 above) and

6. the amount of tax due on the consideration (point 5 above).

...'

6 Paragraph 14(2) of the UStG then provides:

`If the trader has in an invoice for a supply or other service shown separately a higher amount of tax than he owes under this Law in respect of the transaction, then he shall also owe the additional amount. If he corrects the amount of tax as against the recipient, then Paragraph 17(1) shall apply correspondingly.'

7 Under Paragraph 14(5) of the UStG:

`A credit note by which a trader settles up for a taxable supply or other service made to him shall also be deemed to be an invoice. A credit note shall be recognized if the following conditions are met:

1. The trader providing the service (the recipient of the credit note) must be entitled under subparagraph 1 to show the tax separately in an invoice.

2. There must be agreement between the issuer and the recipient of the credit note that the supply or other service is to be settled by a credit note.

3. The credit note must include the information prescribed in the second sentence of subparagraph 1 above.

4. The credit note must have been delivered to the trader providing the service.

Sentences 1 and 2 above shall apply by analogy to credit notes which the trader issues as payment or partial payment for a taxable supply or other service which has not yet been carried out. The credit note shall cease to have effect as an invoice in so far as the recipient contests the amount of tax shown therein.'

Facts of the main proceedings

8 Mr Langhorst, a farmer, declared his turnover for 1985, the year at issue in the present proceedings, after having elected under Paragraph 24(4) of the UStG to be taxed at the rate of 7% instead of the rate of 13% provided for in the first sentence of Paragraph 24(1) of the UStG.

9 Unaware of that fact, livestock dealers whom Mr Langhorst had supplied with fat pigs issued him with credit notes which mentioned separately VAT calculated at 13%. Mr Langhorst did not at first contest the amount of VAT mentioned in the credit notes.

10 Mr Langhorst subsequently brought proceedings in the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony), which gave judgment on 10 October 1989 reducing the amount of VAT. By application of 27 January 1992, supplemented on 26 March 1992, the Finanzamt appealed on a point of law to the Bundesfinanzhof against that decision.

11 In its order for reference, the Bundesfinanzhof considers that the reduction of VAT was calculated correctly by the Niedersächsisches Finanzgericht, but that the Finanzamt's appeal could nevertheless be upheld if, under the first sentence of Paragraph 14(2) of the UStG, Mr Langhorst had to pay the total amount of VAT mentioned separately in the credit notes, including the additional amounts which were not justified by the taxable transactions.

12 The Bundesfinanzhof observes, however, that the wording of Paragraph 14(2) of the UStG expressly describes as the person solely liable for the higher amount of tax the trader who has mentioned the higher amount of VAT separately in an invoice. In the present case, however, it was not the supplier, Mr Langhorst, who issued the document which indicated a higher amount of VAT but his customers, the livestock merchants. The Bundesfinanzhof also states that in so far as the credit notes issued by the livestock merchants are deemed to be invoices under Paragraph 14(5) of the UStG, thus allowing them to deduct an amount of VAT which is not in fact justified, it could be argued that Mr Langhorst is liable for that amount of VAT, since he did not contest it.

13 The Bundesfinanzhof is uncertain whether such an interpretation of Paragraph 14(2) of the UStG is consistent with Community law, in particular Article 21(1)(c) of the Sixth Directive, under which any person who mentions VAT on an invoice or other document serving as an invoice is liable to pay VAT, and Article 22(3)(c) of that directive, which gives the Member States power to determine the criteria under which a document may serve as an invoice, but does not expressly state that credit notes issued by customers may be treated as invoices issued by the taxable person. The Bundesfinanzhof accordingly stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

`1. Is it permissible under Article 22(3)(c) 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 for a credit note within the meaning of Paragraph 14(5) of the Umsatzsteuergesetz 1980 to be regarded as an invoice or other document serving as an invoice (Article 21(1)(c) of the Sixth Directive)?

2. If so, is it permissible under Article 21(1)(c) of the Sixth Directive for a person who accepts a credit note showing a higher amount of tax than that owed by reason of taxable transactions, and does not contest in that respect the amount of tax mentioned in the credit note, to be regarded as a person who mentions value added tax in an invoice or other document serving as an invoice and is therefore liable to pay that value added tax?

3. Can the recipient of a credit note, in the circumstances set out in Question 2, rely on Article 21(1)(c) of the Sixth Directive if the value added tax mentioned in the credit note is claimed from him as a tax debt to the extent of the difference between the tax mentioned and the tax owed by reason of taxable transactions?'

14 The order for reference explains that Question 3 arises only if the answer to Question 2 is negative.

Question 1

15 By its first question the national court essentially asks whether Article 22(3)(c) of the Sixth Directive authorizes Member States to regard a credit note issued by the recipient of goods or services as a `document serving as an invoice'.

16 Under Article 22(3)(a) of the Sixth Directive, an invoice or document serving as such must be issued by every taxable person in respect of all goods and services supplied by him to another taxable person and, under Article 22(3)(b), that that invoice or document serving as such must `state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions'.

17 The minimum conditions regarding the information which must appear on the invoice or document serving as such having thus been laid down, Article 22(3)(c) leaves the Member States free to determine the criteria for considering whether such a document serves as an invoice. That power must, however, be exercised consistently with one of the objectives of the Sixth Directive, namely to ensure that VAT is levied and collected under the supervision of the tax authorities (see, to this effect, Joined Cases 123/87 and 330/87 Jeunehomme and EGI v Belgian State [1988] ECR 4517, paragraphs 16 and 17, and Case C-85/95 Reisdorf v Finanzamt Köln-West [1996] ECR I-6257, paragraph 24).

18 It must therefore be considered whether a credit note which includes, as in the case in the main proceedings, the compulsory information referred to in Article 22(3)(b) of the Sixth Directive may be regarded as serving as an invoice even though it is issued by the recipient of the goods or services, where under the relevant national provisions the issuer and the recipient of the credit note must have agreed that the supply or service is to be settled by a credit note, the credit note must have been delivered to the trader providing the service, and the credit note may no longer serve as an invoice if its recipient contests the amount of tax stated therein.

19 Article 22(3)(a) of the Sixth Directive refers to the normal situation where an invoice or document serving as an invoice is issued by the taxable person who supplies the goods or services.

20 However, as the Advocate General observes in point 29 et seq. of his Opinion, since the purpose of that provision is to ensure correct collection of the tax and to avoid fraud, there is no reason why the document in question should not be drawn up by the recipient of the goods or services, provided that it includes the information prescribed for an invoice and the taxable person who supplies the goods or services has been given the opportunity to ask, if necessary, for the information to be corrected.

21 In such a case, since he has that power of control, the taxable person may be regarded as the author of the document, the drawing up of which he has, as it were, delegated to his customer. The credit note thus fulfils the function of documenting the taxable person's rights and obligations with respect to VAT, since it contains the same information as a traditional invoice and the taxable person is free to approve its content.

22 As the German and United Kingdom Governments have rightly observed, a credit note issued by the recipient of the goods or services is in many cases the best means of accounting for the supplies effected, in that it is only the recipient of the goods or services who is in a position to check that they comply with the terms of the contract.

23 In those circumstances, it cannot be deduced from the fact that Article 22(3)(a) of the Sixth Directive provides only for the issuing by the taxable person who supplies the goods or services of an invoice or document serving as such that it is not possible for the Member States to regard a

document as serving as an invoice solely because it has been issued by the recipient of the goods or services.

24 The answer to Question 1 must therefore be that Article 22(3)(c) of the Sixth Directive authorizes Member States to regard a credit note issued by the recipient of the goods or services as a `document serving as an invoice', where it includes the information prescribed for invoices by that directive, it is drawn up with the agreement of the taxable person who supplies the goods or services, and the latter is able to contest the amount of VAT mentioned.

Question 2

25 By its second question the national court seeks to establish whether a taxable person who has not contested the mention, in a credit note serving as an invoice, of an amount of VAT greater than that owed by reason of taxable transactions may be regarded as the person who has mentioned that amount, and is consequently liable for the amount stated, within the meaning of Article 21(1)(c) of the Sixth Directive.

26 Article 21(1)(c) of the Sixth Directive provides that `any person who mentions the value added tax on an invoice or other document serving as invoice' is liable to pay value added tax under the internal system.

27 Where, as in the case in the main proceedings, a credit note serves as an invoice, the taxable person must be regarded as the person who has in fact mentioned VAT in the credit note, within the meaning of Article 21(1)(c) of the Sixth Directive, and is consequently liable to pay the amount stated.

28 Were it otherwise, part of the VAT appearing in the document serving as an invoice would not have to be paid by the taxable person, even though, as the order for reference observes, that VAT might have been deducted in full by the recipient of the goods or services, thus giving scope for possible fraud or collusion, contrary to the proper functioning of the common system of VAT established by the Sixth Directive and to its objective of ensuring that VAT is levied and collected under the supervision of the tax authorities.

29 The answer to Question 2 must therefore be that a taxable person who has not contested the mention, in a credit note serving as an invoice, of an amount of VAT greater than that owed by reason of taxable transactions may be regarded as the person who has mentioned that amount, and is consequently liable to pay the amount shown, within the meaning of Article 21(1)(c) of the Sixth Directive.

Question 3

30 In view of the answer to Question 2, there is no need to answer Question 3.

Decision on costs

Costs

31 The costs incurred by the German, Greek and United Kingdom Governments 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,

in answer to the questions referred to it by the Bundesfinanzhof by order of 14 March 1996, hereby rules:

1. Article 22(3)(c) 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, authorizes Member States to regard a credit note issued by the recipient of the goods or services as a `document serving as an invoice', where it includes the information prescribed for invoices by that directive, it is drawn up with the agreement of the taxable person who supplies the goods or services, and the latter is able to contest the amount of value added tax mentioned.

2. A taxable person who has not contested the mention, in a credit note serving as an invoice, of an amount of value added tax greater than that owed by reason of taxable transactions may be regarded as the person who has mentioned that amount, and is consequently liable to pay the amount shown, within the meaning of Article 21(1)(c) of the Sixth Directive.