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Judgment of the Court (Sixth Chamber) of 12 November 1998. - The Institute of the Motor Industry v Commissioners of Customs and Excise. - Reference for a preliminary ruling: Value Added Tax and Duties Tribunal, London - United Kingdom. - VAT - Exemptions - Non-profit-making organisations with aims of a trade-union nature. - Case C-149/97.

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Keywords

Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Exemptions provided for in the Sixth Directive - Non-profit-making organisations with aims of a trade-union nature - Definition

(Council Directive 77/388, Art. 13A(1)(I))

Summary

For the purposes of Article 13A(1)(I) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, an organisation with aims of a trade-union nature means an organisation whose main aim is to defend the collective interests of its members - whether they are workers, employers, independent professionals or traders carrying on a particular economic activity - and to represent them vis-à-vis the appropriate third parties, including the public authorities.

Parties

In Case C-149/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the VAT and Duties Tribunal, London, for a preliminary ruling in the proceedings pending before that tribunal between

Institute of the Motor Industry

and

Commissioners of Customs and Excise

on the interpretation of Article 13A(1)(l) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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

(Sixth Chamber),

composed of: P.J.G. Kapteyn (Rapporteur), President of the Chamber, G.F. Mancini, J.L. Murray, H. Ragnemalm and K.M. Ioannou, Judges,

Advocate General: G. Cosmas,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- the Institute of the Motor Industry, by P. Duffy QC, instructed by C. Mainprice, Solicitor,

- the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, K.P.E. Lasok QC and P.J.E. Whipple, Barrister,

- the Commission of the European Communities, by P. Oliver, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Institute of the Motor Industry, the United Kingdom Government and the Commission at the hearing on 24 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 14 May 1998,

gives the following

Judgment

Grounds

1 By order of 7 April 1997, received at the Court on 17 April 1997, the VAT and Duties Tribunal, London, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 13A(1)(l) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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 That question was raised in proceedings between the Institute of the Motor Industry (hereinafter 'the Institute') and the Commissioners of Customs and Excise concerning the application of an exemption from value added tax ('VAT') for items in Group 9 of Schedule 9 to the Value Added Tax Act 1994.

3 Group 9 of Schedule 9 to that Act exempts 'trade unions and professional bodies' from VAT. The relevant wording is as follows:

'1. The supply to its members of such services and, in connection with those services, of such goods as are both referable only to its aims and available without payment other than a membership subscription by any of the following non-profit-making organisations -

(a) a trade union or other organisation of persons having as its main object the negotiation on behalf of its members of the terms and conditions of their employment;

(b) a professional association, membership of which is wholly or mainly restricted to individuals who have or are seeking a qualification appropriate to the practice of the profession concerned;

(c) an association, the primary purpose of which is the advancement of a particular branch of knowledge, or the fostering of professional expertise, connected with the past or present professions or employments of its members;

(d) ...'

4 The Institute is a voluntary association of persons working in the retail sector of the motor industry.

5 By decision of 15 January 1996 the Commissioners of Customs and Excise ruled that the Institute did not satisfy the conditions for exemption under Schedule 9 to the VAT Act 1994, so that its supplies of services to its members in return for their annual subscriptions constituted taxable supplies for VAT purposes.

6 The Institute appealed against that decision to the VAT and Duties Tribunal, London.

7 In its order for reference, that tribunal considers that the Institute does not fall within the scope of Schedule 9 to the VAT Act 1994. In its view, the Institute cannot be regarded as a 'professional association' within the meaning of Item 1(b) of Group 9 of Schedule 9, since its members are drawn from too diverse a range of activities. Moreover, the Institute is not an association within the meaning of Item 1(c) of Group 9, in that it does not contribute to the advancement of a particular branch of knowledge, nor to the fostering of professional expertise. Finally, the Institute does not fall within the scope of Item 1(a) of Group 9 because it is not a 'trade union' whose main object is the negotiation on behalf of its members of the terms and conditions of their employment.

8 The Institute argued before the national tribunal that it is an organisation of a trade-union nature as referred to in Article 13A(1)(I) of the Directive and that its supplies and services are therefore exempt from VAT.

9 That provision reads as follows:

'1. 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 possible evasion, avoidance or abuse:

...

(l) supply of services and goods closely linked thereto for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

...'

10 The national tribunal considers that, having regard to the ordinary meaning of the expression 'trade union' used in the English version of Article 13A(1)(l) of the Directive, the supplies of goods and services effected by the Institute cannot be exempted from VAT by virtue of that provision.

11 It observes, however, that the term 'syndicale' in the French version and its equivalents in certain other language versions appear to be used in a wider sense than that of the expression 'trade union' in the English version and its equivalents in other language versions.

12 Consequently, the national tribunal is uncertain whether the Institute falls within the scope of Article 13A(1)(l) of the Directive. Since it further considered that exemption of the Institute's supplies and services was not likely to cause distortion of competition, the tribunal stayed proceedings and referred the following question to the Court for a preliminary ruling:

'In the light of the findings of fact in paragraphs 3-19 and 21 of the decision of the Tribunal and in circumstances of the sort found in paragraph 21 (which is summarised below), are the services supplied by such an association, being a non-profit-making organisation, exempt from VAT as falling within the scope of Article 13A(1)(l) of the Sixth Directive by virtue of the following words: "... organisations with aims of a ... trade-union ... nature ..."?

Paragraph 21, in summary, states that the association is a voluntary association of individuals comprising employees in the retail motor industry. The primary purposes of the association are the improvement of the standards of its members at work, the improvement of career structures within the different sectors of the industry and the consequent enhancement of the public perception of the industry and the people working within it. The association seeks to achieve these ends by responding to the requirements of the industry for skills at all levels, by validating courses (run by other institutions) that teach those skills, by making awards on completion of those courses and by grading its members, by disseminating information designed to keep its members up to date with developments in the industry and in their skills and by keeping a job placement register.'

13 By its question the national tribunal essentially asks the Court whether an organisation such as the Institute is a non-profit-making organisation with aims of a trade-union nature within the meaning of Article 13A(1)(l) of the Directive.

14 The Court notes first of all that, as the Advocate General observes in points 33 to 37 of his Opinion, the expressions used in some of the language versions of that provision to render the expression 'aims of a trade-union nature' are capable of having a different meaning from those used in other language versions.

15 Thus the expressions used in several versions, including the English ('aims of a trade-union nature'), refer essentially to the aims of workers' trade unions, whereas those used in other versions, including the French ('objectifs de nature syndicale'), refer also to the aims of professional associations which do not constitute such unions.

16 It is settled case-law that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the

requirement of the uniform application of Community law. In the event of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see Case C-372/88 Milk Marketing Board v Cricket St Thomas [1990] ECR I-1345, paragraphs 18 and 19).

17 It should be borne in mind here that the terms used to specify the exemptions envisaged by Article 13 of the Directive are to be interpreted strictly, since they constitute exceptions to the general principle that turnover tax is levied on all services supplied for consideration by a taxable person (Case 348/87 Stichting Uitvoering Financiële Acties v Staatssecretaris van Financiën [1989] ECR 1737, paragraph 13).

18 It must also be remembered that the aim of Article 13A of the Directive is to exempt from VAT certain activities which are in the public interest. As the Court has stressed on several occasions (Case 107/84 Commission v Germany [1985] ECR 2655, paragraph 17, and Stichting Uitvoering Financiële Acties, paragraph 12), that provision does not provide exemption for every activity performed in the public interest, but only for those which are listed and described in great detail.

19 In the light of those considerations, it must be held that a non-profit-making organisation which aims to promote the interests of its members cannot, where that object is not put into practice by defending and representing the collective interests of its members vis-à-vis the relevant decision-makers, be regarded as having objects of a trade-union nature within the meaning of Article 13A(1)(l) of the Directive.

20 The expression 'trade-union' in that provision means specifically an organisation whose main object is to defend the collective interests of its members - whether they are workers, employers, independent professionals or traders carrying on a particular economic activity - and to represent them vis-à-vis the appropriate third parties, including the public authorities.

21 Thus, a non-profit-making organisation whose main object is to defend and represent the collective interests of its members satisfies the criterion of exercising an activity in the public interest, which is the basis of the exemptions set out in Article 13A(1)(l) of the Directive, in so far as it provides its members with a representative voice and strength in negotiations with third parties.

22 It is for the national tribunal to assess, in the light of the above considerations, whether an association such as the Institute is an organisation with aims of a trade-union nature within the meaning of Article 13A(1)(l) of the Directive.

23 The answer to the national tribunal's question must therefore be that, for the purposes of Article 13A(1)(l) of the Directive, an organisation with aims of a trade-union nature means an organisation whose main aim is to defend the collective interests of its members - whether they are workers, employers, independent professionals or traders carrying on a particular economic activity - and to represent them vis-à-vis the appropriate third parties, including the public authorities.

Decision on costs

Costs

24 The costs incurred by the United Kingdom Government and by the Commission, 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 tribunal, the decision on costs is a matter for that tribunal.

Operative part

On those grounds,

THE COURT

(Sixth Chamber),

in answer to the question referred to it by the VAT and Duties Tribunal, London, by order of 7 April 1997, hereby rules:

For the purposes of Article 13A(1)(l) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, an organisation with aims of a trade-union nature means an organisation whose main aim is to defend the collective interests of its members - whether they are workers, employers, independent professionals or traders carrying on a particular economic activity - and to represent them vis-à-vis the appropriate third parties, including the public authorities.