Case C-251/05

Talacre Beach Caravan Sales Ltd

v

Commissioners of Customs & Excise

(Reference for a preliminary ruling from the

Court of Appeal (England and Wales) (Civil Division))

(Sixth VAT Directive – Article 28 – Exemption with refund of the tax paid – Sale of goods taxed at zero-rate fitted with goods taxed at the standard rate – Residential caravans – Single supply)

Opinion of Advocate General Kokott delivered on 4 May 2006

Judgment of the Court (First Chamber), 6 July 2006

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Option for Member States to maintain exemptions with refund of the tax paid at the preceding stage

(Council Directive 77/388, Art. 28(2)(a))

The fact that specific goods are counted as a single supply, including both a principal item which is by virtue of a Member State's legislation subject to an exemption with refund of the tax paid within the meaning of Article 28(2)(a) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 92/77 supplementing the common system of value added tax and amending Directive 77/388 (approximation of value added tax rates), and items which that legislation excludes from the scope of that exemption, does not prevent the Member State concerned from levying value added tax at the standard rate on the supply of those excluded items.

While it follows, admittedly, from the case-law on the taxation of single supplies that such a supply is, as a rule, subject to a single rate of value added tax, the case?law does not preclude some elements of that supply from being taxed separately where only such taxation complies with the conditions imposed by Article 28(2)(a) of the Sixth Directive on the application of exemptions with refund of the tax paid.

(see paras 24, 27, operative part)

JUDGMENT OF THE COURT (First Chamber)

6 July 2006 (*)

(Sixth VAT Directive – Article 28 – Exemption with refund of the tax paid – Sale of goods taxed at zero-rate fitted with goods taxed at the standard rate – Residential caravans – Single supply)

In Case C-251/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Court of Appeal (England and Wales) (Civil Division), made by decision of 21 July 2004, received at the Court on 14 June 2005, in the proceedings

Talacre Beach Caravan Sales Ltd

v

Commissioners of Customs & Excise,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Schiemann, N. Colneric, M. Ileši? (Rapporteur) and E. Levits, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 April 2006,

after considering the observations submitted on behalf of:

– Talacre Beach Caravan Sales Ltd, by R. Cordara QC, A. Hitchmough, Barrister, and B. Goren, Solicitor,

– the United Kingdom Government, by C. White and T. Harris, acting as Agents, and R. Anderson QC,

– the Commission of the European Communities, by R. Lyal, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 28(2)(a) 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), as amended by Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates) (OJ 1992 L 316, p. 1) (‘the Sixth Directive’).

2 The reference was made in the course of a dispute between Talacre Beach Caravan Sales

Ltd (‘Talacre’) and the Commissioners of Customs and Excise (‘the Commissioners’), who are responsible for the collection of value added tax (‘VAT’) in the United Kingdom, regarding the application of an exemption with refund of the tax paid.

The main proceedings and the question referred to the Court for a preliminary ruling

3 Talacre operates holiday home parks in the United Kingdom. Its income is derived, inter alia, from the sale of fitted caravans, the rental of pitches and the provision of associated facilities to caravan owners.

4 The fitted caravans sold by Talacre typically include bathroom suites, floor coverings, curtain rails, curtains, cupboards, fitted kitchens, seating units with fitted banquettes, dining tables, chairs, stools, coffee tables, mirrors, wardrobes, beds and mattresses to fit them.

5 In the caravan manufacturer’s invoices to Talacre the price of the caravan without VAT and the price of the contents with VAT at the standard rate are shown separately.

6 Talacre however considers that the sale of a caravan and its contents is a single indivisible supply which should thus be subject to a single rate of tax, namely that appropriate to the principal element, the caravan itself. The zero?rate is the single rate of tax to be applied in the circumstances, since caravans of the kind supplied by Talacre are entitled to that rate in accordance with the law applicable in the United Kingdom.

7 Section 30 of the Value Added Tax Act (‘the VAT Act’) provides that ‘… a supply of goods or services is zero-rated … if the goods or services are of a description for the time being specified in Schedule 8 …’. Group 9 of Schedule 8 includes ‘Caravans exceeding the limits of size for the time being permitted for the use on roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2 030 kilogrammes’.

8 It is not disputed that that zero-rate may be treated as an exemption with refund of the tax paid within the meaning of Article 28(2) of the Sixth Directive, which provides:

‘Notwithstanding Article 12(3), the following provisions shall apply during the transitional period referred to in Article 281.

(a) Exemptions with refund of the tax paid at the preceding stage and reduced rates lower than the minimum rate laid down in Article 12(3) in respect of the reduced rates, which were in force on 1 January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained.

…’

9 In contrast to the argument submitted by Talacre concerning the taxation of the supply of a fitted caravan, the Commissioners applied the zero-rate only to the caravans themselves and applied the standard rate of VAT to their contents.

10 In this respect, they acted on the basis of the fact that the VAT Act specifically excludes the contents in question from the zero-rate.

11 According to a note contained in Schedule 8 to the VAT Act, Group 9 of that schedule covers neither ‘removable contents other than goods of a kind mentioned in item 3 of Group 5’ nor ‘the supply of accommodation in a caravan or houseboat’. Pursuant to section 96 of the VAT Act, Schedule 8 is to be interpreted in accordance with that note.

12 The appeal brought by Talacre against the Commissioners’ decision was dismissed by the VAT and Duties Tribunal and by the High Court of Justice of England and Wales, Chancery Division. According to those courts, the fact that the caravan and its contents counted as a single supply did not mean that the overall price of both should be zero-rated. Talacre appealed to the referring court.

13 It is in those circumstances that the Court of Appeal (England and Wales) (Civil Division) decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

‘Where a Member State has, pursuant to Article 28(2)(a) of the [Sixth Directive], by its domestic legislation exercised its right of derogation so as to zero-rate a supply of specified goods but in the same legislation has identified items that should not be included in the scope of the zero?rating (“excluded items”), does the fact that there is a single supply of goods (together with the excluded items) preclude the Member State from charging VAT at the standard rate on the supply of the excluded items?’

On the question referred

14 By its question, the referring court essentially asks whether the fact that specific goods are counted as a single supply, including both a principal item which is by virtue of a Member State’s legislation subject to an exemption with refund of the tax paid within the meaning of Article 28(2)(a) of the Sixth Directive and items which that legislation excludes from the scope of that exemption, prevents the Member State concerned from levying VAT at the standard rate on the supply of those excluded items.

15 Talacre submits that that question should be answered in the affirmative. It claims that there are no circumstances in which a Member State may apply multiple rates of taxation to a single supply. In this connection it relies on Case 173/88 *Henriksen* [1989] ECR 2763; Case C?349/96 *CPP* [1999] ECR I-973; and Case C?34/99 *Primback* [2001] ECR I-3833.

16 The United Kingdom Government and the Commission of the European Communities dispute that line of argument. They observe that, in circumstances such as those in the main proceedings, the rate of VAT applied is linked to the establishment of a national derogation which the Member State is authorised to adopt, subject to certain conditions, under Article 28 of the Sixth Directive. Since one of those conditions is that that derogation had to be in force on 1 January 1991, the exemption with refund of the tax paid cannot be extended beyond the terms specifically laid down by the national legislation.

17 It should be noted from the outset that, in authorising Member States to apply exemptions with refund of the tax paid, Article 28(2) of the Sixth Directive lays down a derogation to Article 12(3) thereof, which governs the standard rate of VAT.

18 It is apparent, secondly, from the wording of Article 28(2)(a) of the Sixth Directive that the application of exemptions with refund of the tax paid is subject to a number of conditions. Those exemptions must have been in force on 1 January 1991. In addition, they must be in accordance with Community law and satisfy the conditions stated in the last indent of Article 17 of the Second

Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16), now repealed, which provided that exemptions with refund of the tax paid could only be established for clearly defined social reasons and for the benefit of the final consumer.

19 In the present case, it is not disputed that in so far as the VAT Act exempts, with refund of the tax paid, caravans of the kind supplied by Talacre, those conditions are fulfilled. Specifically, it is acknowledged that the zero-rate was in force on 1 January 1991 and that it was established for social reasons.

20 It is also common ground that the VAT Act specifically excludes some items supplied with the caravans from exemption with refund of the tax paid. It follows that, so far as those items are concerned, the conditions laid down in Article 28(2)(a) of the Sixth Directive, in particular the condition that only exemptions in force on 1 January 1991 can be maintained, are not fulfilled.

21 Therefore, an exemption with refund of the tax paid in respect of those items would extend the scope of the exemption laid down for the supply of the caravans themselves. That would mean that items specifically excluded from exemption by the national legislation would be exempted nevertheless pursuant to Article 28(2)(a) of the Sixth Directive.

22 Clearly, such an interpretation of Article 28(2)(a) of the Sixth Directive would run counter to that provision’s wording and purpose, according to which the scope of the derogation laid down by the provision is restricted to what was expressly covered by the national legislation on 1 January 1991. As the Advocate General observed in points 15 and 16 of her Opinion, Article 28(2)(a) of the Sixth Directive can be compared to a ‘stand?still’ clause, intended to prevent social hardship likely to follow from the abolition of exemptions provided for by the national legislature but not included in the Sixth Directive. Having regard to that purpose, the content of the national legislation in force on 1 January 1991 is decisive in ascertaining the scope of the supplies in respect of which the Sixth Directive allows an exemption to be maintained during the transitional period.

23 Furthermore, as the Court has pointed out on a number of occasions, the provisions of the Sixth Directive laying down exceptions to the general principle that VAT is to be levied on all goods or services supplied for consideration by a taxable person are to be interpreted strictly (see, to that effect, Joined Cases C?308/96 and C-94/97 *Madgett and Baldwin* [1998] ECR I-6229, paragraph 34; Case C-384/01 *Commission* v *France* [2003] ECR I?4395, paragraph 28; Joined Cases C-394/04 and C-395/04 *Ygeia* [2005] ECR I-0000, paragraphs 15 and 16; and Case C?280/04 *Jyske Finans* [2005] ECR I-0000, paragraph 21). For that reason as well, the exemptions with refund of the tax paid referred to in Article 28(2)(a) of the Sixth Directive cannot cover items which were, as at 1 January 1991, excluded from such an exemption by the national legislature.

24 The fact that the supply of the caravan and of its contents may be characterised as a single supply does not affect that conclusion. The case-law on the taxation of single supplies, relied on by Talacre and referred to in paragraph 15 of this judgment, does not relate to the exemptions with refund of the tax paid with which Article 28 of the Sixth Directive is concerned. While it follows, admittedly, from that case-law that a single supply is, as a rule, subject to a single rate of VAT, the case-law does not preclude some elements of that supply from being taxed separately where only such taxation complies with the conditions imposed by Article 28(2)(a) of the Sixth Directive on the application of exemptions with refund of the tax paid.

25 In this connection, as the Advocate General rightly pointed out in points 38 to 40 of her Opinion, referring to paragraph 27 of *CCP*, there is no set rule for determining the scope of a supply from the VAT point of view and therefore all the circumstances, including the specific legal

framework, must be taken into account. In the light of the wording and objective of Article 28(2)(a) of the Sixth Directive, recalled above, a national exemption authorised under that article can be applied only if it was in force on 1 January 1991 and was necessary, in the opinion of the Member State concerned, for social reasons and for the benefit of the final consumer. In the present case, the United Kingdom of Great Britain and Northern Ireland has determined that only the supply of the caravans themselves should be subject to the zero-rate. It did not consider that it was justified to apply that rate also to the supply of the contents of those caravans.

26 Lastly, there is nothing to support the conclusion that the application of a separate rate of tax to some elements of the supply of fitted caravans would lead to insurmountable difficulties capable of affecting the proper working of the VAT system (see, by analogy, Case C-63/04 *Centralan Property* [2005] ECR I-0000, paragraphs 79 and 80).

27 In the light of all the foregoing, the answer to the question referred must be that the fact that specific goods are counted as a single supply, including both a principal item which is by virtue of a Member State's legislation subject to an exemption with refund of the tax paid within the meaning of Article 28(2)(a) of the Sixth Directive and items which that legislation excludes from the scope of that exemption, does not prevent the Member State concerned from levying VAT at the standard rate on the supply of those excluded items.

Costs

28 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The fact that specific goods are counted as a single supply, including both a principal item which is by virtue of a Member State's legislation subject to an exemption with refund of the tax paid within the meaning of Article 28(2)(a) 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, as amended by Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates), and items which that legislation excludes from the scope of that exemption, does not prevent the Member State concerned from levying VAT at the standard rate on the supply of those excluded items.

[Signatures]

* Language of the case: English.