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Case C-368/09

Pannon Gép Centrum kft

v

APEH Központi Hivatal Hatósági F?osztály Dél-dunántúli Kihelyezett Hatósági Osztály

(Reference for a preliminary ruling from the Baranya Megyei Bíróság)

(Sixth VAT Directive – Directive 2006/112/EC – Right to deduct input tax – National legislation penalising an error in the invoice by loss of the right to deduct)

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax – Obligations of the taxable person – Holding of an invoice containing certain information

(Council Directive 2006/112, Arts 167, 178(a), 220, para. 1, and 226)

Articles 167, 178(a), 220(1) and 226 of Council Directive 2006/112 on the common system of value added tax must be interpreted as precluding national legislation or practice whereby the national authorities deny to a taxable person the right to deduct from the VAT which he is liable to pay the VAT due or paid in respect of services supplied to him on the grounds that the initial invoice, in the possession of the taxable person when the deduction is made, contained an incorrect completion date for the supply of services and the numbering of the subsequently corrected invoice and the credit note cancelling the initial invoice were not sequential, if the material conditions governing deduction are satisfied and, before the tax authority concerned has made a decision, the taxable person has submitted to the tax authority a corrected invoice stating the correct date on which that supply of services was completed, even though the numbering of that invoice and the credit note cancelling the initial invoice are not sequential.

Only the details listed in Article 226 of Directive 2006/112 must obligatorily appear, for VAT purposes, on invoices issued pursuant to Article 220 of that directive. It follows that it is not open to Member States to make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down by the provisions of that directive.

(see paras 40-41, 45, operative part)

JUDGMENT OF THE COURT (Third Chamber)

15 July 2010 (*)

(Sixth VAT Directive – Directive 2006/112 – Right to deduct input tax – National legislation penalising an error in the invoice by loss of the right to deduct)

In Case C?368/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Baranya Megyei Bíróság (Hungary), made by decision of 31 August 2009, received at the Court on 14 September 2009, in the proceedings

Pannon Gép Centrum Kft

v

APEH Központi Hivatal Hatósági F?osztály Dél-dunántúli Kihelyezett Hatósági Osztály,

THE COURT (Third Chamber),

Composed of K. Lenaerts (Rapporteur), President of the Chamber, R. Silva de Lapuerta, G. Arestis, J. Malenovský and T. von Danwitz, Judges,

Advocate General: N. Jääskinen,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Hungarian Government, by J. Fazekas, M. Fehér and K. Szíjjártó, acting as Agents,

– the European Commission, by D. Triantafyllou and B.D. Simon, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 17(1), 18(1)(a) and 22(3)(a) and (b) 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 Sixth Directive’), as amended by Council Directive 2001/115/EC of 20 December 2001 (OJ 2002 L 15, p. 24).

2 The reference was made in proceedings brought by Pannon Gép Centrum Kft (‘the applicant’) against APEH Központi Hivatal Hatósági F?osztály Dél-dunántúli Kihelyezett Hatósági Osztály (‘APEH’) in relation to the latter’s denial of the applicant’s right to deduct, from the value added tax (‘VAT’) which the applicant was liable to pay, the VAT relating to services which had been supplied to the applicant.

Legal context

European Union legislation

3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) repealed and replaced from 1 January 2007, pursuant to Articles 411 and 413 thereof, European Union law on VAT, in particular the Sixth Directive. According to recitals (1) and (3) of Directive 2006/112, the recasting of the Sixth Directive was necessary to ensure that all the relevant provisions are presented in a clear and rational manner in a revised structure and wording while, in principle, not making any material changes. The provisions of Directive 2006/112 are therefore identical, essentially, to the corresponding provisions of the Sixth Directive.

4 Under Article 167 of Directive 2006/112, which repeats the wording of Article 17(1) of the Sixth Directive, 'the right to deduct shall arise at the time when the deductible tax becomes chargeable'.

5 Article 168(a) of Directive 2006/112, the wording of which is essentially identical to that of Article 17(2)(a) of the Sixth Directive, in the version given in Article 28g(1) of that directive, provides:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person'.

6 Article 178 of Directive 2006/112, which essentially repeats the wording of Article 18(1) of the Sixth Directive, in the version given in Article 28g(2) of that directive, contains the following provisions:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;

…'.

7 Article 220(1) of Directive 2006/112, which essentially repeats the wording of Article 22(3)(a) of the Sixth Directive, in the version given in Article 28h of that directive, as amended by Article 2(2) of Directive 2001/115, provides:

'Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party:

(1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person'.

8 Article 226 of Directive 2006/112 essentially repeats the wording of Article 22(3)(b) of the Sixth Directive, in the version given in Article 28h of that directive, as amended by Article 2(2) of Directive 2001/115, and is worded as follows:

'Without prejudice to the particular provisions laid down in this Directive, only the following details

are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

(1) the date of issue;

(2) a sequential number, based on one or more series, which uniquely identifies the invoice;

(3) the VAT identification number … under which the taxable person supplied the goods or services;

(4) the customer's VAT identification number …;

(5) the full name and address of the taxable person and of the customer;

(6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

(7) the date on which the supply of goods or services was made or completed …;

(8) the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price;

(9) the VAT rate applied;

(10) the VAT amount payable, except where a special arrangement is applied under which, in accordance with this Directive, such a detail is excluded;

…'.

9 Article 273 of Directive 2006/112, essentially repeating the wording of the first and second subparagraphs of Article 22(8) of the Sixth Directive, in the version given in Article 28h of the same directive, as amended by Article 2(2) of Directive 2001/115, provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion …

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down [in particular, in Article 226].'

National legislation

10 Under Article 13(1)(16) of Law No LXXIV of 1992 on value added tax (Általános forgalmi adóról szóló 1992. évi LXXIV. Törvény, 'the Law on VAT'), which was repealed as from 31 December 2007 but which applies to the dispute in the main proceedings, an invoice is defined as 'any certificate which is appropriate for tax identification and which is issued on paper or – with the prior consent of the customer and in accordance with the relevant provisions – electronically, and which contains, at least, the following details:

(a) a sequential number,

(b) a date of issue,

(c) the name, address, and tax code of the taxable person who has undertaken to deliver the goods or to provide the services,

(d) if the customer is liable to pay the tax, the name, address and the Community tax code of

the customer, or in its absence, the tax code,

(e) in the event of an exempt intra?community delivery, the Community tax code of the customer,

(f) the date the supply was made, if that differs from the date of issue,

…

(i) the unit price, before tax, of the goods delivered or the service provided,

(j) the total amount, before tax, of the consideration for the goods delivered or the service provided,

(k) the tax rate applicable,

(l) the total amount of tax chargeable,

(m) the final amount of the invoice'.

11 Article 35(1) of the Law on VAT provides:

'the right to deduct may be exercised only if the taxpayer is in possession of documents which reliably prove the amount of the input tax. The following may be considered to be such documents:

(a) invoices and simplified invoices, …

…

addressed to the taxable person.'

12 Article 1/E(1) of the order of the Ministry of Finance No 24 of 1995 (XI. 22.), on the tax identification of invoices, simplified invoices and receipts, and the use of cash registers and taximeters to ensure the issue of receipts (24/1995. (XI. 22.) PM rendelet a számla, egyszer?sített számla és nyugta adóigazgatási azonosításáról, valamint a nyugta adását biztosító pénztárgép és taxaméter alkalmazásáról), provides:

'An invoice printed on paper by means of IT tools may be used for tax identification solely when it is part of a rigorous accounting system operated in such a way that

(a) the computer programme which is used to issue the invoices permanently guarantees sequential numbering, without omissions or repetitions …'.

13 Article 165(2) of Law No C of 2000 on accounting (Számvitelr?l szóló 2000. évi C. törvény) provides that data may be recorded in accounting ledgers only if that data is supported by properly issued documents. Under Article 166(2) of that law, information contained in accounting records must, both formally and substantively, be authentic, reliable and correct.

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 On 2 May 2007 the applicant entered into a contract with Betonút Szolgáltató és Épít? Zrt ('Betonút'), whereby the applicant gave an undertaking to Betonút that it would carry out repairs to a bridge. The applicant entrusted the carrying out of that work to a sub-contractor, J és B Pannon-Bau Kft.

15 On 20 November 2007 Betonút issued to the applicant a certificate of completion of that work and, on the basis of that certificate, the applicant issued to Betonút the invoices relating to the execution of that work stating the date of their completion to be 20 November 2007. At the same time the sub-contractor presented to the applicant two invoices relating to the work carried out by it, stating the completion date of that work to be 14 December 2007.

16 On 3 October 2007 the applicant entered into a contract with Gebrüder Haider Épít?ipari Kft ('Haider'), whereby the applicant gave an undertaking to Haider that it would carry out storm sewer construction work. For the performance of that contract, the applicant entrusted that work to the same sub-contractor, namely J és B Pannon-Bau Kft ('the sub-contractor').

17 Haider issued a certificate of completion of that work stating the date of completion to be 11 December 2007, and the final invoice which was issued by the applicant to Haider also specified that date as the date of completion of the work. The sub-contractor, for its part, issued an invoice to the applicant stating 18 December 2007 to be the date of completion of that work.

18 In its tax return for the fourth quarter of 2007, the applicant recorded the three abovementioned invoices from the sub-contractor and exercised its right to deduct VAT.

19 The tax authority inspected that tax return and found that the completion dates contained in the work completion certificates issued by Betonút and Haider and in the invoices issued by the applicant to those companies preceded the dates appearing in the invoices issued by the sub-contractor and used by the applicant to carry out a deduction of VAT.

20 The applicant and the sub-contractor informed the tax authority that the completion dates stated in the invoices issued by the latter were incorrect.

21 On 29 September 2008 the sub-contractor cancelled the three incorrect invoices by means of credit notes numbered 2007/0000000124, 2007/0000000125 and 2007/0000000126 and replaced them with new invoices numbered JESB20080000016, JESB20080000017 and JESB20080000018. The work completion date stated in the new invoices was the same as that appearing in the invoices issued by the applicant.

22 By a decision of 21 January 2009, the first level tax authority ordered the applicant to pay, first, the VAT relating to the services supplied by the sub?contractor, which the applicant had deducted from the tax which it was liable to pay in the fourth quarter of 2007 and, secondly, both a fine and a penalty for late payment. According to that tax authority, the applicant could not use the invoices initially issued by the sub-contractor for the purposes of deduction of VAT, since those invoices did not contain the correct date of completion of the work by the sub?contractor. Nor could the new corrected invoices be used as the basis for deduction of VAT, because the numbering had not been sequential. The tax authority found in that regard that the credit notes and the corrected invoices issued on the same day used two distinct numbering systems since the numbers of the credit notes began with the figures '2007' whereas the numbers of the corrected invoices began with 'JESB2008'.

23 By a decision of 29 April 2009 the APEH upheld the decision of the first level tax authority of 21 January 2009.

24 The applicant brought an action before the Baranya Megyei Bíróság (Baranya county court).

25 In the order for reference, the Baranya Megyei Bíróság considers that, under the national legislation at issue, as interpreted by the Legfels?bb Bíróság (Hungarian Supreme Court) and

applied by the tax authority, the taxable person can maintain his right to deduct only on the basis of an invoice which is both formally and substantively authentic. Accordingly, the exercise of the right to deduct is to be challenged if the invoice contains a formal defect of any kind. In the present case, because of the errors in the work completion dates stated in the sub-contractor's invoices, the tax authority challenged the right to deduct exercised on the basis of those invoices, notwithstanding that they were substantively authentic. The tax authorities have never disputed that the commercial transactions specified in those invoices were carried out for the consideration stated in them.

26 In those circumstances the Baranya Megyei Bíróság decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

(1) Do the provisions of national law contained in Article 13(1)(16) of the Law on VAT in force at the material time when the disputed invoices were issued and in Article 1/E(1) of Order 24/1995 of the Hungarian Ministry of Finance, specifically the provision in Article 13(1)(16)(f) of the Law on VAT, comply with the features of invoices, and the concept of an invoice, laid down in Article 2[(2)] of Council Directive 2001/115?

In the event that the first question is answered in the affirmative:

(2) Is a Member State's practice which consists of penalising formal defects in invoices intended to be used as a basis for the right to deduct by denying that right contrary to Article 17(1), Article 18(1)(a) and Article 22(3)(a) and (b) of the Sixth Directive?

(3) In order to be able to exercise the right to deduct, is it sufficient to fulfil the obligations laid down in Article 22(3)(b) of the Sixth Directive, or is it possible to exercise the right to deduct and accept the invoice as an authentic document only if, at the same time, all the details required under Directive 2001/115 are provided and all the obligations laid down in Directive 2001/115 are fulfilled?

The questions referred for a preliminary ruling

Preliminary remarks

27 It is clear that the referring court is asking the Court to rule upon the compatibility of provisions of national law or a national practice with European Union law.

28 It must be recalled in this respect that, although it is not the task of the Court, in preliminary ruling proceedings, to rule upon the compatibility of provisions of national law or a national practice with the legal rules of the European Union, the Court has repeatedly held that it has jurisdiction to give the national court full guidance on the interpretation of European Union law in order to enable it to determine the issue of compatibility for the purposes of the case before it (see Case C?118/08 *Transportes Urbanos y Servicios Generales* [2010] ECR I?0000, paragraph 23, and case-law there cited).

29 It is therefore appropriate for the Court, in the present case, to restrict its analysis to the provisions of European Union law by providing an interpretation of them which will be of use to the national court, which has the task of determining the compatibility of the provisions of national law or the national practice with European Union law, for the purposes of deciding the dispute before it (see, by analogy, Case C?380/05 *Centro Europa 7* [2008] ECR I?349, paragraph 51).

30 That being the case, it is clear that the subject of the reference from the national court, which mentions Articles 17(1), 18(1)(a) and 22(3)(a) and (b) of the Sixth Directive, is the

interpretation of those provisions.

31 However, in accordance with Articles 411 and 413 of Directive 2006/112, that directive repealed and replaced the Sixth Directive from 1 January 2007.

32 Since all the facts of the main proceedings post-date 1 January 2007, only the interpretation of the provisions of Directive 2006/112 is relevant to the main proceedings.

33 The fact that the national court has, formally speaking, worded the questions referred for a preliminary ruling with reference solely to provisions of the Sixth Directive does not preclude the Court from providing to the national court all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in the wording of its questions (see, to that effect, Case C?115/08 *?EZ* [2009] ECR I?0000, paragraph 81, and Case C?341/08 *Petersen* [2010] ECR I?0000, paragraph 48).

34 In that regard, it must be observed that, as is clear from recital (3) of Directive 2006/112, that directive is a recasting of the existing legislation, and in particular the Sixth Directive, which does not, in principle, involve any material changes.

35 In those circumstances, it must be held that the questions referred for a preliminary ruling concern the interpretation of Articles 167, 178(a), 220(1) and 226 of Directive 2006/112, which correspond to the provisions of the Sixth Directive mentioned in the order for reference.

Substance

36 By the questions referred, which can be considered together, the national court essentially seeks to ascertain whether Articles 167, 178(a), 220(1) and 226 of Directive 2006/112 preclude national legislation such as that at issue in the main proceedings, or a practice based on such legislation, which denies the right to deduct VAT where the invoice relating to goods or services supplied to the taxable person initially contained an error and the subsequent correction of that error does not comply with all the conditions set by the applicable national rules.

37 In that regard, it must be recalled that the right to deduct provided for in Article 167 et seq. of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. The right to deduct is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, inter alia, Case C?62/93 *BP Soupergaz* [1995] ECR I?1883, paragraph 18; Joined Cases C?110/98 to C?147/98 *Gabalfrisa and Others* [2000] ECR I?1577, paragraph 43, and Joined Cases C?439/04 and C?440/04 *Kittel and Recolta Recycling* [2006] ECR I?6161, paragraph 47).

38 It is clear from the order for reference that, in the present case, the material conditions laid down in Article 168(a) of Directive 2006/112 governing whether the applicant is entitled to exercise the right to deduct the VAT relating to the services supplied to him by the sub?contractor are satisfied. Those services were in fact used for the purposes of taxed transactions, carried out by the taxable person in the Member State concerned.

39 However, under Article 178(a) of Directive 2006/112, the exercise of the right of deduction referred to in Article 168(a) of that directive is subject to the condition that an invoice is held. In accordance with Article 220(1) of Directive 2006/112, an invoice must thus be issued for every supply of goods or services which a taxable person makes on behalf of another taxable person.

40 Article 226 of Directive 2006/112 states that, without prejudice to the particular provisions of that directive, only the details listed in that article must obligatorily appear, for VAT purposes, on

invoices issued pursuant to Article 220 of that directive.

41 It follows that it is not open to Member States to make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down by the provisions of Directive 2006/112. It may be added that that interpretation is supported by Article 273 of that directive which provides that Member States may impose obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, but that option may not be relied upon in order to impose additional invoicing obligations over and above those laid down by, inter alia, Article 226 of that directive.

42 In the context of the main proceedings, the right to deduct VAT relating to the services supplied by the sub-contractor was denied to the applicant for two reasons. First, the initial invoices issued by the sub-contractor specified completion dates for the supplies of services which were incorrect. Secondly, the view taken of the corrected invoices, the correctness of the completion dates specified in them not being disputed, was that the numbering provided was not sequential in that the credit notes and the corrected invoices issued on the same day used different numbering systems.

43 Admittedly, as observed by the Hungarian Government, an invoice must, in accordance with Article 226(7) of Directive 2006/112, obligatorily specify the correct date on which the supply of services was completed. However, it is clear from the documents submitted to the Court that, when the first level tax authority denied the applicant the right to deduct the VAT relating to the services supplied to it by the sub?contractor, the tax authority was already in possession of invoices corrected by the sub?contractor, specifying the correct dates of completion. Directive 2006/112 does not prohibit the correction of incorrect invoices.

44 In the light of the findings in paragraphs 38 and 41 of this judgment, if the corrected invoices contained all the details required by Directive 2006/112, in particular in Article 226 of that directive, which it is for the national court to determine, it should be held that, in circumstances such as those in the main proceedings, all the material and formal conditions governing whether the applicant is entitled to deduct the VAT relating to the supply of services by the sub-contractor were satisfied. In that regard, it should be noted that Article 226 of Directive 2006/112 imposes no requirement that corrected invoices and credit notes cancelling incorrect invoices must fall within the same series.

45 In those circumstances, the answer to be given to the questions referred is that Articles 167, 178(a), 220(1) and 226 of Directive 2006/112 must be interpreted as precluding national legislation or practice whereby the national authorities deny to a taxable person the right to deduct from the VAT which he is liable to pay the VAT due or paid in respect of services supplied to him on the grounds that the initial invoice, in the possession of the taxable person when the deduction is made, contained an incorrect completion date for the supply of services and the numbering of the subsequently corrected invoice and the credit note cancelling the initial invoice were not sequential, if the material conditions governing deduction are satisfied and, before the tax authority concerned has made a decision, the taxable person has submitted to the tax authority a corrected invoice stating the correct date on which that supply of services was completed, even though the numbering of that invoice and the credit note cancelling the initial invoice are not sequential.

Costs

46 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 (Third Chamber) hereby rules:

Articles 167, 178(a), 220(1) and 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation or practice whereby the national authorities deny to a taxable person the right to deduct from the VAT which he is liable to pay the VAT due or paid in respect of services supplied to him on the grounds that the initial invoice, in the possession of the taxable person when the deduction is made, contained an incorrect completion date for the supply of services and the numbering of the subsequently corrected invoice and the credit note cancelling the initial invoice were not sequential, if the material conditions governing deduction are satisfied and, before the tax authority concerned has made a decision, the taxable person has submitted to the tax authority a corrected invoice stating the correct date on which that supply of services was completed, even though the numbering of that invoice and the credit note cancelling the initial invoice are not sequential.

[Signatures]

* Language of the case: Hungarian.