Case C-489/09

Vandoorne NV

v

Belgische Staat

(Reference for a preliminary ruling from the hof van beroep te Gent)

(Sixth VAT Directive – Articles 11.C(1) and 27(1) and (5) – Taxable amount – Simplification measures – Manufactured tobacco – Tax labels – Single charge of VAT at source – Intermediate supplier – Total or partial non-payment of the price – Refusal to refund VAT)

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Taxable amount – National derogating measures

(Council Directive 77/388, Art. 11.C(1) and 27(1) and (5))

Articles 11.C(1) and 27(1) and (5) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax, as amended by Directive 2004/7, must be interpreted as not precluding national legislation which, by providing, for the purposes of simplifying the procedure for charging value added tax and of combating tax evasion or avoidance in regard to manufactured tobacco, for the levying of that tax by means of tax labels, in a single charge and at source, from the manufacturer or importer of those products, excludes intermediate suppliers operating at a subsequent stage in the supply chain from the right to obtain reimbursement of value added tax in the event of non-payment by the purchaser of the price for those products.

Article 27(1) of the Sixth Directive precludes only measures that might affect, to a non-negligible extent, the amount of tax due at the final consumption stage. However, even though, in certain circumstances, such as the loss of goods, their sale at a loss or unlawful sale at a price different from the retail price indicated on the tax labels, the manufacturer or importer may, in the context of the abovementioned derogating scheme, be obliged to pay an amount of value added tax higher than that which would have resulted from the application of the ordinary harmonised system for levying value added tax, the mere possibility that such events may take place is not sufficient, however, to justify the conclusion that that scheme might affect, to a non-negligible extent, the amount of tax due at the final consumption stage. Indeed, a simplification measure implies, by definition, a more general approach than that of the rule which it replaces and thus will not necessarily reflect the exact situation of each taxable person.

Furthermore, since intermediate suppliers are not required to pay value added tax on supplies of manufactured tobacco, they cannot seek reimbursement of that tax under Article 11.C(1) of the Sixth Directive in the event of non-payment by the purchaser of the price for those supplies. The fact that the amount of the value added tax paid at source by the manufacturer or importer by way of tax labels is included, from an economic point of view, in the price of the supplies made to those suppliers is irrelevant in that regard. That circumstance does not in any way call into question the fact that those suppliers do not have any tax debt under the value added tax rules.

Furthermore, in the context of such a simplified value added tax collection scheme, in which the amount of the tax paid by the manufacturer or importer by way of tax labels is related, not to the consideration actually received by each supplier but to the price of the products at the stage of final consumption, the loss by an intermediate supplier of its claim to payment against the other contracting party does not reduce the taxable amount.

Lastly, to allow an intermediate supplier, under such a scheme of simplification of value added tax, to obtain reimbursement of an amount, or even the full amount, of that tax in the case where the purchaser fails to pay for supplies, is as likely to complicate significantly the charging of value added tax as it is to encourage avoidance and evasion, whereas the simplification of the charging of that tax and the prevention of such avoidance and evasion are precisely the objectives pursued by that scheme, in accordance with Article 27(1) of the Sixth Directive. It follows that exclusion of the right of an intermediate supplier to reimbursement of value added tax in the case where the purchaser fails to pay the price for manufactured tobacco supplied to it is a consequence inherent in such a scheme, the purpose and effect of which are, pursuant to the criteria defined in Article 27(1) of the Sixth Directive, to simplify the procedure for charging value added tax and to combat tax evasion or avoidance in regard to those products.

(see paras 30-31, 38-40, 43, 45-46, operative part)

JUDGMENT OF THE COURT (Second Chamber)

27 January 2011 (*)

(Sixth VAT Directive – Articles 11.C(1) and 27(1) and (5) – Taxable amount – Simplification measures – Manufactured tobacco – Tax labels – Single charge of VAT at source – Intermediate supplier – Total or partial non-payment of the price – Refusal to refund VAT)

In Case C?489/09,

REFERENCE for a preliminary ruling under Article 234 EC by the Hof van beroep te Gent (Belgium), made by decision of 17 November 2009, received at the Court on 30 November 2009, in the proceedings

Vandoorne NV

v

Belgische Staat,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, U. Lõhmus, A. Ó Caoimh (Rapporteur) and P. Lindh, Judges,

Advocate General: J. Mazák,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

– Vandoorne NV, by D. Blommaert, advocaat,

– the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents,

– the Czech Government, by M. Smolek, acting as Agent,

– the European Commission, by W. Roels and M. Afonso, 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 11.C(1) and 27(1) and (5) of 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 2004/7/EC of 20 January 2004 (OJ 2004 L 27, p. 44) ('the Sixth Directive').

2 The reference has been made in the course of proceedings between Vandoorne NV ('Vandoorne') and Belgische Staat (the Belgian State) concerning the latter's refusal to refund to Vandoorne the value added tax ('VAT') relating to supplies of manufactured tobacco the purchase price for which had not been paid by the party supplied by Vandoorne.

Legal context

European Union legislation

3 Article 2 of the Sixth Directive provides:

'The following shall be subject to [VAT]:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

4 Article 5(1) of the Sixth Directive provides:

'"Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.'

5 Article 10 of the Sixth Directive, which features under Title VII (‘Chargeable event and chargeability of tax’), is worded as follows:

‘1. (a) “Chargeable event” shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled.

(b) The tax becomes “chargeable” when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.

2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. …’

6 Article 11.C(1) of the Sixth Directive, which features under Title VIII (‘Taxable amount’), provides as follows:

‘In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.’

7 Article 27 of the Sixth Directive, which features under Title XV (‘Simplification procedures’), is worded in the following terms:

‘1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.

…

5. Those Member States which apply on 1 January 1977 special measures of the type referred to in paragraph 1 above may retain them providing they notify the Commission of them before 1 January 1978 and providing that where such derogations are designed to simplify the procedure for charging tax they conform with the requirement laid down in paragraph 1 above.’

8 Article 6(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), which applies to manufactured tobacco, provides that excise duty is to become chargeable at the time of release for consumption, that is to say, inter alia, when those products are manufactured or when they are imported outside a suspension arrangement.

9 Article 10 of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40) is worded as follows:

‘1. At the final stage at the latest the rules for collecting the excise duty shall be harmonised. During the preceding stages the excise duty shall, in principle, be collected by means of tax stamps. If they collect the excise duty by means of tax stamps, Member States shall be obliged to make these stamps available to manufacturers and dealers in other Member States. If they collect

the excise duty by other means, Member States shall ensure that no obstacle, either administrative or technical, affects trade between Member States on that account.

2. Importers and national manufacturers of manufactured tobacco shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.'

National legislation

10 Article 77(1)(7) of the Belgian Value Added Tax Code ('the VAT Code') is worded as follows:

'Notwithstanding the application of Article 334 of the Framework Law of 27 December 2004, tax charged on the supply of goods, provision of services or acquisition of goods within the Community shall be refunded in the appropriate amount:

…

7° in the event of the loss of a claim for payment of all or part of the purchase price.'

11 Article 58(1) of the VAT Code provides:

'For manufactured tobacco imported into, acquired within the meaning of Article 25b or produced in Belgium, tax shall be charged whenever Belgian excise duty is to be paid in accordance with the statutory or regulatory provisions relating to the tax arrangements for tobacco. The tax shall be calculated on the basis of the price stated on the tax label or, if no price is specified, on the basis adopted for the imposition of excise duty.

…

The tax thus charged shall take the place of the tax to which imports, intra-Community acquisitions and supplies of manufactured tobacco are subject.

The King shall lay down the detailed rules for charging the tax on manufactured tobacco and for determining which persons shall be required to pay that tax.'

12 Article 58(1) of the VAT Code was in force at the time of adoption of the Sixth Directive. Pursuant to Article 27(5) of the Sixth Directive, the Kingdom of Belgium notified Article 58 of the VAT Code to the Commission on 19 December 1977. The notification read as follows:

'B. Prepayment of tax.

1. Manufactured tobacco products

In order to facilitate monitoring of the charging of VAT in this sector, the VAT that is due when manufactured tobacco products are imported and supplied is payable at the same time as excise duty, when the manufacturer or importer purchases the tax labels. No VAT is charged at later stages, but naturally no deduction can be made. All sales of manufactured tobacco products must be invoiced inclusive of VAT.'

13 Royal Decree No 13 of 29 December 1992 on the value-added-tax arrangements for manufactured tobacco (*Belgisch Staatsblad*, 31 December 1992, p. 28086) provides:

'Article 1

'[VAT] on manufactured tobacco, including tobacco substitutes, imported into, acquired within the meaning of Article 25b of [the VAT Code] or produced in Belgium, shall be chargeable at the same

time as excise duty.

The amount of the tax calculated in accordance with Article 58(1) of [the VAT Code] shall be paid by the person liable to pay the excise duty to the person entitled to charge excise duty.

…

Article 2

By way of derogation from Article 5(8) and (9) of Royal Decree No 1 on the rules governing payment of value added tax, invoices for the supply of manufactured tobacco shall state the price inclusive of tax. In addition, the invoice must include the statement “Manufactured tobacco products: Value added tax paid at source and not deductible”.’

14 Article 6 of the Law of 10 June 1997 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (*Belgisch Staatsblad*, 1 August 1997, p. 19836) provides that excise duty is to become chargeable at the time of release for consumption, that is to say, inter alia, when those products are manufactured or when they are imported outside a suspension arrangement.

15 Article 10a of the Law of 3 April 1997 on the rules on taxation of manufactured tobacco (*Belgisch Staatsblad*, 16 May 1997, p. 12105) provides that excise duty, special excise duty and VAT are to be payable on delivery of the tax labels.

The dispute in the main proceedings and the question referred to the Court

16 Vandoorne is registered as liable for VAT in respect of the wholesale trade in manufactured tobacco. It acts on that basis as an intermediary in the supply chain for those products between manufacturers and/or importers, on the one hand, and re-sellers and/or retailers, on the other.

17 It is clear in this regard from the case-file submitted to the Court that the manufactured tobacco products supplied to Vandoorne for the purpose of carrying on its activities already bear tax labels, affixed to them by its suppliers in their capacity as manufacturers or importers of those products pursuant to Article 58(1) of the VAT Code and the provisions of Royal Decree No 13.

18 It is common ground that, in accordance with Article 2 of that Royal Decree, invoices relating to those supplies made to Vandoorne contain the statement ‘Manufactured tobacco products: Value added tax paid at source and not deductible’ and, consequently, do not indicate a separate amount of VAT. Supplies of those products made by Vandoorne to its own customers include the same statement and thus do not indicate a separate amount of VAT either.

19 In its VAT return for the first quarter of 2006, Vandoorne asked the tax authorities to refund the VAT relating to supplies of manufactured tobacco to Capitol BVBA (‘Capitol’) as a result of the definitive loss of the claim for payment relating to those supplies following the insolvency of Capitol on 14 March 2005.

20 That application was rejected by the tax authorities on the ground that no VAT had been charged on those supplies, since the VAT on the products at issue had been paid by the manufacturer, together with excise duty, in a single levy effected in accordance with Article 58(1) of the VAT Code.

21 By decision of 8 October 2008, the Rechtbank van Eerste Aanleg te Brugge (Court of First Instance, Bruges) also declared Vandoorne’s claim to be unfounded.

22 On appeal, the Hof van beroep te Gent (Court of Appeal, Ghent) found, in the same way as Belgische Staat, that, in the present case, pursuant to Article 58(1) of the VAT Code and the provisions of Royal Decree No 13, no amount had been charged in respect of VAT at the commercial stage at issue between Vandoorne and Capitol, as the manufacturer or importer had been charged VAT in full at source, together with excise duty, and the supplies made to Vandoorne had been accompanied by an invoice on which the VAT was not identified separately as part of the price, with the result that VAT had not been deducted by Vandoorne. Similarly, the invoice issued to Capitol by Vandoorne did not separately mention VAT and stated that VAT had been paid at source and was not deductible. Article 77(1) of the VAT Code, however, provides for the possibility of a 'refund' only in relation to VAT 'charged on the supply of goods'.

23 The Hof van beroep is, however, unsure whether the application of the simplification measure provided for under Article 27 of the Sixth Directive may have the result of precluding a claim for a VAT refund by an intermediate supplier such as Vandoorne where the VAT is included in the price paid by that supplier. Although the effect of the tax regime is that the VAT ceases to be in the nature of a tax once the tax labels have been affixed by the manufacturer or importer, it cannot be denied that, at each subsequent commercial stage, the VAT liability is passed on in full without the possibility of deduction by the person liable to pay. However, where an intermediate supplier loses its claim for payment against the person to whom goods have been supplied, it cannot recover the corresponding amount of VAT, even though it has paid that actual amount of VAT to its own supplier.

24 In those circumstances, the Hof van beroep te Gent decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Belgian law, in particular Article 58(1), in conjunction with Article 77(1)(7), of the VAT Code, compatible or incompatible with Article 27 of [the Sixth Directive], which allows the Member States to adopt simplification measures, and/or with Article 11.C(1) of that directive, which grants a right to a refund of VAT in the case of total or partial non-payment, by reason of the fact that such national law … lays down a simplified procedure for charging VAT on supplies of manufactured tobacco products by imposing a single charge at source; and … does not give persons liable to tax at the various intermediary stages of the chain of supply who have borne VAT on those products a right to a refund of VAT on account of the total or partial loss of the purchase price?'

The question referred for a preliminary ruling

25 At the outset, it is necessary to point out that it is not for the Court, in the context of the procedure provided for in Article 267 TFEU, to determine whether national provisions are compatible with European Union law. The Court does, however, have jurisdiction to provide the national court with all the criteria for the interpretation of European Union law which may enable it to assess whether those provisions are so compatible in order to give judgment in the proceedings before it (see, inter alia, Joined Cases C?145/06 and C?146/06 *Fendt Italiana* [2007] ECR I?5869, paragraph 30, and Joined Cases C?379/08 and C?380/08 *ERG and Others* [2010] ECR I?0000, paragraph 25).

26 In those circumstances, the question referred must be construed as meaning that the national court is asking the Court, essentially, whether Article 11.C(1) and Article 27(1) and (5) of the Sixth Directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, by levying VAT, by means of tax labels, in a single charge and at source, from the manufacturer or importer of the manufactured tobacco, excludes intermediate suppliers operating at a subsequent stage in the supply chain from the right to obtain reimbursement of VAT in the event of non-payment by the purchaser of the price for those

products.

27 It must be recalled in this regard that the national derogating measures referred to in Article 27(1) and (5) of the Sixth Directive, which are allowed ‘in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance’, must be interpreted strictly and may not derogate from the basis for charging VAT laid down in Article 11 of that directive, except within the limits strictly necessary for achieving that aim (see Case 324/82 *Commission* v *Belgium* [1984] ECR 1861, paragraph 29, and Case C-63/96 *Skripalle* [1997] ECR I-2847, paragraph 24). Those measures must also be necessary and appropriate for realising the specific objective which they pursue and have as little effect as possible on the objectives and principles of the Sixth Directive (Joined Cases C?177/99 and C?181/99 *Ampafrance and Sanofi* [2000] ECR I?7013, paragraph 60, and Case C?17/01 *Sudholz* [2004] ECR I?4243, paragraph 46).

28 In the present case, it appears that, in the same way as the Netherlands scheme at issue in Case C?494/04 *Heintz van Landewijck* [2006] ECR I?5381 (see paragraphs 24, 44, 54 and 62 of that judgment), the purpose and effect of the derogation scheme contained in the national rules at issue in the main proceedings permitting VAT to be charged by means of tax labels is both to prevent tax evasion and abuse and to simplify the levying of the tax, which takes place, by virtue of the derogation scheme in question, at a single point in the product marketing chain, by providing that VAT is to be levied at the same time as excise duty, before the occurrence of the chargeable event within the meaning of Article 10 of the Sixth Directive. That scheme thus relates to the time at which VAT becomes chargeable, so as to make it coincide with the time at which excise duty is levied (see Case C?435/03 *British American Tobacco and Newman Shipping* [2005] ECR I?7077, paragraphs 45 and 46).

29 Furthermore, it is common ground that, also in the same way as the Netherlands scheme at issue in *Heintz van Landewijck* (paragraph 55), the scheme here at issue, as is apparent both from Article 58(1) of the VAT Code and from the content of the notification provided by the Kingdom of Belgium pursuant to Article 27(5) of the Sixth Directive, set out in paragraph 12 of the present judgment, applies the amount of the VAT due to the price of the products at the final consumption stage, that amount being determined by reference to the retail price to be paid by the consumer.

30 In that regard, it must be recalled that Article 27(1) of the Sixth Directive precludes only measures which might affect, to a non-negligible extent, the amount of tax due at the final consumption stage (see Joined Cases 138/86 and 139/86 *Direct Cosmetics and Laughtons Photographs* [1988] ECR 3937, paragraph 52, and *Heintz van Landewijck*, paragraph 57).

31 However, even though, in certain circumstances, such as the loss of goods, their sale at a loss or unlawful sale at a price different from the retail price indicated on the tax labels, the manufacturer or importer may, in the context of a scheme such as that at issue in the main proceedings, be obliged to pay an amount of VAT which is higher than that which would have resulted from the application of the ordinary harmonised system for levying VAT, the mere possibility that such events may take place is not sufficient, however, to justify the conclusion that that scheme might affect, to a non-negligible extent, the amount of tax due at the final consumption stage (see, to that effect, *Heintz van Landewijck*, paragraphs 56 to 58). Indeed, a simplification measure implies, by definition, a more general approach than that of the rule which it replaces and thus will not necessarily reflect the exact situation of each taxable person (*Sudholz*, paragraph 62).

32 It follows that a scheme such as that at issue in the main proceedings does not disregard the criteria set out in Article 27(1) of the Sixth Directive and, for the same reasons, does not go beyond what is necessary in order to simplify the procedure for charging VAT and to combat tax

evasion or avoidance (see, to that effect, *Heintz van Landewijck*, paragraphs 58 and 59).

33 In its written observations in the present case, however, Vandoorne argues that the scheme in question is contrary to Article 11.C(1) and Article 27(1) and (5) of the Sixth Directive in that it excludes the right to reimbursement of VAT in the event that the price has not been paid. By allowing the Member States to establish a scheme for imposing VAT by way of a single charge at source, in derogation from the general rule providing for imposition of VAT at each stage of the economic chain, Article 27 of the Sixth Directive, it argues, permits solely national measures simplifying the imposition of VAT which are intended to prevent tax evasion or avoidance. Since any exception must be interpreted strictly, such a derogation cannot, by contrast, have any effect on other VAT rules, such as those governing reimbursement of that tax. Furthermore, the loss of the claim for payment which Vandoorne suffered in this case adversely affects it in exactly the same way as that suffered by a normal taxpayer to whom the system of paying VAT in several portions applies since, in the context of the derogating scheme here at issue, each intermediary bears the VAT included in the price paid to its supplier of manufactured tobacco.

34 That argument cannot be accepted.

35 As is clear from paragraph 28 of the present judgment, it is common ground that, in the context of a scheme such as that at issue in the main proceedings, the VAT relating to manufactured tobacco is levied solely on the manufacturer or importer of those products, by means of tax labels, in a single charge, in advance and at source, at the same time as the charging of excise duty and before the occurrence of the chargeable event within the meaning of Article 10 of the Sixth Directive.

36 It follows that intermediate suppliers, such as Vandoorne in the main proceedings, which enter the chain of successive supplies of those products at a later stage than the manufacturer or importer, first, are not required to pay any prior amount of VAT, when supplies are made to them by their own supplier, which would give them the right to an immediate and full deduction of that tax within the meaning of Article 17(2) of the Sixth Directive, and, second, are not themselves liable to pay any amount of input VAT subsequently due under Article 10(2) of that Directive when supplies are made to the purchaser of those products.

37 Thus, in a situation such as that at issue in the case in the main proceedings, it is common ground that, as has already been noted in paragraph 18 of the present judgment, the invoices relating to those various supplies do not, pursuant to Article 2 of Royal Decree No 13, set out in paragraph 13 of the present judgment, mention a separate amount of VAT inasmuch as they indicate a price which includes the amount of VAT paid by the manufacturer or importer and contain the statement ‘Manufactured tobacco products: Value added tax paid at source and not deductible’.

38 Under those circumstances, since intermediate suppliers are not required to pay VAT on supplies of manufactured tobacco, they cannot seek reimbursement of that tax under Article 11.C(1) of the Sixth Directive in the event of non-payment by the purchaser of the price for those supplies.

39 The fact that the amount of the VAT paid at source by the manufacturer or importer by way of tax labels is included, from an economic point of view, in the price of the supplies made to those suppliers is irrelevant in that regard. That circumstance does not in any way call into question the fact that those suppliers do not have any tax debt under the VAT rules.

40 Furthermore, in the context of a simplified VAT collection scheme such as that at issue in the main proceedings, in which the amount of the VAT paid by the manufacturer or importer by

way of tax labels is related, not to the consideration actually received by each supplier but, as has already been held in paragraph 29 of the present judgment, to the price of the products at the stage of final consumption, the loss, by an intermediate supplier, such as that in the main proceedings, of its claim to payment against the other contracting party does not reduce the taxable amount.

41 Under those circumstances, it must be stated that reimbursement to such an intermediate supplier of an amount of VAT in the event that the purchaser has not paid the price for supplies of manufactured tobacco would affect, to a non-negligible extent, the amount of tax due at the stage of final consumption, contrary to the requirements of Article 27(1) of the Sixth Directive, and would therefore affect the tax revenue collected by the Member State at that stage. That would *a fortiori* be the case if the application for reimbursement of VAT were to relate to the entire amount paid by the manufacturer or importer of the manufactured tobacco on the ground that the tax paid in advance by them applies in full to the price invoiced by each intermediate supplier to its customer.

42 However, it is probable that, as the Commission has stated in its observations, those products, by their very nature, may still be sold to final consumers, inter alia, in a case such as that in the main proceedings, by the representative of the insolvent purchaser. The possibility cannot therefore be discounted that, contrary to the principle laid down by the common system of VAT, those products may be consumed without part, if not all, of the tax due being paid to the Treasury.

43 In addition, it must be pointed out that the fact of allowing an intermediate supplier, under such a scheme, to obtain reimbursement of an amount, or even the full amount, of VAT in the case where the purchaser, pleading, inter alia, its own insolvency, fails to pay for supplies, is, as the Belgian and Czech Governments have pointed out in their observations, as likely to complicate significantly the charging of VAT as it is to encourage avoidance and evasion, whereas the simplification of the charging of VAT and the prevention of such avoidance and evasion are precisely the objectives pursued by that scheme, in accordance with Article 27(1) of the Sixth Directive (see, by way of analogy, *Heintz van Landewijck*, paragraphs 43, 62 and 65, and Case C?374/06 *BATIG* [2007] ECR I?11271, paragraph 39).

44 As the Court has already held, the cigarette market particularly lends itself to the development of unlawful trade (see Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 87; Case C?222/01 *British American Tobacco* [2004] ECR I?4683, paragraph 72; and *BATIG*, paragraph 34).

45 It follows that exclusion of the right of an intermediate supplier, such as Vandoorne, to reimbursement of VAT in the case where the purchaser fails to pay the price for manufactured tobacco supplied to it is a consequence inherent in a scheme such as that at issue in the main proceedings, the purpose and effect of which are, pursuant to the criteria defined in Article 27(1) of the Sixth Directive, to simplify the procedure for charging VAT and to combat tax evasion or avoidance in regard to those products.

46 Consequently, the answer to the question referred to the Court is that Articles 11.C(1) and 27(1) and (5) of the Sixth Directive must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, by providing, for the purposes of simplifying the procedure for charging VAT and of combating tax evasion or avoidance in regard to manufactured tobacco, for the levying of that tax by means of tax labels, in a single charge and at source, from the manufacturer or importer of those products, excludes intermediate suppliers operating at a subsequent stage in the supply chain from the right to obtain reimbursement of VAT in the event of non-payment by the purchaser of the price for those products.

Costs

47 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 (Second Chamber) hereby rules:

Articles 11.C(1) and 27(1) and (5) of 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 2004/7/EC of 20 January 2004, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, by providing, for the purposes of simplifying the procedure for charging value added tax and of combating tax evasion or avoidance in regard to manufactured tobacco, for the levying of that tax by means of tax labels, in a single charge and at source, from the manufacturer or importer of those products, excludes intermediate suppliers operating at a subsequent stage in the supply chain from the right to obtain reimbursement of value added tax in the event of non-payment by the purchaser of the price for those products.

[Signatures]

* Language of the case: Dutch.