62010CJ0500
JUDGMENT OF THE COURT (Fourth Chamber)

29 March 2012 (*)

?Taxation — VAT — Article 4(3) TEU — Sixth Directive — Articles 2 and 22 — Automatic conclusion of proceedings pending before the tax court of third instance'

In Case C-500/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Commissione tributaria centrale, sezione di Bologna (Italy), made by decision of 22 September 2010, received at the Court on 19 October 2010, in the proceedings

Ufficio IVA di Piacenza

v

Belvedere Costruzioni Srl,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, L. Bay Larsen, C. Toader and E. Jaraši?nas (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 22 September 2011,

after considering the observations submitted on behalf of:

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the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato,

—

the European Commission, by E. Traversa and L. Lozano Palacios, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 November 2011,

gives the following

Judgment

1

This reference for a preliminary ruling concerns the interpretation of Article 4(3) TEU and Articles 2 and 22 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, ‘the Sixth Directive’).

2

The reference has been made in proceedings between the Ufficio IVA di Piacenza (Piacenza VAT Office) and Belvedere Costruzioni Srl (‘Belvedere Costruzioni’) concerning an adjustment of value added tax (VAT) for the year 1982.

Legal context

European Union law

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Under Article 2 of the Sixth Directive, the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such and the importation of goods are to be subject to VAT.

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Article 22 of the Sixth Directive provides:

‘…

4. Every taxable person shall submit a return within an interval to be determined by each Member State. …

…

5. Every taxable person shall pay the net amount of the [VAT] when submitting the return. The Member States may, however, fix a different date for the payment of the amount or may demand an interim payment.

…

8. … Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

…’

National law

5

Article 3(2bis) of Decree-Law No 40/2010 (GURI No 71, 26 March 2010), converted, with amendments, into Law No 73/2010 (GURI No 120, 25 May 2010) (‘Decree-Law No 40/2010’), reads as follows:

‘In order to ensure that judicial proceedings in tax matters are kept within a reasonable time, as required by the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950 (“the ECHR”)], ratified by Law No 848 of 4 August 1955, having regard to the failure to comply with the reasonable time requirement laid down in Article 6(1) of that Convention, pending tax disputes arising from actions lodged at first instance more than 10 years before the date of entry into force of the law converting the present decree into law, in which the State Tax Authority has been unsuccessful at first and second

instance, shall be concluded in accordance with the following rules:

(a)

tax disputes pending before the Commissione tributaria centrale, with the exception of those concerning claims for reimbursement, shall be concluded automatically by order of the president of that court or of another member designated for that purpose …

…’

6

Law No 73/2010, which converted Decree-Law No 40/2010 into law, entered into force on 26 May 2010.

7

The Commissione tributaria centrale (Central Tax Court), which acted as the court of third instance in tax matters, was abolished by Legislative Decree No 545/1992 (GURI No 9, 13 January 1993) with effect from 1 April 1996. It continues to function, however, until the cases brought before it before that date are dealt with.

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

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In its annual VAT return for 1982 Belvedere Costruzioni deducted a tax credit of ITL 22 264 000 described as a credit from the 1981 return. On 12 August 1985 the Ufficio IVA di Piacenza, taking the view that the VAT return for 1981 had been submitted out of time and it was not therefore possible to deduct that tax credit in connection with the VAT return for 1982, sent the company an adjustment notice.

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Belvedere Costruzioni brought proceedings against that notice before the Commissione tributaria di primo grado di Piacenza (Tax Court of First Instance, Piacenza), submitting that the disputed tax credit did not derive from the difference between the tax shown as ‘debited’ on sales and the tax shown as ‘credited’ on purchases in relation to taxable transactions effected in 1981, but represented part of the tax credit mentioned in its tax return for 1980. It argued that, having regard to the relevant national legislation, its right to deduct that tax credit had not been extinguished, while the Ufficio IVA di Piacenza argued the contrary.

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The Commissione tributaria di primo grado di Piacenza allowed the application by decision of 10 October 1986, confirmed by decision of the Commissione tributaria di secondo grado (Tax Court of Second Instance) of 28 May 1990 following the appeal by the Ufficio IVA. The Ufficio IVA thereupon appealed against that decision to the referring court.

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In the order for reference the Commissione tributaria centrale, sezione di Bologna, states that, since the tax authorities were unsuccessful before the courts of first and second instance, it should apply Article 3(2bis)(a) of Decree-Law No 40/2010, which would have the consequence that the

decision of the court of second instance would become final and binding and the debt claimed by the tax authorities at the three levels of jurisdiction would be extinguished.

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It considers, however, that the application of that provision may lead to a breach of Article 4(3) TEU and of Articles 2 and 22 of the Sixth Directive, as interpreted in Case C-132/06 Commission v Italy [2008] ECR I-5457, since it definitively bars recovery of the VAT debt the existence of which the tax authorities are expressly seeking to have declared by the court. That in its opinion constitutes a breach of the Italian State's obligation to ensure effective collection of the European Union's own resources.

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In those circumstances, the Commissione tributaria centrale, sezione di Bologna, decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do Article 10 [EC], now Article 4 [TEU], and Articles 2 and 22 of [the Sixth Directive] preclude legislation of the Italian State laid down in Article 3(2bis) of Decree-Law [No 40/2010], under which the court with jurisdiction in tax matters may not rule on the existence of an alleged tax debt which the tax authorities have sought, in due time, to recover by appealing against an unfavourable decision and which thus in effect provides for the VAT debt at issue to be wholly waived in cases where the courts have ruled at both first and second instance that such a debt does not exist, without the taxable person in favour of whom the waiver has operated having to pay even a fraction of the debt at issue?'

Consideration of the question referred

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By its question, the referring court asks essentially whether Article 4(3) TEU and Articles 2 and 22 of the Sixth Directive must be interpreted as precluding the application in VAT matters of a provision of national law which provides for the automatic conclusion of proceedings pending before the tax court of third instance where those proceedings originate in an application brought at first instance more than 10 years before the date of the entry into force of that provision and the tax authorities have been unsuccessful at first and second instance, the consequence of that automatic conclusion being that the decision of the court of second instance becomes final and binding and the debt claimed by the authorities is extinguished.

Admissibility

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The Italian Government submits that the question is inadmissible. In its opinion, the referring court has failed to comply with the obligation to provide the Court with all the elements of fact and law to enable the Court to understand why it considers that Article 3(2bis) of Decree-Law No 40/2010 involves a waiver by the tax authorities of their power of verification of taxable transactions. In the absence of an analysis of that article in the order for reference, the question is manifestly abstract and hypothetical.

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It must be recalled that a reference for a preliminary ruling made by a national court may be declared inadmissible only where it is quite obvious that the interpretation of European Union law

that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-415/93 Bosman [1995] ECR I-4921, paragraph 61, and Case C-450/09 Schröder [2011] ECR I-2497, paragraph 17).

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With regard more specifically to the information that must be provided to the Court in a reference for a preliminary ruling, that information not only serves to enable the Court to provide answers which will be of use to the referring court, it must also enable the Governments of the Member States and other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is settled case-law that, for those purposes, it is necessary, first, that the national court should define the factual and legislative context of the questions which it is asking or, at the very least, explain the factual circumstances on which those questions are based. Secondly, the order for reference must set out the precise reasons why the national court is unsure as to the interpretation of European Union law and considers it necessary to refer questions to the Court for a preliminary ruling (Case C-42/07 Liga Portuguesa de Futebol Profissional and Bwin International [2009] ECR I-7633, paragraph 40 and the case-law cited).

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In the present case, the order for reference contains an account of the facts behind the main proceedings and the relevant national law, namely Article 3(2bis) of Decree-Law No 40/2010. It also indicates the reasons why the referring court is unsure as to the compatibility of that article with European Union law and considered it necessary to refer a question to the Court for a preliminary ruling. Far from being abstract and hypothetical, that question appears to be decisive for the outcome of the main proceedings, since, according to the referring court’s analysis of that provision, it will have to conclude the proceedings without ruling on whether the decision challenged before it should stand.

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The question referred for a preliminary ruling must therefore be considered admissible.

Substance

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As the Court observed in Commission v Italy, paragraph 37, it follows from Articles 2 and 22 of the Sixth Directive and Article 4(3) TEU that every Member State is under an obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory. In that regard, Member States are required to check taxable persons’ returns, accounts and other relevant documents, and to calculate and collect the tax due.

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Under the common system of VAT, the Member States are required to ensure compliance with the obligations to which taxable persons are subject, and they enjoy in that respect a certain measure of latitude, inter alia, as to how they use the means at their disposal (Commission v Italy, paragraph 38).

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That latitude is nevertheless limited by the obligation to ensure effective collection of the European Union's own resources and not to create significant differences in the manner in which taxable persons are treated, either within a Member State or throughout the Member States. The Sixth Directive must be interpreted in accordance with the principle of fiscal neutrality inherent in the common system of VAT, according to which economic operators carrying out the same transactions must not be treated differently in relation to the levying of VAT. Any action by the Member States concerning the collection of VAT must comply with that principle (Commission v Italy, paragraph 39).

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However, in the first place, the obligation to ensure effective collection of European Union resources cannot run counter to compliance with the principle that judgment should be given within a reasonable time, which, under the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be observed by the Member States when they implement European Union law, and must also be observed under Article 6(1) of the ECHR.

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In the present case, it must be emphasised that Article 3(2bis) of Decree-Law No 40/2010 prescribes the conclusion solely of tax proceedings which, at the date of the entry into force of that provision, have lasted for more than 10 years since the application at first instance was made, and that it pursues the objective, as is apparent from its very wording, of remedying the breach of the reasonable time requirement in Article 6(1) of the ECHR. Moreover, according to the observations submitted to the Court, Article 3(2bis) of Decree-Law No 40/2010 entered into force more than 14 years after the last date on which appeals could be brought before the Commissione tributaria centrale, so that all the proceedings still pending before that court have in fact lasted for over 14 years.

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The facts of the dispute in the main proceedings, which go back about 30 years, show that some of those proceedings have lasted for a much greater number of years. Such a length of proceedings is a priori capable in itself of infringing the reasonable time principle and, moreover, the obligation to ensure the effective collection of the European Union's own resources.

26

In the second place, it is apparent that such a measure is not comparable with those at issue in Commission v Italy. As the Advocate General observes in points 36 and 37 of her Opinion, the measures concerned in that case had been introduced very shortly after the expiry of the deadlines for payment of the VAT normally payable and thus enabled the taxable persons concerned to escape all checks by the tax authorities. The Court held that they constituted a general and indiscriminate waiver of verification of the taxable transactions effected during a serious of tax periods. However, it follows from what has been stated in paragraphs 24 and 25 above that the measure in Article 3(2bis) of Decree-Law No 40/2010 constitutes not a general waiver of the collection of VAT for a certain period but an exceptional provision intended to ensure observance of the reasonable time principle by concluding the oldest proceedings pending before the tax court of third instance, with the consequence that the decision of the court of second instance becomes final and binding.

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Moreover, because of its specific and limited character as a result of its conditions of application, such a measure does not create significant differences in the way in which taxable persons are treated as a whole, and does not therefore infringe the principle of fiscal neutrality.

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Consequently, the answer to the question is that Article 4(3) TEU and Articles 2 and 22 of the Sixth Directive must be interpreted as not precluding the application in VAT matters of an exceptional provision of national law, such as that at issue in the main proceedings, which provides for the automatic conclusion of proceedings pending before the tax court of third instance where those proceedings originate in an application brought at first instance more than 10 years, and in practice more than 14 years, before the date of the entry into force of that provision and the tax authorities have been unsuccessful at first and second instance, the consequence of that automatic conclusion being that the decision of the court of second instance becomes final and binding and the debt claimed by the tax authorities is extinguished.

Costs

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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 (Fourth Chamber) hereby rules:

Article 4(3) TEU and Articles 2 and 22 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 must be interpreted as not precluding the application in value added tax matters of an exceptional provision of national law, such as that at issue in the main proceedings, which provides for the automatic conclusion of proceedings pending before the tax court of third instance where those proceedings originate in an application brought at first instance more than 10 years, and in practice more than 14 years, before the date of the entry into force of that provision and the tax authorities have been unsuccessful at first and second instance, the consequence of that automatic conclusion being that the decision of the court

of second instance becomes final and binding and the debt claimed by the tax authorities is extinguished.

[Signatures]

(*) Language of the case: Italian.