JUDGMENT OF THE COURT (Second Chamber)

8 May 2013 (*)

(Taxation – Value added tax – Sixth Directive 77/388/EEC – Right to deduct input tax – Obligations of the taxable person – Possession of improper or inaccurate invoices – Omission of mandatory particulars – Refusal of the right to deduct – Evidence subsequent to the occurrence of the transactions invoiced – Correcting invoices – Right to refund of VAT – Principle of neutrality)

In Case C-271/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour d'appel de Mons (Belgium), made by decision of 25 May 2012, received at the Court on 1 June 2012, in the proceedings

Petroma Transports SA,

Martens Énergie SA,

Martens Immo SA,

Martens SA,

Fabian Martens,

Geoffroy Martens,

Thibault Martens,

v

État belge,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, G. Arestis (Rapporteur), J.-C. Bonichot, A. Arabadjiev and J.L. da Cruz Vilaça, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Petroma Transports SA, Martens Énergie SA, Martens Immo SA, Martens SA, and F. Martens, G. Martens and T. Martens, by O. Van Ermengem, avocat,

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

– the European Commission, by W. Roels and C. Soulay, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 94/5/EC of 14 February 1994 (OJ 1994 L 60, p. 16) ('the Sixth Directive'), and of the principle of neutrality.

2 The request has been made in the context of proceedings between, on the one hand, Petroma Transports SA, Martens Énergie SA, Martens Immo SA, Martens SA, as well as F. Martens, G. Martens and T. Martens, together forming the Martens group, and, on the other hand, État belge ('the Belgian State') concerning the refusal of the latter to grant the Martens group the right to deduct value added tax ('VAT') for services provided within that group.

Legal context

European Union legislation

3 Article 2(1) of the Sixth Directive makes 'the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such' subject to VAT.

4 Article 10 of the Sixth Directive, under the heading 'Chargeable event and chargeability of tax', provides 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. …

…'

5 Article 17 of the Sixth Directive, entitled 'Origin and scope of the right to deduct', provides:

'1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

…'

6 Article 18 of the Sixth Directive, concerning rules governing the exercise of the right to deduct, provides:

‘1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17(2)(a), hold an invoice drawn up in accordance with Article 22(3);

…

2. The taxable person shall effect the deduction by subtracting from the total amount of value added tax due for a given tax period the total amount of the tax in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1.

…

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorised to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2.

…’

7 Article 21(1)(a) and (c) of the Sixth Directive states:

‘The following shall be liable to pay value added tax:

1. under the internal system:

(a) taxable persons who carry out taxable transactions other than those referred to in Article 9(2)(e) and carried out by a taxable person resident abroad. ...

...

(c) any person who mentions the value added tax on an invoice or other document serving as invoice ...’

8 Article 22 of the Sixth Directive, in the version resulting from Article 28h, provides:

‘Obligations under the internal system

1. (a) Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

…

2. (a) Every taxable person shall keep accounts in sufficient detail for value added tax to be applied and inspected by the tax authority.

…

3. (a) Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. …

…

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

…

(c) The Member States shall determine the criteria for considering whether a document serves as an invoice.

…

8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

…'

Belgian legislation

9 Article 3(1)(1) of Royal Decree No 3 of 10 December 1969 on deductions for the application of VAT (*Moniteur belge* of 12 December 1969) provides:

'1. A taxable person, in order to be able to exercise his right to deduction, must:

(1) in respect of the tax which is charged on the goods and services which have been supplied to him, be in possession of an invoice, drawn up in accordance with Article 5 of Royal Decree No 1 of 29 December 1992 [on measures to ensure payment of valued added tax (*Moniteur belge* of 31 December 1992, p. 27976; "Royal Decree No 1")].'

10 Under Article 5(1)(6) of Royal Decree No 1, the invoice is to contain 'the information necessary to determine the transaction and the rate of tax payable, in particular the customary name of the goods supplied and the services provided, the quantity of those goods and services and the purpose of the services'.

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

11 F. Martens, G. Martens and T. Martens are the successors in title of J.-P. Martens, who operated as a sole trader under the name 'Margaz'. That undertaking formed the basis for the development of the Martens group, the companies of which carried out a variety of activities, such as the purchase, sale and transport of petroleum products as well as construction work services. Petroma Transports SA was the main company in the Martens group in terms of staff and provided numerous services to other companies within that group. Contracts were concluded to regulate the use of such staff in the context of the intra-group services. Those contracts provided for remuneration for those services on the basis of hours worked by staff.

12 During inspections conducted as from 1997, the Belgian tax authority questioned, both as

regards direct taxes and VAT, the intercompany invoices and resulting deductions since the 1994 year of assessment, the main reason being that those invoices were incomplete and could not be shown to correspond to actual services. Most of those invoices included an overall amount, with no indication of the unit price or the number of hours worked by the staff of the service-providing companies, thereby making it impossible for the tax authority to determine the exact amount of tax collected.

13 That tax authority therefore disallowed the deductions made by the companies receiving services on the ground, in particular, of non-compliance with the requirements laid down in Article 5(1)(6) of Royal Decree No 1 and Article 3(1)(1) of Royal Decree No 3 of 10 December 1969 on deductions for the application of VAT.

14 Subsequently, additional information was provided by those companies but was not accepted by the tax authority as a sufficient basis to allow the deduction of the various VAT amounts. That authority took the view that that information concerned either private contracts for services submitted late, after completion of the tax audits and after communication of the adjustments that that authority intended to make, and therefore of no certain date and not binding on third parties, or invoices that were supplemented after they had been issued, at the stage of the administrative procedure, by handwritten references to the number of hours worked by staff, the hourly rate for work and the nature of the services provided and which, therefore, according to the tax authority, lacked any probative value.

15 On 2 February 2005, the Tribunal de première instance de Mons (Court of first instance, Mons) delivered several judgments. While, in the case of certain invoices, it ruled in favour of the taxpayer, it also upheld the refusal to allow the deduction of VAT in respect of companies receiving services.

16 That court subsequently decided to reopen the procedure, following new applications seeking a refund of charges paid by the service providers. By judgment of 23 February 2010, the Tribunal de première instance de Mons delivered judgment in the joined cases and dismissed the refund applications as unfounded. Those providers thereupon appealed against that judgment.

17 In those circumstances the Cour d’appel de Mons (Court of appeal, Mons) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is a Member State entitled to refuse to allow a deduction in favour of taxable persons who are recipients of services and are in possession of invoices which are incomplete, but which have been supplemented by the provision of information seeking to prove the occurrence, the nature and the amount of the transactions invoiced (contracts, reconstitution of figures on the basis of declarations made to the national social security institution, information on the functioning of the group involved, …)?

(2) Must a Member State which refuses, on the basis of inaccuracies in invoices, to allow a deduction in favour of taxable persons who are recipients of services not find that the invoices are then also too inaccurate to allow payment of the VAT? Consequently, is a Member State not required, in order to safeguard the principle of neutrality of VAT, to repay the VAT which has been paid to it to the companies which supplied the services thus disputed?’

The questions referred

Preliminary observations

18 It should be noted that the national court does not indicate the provisions of European Union

law in respect of which it seeks on interpretation.

19 However, it is apparent from the order for reference and from the context of the main proceedings that the questions referred concern the interpretation of the provisions of the Sixth Directive and the principle of fiscal neutrality.

20 Insofar as it is also clear from that decision that the first disputed invoices are dated 31 March 1994, the provisions in question must be interpreted in accordance with their version applicable on that date.

The first question

21 By its first question the national court seeks in substance to ascertain whether the provisions of the Sixth Directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the right to deduct VAT may be refused to taxable persons who are recipients of services and are in possession of invoices which are incomplete, in the case where those invoices are then supplemented by the provision of information seeking to prove the occurrence, nature and amount of the transactions invoiced.

22 It should be noted at the outset that the right to deduct VAT is a fundamental principle of the common system of VAT which cannot be limited in principle and must be exercised immediately in respect of all the taxes charged on input transactions (see, to that effect, Case C-285/11 *Bonik* [2012] ECR, paragraphs 25 and 26 and the case-law cited).

23 The deduction system thus established is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see Case C-137/02 *Faxworld* [2004] ECR I-5547, paragraph 37, and Case C-438/09 *Dankowski* [2010] ECR I-14009, paragraph 24).

24 It thus follows from Article 17(2) of the Sixth Directive that every taxable person is entitled to deduct the amounts invoiced as VAT for services rendered to him, in so far as such services are used for the purposes of his taxable transactions (see, to that effect, Case C-74/08 *PARAT Automotive Cabrio* [2009] ECR I-3459, paragraph 17 and the case-law cited).

25 With regard to the rules governing the exercise of the right to deduct, Article 18(1)(a) of the Sixth Directive provides that the taxable person must hold an invoice drawn up in accordance with Article 22(3) of that directive.

26 Under Article 22(3)(b) of the Sixth Directive the invoice must state clearly the price exclusive of tax and the corresponding tax at each rate, as well as any exemptions. Article 22(3)(c) provides for Member States to determine the criteria for considering whether a document serves as an invoice. Furthermore, Article 22(8) allows Member States to impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion.

27 It follows that, with regard to the exercise of the right to deduct, the Sixth Directive does no more than require an invoice containing certain information, and Member States may provide for the inclusion of additional information to ensure the correct levying of VAT and to permit supervision by the tax authority (see, to that effect, Joined Cases 123/87 and 330/87 *Jeunehomme and EGI* [1988] ECR 4517, paragraph 16).

28 However, the requirement that the invoice should contain particulars other than those set

out in Article 22(3)(b) of the Sixth Directive, as a condition for the exercise of the right to deduct, must be limited to what is necessary to ensure the levying of VAT and to permit supervision by the tax authority. Moreover, such particulars must not, by reason of their number or technical nature, make the exercise of the right to deduct practically impossible or excessively difficult (*Jeunehomme and EGI*, paragraph 17).

29 As regards the national legislation at issue in the main proceedings, it should be noted that the Belgian State has exercised the option provided for in Article 22(8) of the Sixth Directive, since, under Article 5(1)(6) of Royal Decree No 1, the invoice must include the information necessary to determine the transaction and the rate of tax payable, in particular the customary name of the goods supplied and the services provided, the quantity thereof and their purpose.

30 In that regard, it is for the national court to determine whether the additional particulars required by those legislative rules comply with the requirements set out in paragraph 28 of the present judgment.

31 Moreover, although the Court, in Case C-368/09 *Pannon Gép Centrum* [2010] ECR I-7467, at paragraph 41, held 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 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), it should be noted that, in the case in the main proceedings, the provisions then in force allowed the Member States to lay down the criteria determining whether a document could be considered to constitute an invoice.

32 It appears from the order for reference that the right to deduct VAT was denied to taxable persons, the recipients of services, on the ground that the invoices at issue in the main proceedings were not sufficiently accurate and complete. In particular, the national court notes that most of those invoices did not indicate the unit price or the number of hours worked by the staff of the companies providing the services, making it impossible for the tax authority to determine the exact amount of tax collected.

33 The appellants in the main proceedings argue that the fact that the invoices do not contain certain particulars required by national legislation is not such as to call into question the exercise of the right to deduct VAT when the occurrence, nature and amount of the transactions have been subsequently demonstrated to the tax authority.

34 It should be noted that the common system of VAT does not prohibit the correction of incorrect invoices. Accordingly, where all of the material conditions required in order to benefit from the right to deduct VAT are satisfied and, before the tax authority concerned has made a decision, the taxable person has submitted a corrected invoice to that tax authority, the benefit of that right cannot, in principle, be refused on the ground that the original invoice contained an error (see, to that effect, *Pannon Gép Centrum*, paragraphs 43 to 45).

35 However, it must be stated that, with regard to the dispute in the main proceedings, the information necessary to complete and regularise the invoices was submitted after the tax authority had adopted its decision to refuse the right to deduct VAT, with the result that, before that decision was adopted, the invoices provided to that authority had not yet been rectified to enable it to ensure the correct collection of the VAT and to permit supervision thereof.

36 Consequently, the answer to the first question is that the provisions of the Sixth Directive must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which the right to deduct VAT may be refused to taxable persons who are recipients of services and are in possession of invoices which are incomplete, even if those

invoices are supplemented by the provision of information seeking to prove the occurrence, nature and amount of the transactions invoiced after such a refusal decision was adopted.

The second question

37 By its second question, the national court asks, essentially, whether the principle of fiscal neutrality must be interpreted as precluding a tax authority from refusing to refund the VAT paid by a company providing services, in the case where the exercise of the right to deduct the VAT on those services has been denied to the companies receiving those services by reason of the irregularities confirmed in the invoices issued by that service providing company.

38 The question therefore arises as to whether, in order to ensure the principle of fiscal neutrality, the charging of VAT to the service provider may be conditional upon the actual exercise of the VAT deduction by the recipient of those services.

39 Under Article 2(1) of the Sixth Directive, the supply of goods or services is subject to VAT where it is effected for consideration within the territory of the country by a taxable person acting as such. It follows from Article 10(2) of that directive that the chargeable event occurs and the tax becomes chargeable when the goods are delivered or the services are performed.

40 The Court has consistently held that VAT is to be levied on all goods and services supplied for consideration by a taxable person (see, to that effect, Case C-29/08 *SKF* [2009] ECR I-10413, paragraph 46 and the case-law cited).

41 It must therefore be stated that, as the Belgian State and the European Commission rightly point out in their written observations, it follows from those provisions of the Sixth Directive that the common system of VAT does not make the charging of that VAT, to the taxable person who is the service provider, conditional upon the actual exercise of the right to deduct VAT by the taxable person who is the recipient of services.

42 It follows from paragraph 13 of the present judgment that the exercise of the right to deduct VAT levied on the provisions of services at issue in the main proceedings, to which the recipients of those services would normally have been entitled, was refused due to the absence of certain compulsory particulars on the invoices issued by the service provider.

43 Since, in the dispute in the main proceedings, it was confirmed that the services subject to VAT were in fact provided, the VAT relating to those transactions was due and was correctly paid to the tax authority. In that context, the principle of fiscal neutrality cannot be invoked to justify the refund of VAT in a situation such as that in the dispute in the main proceedings. Any other interpretation would be liable to encourage situations that may prevent the correct collection of VAT, which Article 22 of the Sixth Directive seeks specifically to avoid.

44 Therefore, in view of the foregoing, the answer to the second question is that the principle of fiscal neutrality does not preclude the tax authority from refusing to refund the VAT paid by a company providing services, in the case where the exercise of the right to deduct the VAT levied on those services has been denied to the companies receiving those services by reason of the irregularities confirmed in the invoices issued by that service-providing company.

Costs

45 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:

1. **The provisions 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 94/5/EC of 14 February 1994, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which the right to deduct value added tax may be refused to taxable persons who are recipients of services and are in possession of invoices which are incomplete, even if those invoices are supplemented by the provision of information seeking to prove the occurrence, nature and amount of the transactions invoiced after such a refusal decision was adopted.**

2. **The principle of fiscal neutrality does not preclude the tax authority from refusing to refund the value added tax paid by a company providing services, in the case where the exercise of the right to deduct the value added tax levied on those services has been denied to the companies receiving those services by reason of the irregularities confirmed in the invoices issued by that service-providing company.**

[Signatures]

* Language of the case: French.