JUDGMENT OF THE COURT (Eighth Chamber)

11 December 2014 (*)

(Reference for a preliminary ruling — Indirect taxation — VAT — Sixth Directive — Articles 18 and 22 — Right to deduct — Intra-Community acquisitions — Reverse charge procedure — Substantive requirements — Formal requirements — Failure to comply with the formal requirements)

In Case C?590/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Italy), made by decision of 7 October 2013, received at the Court on 20 November 2013, in the proceedings

Idexx Laboratories Italia Srl

v

Agenzia delle Entrate,

THE COURT (Eighth Chamber),

composed of C. Toader, acting as President of the Chamber, E. Jaraši?nas and C.G. Fernlund (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Idexx Laboratories Italia Srl, by F. Tesauro, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. De Socio, avvocato dello Stato,

– the European Commission, by L. Lozano Palacios and D. Recchia, 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 Articles 18 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), as amended by Council Directive 91/680/EEC of 16 December 1991 (OJ 1991 L 376, p. 1) ('the Sixth Directive').

2 The request has been made in the context of two sets of proceedings — joined by the referring court — between Idexx Laboratories Italia Srl ('Idexx') and the Agenzia delle Entrate — Ufficio di Milano 1 (the Tax Authority — Milan 1 Office) ('the Agenzia') concerning, first, the recovery notice issued by that authority, reassessing the value added tax ('VAT') return drawn up by Idexx in respect of 1998, and, secondly, the rejection of a request for dispute settlement submitted by that company.

Legal context

EU law

3 The Sixth Directive includes a Title XVIa, entitled 'Transitional arrangements for the taxation of trade between Member States', which was inserted in that directive by Directive 91/680 and which includes, inter alia, Articles 28f to 28h.

4 Paragraph 1 of Article 17 of the Sixth Directive, entitled 'Origin and scope of the right to deduct', provides as follows:

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

5 In the version resulting from Article 28f of the Sixth Directive, Article 17(2) thereof provides as follows:

'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) [VAT] due or paid in respect of goods or services supplied or to be supplied to him by another taxable person liable for the tax within the territory of the country;

(b) [VAT] due or paid in respect of imported goods within the territory of the country;

(c) [VAT] due pursuant to Articles 5(7)(a), 6(3) and 28a(6);

(d) [VAT] due pursuant to Article 28a(1)(a).'

6 In the version resulting from Article 28f of the Sixth Directive, Article 18 of that directive, on 'Rules governing the exercise of the right to deduct', provides in paragraph 1, point (d), thereof, as follows:

'To exercise his right of deduction, a taxable person must:

...

(d) when he is required to pay the tax as a customer or purchaser where Article 21(1) applies, comply with the formalities laid down by each Member State.'

7 So far as concerns persons liable for payment of VAT, Article 21(1)(d) of that directive, in the version resulting from Article 28g thereof, provides that, under the internal system, 'any person

effecting a taxable intra-Community acquisition of goods' is liable to pay VAT '.

8 Under Article 22 of the Sixth Directive, entitled 'Obligations under the internal system', in the version resulting from Article 28h of that directive:

'...

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

(b) ...

Every taxable person shall keep a register of materials dispatched to him from another Member State by or on behalf of a taxable person identified for purposes of [VAT] in that other Member State with a view to the supply to that taxable person of contract work.

...

4. (a) Every taxable person shall submit a return by a deadline to be determined by Member States. ...

(b) The return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions relative to such tax and deductions and the value of any exempt transactions.

(c) The return shall also set out:

...

– on the other hand, the total value, less [VAT], of the intra-Community acquisitions of goods referred to in Article 28a(1) and (6) on which tax has become chargeable.

...

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.

...'

Italian law

9 Most of the relevant provisions on VAT are laid down, first, by Decree No 633 of the President of the Republic establishing and regulating value added tax (Decreto del presidente della Repubblica n. 633, istituzione e disciplina dell'imposta sul valore aggiunto) of 26 October 1972 (Ordinary Supplement to the *GURI* No 292 of 11 November 1972) ('DPR No 633/72'), which has been amended several times, and, secondly, by Legislative Decree No 331 concerning harmonisation of the provisions relating to taxes on mineral oils, alcohol, alcoholic beverages and manufactured tobacco, and in respect of VAT, with the provisions laid down in the EEC directives, and amendments deriving from such harmonisation, as well as provisions relating to the system of authorised tax assistance centres, tax reimbursement procedures, the exclusion from local income

tax ('ILOR') of business income up to the amount corresponding to direct professional expenses, the establishment for 1993 of an extraordinary consumption tax on certain goods, and other tax provisions (decreto-legge n. 331 — armonizzazione delle disposizioni in materia di imposte sugli oli minerali, sull'alcole, sulle bevande alcoliche, sui tabacchi lavorati e in materia di IVA con quelle recate da direttive CEE e modificazioni conseguenti a detta armonizzazione, nonché disposizioni concernenti la disciplina dei centri autorizzati di assistenza fiscale, le procedure dei rimborsi di imposta, l'esclusione dall'ILOR dei redditi di impresa fino all'ammontare corrispondente al contributo diretto lavorativo, l'istituzione per il 1993 di un'imposta erariale straordinaria su taluni beni ed altre disposizioni tributarie) of 30 August 1993 (*GURI* No 203 of 30 August 1993), converted into law by Law No 427 of 29 October 1993 (*GURI* No 255 of 29 October 1993) ('DL No 331/93').

10 The provisions relevant with regard to the detailed rules for and the general conditions governing invoicing and the registration of invoices and acquisitions are those set out in Articles 21, 23 and 25 of DPR No 633/72.

11 As regards the right to deduct in respect of intra-Community transactions, Article 45 of DL No 331/93 provides:

'Under Article 19 et seq. of [DPR No 633/72] and subject to the restrictions provided for in those articles, the tax payable in respect of intra-Community acquisitions of goods carried out in the exercise of an undertaking, an art or a profession, shall confer a right to deduction.'

12 According to Article 46(1) of DL No 331/93, entitled 'Invoicing of intra-Community transactions', the invoice relating to the intra-Community acquisition must be numbered and completed by the transferee or principal, indicating the exchange value in Italian lire of the consideration and all of the other elements that together form the taxable base of the transaction and with that taxable base calculated in accordance with the rate applicable for the goods or services purchased.

13 Under the heading 'Registration of intra-Community transactions', Article 47 of DL No 331/93 provides as follows:

'1. Invoices relating to the intra-Community acquisitions referred to in Article 38(2) and (3)(b) and to the transactions referred to in Article 46(1), second sentence, after having been completed in accordance with the first sentence of Article 46(1), shall be recorded in the month in which they are received or subsequently, but in any event within 15 days of receipt and with reference to the corresponding month, separately in the register referred to in Article 23 of [DPR No 633/72], in sequential order, indicating also the consideration for transactions expressed in foreign currency. The invoices referred to in Article 46(5) shall be recorded in the month in which they were issued. They shall be registered separately, within the periods provided for by the preceding sentences, also in the register provided for in Article 25 of the aforementioned Decree, by reference to the month in which they were received or in which they were issued, respectively.

2. The taxpayers referred to in Article 22 of [DPR No 633/72] may register the invoices referred to in paragraph 1 in the register mentioned in Article 24 of the Decree instead of the register of issued invoices, subject to the requirements regarding periods and procedure set out in paragraph 1.

3. The taxpayers referred to in Article 4(4) of [DPR No 633/72] who are not taxable persons for VAT purposes shall register, after numbering in sequential order, the invoices referred to in paragraph 1 of this article in an *ad hoc* register, held and maintained in accordance with Article 39 of [DPR No 633/72], in the month following that in which they obtained those invoices or, in

respect of the invoices referred to in Article 46(5), during the month in which those invoices were issued.

4. The invoices relating to the intra-Community transactions referred to in Article 46(2) shall be recorded separately in the register provided for in Article 23 of [DPR No 633/72], in sequential order and by reference to their date of issue.

...'

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

14 During the course of 1998, Idexx effected intra-Community acquisitions from a French company and a Dutch company, but failed to carry out the formalities required by national law.

15 It is apparent from the file submitted to the Court that Idexx had failed to record in the VAT register certain invoices drawn up by the French company.

16 As regards the invoices drawn up by the Dutch company, these had not been recorded in Idexx's register of issued invoices but only in its register of purchases, where they were marked 'VAT exempt'.

17 After conducting an inspection in 2000, the Agenzia took the view that those transactions were intra-Community acquisitions on which VAT was to be charged and subject, as such, to the reverse charge procedure. In that context, the Agenzia drew up a report on Idexx which found that it had failed to comply with the Italian legislation on the registration of intra-Community transactions.

18 Subsequent to that report, the Agenzia sent to Idexx, on 27 May 2004, a tax assessment for VAT in respect of 1998 and for a sum equivalent to 100% of the tax, by way of a penalty for the failure to comply with the obligations set out in Articles 46 and 47 of DL No 331/93. That authority then turned down the request submitted by Idexx for settlement of the dispute.

19 Idexx brought two separate actions against the notice of assessment and the refusal to allow its request for settlement of the dispute. In two rulings, the Commissione tributaria provinciale di Milano (Milan District Tax Court) upheld both of those actions and, consequently, annulled the notice of assessment and set aside the rejection of the request for settlement of the dispute.

20 The Agenzia brought an appeal against those two decisions, which was upheld by the Commissione tributaria regionale della Lombardia (Lombardy Regional Tax Court). That court observed that the provisions of Italian law on intra-Community acquisitions, in particular Articles 46 and 47 of DL No 331/93, imposed on the transferee or principal the obligation not only to number and complete the invoice at the time of the intra-Community acquisition with all the elements forming the taxable base of the transaction, but also to record in a timely manner all the invoices thereby completed separately in the different registers referred to in Articles 23 and 25 of DPR No 633/72.

21 The Commissione tributaria regionale della Lombardia held that the failure to register was a breach which was not formal but substantive in nature and that it constituted an infringement such as to warrant a notice of reassessment and/or recovery.

22 Idexx brought two appeals before the Corte di cassazione (Court of Cassation), which decided to join the two cases. In its appeals, Idexx put forward two identical grounds, alleging that the Commissione tributaria regionale della Lombardia had unlawfully characterised as a

‘substantive breach’ the failure to invoice and to register invoices in connection with intra-Community acquisitions.

23 Idexx submits that the intra-Community acquisitions have no substantive effects, creating neither tax debts nor tax credits, but solely ‘notional’ debts and credits and formal obligations to enter a suspense account in both VAT registers, without implications as to the substance.

24 It accordingly contends that non-compliance with such obligations does not allow the Agenzia to reassess the purchaser’s VAT return and to claim from it payment of a tax which is merely theoretical by ignoring the right to deduct which, in the present case, cannot be disputed.

25 The referring court takes the view that the answer to the disputes pending before it depends on the interpretation to be given to the judgment in *Ecotrade* (C?95/07 and C?96/07, EU:C:2008:267). It explains that there are two different, yet coexisting, interpretations of that judgment within the Corte di cassazione, and, consequently, the national legal order, leading to two different approaches.

26 According to the first approach, the right to deduct requires that the obligations of self-invoicing and registration provided for in the reverse charge procedure by national rules and EU law must be fulfilled, those obligations being regarded as substantive obligations.

27 According to the second approach, the right to deduct arises at the time at which the VAT becomes chargeable, that is to say, not after the formalities laid down for the exercise of that right have been completed, but, in principle, at the time at which the assignment of property or provision of services occurred. Consequently, the failure by the taxable person to fulfil the formal obligations required for the purposes of the exercise of that right cannot result in the loss of the right itself, where it is proven, including by other means, that the sum payable was in fact paid and the components of the right to deduct are not disputed. The failure to fulfil formal obligations might, however, in some cases, justify the application of administrative fines.

28 In those circumstances the Corte di cassazione decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Do the principles set out by the [Court] in its judgment in [Ecotrade, C?95/07 and C?96/07, EU:C:2008:267], according to which Articles 18(1)(d) and 22 of [the Sixth Directive] preclude a practice of reassessing tax returns and recovering [VAT] which penalises, by denying the right to deduct in the case of a reverse-charge procedure, non-compliance with, on the one hand, the requirements arising from the formalities introduced by the national legislation giving effect to Article 18(1)(d) and, on the other, the requirements relating to the keeping of accounts and submission of a tax return arising from Article 22(2) and (4) respectively, apply also to cases in which there has been a total failure to comply with the requirements laid down under those legislative provisions where there is, in any event, no doubt as to the position of the person liable for the tax and as to that person’s right to deduct?

(2) Do the terms “obblighi sostanziali”, “substantive requirements” and “exigences de fond” used by the [Court] in the different language versions of its judgment in [*Ecotrade*, EU:C:2008:267] refer, in relation to cases of the reverse-charge procedure provided for under the VAT regime, to the need to pay the VAT or to assume liability for that tax, or do those terms refer to the existence of the substantive conditions establishing the taxpayer’s liability for that tax and governing the right to deduct, which is designed to safeguard the principle of VAT neutrality under European Union law – for example, the conditions relating to intrinsic character, taxability and full deductibility?’

Consideration of the questions referred

29 By its two questions, which it is appropriate to examine together, the referring court seeks, in essence, to ascertain whether Articles 18(1)(d) and 22 of the Sixth Directive must be interpreted as containing formal requirements relating to the right to deduct or, by contrast, as containing substantive requirements governing that right, failure to comply with which, in circumstances such as those at issue in the main proceedings, would result in the loss of that right.

30 According to the Court's settled case-law, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation (judgment in *Tóth*, C?324/11, EU:C:2012:549, paragraph 23 and the case-law cited).

31 As the Court has repeatedly held, that right is an integral part of the VAT scheme and in principle may not be limited. In particular, it is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, to that effect, judgment in *Tóth*, EU:C:2012:549, paragraph 24 and the case-law cited).

32 The deduction system thus established is meant to relieve the taxable person 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 to VAT (judgments in *Tóth*, EU:C:2012:549, paragraph 25 and the case-law cited, and *Fatorie*, C?424/12, EU:C:2014:50, paragraph 31 and the case-law cited).

33 In the context of taxable intra-Community acquisitions of goods, it must be recalled, first, that under the reverse charge procedure established by Article 21(1)(d) of the Sixth Directive, no VAT payment takes place between the seller and the person acquiring the goods, the latter being liable, in respect of the acquisition made, for input VAT, while being able, in principle, to deduct that tax so that no tax is payable to the tax authorities.

34 Secondly, where the reverse charge procedure applies, Article 18(1)(d) of the Sixth Directive allows Member States to lay down formalities in respect of the rules governing the exercise of the right to deduct.

35 However, the formalities thus laid down by the Member State concerned, which must be complied with by a taxable person in order for the latter to be able to exercise the right to deduct VAT, should not exceed what is strictly necessary for the purposes of verifying the correct application of the reverse charge procedure (judgments in *Bockemühl*, C?90/02, EU:C:2004:206, paragraph 50, and *Fatorie*, EU:C:2014:50, paragraph 34 and the case-law cited).

36 In addition, for the purposes of the application of VAT and its inspection by the tax authorities, Article 22 of the Sixth Directive provides for the imposition of certain obligations on the taxable persons liable for that tax, such as the obligations to keep accounts and to submit a VAT return. Under Article 22(8), Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of fraud.

37 Such measures, however, must not go further than is necessary to attain such objectives and must not undermine the neutrality of VAT (see, to that effect, judgments in *Collée*, C?146/05, EU:C:2007:549, paragraph 26 and the case-law cited, and *Ecotrade*, EU:C:2008:267, paragraph 66 and the case-law cited).

38 Thirdly, it is apparent from paragraph 63 of the judgment in *Ecotrade* (EU:C:2008:267) and from the Court's subsequent case-law (see, inter alia, judgments in *Uszodaépít?*, C?392/09, EU:C:2010:569, paragraph 39; *Nidera Handelscompagnie*, C?385/09, EU:C:2010:627, paragraph 42; *EMS-Bulgaria Transport*, C?284/11, EU:C:2012:458, paragraph 62; and *Fatorie*, EU:C:2014:50, paragraph 35) that, in the context of the reverse charge procedure, the fundamental principle of fiscal neutrality requires deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements.

39 The position may be different if non-compliance with such formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied (judgment in *EMS-Bulgaria Transport*, EU:C:2012:458, paragraph 71 and the case-law cited).

40 Consequently, where the tax authority has the information necessary to establish that the substantive requirements have been satisfied, it cannot, in relation to the right of that taxable person to deduct that tax, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes (see, to that effect, judgment in *EMS-Bulgaria Transport*, EU:C:2012:458, paragraph 62 and the case-law cited).

41 In that regard, it must be stated that the substantive requirements for the right to deduct are those which govern the actual substance and scope of that right, as provided for in Article 17 of the Sixth Directive, entitled 'Origin and scope of the right to deduct' (see, to that effect, judgments in *Commission* v *Netherlands*, C?338/98, EU:C:2001:596, paragraph 71; *Dankowski*, C?438/09, EU:C:2010:818, paragraphs 26 and 33; *Commission* v *Hungary*, C?274/10, EU:C:2011:530, paragraph 44; and *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. W?siewicz*, C?280/10, EU:C:2012:107, paragraphs 43 and 44).

42 The formal requirements for that right, by contrast, regulate the rules governing its exercise and monitoring thereof and the smooth functioning of the VAT system, such as the obligations relating to accounts, invoicing and filing returns. Those requirements are set out in Articles 18 and 22 of the Sixth Directive (see, to that effect, judgments in *Commission* v *Netherlands*, EU:C:2001:596, paragraph 71; *Collée*, EU:C:2007:549, paragraphs 25 and 26; *Ecotrade*, EU:C:2008:267, paragraphs 60 to 65; *Nidera Handelscompagnie*, EU:C:2010:627, paragraphs 47 to 51; *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. W?siewicz*, EU:C:2012:107, paragraphs 41 and 48; and *Tóth*, EU:C:2012:549, paragraph 33).

43 So far as concerns taxable intra-Community acquisitions of goods, the substantive requirements stipulate, as follows from Article 17(2)(d) of the Sixth Directive, that those acquisitions must have been effected by a taxable person, that that person must also be liable for the VAT payable on those acquisitions, and that the goods in question must be used for the purposes of his taxable transactions.

44 It is apparent from the order for reference that, in the case in the main proceedings, the Agenzia had all the information necessary to establish that those substantive requirements had been satisfied.

45 Accordingly, it follows from all of the foregoing considerations that the right, referred to in Article 17(2)(d) of the Sixth Directive, to deduct the VAT payable in relation to the intra-Community acquisitions at issue in the main proceedings cannot be denied to Idexx on the ground that it did not satisfy the formal requirements laid down by national law in implementation of Article 18(1)(d) and Article 22 of the Sixth Directive That right to deduct arises, in accordance with Article 17(1) of

that directive, at the time when the deductible tax becomes chargeable.

46 Having regard to those considerations, the answer to the questions referred is that Articles 18(1)(d) and 22 of the Sixth Directive must be interpreted as containing formal requirements relating to the right to deduct, failure to comply with which, in circumstances such as those at issue in the main proceedings, cannot result in the loss of that right.

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 (Eighth Chamber) hereby rules:

Articles 18(1)(d) 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, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as containing formal requirements relating to the right to deduct, failure to comply with which, in circumstances such as those at issue in the main proceedings, cannot result in the loss of that right.

[Signatures]

* Language of the case: Italian.