62015CJ0208
JUDGMENT OF THE COURT (Fifth Chamber)

8 December 2016 (*1)

?Reference for a preliminary ruling — Value added tax — Directive 2006/112/EC — Integrated cooperation — Grant of financing and supplies of current assets necessary for agricultural production — Single, complex supply — Distinct and independent supplies — Ancillary supply and principal supply’

In Case C?208/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 26 March 2015, received at the Court on 5 May 2015, in the proceedings

Stock ‘94 Szolgáltató Zrt.

v

Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó F?igazgatósága,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça (Rapporteur), President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 7 July 2016,

after considering the observations submitted on behalf of:

—

Stock ‘94 Szolgáltató Zrt., by Z. Várszegi and A. Kis, ügyvédek,

—

the Hungarian Government, by M.Z. Fehér, G. Koós and M. Bóra, acting as Agents,

—

the European Commission, by L. Havas and R. Lyal and by 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 Article 1(2), Article 2(1)(a) and (c), Article 14(1), Article 24(1), Article 73, Article 78(b) and Article 135(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2

The request has been made in proceedings between Stock ‘94 Szolgáltato Zrt. and the Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó F?igazgatósága (Regional Customs and Finance Directorate-General for Southern Transdanubia of the National Tax and Customs Office, Hungary; ‘the Directorate-General’) concerning the value added tax (VAT) regime applicable to an operation known as ‘integrated cooperation’.

Legal context

EU law

3

Article 1(2) of the VAT Directive provides:

‘The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.’

4

Pursuant to Article 2(1)(a) and (c) of that directive, respectively, ‘the supply of goods for consideration within the territory of a Member State by a taxable person acting as such’ and ‘the supply of services for consideration within the territory of a Member State by a taxable person acting as such’ are to be subject to VAT.

5

Article 14(1) of the directive defines a supply of goods as ‘the transfer of the right to dispose of tangible property as owner’.

6

Under Article 24(1) of the VAT Directive:

‘“Supply of services” shall mean any transaction which does not constitute a supply of goods.’

7

Article 73 of the VAT Directive provides:

‘In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.’

8

Article 78(b) of that directive provides:

‘The taxable amount shall include the following factors:

…

(b)

incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.’

9

Article 135(1)(b) of that directive provides:

‘1. Member States shall exempt the following transactions:

…

(b)

the granting and the negotiation of credit and the management of credit by the person granting it’.

Hungarian law

10

Pursuant to Paragraph 2(a) of az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law No CXXVII of 2007 on VAT; ‘the VAT Law’), ‘the supply of goods and services for consideration within the territory of a Member State by a taxable person acting as such’ is to be subject to the tax in accordance with that law.

11

In that regard, Paragraph 9(1) of the VAT Law defines the supply of goods as ‘the transfer of the right to dispose of tangible property as owner, or any other transaction having the same effect in law as regards the acquisition of tangible property’. Paragraph 13(1) of that law states that the supply of services means ‘any transaction that does not constitute a supply of goods for the purposes of the present law’.

12

Paragraph 65 of the VAT Law provides:

‘In respect of the supply of goods or services, the taxable amount, unless otherwise specified in

the present law, shall consist of the consideration, expressed in money terms, obtained or to be obtained by the supplier from the purchaser of the goods, the recipient of the services or a third party, including any subsidies directly linked to the price of the supply of goods or services.'

13

Article 70(1)(b) of that law provides that, in respect of the supply of goods and services, the taxable amount is to include 'incidental expenses charged by the supplier of the goods or services to the customer, in particular, the costs of commission or any other type of intermediation, of packing, of transport and of insurance'.

14

According to Article 86(1)(b) of the VAT Law, 'the granting and negotiation of credit, loans and other services constituting a legal relationship of that type, and the management of credit by the person granting it' are to be exempt from VAT.

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

15

Stock '94 is a commercial company established in Hungary. It acts as an 'integrator' within an institution specific to the Hungarian agricultural system, known as 'integrated cooperation'. That institution is governed by the principle pursuant to which the integrator concludes a contract with a farmer, namely, the 'integrated producer', by which the integrator grants a loan to that farmer, who uses it to buy, from the integrator, the resources necessary for its production, such as seeds, referred to as 'current assets'. The integrated producer subsequently sells its production either to the integrator or on the market, through the intermediary of the integrator.

16

In the present case, Stock '94 concluded with various agricultural producers integration contracts whereby, first, it undertook to support, particularly from a technological perspective, farmers' production and to finance the purchase of the current assets necessary for that purpose. Second, those farmers undertook to cultivate the products concerned on certain farmland and to use the loans granted by the integrator solely to purchase the current assets from it.

17

Stock '94 billed the sale of the current assets to the farmers, applying a VAT rate of 25% to the deliveries. However, that company exempted from VAT the interest, billed on a quarterly basis, on the loans granted to the farmers to purchase the current assets. In June 2011 the interest on the financing contracts for the current assets amounted to 149846000 Hungarian forints (HUF) (approximately EUR 483500).

18

During a tax inspection of the VAT returns for that period, carried out a posteriori by the first-tier Hungarian tax authority, it identified, in relation to the interest on the loans, a VAT shortfall of HUF 37462000 (approximately EUR 121000). It therefore ordered Stock '94 to pay that sum, together with default interest, and also imposed a tax penalty on it.

19

The Directorate-General upheld the decision of the first-tier authority on the substance, finding that the loans for the purchase of current assets were an intrinsic part of the integrated cooperation service provided by Stock ‘94. Consequently, it found that the same VAT rate was to be applied to supplies of current assets and to loans. However, it reduced the amount of the sum to be paid to HUF 17588000 (approximately EUR 56500).

20

The court of first instance upheld the position of the Directorate-General. In that regard, it found that the loans that were granted could be used only to purchase the current assets from Stock ‘94, with the result that the credit and the supply of the current assets used by the farmers constituted two intrinsic elements of the complex integrated cooperation service provided by that company. That court held, moreover, that such supplies had the same objective and that the interest on the credit used to purchase the current assets constituted expenses merely incidental to the delivery of those assets, that supply being the principal supply in the complex operation at issue. The consideration billed in respect of the ancillary supply therefore had to use the same tax regime as the supply of the current assets.

21

Hearing an appeal in cassation brought by Stock ‘94 against the judgment at first instance, the Kúria (Supreme Court, Hungary) asks whether it must consider, in terms of VAT, the supply of the current assets and the grant of a loan to be two transactions distinct and independent from one another. In the event that those two supplies should be regarded as a single transaction, the referring court asks under what conditions integrated cooperation constitutes an exception to the principle of the general application of VAT.

22

It was in those circumstances that the Kúria (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)

Must Article 1(2), Article 2(1)(a) and (c), Article 14(1), Article 24(1), Article 73, Article 78(b), and Article 135(1)(b) of the VAT Directive be interpreted as meaning that a supply of goods and a grant of a loan made in accordance with a contract concluded between an integrator and an integrated producer constitute distinct and independent transactions for the purposes of VAT liability, or as meaning that a single transaction is carried out, the tax base of which includes, in addition to the consideration for the goods supplied, the interest on the loan granted?

(2)

If the latter interpretation is in accordance with the VAT Directive, may the VAT Directive be interpreted, as regards the single transaction which covers the supply of goods subject to VAT and the supply of services exempt from VAT, as meaning that the transaction constitutes an exception to the principle of the general application of VAT? If so, what criteria must be met?

(3)

Does the fact that the integrator may, in accordance with the contract, supply further services to the integrated producer, at the latter’s request, and/or may purchase all of the agricultural goods produced, influence the answer to the foregoing questions and if so, to what extent?’

Consideration of the questions referred

23

By its questions, which are to be examined together, the referring court essentially asks whether the VAT Directive must be interpreted as meaning that the grant of a loan used to purchase agricultural goods and the supply of those goods, within integrated agricultural cooperation, are to be regarded as a single complex transaction or as distinct and independent transactions, within the meaning of that directive, taking also into account the option available to the integrator of providing additional services and purchasing the integrated producer’s agricultural production.

24

If the two supplies must be regarded as a single complex transaction, the referring court asks, next, what the criteria are for establishing whether the integrated cooperation may be considered an exception to the principle of the general application of VAT.

25

As the Commission has argued in its written observations, that latter question should be interpreted as seeking to establish which supply, of the loan or of the goods, determines the regime applicable to the integrated cooperation operation. Indeed, since ancillary supplies share the VAT treatment of the principal supply (judgment of 2 December 2010, Everything Everywhere, C?276/09, EU:C:2010:730, paragraph 24), if the grant of a loan constituted the principal supply, the entire transaction would be exempt from VAT by virtue of Article 135(1)(b) of the VAT Directive.

26

In that regard, it must be recalled that, for VAT purposes, every supply must normally be regarded as distinct and independent, as follows from the second subparagraph of Article 1(2) of the VAT Directive (judgment of 16 April 2015, Wojskowa Agencja Mieszkaniowa w Warszawie, C?42/14, EU:C:2015:229, paragraph 30 and the case-law cited).

27

Nevertheless, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split. That is also the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied (judgment of 16 April 2015, Wojskowa Agencja Mieszkaniowa w Warszawie, C?42/14, EU:C:2015:229, paragraph 31 and the case-law cited).

28

In order to determine whether the services supplied constitute independent services or a single service it is necessary to examine the characteristic elements of the transaction concerned (judgments of 17 January 2013, BG? Leasing, C?224/11, EU:C:2013:15, paragraph 32, and of 16 April 2015, Wojskowa Agencja Mieszkaniowa w Warszawie, C?42/14, EU:C:2015:229, paragraph 32).

29

In that regard, it should be noted, first, that, in order to determine whether a transaction that comprises several supplies constitutes a single transaction for the purposes of VAT, the Court takes into account the economic objective of that transaction (see, to that effect, judgments of 19 November 2009, Don Bosco Onroerend Goed, C?461/08, EU:C:2009:722, paragraph 39; of 28 October 2010, Axa UK, C?175/09, EU:C:2010:646, paragraph 23; and of 27 September 2012, Field Fisher Waterhouse, C?392/11, EU:C:2012:597, paragraph 23). In its analysis, the Court also takes into account the interests of the recipients of the supplies (see, to that effect, judgment of 16 April 2015, Wojskowa Agencja Mieszkaniowa w Warszawie, C?42/14, EU:C:2015:229, paragraph 35).

30

Second, it is important to recall that, in the context of the cooperation established by Article 267 TFEU, it is for the national courts to determine whether the taxable person makes a single supply in a particular case and to make all definitive findings of fact in that regard. However, it is for the Court to provide the national courts with all the guidance as to the interpretation of European Union law which may be of assistance in adjudicating on the case pending before them (judgment of 17 January 2013, BG? Leasing, C?224/11, EU:C:2013:15, paragraph 33 and the case-law cited).

31

In the present case, in the first place, it is apparent from the order for reference that the integrated cooperation at issue in the main proceedings is governed by the principle according to which the integrator grants a loan to an integrated producer, which that producer may use only to purchase current assets from the integrator.

32

In those circumstances, the grant of such loans does not constitute a supply with an independent interest from the perspective of integrated producers (see, to that effect, judgment of 2 December 2010, Everything Everywhere, C?276/09, EU:C:2010:730, paragraph 27), inasmuch as those financial resources cannot be used freely.

33

In the second place, as Stock ‘94 itself acknowledges in its observations, not having authorisation to act as a credit institution, it could not grant loans to the integrated producers without their being intended for the purchase of its current assets.

34

In the third place, it is apparent from the order for reference that the delivery of the current assets and the loan pursue the same economic objective, namely, in essence, the creation of financial and logistical support for farmers, enabling them to carry on agricultural production activity. In that

regard, it should be recalled that, according to the general conditions governing the integrated cooperation at issue in the main proceedings, as they are set out in brief in the order for reference, Stock ‘94 undertook to support the production activity of the integrated producers and to finance the purchase of the current assets necessary for that purpose.

35

In such circumstances, the supply of those current assets constitutes, for the integrated producers, the principal supply within the integrated cooperation, inasmuch as the farmers will be able to pursue their agricultural activity because of those assets. Thus, for those farmers, obtaining a loan to acquire those assets is not an end in itself, but merely a means for them to acquire the current assets necessary for their agricultural production.

36

It is for the referring court to ascertain whether the integrated cooperation at issue in the main proceedings actually represents the economic objective referred to in paragraph 34 of the present judgment, and to establish whether the delivery of the current assets is of such fundamental importance for the integrated producers.

37

If that should prove to be the case, the supply of the current assets and the grant of a loan intended for purchasing those assets are to be regarded as constituting a single complex transaction for the purposes of VAT, the principal supply being the supply of those assets.

38

Last, in the fourth place, in the light of what is set out in paragraphs 31 to 37 of the present judgment, the fact that Stock ‘94 may opt to provide additional services to the integrated producers and purchase their agricultural production has no bearing on the finding contained in paragraph 37 of this judgment.

39

Having regard to all the foregoing considerations, the answer to the questions referred for a preliminary ruling is that the VAT Directive must be interpreted as meaning that:

—

an integrated agricultural cooperation providing that an economic operator delivers goods to a farmer and grants him a loan intended for purchasing those goods constitutes a single transaction for the purposes of that directive, in which the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers;

—

the fact that an integrator may provide the farmers with additional services or buy their agricultural production has no bearing on the categorisation of the transaction at issue as a single transaction, for the purposes of the VAT Directive.

Costs

40

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 (Fifth Chamber) hereby rules:

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that:

—

an integrated agricultural cooperation providing that an economic operator delivers goods to a farmer and grants him a loan intended for purchasing those goods constitutes a single transaction for the purposes of that directive, in which the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers;

—

the fact that an integrator may provide the farmers with additional services or buy their agricultural production has no bearing on the categorisation of the transaction at issue as a single transaction, for the purposes of Directive 2006/112.

[Signatures]

(*1) Language of the case: Hungarian.