JUDGMENT OF THE COURT (Third Chamber)

5 October 2016 (*)

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Exemptions for certain activities in the public interest — Article 132(1)(d) — Supplies of human organs, blood and milk — Scope — Plasma of human blood transformed and used for industrial purposes)

In Case C?412/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hessisches Finanzgericht (Finance Court, Hesse, Germany), made by decision of 24 March 2015, received at the Court on 28 July 2015, in the proceedings

TMD Gesellschaft für transfusionsmedizinische Dienste mbH

v

Finanzamt Kassel II - Hofgeismar,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby, J. Malenovský (Rapporteur), M. Safjan and M. Vilaras, Judges,

Advocate General: N. Wahl,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 28 April 2016,

after considering the observations submitted on behalf of

– TMD Gesellschaft für transfusionsmedizinische Dienste mbH, by T. Dennisen and T. Otto, Rechtsanwälte, and by U. Prinz, Steuerberater,

– the German Government, by T. Henze, J. Möller and K. Petersen, acting as Agents,

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

– the European Commission, by R. Lyal and B.R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 132(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between TMD Gesellschaft für transfusionsmedizinische Dienste mbH ('TMD'), a company which manages a blood donor centre established in Germany, and the Finanzamt Kassel II - Hofgeismar (Kassel tax authority, Germany, 'the tax authority'), concerning the taxation, for the purposes of value added tax (VAT), of TMD's activity of supplying plasma used in the production of medicinal products.

Legal context

EU law

3 Article 2 of Directive 2006/112 provides:

'1. The following transactions shall be subject to VAT:

...

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

...'

4 Title IX of that directive, entitled 'Exemptions', includes inter alia Chapter 2 on 'Exemptions for certain activities in the public interest' and Chapter 4 entitled 'Exemptions for intra-Community transactions'.

5 Article 132(1) of that directive, which comes under Chapter 2, provides:

'Member States shall exempt the following transactions:

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

(d) the supply of human organs, blood and milk;

(e) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;

...'

German law

6 Paragraph 4(17) of the Umsatzsteuergesetz (Law on turnover tax) (‘the UStG’), in the version applicable to the dispute in the main proceedings, is worded as follows:

‘Of the transactions falling within the scope of Paragraph 1(1)(1) the following shall be exempt from tax:

...

(a) the supply of human organs, blood and milk.’

7 Paragraph 15 of the UStG governs the right to deduct input tax. The version applicable to the dispute in the main proceedings is worded as follows:

‘(1) a trader may deduct the following forms of input tax:

1. tax lawfully payable on supplies and other services provided by another trader to meet the requirements of his undertaking ...

(2) There shall be no deduction of tax in respect of the supply, importation or intra-Community acquisition of goods, or in respect of supplies of services, which the trader uses for the purposes of the following transactions:

1. exempt transactions;

...

(3) The exclusion of the input tax deduction referred to in subparagraph 2 shall not apply where the transactions

1. in the cases provided for in the first sentence of subparagraph 2, point 1

(a) are exempt in accordance with Paragraph 4(1) to (7) ...’

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

8 TMD manages a blood donor centre. Its business involves collecting, through a chemical process, blood plasma from donors and mixing it with an anticoagulant solution containing, inter alia, sodium citrate. That mixture is then processed in a centrifuge in order to extract certain components. Those components are collected and supplied frozen to businesses in the pharmaceutical sector.

9 In the course of its business, TMD supplied that type of plasma to X AG, a company established in Switzerland. That company took delivery of the plasma from TMD and transported it to its various production facilities in other Member States of the European Union for the preparation of medicinal products.

10 TMD took the view that the plasma which it supplied to manufacturers of medicinal products did not come under the exemption for supplies of human blood. In its VAT return for 2008, TMD therefore applied to the tax authority for the deduction of input VAT on its operations relating to the supply of plasma.

11 The tax authority, on the other hand, considered that the supplies of plasma to other EU Member States were transactions that were exempt from VAT and, accordingly, refused the input tax deduction.

12 In its returns for the years 2009 and 2010, which the tax authority accepted, TMD did not deduct input tax.

13 On 7 December 2012 TMD applied for an adjustment of the VAT assessment for the period from 2008 to 2010. It applied for recognition of the right to deduct input taxes in relation to the supplies of plasma. In support of its application, it claimed that the intra-Community supplies of plasma for which it now sought a deduction of input taxes were not transactions that were exempt under Paragraph 4(17)(a) of the UStG, in that, in the opinion of the company, these were in fact supplies to pharmaceutical businesses of 'source' plasma for fractionation and the subsequent manufacture of medicinal products.

14 The tax authority rejected the requests for adjustment by decision of 7 May 2013 against which TMD brought an action before the referring court.

15 In support of its action, TMD contends that the supply of blood plasma for the manufacture of medicinal products does not constitute a supply of blood within the meaning of Paragraph 4(17)(a) of the UStG or of Article 132(1)(d) of Directive 2006/112.

16 In those circumstances, the Hessisches Finanzgericht (Finance Court, Hesse, Germany) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 132(1)(d) of Council Directive 2006/112 to be interpreted as meaning that the supply of human blood also encompasses the supply of plasma obtained from human blood?

(2) If Question 1 is answered in the affirmative: does this also apply with regard to blood plasma that is not intended to be used directly for therapeutic purposes, but exclusively for the manufacture of pharmaceutical products?

(3) If Question 2 is answered in the negative: is classification as blood dependent solely on the intended purpose of the blood plasma, or also on the uses to which the blood plasma may theoretically be put?'

The application to reopen the oral procedure

17 By letter of 13 June 2016, TMD requested the reopening of the oral procedure, essentially on the ground that point 49 of the Opinion of the Advocate General contained an objective error.

18 In that regard, it must be stated that neither the Statute of the Court of Justice of the European Union nor the Court's Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion (order of 4 February 2000, *Emesa Sugar*, C?17/98, EU:C:2000:69, paragraph 2, and judgment of 6 September 2012, *Döhler Neuenkirchen*, C?262/10, EU:C:2012:559, paragraph 29).

19 As is clear from Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument

which has not been debated between the parties.

20 However, the Court considers that, after hearing the Advocate General, it has all the information necessary to make a ruling in the present case.

21 In the light of the foregoing, the Court considers that there is no need to order that the oral part of the procedure be reopened.

Consideration of the questions referred

22 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 132(1)(d) of Directive 2006/112 must be interpreted to the effect that supplies of human blood which Member States are required to exempt by virtue of that provision also cover supplies of plasma obtained from human blood where that plasma is intended to be used, not for direct therapeutic purposes, but exclusively for the manufacture of medicinal products.

23 Under Article 132(1)(d) of Directive 2006/112, Member States must exempt supplies of human organs, blood and milk.

24 As a preliminary point, it must be recalled that, in accordance with the Court's settled case-law, the concepts in Article 132 constitute independent concepts of EU law the purpose of which is to avoid divergences in the application of the VAT system as between one Member State and another (judgment of 26 February 2015, *VDP Dental Laboratory and Others*, C?144/13, C?154/13 and C?160/13, EU:C:2015:116, paragraph 44).

25 The concept of 'human blood', referred to in Article 132(1)(d) of Directive 2006/112, is not defined by Directive 2006/112.

26 In those circumstances, the meaning and scope of that concept must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (see, to that effect, judgment of 25 October 2012, *Ketelä*, C?592/11, EU:C:2012:673, paragraph 51 and the case-law cited).

27 As regards its usual meaning, it must be pointed out that the concept of 'human blood' refers to an element of the human body consisting of several, non-autonomous, complementary components, whose synergistic action allows for the irrigation of all organs and tissues.

28 One of those complementary components is plasma, that is to say, the liquid which transports other human blood components throughout the body.

29 First of all, as regards the general context, it must be recalled that Article 3(2)(c) of the Charter of Fundamental Rights of the European Union prohibits making the human body and its parts as such a source of financial gain.

30 Next, as regards the purpose of the provisions of Article 132 of Directive 2006/112, it must be recalled that that article aims to exempt from VAT certain activities in the public interest with a view to facilitating access to certain services and the supply of certain goods by avoiding the increased costs that would result if they were subject to VAT (see, to that effect, judgment of 26 February 2015, *VDP Dental Laboratory and Others*, C?144/13, C?154/13 and C?160/13, EU:C:2015:116, paragraphs 43 and 45 and the case-law cited).

31 Finally, as regards Article 132(1)(d) of Directive 2006/112, it must be pointed out that that provision, like points (b), (c) and (e) of that paragraph, concerns transactions directly linked to

healthcare or which have a therapeutic purpose.

32 Therefore, the exemption of supplies of human blood provided for under Article 132(1)(d) of Directive 2006/112 must be understood as being aimed at ensuring that the supply of goods contributing to healthcare or which have a therapeutic purpose does not become inaccessible by reason of the increased costs of those products if their supply were subject to VAT (see, by analogy, judgment of 26 February 2015, *VDP Dental Laboratory and Others*, C?144/13, C?154/13 and C?160/13, EU:C:2015:116, paragraph 46 and the case-law cited).

33 Having regard to the foregoing, the supply of human blood, including the supply of plasma which is a component of blood, must come under the exemption provided for in Article 132(1)(d) of Directive 2006/112 where that supply contributes directly to activities in the public interest, that is to say, where the plasma supplied is used directly for healthcare or for therapeutic purposes.

34 That said, it must be recalled that the terms used to specify the exemptions referred to in Article 132 of Directive 2006/112 are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, to that effect, inter alia, judgments of 28 July 2011, *Nordea Pankki Suomi*, C?350/10, EU:C:2011:532, paragraph 23, and of 22 October 2015, *Hedqvist*, C?264/14, EU:C:2015:718, paragraph 34 and the case-law cited).

35 By contrast, it follows that so-called ‘industrial’ plasma, that is to say, plasma the supply of which does not contribute directly to activities in the public interest, since it is intended to be incorporated into an industrial production, in particular with a view to manufacturing medicinal products, cannot come under the exemption referred to in Article 132(1)(d) of Directive 2006/112.

36 Consequently, only plasma actually intended for direct therapeutic use comes under the exemption laid down in Article 132(1)(d) of Directive 2006/112.

37 Since the benefit of that exemption is conditional on the plasma being used for a certain type of activity in the public interest, the fact that plasma intended for industrial use may in theory be put to direct therapeutic use, even if proved, cannot be taken to mean that it must benefit from the exemption scheme introduced with a view to limiting the cost only of plasma which is actually put to direct therapeutic use.

38 According to the documents submitted to the Court the plasma at issue in the main proceedings is intended, not for healthcare or therapeutic purposes, but solely for pharmaceutical purposes.

39 In those circumstances, such plasma cannot come under the exemption laid down in Article 132(1)(d) of Directive 2006/112.

40 Having regard to the foregoing considerations, the answer to the questions referred is that Article 132(1)(d) of Directive 2006/112 must be interpreted to the effect that supplies of human blood which Member States are required to exempt by virtue of that provision do not include supplies of plasma obtained from human blood where that plasma is intended to be used, not for direct therapeutic purposes, but exclusively for the manufacture of medicinal products.

Costs

41 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 (Third Chamber) hereby rules:

Article 132(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that supplies of human blood which Member States are required to exempt by virtue of that provision do not include supplies of plasma obtained from human blood where that plasma is intended to be used, not for direct therapeutic purposes, but exclusively for the manufacture of medicinal products.

[Signatures]

* Language of the case: German.