Downloaded via the EU tax law app / web

Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

10 January 2019 (*)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(a) and (c) — Article 14(1) — Article 24(1) — Transactions for consideration — Transactions for consideration constituted partly by services or goods — Demolition contract — Purchase contract for dismantling)

In Case C?410/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 30 June 2017, received at the Court on 7 July 2017, in the proceedings

A Oy,

intervening party:

Veronsaajien oikeudenvalvontayksikkö,

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 11 July 2018,

after considering the observations submitted on behalf of:

– A Oy, by M. Kallio and H. Huhtala,

– the Finnish Government, by J. Heliskoski, acting as Agent,

– the European Commission, by J. Jokubauskait? and I. Koskinen, 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 2(1)(a) and (c), Article 14(1) and Article 24(1) 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 brought by A Oy concerning the treatment, for

the purposes of value added tax (VAT), of transactions made, first, under a demolition contract requiring the service provider to dispose of demolition waste which, as it contains iron, may, pursuant to that contract, be resold by the latter and, second, under a contract for the purchase of goods for dismantling, which includes the obligation for the purchaser to demolish or dismantle (hereinafter referred to collectively as ‘dismantling’) and to dispose of those goods, together with the disposal of the resulting waste.

Legal context

European Union law

3 Article 2(1)(a) and (c) of Directive 2006/112 provides:

‘The following transactions shall be subject to VAT:

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

…

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

4 Article 14(1) of that directive is worded as follows:

“Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner.’

5 Article 24(1) of the directive provides:

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

6 Article 73 of that directive states:

‘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.’

7 Article 199(1)(a) and (d) of Directive 2006/112 provides:

‘Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

(a) the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods pursuant to Article 14(3);

…

(d) the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non-industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI’.

8 Points 1 and 4 of Annex VI to the VAT Directive, entitled ‘List of Supplies of Goods and Services as referred to in Point (d) of Article 199(1)’ is worded as follows:

‘(1) Supply of ferrous and non-ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of ferrous and non-ferrous metals and their alloys;

…

(4) supply of, and certain processing services relating to, ferrous and non-ferrous waste as well as parings, scrap, waste and used and recyclable material consisting of cullet, glass, paper, paperboard and board, rags, bone, leather, imitation leather, parchment, raw hides and skins, tendons and sinews, twine, cordage, rope, cables, rubber and plastic’.

Finnish law

9 The arvonlisäverolaki (1501/1993) (Law on value added tax (1501/1993)) of 30 December 1993, in the version applicable to the facts in the main proceedings (‘the AVL’), which transposed Directive 2006/112 into Finnish law, provides in Paragraph 1(1):

‘VAT shall be charged, in accordance with the provisions of this law:

on the sale of goods and services in Finland in the course of business’.

10 The first subparagraph of Paragraph 2 of the AVL states that the person liable to pay VAT, that is the taxable person, is the seller of the goods or services in the case of sales referred to in Paragraph 1, unless otherwise provided for. Among those provisions is Paragraph 8d of the AVL.

11 Paragraph 8d provides that the reverse charge mechanism is applicable to purchasers of scrap metal and waste where that person is a trader entered on the register of persons subject to VAT.

12 Under Paragraph 17 of the AVL, ‘goods’ means tangible property as well as electricity, gas, thermal energy, cooling energy and other comparable energy resources. ‘Services’ means everything else which may be sold in the course of business.

13 According to Paragraph 18 of the AVL, ‘sale of goods’ means the transfer of the right of ownership to goods for consideration. ‘Sale of services’ means the performance or other supply of services for consideration.

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

14 A is a company specialising in environmental services in the industrial

15 and construction sector. It operates in various industrial sectors in real estate and construction and provides environmental services in Finland and Sweden. Its business activities include industrial and real estate services, demolition services and recycling and waste processing services.

16 In the course of its activities, A performs demolition services for its clients, pursuant to a demolition contract (‘the demolition contract’). The terms of the contract are based on standard contractual terms applied by all undertakings in the construction sector for construction services. Pursuant to this type of contract, the company undertakes to demolish the buildings of its client’s

old factory and to be the main contractor with responsibility for site services and works management. According to the standard contractual terms for construction services, the company's responsibilities also include the proper disposal and processing of materials and waste.

17 Part of the materials and waste are composed of scrap metal and waste materials such as those referred to in Paragraph 8d of the AVL, on the sale of which liability for VAT lies with the buyer. That waste consists partly of goods that A may resell to companies who purchase recyclable scrap metal. A tries to estimate in advance the quantity of such goods and the price likely to be obtained on their resale, and that price is factored in to the calculation of the price when preparing the quote for the demolition services, so that the price of the demolition services contract proposed to the client is as competitive as possible. However, the estimated price of those goods is not discussed or fixed with the client under the demolition contract, as the client is quoted a price which covers all the demolition services.

18 In addition, in the course of its business, A purchases from its clients old machines and equipment that, pursuant to a purchase contract for dismantling ('the purchase contract for dismantling'), it is responsible for dismantling and removing (hereinafter referred to collectively as 'dismantle') from the premises or the site of the establishment of the client concerned and disposition of the resulting waste, in accordance with conditions set out in the contract. A typical example of such a contract concerns the purchase of certain specified buildings on a factory site. That contract provides that A is to purchase the buildings and constructions to ground level situated on the site and the machines, equipment and other movable goods, and that A is to dismantle and remove the goods that it has purchased.

19 Taking account of the nature of the goods purchased, the dismantling, the proper disposal and processing of those goods, and the disposal of the resulting waste, generates costs for A that it tries to estimate in advance and to factor in to the price it quotes, as a means of reducing the purchase price. However, the parties to the contract do not discuss those costs in their negotiations and do not specify the amount of those costs in the contract, the aim being not to communicate that amount to the seller at any time.

20 A requested a preliminary decision from the tax authority concerning the calculation of the amount of VAT due under the demolition contract for the supply of demolition services and, under the purchase contract for dismantling, for the purchase of scrap metal and metal waste.

21 By preliminary decision of 11 June 2015, covering the period from 11 June 2015 to 31 December 2016, the tax authority, first, declared that under the demolition contract A must be regarded as selling demolition services to its client and as purchasing scrap metal from it. That authority concluded from that that A must pay VAT on the services it supplies to its client and, under the reverse charge mechanism, on the scrap metal that it purchases from its client.

22 Second, in the same preliminary decision, the tax authority declared that, as regards the purchase contract for dismantling, A must be regarded as supplying demolition services to its client and as purchasing scrap metal from it. That authority concluded that A must pay VAT on the supply of the services to its client and, under the reverse charge mechanism, on the scrap A purchases from its client.

23 In neither of the two situations which are the subject of the preliminary decision, did the tax authority take a position on the price formation of the consideration.

24 A brought proceedings against the preliminary decision of 11 June 2015 in the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland).

25 By judgment of 16 December 2015, that court dismissed the action. It held that, in both the demolition contract and the purchase contract for dismantling, A must be regarded as having concluded a barter agreement with its client, pursuant to which it provides demolition services and purchases scrap metal and, therefore, it is liable to pay VAT both on the services it provides to the client and on the scrap metal that it purchases from the client.

26 A brought an appeal against the judgment of the Helsingin hallinto-oikeus (Administrative Court, Helsinki) before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland).

27 The referring court takes the view that, under the demolition contract, A supplies services for consideration and that, under the purchase contract for dismantling, it acquires goods for consideration. The dispute in the main proceedings concerns whether, with regard to the demolition contract, A also acquires goods for consideration and whether, with regard to the purchase contract for dismantling, it also supplies services for consideration. The referring court points out that A challenges the classification of those contracts as barter agreements, on the ground that, according to that company, under the demolition contract the scrap metal does not constitute consideration for the demolition services and, with regard to the purchase contract for dismantling, the demolition services do not constitute consideration for the purchase of scrap metal, in the absence of a direct link between the supply of the services or goods concerned and the consideration received.

28 It is in those circumstances that the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 2(1)(c), in conjunction with Article 24(1) of [Directive 2006/112], to be interpreted as meaning that demolition services carried out by a company whose business includes the performance of demolition works, is one single transaction where, under the terms of the contract between it and the client, the demolition company is required to dispose of the demolition waste and where the demolition company may, if the demolition waste contains metal scrap, sell it to companies which buy recyclable scrap metal?

Or, taking into account Article 2(1)(a), in conjunction with Article 14(1) of [Directive 2006/112], is such a contract for demolition works to be interpreted as comprising two transactions: first, a supply of services by the demolition company to the client of demolition works and, second, the purchase of the metal scrap from the client for resale by the demolition company?

In the present case, is it important when fixing the price for the demolition works that the demolition company took into account, as a factor moderating the price, that it is also possible to generate revenues by making use of demolition waste?

In the present case, is it important that the quantity and value of the recoverable demolition waste have not been agreed upon in the demolition contract, or that it has not been agreed that that information will be notified later to the client for which the demolition work is carried out, or the fact that the quantity and the value of the demolition waste are known only when the demolition company sells it?

(2) Is Article 2(1)(a), in conjunction with Article 14(1) of [Directive 2006/112], in a situation in which a company whose business is the supply of demolition services concludes a contract with the owner of an object to be demolished that the demolition company will buy the object to be demolished and undertakes, subject to a contractual penalty, to demolish and dispose of the object within a period specified in the contract, to be interpreted as meaning that in such a

situation there is a single transaction which includes the sale of goods by the owner of the object to be demolished to the demolition company?

Or, having regard to Article 2(1)(c), in conjunction with Article 24(1) of [Directive 2006/112], is a contract of that kind to be interpreted as comprising two transactions, namely the sale of goods by the owner of the object to be demolished to the demolition company and the demolition works supplied by the demolition company to the seller of the goods?

In the present case, what importance is to be attached to the fact that the demolition company, when fixing the price in its purchase offer for the goods, takes into account, as a factor in reducing the price, the costs to be incurred in dismantling and disposing of the goods?

Is it important that the seller of the goods is aware that the costs incurred by the demolition company for dismantling and disposing of the goods are taken into account as a factor reducing the price of those goods, in view of the fact that there is no agreement between the parties with regard to those costs and that the estimated or actual amount of those costs must at no time be known to the seller of the goods?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks essentially whether Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that where, under a demolition contract, the service provider, that is a demolition company, is required to carry out demolition works and may, if the demolition waste contains scrap metal, resell it, that contract consists of one single transaction or two transactions for VAT purposes.

30 From the outset, it must be observed that, pursuant to Article 2(1)(a) and (c) of Directive 2006/112, 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.

31 In that connection, Article 14(1) of Directive 2006/112 defines the supply of goods as being 'the transfer of the right to dispose of tangible property as owner', while Article 24(1) thereof defines a supply of services as 'any transaction which does not constitute a supply of goods'.

32 Furthermore, it is clear from settled case-law that a supply of goods or services 'for consideration' within the meaning of Article 2(1)(a) and (c) of Directive 2006/112 simply requires the existence of a direct link between the supply of goods and services and consideration actually received by the taxable person. Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient (see, to that effect, judgment of 26 September 2013, *Serebryannay vek*, C?283/12, EU:C:2013:599, paragraph 37 and the case-law cited).

33 In the present case, it is clear from the order for reference that, under the demolition contract, the service provider, that is a demolition company, undertakes to carry out demolition works, which also includes the proper disposal and processing of materials to be taken away and of waste for the payment of a fee by the client. It is also clear from the order for reference that that service provider tries to estimate in advance the quantity of materials and waste to be disposed of

as well as their subsequent resale price in order to factor this in to the calculation of the price for the demolition works. Furthermore, it is clear from the order for reference that under that contract, if the demolition waste contains scrap metal, the service provider may sell it to undertakings which buy recyclable scrap metal.

34 It is common ground in the case in the main proceedings that the demolition company performs demolition works for its clients in return for payment in the territory of a Member State and, therefore, supplies services for consideration within the meaning of Article 2(1)(c) of Directive 2006/112.

35 The questions of the referring court concern, in substance, whether that supply of services is also made in exchange for a supply of goods, namely the supply of recyclable scrap metal contained in the waste and used materials, so that the taxable base of that supply of services is composed both of the price paid by the client and of that supply of goods.

36 In that connection, it is clear from settled case-law that the consideration for a supply of services may consist of a supply of goods, and so constitute the taxable amount within the meaning of Article 73 of Directive 2006/112, provided, however, that there is a direct link between the supply of services and the supply of goods and that the value of the latter can be expressed in monetary terms (see, to that effect, judgment of 19 December 2012, *Orfey*, C?549/11, EU:C:2012:832, paragraph 36 and the case-law cited). The same is true if a supply of goods is performed in exchange for a supply of services, as long as the same conditions are satisfied (see, to that effect, judgment of 26 September 2013, *Serebryannay vek*, C?283/12, EU:C:2013:599, paragraph 38 and the case-law cited).

37 It is clear from the same case-law that barter contracts, under which the consideration is by definition in kind, and transactions for which the consideration is in money are, economically and commercially speaking, two identical situations (judgment of 26 September 2013, *Serebryannay vek*, C?283/12, EU:C:2013:599, paragraph 39 and the case-law cited).

38 In the present case, it is clear from the description of the facts in the main proceedings, set out in paragraph 32 of the present judgment, that the service supplier, namely a demolition company, in addition to receiving monetary payment from its client for carrying out demolition works, acquires, pursuant to the demolition contract, recyclable scrap metal that it may then sell on. Therefore, in that situation, there is a supply of goods, within the meaning of Article 14(1) of Directive 2006/112.

39 As regards the issue of whether that supply is made ‘for consideration’, within the meaning of Article 2(1)(a) of that directive, it is clear from settled case-law that the consideration which is the taxable amount for a transaction has a subjective value. Where that value is not a sum of money agreed between the parties, it must, in order to be subjective, be the value which the recipient of services constituting the consideration for the supply of goods attributes to the services which he is seeking to obtain and must correspond to the amount which he is prepared to spend for that purpose (see, to that effect, judgment of 19 December 2012, *Orfey*, C?549/11, EU:C:2012:832, paragraphs 44 and 45 and the case-law cited).

40 It follows that, in a situation such as that in the main proceedings, the supply of recyclable scrap metal is made for consideration if the person acquiring it, namely a demolition company, attributes a value to that supply which it takes into account in the calculation of the price quoted for carrying out the demolition works, which is a matter for the referring court to ascertain.

41 The fact that the quantity and value of the scrap metal contained in demolition waste has not been agreed in the demolition contract does not preclude that finding.

42 It is clear from the case-law of the Court that any technical difficulties which exist in determining the amount of the consideration cannot by themselves justify the conclusion that no consideration exists (see, by analogy, judgment of 14 July 1998, *First National Bank of Chicago*, C?172/96, EU:C:1998:354, paragraph 31).

43 In any event, it must be observed that, in the situation mentioned in paragraph 39 of the present judgment, it is possible to determine the value of the supply of recyclable scrap metal. Having regard to the case-law cited in paragraph 38 of the present judgment, that value must be considered as equal to the amount of the reduction by the service provider in the price of the demolition works.

44 The fact that the recipient of the demolition services does not know the exact value of the recyclable scrap metal, as estimated by the service provider, is also not such as to invalidate the finding in paragraph 39 of the present judgment (see, by analogy, judgment of 14 July 1998, *First National Bank of Chicago*, C?172/96, EU:C:1998:354, paragraph 49).

45 Therefore, in such a case, reciprocal transactions are exchanged under the same contract, between the service provider and its client, so that a direct link, within the meaning of the case-law cited in paragraph 35 of the present judgment, exists between the performance of the demolition works and the supply of the recyclable scrap metal.

46 As to the question whether the supply of the recyclable scrap metal at issue in the main proceedings constitutes a taxable transaction, it must be stated that, under Article 2(1)(a) of Directive 2006/112, a supply of goods for consideration is subject to VAT only if it is made by a ‘taxable person acting as such’, which is for the referring court to ascertain.

47 In such as case, the taxable base of the supply of services which is the subject matter of a demolition contract, such as that at issue in the main proceedings, is constituted by the price actually paid by the client and by the value attributed by the service provider to the recyclable scrap metal, as reflected in the amount of the reduction of the price charged for the supply of services.

48 However, it may be that, on occasion, that value does not reflect economic and commercial reality which, according to the case-law of the Court, is a fundamental criterion for the application for the common system of VAT. In such a case, it is for the national court to ensure, taking account of all the relevant circumstances, that there is no abuse (see, to that effect, judgment of 20 June 2013, *Newey*, C?653/11, EU:C:2013:409, paragraph 39, 46 and 52).

49 Accordingly, the answer to the first question is that Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that, where, pursuant to a demolition contract, the service provider, namely a demolition company, is required to carry out demolition works and may, in so far as the demolition waste contains scrap metal, resell that scrap metal, that contract consists of a supply of services for consideration, that is to say the performance of demolition works, and also a supply of goods for consideration, that is the supply of the scrap metal, if the purchaser, that is to say the demolition company, attributes a value to that supply of goods, which it factors in when calculating the price quoted for the performance of the demolition works, that supply of goods being, however, subject to VAT only if it is made by a taxable person acting as such.

The second question

50 By its second question, the referring court asks essentially whether Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that where, pursuant to a purchase contract for dismantling, the purchaser, that is a demolition company, purchases goods for dismantling and undertakes, subject to a contractual penalty, to dismantle those goods and to dispose of them, and to dispose of the resulting waste within a period fixed in the contract, that contract consists of one single transaction or two transactions for the purposes of VAT.

51 In the present case, it is clear from the order for reference that, in the context of a purchase contract for dismantling, the purchaser, a demolition company, acquires old buildings and constructions above ground level on a factory site, together with machines, equipment and other movable goods, that it is required, pursuant to the contract, to dismantle and dispose of, and to dispose of the resulting waste within a given period, from the premises or site of the factory, subject to a contractual penalty. Furthermore, it is clear from the order for reference that the purchaser tries to estimate in advance the costs incurred by the dismantling, disposal and appropriate processing of the goods to be dismantled, in order to factor that in to the purchase price offered.

52 It is common ground that, in the case in the main proceedings, such a contract includes the supply of goods for consideration, within the meaning of Article 2(1)(a) of Directive 2006/112, in the territory of a Member State, namely the supply of goods to be dismantled in exchange for payment of a purchase price. Provided that that supply is made ‘by a taxable person acting as such’, within the meaning of that provision, which is for the referring court to ascertain, there is a taxable transaction in such a situation.

53 The questions from the referring court concern, in substance, whether that supply is also made in exchange for a supply of services, that is dismantling and waste disposal, so that the taxable base of that supply is constituted both by the purchase price referred to in the preceding paragraph of the present judgment and by that supply of services.

54 In that connection, it seems clear from the description of the facts in paragraph 50 of the present judgment that the purchaser, that is a demolition company, in addition to paying the purchase price agreed in the contract for the supply of goods to be dismantled is required, pursuant to the same contract, to dismantle and dispose of those goods, and to dispose of the resulting waste within a given period, subject to a contractual penalty. In so far as the purchaser is required to dismantle and dispose of those goods and to dispose of the resulting waste, thereby specifically meeting the needs of the seller, which is for the referring court to ascertain, there is, in that situation, a supply of services within the meaning of Article 24(1) of Directive 2006/112.

55 In accordance with the case-law set out in paragraph 38 of the present judgment, in a situation such as that at issue in the main proceedings, the dismantling and the disposal of goods is performed for consideration if the purchaser, namely a demolition company, attributes a value to that supply which it factors in to the price it quotes, as a factor reducing the purchase price of the goods to be dismantled, which is for the referring court to ascertain.

56 Taking account of the considerations in paragraphs 40, 41 and 43 of the present judgment, it must be stated that neither the fact that the costs for dismantling and disposal have been agreed between the parties, nor the fact that the seller does not know the amount of costs which are factored in to the calculation of the purchase price proposed affects that conclusion.

57 In any event, in the case mentioned in paragraph 54 of the present judgment, it is possible to calculate the value of the performance of dismantling and waste disposal. Having regard to the case-law set out in paragraph 38 of the present judgment, that value must be regarded as equal to the amount that the purchaser, that is a demolition company, takes into account as a factor reducing the purchase price of the goods to be dismantled.

58 Therefore, in such a case, reciprocal transactions are exchanged under the same contract, between the purchaser, that is a demolition company, and the recipient, that is the supplier of goods to be dismantled, so that a direct link, within the meaning of the case-law cited in paragraph 35 of the present judgment, exists between the supply of goods to be dismantled and the performance of dismantling and waste disposal.

59 In such a case, the taxable base of the supply of goods to be dismantled is, therefore, constituted by the price actually paid for the purchase of those goods and the amount corresponding to the factor applied by the purchaser in order to reduce the purchase price proposed.

60 However, it is possible that, sometimes, that amount does not reflect the economic and commercial reality which, according to the case-law cited in paragraph 47 of the present judgment, constitutes a fundamental criterion for the application of the common system of VAT, a case in which, according to that case-law, it is for the national court to ensure, taking into account all the relevant circumstances, the absence of abuse.

61 Accordingly, the answer to the second question is that 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that, where, pursuant to a purchase contract for dismantling, the purchaser, namely a demolition company, purchases goods to be dismantled and undertakes, subject to a contractual penalty, to dismantle and dispose of those goods and to dispose of the waste within a period fixed in the contract, that contract consists of a supply of goods for consideration, that is the supply of goods to be dismantled, which is subject to VAT only if it is made by a taxable person acting as such, which is for the referring court to ascertain. In so far as the purchaser is required to dismantle and dispose of those goods and to dispose of the resulting waste, thereby specifically meeting the needs of the seller, which is for the referring court to ascertain, that contract also includes a supply of services for consideration, that is the performance of dismantling and waste disposal, if that purchaser attributes a value to that supply of goods which it factors in to the price quoted as a factor reducing the purchase price of the goods to be dismantled, which is for the referring court to ascertain.

Costs

62 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 (Ninth Chamber) hereby rules:

1. **Article 2(1)(a) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that, where, pursuant to a demolition contract, the service provider, namely a demolition company, is required to carry out demolition works and may, in so far as the demolition waste contains scrap metal, resell that scrap metal, that contract consists of a supply of services for consideration, that is to say the performance of demolition works, and also a supply of goods for consideration, that is the supply of the scrap metal, if the purchaser, that is to say the demolition company,**

attributes a value to that supply of goods, which it factors in when calculating the price quoted for the performance of the demolition works, that supply of goods being, however, subject to value added tax only if it is made by a taxable person acting as such.

2. **Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that, where, pursuant to a purchase contract for dismantling, the purchaser, namely a demolition company, purchases goods to be dismantled and undertakes, subject to a contractual penalty, to demolish or dismantle and dispose of those goods and to dispose of the waste within a period fixed in the contract, that contract consists of a supply of goods for consideration, that is the supply of goods to be dismantled, which is subject to value added tax only if it is made by a taxable person acting as such, which is for the referring court to ascertain. In so far as the purchaser is required to demolish or dismantle and dispose of those goods and to dispose of the resulting waste, thereby specifically meeting the needs of the seller, which is for the referring court to ascertain, that contract also includes a supply of services for consideration, that is the performance of demolition works or dismantling and waste disposal, if that purchaser attributes a value to that supply of goods which it factors in to the price quoted as a factor reducing the purchase price of the goods to be dismantled, which is for the referring court to ascertain.**

[Signatures]

* Language of the case: Finnish.