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Reference for a preliminary ruling from the Supreme Court of the United Kingdom made on 6 April 2020 — Zipvit Ltd v Commissioners for Her Majesty's Revenue & Customs

(Case C-156/20)

(2020/C 215/29)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Appellant: Zipvit Ltd

Respondent: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1.

Where (i) a tax authority, the supplier and the trader who is a taxable person misinterpret European VAT legislation and treat a supply, which is taxable at the standard rate, as exempt from VAT, (ii) the contract between the supplier and the trader stated that the price for the supply was exclusive of VAT and provided that if VAT were due the trader should bear the cost of it, (iii) the supplier never claims and can no longer claim the additional VAT due from the trader, and (iv) the tax authority cannot or can no longer (through the operation of limitation) claim from the supplier the VAT which should have been paid, is the effect of the Directive (1) that the price actually paid is the combination of a net chargeable amount plus VAT thereon so that the trader can claim to deduct input tax under article 168(a) of the Directive as VAT which was in fact 'paid' in respect of that supply?

2.

Alternatively, in those circumstances can the trader claim to deduct input tax under article 168(a) of the Directive as VAT which was 'due' in respect of that supply?

3.

Where a tax authority, the supplier and the trader who is a taxable person misinterpret European VAT legislation and treat a supply, which is taxable at the standard rate, as exempt from VAT, with

the result that the trader is unable to produce to the tax authority a VAT invoice which complies with article 226(9) and (10) of the Directive in respect of the supply made to it, is the trader entitled to claim to deduct input tax under article 168(a) of the Directive?

4.

In answering questions 1 to 3:

a)

is it relevant to investigate whether the supplier would have a defence, whether based on legitimate expectation or otherwise, arising under national law or EU law, to any attempt by the tax authority to issue an assessment requiring it to account for a sum representing VAT in respect of the supply?

b)

is it relevant that the trader knew at the same time as the tax authority and the supplier that the supply was not in fact exempt, or had the same means of knowledge as them, and could have offered to pay the VAT which was due in respect of the supply (as calculated by reference to the commercial price of the supply) so that it could be passed on to the tax authority, but omitted to do so?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

(OJ 2006, L 347, p. 1).