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Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 3 May 2022
— A.T.S. 2003 Vagyonvédelmi és Szolgáltató Zrt. (in liquidation) v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-289/22)

(2022/C 266/20)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: A.T.S. 2003 Vagyonvédelmi és Szolgáltató Zrt. (in liquidation)

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Are Articles 167, 168(a) and 178(a) of the VAT Directive (1) to be interpreted as meaning that, if the tax authority finds, in respect of any member of a supply chain, that there has been an infringement of special legislation concerning the services provided under a contract concluded with the taxpayer or under agreements concluded between the members of the chain, or an infringement of any other legislation, such an infringement is sufficient in itself, as an objective circumstance, to establish the existence of tax evasion, even where the activities of the members of the chain are lawful in all respects, or does the tax authority also have to specify in that case what the tax evasion consists of, and by which members of the chain and by means of what action it has been committed? In that context, if such a breach is found, is it necessary for the tax authority to examine the causal link between the breach of the regulatory obligations governing the economic activity and the taxpayer's right of deduction, so that it is only if such a link is established that it can refuse the taxpayer his or her right to deduct VAT?

2.

Having regard to those articles of the VAT Directive, and the right to a fair trial enshrined as a general principle of law in Article 47 of the Charter of Fundamental Rights of the European Union and the fundamental principles of proportionality and legal certainty, can the taxpayer be required,

in the context of his or her general duty of control, to verify whether the previous members of the chain have complied with the obligations laid down by special legislation for carrying out the services invoiced and the conditions to operate lawfully? If that question is answered in the affirmative, is this a continuous obligation for the taxpayer for the duration of the legal relationship or, if appropriate, how often must it be complied with?

3.

Are Articles 167, 168(a) and 178(a) of the VAT Directive to be interpreted as meaning that, if the taxpayer finds that any previous member of the chain has failed to fulfil his or her obligations, a duty arises for the taxpayer not to exercise his or her right to deduct input VAT in such a case, failing which the application of the VAT deduction would be regarded as tax evasion?

4.

Are those articles of the VAT Directive, in light of the principles of legal certainty and fiscal neutrality, to be interpreted as meaning that, when examining and categorising the fraudulent nature of the chain, and also when establishing the relevant facts and assessing the evidence supporting those facts, the tax authority cannot disregard the provisions of the special legislation relating to services invoiced, in particular the rules governing the rights and obligations of the parties?

5.

Is it consistent with the abovementioned articles of the VAT Directive, and with the right to a fair trial enshrined as a general principle of law in Article 47 of the Charter and with the fundamental principle of legal certainty, for the tax authority [to adopt] a practice whereby, as a result of a review of the right of deduction in respect of an economic transaction carried out in the course of supplying services, the actual existence of that economic transaction, documented by invoices, contracts and other accounting records, may be refuted on the basis of the findings made by the inspection authority during the inspection, the statements made during the inspection by the persons inspected and the witness statements made by employees engaged through temporary employment agencies as to what they think of their employment relationship, how they legally define it and who they consider to be the employer?

6.

Is it compatible with the abovementioned articles of the VAT Directive, and also with the right to a fair trial enshrined in Article 47 of the Charter and with the fundamental principle of legal certainty for the tax authority [to adopt] a practice whereby the choice of a taxpayer to carry out his or her economic activity in a way that enables that taxpayer to reduce his or her costs as much as possible is classified as an unlawful exercise of the right and, on that basis, the tax authority exercises its right to reclassify contracts in such a way as to create a contract between parties who were not previously in a contractual relationship?

(1) Council Directive 2006/112/EC of 28 November on the common system of value added tax (OJ 2006 L 347, p. 1).