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Request for a preliminary ruling from the F?városi Törvényszék (Hungary) lodged on 11 August 2022 — Global Ink Trade Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-537/22)

(2022/C 432/11)

Language of the case: Hungarian

Referring court

F?városi Törvényszék

Parties to the main proceedings

Applicant: Global Ink Trade Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Does the fact that a court in a Member State, adjudicating at last instance, interprets a decision of the Court of Justice (adopted in the form of an order in response to a request for a preliminary ruling specifically concerned with the case-law developed by the self-same court adjudicating at last instance) as meaning that there is nothing in that decision which has or is likely to have the effect of overturning earlier decisions of the Court of Justice or bringing about a change in the previous national case-law developed by the court adjudicating at last instance, constitute an infringement of the principle of the primacy of EU law and of the right to effective judicial protection guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter')?

2.

Must the principle of the primacy of EU law and the right to effective judicial protection guaranteed in Article 47 of the Charter be interpreted as meaning that the principle of the primacy of decisions of the Court of Justice applies even in the case where a court in a Member State, adjudicating at last instance, also relies on [the] earlier judgments [of the Court of Justice] as precedent? Is a different answer conceivable, in the light of Article 99 of the Rules of Procedures of the Court of Justice, where the decision of the Court of Justice takes the form of an order?

3.

Within the framework of the taxable person's general obligation to exercise scrutiny, irrespective of the performance and nature of the economic transaction shown on the invoices concerned, and regard being had to Articles 167, 168(a) and 178(a) of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax ('the VAT Directive') and to the principles of legal certainty and fiscal neutrality, may the taxable person be required, as a condition of benefiting from the right to deduct VAT — and notwithstanding the absence of a legislative provision to this effect in the Member State concerned —, to maintain contact in person with the issuer of the invoice or to contact his supplier only at the officially communicated e-mail address? May these circumstances be regarded as revealing a failure, demonstrated by objective facts, to exercise the due diligence to be expected of the taxable person, account being taken of the fact that those circumstances did not yet exist at the time when the taxable person carried out the relevant checks before entering into the business relationship in question, but are features of the existing business relationship between the parties?

4.

Are a legal interpretation and a practice developed in a Member State, whereby a taxable person who has an invoice in conformity with the VAT Directive is refused the benefit of the right to deduct VAT on the ground that he has not acted with due diligence in the course of trade because he has failed to demonstrate conduct such as to support the determination that his activity was not simply confined to the mere receipt of invoices meeting the formal requirements laid down, consistent with the aforementioned articles of the VAT Directive, with the principle of fiscal neutrality and, above all, with the case-law of the Court of Justice — which, when interpreting those provisions, places the burden of proof on the tax authority —, even in the case where the taxable person has enclosed all documentation relating to the transactions at issue and the tax authority has rejected other offers to furnish evidence made by the taxable person during the tax proceedings?

5.

In the light of the aforementioned articles of the VAT Directive and the fundamental principle of legal certainty, may the finding, reached in connection with due diligence, that the issuer of the invoice was not engaged in any economic activity at all, constitute an objective fact, in the case where the tax authority takes the view that there has been a failure to demonstrate the actual performance (and, therefore, the genuine existence) of an economic transaction — as documented by means of invoices, contracts and other supporting accounting documentation, and by correspondence, and as confirmed by the statements of the warehousing undertaking and the taxable person's director and employee —, and bases that view exclusively on the statement of the supplier undertaking's director denying the existence of that transaction, without taking into account the circumstances in which that statement was made, the interests of the person making the statement or the fact that, according to the documents in the case file, that undertaking had been founded by the very person making the statement and, according to the information available, an agent was acting on its behalf?

6.

Must the provisions of the VAT Directive relating to the deduction of VAT be interpreted as meaning that, in the case where the tax authority discovers during the tax proceedings that the goods mentioned on the invoices concerned are of Community origin and that the taxable person is the second member of a chain [of supplies], the configuration of that scenario — given that goods of Community origin are exempt from VAT and the first Hungarian purchaser is not

therefore entitled to deduct VAT, only the second member of that chain being so entitled — is an objective fact sufficient in itself to demonstrate tax evasion, or must the tax authority, in that case, also show, on the basis of objective facts, which member or members of that chain committed tax evasion, by what *modus operandi* it or they did so, and whether the taxable person was or could have been aware of this through the exercise of due diligence?

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