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Judgment of the Court (Sixth Chamber) of 8 March 1988. - Leesportefeuille "Intiem" CV v Staatssecretaris van Financiën. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - Second and Sixth Directives on value-added tax - Taxation of supplies to employees of a taxable person. - Case 165/86.

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Summary

Parties

Grounds

Decision on costs

Operative part

Keywords

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TAX PROVISIONS - HARMONIZATION OF LEGISLATION - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - DEDUCTION OF INPUT TAX - GOODS USED IN THE COURSE OF BUSINESS - CONDITION - SUPPLY OF GOODS TO A TAXABLE PERSON - CONCEPT - DIRECT DELIVERY TO THE EMPLOYEES OF THE UNDERTAKING CONCERNED - INCLUDED

(COUNCIL DIRECTIVE 67/228/EEC, ART . 11 (1) (A), AND COUNCIL DIRECTIVE 77/388/EEC, ART . 17 (2) (A))

Summary

WHERE AN EMPLOYER, WHO IS A TAXABLE PERSON FOR THE PURPOSES OF THE RULES ON VALUE-ADDED TAX, BY AGREEMENT WITH ONE OF HIS EMPLOYEES AND ANOTHER TAXABLE PERSON, THE SUPPLIER, ARRANGES FOR THE LATTER TO SUPPLY GOODS AT THE EMPLOYER' S EXPENSE TO THE EMPLOYEE, WHO USES THEM EXCLUSIVELY FOR THE PURPOSES OF THE EMPLOYER' S BUSINESS, AND THE EMPLOYER RECEIVES FROM THE SUPPLIER INVOICES FOR THOSE SUPPLIES CHARGING HIM VALUE-ADDED TAX IN RESPECT OF THE GOODS SUPPLIED, ARTICLE 11 (1) (A) OF THE SECOND COUNCIL DIRECTIVE AND ARTICLE 17 (2) (A) OF THE SIXTH DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES MUST BE INTERPRETED AS MEANING THAT THE EMPLOYER MAY DEDUCT THE VALUE-ADDED TAX WITH WHICH HE IS SO CHARGED FROM THE VALUE-

ADDED TAX PAYABLE BY HIM .

ALTHOUGH THE AFORESAID PROVISIONS RESTRICT A TAXABLE PERSON' S RIGHT OF DEDUCTION TO THE TAX DUE OR PAID "IN RESPECT OF GOODS ... SUPPLIED TO HIM", THE PURPOSE OF THOSE PROVISIONS CANNOT BE TO EXCLUDE FROM THE RIGHT OF DEDUCTION THE TAX PAID ON GOODS WHICH, ALTHOUGH SOLD TO THE TAXABLE PERSON IN ORDER TO BE USED EXCLUSIVELY IN HIS BUSINESS, WERE PHYSICALLY DELIVERED TO HIS EMPLOYEES .

Parties

IN CASE 165/86

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN

LEESPORTEFEUILLE "INTIEM" CV

AND

STAATSSECRETARIS VAN FINANCIEN (SECRETARY OF STATE FOR FINANCE)

ON THE INTERPRETATION OF ARTICLE 11 (1) (A) OF THE SECOND COUNCIL DIRECTIVE (67/228/EEC) OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX (OFFICIAL JOURNAL, ENGLISH SPECIAL EDITION 1967, P . 16) AND ARTICLE 17 (2) (A) OF THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977, L 145, P . 1),

THE COURT (SIXTH CHAMBER)

COMPOSED OF : O . DUE, PRESIDENT OF THE CHAMBER, G . C . RODRIGUEZ IGLESIAS, T . KOOPMANS, K . BAHLMANN AND C . KAKOURIS, JUDGES,

ADVOCATE GENERAL : J . L . DA CRUZ VILACA

REGISTRAR : H . A . ROEHL, PRINCIPAL ADMINISTRATOR

AFTER CONSIDERING THE OBSERVATIONS SUBMITTED ON BEHALF OF

LEESPORTEFEUILLE "INTIEM" CV, THE APPELLANT IN THE MAIN PROCEEDINGS, BY K.J.M . HOYER, ACTING AS AGENT, IN THE ORAL PROCEDURE,

THE COMMISSION OF THE EUROPEAN COMMUNITIES, BY J . F . BUHL, LEGAL ADVISER, AND H . VAN LIER, A MEMBER OF THE COMMISSION' S LEGAL DEPARTMENT, ACTING AS AGENTS, IN THE WRITTEN AND ORAL PROCEDURES,

THE NETHERLANDS GOVERNMENT, BY THE SECRETARY GENERAL OF THE MINISTRY OF FOREIGN AFFAIRS, ACTING AS AGENT, IN THE WRITTEN PROCEDURE,

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY, BY M . SEIDEL AND A . DITTRICH, ACTING AS AGENTS, IN THE WRITTEN PROCEDURE,

HAVING REGARD TO THE REPORT FOR THE HEARING AND FURTHER TO THE HEARING ON 30 JUNE 1987,

AFTER HEARING THE OPINION OF THE ADVOCATE GENERAL DELIVERED AT THE SITTING ON 8 OCTOBER 1987,

GIVES THE FOLLOWING

JUDGMENT

Grounds

1 BY A JUDGMENT OF 2 JULY 1986, WHICH WAS RECEIVED AT THE COURT ON 9 JULY 1986, THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION ON THE INTERPRETATION OF ARTICLE 11 (1) (A) OF THE SECOND COUNCIL DIRECTIVE (67/228/EEC) OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX, AND ARTICLE 17 (2) (A) OF THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT .

2 THAT QUESTION AROSE IN PROCEEDINGS BETWEEN LEESPORTEFEUILLE "INTIEM" CV (HEREINAFTER REFERRED TO AS "INTIEM ") AND THE NETHERLANDS TAX AUTHORITIES CONCERNING THE DEDUCTION OF THE FULL AMOUNT OF VALUE-ADDED TAX ON PETROL SUPPLIED TO EMPLOYEES OF INTIEM BUT INVOICED TO THAT COMPANY .

3 ACCORDING TO THE JUDGMENT OF THE NATIONAL COURT, INTIEM OPERATES A BUSINESS IN WHICH IT LOANS AND DELIVERS READING MATERIAL TO CUSTOMERS AT THEIR HOMES . AS AN EMPLOYER IT PAYS ITS DELIVERY STAFF A TRAVEL ALLOWANCE FOR USING THEIR OWN CARS WHEN CARRYING OUT THEIR WORK . THAT ALLOWANCE DOES NOT INCLUDE PETROL COSTS . AT THE BEGINNING OF EACH WORKING DAY THE DELIVERY STAFF FILL THEIR PETROL TANKS AT THEIR OWN EXPENSE BEFORE STARTING WORK AND AT THE END OF THE DAY THEY REFUEL THEIR CARS AT INTIEM' S EXPENSE AT A FILLING STATION SITUATED OPPOSITE ITS PREMISES .

4 INTIEM DEDUCTS THE FULL AMOUNT OF THE VALUE-ADDED TAX PAYABLE ON THE PETROL WITH WHICH IT IS INVOICED BY THE OPERATOR OF THE FILLING STATION .

5 THE NETHERLANDS TAX AUTHORITIES WOULD NOT ALLOW INTIEM TO DEDUCT THE FULL AMOUNT OF VALUE-ADDED TAX; THEY AGREED TO ALLOW A DEDUCTION ONLY UP TO THE FLAT-RATE PERCENTAGE LAID DOWN BY MINISTERIAL ORDER ON THE BASIS OF NATIONAL LEGISLATION GOVERNING TRAVEL EXPENSES PAID TO EMPLOYEES, TAKING THE VIEW THAT TRAVEL EXPENSES INCLUDED PETROL COSTS .

6 INTIEM APPEALED TO THE GERECHTSHOF (REGIONAL COURT OF APPEAL), AMSTERDAM, WHICH ACCEPTED THE TAX AUTHORITIES' ARGUMENT . INTIEM THEN LODGED AN APPEAL IN CASSATION . THE HOGE RAAD REJECTED THE APPELLANT' S

COMPLAINT THAT THE GERECHTSHOF HAD ERRED IN FINDING THAT THE PETROL IS SUPPLIED DIRECTLY TO THE APPELLANT'S EMPLOYEES BUT THEN RAISED THE QUESTION WHETHER THE FACT THAT THE PETROL IS, ACCORDING TO THAT FINDING, DIRECTLY SUPPLIED TO THE APPELLANT'S EMPLOYEES PRECLUDES THE DEDUCTION BY THE EMPLOYER OF THE VALUE-ADDED TAX PAYABLE ON THAT PETROL .

7 TAKING THE VIEW THAT THE ANSWER TO THAT QUESTION DEPENDED ON THE INTERPRETATION OF CERTAIN PROVISIONS OF THE SECOND AND SIXTH DIRECTIVES, THE HOGE RAAD STAYED THE PROCEEDINGS AND REQUESTED THE COURT TO GIVE A PRELIMINARY RULING ON THE FOLLOWING QUESTION :

"WHERE A TAXABLE PERSON (' THE EMPLOYER'), BY AGREEMENT WITH ONE OF HIS EMPLOYEES AND ANOTHER TAXABLE PERSON (' THE SUPPLIER'), ARRANGES FOR THE SUPPLIER TO SUPPLY GOODS TO THE EMPLOYEE AT THE EMPLOYER'S EXPENSE, WITH THE AIM THAT THE EMPLOYEE SHOULD USE THEM FOR THE PURPOSES OF THE EMPLOYER'S BUSINESS, AND THE EMPLOYER RECEIVES FROM THE SUPPLIER INVOICES FOR THOSE SUPPLIES CHARGING HIM VALUE-ADDED TAX IN RESPECT OF THE GOODS SUPPLIED, DO THE PROVISIONS OF ARTICLE 11 (1) (A) OF THE SECOND DIRECTIVE AND OF ARTICLE 17 (2) (A) OF THE SIXTH DIRECTIVE MEAN THAT THE EMPLOYER MAY DEDUCT THE VALUE-ADDED TAX WITH WHICH HE IS SO CHARGED FROM THE TAX PAYABLE BY HIM, OR IS DEDUCTION OF THE TAX RULED OUT BY THE FACT THAT THE GOODS WERE NOT SUPPLIED TO THE EMPLOYER BUT TO THE EMPLOYEE?"

8 REFERENCE IS MADE TO THE REPORT FOR THE HEARING FOR A FULLER ACCOUNT OF THE FACTS OF THE CASE, THE LEGAL BACKGROUND TO THE CASE, THE COURSE OF THE PROCEDURE AND THE OBSERVATIONS SUBMITTED TO THE COURT, WHICH ARE MENTIONED HEREINAFTER ONLY IN SO FAR AS IS NECESSARY FOR THE REASONING OF THE COURT .

9 ARTICLE 11 (1) (A) OF THE SECOND COUNCIL DIRECTIVE PROVIDES AS FOLLOWS :

"WHERE GOODS AND SERVICES ARE USED FOR THE PURPOSES OF HIS UNDERTAKING, A TAXABLE PERSON SHALL BE AUTHORIZED TO DEDUCT FROM THE TAX FOR WHICH HE IS LIABLE :

(A) THE VALUE-ADDED TAX INVOICED TO HIM IN RESPECT OF GOODS SUPPLIED TO HIM OR IN RESPECT OF SERVICES RENDERED TO HIM; ...".

10 SIMILARLY, ARTICLE 17 (2) (A) OF THE SIXTH COUNCIL DIRECTIVE PROVIDES THAT :

"IN SO FAR AS THE GOODS AND SERVICES ARE USED FOR THE PURPOSES OF HIS TAXABLE TRANSACTIONS, THE TAXABLE PERSON SHALL BE ENTITLED TO DEDUCT FROM THE TAX WHICH HE IS LIABLE TO PAY :

(A) VALUE-ADDED TAX DUE OR PAID IN RESPECT OF GOODS OR SERVICES SUPPLIED OR TO BE SUPPLIED TO HIM BY ANOTHER TAXABLE PERSON; ...".

11 IT IS APPARENT FROM THOSE PROVISIONS THAT THE DEDUCTION OF THE VALUE-ADDED TAX PAID ON INPUTS BY A TAXABLE PERSON RELATES ONLY TO THE TAX DUE OR PAID IN RESPECT OF GOODS AND SERVICES SUPPLIED TO HIM IN THE COURSE OF HIS BUSINESS .

12 HAVING REGARD TO THE FACTS OF THE CASE, AS ESTABLISHED BY THE NATIONAL COURT, THE QUESTION RAISED BY THIS CASE IS WHETHER THAT RULE PRECLUDES

THE DEDUCTION OF VALUE-ADDED TAX WHERE GOODS ARE PURCHASED BY A TAXABLE PERSON AND, AFTER BEING SUPPLIED TO HIS EMPLOYEES, ARE USED FOR THE UNDERTAKING' S BUSINESS PURPOSES .

13 IN THAT REGARD IT MUST BE OBSERVED THAT IT IS CLEAR FROM THE DEDUCTION SYSTEM, AS LAID DOWN IN ARTICLES 17 TO 20 OF THE SIXTH DIRECTIVE, THAT THE RIGHT TO DEDUCT VALUE-ADDED TAX PAID ON INPUTS APPLIES TO GOODS AND SERVICES CONNECTED WITH THE PURSUIT OF THE TAXABLE PERSON' S BUSINESS, EXCLUDING, AS STATED IN ARTICLE 17 (6), ANY EXPENDITURE WHICH IS NOT "STRICTLY BUSINESS EXPENDITURE" SUCH AS THAT ON LUXURIES, AMUSEMENTS OR ENTERTAINMENT .

14 IT MUST ACCORDINGLY BE CONCLUDED THAT THIS DEDUCTION SYSTEM MUST BE APPLIED IN SUCH A WAY THAT ITS SCOPE CORRESPONDS AS FAR AS POSSIBLE TO THE SPHERE OF THE TAXABLE PERSON' S BUSINESS ACTIVITY . WHERE, IN SUCH CIRCUMSTANCES, ARTICLE 17 (2) OF THE SIXTH DIRECTIVE RESTRICTS THE TAXABLE PERSON' S RIGHT OF DEDUCTION, AS REGARDS THE VALUE-ADDED TAX ON SUPPLIED GOODS, TO THE TAX DUE OR PAID "IN RESPECT OF GOODS ... SUPPLIED TO HIM", THE PURPOSE OF THAT PROVISION CANNOT BE TO EXCLUDE FROM THE RIGHT OF DEDUCTION THE VALUE-ADDED TAX PAID ON GOODS WHICH, ALTHOUGH SOLD TO THE TAXABLE PERSON IN ORDER TO BE USED EXCLUSIVELY IN HIS BUSINESS, WERE PHYSICALLY DELIVERED TO HIS EMPLOYEES .

15 THAT INTERPRETATION IS SUPPORTED BY THE AIM OF THE DEDUCTION SYSTEM . AS IS STATED IN THE SECOND PARAGRAPH OF ARTICLE 2 OF THE FIRST COUNCIL DIRECTIVE (67/227/EEC) OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES (OFFICIAL JOURNAL, ENGLISH SPECIAL EDITION 1967, P . 14), ON EACH TRANSACTION, VALUE-ADDED TAX, CALCULATED ON THE PRICE OF THE GOODS OR SERVICES AT THE RATE APPLICABLE TO SUCH GOODS OR SERVICES, IS TO BE CHARGEABLE AFTER DEDUCTION OF THE AMOUNT OF VALUE-ADDED TAX "BORNE DIRECTLY BY THE VARIOUS COST COMPONENTS " .

16 THE ANSWER TO THE QUESTION SUBMITTED BY THE HOGE RAAD DER NEDERLANDEN MUST THEREFORE BE THAT WHERE AN EMPLOYER, WHO IS A TAXABLE PERSON FOR THE PURPOSES OF THE RULES ON VALUE-ADDED TAX, BY AGREEMENT WITH ONE OF HIS EMPLOYEES AND ANOTHER TAXABLE PERSON, THE SUPPLIER, ARRANGES FOR THE LATTER TO SUPPLY GOODS AT THE EMPLOYER' S EXPENSE TO THE EMPLOYEE, WHO USES THEM EXCLUSIVELY FOR THE PURPOSES OF THE EMPLOYER' S BUSINESS, AND THE EMPLOYER RECEIVES FROM THE SUPPLIER INVOICES FOR THOSE SUPPLIES CHARGING HIM VALUE-ADDED TAX IN RESPECT OF THE GOODS SUPPLIED, ARTICLE 11 (1) (A) OF THE SECOND DIRECTIVE AND ARTICLE 17 (2) (A) OF THE SIXTH DIRECTIVE ON VALUE-ADDED TAX MUST BE INTERPRETED AS MEANING THAT THE EMPLOYER MAY DEDUCT THE VALUE-ADDED TAX WITH WHICH HE IS SO CHARGED FROM THE VALUE-ADDED TAX PAYABLE BY HIM .

Decision on costs

COSTS

17 THE COSTS INCURRED BY THE NETHERLANDS GOVERNMENT, BY THE GERMAN GOVERNMENT AND BY THE COMMISSION OF THE EUROPEAN COMMUNITIES, WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT, ARE NOT RECOVERABLE . AS THESE

PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED, IN THE NATURE OF A STEP IN THE PROCEEDINGS PENDING BEFORE THE NATIONAL COURT, THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS,

THE COURT (SIXTH CHAMBER)

IN ANSWER TO THE QUESTION SUBMITTED TO IT BY THE HOGE RAAD DER NEDERLANDEN, BY JUDGMENT OF 2 JULY 1986, HEREBY RULES :

WHERE AN EMPLOYER, WHO IS A TAXABLE PERSON FOR THE PURPOSES OF THE RULES ON VALUE-ADDED TAX, BY AGREEMENT WITH ONE OF HIS EMPLOYEES AND ANOTHER TAXABLE PERSON, THE SUPPLIER, ARRANGES FOR THE LATTER TO SUPPLY GOODS AT THE EMPLOYER' S EXPENSE TO THE EMPLOYEE, WHO USES THEM EXCLUSIVELY FOR THE PURPOSES OF THE EMPLOYER' S BUSINESS, AND THE EMPLOYER RECEIVES FROM THE SUPPLIER INVOICES FOR THOSE SUPPLIES CHARGING HIM VALUE-ADDED TAX IN RESPECT OF THE GOODS SUPPLIED, ARTICLE 11 (1) (A) OF THE SECOND DIRECTIVE AND ARTICLE 17 (2) (A) OF THE SIXTH DIRECTIVE ON VALUE-ADDED TAX MUST BE INTERPRETED AS MEANING THAT THE EMPLOYER MAY DEDUCT THE VALUE-ADDED TAX WITH WHICH HE IS SO CHARGED FROM THE VALUE-ADDED TAX PAYABLE BY HIM .