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Judgment of the Court of 21 February 1989. - Commission of the European Communities v Italian Republic. - Action for failure to fulfil obligations - Temporary derogation from VAT arrangements. - Case 203/87.

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Keywords

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Tax provisions - Harmonization of legislation - Turnover taxes - Common system of value-added tax - Exemptions provided for in the Sixth Directive - Exhaustive - Unilateral introduction of other exemptions by Member States - Prohibition - Justification - Absence of effect on Community' s own resources - Inadmissible

(Council Directive 77/388, Art . 13 et seq .)

Summary

The provisions of Title X of the Sixth Directive (77/388/EEC) relating to exemptions from value-added tax are exhaustive . They are aimed not only at ensuring that the Community' s own resources are collected in a uniform manner in all the Member States, but also at helping to achieve the overall objective of the directive, which is to provide for a uniform basis of assessment of value-added tax so that a common market permitting fair competition and resembling a real internal market may ultimately be achieved . Therefore, exemptions not provided for in Title X may not be decided upon unilaterally by Member States, even if they are organized so as to avoid any impact on own resources .

Parties

In Case 203/87

Commission of the European Communities, represented by S . Fabro, Legal Adviser, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, also a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by P . G . Ferri, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that the Italian Republic infringed Article 2 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

composed of : O . Due, President, T . F . O' Higgins and F . Grévisse (Presidents of Chambers), G . F . Mancini, C . N . Kakouris, F . A . Schockweiler, J . C . Moitinho de Almeida, M . Díez de Velasco and M . Zuleeg, Judges,

Advocate General : J . Mischo

Registrar : B . Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 24 November 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 2 December 1988,

gives the following

Judgment

Grounds

1 By application lodged at the Court Registry on 3 July 1987, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by granting, in the years subsequent to 31 December 1983, an exemption from value-added tax, with reimbursement of the tax paid at the preceding stage, in respect of certain transactions carried out for earthquake victims in Campania and Basilicata, the Italian Republic infringed Article 2 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), hereinafter referred to as "the Sixth Directive " .

2 Article 2 of the Sixth Directive defines the transactions which are to be subject to value-added tax as "the supply of goods or services effected for consideration within the territory of the country

by a taxable person acting as such" and "the importation of goods ". Title X of the directive provides for exemptions for certain categories of such transactions .

3 On 3 November 1981 the Council adopted, at the Italian Government' s request, Decision 81/890/EEC authorizing the Italian Republic to derogate temporarily from the value-added tax arrangements in the context of aid to earthquake victims in southern Italy (Official Journal 1981, L 322, p . 40).

4 By that decision, the Italian Republic was authorized, until 31 December 1981, to exempt, with reimbursement of the tax paid at the preceding stage, certain transactions listed in the annex to the decision which corresponded to the transactions covered by the Italian laws and decree-laws adopted following the earthquake . The annex to the decision also set out the arrangements for exempting those transactions . Under the decision, the Italian Republic was to adopt such provisions as were necessary to ensure that taxable persons furnished the information required for determining the Community' s own resources in respect of those transactions .

5 By Decisions 82/424/EEC of 21 June 1982 (Official Journal 1982, L 184, p . 26) and 84/87/EEC of 6 February 1984 (Official Journal 1984, L 40, p . 30), the Council extended the authorization until 31 December 1983 . However, by annual decree-laws the Italian Republic maintained the exemption in force until 31 December 1988, with reimbursement of the tax paid at the preceding stage, while continuing to declare the Community' s own resources in respect of the exempted transactions .

6 The Commission considered that it was contrary to the provisions of the Sixth Directive to maintain the exemption in force without the Council' s authorization, and instituted proceedings under Article 169 of the Treaty .

7 Reference is made to the Report for the Hearing for a fuller account of the background to the dispute, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

8 The Italian Republic claims that the exemption of certain transactions following a natural disaster does not fall within the scope of the Sixth Directive and, therefore, that the provisions of Title X of that directive relating to exemptions are not exhaustive in that respect . It adds that the aim of the provisions relating to exemptions is, according to the 11th recital in the preamble to the directive, to enable the Community' s own resources to be collected in a uniform manner in all the Member States . However, in accordance with the Council' s decisions, the exemption in question was organized so as to avoid any impact on own resources . Finally, it claims that the Council, by authorizing the exemption, acknowledged that it was not contrary to the Sixth Directive . The Italian Republic considers that, inasmuch as it complied fully, throughout the period, with the arrangements laid down in the annexes to the decisions, it did not infringe the provisions of the directive .

9 Those arguments cannot be accepted . The provisions of Title X of the Sixth Directive relating to exemptions are aimed not only at ensuring that the Community' s own resources are collected in a uniform manner in all the Member States, but also at helping to achieve the overall objective of the directive which is to provide for a uniform basis of assessment of VAT so that a common market permitting fair competition and resembling a real internal market may ultimately be achieved, as is confirmed in particular by the fourth recital in the preamble to the directive . It follows that the provisions of Title X are exhaustive .

10 In so far as an exemption of the type in question is not provided for in Title X, it constitutes a derogation from the general rule set out in Article 2 of the directive . Such a derogation may not be decided upon unilaterally by a Member State . By its decisions, the Council authorized the derogation in question only temporarily, and deliberately prescribed a specific date at which the

authorization was to come to an end . Consequently, by extending the exemption beyond that date without the authorization of the Council, the Italian Republic infringed Article 2 of the directive .

11 It follows that by granting, for the period between 1 January 1984 and 31 December 1988, an exemption from value-added tax with reimbursement of the tax paid at the preceding stage in respect of certain transactions carried out for earthquake victims in Campania and Basilicata, the Italian Republic infringed Article 2 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 .

Decision on costs

Costs

12 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs . Since the defendant has failed in its submissions, it must be ordered to pay the costs .

Operative part

On those grounds,

THE COURT

hereby :

(1) Declares that by granting, for the period between 1 January 1984 and 31 December 1988, an exemption from value-added tax with reimbursement of the tax paid at the preceding stage in respect of certain transactions carried out for earthquake victims in Campania and Basilicata, the Italian Republic infringed Article 2 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) Orders the Italian Republic to pay the costs .