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Judgment of the Court (Sixth Chamber) of 24 October 1996. - Eismann Alto Adige Srl v Ufficio IVA di Bolzano. - Reference for a preliminary ruling: Commissione tributaria di primo grado di Bolzano - Italy. - Value added tax - Interpretation of Article 22(8) of the Sixth Directive (77/388/EEC) as amended by Directive 91/680/EEC - Equal treatment of domestic transactions and transactions carried out between Member States by taxable persons. - Case C-217/94.

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Keywords

Tax provisions ° Harmonization of laws ° Turnover tax ° Common system of value added tax ° Transitional arrangements for the taxation of trade between Member States ° Matters covered ° Goods transported within the confines of a Member State ° Excluded

(Council Directives 77/388, Art. 22(8), and 91/680, Art. 28h)

Summary

Article 22(8) of the Sixth Directive (77/388) on the harmonization of the laws of the Member States relating to turnover taxes, as amended by Directive 91/680 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers, must be interpreted as not precluding a national rule requiring accompanying documents to be drawn up in respect of goods transported within the confines of the Member State concerned.

The complete and exhaustive harmonization of the formalities which the Member States may impose on internal transactions for the correct collection of value added tax and for the prevention of evasion has not yet been carried out by the Community legislature and the latter, when laying down the rule that internal transactions and those between Member States should be treated equally, did not intend to prohibit a Member State from imposing formalities which are stricter on internal transactions than those applying to intra-Community trade.

Parties

In Case C-217/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Commissione Tributaria di Primo Grado di Bolzano (Italy) for a preliminary ruling in the proceedings pending before that court between

Eismann Alto Adige Srl

and

Ufficio IVA di Bolzano

on the interpretation of Article 22(8) 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 (OJ 1977 L 145, p. 1), as amended by Article 28h inserted by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1),

THE COURT (Sixth Chamber),

composed of: G.F. Mancini, President of the Chamber, C.N. Kakouris and G. Hirsch (Rapporteur), Judges,

Advocate General: M.B. Elmer,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

° Eismann Alto Adige Srl, by Francesco Cimmino, of the Milan Bar,

° the Italian Government, by Umberto Leanza, Head of the Department for Legal Affairs of the Ministry of Foreign Affairs, acting as Agent, and Maurizio Fiorilli, Avvocato dello Stato,

° the Portuguese Government, by Luís Fernandes, Director of the Legal Service of the Directorate-General for the European Communities, and Angelo Cortesão de Seíça Neves, of the same service, acting as Agents,

° the Commission of the European Communities, by Enrico Travesa, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the parties at the hearing on 14 March 1996,

after hearing the Opinion of the Advocate General at the sitting on 2 May 1996,

gives the following

Grounds

1 By order of 12 July 1994, received at the Court on 27 July 1994, the Commissione Tributaria di Primo Grado (Tax Court of First Instance), Bolzano, referred for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 22(8) 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 (OJ 1977 L 145, p. 1, hereinafter "the Sixth Directive"), as amended by Article 28h inserted by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

2 That question was raised in proceedings brought by Eismann Alto Adige Srl ("Eismann"), whose registered office is in Laives (Italy), against notices issued by the Ufficio IVA di Bolzano (Bolzano VAT Office) by which it was fined for carrying goods within Italy without observing the formalities imposed by Italian law.

3 Under Articles 1 and 2 of Presidential Decree No 627 of 6 October 1978 (hereinafter "the Decree"), all goods undergoing transport are to be accompanied, during their carriage, by an accompanying document in order to facilitate fiscal controls.

4 Following the abolition, on 1 January 1993, of fiscal controls between Member States by Directive 91/680, the Italian Ministry of Finance stated, in a circular of 5 January 1993, that the duty to issue the accompanying document laid down in the Decree was abolished in respect of goods traded between Member States but was maintained in respect of internal trade and trade with third countries.

5 Article 1(22) of Directive 91/680 inserts into the Sixth Directive Title XVla, entitled "Transitional arrangements for the taxation of trade between Member States", comprising Articles 28a to 28m.

6 Article 28h, in conjunction with Article 28l, provides that Article 22 of the Sixth Directive is to be replaced by a new provision for the period of application of the transitional arrangement to enter into force on 1 January 1993 and applicable until the entry into force of the definitive system.

7 Articles 22(1) to (7) in the amended version impose on taxable persons obligations to observe certain formalities such as those consisting in submitting returns and recapitulative statements. Article 22(8) adds:

"8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers."

8 Eismann sells foodstuffs from door to door. To that end, it employs salesmen who go with a lorry loaded with goods intended for sale to the homes of potential private consumers.

9 Following inspections, the Ufficio IVA di Bolzano served on Eismann a number of notices imposing fines on it for failing to draw up ° or drawing up incorrectly ° accompanying documents in respect of goods transported within Italy.

10 Eismann thereupon brought a number of actions before the Commissione Tributaria di Primo Grado di Bolzano seeking annulment of those fines. In support of its actions, it maintained in particular that the obligation to issue accompanying documents was incompatible with the Community provisions relating to the abolition of fiscal frontiers between the Member States and, in particular, with Article 22(8) of the Sixth Directive, as amended.

11 Taking the view that the outcome of the proceedings depended upon an interpretation of that provision, the Commissione Tributaria di Primo Grado di Bolzano stayed the proceedings and requested the Court to make a preliminary ruling on the following question:

"Is the application from 1 January 1993 onwards of the provisions laid down by Presidential Decree No 627 of 6 October 1978 to internal trade alone and not to transactions carried out between Member States contrary to the principle of equal treatment laid down in the amended version of Article 22(8) of the Sixth Council Directive 77/388/EEC of 17 May 1977?"

Admissibility of the question referred to the Court

12 The Italian Government submits that the question referred for a preliminary ruling is inadmissible on the ground that it is manifestly irrelevant to the determination of the national proceedings. Eismann has stated that he carried out "retail" sales rather than "itinerant" sales. Under Article 4 of the Decree, accompanying documents are not required in respect of goods for retail sale.

13 That argument cannot be accepted.

14 The Court has consistently held that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, in particular, Case C-387/93 *Banchero* [1995] ECR I-4663, paragraph 15). In this case, it appears from the case-file that the national court and the Ufficio IVA di Bolzano considered that under the Decree, which falls to be interpreted by the national court, Eismann was required to draw up accompanying documents. In those circumstances, the question referred for a preliminary ruling is admissible.

The question referred to the Court

15 By its question the national court is essentially seeking to ascertain whether the principle of equal treatment expressed in Article 22(8) of the Sixth Directive, as amended, must be interpreted as precluding a national rule requiring accompanying documents to be drawn up in respect of goods transported within the confines of the Member State concerned where there is no such requirement in respect of trade between Member States.

16 The Court has consistently held that, in interpreting a provision of Community law, it is necessary to consider not only its wording but also its context and the aims pursued by the legislation of which it forms part (see Case C-30/93 *AC-ATEL Electronics Vertriebs v Hauptzollamt Muenchen-Mitte* [1994] ECR I-2305, at paragraph 21).

17 As far as the context and aims of Article 22(8) are concerned, this provision forms part of Title XVIa of the Sixth Directive, inserted by Directive 91/680. The provisions of that title relating to transitional arrangements for the taxation of trade between Member States are essentially

intended to regulate trade between Member States and not transactions which take place within a single Member State.

18 As the Advocate General points out in point 34 of his Opinion, the first three recitals of the preamble to Directive 91/680 show that the directive's main purpose is to complete the internal market, to eliminate fiscal frontiers between Member States and to abolish fiscal controls at internal frontiers for all transactions carried out between Member States. The purpose of the directive is not, however, to harmonize or to simplify formalities relating to purely internal transactions.

19 The Community legislature has not yet completely and exhaustively harmonized the formalities which the Member States may impose on internal transactions for the correct collection of VAT and for the prevention of evasion.

20 Accordingly, Article 22(8) of the Sixth Directive, as amended, applies only to transactions between Member States in requiring that they be treated in the same way as internal transactions. Consequently, it does not preclude a Member State from imposing on transactions internal to that State formalities which are stricter than those applying to intra-Community trade.

21 That interpretation is confirmed by the case-law of the Court according to which the Treaty does not prohibit a Member State from taxing national products more heavily than imported products; disparities of this kind result from the specific features of unharmonized national laws in areas falling within the Member States' competence (see Case 86/78 Peureux v Services Fiscaux de la Haute-Saône et du Territoire de Belfort [1979] ECR 897, paragraph 32).

22 The reply to the question put by the national court must therefore be that Article 22(8) of the Sixth Directive, as amended, is to be interpreted as not precluding a national rule requiring accompanying documents to be drawn up in respect of goods transported within the confines of the Member State concerned.

Decision on costs

Costs

23 The costs incurred by the Italian and Portuguese Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 referred to it by the Commissione Tributaria di Primo Grado di Bolzano, by order of 12 July 1994, hereby rules:

Article 22(8) 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, as amended by Article 28h inserted by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and

amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, is to be interpreted as not precluding a national rule requiring accompanying documents to be drawn up in respect of goods transported within the confines of the Member State concerned.