Case C-35/05

Reemtsma Cigarettenfabriken GmbH

v

Ministero delle Finanze

(Reference for a preliminary ruling from the

Corte suprema di cassazione)

(Eighth VAT Directive – Articles 2 and 5 – Taxable persons not established in the territory of the country – Tax paid in error – Arrangements for reimbursement)

Opinion of Advocate General Sharpston delivered on 8 June 2006

Judgment of the Court (Second Chamber), 15 March 2007

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Refund of the tax to taxable persons not established in the country*

(Council Directive 79/1072, Arts 2 and 5)

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Taxable persons*

(Council Directive 77/388, Art. 21, para. 1)

3. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Regularisation of tax unduly invoiced*

(Council Directive 77/388)

1. Articles 2 and 5 of the Eighth Directive 79/1072 on the harmonisation of the laws of the Member States relating to turnover taxes – arrangements for the refund of value added tax to taxable persons not established in the territory of the country, must be interpreted as meaning that value added tax that is not due and has been invoiced in error to the beneficiary of the services and paid to the tax authorities of the Member State where those services were supplied, is not refundable under those provisions.

The Eighth Directive, whose purpose is not to undermine the scheme introduced by the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, is designed to lay down detailed arrangements for the refund of value added tax paid in a Member State by taxable persons established in another Member State. Its objective is therefore to harmonise the right to refund as provided for in Article 17(3) of the Sixth Directive. Articles 2 and 5 of the Eighth Directive refer expressly to Article 17 of the Sixth Directive. In those circumstances, since the right to deduct, within the meaning of Article 17, cannot be extended to value added tax unduly invoiced

and paid to the tax authorities, it must be found that that value added tax is not reimbursable on the basis of the provisions of the Eighth Directive.

(see paras 25-28, operative part 1)

2. Except in the cases expressly provided for in Article 21(1) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, as amended by Directive 92/111, only the supplier must be considered to be liable for payment of value added tax for the purposes of the tax authorities of the Member State where the services were supplied.

(see para. 33, operative part 2)

3. The principles of neutrality, effectiveness and non-discrimination do not preclude national legislation according to which only the supplier may seek reimbursement of the sums unduly paid as value added tax to the tax authorities and the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due. However, where reimbursement of the value added tax would become impossible or excessively difficult, the Member States must provide for the instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.

That answer cannot be affected by the national legislation on direct taxation, since the system of direct taxation as a whole is not related to the value added tax system.

(see paras 42, 45, operative part 3)

JUDGMENT OF THE COURT (Second Chamber)

15 March 2007 (*)

(Eighth VAT Directive – Articles 2 and 5 – Taxable persons not established in the territory of the country – Tax paid in error – Arrangements for reimbursement)

In Case C?35/05,

REFERENCE for a preliminary ruling under Article 234 EC by the Corte suprema di cassazione (Italy), made by decision of 23 June 2004, received at the Court on 31 January 2005, in the proceedings

Reemtsma Cigarettenfabriken GmbH

v

Ministero delle Finanze,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, P. K?ris, J. Klu?ka, J. Makarczyk

and G. Arestis (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 March 2006,

after considering the observations submitted on behalf of:

– Reemtsma Cigarettenfabriken GmbH, by S. Pettinato, avvocato,

– the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. De Bellis, avvocato dello Stato,

– the Commission of the European Communities, by M. Afonso, M. Velardo and A. Aresu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 2 and 5 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11; 'the Eighth Directive').

2 This reference was made in the course of proceedings between Reemtsma Cigarettenfabriken GmbH ('Reemtsma') and the Ministero delle Finanze (finance minister) concerning the latter's refusal to partially reimburse Reemtsma the value added tax ('VAT') charged in respect of the advertising and marketing services with which it was supplied in Italy.

Legal context

Community law

3 Article 2 of the Eighth Directive states:

'Each Member State shall refund to any taxable person who is not established in the territory of the country but who is established in another Member State, subject to the conditions laid down below, any value added tax charged in respect of services or movable property supplied to him by other taxable persons in the territory of the country or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17(3)(a) and (b) of Directive 77/388/EEC and of the provision of services referred to in Article 1(b).'

4 The first paragraph of Article 5 of the Eighth Directive provides:

'For the purposes of this Directive, goods and services in respect of which tax may be refundable shall satisfy the conditions laid down in Article 17 of Directive 77/388/EEC as applicable in the Member State of refund.'

5 Under Article 9(2)(e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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 Council Directive 92/111/EEC of 14 December 1992 (OJ 1992 L 384, p. 47; 'the Sixth Directive'):

'The place where the following services are supplied when performed for … taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

…

– advertising services,

…'

6 Article 17 of the Sixth Directive is worded as follows:

'1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. 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 within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

…

3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

(a) transactions relating to the economic activities as referred to in Article 4(2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

…'

7 Under the first paragraph of Article 21 of the Sixth Directive:

'The following shall be liable to pay value added tax:

1. under the internal system:

(a) the taxable person carrying out the taxable supply of goods or of services, other than one of the supplies of services referred to in (b). Where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may adopt arrangements whereby tax is payable by another person. Inter alia a tax representative or the person for whom the taxable supply of goods or of services is carried out may be designated as that other person. … Member States may provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;

(b) persons to whom services covered by Article 9(2)(e) are supplied, or persons, identified for

value added tax purposes within the territory of the country, to whom services referred to in Article 28b(C), (D) or (E) are supplied, when the service is carried out by a taxable person established abroad; however, Member States may require that the supplier of the service shall be held jointly and severally liable for payment of the tax;

(c) any person who mentions the value added tax on an invoice or other document serving as invoice'.

National law

8 Article 17(1) of the Decree of the President of the Republic No 633 of 26 October 1972, establishing and governing value added tax (GURI, supplemento ordinario, No 1 of 11 November 1972, p. 1; 'Presidential Decree No 633/72'), adopted pursuant to the Eighth Directive, states that:

'Taxable persons – The tax is payable by persons supplying taxable goods or providing taxable services who must pay that tax to the tax authorities, cumulatively for all transactions carried out and net of the deduction laid down in Article 19, in accordance with the detailed rules and the terms laid down in Title II.'

9 The second paragraph of Article 19 of Presidential Decree No 633/72 provides:

'Tax on the acquisition or import of goods and services relating to transactions which are exempt from, or not subject to, tax is not deductible …'

10 Article 38b of Presidential Decree No 633/72 is worded as follows:

'Taxable persons domiciled and resident in Member States of the European Economic Community, who are not referred to directly in Article 35b and have no appointed agent within the meaning of Article 17, who are taxable in their State of residence and who have not carried out transactions in Italy, with the exception of transport services and other ancillary services which are not subject to tax under Article 9, and the services listed in Article 7(4)(d), may obtain, for any period of less than a year, reimbursement of tax if it is deductible under Article 19 where it relates to movable goods and services imported or purchased, in so far as the total amount in less than EUR 200 …'

The main proceedings and the questions referred

11 The facts as they appear from the order for reference may be summarised as follows.

12 Reemtsma is a company whose principal place of business is in Germany and which has no permanent establishment in Italy. In 1994 an Italian firm provided Reemtsma with advertising and marketing services on which it charged VAT amounting to a total of LIT 175 022 025.

13 The VAT was charged to Reemtsma and paid to the Italian tax authorities.

14 Reemtsma thus sought partial reimbursement of the two sums of VAT paid for the year 1994 which it considered it had paid unduly, since the services at issue had been supplied to a taxable person established in a Member State other than the Italian Republic, namely Germany. Therefore, the VAT was payable in that latter Member State.

15 The national tax authorities refused that reimbursement. Reemtsma then challenged that refusal before the Italian courts. Both at first instance and on appeal, the action was dismissed on the ground that the invoices issued related to advertising and marketing services which are not subject to VAT since they concern advertising and marketing services that were not subject to VAT

because the condition as to territory was not fulfilled inasmuch as those services were supplied to a person taxable in another Member State.

16 Reemtsma then brought an action before the Corte suprema di cassazione (Court of Cassation) which, taking the view that the decision in the case turns on the interpretation of rules and principles of Community law, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Articles 2 and 5 of the Eighth Directive … in so far as they make reimbursement to a non-resident recipient of goods or services conditional on use of the goods and services for the purposes of taxable transactions, be interpreted as meaning that even VAT that is not due, and has been charged incorrectly as output tax and paid to the revenue authorities, is refundable? If the answer is in the affirmative, is a national provision which precludes reimbursement to a non-resident recipient of goods or services, on the ground that the tax charged and paid although not due is not deductible, contrary to the abovementioned provisions?

(2) In general, is it possible to infer from the uniform Community rules that the recipient of goods or services is the person liable for payment of tax to the revenue authorities? Is it compatible with those rules and in particular with the principles of neutrality of VAT, effectiveness and non-discrimination, not to grant under domestic law to a recipient of goods or services who is subject to VAT and who is treated under national law as being subject to the obligations of invoicing and payment of the tax, a right against the revenue authorities to claim reimbursement in cases where tax that is not due is charged and paid? Are national rules – as interpreted by the national courts – under which a recipient of goods or services may bring an action only against the supplier of the goods or services and not against the revenue authorities, despite the existence of a case of substitution of that kind under domestic law in relation to direct taxes where both parties (the withholding agent and the taxpayer) are entitled to apply to the revenue authorities for reimbursement, contrary to the principles of effectiveness and non?discrimination in the matter of reimbursement of VAT collected in breach of Community law?’

The questions

The first question

17 By its first question, the national court is asking, essentially, whether Articles 2 and 5 of the Eighth Directive must be interpreted as meaning that VAT which is not due and invoiced in error to the beneficiary of the services, then paid to the tax authorities of the Member State of the place where the services were supplied, is refundable.

18 It should be pointed out, at the outset, that the common system of VAT does not expressly provide for the case where such tax has been invoiced in error.

19 It is not contested by the parties to the main proceedings that the services provided for Reemtsma, namely advertising and marketing services, were not subject to VAT. Under Article 9(2)(e) of the Sixth Directive, the place where the advertising services are supplied to persons established in the Community, but not in the same country as the supplier, is to be the place where the customer has established his business or has a fixed establishment to which the service is supplied. In the case in the main proceedings, those services are deemed to have been supplied in Germany.

20 Article 2 of the Eighth Directive provides that any taxable person who is established in a Member State other than the one in which the services are supplied is entitled to reimbursement of the VAT charged in respect of the services with which he was supplied in the Member State in

which that place is situated for the purposes of the transactions referred to, inter alia, in Article 17(3)(a) of the Sixth Directive. Under the first paragraph of Article 5 of the Eighth Directive, reimbursement is determined in accordance with Article 17 of the Sixth Directive as applicable in the Member State of refund.

21 Reemtsma takes the view that the fact that the right to reimbursement is restricted to deductible VAT only does not mean that the tax which was unduly invoiced and paid to the tax authorities is not reimbursable. Article 21(1)(c) of the Sixth Directive, as interpreted by the Court in its judgment of 17 September 1977 in Case C?141/96 *Langhorst* [1997] ECR I?5073, precludes any principle that the right to deduct may be exercised only in respect of taxes actually due. Reemtsma submits that the right to deduct that tax is one of the main instruments ensuring the protection of the principle of neutrality of VAT and, therefore, such a right cannot be restricted.

22 The Italian Government and the Commission of the European Communities take the view, however, that it is not possible to rely on Articles 2 and 5 of the Eighth Directive when seeking reimbursement of VAT invoiced in error since the right laid down in Article 17(2) of the Sixth Directive to deduct the tax paid is lacking. The judgment in Case C?342/87 *Genius Holding* [1989] ECR 4227 precludes a right to deduct VAT unduly invoiced and paid to the tax authorities.

23 First of all, it should be recalled that, in paragraph 13 of *Genius Holding*, the Court found that the right to deduct may be exercised only in respect of taxes actually due, that is to say, the taxes corresponding to a transaction subject to VAT or paid in so far as they were due. It thus found that that right to deduct does not apply to VAT which is due, under Article 21(1)(c) of the Sixth Directive, solely because it is mentioned on the invoice (see, inter alia, *Genius Holding*, paragraph 19). In that regard, the Court subsequently upheld that case?law in Case C?454/98 *Schmeink & Cofreth and Strobel* [2000] ECR I?6973, paragraph 53 and Joined Cases C?78/02 to C?80/02 *Karageorgou and Others* [2003] ECR I?13295, paragraph 50).

24 In those circumstances, it is appropriate to consider whether the case?law referred to in the preceding paragraph is applicable in the context of the Eighth Directive.

25 It should be pointed out, in that regard, that it is not the purpose of the Eighth Directive to undermine the scheme introduced by the Sixth Directive (see, inter alia, Case C?302/93 *Debouche* [1996] ECR I?4495, paragraph 18).

26 In addition, the purpose of the Eighth Directive is to lay down detailed arrangements for the refund of VAT paid in a Member State by taxable persons established in another Member State. Its objective is therefore to harmonise the right to refund as provided for in Article 17(3) of the Sixth Directive (see, inter alia, Case C?136/99 *Monte dei Paschi Di Siena* [2000] ECR I?6109, paragraph 20). As is apparent from paragraph 20 of this judgment, Articles 2 and 5 of the Eighth Directive refer expressly to Article 17 of the Sixth Directive.

27 In those circumstances, since the right to deduct, within the meaning of Article 17, cannot be extended to VAT unduly invoiced and paid to the tax authorities, it must be found that that VAT is not reimbursable on the basis of the provisions of the Eighth Directive.

28 In the light of the above considerations, the answer to the first question must be that Articles 2 and 5 of the Eighth Directive must be interpreted as meaning that VAT which is not due and has been invoiced in error to the beneficiary of the services and paid to the tax authorities of the Member State where the services were supplied, is not refundable under those provisions.

The second question

29 By its second question, the national court is asking, essentially, whether, in a situation such as that in the main proceedings, it is sufficient that the recipient of a service is entitled to request reimbursement of the VAT from the supplier which incorrectly invoiced that tax and who could, in turn, seek reimbursement from the tax authorities, or whether such a recipient must be able to bring a claim directly against those authorities. This question is subdivided into three parts.

30 First, the national court asks whether the recipient of a service may be considered, generally speaking, to be the person liable for payment of VAT for the purposes of the tax authorities of the Member State where the services are supplied.

31 In that regard, it should be pointed out that, under Article 21(1)(a) of the Sixth Directive, 'the taxable person carrying out the taxable supply of goods or of services, other than one of the supplies of services referred to in (b)'… 'shall be liable to pay value added tax under the internal system'. Article 21 thus establishes the basic rule that only the supplier is liable for payment of VAT and subject to obligations towards the tax authorities. However, the exceptions to that rule are exhaustively listed in that provision and others may be authorised by the Council on the basis of Article 27 of the Sixth Directive. Therefore, where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may adopt arrangements whereby tax is payable by another person, who may be the recipient of the taxable services.

32 Even in a situation such as that in the main proceedings, in which the transfer mechanism of the tax obligation laid down in Article 9(2)(e) of the Sixth Directive is applicable, Reemtsma could have requested reimbursement of the VAT as a person liable for payment of such tax, it must be borne in mind that, as pointed out by the Advocate General in point 77 of her Opinion, Reemtsma's relationship under that mechanism is with the tax authorities of the Member State in which it is established, in this case the Federal Republic of Germany, and not with those of the Member State in which its supplier unduly invoiced and accounted for VAT, namely the Italian Republic.

33 The answer to the first part of the second question must therefore be that, except in the cases expressly provided for in Article 21(1) of the Sixth Directive, only the supplier must be considered to be liable for payment of VAT for the purposes of the tax authorities of the Member State where the services are supplied.

34 Second, the national court asks the Court whether the common system of VAT and the principles of neutrality, effectiveness and non?discrimination preclude national legislation such as that at issue in the main proceedings, which does not entitle the recipient of services to reimbursement of VAT by the tax authorities where that tax was not due, but was nevertheless paid by that recipient to the tax authorities of the Member State where the services were supplied.

35 Reemtsma considers that the principle of effectiveness implies that the national legislation should not constitute an obstacle to the exercise of the right to reimbursement of sums paid as VAT in contravention of the applicable rules. That principle might otherwise be infringed as a result of the insolvency of the supplier or possible conflicting judgments of the civil and tax courts.

36 The Commission considers, by contrast, that a tax system such as the one in force in Italy, in which only the supplier is entitled, in principle, to seek reimbursement of VAT from the tax authorities and the recipient of the services may demand the amount unduly paid from the supplier in accordance with civil law is acceptable. In that regard, the Member States are free to choose the procedure which they judge appropriate for guaranteeing that reimbursement, provided that the principle of effectiveness is respected. The implementation of that principle could thus require that

the recipient be able to being an action directly against those authorities if reimbursement were to turn out to be virtually impossible or excessively difficult.

37 It must be pointed out in that regard that, in the absence of Community rules on applications for the repayment of taxes, it is for the domestic legal system of each Member State to lay down the conditions under which such applications may be made; those conditions must observe the principles of equivalence and effectiveness, that is to say, they must not be less favourable than those relating to similar claims founded on provisions of domestic law or framed so as to render virtually impossible the exercise of rights conferred by the Community legal order (see, inter alia, Case C?30/02 *Recheio – Cash & Carry* [2004] ECR I?6051, paragraph 17, and Case C?291/03 *MyTravel* [2005] ECR I?8477, paragraph 17).

38 Also, the Sixth Directive does not contain any provisions relating to the adjustment by the issuer of the invoice of VAT which has been improperly invoiced. The Sixth Directive merely defines, in Article 20, the conditions which must be complied with in order that deduction of input taxes may be adjusted at the level of the person to whom goods or services have been provided. In those circumstances, it is for the Member States to lay down the conditions in which improperly invoiced VAT may be adjusted (*Schmeink & Cofreth and Strobel*, paragraphs 48 and 49).

39 In the light of the case?law cited in the two preceding paragraphs, it must be conceded that, in principle, a system such as the one at issue in the main proceedings in which, first, the supplier who has paid the VAT to the tax authorities in error may seek to be reimbursed and, second, the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due observes the principles of neutrality and effectiveness. Such a system enables the recipient who bore the tax invoiced in error to obtain reimbursement of the sums unduly paid.

40 It must also be borne in mind that, according to settled case-law, in the absence of relevant Community rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under Community law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States (see, inter alia, Case C?78/98 *Preston and Others* [2000] ECR I-3201, paragraph 31, and Joined Cases C?392/04 and C?422/04 *i?21 Germany and Arcor* [2006] ECR I?0000, paragraph 57).

41 In that regard, as rightly submitted by the Commission, if reimbursement of the VAT becomes impossible or excessively difficult, in particular in the case of the insolvency of the supplier, those principles may require that the recipient of the services to be able to address his application for reimbursement to the tax authorities directly. Thus, the Member States must provide for the instruments and the detailed procedural rules necessary to enable the recipient of the services to recover the unduly invoiced tax in order to respect the principle of effectiveness.

42 The answer to the second part of the second question must therefore be that the principles of neutrality, effectiveness and non-discrimination do not preclude national legislation, such as that at issue in the main proceedings, according to which only the supplier may seek reimbursement of the sums unduly paid as VAT to the tax authorities and the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due. However, where reimbursement of the VAT would become impossible or excessively difficult, the Member States must provide for the instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.

43 Third, the national court asks the Court of Justice whether the principles of equivalence and non-discrimination preclude national legislation, such as that at issue in the main proceedings, which entitles the recipient of services to bring an action only against the supplier and not against the tax authorities, although there exists, under the national direct tax system, a situation where, in

the case of undue payment, both the person charged with collecting the tax and the person liable for payment of that tax are entitled to bring an action against those authorities.

44 In that regard, according to settled case?law of the Court, the prohibition of discrimination is only a specific expression of the general principle of equality in Community law, which requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see, inter alia, Case C?309/89 *Codorniu* v *Council* [1994] ECR I?1853, paragraph 26, and Case C?354/95 *National Farmers' Union and Others* [1997] ECR I?4559, paragraph 61).

45 In the present case, the system of direct taxation, as a whole, is not related to the VAT system. It follows that the answer to the second part of the second question cannot be affected by the national legislation on direct taxation.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. The costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Articles 2 and 5 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, must be interpreted as meaning that value added tax that is not due and has been invoiced in error to the beneficiary of the services and paid to the tax authorities of the Member State where those services were supplied, is not refundable under those provisions.**

2. **Except in the cases expressly provided for in Article 21(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, as amended by Council Directive 92/111/EEC of 14 December, only the supplier must be considered to be liable for payment of value added tax for the purposes of the tax authorities of the Member State where the services were supplied.**

3. **The principles of neutrality, effectiveness and non-discrimination do not preclude national legislation, such as that at issue in the main proceedings, according to which only the supplier may seek reimbursement of the sums unduly paid as value added tax to the tax authorities and the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due. However, where reimbursement of the value added tax would become impossible or excessively difficult, the Member States must provide for the instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.**

This ruling shall not be affected by national legislation on direct taxation.

[Signatures]

* Language of the case: Italian.