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Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

11 April 2019(*)

(Reference for a preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Right to deduct value added tax (VAT) paid as input tax — Article 199(1)(a) — Reverse charge procedure — Undue payment of the tax by the recipient of services to the suppliers on the basis of an invoice drawn up incorrectly according to the rules on ordinary taxation — Tax authority's decision holding that the recipient of services has an outstanding tax liability and refusing a claim for deduction — No examination by the tax authority of the possibility of reimbursement of the tax)

In Case C?691/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the F?városi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary), made by decision of 29 November 2017, received at the Court on 11 December 2017, in the proceedings

PORR Építési Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Tenth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, E. Juhász and M. Ileši?, Judges,

Advocate General: M. Bobek,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 9 January 2019,

after considering the observations submitted on behalf of:

– PORR Építési Kft., by É. Radnai and G. Hajdu, ügyvédek,

– the Hungarian Government, by M.Z. Fehér and G. Koós, acting as Agents,

– the European Commission, by K. Talabér-Ritz and L. Lozano Palacios, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive

2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('Directive 2006/112'), and of the principles of proportionality, fiscal neutrality and effectiveness.

2 The request has been made in proceedings between PORR Építési Kft. ('PORR') and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Taxation and Customs Authority, Hungary) ('the tax authority') and concerning a tax adjustment imposed on the former on account of a failure to apply the national provisions in relation to procedure for the reverse charging of value added tax (VAT).

Legal context

European Union law

3 Article 167 of Directive 2006/112 provides as follows:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

4 Under Article 168 of that directive:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…'

5 Under Article 178 of that directive:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

…

(f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.'

6 Under Article 199(1) of that directive:

'Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

(a) the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods pursuant to Article 14(3);

…'

7 Article 226 of Directive 2006/112 provides as follows:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

(11a) where the customer is liable for the payment of the VAT, the mention “Reverse charge”;

…’

8 The version of Article 226 of Directive 2006/112/EC applicable prior to the entry into force of Directive 2010/45 was worded as follows:

‘Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

11 in the case of an exemption or where the customer is liable for payment of VAT, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt or subject to the reverse charge procedure;

…’

Hungarian law

9 Paragraph 70(1) of the általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law No CXXVII of 2007 on value added tax), in the version applicable to the case in the main proceedings (‘the Law on VAT’) provides as follows:

‘In the case of supplies of goods and services, the basis of assessment shall include:

…

(b) incidental expenses which the supplier of goods or services charges to the acquirer of the goods or recipient of the services, in particular: expenses and costs connected with commission or any other type of intermediation, packaging, transport and insurance;

…’

10 Paragraph 119(1) of that Law is drafted as follows:

‘Unless otherwise provided in the present Law, a right of deduction shall arise at the time the amount due in respect of input VAT is to be determined [Paragraph 120] …’

11 Paragraph 120 of that Law provides as follows:

‘In so far as the taxable person, acting as such, uses or otherwise exploits goods or services in order to carry out a taxable supply of goods or services, he shall be entitled to deduct from the tax that he is liable to pay:

(a) the amount of tax he was charged, in connection with the purchase of the goods or the use of the services, by another taxable person — including any person or entity subject to simplified corporation tax;

(b) the amount of tax calculated by another taxable person as tax due in connection with the

purchase of the goods — including intra-Community purchases of goods — or the use of the services;

…’

12 Paragraph 127 of the Law on VAT is worded as follows:

‘1. Exercise of the right of deduction shall be subject to the substantive condition that the taxable person is himself in possession:

(a) in the situation referred to in Paragraph 120(a), of an invoice issued in his name which attests to the performance of the transaction;

(b) in the situations referred to in Paragraph 120(b):

(ba) in the case of intra-Community supplies, of an invoice issued in his name which attests to the performance of the transaction, or

(bb) in any other case not falling under subsection (ba), also of an invoice issued in his name which attests to the performance of the transaction or, if at the time when the tax payable is established the invoice is not at the taxable person’s disposal, of all the documentation necessary to calculate the amount of tax payable;

…

4. The amount of deductible input VAT may not exceed the amount which is indicated as tax in any document referred to in subparagraph 1 or which can be calculated as such on the basis of such a document.

…’

13 Under Paragraph 169 of the Law on VAT:

‘The invoice shall be required to contain the following text:

…

(j) the tax chargeable, subject to any provision in the present Law to the contrary;

(k) in the event of a tax exemption or that the purchaser of the goods or recipient of the service is liable for the tax, a reference to a legal rule or some other unequivocal indication that the sale of the goods or supply of the services

(ka) is exempt from tax

(kb) is liable to tax in the hands of the purchaser of the goods or the recipient of the service;

…’

14 Paragraph 142(1) of that Law provides as follows:

‘The tax shall be paid by the purchaser of the goods or the recipient of the services:

…

(b) in the case of construction and installation works and other installation works classifiable as a supply of services which are aimed at the construction, extension, conversion and other alterations of immovable property, including the total demolition of the immovable property, provided that the construction, extension, conversion and other alterations of the immovable property are subject to a works licence — a fact of which the recipient of the service is to give prior written notice to the supplier of the services;

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 The Nemzeti Adó- és Vámhivatal Kiemelt Adózók Adóigazgatósága (Directorate for Major Taxpayers of the National Taxation and Customs Authority, Hungary) carried out a retrospective examination of PORR's tax returns with regard to the taxes and public subsidies in respect of the years 2010 and 2011.

16 By decision of 13 March 2015, that tax authority ordered PORR to pay the sums of 88 644 000 Hungarian forint (HUF) (approximately EUR 275 000) by way of unpaid VAT, of HUF 26 593 000 (approximately EUR 82 200) by way of a tax penalty, of HUF 13 908 000 (approximately EUR 43 000) by way of a late-payment charge, as well as a fine for non-compliance of HUF 500 000 (approximately EUR 1 550).

17 Following an administrative appeal brought by PORR against the decision of 13 March 2015, the tax authority, on 31 July 2015, confirmed that decision so far as the tax adjustments in relation to VAT were concerned.

18 It is apparent from the order for reference that, in connection with the construction of a motorway, PORR had accepted, from at least three suppliers, invoices drawn up under the ordinary tax regime and on which VAT was entered. PORR had paid those invoices, deducted the amounts of VAT entered, then sought reimbursement of those amounts. However, the tax authority found that the economic transactions entered on the invoices at issue related to a principal activity of construction and that, in accordance with the applicable national rules, those transactions should have been subject to the reverse charge VAT regime. The issuers of the invoices should therefore have drawn up the invoices without entering VAT on them or should have entered on them that they were subject to the reverse charge regime.

19 The tax authority therefore concluded that PORR was entitled to the right to deduct the amounts of VAT entered on those invoices only under Paragraph 120(b) of the Law on VAT, and not under Paragraph 120(a) of that Law. It stated that there had been no double taxation and that the invoicing error committed did not exempt PORR from the sanctions imposed. It also maintained that the issuers of the invoices in question in the main proceedings could be requested to correct those invoices.

20 PORR brought an appeal before F?városi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary) against the decision of the tax authority. In its appeal, it argues, primarily, that the tax authority erred in the classification of the facts in finding that the invoices at issue in the main proceedings were subject to the reverse charge procedure.

21 In the alternative, PORR claims that, even if those invoices were indeed subject to the reverse charge procedure, the tax authority had still deprived it of the right to deduct VAT. That company submits that the tax authority did not call into question whether the transactions carried out with the companies which had issued the invoices had taken place, and adds that those

companies probably met their obligation to pay the VAT collected, that is to say, paid the VAT to the revenue authorities.

22 PORR thus observes that the tax authority failed to fulfil its obligation to ascertain whether the issuers of the invoices at issue in the main proceedings had paid the VAT and whether they could still correct those invoices. It further submits that, a fortiori, the authority concerned did not take into account the fact that such a correction was probably ruled out, given that self-corrections are not permitted following an inspection aimed at conducting a retrospective verification of tax returns. Consequently, that company has definitively lost the possibility of exercising the right to deduct.

23 In its defence, the tax authority submits that it granted PORR the right to deduct the VAT paid as input tax in relation to the invoices issued under the reverse charge regime, thereby ruling out the risk of double taxation.

24 The F?városi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest) refers to the Court's case-law according to which, if the reimbursement of the VAT paid in error to the tax authorities becomes impossible or excessively difficult, in particular in the case of the insolvency of the supplier, the principle of effectiveness requires that the recipient of the goods in question be able to address its 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 that recipient to recover the unduly invoiced tax in order to observe the principle of effectiveness.

25 In the view of the referring court, the tax authority should have ascertained whether the issuers of the invoices could reimburse the VAT paid in error to the applicant in the main proceedings and whether they were entitled to recover that VAT from that authority. Given that the tax inspection procedure had started, and thus that all self-correction was precluded, the tax authority should have regularised the situation. The referring court also raises the issue of under which procedure, namely whether administrative judicial proceedings or by way of new proceedings before the tax authority, the applicant in the main proceedings should be able to obtain the sum of VAT paid unduly.

26 In those circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of Directive [2006/112] and, in particular, the principles of proportionality, fiscal neutrality and effectiveness, be interpreted as precluding a practice whereby, in circumstances not involving tax evasion, the tax authority of a Member State, when calculating the tax, refuses the right to deduct that may be exercised on the basis of an invoice in which the VAT was established in accordance with the ordinary taxation regime, because it considers that the invoice for the transaction concerned ought to have been issued in accordance with the reverse charge procedure, and fails, before refusing the right to deduct, to examine

– whether the issuer of the invoice can reimburse the recipient of the invoice the amount of VAT paid unduly, or

– whether the issuer of the invoice may lawfully (within the national legal framework) regularise that invoice by means of self-correction, and on that basis recover from the tax authority the tax it paid unduly?

(2) Must the provisions of Directive [2006/112] and, in particular, the principles of proportionality, fiscal neutrality and effectiveness, be interpreted as precluding a practice whereby

the tax authority of a Member State, when calculating the tax, refuses the right to deduct that may be exercised on the basis of an invoice in which the VAT was established in accordance with the ordinary taxation regime, because it considers that the invoice for the transaction concerned ought to have been issued in accordance with the reverse charge procedure, and whereby that authority, when calculating the tax, did not order the recipient of the invoice to be reimbursed the tax paid unduly, even though the issuer of the invoice has moreover paid the amount of the VAT in those invoices to the revenue authorities?'

Consideration of the questions referred

27 By its questions, which it is necessary to examine together, the referring court asks, in essence, whether Directive 2006/112 and the principles of proportionality, fiscal neutrality and effectiveness must be interpreted as precluding a practice of the tax authority whereby, in the absence of any suspicion of tax evasion, that authority refuses an undertaking the right to deduct the VAT which that undertaking, as the recipient of services, unduly paid to the supplier of those services on the basis of an invoice drawn up by that supplier in accordance with the rules on the ordinary VAT regime, whereas the relevant transaction fell under the reverse charge mechanism, and where the tax authority did not,

– examine, prior to refusing the right to deduct, whether the issuer of that incorrect invoice could reimburse the recipient of the invoice the amount of VAT unduly paid and could correct that invoice under a self-correction procedure, in accordance with the applicable national rules, in order to recover the tax which it unduly paid to the Treasury, or

– itself decide to reimburse the recipient of that invoice the tax which the recipient unduly paid to the issuer of the invoice and that the latter, subsequently, unduly paid to the Treasury.

28 As a preliminary point, it must be observed that the order for reference contains no information allowing the Court to assess the usefulness, for the purposes of the answer to be given to the questions referred, of interpreting the principle of proportionality. Therefore, the answer to those questions will be restricted to the interpretation of the relevant provisions of Directive 2006/112 and that of the principles of fiscal neutrality and effectiveness.

29 In the first place, it is necessary to ascertain whether the fact that the right to deduct VAT is refused to a recipient of services placed in a situation such as that of PORR is in accordance with those provisions and those principles.

30 It is important to recall in this connection that, under the reverse charge regime, no VAT payment takes place between the supplier and the recipient of services, the recipient being liable, in respect of the transactions carried out, for the input VAT, while being able, in principle, to deduct that tax so that no amount is payable to the tax authorities (see, to that effect, judgment of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraph 41 and the case-law cited).

31 It must also be pointed out that the right of deduction forms an integral part of the VAT scheme and in principle may not be limited (judgments of 15 July 2010, *Pannon Gép Centrum*, C?368/09, EU:C:2010:441, paragraph 37, and of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraph 42).

32 The deduction rules thus established are intended to free the taxable person completely of the burden of the VAT accruing or paid in all its economic activities. The common system of VAT therefore ensures that all economic activities, whatever their purpose or results, provided that they are, in principle, themselves subject to VAT, are taxed in a neutral way (judgments of 22 February 2001, *Abbey National*, C?408/98, EU:C:2001:110, paragraph 24, and of 26 April 2017, *Farkas*,

C?564/15, EU:C:2017:302, paragraph 43).

33 It should also be recalled that, as regards the rules governing the exercise of the right to deduct VAT in the reverse charge procedure under Article 199(1) of Directive 2006/112, a taxable person which is liable as the recipient of a service for the VAT relating thereto is not obliged to hold an invoice drawn up in accordance with the formal requirements of that directive in order to be able to exercise its right to deduct, and only has to fulfil the formalities laid down by the Member State concerned in the exercise of the option conferred by Article 178(f) of that directive (see, to that effect, judgment of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraph 44 and the case-law cited).

34 In the present case, it is apparent from the decision of the referring court that the invoices at issue in the main proceedings did not contain the obligatory details required under Paragraph 169(1)(k) of the Law on VAT and that PORR incorrectly paid the VAT, wrongly referred to in that invoice, to the issuers of those invoices, whereas, under the reverse charge regime, it should, as the recipient of the services, have paid the VAT directly to the tax authorities, in accordance with Paragraph 142(1)(b) of that Law, by which Hungary implemented the option provided for in Article 199(1)(a) of Directive 2006/112.

35 Thus, besides the fact that those invoices did not satisfy the formal requirements provided for under the national legislation which transposed that directive, a substantive requirement of that regime was not met, namely the payment of the VAT to the tax authorities by the taxable person claiming deduction. Such a situation prevented the competent tax authority from investigating the application of the reverse charge regime and led to a risk of a loss of tax revenue for the Member State concerned (see, to that effect, judgment of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraphs 45 and 46).

36 Moreover, the VAT paid by PORR to the suppliers of services which issued the invoices was not due, whereas the right to deduct can 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 (see, to that effect, judgment of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraph 47).

37 Since PORR did not observe a substantive requirement of the reverse charge regime and the VAT which it paid to the suppliers of the services was not due, that company could not claim a right to deduct that VAT.

38 In the second place, it is necessary to examine whether, in accordance with the case-law of the Court and as PORR in essence submits, the tax authority must ascertain, before refusing a taxable person the right to deduct the VAT which it has incorrectly paid to the issuers of invoices such as those at issue in the main proceedings, whether the latter are able to correct those invoices and to reimburse that taxable person the amount of the VAT entered on them. According to PORR, were it to be accepted that the tax authority could refuse to grant the recipient of the invoices the right to deduct VAT, without at the same time requiring the issuers of those invoices to apply the reverse charge regime and to correct those invoices, the invoice recipient would be subject to double taxation. In the present case, PORR takes the view that the national rules applicable to tax inspections do not allow the issuers of the invoices to correct them.

39 It must be recalled in this connection that, in the absence of EU rules on applications for the repayment of taxes, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under EU law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States; the conditions under which such applications may be made 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 or excessively difficult the exercise of rights conferred by the EU legal order (see, to that effect, judgment of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraphs 50 and 52 and the case-law cited).

40 In that context, the Court has accepted that a system in which, first, the supplier of services which has paid the VAT to the tax authorities in error may seek to be reimbursed and, secondly, the recipient of those 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 that recipient, which bore the tax invoiced in error, to obtain reimbursement of the sums unduly paid (judgments of 15 March 2007, *Reemtsma Cigarettenfabriken*, C?35/05, EU:C:2007:167, paragraphs 38 and 39, and of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraph 51).

41 In the present case, subject to the matters which it is for the referring court to verify, the Hungarian government confirmed, both in its written observations and at the hearing before the Court, that the Hungarian legal system, in particular the detailed procedural rules provided for by that system on applications for repayment of taxes invoiced unduly, enable, first, the recipient of the services, which is the recipient of the invoices in which the VAT was incorrectly entered, to bring against the suppliers of services having issued those invoices a civil law action seeking recovery of the sums paid but not due and, secondly, those suppliers of services to claim from the tax authority the reimbursement of the VAT which they paid unduly.

42 It must however be noted that if, in a situation where the VAT has actually been paid to the Treasury by the supplier of the services, the reimbursement of the VAT by the supplier to the recipient of the services is impossible or excessively difficult, in particular in the case of the insolvency of that supplier of services, the principle of effectiveness may require that the recipient of the services concerned be able to address its application for reimbursement to the tax authorities directly. In such a case, the Member States must provide for the instruments and the detailed procedural rules necessary to enable that recipient of services to recover the unduly invoiced tax in order to respect the principle of effectiveness (see, to that effect, judgment of 26 April 2017, *Farkas*, C?564/15, EU:C:2017:302, paragraph 53).

43 At the hearing before the Court, PORR stated that one of the suppliers of services which issued the invoices in question in the main proceedings was the subject, or had been the subject, of insolvency proceedings. Without prejudice to the matters to be verified by the referring court, such a finding constitutes an indication that it could be impossible or excessively difficult for PORR to obtain reimbursement of the VAT for which that supplier had invoiced it unduly.

44 It should be added that, according to the information provided by the referring court, besides the fact that there is no evidence of tax evasion in the present case, the suppliers of services which issued the invoices in question in the main proceedings paid the VAT to the Treasury, so that the latter suffered no loss as a result of the fact that those invoices were wrongly issued under the ordinary tax system, instead of the reverse charge system.

45 In those circumstances, in the event that reimbursement to PORR, by the suppliers of services in question in the main proceedings, of the VAT unduly invoiced would be impossible or excessively difficult, in particular in the case of the insolvency of those suppliers, PORR must be able to address its application for reimbursement to the tax authority directly. Such an application would, however, be distinct from the claim for deduction of VAT, forming the subject

46 matter of the main proceedings.

47 As regards, furthermore, the issue raised by the referring court concerning whether there is any obligation on the tax authority to verify that the correction of the invoices concerned and the recovery by the issuers of those invoices of the tax unduly paid to the Treasury are, as a matter of law, possible, it must be recalled that the dispute in the main proceedings concerns the rejection by the tax authority of a claim for deduction of VAT, made by the recipient of those invoices. Admittedly, the possibility for the issuers of such invoices to correct them or to recover the tax unduly paid to the Treasury is, as shown in paragraphs 42 to 45 of the present judgment, an aspect which it is important to check in order to determine whether the recipient of the invoices in question should be able to submit an application for reimbursement directly to the tax authority. On the other hand, that aspect is not relevant for the purposes of ascertaining whether the rejection by the tax authority of the claim for deduction of VAT, made by the recipient of the invoices concerned, in a situation such as that in the main proceedings, complies with EU law.

48 Accordingly, in so far as which as the Hungarian system allows PORR to recover the VAT which it unduly paid to the issuers of the invoices in question, the tax authority is not required, before rejecting the claim for deduction of VAT, either to ascertain whether those issuers can correct those invoices on the basis of the national legislation or to order such correction.

49 It follows from the foregoing considerations that Directive 2006/112 and the principles of fiscal neutrality and effectiveness must be interpreted as not precluding a practice of the tax authority whereby, in the absence of any suspicion of tax evasion, that authority refuses an undertaking the right to deduct the VAT which that undertaking, as the recipient of services, unduly paid to the supplier of those services on the basis of an invoice drawn up by that supplier in accordance with the rules on the ordinary VAT regime, whereas the relevant transaction fell under the reverse charge mechanism, and where the tax authority did not,

– examine, prior to refusing the right to deduct, whether the issuer of that incorrect invoice could reimburse the recipient of the invoice the amount of VAT unduly paid and could correct that invoice under a self-correction procedure, in accordance with the applicable national rules, in order to recover the tax which it unduly paid to the Treasury, or

– itself decide to reimburse the recipient of that invoice the tax which the recipient unduly paid to the issuer of the invoice and that the latter, subsequently, unduly paid to the Treasury.

Those principles require, however, in the situation where the reimbursement by the supplier of services to the recipient of those services of the VAT unduly invoiced would be impossible or excessively difficult, in particular in the case of the insolvency of the supplier, that the recipient of the services must be able to address its application for reimbursement to the tax authorities directly.

Costs

50 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, and the principles of fiscal neutrality and effectiveness must be interpreted as not precluding a practice of the tax authority whereby, in the absence of any suspicion of tax evasion, that authority refuses an undertaking the right to deduct the value added tax which that undertaking, as the recipient of services, unduly paid to the supplier of those services on the basis of an

invoice drawn up by that supplier in accordance with the rules on the ordinary value added tax (VAT) regime, whereas the relevant transaction fell under the reverse charge mechanism, and where the tax authority did not,

– **examine, prior to refusing the right to deduct, whether the issuer of that incorrect invoice could reimburse the recipient of the invoice the amount of VAT unduly paid and could correct that invoice under a self-correction procedure, in accordance with the applicable national rules, in order to recover the tax which it unduly paid to the Treasury, or**

– **itself decide to reimburse the recipient of that invoice the tax which the recipient unduly paid to the issuer of the invoice and that the latter, subsequently, unduly paid to the Treasury.**

Those principles require, however, in the situation where the reimbursement by the supplier of services to the recipient of those services of the VAT unduly invoiced would be impossible or excessively difficult, in particular in the case of the insolvency of the supplier, that the recipient of the services must be able to address its application for reimbursement to the tax authorities directly.

[Signatures]

* Language of the case: Hungarian.