Provisional text

JUDGMENT OF THE COURT (Third Chamber)

4 March 2021 (*)

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Article 2(1)(c) – Supplies subject to VAT – Exemptions – Article 132(1)(c) – Provision of medical care in the exercise of the medical and paramedical professions – Nutrition monitoring and advice – Sports, physical well-being and fitness activities – Concepts of a single complex supply, a supply ancillary to the main supply, and independent supplies – Criteria)

In Case C?581/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD) ((Tax Arbitration Tribunal (Centre for Administrative Arbitration) – CAAD), Portugal), made by decision of 22 July 2019, received at the Court on 30 July 2019, in the proceedings

Frenetikexito – Unipessoal Lda

v

Autoridade Tributária e Aduaneira,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, N. Wahl (Rapporteur), F. Biltgen, L. S. Rossi and J. Passer, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Frenetikexito – Unipessoal Lda, by R. Monteiro, advogado,

– the Portuguese Government, by L. Inez Fernandes and R. Campos Laires and by S. Jaulino and P. Barros da Costa, acting as Agents,

– the European Commission, by L. Lozano Palacios and B. Rechena, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 October 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(c) and Article

132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between Frenetikexito – Unipessoal Lda and the Autoridade Tributária e Aduaneira (Tax and Customs Authority, Portugal) concerning an additional value added tax (VAT) assessment for nutrition monitoring and advice services and services concerning sports, physical well-being and fitness activities.

Legal context

European Union law

3 Article 2(1)(c) of Directive 2006/112 provides that the following are to be subject to VAT:

‘The supply of services for consideration within the territory of a Member State by a taxable person acting as such’.

4 Under Article 132(1)(b) of that directive, Member States are to exempt:

‘Hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature’.

5 Under Article 132(1)(c) of that directive, Member States are to exempt:

‘The provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned’.

Portuguese law

6 Under Article 9(1) of the Código do Imposto sobre o Valor Acrescentado (Code on Value Added Tax), the following are to be exempt from VAT:

‘The supply of services in the exercise of the professions of doctor, dentist, midwife, nurse and other paramedical professions’.

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

7 Frenetikexito is a commercial company which, inter alia, manages and operates sports facilities, physical well-being and fitness activities and activities promoting and supporting human health, such as nutrition monitoring and advice or physical evaluation.

8 Following its registration with the Entidade Reguladora da Saúde (Regulatory Authority for Health, Portugal), the applicant in the main proceedings provided, in 2014 and 2015, nutrition monitoring services on its premises through a qualified nutritionist certified for that purpose. That nutritionist, who was employed by the applicant in the main proceedings, was available for the supply of those services one day per week. VAT was not invoiced for those services.

9 The applicant in the main proceedings offered different programmes in its facilities. Some programmes included only well-being and fitness services, whereas others also included nutrition monitoring. Each customer was able to choose the desired programme and whether or not to take advantage of all the services available under the programme selected. Thus, if a customer had signed up for a nutrition monitoring service, that service would be billed to him or her, irrespective

of whether or not it was used or of the number of consultations that took place.

10 Furthermore, it was possible to sign up for nutrition monitoring services separately from any other services by paying a certain sum, on the basis of whether or not a customer belonged to a facility run by the applicant in the main proceedings.

11 The applicant in the main proceedings drew a distinction, in the invoices it issued, between amounts relating to the physical well-being and fitness service and those relating to the nutrition monitoring service. There was no correspondence between the nutrition monitoring services invoiced and the nutrition consultations.

12 In the context of an inspection, the tax and customs authority found that, for the 2014 and 2015 tax years, customers of the applicant in the main proceedings had paid for the nutrition monitoring service even where they had not used it. Therefore, it concluded that the supply of that service was ancillary to the supply of the physical well-being and fitness service. Accordingly, the tax and customs authority decided to apply the same tax treatment as that of the main supply and issue an additional tax assessment plus the corresponding compensatory interest, in the amount of the overall sum of EUR 13 253.05.

13 Since the applicant in the main proceedings had not paid those sums, the applicable enforcement procedures were initiated for their recovery, in the context of which the applicant concluded an agreement to pay them in instalments. Nevertheless, since it considered that the physical well-being and fitness services and nutrition monitoring services it supplied were independent, the applicant in the main proceedings brought an action before the referring court seeking a declaration that the additional assessment in question was unlawful.

14 In those circumstances the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration – CAAD), Portugal) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Where, as occurs in this case, a company

(a) carries on, principally, fitness and physical well-being activities and, on a secondary basis, human health activities, which include nutrition services, nutrition/dietary advice, fitness assessment services and massages; and

(b) offers its customers plans that include only fitness services and plans that include nutrition services in addition to fitness services,

for the purposes of Article 2(1)(c) of [Directive 2006/112], must the human health activity, and the nutrition service in particular, be regarded as ancillary to the fitness and physical well-being activity, with the effect that the ancillary supply must be given the same tax treatment as the principal supply, or, on the contrary, must the human health activity, and the nutrition service in particular, be regarded as independent of and distinct from the fitness and physical well-being activity, with the effect that the tax treatment established for each of those activities will apply to that activity?

2. For the purposes of applying the exemption under Article 132(1)(c) of [Directive 2006/112], must the services listed in that article actually be supplied, or is it sufficient in order for that exemption to apply that they are merely made available, so that use of those services depends solely on the wishes of the customer?’

Admissibility of the request for a preliminary ruling

15 In its written observations, the Portuguese Government maintains that the request for a preliminary ruling is inadmissible, since the referring court has failed to provide to the requisite legal standard the information necessary so that a relevant and useful answer may be provided, as required by Article 94(a) of the Rules of Procedure of the Court of Justice.

16 In that regard, it should be recalled that, according to the Court's settled case-law, in the context of the cooperation between the Court of Justice and the national courts, the need to provide an interpretation of EU law which will be of use to the national court means that the national court is bound to observe scrupulously the requirements concerning the content of a request for a preliminary ruling, expressly set out in Article 94 of the Rules of Procedure (judgment of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi*, C?152/17, EU:C:2018:264, paragraph 21 and the case-law cited).

17 Thus, it is, in particular, essential, as stated in Article 94(a) of the Rules of Procedure, that the order for reference itself contain a summary of the relevant findings of fact as determined by the referring court or, at least, an account of the facts on which the questions are based (judgment of 3 December 2019, *Iccrea Banca*, C?414/18, EU:C:2019:1036, paragraph 28 and the case-law cited), and a statement of the reasons which prompted the national court to inquire about the interpretation or validity of certain provisions of EU law and the relationship between those provisions and the national legislation applicable to the main proceedings (order of 5 June 2019, *Wilo Salmson France*, C?10/19, not published, EU:C:2019:464, paragraph 15).

18 In the present case, the order for reference contains an account of the facts that is sufficient to ensure that both the question referred and the scope of that question can be understood, with the result that the Court may provide the referring court with full guidance on the interpretation of EU law so that it may settle the dispute in the main proceedings. Accordingly, both questions referred for a preliminary ruling are admissible.

Consideration of the questions referred

19 By its questions, which must be addressed together, the referring court asks, in essence, whether the combined provisions of Article 2(1)(c) and Article 132(1)(c) of Directive 2006/112 must be interpreted as meaning that a nutrition monitoring service supplied by an authorised and certified professional in sports facilities, potentially in the context of programmes which also include physical well-being and fitness services, constitutes an independent supply of services. It also asks the Court whether the benefit of the VAT exemption laid down in Article 132(1)(c) of that directive requires that the service – in the present case a nutrition monitoring service as defined by the referring court, be actually provided or whether the fact that such a service is made available is sufficient for that purpose.

20 It must be observed, at the outset, that the referring court, by raising those questions, appears to have proceeded on the assumption that one of the types of services supplied in the case in the main proceedings, namely the nutrition monitoring service, was capable of falling within the scope of the exemption provided for in Article 132(1)(c) of Directive 2006/112.

21 It is therefore necessary, first of all, to determine whether that assumption, which was defended by the applicant in the main proceedings but disputed by the Portuguese Government, and about which the European Commission expressed a nuanced view, is accurate.

22 As is clear from settled case-law, the terms used to specify the exemptions in Article 132 of

Directive 2006/112 are to be interpreted strictly. Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. However, that requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 should be construed in such a way as to deprive them of their intended effect (judgment of 8 October 2020, *Finanzamt D*, C?657/19, EU:C:2020:811, paragraph 28 and the case-law cited).

23 In the present case, the provision in question must be interpreted in the light of the context in which it is used and of the aims and scheme of Directive 2006/112, with particular regard to the underlying purpose of the exemption which it establishes (see, to that effect, judgment of 13 March 2014, *ATP PensionService*, C?464/12, EU:C:2014:139 paragraph 61 and the case-law cited). Thus, the wording of Article 132(1)(c) of that directive, that is 'the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned', does not cover services supplied in a hospital environment, centres for medical treatment or diagnosis and other establishments of a similar nature, exempted under Article 132(1)(b) of that directive, but the medical and paramedical service supplied outside that context, both at the private address of the person providing the care and at the patient's home or at any other place (see, to that effect, judgments of 10 September 2002, *Kügler*, C?141/00, EU:C:2002:473, paragraph 36, and of 10 June 2010, *Future Health Technologies*, C?86/09, EU:C:2010:334, paragraph 36).

24 It must furthermore be noted that the concept of 'medical care' contained in Article 132(1)(b) of Directive 2006/112 and that of 'the provision of medical care', referred to in Article 132(1)(c) of that directive, are both intended to cover services that have as their purpose the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders (see judgments of 10 June 2010, *Future Health Technologies*, C?86/09, EU:C:2010:334, paragraphs 37 and 38, and of 18 September 2019, *Peters*, C?700/17, EU:C:2019:753, paragraph 20 and the case-law cited).

25 Therefore, the 'provision of medical care', within the meaning of that provision, must necessarily have a therapeutic purpose, since that is what determines whether a medical or paramedical service must be exempt from VAT (see, to that effect, judgment of 5 March 2020, *X (VAT exemption for telephone consultations)*, C?48/19, EU:C:2020:169, paragraph 27 and the case-law cited), although it does not necessarily follow that that purpose must be confined within a particularly narrow compass (judgments of 10 June 2010, *Future Health Technologies*, C?86/09, EU:C:2010:334, paragraph 40 and the case-law cited, and of 21 March 2013, *PFC Clinic*, C?91/12, EU:C:2013:198, paragraph 26).

26 Thus, supplies of a medical or paramedical nature carried out with the aim of protecting, including maintaining or restoring, the health of persons may benefit from the exemption provided for in Article 132(1)(c) of Directive 2006/112 (judgment of 5 March 2020, *X (VAT exemption for telephone consultations)*, C?48/19, EU:C:2020:169, paragraph 29 and the case-law cited).

27 The exemption provided for in Article 132(1)(c) of Directive 2006/112 therefore presupposes that two conditions are satisfied, the first relating to the purpose of the supply in question, as recalled in paragraphs 24 to 26 of this judgment, and the second relating to the fact that that supply is provided in the context of the exercise of the medical and paramedical professions as defined by the Member State concerned.

28 With regard to the second condition, it is important to determine, as the Portuguese Government and the Commission point out, whether a nutrition monitoring service, such as that at issue in the main proceedings, supplied by a certified professional authorised for that purpose in sports facilities, potentially as part of programmes which also include physical well-being and

fitness services, is defined by the law of the Member State concerned (judgment of 27 June 2019, *Belgisch Syndicaat van Chiropraxie and Others,* C?597/17, EU:C:2019:544, point 23 and the case-law cited) as being provided in the exercise of a medical or paramedical profession. It is apparent from the information in the order for reference, clarified by the observations of the Portuguese Government, that the service in question was provided by a person with a professional qualification entitling him or her to carry out paramedical activities as defined by the Member State concerned, which will be for the national court to confirm.

29 Assuming that this is indeed the case, the focus must be on the purpose of a supply such as that at issue in the main proceedings, which corresponds to the first condition laid down in Article 132(1)(c) of Directive 2006/112. In that regard, it is necessary to bear in mind, when examining that purpose, that the exemptions laid down in Article 132 of that directive are in Chapter 2, headed ‘Exemptions for certain activities in the public interest’, of Title IX of that directive. Thus, an activity cannot be exempted, under an exception to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (judgments of 21 March 2013, *PFC Clinic*, C?91/12, EU:C:2013:198, paragraph 23, and of 21 September 2017, *Commission* v *Germany*, C?616/15, EU:C:2017:721, paragraph 49), if it does not fulfil that purpose based on the public interest, common to all the exemptions listed in Article 132.

30 In that regard, it is not disputed that a nutrition monitoring service provided in a sports facility may, in the medium- and long-term or viewed very broadly, be a tool to prevent certain conditions, such as obesity. However, it must be noted that the same applies to exercise itself, the role of which is recognised, by way of example, as limiting the occurrence of cardiovascular diseases. Such a service therefore, in principle, has a health purpose but not, or not necessarily, a therapeutic purpose.

31 Accordingly, where there is no indication that it is provided for purposes of prevention, diagnosis, treatment of a condition or restoration of health, and accordingly with a therapeutic purpose, within the meaning of the case-law cited in paragraphs 24 and 26 of the present judgment, which it is for the referring court to determine, a nutrition monitoring service, such as that provided in the case in the main proceedings, does not fulfil the criterion of an activity in the public interest common to all the exemptions laid down in Article 132 of Directive 2006/112 and, consequently, does not fall within the scope of the exemption laid down in Article 132(1)(c) of that directive, with the result that it is, in principle, subject to VAT.

32 That interpretation does not contravene the fiscal neutrality principle, which precludes in particular two deliveries of goods or two supplies of services which are identical or similar from the point of view of the consumer and meet the same needs of the consumer, and which are therefore in competition with one another, from being treated differently with regard to VAT (see, to that effect, judgment of 17 December 2020, *WEG Tevesstraße*, C?449/19, EU:C:2020:1038, paragraph 48 and the case-law cited), since, in the light of the objective pursued in Article 132(1)(c) of Directive 2006/112, nutrition monitoring services provided with a therapeutic purpose and nutrition monitoring services without such an objective cannot be regarded as identical or similar from the point of view of the consumer and do not fulfil the same needs on the part of that consumer.

33 Any other interpretation would have the consequence of extending the scope of the exemption laid down in Article 132(1)(c) of Directive 2006/112 beyond the rationale reflected in the wording of that provision as well as the heading of Chapter 2 of Title IX of that directive. Any service performed in the exercise of a medical or paramedical profession, having, even in a very indirect or distant manner, the effect of preventing certain health conditions, would fall within the exemption laid down by that provision, which would not correspond with the intention of the EU

legislature and the requirement that such an exemption be interpreted strictly, as recalled in paragraph 22 of the present judgment. As the Advocate General observed in point 61 of her Opinion, a merely uncertain link with a health condition, without a specific risk of health impairment, cannot suffice in that regard.

34 In the light of the foregoing, it must be concluded that, subject to verification by the referring court, a nutrition monitoring service provided under conditions such as those at issue in the main proceedings is not such as to fall within the scope of the exemption laid down in Article 132(1)(c) of Directive 2006/112. Accordingly, there is no need to answer the second question.

35 As regards the first question, it cannot be ruled out that, in the light of the taxable nature of such a service, the referring court considers that the question whether or not it is independent of physical well-being and fitness services is relevant for the purpose of determining the respective tax treatment of those services.

36 Accordingly, it must be noted that although, in the context of proceedings referred to in Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, it is for those courts, which alone have jurisdiction, inter alia, to establish and assess the facts, to determine, in particular, whether or not a nutrition monitoring service provided under conditions such as those at issue in the main proceedings constitutes a supply of services independent of physical well-being and fitness services and to make all definitive findings of fact in that regard (judgement of 19 December 2018, *Mailat*, C?17/18, EU:C:2018:1038, paragraph 35 and the case-law cited), the Court may provide the national courts with all the guidance as to the interpretation of EU law which may be of assistance in adjudicating on the case pending before them (judgment of 17 January 2013, *BG? Leasing*, C?224/11, EU:C:2013:15, paragraph 33). From that point of view, the following considerations ought to be noted.

37 It follows from the Court’s case-law that where an economic transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether it gives rise to one or more supplies (see, to that effect, judgment of 25 February 1999, *CPP*, C?349/96, EU:C:1999:93, paragraph 28 and the case-law cited), given that, as a general rule, each supply must be regarded as a distinct and independent supply, as follows from the second subparagraph of Article 1(2) of Directive 2006/112 (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 23 and the case-law cited).

38 However, by way of exception to that general rule, first, the transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. This is why there is a single supply where several elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 23 and the case-law cited).

39 To that end, as the Advocate General observed in points 22 to 33 of her Opinion, it is necessary to identify the characteristic elements of the transaction in question (judgments of 29 March 2007, *Aktiebolaget NN*, C?111/05, EU:C:2007:195, paragraph 22, and of 18 January 2018, *Stadion Amsterdam*, C?463/16, EU:C:2018:22, paragraph 30), from the perspective of the average consumer (judgment of 19 July 2012, *Deutsche Bank*, C?44/11, EU:C:2012:484, paragraph 21 and the case-law cited). The body of evidence relied on for this purpose comprises various elements, the first of which, being of an intellectual nature and of decisive importance, seek to establish whether or not the elements of the operation in question are indivisible (judgment of 28 February 2019, *Sequeira Mesquita*, C?278/18, EU:C:2019:160, paragraph 30) and its economic

purpose, whether or not this is unique (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 34), and the second of which, being of a substantive nature and not of decisive importance (see, to that effect, judgment of 25 February 1999, *PPC*, C?349/96, EU:C:1999:93, paragraph 31), support, where appropriate, the analysis of the first elements, such as separate access (judgment of 17 January 2013, *BG? Leasing*, C?224/11, EU:C:2013:15, point 43) or joint access (judgment of 8 December 2016, *Stock '94*, C?208/15, EU:C:2016:936, point 33) to the services in question or the existence of a single invoice (order of 19 January 2012, *Purple Parking and Airparks Services*, C?117/11, not published, EU:C:2012:29, paragraph 34 and the case-law cited) or a separate invoice (judgment of 18 January 2018, *Stadion Amsterdam*, C?463/16, EU:C:2018:22, paragraph 27).

40 Secondly, an economic transaction constitutes a single supply where one or more elements are to be regarded as constituting the principal supply, while, by contrast, other elements are to be regarded as one or more ancillary supplies which share the tax treatment of the principal supply (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 29 and the case-law cited).

41 It follows from the Court’s case-law that the first criterion to be taken into consideration in this respect is the absence of a distinct purpose of the supply from the perspective of the average consumer. Thus, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 29 and the case-law cited).

42 The second criterion, which in fact constitutes evidence of the first, is that account should be taken of the respective value of each of the benefits making up the economic transaction, one being minimal or even marginal in relation to the other (see, to that effect, judgment of 22 October 1998, *Madgett and Baldwin*, C?308/96 and C?94/97, EU:C:1998:496, paragraph 24).

43 Thirdly, as the Advocate General pointed out in point 44 of her Opinion, under Directive 2006/112, ‘closely related activities’ in respect of an exempt supply share the exemption of that exempt supply in order to make that exemption fully effective. However, in the light of the considerations set out in paragraphs 30 and 31 of this judgment, this third type of exception to the general rule that each supply must be regarded as a distinct and independent supply is not applicable in the case of a nutrition monitoring service such as that provided in the main proceedings. It is therefore appropriate to dispense with the examination of that type of exception.

44 As regards the applicability to services such as those at issue in the main proceedings of the first type of exception, referred to in paragraph 38 of this judgment, it should be noted, on reading the order for reference, that the applicant in the main proceedings is engaged, inter alia, in the activity of managing and operating sports facilities and physical well-being and fitness activities and that it has supplied, through a professional duly qualified and certified for that purpose, nutrition monitoring services on its premises.

45 Moreover, it is clear from the information provided by the national court that the various services supplied by the applicant in the main proceedings were invoiced separately and that it was possible to benefit from some of them without recourse to others.

46 Thus, subject to verification by the referring court, it appears that physical well-being and fitness services, on the one hand, and nutrition monitoring, on the other, as provided by the applicant in the main proceedings, are not indivisibly linked within the meaning of the case-law referred to in paragraphs 38 and 39 of this judgment.

47 Supplies such as those at issue in the main proceedings should therefore be regarded, in principle, as not constituting a single supply of a complex nature.

48 As regards the applicability to services such as those at issue in the main proceedings of the second type of exception, referred to in paragraphs 40 to 42 of this judgment, it is important, in the present case, to note, on the one hand, the autonomous purpose of the dietary monitoring service from the perspective of the average consumer. Even if such dietary monitoring services were provided or could be provided in the same sports premises as physical well-being and fitness services, the purpose of the former is not a sporting one, but a health and aesthetic one, notwithstanding the fact that a dietary regime may have the effect of contributing to athletic performance. On the other hand, as the Advocate General pointed out in point 56 of her Opinion, in the case in the main proceedings, according to the applicant's invoice, 40% of the total monthly consideration payable by the client was attributable to nutritional advice, a percentage which clearly cannot be described as minimal or, a fortiori, marginal. Dietary monitoring services such as those at issue in the main proceedings cannot therefore be regarded as ancillary to the main services which constitute physical well-being and fitness services.

49 It follows that services such as those at issue in the main proceedings must, subject to verification by the national court, be regarded as distinct and independent of one another for the purposes of the application of Article 2(1)(c) of Directive 2006/112.

50 In the light of those findings, the answer to the questions raised is that Directive 2006/112 must be interpreted as meaning that, subject to verification by the referring court, a nutrition monitoring service provided, under circumstances such as those at issue in the main proceedings, by a certified and authorised professional in sports facilities, potentially in the context of programmes that also include physical well-being and fitness services, constitutes a separate and independent supply of services and is not capable of falling under the exemption laid down in Article 132(1)(c) of that directive.

Costs

51 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 (Third Chamber) hereby rules:

Council Directive 2006/112 of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, subject to verification by the referring court, a nutrition monitoring service provided by a certified and authorised professional in sports facilities, potentially in the context of programmes that also include physical well-being and fitness services, constitutes a separate and independent supply of services and is not capable of falling under the exemption laid down in Article 132(1)(c) of that directive.

[Signatures]

* Language of the case: Portuguese.