JUDGMENT OF THE COURT (Sixth Chamber)
16 January 2003 *

In Case C-398/99,

REFERENCE to the Court under Article 234 EC by the VAT and Duties Tribunal, Manchester (United Kingdom) for a preliminary ruling in the proceedings pending before that tribunal between

Yorkshire Co-operatives Ltd

and

Commissioners of Customs & Excise,

on the interpretation of Articles 11(A)(1)(a) and 11(C)(1) of the 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),

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric, Judges,

Advocate General: C. Stix-Hackl,
Registrar: D. Louterman-Hubeau, Head of Division,

after considering the written observations submitted on behalf of:

— Yorkshire Co-operatives Ltd, by J. Ghosh, Barrister, instructed by KPMG, Accountants,

— the United Kingdom Government, by R. Magrill, acting as Agent, assisted by R. Anderson, Barrister,

— the German Government, by W.-D. Plessing, acting as Agent,

— the Irish Government, by M.A. Buckley, acting as Agent, assisted by D. Moloney, BL,

— the Netherlands Government, by M.A. Fierstra, acting as Agent,

— the Commission of the European Communities, by R. Lyal, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Yorkshire Co-operatives Ltd, represented by J. Ghosh, of the United Kingdom Government, represented by R. Magrill, assisted by K. Parker QC, of the Irish Government, represented by D. Moloney, and the Commission, represented by R. Lyal, at the hearing on 21 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2001,

gives the following

Judgment

1 By order of 12 October 1999, received at the Court on 14 October 1999, the VAT and Duties Tribunal, Manchester, referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Articles 11(A)(1)(a) and 11(C)(1) of the 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; the 'Sixth Directive'),

2 The questions were raised in proceedings between Yorkshire Co-operatives Ltd ('Yorkshire') and the Commissioners of Customs and Excise ('the Commissioners'), the competent authority in the United Kingdom for collecting value

added tax ('VAT'), concerning the repayment of sums paid by Yorkshire by way of VAT.

The Community legislation

3 Article 11(A)(1) of the Sixth Directive provides:

'The taxable amount shall be:

(a) in respect of supplies of goods and services..., everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;

...'

4 Article 11(A)(2) and (3) lists the elements to be included in the taxable amount and those not to be so included. Under Article 11(A)(3)(b) 'price discounts and

rebates allowed to the customer and accounted for at the time of the supply' are not to be included.

5 Under the first paragraph of Article 11(C)(1) of the Sixth Directive:

'In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.'

The dispute in the main proceedings and the questions referred to the Court

6 Yorkshire is a co-operative society which carries on the business of a retailer of food and non-food goods. Between 1974 and 1996 Yorkshire accepted price-reduction coupons issued by various manufacturers. Those coupons were issued to the public either directly or in the form of cut-out coupons in newspapers and magazines. Each coupon either stated a sum of money or set out a means of calculating a sum of money and its terms enabled the customer to obtain from certain retailers the goods specified on the coupon at their retail price less the price reduction. The coupons also included instructions to the retailers as to the manner in which they were to proceed in order to obtain payment by the manufacturers of a sum equal to the nominal value of the coupons accepted.

7 The products covered by the coupons in question were always put on sale at the normal retail price, with the result that a customer without a coupon was required to pay the normal sale price.

8 Yorkshire included in its gross daily takings the sums received from manufacturers in exchange for price-reduction coupons collected from customers, thus declaring for VAT purposes the whole of the normal retail price of the products sold without deducting the amount of the price-reduction coupons. The price at which Yorkshire bought the products from the various manufacturers did not take account of the price-reduction coupons, and some products had even been purchased before the manufacturers issued such coupons.

9 On 2 December 1996 Yorkshire sought repayment from the Commissioners of a part of the VAT which it had paid in respect of the period from February 1974 to January 1996. Relying on the judgment in Case C-317/94 *Elida Gibbs* [1996] ECR I-5339, it claimed specifically that only the amounts paid by its customers constituted the consideration for the supply by it of goods during that period and that the amounts received from the manufacturers constituted refunds or reductions allowed by the latter on the initial purchase price. Those sums were therefore not to be included in the taxable amount. Furthermore, since no credit notes had been issued by the manufacturers to it, it was not required to adjust its input tax or to make any compensatory adjustment in its VAT declarations in connection with those supplies.

10 By letter dated 10 February 1997 the Commissioners rejected that request on the ground that Yorkshire had misinterpreted the *Elida Gibbs* judgment. They take the view that the taxable amount for the supply of goods by Yorkshire consists of the cash amounts paid by Yorkshire's customers plus the amounts paid by the manufacturers.

11 Yorkshire brought an action against that decision before the referring tribunal.

12 Taking the view that the resolution of the dispute before it turned on the interpretation of the Sixth Directive, the VAT and Duties Tribunal, Manchester, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) On the proper construction of Article 11(A)(1)(a) and 11(C)(1) of the Sixth Directive, what is the taxable amount, in relation to a supply of goods by a retailer in the position of the appellant to a customer, where:

(a) the manufacturer of the goods has sold them to the retailer (or, hypothetically, to a wholesaler who has sold them to the retailer),

(b) in the course of a sales promotion the manufacturer procures the issue of a coupon, the terms of which are:

(i) that the holder, on presenting the coupon to the retailer, may buy the goods from the retailer at a price which is less than the retailer's normal selling price by an amount ("the reduction") specified in or ascertainable in accordance with the terms of the coupon, and

(ii) that the manufacturer, when the retailer has sold the goods in accordance with the terms of the coupon and has presented the coupon to the manufacturer, will pay to the retailer a sum equal to the reduction,

(c) the retailer sells the goods to a customer on presentation of the coupon and on payment of the reduced price,

(d) the retailer presents the coupon to the manufacturer and is paid a sum equal to the reduction?

Is the taxable amount:

(i) the cash sum paid by the customer, or

(ii) the cash sum paid by the customer together with the sum equal to the reduction paid by the manufacturer?

2. If the answer to question 1 is in sense (i), must the retailer adjust his input tax in his returns of VAT in relation to the supply of the goods by the manufacturer (or, as the case may be, by the wholesaler) to him, where the manufacturer or other supplier has not issued a credit note to the retailer for the reimbursement of the reduction?'

The first question

13 It must first be borne in mind that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-340/99 *TNT Traco* [2001] ECR I-4109, paragraph 30).

14 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, *Bosman*, paragraph 61; and *TNT Traco*, paragraph 31).

15 In this case, as the Advocate General has observed at point 26 of her Opinion, the national tribunal has stated that no wholesalers were involved in the sales of the products for which Yorkshire accepted reduction coupons from the final consumers, so that the part of its first question concerning the participation of a wholesaler in the distribution chain is an irrelevant hypothesis for the purposes of resolving the main dispute. There is therefore no need for the Court to reply to that part of the first question.

16 The first question should therefore be understood as asking essentially whether, on a proper construction of Articles 11(A)(1)(a) and 11(C)(1) of the Sixth Directive, when, on the sale of a product, the retailer allows the final consumer to settle the sale price partly in cash and partly by means of a reduction coupon issued by the manufacturer of that product, and the manufacturer reimburses to the retailer the amount indicated on that coupon, the nominal value of that coupon should be included in the taxable amount in the hands of that retailer, or whether the taxable amount is constituted solely by the part of the price paid in cash by that consumer.

17 In order to reply to the question reformulated in that way, it should be noted that, in paragraph 45 of the judgment in Case C-427/98 *Commission* v *Germany* [2002] ECR I-8315, which deals *inter alia* with the determination of the taxable amount in the hands of manufacturers who issue reduction coupons such as those at issue in the main proceedings, the Court held, essentially, that such a manufacturer may be regarded as a third party as regards the transaction between the retailer who receives reimbursement of the value of the coupon and the final consumer who used such a coupon.

18 In paragraph 46 of the judgment in *Commission* v *Germany*, the Court pointed out that, as regards the supply made by the retailer receiving the reimbursement, the fact that a portion of the consideration received for that supply was not actually paid by the final consumer himself but was made available on behalf of the final consumer by a third party not connected with that transaction is immaterial for the purposes of determining the taxable amount in the hands of that retailer.

19 The Court added, in paragraph 57 of *Commission* v *Germany*, that assessment of reduction coupons for the purpose of calculating VAT is determined by their legal and financial characteristics, and that the taxable amount in the hands of the

trader who accepts them may not be less than the sum of money which he actually receives for the supply by him.

20 The Court concluded, in paragraph 58 of *Commission* v *Germany*, that, where a manufacturer organises a promotional operation by means of reduction coupons, the nominal amount of which it reimburses to the retailers who have accepted them, the subjective consideration within the meaning of Article 11(A)(1)(a) of the Sixth Directive received by the retailer comprises the whole of the price of the goods, which is paid in part by the final consumer and in part by the manufacturer. The coupons substantiate the retailer's right to receive from the manufacturer a reimbursement in the amount of the reduction granted to the final consumer. It follows that the sum represented by the nominal value of those coupons constitutes for the retailer an asset item realised on their reimbursement and that they must be treated, to the extent of that value, as a means of payment.

21 In the light of those considerations, the Court held, in paragraph 59 of *Commission* v *Germany*, that the taxable amount in the hands of the retailer for the sale to the final consumer was the full retail price, namely the price paid by the final consumer plus the amount reimbursed to the retailer by the manufacturer.

22 Since the reduction coupons at issue in *Commission* v *Germany*, issued in the context of promotional operations by manufacturers, were similar to those accepted by Yorkshire during the period at issue in the dispute before the referring tribunal, the conclusion must be that the interpretation reached by the Court in paragraph 59 of its judgment in *Commission* v *Germany* is transposable to a case such as that in point in the main proceedings.

23 The answer to the first question must therefore be that, on a proper construction of Articles 11(A)(1)(a) and 11(C)(1) of the Sixth Directive, when, on the sale of a product, the retailer allows the final consumer to settle the sale price partly in cash and partly by means of a reduction coupon issued by the manufacturer of that product, and the manufacturer reimburses to the retailer the amount indicated on that coupon, the nominal value of that coupon must be included in the taxable amount in the hands of that retailer.

24 Having regard to the reply given to the first question, there is no need to answer the second.

Costs

25 The costs incurred by the United Kingdom, German, Irish and Netherlands Governments, and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national tribunal, the decision on costs is a matter for that tribunal.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the VAT and Duties Tribunal, Manchester, by order of 12 October 1999, hereby rules:

On a proper construction of Articles 11(A)(1)(a) and 11(C)(1) of the 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, when, on the sale of a product, the retailer allows the final consumer to settle the sale price partly in cash and partly by means of a reduction coupon issued by the manufacturer of that product, and the manufacturer reimburses to the retailer the amount indicated on that coupon, the nominal value of that coupon must be included in the taxable amount in the hands of that retailer.

Schintgen Gulmann Skouris

Macken Colneric

Delivered in open court in Luxembourg on 16 January 2003.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber