Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

20 December 2017*

[Text rectified by order of 30 January 2018]

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 135(1)(a) — Exemptions — Taxes levied in breach of EU law — Obstacles to the refund of an overpayment of VAT — Article 4(3) TUE — Principles of equivalence, effectiveness and sincere cooperation — Rights conferred on individuals — Expiry of the limitation period for the tax liability — Effects of a judgment of the Court — Principle of legal certainty)

In Case C-500/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 19 May 2016, received at the Court on 16 September 2016, in the proceedings

Caterpillar Financial Services sp. z o.o.

In the presence of

Dyrektor Izby Skarbowej w Warszawie,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: K. Malacek,

having regard to the written procedure and further to the hearing on 23 October 2017,

after considering the observations submitted on behalf of:

– [As rectified by order of 30 January 2018] Caterpillar Financial Services sp. z o.o., by M. Szafarowska, doradca podatkowy, and M. Sobońska, adwokat,

– [As rectified by order of 30 January 2018] the Dyrektor Izby Skarbowej w Warszawie, by J. Kaute, radca prawny, and B. Kołodziej,the Polish Government, by B. Majczyna and A. Kramarczy-Szaładzińska, acting as Agents,

* Language of the case: Polish.

– the European Commission, by K. Herrmann and M. Owsiany-Hornung and by R. Lyal, 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 the principle of sincere cooperation, laid down in Article 4(3) TEU, and of the principles of effectiveness and equivalence.

2 The request has been made in proceedings between Caterpillar Financial Services sp. z o.o. ('Caterpillar') and the Dyrektor Izby Skarbowej w Warszawie (Director of the Tax Chamber, Warsaw, Poland) ('the Director') concerning the latter's refusal to act on Caterpillar's request for a refund of an overpayment of value added tax (VAT) resulting from a tax calculation which does not comply with EU law.

Legal context

European Union law

3 Article 135(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT directive'), included in Title IX 'Exemptions', Chapter 3, entitled 'Exemptions for other activities', of that directive, provides:

'Member States shall exempt the following transactions:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents'.

Polish law

4 The ustawa ordynacja podatkowa (Law establishing the Tax Code) of 29 August 1997 (Dz. U. of 1997, No 137, position 926) ('the Tax Code'), in the version applicable to the facts in the main proceedings, provides in Article 70:

'(1) The limitation period for tax liability shall be five years from the end of the calendar year in which the time limit for paying the tax expired.

…

(6) The limitation period for the tax liability shall not start to run — and, if it has already started to run, is suspended — on the date of the following events:

…

(2) the bringing of an action before an administrative tribunal against a decision relating to such liability;

…'

5 Article 72(1) of the Tax Code is worded as follows:

‘The following shall be regarded as overpayment:

(1) tax which is overpaid or paid unduly;

…’

6 Article 74(1) of that code reads as follows:

‘If a tax overpayment results from a judgment of the Trybunał Konstytucyjny [Constitutional Court, Poland] or judgment of the Court of Justice of the European Union, and the taxable persons, whose tax liability arises in a manner provided for in Article 21(1)(1) …, has submitted one of the declarations referred to in Article 73(2), or another declaration showing the amount of tax liability, the taxable person shall determine the amount of the overpayment in a request for the refund thereof, and submit a corrected declaration at the same time.’

7 Article 75(1) of that code provides:

‘Where the taxable person challenges whether the tax was properly levied by the payer or the amount of the tax levied, he may bring an application seeking to confirm the overpayment.’

8 Article 77(1) of that code states:

‘Overpayment shall be refunded within:

…

(2) 30 days from the date of the decision confirming the overpayment or fixing the amount of the overpayment;

…

(4) 30 days from the submission of a request as referred to in Article 74;

…’

9 Article 79(2) of the Tax Code provided:

‘The right to submit a request for confirmation of overpayment or refund of overpayment shall expire after the limitation period for the tax liability expires, save where tax law lays down a different procedure refunding the tax.’

10 Article 80(1) of that code reads as follows:

‘The right to a refund of tax overpayment shall expire after five years from the end of the calendar year in which the time limit for refunding it expired.’

11 Article 81(1) of that code states:

‘Unless provided otherwise, the taxable persons, payers and collectors may correct a declaration submitted previously.’

12 Article 240(1)(1) of that code provides:

'Where a final decision has been adopted, the proceedings shall be reopened if the following conditions are met:

…

(11) a judgment of the Court of Justice of the European Union shall influence the contents of the decision.'

13 Article 79(2) of the Tax Code, in its amended version, which entered into force on 1 January 2016, provides:

'Following the expiry of the limitation period for tax debts, the right expires to lodge a request for determination of overpayment and a request for a refund of an overpayment, unless tax legislation provides for some other method of procedure for tax refunds.'

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

14 Caterpillar, a company incorporated under Polish law which, as lessor, concludes leasing agreements in the context of its business, offers lessees the possibility of providing them with insurance covering the subject matter of the leasing agreement.

15 After the lessees express their wish to benefit from that possibility, the insurance contracts are taken out with an insurance company by Caterpillar, which bears the costs incurred in concluding those contracts, but charges the lessees the costs of the insurance contributions, without adding any mark-up. In the invoices drawn up at the address of the lessees, Caterpillar exempted those contributions from VAT.

16 Following a judgment of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) of 8 November 2010, in which it was held that the person providing the leasing service must include in the taxable amount of those services the costs of insuring the subject matter of the lease, and a notification from the Dyrektor Urzędu Kontroli Skarbowej (Director of the Tax Inspection Authority, Poland) informing Caterpillar of the intention to initiate an inspection in relation to the period from December 2005 to December 2006, the latter submitted corrected invoices stating the amounts relating to tax arrears, plus interest, and, on 30 December 2010, paid the VAT on the corresponding insurance contributions.

17 After the delivery of the judgment of 17 January 2013, *BGŻ Leasing* (C-224/11, EU:C:2013:15), following the reference to the Court for a preliminary ruling by the Naczelny Sąd Administracyjny (Supreme Administrative Court), in the context of a dispute relating to the refusal by the Polish tax authorities to exempt from VAT the transaction consisting in providing insurance cover for a property which is the subject matter of a lease, on 11 March 2013, Caterpillar requested from the Naczelnik Drugiego Mazowieckiego Urzędu Skarbowego w Warszawie (Director of Second Mazovian Tax Office in Warsaw, Poland) the refund of the overpayment of VAT relating to the period from December 2005 to December 2011.

18 By decision of 11 April 2013, the Director of Second Mazovian Tax Office in Warsaw refused to initiate the procedure for refunding an overpayment of VAT in relation to individual months from December 2005 to November 2007, citing expiry of the limitation period provided for in Article 70(1) of the Tax Code. By contrast, it refunded the overpayment of VAT relating to the period from December 2007 to December 2011.

19 The Director, ruling on an objection against the decision of the Director of Second Mazovian Tax Office in Warsaw, upheld the latter's decision. In the grounds for its order, the Director stated that the limitation period for tax liability relating to VAT for the period covered by Caterpillar's request for a refund of the overpayment of VAT had expired on 31 December 2011 (concerning the months of December 2005 and February 2006 covered by the request) and on 31 December 2012 (concerning the months of January and November 2007 covered by the request).

20 By application lodged against that order before the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw, Poland), Caterpillar alleged, in essence, an incorrect interpretation of Article 74 of the Tax Code, Article 9 of the Polish Constitution and Article 4(3) TEU.

21 By judgment of 10 September 2014, that court annulled the Director's order on the ground that the tax authorities should have issued not a decision refusing to initiate the procedure but a decision refusing a refund of the overpayment of VAT. As regards substance, the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw) held that Caterpillar was not justified in requesting the refund of the overpayment of VAT on the basis of Article 74 of the Tax Code, after the expiry of the limitation period of five years from the tax liability provided for in Article 70(1) of that code. That court also held that that limitation period was not contrary to the EU law principle of effectiveness.

22 Both Caterpillar and the Director brought an appeal against that judgment before the referring court, the Naczelny Sąd Administracyjny (Supreme Administrative Court).

23 The referring court is of the view that the five-year limitation period for the refund of VAT wrongly paid, provided for in Article 70(1) of the Tax Code and read in conjunction with Article 79(2) of that code, cannot, in principle, in the light of the Court's settled case-law, be regarded as incompatible with the principle of effectiveness.

24 However, according to the referring court, Polish law does not provide for any legal basis allowing a party, who has relied on national institutions for a finding that a tax was payable, to receive a refund of that tax, levied in infringement of EU law by the tax authorities, after the expiry of the limitation period for the right to submit such a request for a refund.

25 In those circumstances, the Naczelny Sąd Administracyjny (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Having regard to the interpretation of the Court of Justice in its judgment of 17 January 2013 in Case C-224/11, *BGŻ Leasing* [(C-224/11, EU:C:2013:15)], do the principles of effectiveness, sincere cooperation and equivalence expressed in Article 4(3) of the TEU, or any other principle laid down in EU law, preclude, in the field of value added tax, national legislation or a national practice which precludes the refund of overpayment resulting from the collection of VAT contrary to EU law where, as a result of the action of the national authorities, an individual was unable to exercise his or her rights until after the limitation period for the tax liability had expired?'

Consideration of the question referred

26 By its question, the referring court asks, in essence, whether the principles of equivalence and effectiveness, read in the light of Article 4(3) TEU, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which allows a request for a refund of the overpayment of VAT to be refused where that request was submitted by the taxable person after the expiry of the five-year limitation period although the Court held, after the expiry of that period, that the payment of the VAT which is the subject of that request for a refund was not payable.

27 It is apparent from the order for reference that that question is referred in the light of circumstances, such as those at issue in the main proceedings, in which the taxable person claims that it made that overpayment only having regard to the case-law established by the referring court, prior to the judgment of 17 January 2013, *BGŻ Leasing* (C-224/11, EU:C:2013:15), and to the prospect of an imminent review carried out by the competent tax authority.

28 First of all, it must be noted that the Member States are obliged, under, inter alia, the principle of sincere cooperation, laid down in the first subparagraph of Article 4(3) TEU, to ensure, in their respective territory, the application of and compliance with EU law and that, under the second subparagraph of Article 4(3) TEU, the Member States are to take any appropriate measure, general or particular, to ensure fulfilment of the obligations resulting from the acts of the institutions of the Union (see, to that effect, judgment of 14 September 2017, *The Trustees of the BT Pension Scheme*, C-628/15, EU:C:2017:687, paragraph 47).

29 In its judgment of 17 January 2013, *BGŻ Leasing* (C-224/11, EU:C:2013:15), the Court held, interpreting Article 2(1)(c) of the VAT directive, that it was for the referring court to determine whether, in the light of the particular circumstances of the case that gave rise to that judgment, the supply of insurance services for a leased item and the supply of the leasing services themselves were so closely linked that they should be regarded as constituting a single supply or whether, on the contrary, they constituted independent services. In the event that those supplies of services are regarded as being separate, the Court held, interpreting Article 28 and Article 135(1)(a) of the VAT directive, that when a lessor insures himself the subject matter of the leased item and re-invoices the exact cost of the insurance to the lessee, such a transaction constitutes, in circumstances such as those at issue in the main proceedings, a transaction exempt from VAT.

30 In this case, as is apparent from the file before the Court, following the delivery of that judgment of the Court, the Polish tax authorities refused to initiate a procedure for the refund of the overpayment of VAT in relation to the period between December 2005 and November 2007, on the ground that the five-year limitation period, provided for in Article 70(1) of the Tax Code, had expired. Although the applicant in the main proceedings contests the applicability of that limitation period to requests for a refund of the overpayment of VAT, it is however apparent from the order for reference that that period set out in Article 70(1) of the Tax Code must, according to the referring court's assessment, be read in conjunction with Article 79(2) of that code and it therefore applies to those requests for a refund.

31 As regards, first, the effects of a preliminary ruling, it should be noted that, in accordance with settled case-law, the interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, gives to a rule of EU law clarifies and, where necessary, defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the delivery of the judgment ruling on the request for interpretation, provided that in other respects the conditions under which an action relating to the application of that rule may be brought before the courts having jurisdiction are satisfied (judgment of 14 April 2015, *Manea*, C-76/14, EU:C:2015:216, paragraph 53 and the case-law cited).

32 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the European Union legal order, be moved to restrict the opportunity to rely on a provision which it has interpreted (judgment of 14 April 2015, *Manea*, C-76/14, EU:C:2015:216, paragraph 54 and the case-law cited).

33 It must be stated that the Court did not limit the temporal effects of the judgment of 17 January 2013, *BGŻ Leasing* (C-224/11, EU:C:2013:15).

34 It follows that the provisions interpreted by the Court in that judgment must, in principle, be understood and applied in conformity with that interpretation from the date of their entry into force.

35 It follows, secondly, from settled case-law that the right to a refund of charges levied in a Member State in breach of the rules of EU law is the consequence and complement of the rights conferred on individuals by provisions of EU law as interpreted by the Court. The Member State is therefore required in principle to repay charges levied in breach of EU law (judgment of 6 September 2011, *Lady & Kid and Others*, C-398/09, EU:C:2011:540, paragraph 17 and the case-law cited).

36 However, the Court has held, on several occasions, that the problem of the repayment of charges paid though not due is settled in different ways in the Member States, and even within a single Member State, according to the various kinds of taxes or charges in question. In certain cases, objections or claims of that kind are subject to specific procedural conditions and time limits under the law with regard both to complaints submitted to the tax authorities and to legal proceedings. In other cases, claims for repayment of charges paid but not due must be brought before the ordinary courts, mainly in the form of actions for recovery of sums paid but not owed, such claims being available for varying lengths of time, in some cases for the limitation period laid down under the general law (judgment of 17 June 2004, *Recheio — Cash & Carry*, C-30/02, EU:C:2004:373, paragraph 16 and the case-law cited).

37 Therefore, in the absence of harmonised rules governing the reimbursement of charges imposed in breach of EU law, the Member States retain the right to apply procedural rules provided for under their national legal system, in particular concerning limitation periods, subject to observance of the principles of equivalence and effectiveness (judgment of 8 September 2011, *Q-Beef and Bosschaert*, C-89/10 and C-96/10, EU:C:2011:555, paragraph 34).

38 In order to determine whether the principle of equivalence has been complied with in the case in the main proceedings, it is therefore necessary to examine whether there exists, in addition to a limitation rule, such as that at issue in the main proceedings, applicable to actions intended to ensure that the rights derived by individuals from EU law are safeguarded under domestic law, a limitation rule applicable to domestic actions and whether, having regard to their purpose and essential characteristics, the two limitation rules may be considered similar (judgment of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 20 and the case-law cited).

39 As is apparent from the written observations of the Polish Government and the observations of the Director submitted during the oral part of the procedure before the Court, which were not challenged by the applicant in the main proceedings, in Poland, there is a uniform application of the same rules to requests for a refund of the overpayment of tax submitted in the context of actions seeking to safeguard, under national law, rights which individuals derive from EU law or from domestic actions. In so far as the Tax Code does not make provision for any specific provisions applicable to either of those types of action, it therefore appears that the limitation period provided for in Article 70(1) of the Tax Code is applicable to both types of action.

40 Since that limitation rule applies in the same way both to domestic actions and to actions seeking to safeguard rights which individuals derive from EU law, it cannot be considered to be contrary to the principle of equivalence.

41 As regards the principle of effectiveness, it should be noted that the Member States are responsible for ensuring that the rights conferred by EU law are effectively protected in each case and that that principle requires, in particular, that the tax authorities of the Member States do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (see, to that effect, judgments of 8 September 2011, *Q-Beef and Bosschaert*, C-89/10 and C-96/10, EU:C:2011:555, paragraph 32, and of 14 September 2017, *The Trustees of the BT Pension Scheme*, C-628/15, EU:C:2017:687, paragraph 59).

42 The Court has stated that it is compatible with EU law to lay down reasonable time limits for bringing proceedings in the interests of legal certainty which protects both the individual and the authorities concerned, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see, to that effect, judgment of 8 September 2011, *Q-Beef and Bosschaert*, C-89/10 and C-96/10, EU:C:2011:555, paragraph 36). By way of example, limitation periods of three years (judgment of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 28) or two years (judgment of 15 December 2011, *Banca Antoniana Popolare Veneta*, C-427/10, EU:C:2011:844, paragraph 25), have been held to be compatible with the principle of effectiveness.

43 Therefore, the five-year limitation period, provided for in Article 70(1) of the Tax Code, must a fortiori be considered to be, in principle, consistent with the principle of effectiveness, in so far as it is such as to enable any normally attentive taxable person validly to assert the rights he derives from EU law.

44 As regards the principle of sincere cooperation, set out in Article 4(3) TEU, it must be noted that, where a limitation rule provided for in a national tax code is consistent with the principles of equivalence and effectiveness, it cannot be considered to infringe the principle of sincere cooperation. In those circumstances, it cannot be claimed that the Member State concerned, by applying that limitation rule, undermines the achievement of the Union's aims.

45 Thirdly, it should be noted that, according to the Court, EU law precludes a national authority from relying on the expiry of a reasonable limitation period only if the conduct of the national authorities combined with the existence of a limitation period result in depriving a person of the opportunity to enforce his rights before the national courts (see, to that effect, judgment of 8 September 2011, *Q-Beef and Bosschaert*, C-89/10 and C-96/10, EU:C:2011:555, paragraph 51 and the case-law cited).

46 It is therefore necessary to examine whether, in circumstances such as those at issue in the main proceedings, a taxable person is regarded as having been prevented from exercising his rights before the national courts.

47 In that regard, in order to claim that it was deprived of the possibility to exercise its rights, Caterpillar invokes, first, a judgment, in a case in which it was not a party, of the Naczelny Sąd Administracyjny (Supreme Administrative Court) and, secondly, a notification from the Director of the tax inspectorate, sent to Caterpillar, informing the latter of his intention to carry out a tax review relating to the period from December 2005 to December 2006.

48 In the context of the oral stage of the procedure before the Court, Caterpillar claimed that awareness of a judgment of the highest administrative court in Poland, which was unfavourable to it, together with the announcement of an imminent tax review, influenced its decision to pay to the tax authorities amounts corresponding to tax arrears. Caterpillar expressed that it was convinced of the 'futility', in that context, of contesting the compatibility with EU law of the collection of VAT relating to the insurance costs connected with lease contracts.

49 However, the subjective conviction not to be able to act other than by paying the VAT relating to the insurance costs connected with lease contracts cannot be treated as an objective impossibility to act otherwise.

50 In this case, Caterpillar had the possibility of refusing to pay the tax arrears, since it had initially considered that those insurance costs were exempt from VAT, and to contest any order for payment by way of a legal action, or to pay the tax arrears and bring an action before a national court to obtain reimbursement of the undue payment within the limitation period, without waiting for a possible interpretation by the Court of the provisions of the VAT directive. However, it must be noted that Caterpillar did not invoke any of those possibilities.

51 It follows that the delivery of the judgment of the Court of 17 January 2013, *BGŻ Leasing* (C-224/11, EU:C:2013:15), which was after the expiry of the limitation period, provided for in Article 70(1) of the Tax Code, does not allow it to be concluded that the applicant in the main proceedings could not assert its rights before the expiry of that period.

52 In the light of the foregoing, the answer to the question referred is that the principles of equivalence and effectiveness, read in the light of Article 4(3) TEU, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a request for a refund of an overpayment of VAT to be refused where that request was submitted by the taxable person after the expiry of the five-year limitation period, although it follows from a judgment of the Court, delivered after the expiry of that period, that the payment of the VAT which is the subject of that request for a refund was not payable.

Costs

53 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 (Second Chamber) hereby rules:

The principles of equivalence and effectiveness, read in the light of Article 4(3) TEU, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a request for a refund of an overpayment of value added tax to be refused where that request was submitted by the taxable person after the expiry of the five-year limitation period, although it follows from a judgment of the Court, delivered after the expiry of that period, that the payment of the VAT which is the subject of that request for a refund was not payable.

[Signatures]