JUDGMENT OF THE COURT (Fourth Chamber)

10 July 2008 *

In Case C-484/06,

REFERENCE for a preliminary ruling under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands), made by decision of 24 November 2006, received at the Court on 27 November 2006, in the proceedings

Fiscale eenheid Koninklijke Ahold NV

v

Staatssecretaris van Financiën,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of Chamber, G. Arestis, R. Silva de Lapuerta, E. Juhász and T. von Danwitz (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: E. Sharpston,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 13 December 2007,

after considering the observations submitted on behalf of:

— the Fiscale eenheid Koninklijke Ahold NV, by G.C. Bulk, adviseur, and M. Hamer, advocaat,

— the Netherlands Government, by H.G. Sevenster and M. de Grave, acting as Agents,

— the Greek Government, by O. Patsopoulou, M. Tassopoulou and G. Skiani, acting as Agents,

— the Polish Government, by E. Ośniecka-Tamecka, acting as Agent,

— the United Kingdom Government, by V. Jackson, acting as Agent, and by I. Hutton, Barrister,

— the Commission of the European Communities, by D. Triantafyllou, A. Weimar and P. van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2008,

gives the following

Judgment

1 The reference for a preliminary ruling relates to the interpretation of Article 22(3)(b) and (5) and Article 11A 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), as amended by Council Directive 91/680/EEC of 16 December 1991 (OJ 1991 L 376, p. 1, the 'Sixth Directive').

2 This reference was made in proceedings brought by the Fiscale eenheid Koninklijke Ahold NV, a fiscal entity to which the company Albert Heijn BV belongs, against the Staatssecretaris van Financiën (Secretary of State for Finance, Netherlands) following the rejection by the Inspecteur van de Belastingdienst (Inspector of Taxes, the 'Inspector') of its complaint brought to obtain repayment of a sum of EUR 1 414 of value added tax ('VAT').

Legal context

Community legislation

3 Article 2 of the First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p 14, the 'First Directive') provides:

'The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.

On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components.

The common system of value added tax shall be applied up to and including the retail trade stage.

…'

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

'The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, 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'.

5 Article 22(3)(a) and (b), (4)(b) and (5) of the Sixth Directive, state:

'3. (a) Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. … A taxable person shall keep a copy of every document issued.

…

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

…

4. (a) …

(b) The return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions relative to such tax and deductions and the value of any exempt transactions.

…

5. Every taxable person shall pay the net amount of the value added tax when submitting the regular return. Member States may, however, set a different date for the payment of that amount or may demand an interim payment.'

6 Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388 with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (OJ 2002 L 15, p. 24), which Member States had to bring into force with effect from 1 January 2004, amended Article 22(3)(b) of the Sixth Directive, entailing, inter alia, inclusion of a 10th indent worded as follows:

'(b) Without prejudice to the specific arrangements laid down by this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a):

…

— the VAT amount payable, except where a specific arrangement is applied for which this Directive excludes such a detail,

— …'

National legislation

7 Article 35 of the Law on turnover tax (Wet op de omzetbelasting) of 28 June 1968 (Stb. 1968, No 329), in the version applicable to the dispute in the main proceedings, is worded as follows:

'1. In respect of all goods and services supplied to another trader or to a legal person, other than a trader, the trader shall issue a numbered and dated invoice which shall state clearly and unambiguously:

…

i. The remuneration.

j. The amount of the tax payable in respect of the supply of goods or services. No reference may be made to another amount of tax.

…’

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

8 The company Albert Heijn BV, belonging to the Fiscale eenheid Koninklijke Ahold NV, which constitutes a fiscal entity for the levying of the turnover tax, operates supermarkets in which it offers a standard range of foodstuffs or other products.

9 At the material time, namely October 2003, the applicant in the main proceedings calculated and declared the VAT in respect of sales in its supermarkets, according to its usual practice, on the basis of the total amount, according to each till receipt (or ‘shopping basket’), paid by a customer buying various articles at the same time.

10 Each of the amounts on those till receipts was rounded arithmetically to the nearest cent (EUR). The operation of arithmetic rounding means that amounts in which the third decimal place is equal to or exceeds five are rounded up to the nearest cent and amounts in which the third decimal place is less than five are rounded down to the nearest cent. This procedure was followed by the applicant in the main proceedings in all its branches.

11 However, at two branches during the relevant period the applicant also employed another method, which consisted of calculating the amount of VAT payable, not per till receipt, but separately for each item sold to the customer, by rounding the amount thus calculated per item down to the nearest cent.

12 The applicant in the main proceedings accordingly calculated that, for those two branches during the relevant period, the result of that method of rounding down per item was that it should have paid EUR 1 414 less than the amount stated on its VAT return and which it in fact paid in accordance with its usual practice of rounding per till receipt.

13 The applicant in the main proceedings applied for repayment of the amount of EUR 1 414 of VAT which, in its opinion, it had wrongly paid for the two branches in question. When that application was rejected, the applicant brought a complaint before the Inspector with the claim that 'rounding per basket' was incorrect and that the amount of the tax calculated per item should, when necessary, be rounded down to the nearest amount.

14 The Inspector rejected that complaint. The applicant in the main proceedings brought an action seeking annulment of that rejection before the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam). That court dismissed the action as unfounded by judgment of 16 August 2004. The applicant then brought an appeal against that judgment before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

15 In the order for reference, the Hoge Raad der Nederlanden states that, in the opinion of the Gerechtshof te Amsterdam, even when the result of using the arithmetic method is a rounding up to the nearest cent, that method is, on balance, more consistent with the principle that the tax must be strictly proportional to the price than a method which prescribes rounding down to the nearest cent.

16 The referring court adds that, in calculating the VAT, it is permissible for each supply of goods or each provision of services to adopt either the procedure of arithmetic rounding of the tax or the method of rounding the total amount of a certain number of supplies or service provisions taken together, namely, in this case, per basket. According to that court, both those methods are laid down, as from 1 July 2004, in Article 5 a of the implementing decree of 1968 on turnover tax (Uitvoeringsbesluit omzetbelasting 1968).

17 The questions arising from the main proceedings are whether it is a requirement of the First and Sixth Directives that the method of rounding down per item be permitted and, more particularly, whether the provisions of the first and second paragraphs of Article 2 of the First Directive and of Articles 11A(1)(a) and 22(3)(b), first paragraph, in the version applicable before 1 January 2004, and 22(5) of the Sixth Directive are founded on a method which necessitates the amount of VAT being calculated on each transaction, even if various transactions are referred to on one invoice and/or are included in one and the same VAT return.

18 In those circumstances, the Hoge Raad der Nederlanden decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the rounding of VAT amounts governed solely by national law, or — particularly in view of the provisions [of Article 22(3)(b), tenth indent, and (5), and Article 11A, of the Sixth Directive] — is it a matter for Community law?

(2) If the latter is the case, does it follow from the aforementioned provisions of the Directives that the Member States are required to permit rounding down per article, even if different supplies are included in one invoice and/or one tax return?'

Application for reopening of the oral procedure

19 By application lodged at the Registry of the Court on 10 March 2008, the applicant in the main proceedings applied for the reopening of the oral procedure on the ground that the case may not be dealt with on the basis of an argument which has not been

debated between the parties, in so far as the Opinion of the Advocate General is based on a factual misconception.

20 It must be borne in mind that the Court may of its own motion, on a proposal from the Advocate General, or at the request of the parties, reopen the oral procedure in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see order in Case C-17/98 *Emesa Sugar* [2000] ECR I-665, paragraph 18; Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 25; Case C-466/03 *Albert Reiss Beteiligungsgesellschaft* [2007] ECR I-5357, paragraph 29; and Case C-491/06 *Danske Svineproducenter* [2008] ECR I-3339, paragraph 21).

21 However, in its application to have the oral procedure reopened, the applicant in the main proceedings states that it several times at the hearing drew attention, inter alia, to what were, in its opinion, the correct facts in relation to the effects of rounding.

22 Having heard the Advocate General, the Court considers in this case that it has all the information required to reply to the questions referred and that, accordingly, there is no need to order the reopening of the oral procedure.

23 Consequently, the application for an order reopening the oral procedure must be dismissed.

The questions referred for a preliminary ruling

The first question

24 In reply to the first question, the provisions of the First and Sixth Directives contain no explicit rule concerning rounding of amounts of VAT. In particular, the Sixth Directive is silent on that matter.

25 It is true that the substantive content both of the provisions of Article 22(3)(b) of the Sixth Directive, both in the version applicable at the material time and in the version amended by Directive 2001/115 which entered into force on 1 January 2004 and which, consequently, is not applicable to the main proceedings, and of the provisions of Article 22(5) is capable of referring by implication to rounded amounts of VAT, as is submitted by the referring court. However, it is common ground that those provisions do not lay down any express rule as to the manner in which rounding must be carried out.

26 The same is true of Article 11A(1)(a) of the Sixth Directive. That provision restricts itself to determining the taxable amount and it refers only to the price of the goods supplied and the services performed as consideration for the price.

27 That finding is in no way affected by the requirement that the objectives and context of each of the provisions referred to in the two preceding paragraphs must be taken into account in their interpretation (see, in particular, Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, para-

graph 203 and case-law there cited; Case C-12/00 *Commission* v *Spain* [2003] ECR I-459, paragraph 55; and Case C-437/06 *Securenta* [2008] ECR I-1597, paragraph 35).

28 It is clear from the Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16) that the objective of the turnover tax is to achieve equal conditions of taxation for the same supply, no matter in which Member State it is carried out (Case C-475/03 *Banca Popolare di Cremona* [2006] ECR I-9373, paragraphs 20 and 23). In that context, the purpose of Article 11A(1)(a) of the Sixth Directive is to guarantee uniformity, in the Member States, of the amount which is to be taxable.

29 The same applies to Article 22(3)(b) of the Sixth Directive, in relation to which it is evident from the fourth recital in the preamble to Directive 2001/115 that the purpose of the particulars which must appear on invoices is to ensure that the internal market functions properly. Lastly, the objective of Article 22(4) and (5) of the Sixth Directive is to ensure that the tax authority has available to it all the information required in order to calculate and collect the exact amount of tax payable.

30 It follows that it cannot be inferred from either the wording of those provisions or their objectives that a specific method of rounding has been laid down by Community law.

31 Consequently, in the absence of any Community legislation, it is for the legal systems of the Member States to determine, within the limits of Community law, the method and rules for rounding of an amount declared by way of VAT.

32 When Member States establish or accept a particular method of rounding, they are obliged to observe the principles governing the common system of VAT, such as those of fiscal neutrality and proportionality. It does not, however, follow from observance of those recognised principles of the Community legal system that the question as to which specific method of rounding should be used is itself within the scope of Community law.

33 Having regard to all of the foregoing, the answer to be given to the first question is that, in the absence of specific Community legislation, it is for Member States to decide on the rules and methods of rounding amounts of VAT, those States being bound, when making that decision, to observe the principles underpinning the common system of VAT, in particular those of fiscal neutrality and proportionality.

The second question

34 By its second question, the referring court seeks to know whether the directives entail a specific obligation that Member States must permit taxable persons to round down per item the amount of VAT.

35 In the light of the answer given to the first question, the Court must, in order to give a useful answer to the referring court in relation to the second question, determine whether Community law, as it emerges from the principles underpinning the common system of VAT, in particular the principles of fiscal neutrality and proportionality, obliges a Member State to permit taxable persons to round down per item the amount of VAT payable to the tax authority. Such an obligation presupposes that there is only one method of rounding, namely that involving rounding down per item the amount of the tax, which is capable of satisfying such requirements.

36 One of the consequences of the principle of fiscal neutrality, which is the reflection in the field of VAT of the principle of equal treatment, is that taxable persons must not be treated differently, with regard to the method of rounding applied when VAT is calculated, in respect of similar services which are in competition with each other (see, to that effect, Joined Cases C-443/04 and C-444/04 *Solleveld and van den Hout-van Eijnsbergen* [2006] ECR I-3617, paragraph 35 and case-law there cited). By virtue of the same principle, the amount of VAT to be collected by the tax authority must correspond exactly to the amount of VAT declared on the invoice and paid by the final consumer to the taxable person (see, to that effect, Case C-317/94 *Elida Gibbs* [1996] ECR I-5339, paragraph 24).

37 Accordingly, that principle does not entail any requirement that a particular method of rounding be applied, in so far as the method chosen by the Member State concerned ensures that the amount of VAT to be collected by the tax authority corresponds exactly to the amount of VAT declared on the invoice and paid by the final consumer to the taxable person.

38 As regards the principle of proportionality, it is clear from the first paragraph of Article 2 of the First Directive that VAT is a general tax on consumption exactly proportional to the price of goods and services (see, in particular, *Banca Popolare di Cremona*, paragraph 21, and Joined Cases C-283/06 and C-312/06 *KÖGÁZ and Others* [2007] ECR I-8463, paragraph 29).

39 While observance of that principle requires, when rounding is necessary, it to be carried out in such a way that the rounded amount corresponds as closely as possible with the amount of VAT arising from application of the rates in force, the fact remains that such an operation, of its nature, is intended to facilitate calculation and must, therefore, reconcile the requirement of, so far as possible, exact proportion with the practical necessity that the common system of VAT based on the principle of a return from the taxable person should operate effectively.

40 In any event, it is unnecessary for the Court to rule on whether the rounding down per item method is capable of satisfying the requirements of the principle of proportionality within the meaning of the first paragraph of Article 2 of the First Directive, since it is clear from, inter alia, the illustrative calculations provided in the observations submitted to the Court and outlined by the Advocate General in point 47 of her Opinion, that there are methods of calculation which can satisfy those requirements.

41 Consequently, because of the technical nature of rounding, it is also the case that the principle of proportionality does not contain requirements from which it can be inferred that only one method of rounding, namely that involving rounding down per item the amount of VAT, is able to satisfy the principle of proportionality.

42 It follows from the foregoing that Community law, in particular the provisions of the First and Sixth Directives and the principles of fiscal neutrality and proportionality, contains no specific obligation for Member States to permit taxable persons to round down per item the amount of VAT.

43 Consequently, the answer to the second question must be that Community law, as it now stands, entails no specific obligation for Member States to permit taxable persons to round down per item the amount of VAT.

Costs

44 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 (Fourth Chamber) hereby rules:

1. **In the absence of specific Community legislation, it is for Member States to decide on the rules and methods of rounding amounts of the value added tax, but those States must, when making that decision, observe the principles underpinning the common system of that tax, in particular the principles of fiscal neutrality and proportionality.**

2. **Community law, as it now stands, entails no specific obligation for Member States to permit taxable persons to round down per item the amount of the value added tax.**

[Signatures]