JUDGMENT OF THE COURT

7 September 1999 *

In Case C-216/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the VAT and Duties Tribunal, Belfast, United Kingdom, for a preliminary ruling in the proceedings pending before that tribunal between

Jennifer Gregg and Mervyn Gregg

and

Commissioners of Customs & Excise,

on the interpretation of Article 13A(1)(b) and (g) 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,

composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, G. Hirsch (Rapporteur) and P. Jann (Presidents of Chambers), J.C. Moitinho de Almeida, J.L. Murray, D.A.O. Edward, H. Ragnemalm and R. Schintgen, Judges,

Advocate General: G. Cosmas,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr and Mrs Gregg, by Andrew Hitchmough, Barrister, instructed by Terry Dockley, Solicitor,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, with Paul Lasok QC and Melanie Hall, Barrister,

— the German Government by Ernst Röder, Ministerialrat at the Federal Ministry of the Economy, and Claus-Dieter Quassowski, Regierungsdirektor at the same Ministry, acting as Agents,

— the Netherlands Government, by Adriaen Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by Peter Oliver, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr and Mrs Gregg, represented by Andrew Hitchmough, of the United Kingdom Government, represented by John E. Collins, with Nicholas Paines QC, of the Netherlands Government, represented by Marc Fierstra, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, of the Swedish Government, represented by Lotty Nordling, Director General of Legal Affairs in the Legal Secretariat (EU) of the Ministry of Foreign Affairs, acting as Agent, and of the Commission, represented by Peter Oliver, at the hearing on 15 September 1998,

after hearing the Opinion of the Advocate General at the sitting on 17 November 1998,

gives the following

Judgment

1 By order of 4 June 1997, received at the Court on 9 June 1997, the VAT and Duties Tribunal, Belfast, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Article 13A(1)(b) and (g) 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 Mr and Mrs Gregg and the Commissioners of Customs & Excise ('the Commissioners'), who are responsible for collecting value added tax ('VAT') in the United Kingdom, concerning application of a VAT exemption provided for in Schedule 9, Group 7, item 4, of

the Value Added Tax Act 1994 ('the VAT Act 1994'), transposing Article 13A(1)(b) and (g) of the Sixth Directive.

National legislation

3 Schedule 9, Group 7, item 4, of the Value Added Tax Act 1994 exempts from VAT:

'The provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or other institution approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to a provision of a public general Act of Parliament or of the Northern Ireland Parliament or of a public general Measure of the Northern Ireland Assembly or Order in Council under Schedule 1 to the Northern Ireland Act 1974, not being a provision which is capable of being brought into effect at different times in relation to different local authority areas.'

Community legislation

4 Article 13 of the Sixth Directive governs exemptions within the Member State. Article 13A(1)(b) and (g) provides:

'A. *Exemptions for certain activities in the public interest*

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to 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;

...

(g) the supply of services and of goods closely linked to welfare and social security work including those supplied by old people's homes, by bodies

governed by public law or by other organisations recognised as charitable by the Member State concerned.'

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

5 Mr and Mrs Gregg, who are in business as a partnership under the law of Northern Ireland, run a nursing home there called the 'Glenview Nursing Home', comprising 17 bedrooms and communal areas. The business employs about 25 persons. It is registered as both a 'residential care home' and a 'nursing home' in accordance with the Registered Homes Order 1992 but it is not recognised as a charity under United Kingdom law. Mr and Mrs Gregg, operating as a partnership, systematically aim to make a profit. Partnerships in Northern Irish law have no legal personality and consequently it is the partners, not the partnership, who are jointly and severally liable for all debts and liabilities, including VAT.

6 Wishing to expand their business, Mr and Mrs Gregg applied to be registered for VAT under the provisions of Schedule 1 of the VAT Act 1994. However, the Commissioners decided that they could not be so registered since their activity as a partnership fell within the scope of the VAT exemption provided for in Schedule 9, Group 7, item 4, of the VAT Act 1994. Mr and Mrs Gregg appealed against that decision, claiming, in reliance on Case C-453/93 *Bulthuis-Griffioen* v *Inspecteur der Omzetbelasting* [1995] ECR I-2341, that the VAT exemption laid down in Article 13A(1)(b) and (g) of the Sixth Directive applies only to activities carried on by legal persons.

7 The VAT and Duties Tribunal, Belfast, before which the matter was brought, considers that the wording of those provisions does not confine the exemption to

legal persons, thus excluding from its scope businesses run by individuals. However, in the light of the *Bulthuis-Griffioen* judgment cited above, it decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 13A(1) of the Sixth Directive to be interpreted as meaning that two natural persons (i.e. individuals) who carry on business in common as partners cannot claim exemption under subparagraph (b) in the circumstances summarised in the schedule to these questions and on the assumptions that

(a) the business consists of medical care and closely related activities and

(b) they are "duly recognised" and their activities are of a similar nature to those provided by "hospitals" and/or "centres for medical treatment or diagnosis"?

In particular, are the partners excluded from exemption because

— they do not constitute a "body" governed by public law;

— their activities are not undertaken under social conditions comparable to those applicable to bodies governed by public law?

2. Is Article 13A(1) of the Sixth Directive to be interpreted as meaning that two natural persons (i.e. individuals) who carry on business in common as partners cannot claim exemption under subparagraph (g) in the circumstances summarised in the schedule to these questions and on the assumption that the services they supply are "closely linked to welfare and social security work, including those supplied by old people's homes"?'

8 By those two questions, which it is appropriate to examine together, the VAT and Duties Tribunal is asking essentially whether Article 13A(1) of the Sixth Directive is to be interpreted as meaning that the terms 'other duly recognised establishments of a similar nature' and 'other organisations recognised as charitable by the Member State concerned', which appear in subparagraphs (b) and (g) of that provision respectively, exclude from that exemption natural persons running a business.

9 Mr and Mrs Gregg, who wish to benefit from the right to deduct VAT, maintain that the activities involved in running their nursing home are taxable.

10 Referring to *Bulthuis-Griffioen*, cited above, they argue that since the exemptions in Article 13A of the Sixth Directive are to be strictly construed, then, in so far as Article 13A(1) refers to 'establishment' or 'organisation', it must be interpreted as covering only legal and not natural persons.

11 The United Kingdom, German and Netherlands Governments and the Commission contend that neither the literal meaning of the terms 'establishment' or 'organisation' nor the strict interpretation that must be given to the exemptions referred to in Article 13 of the Sixth Directive can have as a necessary consequence that the legal form in which the taxable person concerned carries

on his business constitutes a determining factor in deciding whether or not the activities carried on by him are taxable. The principle of fiscal neutrality would preclude confining the exemption to legal persons.

12 It should be observed at the outset that, according to settled case-law of the Court, the terms used to describe the exemptions envisaged by Article 13 of the Sixth Directive are to be interpreted strictly since these constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see Case C-2/95 *SDC* v *Skatteministeriet* [1997] ECR I-3017, paragraph 20).

13 Furthermore, the Court held, in Case 107/84 *Commission* v *Germany* [1985] ECR 2655, paragraph 13, that, although it is true that the exemptions are granted in favour of activities pursuing specific objectives, most of the provisions also define the bodies which are authorised to supply the exempted services and those services are not defined by reference to purely material or functional criteria.

14 As the Court stated in *Bulthuis-Griffioen*, cited above, paragraph 20, the terms 'body' or 'organisation' are used in some provisions of Article 13A(1) of the Sixth Directive whilst in others the activity in question is described by reference to individuals in their professional capacity, such as the medical and paramedical professions (under (c)), dental technicians (under (e)), and teachers giving private tuition (under (j)).

15 However, notwithstanding what the Court stated in *Bulthuis-Griffioen*, cited above, at paragraph 20, it cannot be inferred from the fact that Article 13A(1) of the Sixth Directive mentions different categories of economic operators that the exemptions provided for in that provision are confined to legal persons where it

refers expressly to activities undertaken by 'establishments' or 'organisations', whilst in other cases an exemption may also be claimed by natural persons.

16 That interpretation is not affected by the fact that, as the Court held in *Bulthuis-Griffioen*, cited above, at paragraphs 18 and 19, the specific conditions concerning the status or identity of the economic operator performing the services covered by the exemption are to be interpreted strictly.

17 The terms 'establishment' and 'organisation' are in principle sufficiently broad to include natural persons as well. It may be added that none of the language versions of Article 13A of the Sixth Directive include the term 'legal person', which would have been clear and unambiguous, instead of the abovementioned terms. It may be inferred that, in employing those terms, the Community legislature did not intend to confine the exemptions referred to in that provision to the activities carried on by legal persons, but meant to extend the scope of those exemptions to activities carried on by individuals.

18 It is true that the terms 'establishment' and 'organisation' suggest the existence of an individualised entity performing a particular function. Those conditions are, however, satisfied not only by legal persons but also by one or more natural persons running a business.

19 That interpretation, to the effect that the terms 'establishment' and 'organisation' do not refer only to legal persons, is, in particular, consistent with the principle of fiscal neutrality inherent in the common system of VAT and in compliance with which the exemptions provided for in Article 13 of the Sixth Directive must be applied (see, to that effect, Case C-283/95 *Fischer* [1998] ECR I-3369, paragraph 27).

20 The principle of fiscal neutrality precludes, *inter alia*, economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned. It follows that that principle would be frustrated if the possibility of relying on the benefit of the exemption provided for activities carried on by the establishments or organisations referred to in Article 13A(1)(b) and (g) was dependent on the legal form in which the taxable person carried on his activity.

21 The answer to the questions must therefore be that Article 13A(1) of the Sixth Directive is to be interpreted as meaning that the terms 'other duly recognised establishments of a similar nature' and 'other organisations recognised as charitable by the Member State concerned', which appear in subparagraphs (b) and (g) of that provision respectively, do not exclude from that exemption natural persons running a business.

Costs

22 The costs incurred by the United Kingdom, German 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 case pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the VAT and Duties Tribunal, Belfast, by order of 4 June 1997, hereby rules:

Article 13A(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 is to be interpreted as meaning that the terms 'other duly recognised establishments of a similar nature' and 'other organisations recognised as charitable by the Member State concerned', which appear in subparagraphs (b) and (g) of that provision respectively, do not exclude from that exemption natural persons running a business.

Rodríguez Iglesias	Kapteyn	Hirsch
Jann	Moitinho de Almeida	Murray
Edward	Ragnemalm	Schintgen

Delivered in open court in Luxembourg on 7 September 1999.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President