Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

23 October 2025 *

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 138(1) – Directive 2008/9/EC – Article 4(b) – Refund of VAT to taxable persons not established in the Member State of refund – Principal supply and ancillary supply – Artificial splitting of a single supply – No dispatch of the object of the supply)

In Case C-234/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 27 March 2024, received at the Court on 27 March 2024, in the proceedings

Brose Prievidza, spol. s r.o.

v

Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite,

THE COURT (Tenth Chamber),

composed of J. Passer, President of the Chamber, D. Gratsias and B. Smulders (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Brose Prievidza, spol. s r.o., by E. Evtimov, Y. Mateeva, S. Vasilev and V. Vidolovet, advokati, and by B. Lazarov,

– the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, by E. Pavlova,

– the European Commission, by P. Carlin and D. Drambozova, acting as Agents,

* Language of the case: Bulgarian.

after hearing the Opinion of the Advocate General at the sitting on 22 May 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

2 The request has been made in proceedings between Brose Prievidza, spol. s r.o., a company established in Slovakia, and the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia (Director of the Appeals and Tax and Social Security Practice Directorate, Sofia, at the Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Central Administration of the National Revenue Agency, Bulgaria) ('the director of the tax authority'), concerning the right to a refund of the value added tax (VAT) charged on the supply of equipment.

Legal context

European Union law

Directive 2006/112

3 Title IV of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive (EU) 2018/1910 of 4 December 2018 (OJ 2018 L 311, p. 3) ('Directive 2006/112'), entitled 'Taxable transactions', includes Chapter 1, entitled 'Supply of goods', which contains Article 14 of that directive, which provides, in paragraph 1 thereof:

'"Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.'

4 Title IV of Directive 2006/112 includes Article 20 of that directive, which states, in the first paragraph thereof:

'"Intra-Community acquisition of goods" shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.'

5 Title IX of Directive 2006/112, entitled ‘Exemptions’, contains Chapter 4, entitled ‘Exemptions for intra-Community transactions’, which includes Article 138 of that directive, which provides, in paragraph 1 thereof:

‘Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the [European] Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met:

(a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins;

(b) the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier.’

6 Article 169(a) of that directive provides:

‘In addition to the deduction referred to in Article 168, the taxable person shall be entitled to deduct the VAT referred to therein in so far as the goods and services are used for the purposes of the following:

(a) transactions relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;

…’

7 Article 170 of Directive 2006/112 states:

‘All taxable persons who, within the meaning of … Article 2(1) and Article 3 of [Directive 2008/9] and Article 171 of this Directive, are not established in the Member State in which they purchase goods and services or import goods subject to VAT shall be entitled to obtain a refund of that VAT in so far as the goods and services are used for the purposes of the following:

(a) transactions referred to in Article 169;

…’

8 Article 171(1) of that directive provides:

‘VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in [Directive 2008/9].’

Directive 2008/9

9 Under Article 1 of Directive 2008/9:

'This Directive lays down the detailed rules for the refund of [VAT], provided for in Article 170 of [Directive 2006/112], to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3.'

10 Article 2 of that directive provides:

'For the purposes of this Directive, the following definitions shall apply:

1. "taxable person not established in the Member State of refund" means a taxable person within the meaning of Article 9(1) of [Directive 2006/112] who is not established in the Member State of refund but established in the territory of another Member State;

2. "Member State of refund" means the Member State in which the VAT was charged to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;

…'

11 Article 4 of Directive 2008/9 provides:

'This Directive shall not apply to:

(a) amounts of VAT which, according to the legislation of the Member State of refund, have been incorrectly invoiced;

(b) amounts of VAT which have been invoiced in respect of supplies of goods the supply of which is, or may be, exempt under Article 138 or Article 146(1)(b) of [Directive 2006/112].'

Bulgarian law

The ZDDS

12 Article 53 of the Zakon za danak varhu dobavenata stoynost (Law on value added tax) ([Darzhaven Vestnik (State Gazette) (DV)] No 63 of 4 August 2006) ('the ZDDS') provides:

'(1) A zero rate of tax shall be applied to the intra-Community supplies referred to in Article 7, with the exception of exempt intra-Community supplies under Article 38(2).

(2) … For the purpose of applying the zero rate of tax referred to in paragraph 1, the supplier must be in possession of:

1. documents relating to the supply as defined by the rules governing the application of the law, and

2. … documents relating to the dispatch or transport of goods from the national territory to the territory of another Member State, as defined by Article 45a of [Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ 2011 L 77, p. 1), as amended by Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 (OJ 2018 L 311, p. 10)] ("Implementing Regulation (EU) No 282/2011"), or as defined by the rules governing the application of the law.

(3) …'

13 Article 81 of the ZDDS, entitled 'Refund of tax to persons not established in the national territory', states:

'(1) The tax paid shall be refunded to:

1. taxable persons who are not established in the national territory but who are established and registered for VAT purposes in another Member State in respect of the goods that they have purchased and the services that they have received in the national territory;

…

(2) The arrangements for, and the documents required in respect of, the refund of tax referred to in paragraph 1 shall be laid down by a regulation on the part of the Minister for Finance.'

14 Under Article 128 of the ZDDS:

'Where the principal supply is accompanied by another supply and the payment is determined jointly, it shall be presumed that there is a single principal supply.'

Naredba nº N-9

15 Article 1 of Naredba nº N-9 za vazstanoviavaneto na danaka varhu dobavenata stoynost na danachno zadalzheni litsa, neustanoveni v darzhavata chlenka po vazstanoviavane, no ustanoveni v druga darzhava – chlenka na Evropeiskia sayuz (Regulation No N-9 concerning the refund of value added tax to taxable persons who are not established in the Member State of refund but who are established in another Member State of the European Union) of 16 December 2009 (DV No 101 of 18 December 2009) ('Naredba nº N-9') provides:

'(1) This Regulation shall govern:

1. … the conditions and procedures under which invoiced [VAT] is refunded to taxable persons established and registered for [VAT] purposes in another Member State of the European Union, in respect of the goods that they have purchased, the services that they have received, or the imports that have been carried out in the national territory;

…

(2) This Regulation shall not apply to amounts which correspond to improperly invoiced [VAT], including intra-Community supplies carried out and exports.'

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

16 Brose Prievidza is a company established and registered for VAT purposes in Slovakia. Its business consists, inter alia, in the production of window regulators and door systems in respect of motor vehicles. In order to manufacture those products, it purchases components from 'Integrated Micro-Electronics Bulgaria' EOOD ('IME Bulgaria'), an undertaking established in Bulgaria. The referring court classifies the supply of those components by IME Bulgaria to Brose Prievidza as intra-Community supplies.

17 Brose Fahrzeugteile SE & Co. KG ('Brose Coburg') is a company established in Germany and registered for VAT purposes in Germany and Bulgaria. It is apparent from the documents before the Court that Brose Coburg, like Brose Prievidza, is part of the Brose group, which produces, inter alia, mechatronic systems in respect of the bodies and interiors of cars intended for car manufacturers.

18 Brose Coburg ordered specific equipment from IME Bulgaria for the manufacture of components to be integrated into those mechatronic systems. On 14 May 2020, IME Bulgaria invoiced Brose Coburg for the sale of that equipment. Although the equipment became the property of Brose Cobourg, it has remained with IME Bulgaria, which uses it exclusively to manufacture the abovementioned components, intended for Brose Prievidza.

19 On 7 June 2021 Brose Coburg sold that equipment to Brose Prievidza. On that basis, it issued an invoice relating to the sale of tooling equipment, referred to as 'spindle set as per Annex S-T 08-P-9965 – automatic workpiece clamping in welding system' ('the equipment at issue'), in a net amount of EUR 62 000, plus Bulgarian VAT, which was paid. The equipment at issue remained with IME Bulgaria for the purpose of manufacturing those components.

20 On 10 March 2022, Brose Prievidza applied for a refund of that VAT in respect of the period from 1 January to 31 December 2021. By a notice of set-off and refund of 15 July 2022, that application was rejected. That decision was confirmed by the director of the tax authority.

21 The Administrativen sad Sofia-grad (Administrative Court, Sofia City, Bulgaria) dismissed the action brought by Brose Prievidza against that notice of set-off and refund. That court held, in essence, that, as the supply of the equipment at issue was ancillary to the intra-Community supplies of the components produced by IME Bulgaria, it had to be subject to the same tax regime. It considered that those two transactions had been artificially split. Thus, under Article 53(1) of the ZDDS, the supply of that equipment should have been subject to a zero rate of tax, so that Brose Coburg should not have entered the VAT on the invoice relating to the supply of that equipment. Therefore, in accordance with Article 1(2) of Naredba nº N-9, which transposes Article 4(b) of Directive 2008/9 into Bulgarian law, it held that Brose Prievidza was not entitled to a refund of the VAT which it had paid.

22 Brose Prievidza has challenged that decision before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), which is the referring court.

23 In its request for a preliminary ruling, that court states at the outset that it is of the view, having regard to the findings made in the judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108, paragraphs 56 and 57), that the Administrativen sad Sofia-grad (Administrative Court, Sofia City) was justified in finding that the supplies by IME Bulgaria of, first, the components for the purposes of the activity of Brose Prievidza and, second, the equipment at

issue had been artificially split. A number of factors support that view, such as the material link between Brose Coburg and Brose Prievidza, the fact that the supplies of the components were made directly by IME Bulgaria to Brose Prievidza, but that the equipment at issue necessary for the manufacture of those components was supplied indirectly, namely by Brose Coburg, and the fact that, taken in isolation, the supply of that equipment appears to lack economic logic given that that equipment has remained with IME Bulgaria, which uses it solely to manufacture those components. By contrast, unlike the situation at issue in the judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108), no intention of tax abuse has been claimed or demonstrated in the present case.

24 Next, however, the referring court is uncertain whether the supply of the equipment at issue, which it considers to be ancillary to the supply of components, can be classified as a transaction which is exempt or likely to be exempt from VAT where that equipment has not been transported outside Bulgaria.

25 In addition, that court refers to its case-law, which is based on the judgments of the Court of Justice of 25 February 1999, *CPP* (C-349/96, EU:C:1999:93, paragraph 26); of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108, paragraph 48); and of 27 October 2005, *Levob Verzekeringen and OV Bank* (C-41/04, EU:C:2005:649), according to which supplies of equipment accompanying the intra-Community supplies of parts manufactured using that equipment are subject to the same tax regime, which means, in the present case, that the supply of the equipment at issue should be taxed at a zero rate of tax. In such a case, under Article 1(2) of Naredba nº N-9, which transposed Article 4(b) of Directive 2008/9, a company established in another Member State to which such equipment has been invoiced is not entitled to a refund of VAT in Bulgaria.

26 That said, the referring court questions whether that reasoning is consistent with EU law, first, having regard to the findings made in the judgment of 21 October 2021, *Wilo Salmson France* (C-80/20, EU:C:2021:870). In the case which gave rise to that judgment, as in the present case, the equipment invoiced did not leave the territory of the Member State of the supplier and the goods produced using that equipment were the subject of intra-Community supplies. In that judgment, the existence of a right to a refund was not called into question by the Court.

27 Second, the referring court notes that the case before it differs, in particular, as regards the number of persons involved in the supplies concerned, from the cases which gave rise to the judgments of 27 October 2005, *Levob Verzekeringen and OV Bank* (C-41/04, EU:C:2005:649), and of 27 September 2012, *Field Fisher Waterhouse* (C-392/11, EU:C:2012:597), relating to transactions regarded as forming a single supply. It states that, in the present case, three entities are involved. Furthermore, in the case which gave rise to the judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108), as in the case before the referring court, various suppliers supplied equipment to a single recipient. However, in the case which gave rise to that judgment, the artificial separation of the supplies had the objective of committing tax abuse, which is not the case here.

28 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Directive 2008/9 confer a right to obtain a refund of [VAT] paid which is claimed by the recipient of a supply of [equipment] (tooling) where the subject of the supply has not left the territory of the supplier's Member State and the supply of [that equipment] has been artificially split from the intra-Community supply, to the same recipient, of goods manufactured by means of [that equipment]?'

Consideration of the question referred

29 As a preliminary point, it should first of all be noted that what is at issue in the case in the main proceedings is the situation of a taxable person established in a Member State other than that in which the purchase of the goods was made. In that case, it is common ground that the equipment at issue was sold by Brose Coburg, established in Germany and registered for VAT purposes in Germany and Bulgaria, to Brose Prievidza, established in Slovakia.

30 It is also common ground that the supply of that equipment took place and that VAT was paid in Bulgaria. The referring court stated in that regard that, in the present case, following the manufacture of the equipment at issue, the ownership of that equipment had been successively transferred to Brose Coburg and then to Brose Prievidza.

31 In that context, it should be stated, as the Advocate General observed in point 30 of her Opinion, that that transfer and, therefore, the supply within the meaning of Article 14(1) of Directive 2006/112 is not called into question by the fact that a person has retained possession of the property concerned, for example in order to use it himself, herself or itself, like IME Bulgaria in the present case, which uses the equipment at issue for the sole purpose of producing components ordered by Brose Prievidza. The Court has previously held that the transfer of the right to dispose of tangible property as owner within the meaning of that provision does not require the party to whom the tangible property is transferred to be in physical possession of it, or that the tangible property be physically transported to that party and/or physically received by that party (judgment of 17 October 2024, *Digital Charging Solutions*, C-60/23, EU:C:2024:896, paragraph 27 and the case-law cited).

32 The referring court states, however, that it is of the view that, in the present case, the supply of the equipment at issue to Brose Prievidza and the intra-Community supplies to that company of the components manufactured using that equipment, exempt from VAT, were artificially split, with the result that the supply of that equipment should be regarded as falling within the same tax regime as the supplies of those components. That court has doubts, therefore, as to the right to a refund of the VAT paid in Bulgaria by Brose Prievidza on the supply of the equipment at issue, while questioning, at the same time, the compatibility with EU law of its assessment of the situation at issue in the main proceedings.

33 Next, it must be stated that Article 171 of Directive 2006/112 provides, in paragraph 1 thereof, that VAT is to be refunded to taxable persons who are not established in the Member State in which they, inter alia, purchase goods and services subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9.

34 Although the referring court does not cite any specific provision of Directive 2008/9 in the question referred for a preliminary ruling, it is apparent from its request for a preliminary ruling that the referring court is seeking the interpretation of Article 4(b) thereof. In the statement of reasons in respect of the reference for a preliminary ruling, that court starts from the premiss that the supply of the equipment at issue should follow the same tax regime as the supplies of the components which constitute intra-Community supplies which are exempt under Article 138 of Directive 2006/112. In addition, it notes, in particular, the link between Article 4(b) of Directive 2008/9 and the national legislation, namely Article 1(2) of Naredba nº N-9, under which the refund of the VAT paid in respect of supplies of goods which are to be regarded as intra-Community transactions is excluded.

35 In those circumstances, it must be held that, by its question, the referring court asks, in essence, whether Article 4(b) of Directive 2008/9, read in conjunction with Article 138(1) and Article 171 of Directive 2006/112, is to be interpreted as precluding a refusal to refund the VAT charged on the supply of equipment to a taxable person established in a Member State other than the Member State of purchase of those goods, on the ground that that supply must be exempt from VAT as an intra-Community supply, because it must be regarded as forming part of a single, indivisible economic supply, or as being ancillary to a principal supply comprising intra-Community supplies of goods produced using that equipment and intended for that taxable person, even though that equipment has not physically left the territory of the Member State of its supplier.

36 In order to answer that question, it is necessary to examine, first, whether a supply of goods may be regarded as an intra-Community supply, even if the goods at issue have not left the Member State of their supplier, and, second, whether, in circumstances such as those at issue in the main proceedings, the supply of equipment may be regarded as forming part of a single, indivisible supply or as being ancillary to intra-Community supplies of goods produced using that equipment.

37 In that regard, it should be stated, in the first place, that the Court has already held that, like the right to deduct, the right to a refund is a fundamental principle of the common system of VAT established by EU legislation, and, in principle, may not be limited. That right is exercisable immediately in respect of all the taxes charged on input transactions. The deduction system, and accordingly the refund system, is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his or her economic activities. The common system of VAT therefore ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves, in principle, subject to VAT (judgment of 16 May 2024, *Slovenské Energetické Strojárne*, C-746/22, EU:C:2024:403, paragraph 35 and the case-law cited).

38 In accordance with Article 1 of Directive 2008/9, the purpose of that directive is to lay down the detailed rules for the refund of VAT, provided for in Article 170 of Directive 2006/112, to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3 of Directive 2008/9.

39 However, the purpose of Directive 2008/9 is not to define the conditions for exercising the right to a refund; nor is it to define the extent of that right. Indeed, the second subparagraph of Article 5 of Directive 2008/9 provides that, for the purposes of that directive and without prejudice to Article 6 thereof, entitlement to an input VAT refund is to be determined pursuant to Directive

2006/112 as applied in the Member State of refund (see, to that effect, judgment of 21 October 2021, *Wilo Salmson France*, C-80/20, EU:C:2021:870, paragraphs 62 and 63 and the case-law cited).

40 However, in accordance with Article 4(b) thereof, Directive 2008/9 does not apply to amounts of VAT which have been invoiced in respect of supplies of goods the supply of which is, or may be, exempt under, inter alia, Article 138 of Directive 2006/112.

41 Pursuant to Article 138(1)(a) of Directive 2006/112, Member States are to exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the European Union, by or on behalf of the vendor or the person acquiring the goods, on condition that the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins.

42 According to settled case-law, the exemption of a supply of goods for the purposes of Article 138 of that directive becomes applicable only if the right to dispose of the goods as owner has been transferred to the person acquiring the goods, if the supplier establishes that those goods have been dispatched or transported to another Member State and if, as a result of that dispatch or transport, they have physically left the territory of the Member State of supply (judgment of 26 July 2017, *Toridas*, C-386/16, EU:C:2017:599, paragraph 30 and the case-law cited).

43 It follows that, without the physical movement of the goods concerned outside the territory of the latter Member State, a supply cannot be classified as an intra-Community supply.

44 It should also be noted that the corollary of an intra-Community supply falling within Article 138(1) of Directive 2006/112 is an intra-Community acquisition, as defined in Article 20 of that directive (judgment of 26 July 2017, *Toridas*, C-386/16, EU:C:2017:599, paragraph 31).

45 It is clear from Article 20 of Directive 2006/112 that an acquisition can be classified as an intra-Community acquisition only if the goods have been transported or dispatched to another Member State, to the person acquiring them. It follows that the conditions for applying Article 138(1) of that directive cannot be fulfilled if the goods being supplied to the person acquiring them have not physically left the territory of the Member State of supply (see, to that effect, judgment of 26 July 2017, *Toridas*, C-386/16, EU:C:2017:599, paragraphs 32 and 33).

46 The fact that the goods were sold by a company established in a Member State other than that of the person acquiring the goods and other than that in which those goods are physically located does not call into question that conclusion. It follows from paragraphs 43 and 45 of the present judgment that, without dispatch or transport to the person acquiring the goods outside the territory of the Member State of supply, there is no question of either an intra-Community acquisition or, therefore, an exempt intra-Community supply.

47 In the present case, it is apparent from the request for a preliminary ruling that the equipment at issue was the subject of two sales, by which the right to dispose of that equipment was transferred, initially, from IME Bulgaria to Brose Coburg and, subsequently, from Brose Coburg to Brose Prievidza. However, those goods have not been dispatched or transported to the successive persons acquiring the goods, but have remained in the territory of the Member State of the supplier.

48 If, in such circumstances, the conditions for applying Article 138 of Directive 2006/112 are not satisfied, which it is for the referring court to determine, it follows that the refund of the VAT charged on the acquisition of those goods cannot be excluded by applying Article 4(b) of Directive 2008/9.

49 In the second place, as regards the relationship between intra-Community supplies and a supply such as that of the equipment at issue, it should be noted that it follows from the second subparagraph of Article 1(2) of Directive 2006/112, as well as Article 2 thereof, that each transaction must, in principle, be regarded as a distinct and independent transaction (see, to that effect, judgments of 27 October 2005, *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 20; of 21 February 2008, *Part Service*, C-425/06, EU:C:2008:108, paragraph 50 and the case-law cited; and of 17 October 2024, *Digital Charging Solutions*, C-60/23, EU:C:2024:896, paragraph 47).

50 As the Advocate General observed in point 42 of her Opinion, that principle applies even where there is a certain link between multiple supplies, having regard to the economic links between all the transactions at issue and their common purpose (see, to that effect, judgment of 4 September 2019, *KPC Herning*, C-71/18, EU:C:2019:660, paragraph 44 and the case-law cited).

51 Therefore, in a situation such as that at issue in the main proceedings, even if the sole purpose of the supplies of components, on the one hand, and the supply of the equipment at issue, on the other, consisted in implementing the orders for the manufacture of parts for Brose Prievidza, as the Administrativen sad Sofia-grad (Administrative Court, Sofia City) held was the case with regard to the supplies at issue in the main proceedings, that purpose or possible economic link between those supplies does not automatically mean that those supplies must be regarded as constituting a single transaction within the meaning of Directive 2006/112.

52 That being so, it is possible that an exception must be made to the principle set out in paragraph 49 of the present judgment. A 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 (judgments of 27 October 2005, *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 20, and of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraph 58 and the case-law cited).

53 In accordance with settled case-law, it must be held that there is a single supply where two or more 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 (judgments of 27 October 2005, *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 22, and of 17 October 2024, *Digital Charging Solutions*, C-60/23, EU:C:2024:896, paragraph 47 and the case-law cited).

54 Moreover, in certain circumstances, several formally distinct supplies, which could be provided separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. That is the case where, inter alia, one or more elements are to be regarded as constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply (judgments of 27 October 2005, *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 21 and the case-law cited; of 20 April 2023, *Dyrektor Krajowej Informacji Skarbowej*, C-282/22, EU:C:2023:312, paragraph 30; and of 17 October 2024, *Digital Charging Solutions*, C-60/23, EU:C:2024:896, paragraph 48).

55 In the context of the cooperation established by Article 267 TFEU, it is for the national courts to determine whether, in the circumstances of the particular case, the supply concerned constitutes a single supply and to make all definitive findings of fact in that regard. However, it is for the Court to provide the national courts with all the guidance as to the interpretation of European Union law which may be of assistance in adjudicating on the case pending before them (judgment of 17 October 2024, *Digital Charging Solutions*, C-60/23, EU:C:2024:896, paragraph 49 and the case-law cited).

56 In the present case, it is apparent from the order for reference that the components manufactured using the equipment at issue were the subject of several intra-Community supplies made directly by IME Bulgaria to Brose Prievidza. That equipment, the supply of which was subject to the VAT at issue in the main proceedings, was sold by Brose Coburg to Brose Prievidza, but remained in Bulgaria and was made available to IME Bulgaria.

57 First, the fact that several supplies of identical goods, in the present case the components, took place between the same companies is not sufficient to determine that those supplies must, in themselves and independently of the supply of the equipment at issue, be regarded as a single transaction. The fact that the purpose of those supplies is the same does not automatically mean that they form, objectively, a single, indivisible economic supply, which it would be artificial to split.

58 That is all the more the case where two supplies of different goods, in this instance the equipment at issue and the components, are carried out by two independent suppliers. As the Advocate General observed, in essence, in points 46 and 47 of her Opinion, from the perspective of an average consumer, the separate treatment of supplies carried out by two independent suppliers appears entirely logical.

59 In addition, as has already been pointed out in paragraphs 50 and 51 of the present judgment, the fact that there is a certain link between the transactions, because the equipment at issue is necessary for the manufacture of the components, does not mean that those transactions must be regarded as constituting a single transaction or, therefore, as indivisible supplies.

60 However, by way of exception, two supplies provided by two independent suppliers may be regarded as a single complex transaction. That is the case where it is established that an artificial division of those supplies has taken place.

61 Such a situation was taken into account by the Court in the judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108). It is on paragraphs 56 and 57 of that judgment (in which the Court noted the characteristics of the transactions at issue in the case which gave rise to that judgment) that the referring court in this case relied – as it states in its order for reference – in order to hold that the supplies of the components and the supply of the equipment at issue had to be regarded as forming a single supply which had to be governed by the same tax regime.

62 However, the information in paragraphs 56 and 57 of the judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108), cannot lead to the conclusion that supplies such as those at issue in the main proceedings have been artificially split, as none of the characteristics of the transactions described by the Court in that regard is comparable to the characteristics of those supplies.

63 Unlike a legal situation such as that at issue in the main proceedings, the two companies providing the supplies of services to the same customer in the case which gave rise to that judgment were linked inasmuch as they formed part of the same group. In addition, supplies such as those at issue in the main proceedings each arise not from an intentional splitting of the supply agreed to by a supplier, but from separate contracts concluded with two independent suppliers, so that, taken in isolation, those supplies are subject to their own economic logic. Furthermore, in the present case, the referring court considered that it has neither been claimed nor demonstrated that the company to whom the various supplies are made, namely Brose Prievidza, sought to obtain an undue tax advantage resulting from a different tax treatment of the supplies concerned, whereas the Court has stated, in essence, in paragraphs 58 to 62 of the judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108), that that element plays an essential role in the classification of transactions as being artificially split.

64 Furthermore, the fact that equipment is not intended to produce a single part or a single batch of parts, or to be integrated into the components, but is intended to be used in respect of the serial production of those parts or components, can contribute to showing that the supply of that equipment is not so closely linked to a specific supply of parts to the point where it must be regarded as objectively forming, together with that specific supply of parts, a single, indivisible economic supply.

65 Secondly, as regards the question whether a supply must be regarded as ancillary to a principal supply, according to settled case-law, such is the case if that supply does not constitute for customers an aim in itself, but a means of better enjoying the principal supply provided (see, to that effect, judgments of 21 February 2008, *Part Service*, C-425/06, EU:C:2008:108, paragraph 52 and the case-law cited; of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraph 60 and the case-law cited; and of 17 October 2024, *Digital Charging Solutions*, C-60/23, EU:C:2024:896, paragraph 48). It follows that, if, on the contrary, those supplies each have a specific function or purpose for the customer, one cannot be classified as ancillary in relation to the other.

66 Thus, where the purchase of equipment essential to the manufacture of goods, which is made available to the supplier of those goods, provides the person acquiring the goods with security enabling that person to secure his, her or its position with regard to that supplier, in particular in the event of the insolvency of that supplier, or enables the person acquiring the goods to transfer or move that equipment, should the production process so require, such a circumstance constitutes a strong indication that the supply of that equipment constitutes an end in itself for that person and that, therefore, it should not be regarded as ancillary to the supply of parts manufactured using that equipment, which has a different purpose.

67 Furthermore, as a tool, it may be presumed, subject to verification by the referring court, that equipment will be used throughout the production cycle of the goods manufactured using that equipment, which is why it has been made available to the manufacturer. Thus, the supply of such equipment has its own purpose in relation to the various supplies of the components, with the result that it cannot be regarded as ancillary to those supplies.

68 While it is true that the fact that equipment constitutes a precondition for any subsequent supply of goods manufactured using that equipment may indicate that its acquisition would constitute a means of better enjoying the supply of those goods and, therefore, could appear to be a supply ancillary to that of the supply of those goods, that element must nevertheless be considered in all the circumstances in which those transactions take place.

69 It is for the referring court to take into account the economic and commercial reality as a relevant element for the classification of a supply as ancillary or, on the contrary, independent (see, to that effect, judgment of 26 May 2016, *National Exhibition Centre*, C-130/15, EU:C:2016:357, paragraph 22). Consideration of the economic reality of the transactions at issue, which is, in principle, reflected in the contractual relations of the parties, is regarded as a fundamental criterion for the application of the common system of VAT (see, to that effect, judgment of 22 February 2018, *T-2*, C-396/16, EU:C:2018:109, paragraph 43 and the case-law cited).

70 In that regard, the business model of the group of which some of the companies involved in the supplies at issue in the main proceedings form part is an element which must be taken into account by the national court. In the present case, Brose Prievidza stated, in its written observations submitted to the Court, that the fact that the equipment at issue was first sold by IME Bulgaria to Brose Coburg before Brose Prievidza itself acquired that equipment from Brose Coburg is justified by the centralisation, with Brose Coburg, of the orders for tooling within the Brose group. At the time of ordering equipment, the group entity which must produce the parts including the components manufactured using that equipment is not yet known. The choice of that entity depends, inter alia, on the geographical location of the customers and the third-party company which produces that equipment. However, after that entity has been determined, the transfer of that equipment to that entity takes place. Subject to verification by the referring court, that method of proceeding within the Brose group appears to correspond to the economic and commercial reality of the supply transactions at issue in the main proceedings, which is reflected by the successive contracts of sale of the equipment at issue, which the referring court has found do not constitute an arrangement with a view to committing tax abuse or in order to obtain an undue tax advantage. Each supply, whether it concerns that equipment or the components, appears to correspond to a stage in the production process of the manufactured parts including those components, which could justify classifying those various supplies as independent supplies which must be taxed independently.

71 Lastly, it is apparent from the order for reference that the intra-Community supplies of the components and the supply of the equipment at issue were invoiced separately. In that regard, the Court has already held, in essence, that, if it follows from the circumstances of the case in the main proceedings that the customer intends to purchase distinct supplies, the transaction carried out must be regarded as comprising independent supplies, even if that customer has paid a single price (see, to that effect, judgment of 25 February 1999, *CPP*, C-349/96, EU:C:1999:93, paragraphs 31 and 32). A fortiori, where the supplies have been paid for separately, that element, although not decisive in itself (see, to that effect, judgment of 26 May 2016, *National Exhibition Centre*, C-130/15, EU:C:2016:357, paragraph 21), supports the classification of the supplies concerned as independent supplies.

72 If, having regard to the specific characteristics and objectives of the supplies at issue in the main proceedings and to all the circumstances in which those supplies took place, the referring court concludes that the supply of the equipment at issue must be classified as independent in relation to the supplies of the components, that supply cannot be classified as intra-Community and, therefore, exempt under Article 138 of Directive 2006/112. Consequently, in that case, the refund of the VAT paid cannot be excluded under Article 4(b) of Directive 2008/9.

73 In the light of all the foregoing considerations, the answer to the question referred is that Article 4(b) of Directive 2008/9, read in conjunction with Article 138(1) and Article 171 of Directive 2006/112, must be interpreted as precluding a refusal to refund the VAT charged on the supply of equipment to a taxable person established in a Member State other than the

Member State of purchase of those goods, where that equipment has not physically left the territory of the Member State of its supplier, unless, having regard to all the circumstances characterising the transactions in question, that supply must be regarded as forming part of a single, indivisible economic supply, or as being ancillary to a principal supply comprising intra-Community supplies of goods produced using that equipment and intended for that taxable person.

Costs

74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Article 4(b) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, read in conjunction with Article 138(1) and Article 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2018/1910 of 4 December 2018,

must be interpreted as precluding a refusal to refund the value added tax charged on the supply of equipment to a taxable person established in a Member State other than the Member State of purchase of those goods, where that equipment has not physically left the territory of the Member State of its supplier, unless, having regard to all the circumstances characterising the transactions in question, that supply must be regarded as forming part of a single, indivisible economic supply, or as being ancillary to a principal supply comprising intra-Community supplies of goods produced using that equipment and intended for that taxable person.

[Signatures]