JUDGMENT OF THE COURT (Second Chamber)

11 June 2009 *

In Case C-572/07,

REFERENCE for a preliminary ruling under Article 234 EC, from the Krajský soud v Ústi nad Labem (Czech Republic), made by decision of 20 November 2007, received at the Court on 24 December 2007, in the proceedings

RLRE Tellmer Property sro

v

Finanční ředitelství v Ústí nad Labem,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J.-C. Bonichot, J. Makarczyk (Rapporteur), P. Kūris and L. Bay Larsen, Judges,

* Language of the case: Czech.

Advocate General: V. Trstenjak,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 6 November 2008,

after considering the observations submitted on behalf of:

— Finanční ředitelství v Ústí nad Labem, by J. Janoušková,

— RLRE Tellmer Property sro, by R. Lančík and J. Rambousek,

— the Czech Government, by M. Smolek, acting as Agent,

— the Greek Government, by K. Georgiadis, S. Alexandriou and V. Karra, acting as Agents,

— the Commission of the European Communities, by D. Triantafyllou and M. Thomannová-Körnerová, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 December 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13B(b) of 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 reference was submitted in the context of a dispute between RLRE Tellmer Property sro ('RLRE Tellmer Property') and the Finanční ředitelství v Ústí nad Labem (Tax Directorate of Ústí nad Labem) concerning the question whether the costs of cleaning the common parts in an apartment block are, like letting, exempt from value added tax ('VAT').

Legal context

Community legislation

3 Article 2(1) of the Sixth Directive subjects to VAT 'the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such'.

4 Article 6(1) of the Sixth Directive states:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

Such transactions may include inter alia:

— assignments of intangible property whether or not it is the subject of a document establishing title,

— obligations to refrain from an act or to tolerate an act or situation,

— the performances of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.'

5 Article 13B(b) of the Sixth Directive, which is found under Title X thereof, entitled 'Exemptions', provides:

'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 the exemptions and of preventing any possible evasion, avoidance or abuse:

…

(b) the leasing or letting of immovable property excluding:

1. the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites;

2. the letting of premises and sites for parking vehicles;

3. lettings of permanently installed equipment and machinery;

4. hire of safes.

Member States may apply further exclusions to the scope of this exemption'.

National legislation

6 The application of VAT in the Czech Republic is governed by Law No 235/2004 on Value Added Tax. Article 56(4) of that law, which is headed 'Transfer and letting of plots of land, buildings, apartments and non-residential premises, leasing of other apparatus' provides as follows as regards the VAT exemption applicable to the letting of property:

'The letting of plots of land, buildings, apartments and non-residential premises is exempt from the tax. The exemption does not apply to the short-term letting of a building, the letting of premises and spaces for the parking of vehicles, the letting of safes or permanently installed equipment or machines. Short-term letting of a building means letting including internal movable fittings, possibly with the addition of electricity, heating, cooling, gas or water, for a period not exceeding 48 hours.'

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

7 The decision to refer shows that RLRE Tellmer Property is the owner of rented apartment blocks. In addition to rent, it claims from its tenants separately invoiced sums for cleaning of the common parts carried out by caretakers.

8 Having taken the view that RLRE Tellmer Property had made an excessive deduction of VAT in relation to cleaning costs, the tax authorities decided to increase the VAT owed by that company for the month of May 2006 by CZK 115 911 in respect of receipts from cleaning activities.

9 The decision of the Litvínov Tax Office of 20 September 2006 having been confirmed by a decision of the Finanční ředitelství v Ústí nad Labem of 5 February 2007, RLRE Tellmer Property brought an action before the referring court.

10 RLRE Tellmer Property argues that letting and services related to the letting of apartments, such as the cleaning of the common parts, constitute indivisible transactions subject to a single regime of VAT.

11 The referring court is in doubt as to the interpretation which must be given both to the national law and the Community law applicable in this case. It envisages three possible replies to the questions which arise in the main proceedings.

12 First, since tenants have the possibility of concluding an independent contract for the cleaning of common parts with a third party, that service does not form part of the letting and its exemption has no purpose. Second, in so far as exemption of the costs of cleaning those areas has the effect of diminishing charges due for accommodation, reasons of a social nature may justify exemption of those charges. Third, the referring court does not exclude the possibility that that question might have to be left to the assessment of the Member States.

13 In those circumstances, the Krajský soud v Ústí nad Labem (Usti nad Labem Regional Court) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) … Can the provisions of Article 6 … and Article 13 … of the Sixth Directive be interpreted as meaning that the letting of an apartment (and possibly of non-residential premises) on the one hand and the related cleaning of the common parts on the other hand can be regarded as independent, mutually divisible taxable transactions?

(2) If … the answer to the first question is in the negative, do the provisions of Article 13 of that directive, and in particular the introduction and Part B(b) thereof: (1) require; (2) preclude; or (3) leave to the determination of the Member State the application of VAT to payment for cleaning of the common parts of a rented apartment block?'

The questions referred

The first question

14 By its first question, the referring court asks, for the purposes of applying Article 13B(b) of the Sixth Directive, what is the relationship between the letting of property and the service for cleaning the common parts of an apartment block. In particular, it asks whether the charges relating to that cleaning service fall within the concept of letting for the purposes of that article and therefore share the tax treatment of the letting of property, which is exempt from VAT by virtue of Article 13 B(b) of the Sixth Directive.

15 In that respect, it should first be recalled that, according to consistent case-law, the exemptions under Article 13 of the Sixth Directive have their own independent meaning in Community law and must therefore be given a Community definition (Case C-174/06 *CO.GE.P* [2007] ECR I-9359, paragraph 26 and case-law cited).

16 The terms used to specify the exemptions under Article 13 of the Sixth Directive are to be interpreted strictly, since these exemptions constitute exceptions to the general principle that VAT is to be levied on all goods or services supplied for consideration by a taxable person acting as such (see, in particular, Case C-150/99 *Stockholm Lindöpark* [2001] ECR I-493, paragraph 25, and Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 21 and case-law cited).

17 Secondly, it follows from Article 2 of the Sixth Directive that every transaction must normally be regarded as distinct and independent (Case C-425/06 *Part Service* [2008] ECR I-897, paragraph 50 and case-law cited).

18 Moreover, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. Such is the case for example, where, in the course of a purely objective analysis, it is found that there is a single supply in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. In particular, a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (*Part Service*, paragraphs 51 and 52 and case-law cited).

19 It can also 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 (*Part Service*, paragraph 53).

20 It should be remembered at the outset that the letting of immovable property within the meaning of Article 13B(b) of the Sixth Directive essentially consists in the conferring by a landlord on a tenant, for an agreed period and in return for payment, of the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such a right (see, to that effect, Case C-326/99 *'Goed Wonen'* [2001] ECR I-6831, paragraph 55; Case C-409/98 *Mirror Group* [2001] ECR I-7175, paragraph 31; Case C-269/00 *Seeling* [2003] ECR I-4101, paragraph 49; and Case C-284/03 *Temco Europe* [2004] ECR I-11237, paragraph 19).

21 Thus, even if the cleaning services of the common parts of an apartment block accompany the use of the property let, they do not necessarily fall within the concept of letting for the purposes of Article 13(B)(b) of the Sixth Directive.

22 It is, moreover, undisputed that the cleaning services of the common parts of an apartment block can be supplied in various ways, such as, for example, a third party invoicing the cost of the service direct to the tenants or by the landlord employing his own staff for the purpose or using a cleaning company.

23 It should be noted that, in this case, RLRE Tellmer Property invoices the cleaning services to the tenants separately from the rent.

24 Also, since the letting of apartments and the cleaning of the common parts of an apartment block can, in circumstances such as those at issue in the main proceedings, be separated from each other, such letting and such cleaning cannot be regarded as constituting a single transaction within the meaning of the case-law of the Court.

25 Having regard to the whole of the above considerations, the answer to the first question must be that, for the purposes of applying Article 13B(b) of the Sixth Directive, the letting of immovable property and the cleaning service of the common parts of the latter must, in circumstances such as those at issue in the main proceedings, be regarded as independent, mutually divisible operations, so that the said service does not fall within that provision.

The second question

26 In view of the reply given to the first question, there is no need to answer the second question.

Costs

27 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:

For the purposes of applying Article 13B(b) of 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, the letting of immovable property and the cleaning service of the common parts of the latter must, in circumstances such as those at issue in the main proceedings, be regarded as independent, mutually divisible operations, so that the said service does not fall within that provision.

[Signatures]