JUDGMENT OF THE COURT (Sixth Chamber)
6 July 1995 *

In Case C-62/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Dioikitiko Protodikeio Athinas for a preliminary ruling in the proceedings pending before that court between

BP Supergas Anonimos Etairia Geniki Emporiki-Viomichaniki kai Antiprossopeion

and

Greek State

on the interpretation of Articles 11, 17 and 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment,

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini (Rapporteur), C. N. Kakouris, J. L. Murray and G. Hirsch, Judges,

* Language of the case: Greek.

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— BP Supergas Anonimos Etairia Geniki Emporiki-Viomichaniki kai Antiprossopeion, by Nikolaos Skandamis and Athanassios Bakas, of the Athens Bar,

— the Hellenic Republic, by Vassileios Kontolaimos, Deputy Legal Adviser at the State Legal Service and Vassileia Pelekou, Legal Agent in the same service, acting as Agents,

— the Commission of the European Communities, by Enrico Traversa, of its Legal Service, and Théophile M. Margellos, a national civil servant seconded to the Commission, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of BP Supergas Anonimos Etairia Geniki Emporiki-Viomichaniki kai Antiprossopeion, represented by Nikolaos Skandamis and Athanassios Bakas, the Greek Government represented by Vassileios Kontolaimos and Vassiliki Tatsi and the Commission of the European Communities represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, at the hearing on 19 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 9 March 1995,

gives the following

Judgment

1 By judgment of 7 April 1992, received at the Court on 11 March 1993, the Dioikitiko Protodikeio Athinas (Administrative Court of First Instance, Athens) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 11, 17 and 27 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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, hereafter 'the Sixth Directive').

2 Those questions were raised in proceedings between BP Supergas Anonimos Etairia Geniki Emporiki-Viomichaniki kai Antiprossopeion (hereafter 'Supergas') and the Greek State concerning an action to annul Decision No 46645 of the Head of the State Finance Service, Taxation of Limited Commercial Companies, Athens, of 28 January 1991 (hereafter 'the decision at issue'), by which the company's request for partial withdrawal of its VAT returns for the accounting period 1 January to 31 December 1987 was rejected, and also for refund of DR 12 472 889 which it submits was not due by way of VAT.

3 Supergas markets petroleum and related products in Greece. It submitted VAT returns for the period from 1 January to 31 January 1987 which showed a total turnover of DR 2 012 096 255, of which DR 1 760 906 349, or 87%, consisted in sales of petroleum products which, by virtue of Article 37(4) of the Greek Law No 1642/1986 on the application of VAT and other provisions (*Greek Official Journal*, Part 1, No 125) did not give rise to a right to deduct input VAT. An amount of DR 251 139 876, that is to say 13% of the total turnover, related to other transactions which, according to Law No 1642/86, did give rise to a right of deduction.

4 During the same period Supergas paid DR 14 336 654 by way of VAT on supplies of goods and services made to it. Initially it claimed only deduction of DR 1 863 765, that is to say 13% of that amount, which was the percentage of the transactions giving rise to a right of deduction under the VAT Law. On 31 December 1990 it then partially revoked its original returns on the ground of excusable error and claimed deduction of DR 14 336 654, which corresponded to the whole of the input VAT paid by it. It also claimed a refund of DR 12 472 899, which was 87% of the input VAT, which it considered to have been wrongly levied.

5 In the decision at issue the Head of the State Finance Service rejected that claim. Supergas then brought an action before the Dioikitiko Protodikeio Athinas claiming annulment of that decision and refund of the abovementioned amount of DR 12 472 889.

6 Supergas claimed that Articles 23(1), 24(1) and 37 of Greek Law No 1642/1986 and Article 11 of the Greek Law No 1571/1985 (*Greek Official Journal No 192*) and Presidential Decree No 619/1985 (*Greek Official Journal No 227*), as in force for the 1987 tax year, infringed several provisions of the Sixth Directive.

7 After observing that Article 37 of Law No 1641/1986 contained rules which in principle derogated from the provisions of the Sixth Directive, the national court stayed the proceedings and submitted to the Court the following questions for a preliminary ruling:

'1. Was the Greek Government entitled, for whatever reason,

(a) under the rules contained in Article 37(1) and (4) of Law No 1642/1986, on the one hand, to subject the importation of finished petroleum products

to value added tax to be calculated on the basic price referred to above, which differs from that provided for in Article 11A(1) and B(1) and (2) of the Sixth Council Directive, and, on the other hand, to exempt companies marketing petroleum products, filling stations and other retail sellers from the obligation to submit related returns, thus depriving them of the right to deduct the tax; and

(b) to exempt from the tax, pursuant to Article 37(6) of Law No 1642/1986, services in respect of the transport and storage of petroleum products unconnected with the transport etc. of those products from the first to another named destination?

2. If the reply is in the negative, that is to say, if the Greek Government was not so entitled, are Article 11A(1) and B(1) and (2) and Article 17(1) and (2) of the Sixth Directive unconditional and sufficiently clear, enabling the plaintiff company to rely upon them as superior law before the Dioikitiko Protodikeio before which the case is pending? Further, if the latter is the case, in application of those provisions in the directive, may the taxable person request retrospectively from 1 January 1987, when Law No 1642/86 came into force, deduction of the tax on the inputs referred to which was not deducted and a refund of the amount of any tax paid on that basis for 1987 which was not due?'

Admissibility

8 In its observations the Greek Government claimed that the questions submitted by the national court were inadmissible.

9 It claimed, first, that Question 1(a) had no connection with the subject-matter of the dispute.

10 In that regard the Court has consistently held that it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court. A request for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law or the examination of the validity of a rule of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action (see, among others, the judgments in Case C-67/91 Asociación Española de Banca Privada and Others [1992] ECR I-4785, paragraphs 25 and 26, and Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and Others* [1994] ECR I-1711, paragraph 17). However, that is not the position in this case.

11 The refusal of the right to deduct tax which is at issue in the main proceedings is closely linked to the special VAT arrangements for petroleum products. The national court could therefore take the view that it was necessary to obtain an interpretation of the Sixth Directive from the Court of Justice to enable it to rule on the compatibility with Community law of those arrangements as a whole.

12 Secondly, the Greek Government claimed that the Court should not reply to the second question, on the ground that the general provisions of Law No 1642/1986, which would apply if the reply to the first question were in the negative, were perfectly compatible with the Sixth Directive.

13 Since the Court of Justice has no jurisdiction, in proceedings for a preliminary ruling under Article 177, to rule on the compatibility of a national measure with

Community law (see, in particular, the judgment in Case C-188/91 *Deutsche Shell* v *Hauptzollamt Hamburg-Harburg* [1993] I-363, paragraph 27), it is unable to rule on the validity of that argument.

14 The Court must therefore consider the questions submitted by the national court.

Question 1(a)

15 The national court asks in substance whether Articles 2, 11 and 17 of the Sixth Directive are to be interpreted as precluding national rules which make the importation of finished petroleum products subject to VAT calculated on the basis of a basic price different from that provided for in Article 11 of that directive, and which, by exempting traders in the petroleum sector from the obligation to submit returns, deprives them of the right to deduct the VAT levied directly on input transactions.

16 The fundamental principle which underlies the VAT system, and which follows from Article 2 of the First and Sixth Directives, is that VAT applies to each transaction by way of production or distribution after deduction has been made of the VAT which has been levied directly on transactions relating to inputs.

17 Article 11 of the Sixth Directive defines the taxable amount for VAT purposes. That provision is intended *inter alia* to ensure that VAT is applied at each marketing stage on the price or value of the goods at that stage. It therefore precludes the application of taxation arrangements such as those at issue in the main proceedings, in which VAT is determined, once only, on the price at the first marketing stage.

18 The right of deduction provided for in Article 17 et seq. of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. The Court has consistently held (see, in particular, Case 50/87 *Commission* v *France* [1988] ECR 4797, paragraphs 15 to 17 and Case C-97/90 *Lennartz* v *Finanzamt München III* [1991] ECR I-3795, paragraph 27) that the right of deduction must be exercised immediately in respect of all the taxes charged on transactions relating to inputs. Any limitation on the right of deduction affects the level of the tax burden and must be applied in a similar manner in all the Member States. Consequently, derogations are permitted only in the cases expressly provided for in the directive.

19 As regards, more particularly, the derogations in Article 37 of Law No 1642/1986, the Greek Government considers that they were authorized by the Council under the procedure laid down in Article 27 of the Sixth Directive. It claims that, since the Greek authorities brought the entire text of draft Law No 1642/1986 to the attention of the Commission, they obtained the Council's approval for the derogation in question, since they were not raised by the Council within the period applicable.

20 That argument cannot be accepted.

21 The features of the system established by Article 27 of the Sixth Directive should first be noted. Under Article 27(1), the Council may authorize any Member State to introduce special measures for derogation from the directive. Under Article 27(2), a Member State wishing to introduce one of the measures referred to in Article 27(1) is to inform the Commission of it and to provide the Commission with all relevant information. The Commission is to inform the other Member States within one month (Article 27(3)). If neither the Commission nor a Member State has requested that the matter be raised by the Council, the Council's authorization is deemed to have been given at the end of a period of two months after

the date on which the Commission informed the Member States (Article 27(4)). Otherwise, the Council may not authorize a measure except by acting unanimously on a proposal from the Commission (Article 27(1) *in fine*).

22 The Court has held (see Case 5/84 *Direct Cosmetics* v *Commissioners of Customs and Excise* [1985] ECR 617, paragraph 24) that measures derogating from the directive do not accord with Community law unless they remain within the limits of the objectives referred to in Article 27(1) and have also been notified to the Commission and impliedly or expressly authorized by the Council in the circumstances specified in paragraphs (1) and (4) of Article 27.

23 In the light of those considerations, the Court finds that the Greek Government did not specifically inform the Commission of the special measures in Article 37 of Law No 1642/1986 that provided for arrangements derogating from the Sixth Directive with regard to petroleum products. The Greek authorities merely sent the whole draft Law No 1642/1986, without giving any particular indication regarding the special arrangements provided for in Article 37. Only a notification referring expressly to Article 27(2) of the directive would have enabled the Commission and, if necessary, the Council to verify whether the derogating arrangements for petroleum products laid down in Article 37 of that draft Law were within the scope of the objectives referred to in Article 27(1).

24 Accordingly, it should be stated in reply to this part of Question 1 that Articles 2, 11 and 17 of the Sixth Directive must be interpreted as precluding national rules which make the importation of finished petroleum products subject to VAT calculated on the basis of a basic price different from that provided for in Article 11 of that directive and which, by exempting traders in the petroleum sector from the obligation to submit returns, deprive them of the right to deduct VAT charged directly on transactions relating to inputs.

Question 1(b)

25 The national court asks in substance whether the provisions of the Sixth Directive should be interpreted as meaning that they preclude exemption from VAT of transport and storage services of petroleum products that are unconnected with the transport of those products from their first destination to another named destination.

26 Articles 13 to 16 of the Sixth Directive lay down a common list of exemptions from VAT. Under Article 14(1)(i) of that directive, Member States are to exempt 'the supply of services, in connection with the importation of goods where the value of such services is included in the taxable amount in accordance with Article 11B(3)(b)'.

27 Under the first paragraph of Article 11B(3)(b), transport costs incurred up to the 'first place of destination' within the territory of the Member State are included in the taxable amount. The 'first place of destination' means the place mentioned on the consignment note (Article 11B(3)(b), second paragraph). Member States may also include the transport costs in the taxable amount where they result from transport to another known place of destination (third paragraph).

28 The Court finds that a general exemption from VAT on all 'transport and storage of petroleum products', as laid down in Article 37(6) of Law No 1642/1986, goes beyond the exemption provided for in Article 14 of the Sixth Directive.

29 Moreover, such a general exemption deprives the trader of the right to deduct VAT charged on services in respect of transport and storage after the transport of petroleum products to a second place of destination.

30 Furthermore, as set out in paragraphs 22 and 23 above, the measures for derogation from the Sixth Directive must be notified to the Commission in accordance with Article 27(2), which was not the case in the context of the main proceedings with regard to Article 37(6) of Law No 1642/1986.

31 Accordingly, it should be stated in reply to the second part of Question 1 that the provisions of the Sixth Directive, in particular Articles 13 to 17 thereof, are to be interpreted as precluding an exemption from VAT on services in respect of the transport and storage of petroleum products that are unconnected with the transport of those products from a first destination to another named destination.

Question 2, first part

32 The first part of the national court's question seeks to establish whether Article 11A(1) and B(1) and (2), and Article 17(1) and (2) of the Sixth Directive confer rights on individuals on which they may rely before national courts.

33 In order to reply to that question, reference should be made to the settled case-law of the Court regarding the right of individuals to rely upon the Sixth Directive (see the judgments in *inter alia* Case 8/81 *Becker* [1982] ECR 53 and Case C-10/92 *Balocchi* [1993] ECR I-5105).

34 It follows from that case-law that, despite the relatively wide discretion enjoyed by the Member States in implementing certain provisions of the Sixth Directive, individuals may effectively plead before national courts the provisions of the directive which are sufficiently clear, precise and unconditional (*Balocchi*, paragraph 34).

35 The provisions of Article 11A(1) and B(1) and (2) specify the rules for determining the taxable amount whilst Article 17(1) and (2) specify the conditions giving rise to the right to deduct and the extent of that right. They do not leave the Member States any discretion as regards their implementation. Accordingly, they satisfy the abovementioned criteria and therefore confer rights on individuals which they may invoke before a national court in order to challenge national rules which are incompatible with those provisions.

36 Consequently, it should be stated in reply to the first part of Question 2 that the provisions of Article 11A(1) and B(1) and (2) and of Article 17(1) and (2) of the Sixth Directive confer rights on individuals on which they may rely before a national court.

Question 2, second part

37 The national court's question seeks to establish whether a taxable person may claim, with retroactive effect from the date on which the national legislation contrary to the Sixth Directive came into force, a refund of the VAT paid without being due.

38 The Sixth Directive does not contain any provisions applicable to claims for refund of VAT unduly paid by taxable persons.

39 Nevertheless, the Court has held (see, in particular, the judgment in Case 309/85 *Barra* v *Belgium and Another* [1988] ECR 355, paragraph 11) that the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177, the Court of Justice gives to a rule of Community law clarifies and defines, where necessary, the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before delivery of the judgment ruling on the request for interpretation, provided that in other respects the conditions under which an action relating to the application of that rule may be brought before the courts having jurisdiction are satisfied.

40 It follows more particularly that the right to obtain a refund of amounts charged by a Member State in breach of rules of Community law is the consequence and complement of the rights conferred on individuals by the Community provisions as interpreted by the Court (*Barra*, paragraph 17).

41 While it is true that such a refund may be sought only in the framework of the substantive and procedural conditions laid down by the various relevant national laws, the Court has consistently held (see *inter alia* the judgment in Case 199/82 *San Giorgio* [1983] ECR 3595, Case 309/85 *Barra*, cited above, paragraph 18, Case C-208/90 *Emmot* v *Minister for Social Welfare and the Attorney General* [1991] ECR I-4269, paragraph 16, and Case C-410/92 *Johnson* v *Chief Adjudication Officer* [1984] ECR I-5483, paragraph 21), that those conditions and the procedural conditions and rules governing actions at law for protecting the rights which individuals derive from the direct effect of Community law may not be less favourable than those relating to similar, domestic actions nor be framed in a way such as to render virtually impossible the exercise of rights conferred by Community law.

42 Accordingly, it should be stated in reply to the second part of the second question that a taxable person may claim, with retroactive effect from the date on which the

national legislation contrary to the Sixth Directive came into force, a refund of VAT paid without being due, by following the procedural rules laid down by the domestic legal system of the Member State concerned, provided that those rules are not less favourable than those relating to similar, domestic actions nor framed in a way such as to render virtually impossible the exercise of rights conferred by Community law.

Costs

43 The costs incurred by the Commission of the European Communities and the Greek Government, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Dioikitiko Protodikeio Athinas by judgment of 7 April 1992, hereby rules:

1. **Articles 2, 11 and 17 of the Sixth Council Directive (77/388/EEC) of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as precluding national rules which make the importation of finished petroleum products subject to VAT calculated on the basis of a basic price different from that provided for in Article 11 of that directive and which, by exempting traders in the petroleum sector from the**

obligation to submit returns, deprive them of the right to deduct VAT charged directly on transactions relating to inputs.

2. The provisions of the Sixth Directive, in particular Articles 13 to 17 thereof, are to be interpreted as precluding an exemption from VAT on services in respect of the transport and storage of petroleum products that are unconnected with the transport of those products from a first destination to another named destination.

3. The provisions of Article 11A(1) and B(1) and (2) and of Article 17(1) and (2) of the Sixth Directive confer rights on individuals on which they may rely before a national court.

4. A taxable person may claim, with retroactive effect from the date on which the national legislation contrary to the Sixth Directive came into force, a refund of VAT paid without being due, by following the procedural rules laid down by the domestic legal system of the Member State concerned, provided that those rules are not less favourable than those relating to similar, domestic actions nor framed in a way such as to render virtually impossible the exercise of rights conferred by Community law.

Schockweiler Mancini Kakouris

Murray Hirsch

Delivered in open court in Luxembourg on 6 July 1995.

R. Grass
Registrar

F. A. Schockweiler
President of the Sixth Chamber