JUDGMENT OF THE COURT (Fourth Chamber)
16 December 1992 *

In Case C-208/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale de Grande Instance (Regional Court), Nantes, for a preliminary ruling in the proceedings pending before that court between

Raymond Beaulande

and

Directeur des Services Fiscaux, Nantes,

on the interpretation of Article 33 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),

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris, President of the Chamber, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: French.

after considering the written observations submitted on behalf of:

— R. Beaulande, by himself;

— the French Government, by P. Pouzoulet, Deputy Director in the Department of Legal Affairs at the Ministry of Foreign Affairs, and G. de Bergues, Principal Assistant Secretary in the same Ministry, acting as Agents;

— the Commission of the European Communities, by Johannes Føns Bühl, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the parties at the hearing on 11 June 1992, at which Mr Beaulande was represented by J. C. Bouchard and X. Casal, of the Hauts-de-Seine Bar,

after hearing the Opinion of the Advocate General at the sitting on 17 September 1992,

gives the following

Judgment

1 By order of 7 May 1991, received at the Court on 2 August 1991, the Tribunal de Grande Instance, Nantes, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Article 33 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, hereinafter 'the Sixth Directive').

2 That question arose in proceedings between R. Beaulande and the Directeur des Services Fiscaux de Loire Atlantique (Director of the Tax Authorities of Loire Atlantique) relating to the charging of stamp duty on building land.

3 The documents before the Court show that Mr Beaulande purchased a house in Nantes on 16 January 1980, undertaking to demolish it and to erect a residential building within four years.

4 As the purchase took place under the system of VAT on real estate transactions in accordance with Article 257 of the French Code Général des Impôts (General Tax Code, hereinafter 'the CGI'), Mr Beaulande paid the tax and was granted exemption from payment of stamp duty under Article 691 of the CGI. This article provides that purchases of undeveloped land or land covered by buildings that are to be demolished are exempt from stamp duty when they attract VAT, on condition in particular that the purchase deed contains an undertaking to erect a building within four years of the date of the deed and that the purchaser adduces proof that the work has been carried out at the end of that period.

5 Article 1840 G ter of the CGI lays down that if the purchaser fails to adduce the proof provided for in Article 691 he is required to pay, upon the first demand, the stamp duty from which he had been exempted and, in addition, a supplementary duty of 6%. However, under Article 291 of Annex II to the CGI, the VAT paid at the time of purchase and not yet deducted may be offset against the stamp duty payable.

6 As the building was not constructed within the prescribed period, Mr Beaulande received a demand from the tax authorities for the duty payable under Article 1840 G ter of the CGI.

7 Following the rejection of the objection which he had lodged with the tax authorities of Loire Atlantique, Mr Beaulande brought an action against those authorities before the Tribunal de Grande Instance, Nantes, on 14 September 1989. In support of his action for the annulment of the demand for payment, he argued in particular that the stamp duty claimed could be characterized as a turnover tax, so that its imposition alongside VAT in connection with the same conveyance was contrary to Article 33 of the Sixth Directive.

8 Taking the view that the outcome of the dispute depended on the interpretation of the Sixth Directive, the national court decided to refer the following question to the Court of Justice for a preliminary ruling:

'Is it not the case that stamp duties which are charged on the acquisition of building land in the event of a breach of the undertaking to build within the four-year period (or such longer period as is allowed) and which are proportional to the value of the property can be characterized as turnover taxes and hence, by virtue of Article 33 of the Sixth Council Directive of 17 May 1977, are incompatible with VAT charged at the time of acquisition?'

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 The question referred to the Court seeks essentially to establish whether Article 33 of the Sixth Directive precludes the introduction or maintenance of a national tax which has the characteristics of stamp duty charged on the acquisition of building land in the event of a breach of the undertaking to build within the time-limit set by the relevant national legislation.

11 It must be borne in mind first of all that Article 33 of the Sixth Directive provides that 'without prejudice to other Community provisions, the provisions of this directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes'.

12 Furthermore, the Court has consistently held (see, most recently, its judgment in Case C-347/90 *Bozzi* [1992] ECR I-2947, paragraph 9) that the purpose of Article 33 is to prevent the introduction of taxes, duties and charges which, through being levied on the movement of goods and services in a way comparable to VAT, would jeopardize the functioning of the common system of VAT. Taxes, duties and charges must in any event be regarded as being imposed on the movement of goods and services in a way comparable to VAT if they exhibit the essential characteristics of VAT.

13 It follows that Article 33 of the Sixth Directive does not preclude the maintenance or introduction of stamp duties or other kinds of taxes, duties or charges which do not have the essential characteristics of VAT.

14 With regard to those characteristics, the first point to bear in mind is that, as the Court has repeatedly held (see, in particular, the judgments in Case 252/86 *Bergandi* v *Directeur-Général des Impôts* [1988] ECR 1343, paragraph 15, Joined Cases 93 and 94/88 *Wisselink and Others* v *Staatssecretaris van Financiën* [1989] ECR 2671, paragraph 18, Case C-109/90 *Giant* v *Gemeente Overijse* [1991] ECR I-1385, paragraphs 11 and 12, Case C-200/90 *Dansk Denkavit and Poulsen* v *Skatteministeriet* [1992] ECR I-2217, paragraph 11, and Case C-347/90 *Bozzi* [1992] ECR I-2947, paragraph 12), VAT applies generally to transactions relating to goods or services, it is proportional to the price of those goods or services, it is charged at each stage of the production and distribution process and finally it is imposed on the added value of goods and services, since the tax payable on a transaction is calculated after deduction of the tax paid on the previous transaction.

15 The next point to note is that a charge of the kind referred to by the national court does not have the essential features of VAT, mentioned above.

16 First, stamp duty of the kind described by the national court is not a general tax since it relates only to real estate sold for valuable consideration, the conveyance of which gives rise to certain formalities. Such duty is not therefore intended to apply to all economic transactions in the Member State concerned.

17 Secondly, no production and distribution process is involved, as the stamp duty is charged only when the real estate passes into the ownership of the final consumer. Furthermore, it is not deductible from duty of the same kind paid on subsequent conveyances.

18 Finally, the levying of such duty does not take account of the added value but is based on the full value of the property.

19 Consequently, the answer to the question referred by the Tribunal de Grande Instance, Nantes, must be that Article 33 of the Sixth Directive is to be interpreted as meaning that it does not preclude the introduction or maintenance of a national tax which has the characteristics of stamp duty charged on the acquisition of building land in the event of a breach of the undertaking to build within the time-limit set by the relevant national legislation.

Costs

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

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Tribunal de Grande Instance, Nantes, by order of 7 May 1991, hereby rules:

Article 33 of the Sixth Directive is to be interpreted as meaning that it does not preclude the introduction or maintenance of a national tax which has the characteristics of stamp duty charged on the acquisition of building land in the event of a breach of the undertaking to build within the four-year period provided for by national legislation.

Kakouris Diez de Velasco Kapteyn

Delivered in open court in Luxembourg on 16 December 1992.

J.-G. Giraud C. N. Kakouris

Registrar President of the Fourth Chamber