JUDGMENT OF THE COURT (Sixth Chamber)
24 October 1996 *

In Case C-288/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the VAT and Duties Tribunal, London, for a preliminary ruling in the proceedings pending before that court between

Argos Distributors Limited

and

Commissioners of Customs and Excise

on the interpretation of Article 11 of the Sixth Directive, 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 (Sixth Chamber),

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

* Language of the case: English.

Advocate General: N. Fennelly,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Argos Distributors Ltd., by David Milne QC, instructed by Herbert Smith, Solicitors,

— the United Kingdom Government, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent, assisted by Nicholas Paines, Barrister,

— the Greek Government, by Michail Apessos, Legal Adviser in the State Legal Service, Foteini Dedousi, Agent for Legal Proceedings in the State Legal Service, and Anna Rokofyllou, Special Adviser to the Deputy Minister for Foreign Affairs, acting as Agents,

— the Commission of the European Communities, by Peter Oliver and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Argos Distributors Ltd, represented by David Milne QC, the United Kingdom Government, represented by Kenneth Parker QC, the Greek Government, represented by Michail Apessos and Fokion Georgakopoulos, Legal Adviser in the State Legal Service, acting as Agent, and Anna Rokofyllou, and the Commission, represented by Peter Oliver and Enrico Traversa, at the hearing on 25 April 1996,

after hearing the Opinion of the Advocate General at the sitting on 27 June 1996,

gives the following

Judgment

1 By order of 26 September 1994, received at the Court Registry on 25 October 1994, the VAT and Duties Tribunal, London, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of the Sixth Directive, 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 Those questions have been raised in proceedings brought by Argos Distributors Ltd (hereinafter 'Argos') against the Commissioners of Customs and Excise (hereinafter 'the Commissioners'), who are responsible for collecting value added tax (hereinafter 'VAT'), in which Argos seeks a refund of sums paid by Argos to the United Kingdom Government in respect of VAT.

3 According to the order for reference and the documents accompanying it, Argos is a retailer which lists its goods in a catalogue and sells them from its showrooms. It has more than 300 outlets of that kind throughout the United Kingdom.

4 Goods purchased can be paid for by means of vouchers issued and sold by Argos under its incentive scheme. Each voucher is in the form of a printed note and has

a face value of £1, £5, £10, £20 or £25. According to the conditions for use of the vouchers, they may be used, at the value shown, for part or full payment for goods or services purchased in Argos showrooms but cannot be redeemed for cash.

5 Argos sells its vouchers either at face value or at a discount. The size of the discount depends on the value of the order. The normal discount is 5% of the face value of the vouchers where the order amounts to £500 or more. There is a retroactive additional discount of 1% or 2.5% for orders exceeding £10 000 and £50 000 respectively within one year.

6 The main buyers of the vouchers are companies which distribute them to their staff or representatives by way of incentive, and financial services companies which resell them to the public at or below face value. The last recipient of a voucher does not necessarily know who originally bought it or whether a discount from face value was granted.

7 Any customer making a purchase in an Argos shop may present a voucher in full or partial payment of the price of the goods up to the face value of the voucher. If the face value of the voucher exceeds the value of the purchase, the surplus is not repaid in cash. If stolen, vouchers can be cancelled and replaced. Following use in an Argos shop, the voucher is cancelled and destroyed.

8 By using that system, Argos attracts the holders of vouchers into its showrooms, makes itself more widely known to the public and increases its turnover. It also benefits from improved cash flow.

9 The dispute in the main proceedings concerns calculation of the VAT which Argos, as a taxable person, must pay on its receipts from sales of goods paid for by means of vouchers. The Commissioners take the view that the face value of the voucher constitutes the consideration for the supply of the goods for the purpose of fixing the taxable amount, regardless of whether, when the voucher was initially purchased, the buyer was granted a discount.

10 Argos, on the other hand, considers that it does not receive the full face value of the vouchers but only the difference between that figure and the discount granted to the first buyer of them, so that that sum constitutes the taxable amount. It therefore applied to the Commissioners for a refund of £1 363 245, representing part of the VAT paid between 1 April 1983 and 27 March 1993. That application was rejected. Argos then appealed to the Value Added Tax Tribunal (now the VAT and Duties Tribunal), London.

11 The tribunal considered that, to determine the taxable amount for VAT purposes, the essential question was the meaning of the term 'consideration' used in Article 11(A)(1)(a) of the Sixth Directive, which provides:

'1. The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has

been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;

(b) ...'.

12 The tribunal considered that the issue in this case was to assess the value of the consideration represented by a voucher when it was presented by way of payment in an Argos shop by a final user who was not the person who had initially bought it at a discount. In view of the wording of Article 11(A)(3)(b), according to which discounts are to be allowed to the customer and accounted for at the time of the supply, a link must be established, for the purposes of applying the provision in question, between the initial purchase of the voucher, when a discount was allowed, and its final use. It was also necessary, in order to apply that provision, to determine whether a discount may extend to the full price of a particular item of goods in view of the fact that a voucher may cover the full price.

13 Entertaining doubts as to how the dispute should be decided, the VAT and Duties Tribunal stayed proceedings pending a preliminary ruling from the Court on the following questions:

'1. Is Article 11(A)(3)(b) of the Sixth Directive to be interpreted so that the expression "price discounts and rebates" is capable of applying in circumstances where the face value of a voucher issued by the supplier of goods covers or is available to cover the entirety of the supplier's normal retail selling price?

2. In circumstances where a supplier of goods has sold to a purchaser at a discount a voucher which is subsequently presented in whole or (more commonly) in part payment for goods by a customer who was not the purchaser of the voucher and does not normally know what sum was paid for the voucher, is Article 11(A)(3)(b) of the Sixth Council Directive to be interpreted so that the expression "price discounts and rebates allowed to the customer and accounted for at the time of supply" covers,

   (a) the difference between the face value of the vouchers and the price charged by the supplier to the original purchaser of the voucher; or

   (b) the entire face value of the voucher; or

   (c) neither?

3. If Article 11(A)(3)(b) does not apply in the above circumstances, is Article 11(A)(1)(a) to be interpreted so that the part of the consideration represented by the voucher is:

   (a) the face value of the voucher; or

   (b) the sum actually obtained by the supplier of the goods from the sale of the voucher?'

The third question

14 By its third question, which it is appropriate to consider first, the national court essentially seeks to ascertain whether, when a supplier has sold a voucher at a dis-

count to a buyer and promised at a later stage to accept that voucher at face value in full or part payment of the price of goods purchased by a customer, who is not the buyer of the voucher, and who does not normally know the actual price at which the voucher was sold by the supplier, Article 11(A)(1)(a) of the Sixth Directive must be interpreted as meaning that the consideration represented by the voucher is its face value or the sum actually received by the supplier when it sold the voucher.

15 It should be noted that the transaction at issue in this question is the transaction whereby Argos goods are bought in one of its shops, the price being paid by the buyer, in whole or in part, by means of a voucher. The transaction at issue is not the previous sale of vouchers by Argos.

16 According to the Court's settled case-law, the taxable amount for the supply of goods or services is represented by the consideration actually received for them. That consideration is thus the subjective value, that is to say, the value actually received, in each specific case, and not a value estimated according to objective criteria (see Case 154/80 *Staatssecretaris Van Financiën* v *Cooperatieve Aardappelenbewaarplats* [1981] ECR 445; Case 230/87 *Naturally Yours Cosmetics* [1988] ECR 6365; Case C-126/88 *Boots* v *Commissioners of Customs and Excise* [1990] ECR I-1235; and Case C-38/93 *Glawe* [1994] ECR I-1679).

17 According to the same case-law, that consideration, when not consisting of money, must be capable of being expressed in money (*Cooperatieve Aardappelenbewaarplats* and *Naturally Yours Cosmetics*, cited above).

18 In this case, the subjective consideration actually received by Argos for the sale of its goods is constituted wholly or in part by the vouchers presented by the buyer of the goods. Since Argos regards the voucher as representing such part of the catalogue price as is equal to its face value, the only question is as to the actual money equivalent of the voucher taken in payment by Argos.

19 According to the terms of the transaction which involves the initial purchase of the voucher, that voucher, by its nature, is no more than a document evidencing the obligation assumed by Argos to accept the voucher, instead of money, at its face value (see, to that effect, *Boots Company*, cited above, paragraph 21).

20 In order to ascertain the actual money equivalent accruing to Argos when it takes a voucher in payment, regard must be had only to the transaction which is relevant in that regard, namely the initial transaction comprising the sale of the voucher, at a discount or otherwise. In view of the nature of that transaction, the actual money equivalent which the voucher represents for Argos, when the latter accepts it in payment, is the sum of money which it received upon the sale of the voucher, namely its face value less any discount allowed.

21 The fact that a buyer of Argos goods does not know the real money equivalent of the voucher used by him is irrelevant: the important issue in this case is to determine the actual money equivalent received by Argos when it accepts vouchers in payment for its goods, since only that actual equivalent can constitute the taxable amount.

22 This interpretation is not invalidated by the fact that, in each transaction, the details of what Argos receives as consideration for the supply of goods are unknown. In that connection, it must be emphasized that in this case the burden of proof falls on the supplier. Argos claims, without having been contradicted, that as a result of the serial number appearing on each voucher, it is possible, when the voucher is presented in a shop, to identify the initial purchaser and to determine

any discount allowed to him. Thus, it is not difficult to ascertain what proportion of Argos's total receipts is represented by the vouchers received (see, to that effect, *Glawe*, cited above).

23 The answer to the third question must therefore be that Article 11(A)(1)(a) of the Sixth Directive is to be interpreted as meaning that, when a supplier has sold a voucher to a buyer at a discount and promised subsequently to accept that voucher at its face value in full or part payment of the price of goods purchased by a customer who was not the buyer of the voucher, and who does not normally know the actual price at which the voucher was sold by the supplier, the consideration represented by the voucher is the sum actually received by the supplier upon the sale of the voucher.

The other questions

24 In view of the answer given to the third question, it is unnecessary to answer the others.

Costs

25 The costs incurred by the United Kingdom and Greek Governments 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 (Sixth Chamber),

in answer to the questions referred to it by the VAT and Duties Tribunal, London, by order of 26 September 1994, hereby rules:

Article 11(A)(1)(a) of the Sixth Directive, 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 meaning that, when a supplier has sold a voucher to a buyer at a discount and promised subsequently to accept that voucher at its face value in full or part payment of the price of goods purchased by a customer who was not the buyer of the voucher, and who does not normally know the actual price at which the voucher was sold by the supplier, the consideration represented by the voucher is the sum actually received by the supplier upon the sale of the voucher.

Mancini Kakouris Hirsch

Delivered in open court in Luxembourg on 24 October 1996.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber