Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

18 May 2017*

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 314 — Margin scheme — Conditions under which it is applicable — Refusal by the national tax authorities to grant a taxable person the right to apply the margin scheme — References on the invoices relating both to the application of the margin scheme by the supplier and to exemption from VAT — Margin scheme not applied by the supplier to the supply — Indications giving grounds for suspecting an infringement or fraud in the supply)

In Case C-624/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), made by decision of 2 November 2015, received at the Court on 23 November 2015, in the proceedings

'Litdana' UAB

v

Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos,

third party:

Klaipėdos apskrities valstybinė mokesčių inspekcija,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda (Rapporteur) and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 11 January 2017,

after considering the observations submitted on behalf of:

— 'Litdana' UAB, by P. Gruodis, advokatas,

— the Lithuanian Government, by K. Dieninis, D. Stepanienė and D. Kriaučiūnas, acting as Agents,

— the Cypriot Government, by K.-K. Kleanthous and E. Symeonidou, acting as Agents,

* Language of the case: Lithuanian.

— the European Commission, by L. Lozano Palacios and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 226(11) and (14) and Article 314(a) and (d) 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 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between 'Litdana' UAB and the Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania, 'the State Tax Inspectorate') concerning that authority's refusal to grant Litdana the right to apply the margin scheme when calculating value added tax (VAT) in relation to the sale of second-hand vehicles acquired from a Danish undertaking.

Legal context

EU law

3 Recital 51 of the VAT Directive states as follows:

'It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors' items, with a view to preventing double taxation and the distortion of competition as between taxable persons.'

4 According to Article 226 of that directive:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

(11) in the case of an exemption, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt;

…

(14) where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques is applied, the mention "Margin scheme — Second-hand goods"; "Margin scheme — Works of art" or "Margin scheme — Collector's items and antiques" respectively;

…'

5 Article 313(1) of that directive provides:

‘In respect of the supply of second-hand goods, works of art, collectors’ items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.’

6 Article 314 of that directive provides:

‘The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors’ items or antiques where those goods have been supplied to him within the Community by one of the following persons:

(a) a non-taxable person;

(b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

(d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.’

7 Article 315 of the VAT Directive provides:

‘The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.’

8 Article 323 of the VAT Directive states as follows:

‘Taxable persons may not deduct from the VAT for which they are liable the VAT due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the margin scheme.’

9 Article 325 of that directive provides:

‘The taxable dealer may not enter separately on the invoices which he issues the VAT relating to supplies of goods to which he applies the margin scheme.’

Lithuanian law

10 Article 106 of the Lietuvos Respublikos pridėtinės vertės mokesčio įstatymas No IX-751 (Law of the Republic of Lithuania No IX-751 on value added tax) of 5 March 2002 (Žin., 2002, No 35-1271), in the version applicable at the material time (‘the Law on VAT’), provides:

‘1. A VAT payer supplying second-hand goods, works of art, collectors’ items and/or antiques, as defined in this article, shall calculate VAT on the supplied second-hand goods, works of art, collectors’ items and antiques in accordance with the detailed rules laid down in this Section. The provisions of this Section shall apply to VAT payers who, in the course of their economic activities, are constantly engaged in the supply of second-hand goods, works of art, collectors’ items and/or

antiques. Where the VAT payer supplies his own second-hand fixed tangible assets, he shall be deemed in respect of such transactions to meet the requirements of this paragraph concerning constant engagement in the supply of second-hand goods.

2. The provisions of this Section shall apply where a VAT payer supplies second-hand goods, works of art, collectors' items and/or antiques acquired within the territory of the European Union without VAT, second-hand goods, works of art, collectors' items and/or antiques on the acquisition of which this special scheme was applied, or second-hand means of transport on the acquisition of which in the Member State of dispatch the special transitional provisions for second-hand means of transport applicable in that Member State were applied. …'

11 Article 107(1) and (2) of the Law on VAT provides:

'1. When goods referred to in Article 106(2) of this Law are supplied, the taxable amount shall be the seller's margin, calculated in the manner laid down in paragraph 2 of this Article.

2. The seller's margin shall be calculated as the difference between the consideration (excluding the VAT itself) received or to be received by the seller for the goods supplied and the amount (including VAT) paid or to be paid by him to his supplier when acquiring those goods. If goods imported by the VAT payer are supplied, the amount of import duties, import taxes and import VAT charged on those goods shall additionally be subtracted.'

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

12 Litdana is engaged in the activity of selling second-hand vehicles on a constant basis. During the period from 1 January to 30 October 2012, it acquired from Handicare Auto A/S, a Danish company, second-hand vehicles which it resold to natural and legal persons. All the invoices relating to the acquired second-hand vehicles contained a reference to Paragraphs 69 to 71 of the Danish VAT Law and indicated, in addition, that the vehicles being sold were exempt from VAT. Litdana applied the margin scheme referred to in Article 106(2) of the Law on VAT to the vehicles at issue when they were resold.

13 Litdana was subject to a tax inspection carried out by the Klaipėdos apskrities valstybinė mokesčių inspekcija (State Tax Inspectorate, Region of Klaipėda, Lithuania, 'the Regional Tax Inspectorate') covering the period from 1 January to 30 October 2012 with regard to the calculation of VAT. That inspection gave rise to an inspection report dated 28 April 2014, in which the Regional Tax Inspectorate found that Litdana had not been justified in applying the margin scheme to the 25 second-hand vehicles that it had acquired from Handicare Auto and resold to natural and legal persons, since Handicare Auto had not applied the margin scheme to the vehicles sold. The Regional Tax Inspectorate therefore required Litdana to pay VAT in the amount of EUR 15745.48.

14 On 23 June 2014, the Regional Tax Inspectorate approved the inspection report and ordered Litdana to pay EUR 15745.48 in VAT, EUR 3141.76 in interest for late payment and a fine of EUR 1574.66. By decision of 21 August 2014, the State Tax Inspectorate confirmed that decision.

15 Litdana lodged a complaint with the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania, 'the Tax Disputes Commission') requesting annulment of the decisions of the Regional Tax Inspectorate and the State Tax Inspectorate.

16 By decision of 31 October 2014, the Tax Disputes Commission confirmed the State Tax Inspectorate's decision but relieved Litdana of the interest for late payment.

17 Litdana brought an appeal against those various decisions before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania).

18 The referring court states that the Lithuanian tax authorities denied Litdana the right to apply the margin scheme in the light solely of the information provided by the Danish tax authority that Handicare Auto had not applied the margin scheme to the supply of the vehicles at issue. In doing so, first, the State Tax Inspectorate did not take account of the fact that the invoices presented by Handicare Auto indicated that the vehicles being sold were exempt from VAT and contained a reference to Paragraphs 69 to 71 of the Danish VAT Law and, secondly, the Tax Disputes Commission stated that Litdana, acting with care, should have contacted Handicare Auto in order to obtain confirmation that the vehicles were sold under the margin scheme, or asked the Danish tax authorities whether that company had transmitted the data on the supply of the vehicles at issue to the electronic database of the VAT Information Exchange System (VIES).

19 The question arising before the referring court is therefore whether a taxable person who has received an invoice that includes references relating both to the margin scheme and to exemption from VAT has the right to apply that scheme, referred to in Article 314 of the VAT Directive, notwithstanding the fact that it is apparent from a subsequent check carried out by the tax authorities that the taxable dealer supplying the goods at issue had not applied that scheme.

20 In those circumstances, the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Under Articles 314(a) and 226(11) of [the VAT Directive] and under Articles 314(d) and 226(14) of that directive, are national rules and/or national practice founded on those rules allowed that prevent a taxable person from applying the VAT margin scheme because it becomes apparent upon a tax inspection carried out by the tax authority that incorrect information/data on the application of the VAT margin scheme and/or on exemption from VAT was provided in the VAT invoices for the goods supplied, but the taxable person did not know and could not have known about that?

(2) Is Article 314 of [the VAT Directive] to be understood and interpreted as meaning that, although the VAT invoice states that the goods are exempt from VAT (Article 226(11) of [the VAT Directive]) and/or the seller has applied the margin scheme in order to supply the goods (Article 226(14) of [the VAT Directive]), the taxable person acquires the right to apply the VAT margin scheme only when the supplier of the goods actually applies the margin scheme and duly discharges his obligations in the sphere of payment of VAT (pays VAT on the margin in his State)?’

Consideration of the questions referred

Preliminary observations

21 It is not in dispute that the mention ‘Sections 69-71’ referring to the relevant provisions of Danish law and appearing on the invoices received by Litdana must be understood as corresponding, in essence, to the mention ‘Margin scheme — Second-hand goods’ which, pursuant to Article 226(14) of the VAT Directive, is required on invoices where the special arrangements applicable to second-hand goods are applied. Moreover, it is not apparent from the order for reference or the observations submitted to the Court by the parties in the main proceedings that the question of the conformity of the invoices received by Litdana with the requirements laid down in Article 226 of the VAT Directive arises in the main proceedings.

The questions

22 By its questions, which should be examined together, the referring court asks, in essence, whether Article 314 of the VAT Directive must be interpreted as precluding the competent authorities of a Member State from denying a taxable person the right to apply the margin scheme where he received an invoice that includes references relating both to the margin scheme and to exemption from VAT if it is apparent from a subsequent check carried out by those authorities that the taxable dealer supplying the second-hand goods had not actually applied that scheme to the supply of those goods.

23 As a preliminary point, it should be noted that the scheme for the taxation of the profit margin made by the taxable dealer on the supply of second-hand goods, such as those at issue in the main proceedings, constitutes a special arrangement for VAT, derogating from the general scheme of the VAT Directive. Consequently, Article 314 of that directive, which identifies the cases in which this special arrangement is to be applied, must be construed narrowly (see judgment of 19 July 2012, *Bawaria Motors*, C-160/11, EU:C:2012:492, paragraphs 28 and 29 and the case-law cited).

24 As is apparent from Articles 314 and 315 of the VAT Directive, the margin scheme enables a taxable dealer to charge VAT only on the profit margin made on the resale of second-hand goods, works of art, collectors' items or antiques acquired from a person referred to in Article 314(a) to (d) of the VAT Directive, the profit margin corresponding to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.

25 The objective of the margin scheme, as is clear from recital 51 of the VAT Directive, is to avoid double taxation and distortions of competition between taxable persons in the area of second-hand goods, works of art, collectors' items or antiques (see, to that effect, judgment of 3 March 2011, *Auto Nikolovi*, C-203/10, EU:C:2011:118, paragraph 47 and the case-law cited).

26 To tax, on its overall price, the supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where the price at which that dealer purchased those goods includes a sum of input VAT which was paid by a person falling within one of the categories identified in Article 314(a) to (d) of that directive and which neither that person nor the taxable dealer was able to deduct, would lead to such double taxation (see, to that effect, judgment of 3 March 2011, *Auto Nikolovi*, C-203/10, EU:C:2011:118, paragraph 48 and the case-law cited).

27 The conditions that must be fulfilled for the purpose of enabling a taxable person to apply the margin scheme are set out in Article 314 of the VAT Directive. That article, in addition to specifying the types of goods that a taxable dealer may supply under the margin scheme, lists in points (a) to (d) the persons from one of whom the taxable dealer must acquire those goods, thus enabling him to apply that special arrangement. Those different persons have in common that they could not deduct any of the input tax paid on the purchase of those goods and therefore bore that tax in its entirety (see, to that effect, judgment of 19 July 2012, *Bawaria Motors*, C-160/11, EU:C:2012:492, paragraph 37).

28 In the present case, it is apparent from the order for reference that the invoices received by Litdana from Handicare Auto included references relating both to the margin scheme and to exemption from VAT. Thus, invoice No 96681, which is included in the file submitted to the Court and is a typical example of the invoice issued by Handicare Auto for the supplies of goods at issue in the main proceedings, featured — in addition to the details relating to the date of issue, the VAT identification number under which Handicare Auto supplied the goods, the full name and address of that company, the quantity and nature of the goods supplied, the unit price, the 'Total DKK' price, the amount of VAT, corresponding to '0', and the 'Total DKK incl. VAT' amount — the details 'Sections 69-71' and 'Free of VAT'.

29 It follows from the order for reference that the wording on the invoices issued by Handicare Auto regarding the application of the margin scheme was incorrect, because it became apparent, following a check carried out by the tax authorities, that Handicare Auto had not actually applied that scheme to the supply of the second-hand vehicles at issue. The authorities concluded that Litdana had no right to apply the margin scheme since the conditions for the application of that scheme were not met, which is why they subsequently required Litdana to pay the amount of VAT applicable.

30 In that regard, it should be noted that the case referred to in Article 314(d) of the VAT Directive in which the margin scheme is applied is subject to the requirement that the goods referred to in that article are supplied to the taxable person by another taxable dealer who has applied that special arrangement to the supply, a condition that has not been met in the present case. Moreover, it is not apparent in any way from the information in the order for reference that the situation in the main proceedings fell under one of the other cases envisaged in Article 314 in which the margin scheme is applied.

31 It should be recalled, in that context, that the Court has repeatedly held that EU law cannot be relied on by individuals for abusive or fraudulent ends (judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraph 43).

32 The Court has concluded from this, first of all, in the context of settled case-law on the right to deduct VAT laid down by the VAT Directive, that it is for the national authorities and courts to refuse the right of deduction if it is shown, in the light of objective evidence, that that right is being relied on for fraudulent or abusive ends. It has held, next, that the consequence of an abuse or fraud also applies, in principle, to the right to an exemption for intra-Community supplies (see, to that effect, judgment of 6 September 2012, *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraph 54). Finally, the Court has held that, in so far as any refusal of a right under the VAT Directive reflects the general principle that no one may benefit from the rights stemming from the legal system of the European Union for abusive or fraudulent ends, such a refusal is incumbent, in general, on the national authorities and courts, irrespective of the VAT right affected by the fraud, including therefore the right to a VAT refund (see, to that effect, judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraph 46).

33 According to settled case-law, that is the position not only where tax evasion has been carried out by the taxable person himself but also where a taxable person knew, or should have known, that, by the transaction concerned, he was participating in a transaction involving evasion of VAT carried out by the supplier or by another trader acting upstream or downstream in the supply chain (see, regarding the right of deduction, judgment of 6 December 2012, *Bonik*, C-285/11, EU:C:2012:774, paragraphs 38 to 40, regarding the right of exemption for an intra-Community supply, judgment of 6 September 2012, *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraph 54, and, regarding VAT reimbursement, judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraphs 49 and 50).

34 Accordingly, it is not contrary to EU law to require a trader to act in good faith and to take every step which could reasonably be asked of him to satisfy himself that the transaction which he is carrying out does not result in his participation in tax evasion (judgment of 6 September 2012, *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraph 48 and the case-law cited).

35 On the other hand, it is incompatible with the rules governing the right of deduction under the VAT Directive to impose a penalty, in the form of refusal of that right, on a taxable person who did not know, and could not have known, that the transaction concerned was connected with fraud committed by the supplier or that another transaction forming part of the chain of supply, downstream or upstream of the transaction carried out by the taxable person, was vitiated by VAT

fraud. The establishment of a system of strict liability would go beyond what is necessary to preserve the public exchequer's rights (judgment of 6 December 2012, *Bonik*, C-285/11, EU:C:2012:774, paragraphs 41 and 42 and the case-law cited).

36 It follows that, even if all the substantive conditions giving rise to the right to the exemption of an intra-Community supply from VAT or to deduct VAT were not met, the Court has held that a taxable person who has acted in good faith and taken every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion cannot be refused that right (see, to that effect, judgments of 27 September 2007, *Teleos and Others*, C-409/04, EU:C:2007:548, paragraph 68, and of 6 September 2012, *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraphs 47 to 50 and 55).

37 The considerations set out in paragraphs 32 to 35 of the present judgment are relevant where the national authorities or courts refuse the right to apply the margin scheme, referred to in Article 314 of the VAT Directive, a matter on which all of the parties and interested persons that submitted observations to the Court are agreed.

38 According to the case-law of the Court, determination of the measures which may, in a particular case, reasonably be required of a taxable person wishing to exercise a right conferred by the VAT Directive in order to satisfy himself that his transactions are not connected with fraud committed by a trader at an earlier stage of a transaction depends essentially on the circumstances of that particular case (see, by analogy, judgments of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraphs 53, 54 and 59, and of 6 September 2012, *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraph 53).

39 When there are indications giving grounds for suspecting an infringement or fraud, a prudent trader could, depending on the circumstances of the case, be obliged to make enquiries about another trader from whom he intends to purchase goods or services in order to ascertain the latter's trustworthiness (see, by analogy, judgment of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 60).

40 However, the tax authority cannot, as a general rule, require the taxable person wishing to exercise the right to apply the margin scheme, first, to verify, inter alia, that the issuer of the invoice relating to the goods in respect of which the exercise of that right is sought has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders operating at an earlier stage of the transaction or, secondly, to be in possession of documents in that regard (see, by analogy, judgment of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 61).

41 It is, in principle, for the tax authorities to carry out the necessary inspections of traders in order to detect irregularities and VAT fraud as well as to impose penalties on the trader who has committed those irregularities or that fraud (see, by analogy, judgment of 21 June 2012, *Mahagében and Dávid*, C-80/11 and C-142/11, EU:C:2012:373, paragraph 62).

42 Thus, the question whether Litdana acted in good faith and took every step which could reasonably be required of it to satisfy itself that the transactions which it carried out were not connected with tax evasion is a matter for the referring court to assess, in the light of the principles set out in paragraphs 37 to 41 of the present judgment.

43 The factors and factual circumstances that may be taken into consideration by the referring court in that regard may include, inter alia, the fact that it has not been established that Litdana knew that Handicare Auto had not actually applied the margin scheme to the supplies at issue in the main proceedings. In any event, that is not at all apparent from the order for reference.

44 As to whether Litdana took every necessary step to satisfy itself that the transactions which it carried out were not connected with tax evasion, the referring court may, in the context of its overall assessment, take into consideration, inter alia, the fact that the supplies at issue in the main proceedings appear to form part of a long-standing commercial relationship between Litdana and Handicare Auto, in the context of which Litdana in the past took care to verify with the tax authorities the meaning of the reference 'Sections 69-71' on the invoices issued by Handicare Auto and received confirmation from those authorities that the invoices featuring that reference provided sufficient evidence for it to apply the margin scheme. In such circumstances, it would be contrary to the principle of proportionality to require the taxable person to systematically verify, in respect of each supply, that the supplier actually applied the margin scheme, at least when there is no indication giving grounds for suspecting an infringement or fraud within the meaning of paragraph 39 of the present judgment.

45 As to whether, in the main proceedings, there are indications giving grounds for suspecting an infringement or fraud, it should be noted that the Lithuanian Government acknowledged, at the hearing, in response to a question from the Court, that the mere reference to 'Sections 69-71' on the invoices received by Litdana is not, viewed in isolation, an indication that should have aroused its suspicions as to the existence of an infringement or fraud. In that government's view, it is the fact that the invoices simultaneously include the references 'Sections 69-71' and 'Free of VAT' that is an indication of an infringement or fraud, within the meaning of paragraph 39 of the present judgment.

46 While it is true that that double reference is not devoid of any ambiguity because it seems to refer both to the rules on taxing the supply on the basis of the dealer's profit margin and to those exempting the supply from VAT, it should however be noted, as the European Commission has observed, that it is not obvious that that double reference is such as to arouse the suspicions of a prudent trader who is not a VAT expert as to the existence of an infringement or fraud committed by a trader at an earlier stage. It is not inconceivable that the taxable person may interpret the double reference as confirming that the supply was carried out, pursuant to Article 314(d) of the VAT Directive, by another taxable dealer, in so far as the supply by that other taxable dealer had been subject to VAT in accordance with the margin scheme. Both the reference to exemption from VAT and the reference to the margin scheme on the invoices at issue in the main proceedings could also be interpreted by the taxable person, as Litdana submitted at the hearing, as confirming that the dealer's margin alone is being taxed, the value of the goods concerned remaining exempt, a matter which is for the referring court to ascertain.

47 Moreover, and subject to verification by the referring court, the reference 'Free of VAT', combined with the details 'Sections 69-71' and 'Total DKK incl. VAT', on those invoices could also be interpreted by the taxable person as confirming that, when applying the margin scheme, he cannot, in accordance with Article 323 of the VAT Directive, deduct the input tax paid on the purchase of the goods at issue, or that the supplies are subject to the margin scheme under which, pursuant to Article 325 of that directive, the taxable dealer may not enter separately on the invoices which he issues the VAT relating to supplies.

48 In the light of the foregoing considerations, the answer to the questions referred is that Article 314 of the VAT Directive must be interpreted as precluding the competent authorities of a Member State from denying a taxable person the right to apply the margin scheme where he received an invoice that includes references relating both to the margin scheme and to exemption from VAT, even if it is apparent from a subsequent check carried out by those authorities that the taxable dealer supplying the second-hand goods had not actually applied that scheme to the supply of those goods, unless it is established by the competent authorities that the taxable person did not act in good faith or did not take every reasonable measure in his power to satisfy himself that the transaction carried out by him does not result in his participation in tax evasion — a matter which it is for the referring court to determine.

Costs

49 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 (Ninth Chamber) hereby rules:

Article 314 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding the competent authorities of a Member State from denying a taxable person the right to apply the margin scheme where he received an invoice that includes references relating both to the margin scheme and to exemption from value added tax (VAT), even if it is apparent from a subsequent check carried out by those authorities that the taxable dealer supplying the second-hand goods had not actually applied that scheme to the supply of those goods, unless it is established by the competent authorities that the taxable person did not act in good faith or did not take every reasonable measure in his power to satisfy himself that the transaction carried out by him does not result in his participation in tax evasion — a matter which it is for the referring court to determine.

[Signatures]