JUDGMENT OF THE COURT (First Chamber)

11 February 2010 *

In Case C-88/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 27 June 2008, received at the Court on 2 March 2009, in the proceedings

Graphic Procédé

v

Ministère du Budget, des Comptes publics et de la Fonction publique,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits (Rapporteur), M. Ilešič, J.-J. Kasel and M. Safjan, Judges

* Language of the case: French.

Advocate General: P. Mengozzi,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 10 December 2009,

after considering the observations submitted on behalf of:

— Graphic Procédé, by T. Haas, avocat,

— the French Government, by G. de Bergues and J.-S. Pilczer, acting as Agents,

— the Greek Government, by O. Patsopoulou, Z. Xatzipavlou, V. Karra and M. Apesos, acting as Agents,

— the Commission of the European Communities, by M. Afonso, acting as Agent,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 5 and 6 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 has been made in the course of proceedings between Graphic Procédé, a company which carries on reprographics activities, and the Ministère du Budget, des Comptes publics et de la Fonction publique (French Ministry of the Budget, Public Accounts and the Civil Service) concerning additional assessments to value added tax ('VAT') and the related interest.

Legal context

European Union legislation

3 Article 2 of the Sixth Directive provides:

'The following shall be subject to value added tax:

(1) the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

….’

4 Article 5(1) of the Sixth Directive states:

“‘Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner.’

5 The first subparagraph of Article 6(1) of that directive provides:

“‘Supply of services” shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.’

National legislation

6 Article 256 of the French General Tax Code (code général des impôts), in the version applicable during the tax period at issue in the main proceedings, transposes literally Articles 5(1) and 6(1) of the Sixth Directive.

7 Article 269 of the General Tax Code provides:

‘1. The chargeable event consists of:

a. For supplies of goods and purchases, the delivery of the goods and, for supplies of services … the performance of the services …

2. Tax shall be payable:

a. For supplies of goods and purchases referred to in 1a. …, at the time of the chargeable event;

…

c. For supplies of services …, at the time of the receipt of part payments, the price, remuneration or, with the authorisation of the director of tax services, on the basis of invoices.... ’

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

8 The reprographics activities carried on by Graphic Procédé involve the production, using its own materials, of copies of documents, files and maps at the request of customers consisting, in particular, of firms of architects, design offices, museums, publishers, billboard advertisers and ministries. Graphic Procédé's customers retain title to the original documents they have asked to be reproduced. Print runs range from one copy to several hundred copies.

9 As Graphic Procédé considers the transactions it carries out to be supplies of services, during the period from 1 January 1991 to 31 December 1993 it declared and paid VAT on receipt of payment for invoices.

10 As the tax authority took the view that the transactions carried out by Graphic Procédé consisted in supplies of goods, by means of a tax adjustment of 27 September 1994 it imposed additional assessments to VAT on that company in the amount of FRF 582 503 (approximately EUR 88 802), corresponding to the VAT which had been invoiced but not yet paid into the public purse by 31 December 1993, to which was added default interest in the amount of FRF 39 319 (approximately EUR 5 994).

11 As the applications to have those additional assessments and default interest cancelled were dismissed by a judgment of the tribunal administratif de Paris (Administrative Court, Paris) of 3 April 2003 and then by a judgment of the Cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) of 15 June 2006, Graphic Procédé appealed to the Conseil d'État (French Council of State) to have that judgment set aside.

12 As it considers that the outcome of the proceedings before it requires an interpretation of provisions of the Sixth Directive, the Conseil d'État decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'What are the criteria to be employed in order to determine whether reprographics is a supply of goods or a supply of services?'

The question referred

13 By its question, the referring court wishes to know the criteria for determining, for the purposes of the collection of VAT, whether reprographics activities, such as those at issue in the main proceedings, must be classified as a supply of goods within the meaning of Article 5(1) of the Sixth Directive or as a supply of services within the meaning of Article 6(1) of that directive.

14 It must be remembered first of all that the Sixth Directive establishes a common system of VAT based, inter alia, on a uniform definition of taxable transactions (see Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 48).

15 In that regard, under the Sixth Directive the scope of VAT is very wide in that Article 2 thereof, which concerns taxable transactions, refers not only to imports of goods but also to the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such (see *Halifax and Others*, paragraph 49).

16 As regards the term 'supply of goods', Article 5(1) of the Sixth Directive states that any transfer of the right to dispose of tangible property as owner constitutes such a supply. In that regard the case-law of the Court states that that term covers any transfer of tangible property by one party who empowers the other party actually to dispose of it as if he were the owner of the property (see *Halifax and Others*, paragraph 51).

17 As regards the term 'supply of services', it is clear from Article 6(1) of the Sixth Directive that it covers any transaction not constituting a supply of goods within the meaning of Article 5 of that directive.

18 According to the Court's case-law, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine, firstly, if there were two or more distinct supplies or one single supply and, secondly, whether, in the latter case, that single supply is to be regarded as a supply of goods or as a supply of services (see, to that effect, Case C-231/94 *Faaborg-Gelting Linien* [1996] ECR I-2395, paragraphs 12 to 14; Case C-41/04 *Levob Verzekeringen and OV Bank* [2005] ECR I-9433, paragraph 19; and Case C-111/05 *Aktiebolaget NN* [2007] ECR I-2697, paragraph 17).

19 The Court has also held that, taking into account the two facts that, firstly, it follows from Article 2 of the Sixth Directive that every transaction must normally be regarded as distinct and independent and, secondly, a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, it 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 (see *Levob Verzekeringen and OV Bank*, paragraphs 20 and 22, and *Aktiebolaget NN*, paragraphs 22 and 23).

20 In the present case, it must be ascertained whether, having regard to the essential features of the transaction at issue in the main proceedings, the reprographer makes to his customer, being a typical consumer, several distinct principal supplies or a single supply (see, to that effect, *Levob Verzekeringen and OV Bank*, paragraph 20, and *Aktiebolaget*, paragraph 20).

21 As is stated in the order for reference, the economic purpose of the reprographics activities at issue in the main proceedings consists in the reproduction in varying numbers of copies of an original document provided by the customer.

22 In particular, as is apparent from the file before the Court, those reprographics activities are not limited to the mere reproduction of original documents, but involve also the selection and programming of the photocopiers, the compilation and binding of the documents and the sorting of the copies.

23 It follows, therefore, from those findings that all the elements of the transaction at issue in the main proceedings appear necessary for the reprographics activities and are closely interlinked.

24 In order to determine whether a single complex transaction, such as that at issue in the main proceedings, is to be classified as a supply of goods or as a supply of services, it is necessary to identify its predominant elements (see, inter alia, *Faaborg-Gelting Linien*, paragraphs 12 and 14; *Levob Verzekeringen and OV Bank*, paragraph 27; and *Aktiebolaget NN*, paragraph 27). In that regard, it is clear from the case-law that a service must be regarded as ancillary to a principal service if it constitutes for customers not an aim in itself, but a means of better enjoying the principal service supplied (see *Aktiebolaget NN*, paragraph 28).

25 In the circumstances of the case in the main proceedings, it cannot be disputed that the aim in itself of the reprographer's activities is the provision to his customers of copies of the original that those customers have previously provided to him, and that the compilation and sorting transactions prior to the delivery of those copies are merely a means by which the reprographer offers his customers the best possible service. Those activities give rise, therefore, to a single, indivisible economic supply, which it would be artificial to split.

26 That being the case, it should be noted that, to be classified as a supply of goods, an activity must satisfy the criteria in Article 5(1) of the Sixth Directive, as set out in paragraph 16 above.

27 Therefore, first, such an activity must relate to tangible property. In the main proceedings, the reprographics activities clearly relate specifically to the production of copies on materials such as paper.

28 Secondly, according to the same provision of the Sixth Directive, the transfer of the right to dispose of tangible property as owner must be the consequence of the supply of that property.

29 In the main proceedings, the delivery by the reprographer of copies to the customer who ordered them corresponds to the transfer of the right to dispose of them as owner, within the meaning of Article 5(1) of the Sixth Directive. That transfer relates, specifically, to the materials, in the present case sheets of paper, on which the reproduction was carried out, materials at the disposal of the reprographer prior to their delivery to the customer. As the reprographer's customer was never deprived of his right to dispose of the intangible content of the copies created from the original provided by him, the transaction concluded with the reprographer relates exclusively to the materials allowing the delivery of the copies. In fact, the price invoiced by the reprographer for the copies made is determined by taking account not of the intellectual value of the original, but of the technical features of the copies to be made and the number of copies ordered.

30 It seems, therefore, that, in the circumstances of the main proceedings, reprographics activities such as those described in the order for reference are likely to have the characteristics of a supply of goods within the meaning of Article 5(1) of the Sixth Directive.

31 It should, however, be noted, as is apparent from paragraph 18 of the present judgment, that the classification as a supply of goods or a supply of services of reprographics activities such as those at issue in the main proceedings must take account of all the

circumstances in which the activities are carried on. In particular, a reprographer's activities may not be limited to the mere reproduction of an original, but may involve various additional services such as advice and adapting, modifying and altering the original according to the customer's wishes, for the purposes of producing copies which are to a greater or lesser extent different from the original document initially provided by that customer.

32 In those circumstances, and having regard to the unique nature of the complex reprographics transaction as noted in paragraph 25 of the present judgment, it is for the referring court to determine, on the basis of the importance of those services for the customer, the degree to which the original document provided by the customer was processed, the time necessary for the performance of those services and the proportion of the total cost that they represent, whether those services are liable to be regarded as transactions which, far from being only minor or ancillary, are predominant in relation to the supply of the reproduced documents, such that they constitute, over and above that mere reproduction, an aim in themselves for the recipient of those services.

33 Consequently, the answer to the question referred is that Article 5(1) of the Sixth Directive must be interpreted as meaning that reprographics activities have the characteristics of a supply of goods to the extent that they are limited to mere reproduction of documents on materials, where the right to dispose of them has been transferred from the reprographer to the customer who ordered the copies of the original. Such activities must be classified however as a 'supply of services', within the meaning of Article 6(1) of the Sixth Directive, where it is clear that they involve additional services liable, having regard to the importance of those services for the recipient, the time necessary to perform them, the processing required by the original documents and the proportion of the total cost that those services represent, to be

predominant in relation to the supply of goods, such that they constitute an aim in themselves for the recipient thereof.

Costs

34 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 (First Chamber) hereby rules:

Article 5(1) 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 must be interpreted as meaning that reprographics activities have the characteristics of a supply of goods to the extent that they are limited to mere reproduction of documents on materials, where the right to dispose of them has been transferred from the reprographer to the customer who ordered the copies of the original. Such activities must be classified however as a 'supply of services', within the meaning of Article 6(1) of Sixth Directive 77/388, where it is clear that they involve additional services liable, having regard to the importance of those services for the recipient, the time necessary to perform them, the processing required by the original documents and the proportion of the total cost that those services

represent, to be predominant in relation to the supply of goods, such that they constitute an aim in themselves for the recipient thereof.

[Signatures]