Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

18 March 2024*

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Common system of value added tax (VAT) – Directive 2006/112/EC – Articles 2, 206 and 273 – Principle of fiscal neutrality – Reduction of the VAT payable by taxable persons affected by the earthquake of 6 April 2009 in the Abruzzo region)

In Case C-37/23 [Giocevi],[i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 16 January 2023, received at the Court on 25 January 2023, in the proceedings

Agenzia delle Entrate

v

PR,

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur), President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PR, by F. Camerini and A. Rossi, avvocati,

– the European Commission, by M. Herold, J. Jokubauskaitė and F. Tomat, acting as Agents,

having regard to the decision, after hearing the Advocate General, to rule by reasoned order pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

* Language of the case: Italian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of the principles set out in the judgment of 17 July 2008, *Commission* v *Italy* (C-132/06, EU:C:2008:412), and in the order of 15 July 2015, *Nuova Invincibile* (C-82/14, EU:C:2015:510), which relate to the common system of value added tax (VAT).

2 The request has been made in proceedings between the Agenzia delle Entrate (Revenue Authority, Italy) and PR, a notary, concerning a request made by PR for a refund of 60% of the VAT paid by that person for the period from April 2009 to December 2010.

Legal context

European Union law

3 Recital 45 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive') states:

'The obligations of taxable persons should be harmonised as far as possible so as to ensure the necessary safeguards for the collection of VAT in a uniform manner in all the Member States.'

4 Article 2 of that directive provides:

'1. The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…'

5 Article 206 of that directive provides:

'Any taxable person liable for payment of VAT must pay the net amount of the VAT when submitting the VAT return provided for in Article 250. Member States may, however, set a different date for payment of that amount or may require interim payments to be made.'

6 Under Article 273 of that directive:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable

persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

…'

Italian law

Decree-Law No 78 of 31 May 2010

7 Article 39 of decreto-legge n. 78 – Misure urgenti in materia di stabilizzazione finanziaria e di competitività economica (Decree-Law No 78 laying down urgent measures concerning financial stabilisation and economic competitiveness, converted with amendments by Law No 122 of 30 July 2010), of 31 May 2010 (Ordinary Supplement to GURI No 125 of 31 May 2010) provides, in paragraph 1 thereof, that, for natural persons with business income or income from self-employment as well as for persons other than natural persons whose turnover does not exceed EUR 200 000, the period of suspension of tax obligations and payments is to be extended until 20 December 2010, without any refund of amounts already paid. Paragraph 3 of Article 39 provides that, for all of those persons, the period of suspension of social security and welfare contributions and compulsory insurance premiums against work-related accidents and occupational disease is to be extended until 15 December 2010, without any refund of amounts already paid. Those measures are not to apply to the withholding of tax levied on income other than business income or income from self-employment and related payments.

Law No 183/2011

8 Article 33(28) of legge n. 183 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge di stabilità 2012) (Law No 183 laying down measures for the drawing up of the annual and multiannual State budget (Stability Law 2012)) of 12 November 2011 (Ordinary Supplement to GURI No 265 of 14 November 2011), in the version applicable to the dispute in the main proceedings ('Law No 183/2011'), provides, in order to enable recovery from the emergency situation following the earthquake that struck the region of Abruzzo (Italy) on 6 April 2009, for the collection of the taxes referred to in Article 39 of Decree-Law No 78 of 31 May 2010 to be resumed, without the imposition of any penalties, interest or attendant charges, by way of payment in 120 equal monthly instalments starting from January 2012, with the amount payable for each suspended tax or contribution, net of any payments already made, being reduced to 40%.

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

9 PR, a notary, applied for a refund of EUR 102 088 in respect of VAT paid for the period from April 2009 to December 2010, on the basis of Article 33(28) of Law No 183/2011, which provides for a 60% reduction of taxes whose payment had been suspended following the earthquake of 6 April 2009 in the Abruzzo region.

10 The tax authorities rejected that application on the ground that the provision relied on precluded the refund of VAT already paid.

11 PR brought an action against that decision before the Commissione tributaria provinciale di L'Aquila (Provincial Tax Court, L'Aquila, Italy), which dismissed the action.

12 PR lodged an appeal with the Commissione tributaria regionale dell'Abruzzo (Regional Tax Court, Abruzzo, Italy), claiming that the situation of taxable persons who had not yet paid VAT and who could therefore receive a reduction of the payment to be made was the same as that of taxable persons who had made those payments and who, therefore, should be able to claim a refund of sums paid in excess.

13 The tax authorities requested that the case be stayed pending the final decision of the European Commission in the formal procedure for investigating State aid under Article 108 TFEU, opened by decision of 17 October 2012, State aid SA.33083 (2012/C) (ex 2012/NN) & SA.35083 (2012/C) (ex 2012/NN) – Reduced taxes and contributions linked to natural disasters and reduced taxes and contributions linked to the earthquake in Abruzzo in 2009 (all sectors except agriculture) (OJ 2012 C 381, p. 32).

14 By judgment of 6 March 2014, the Commissione tributaria regionale dell'Abruzzo (Regional Tax Court, Abruzzo) upheld the appeal and found that the refusal to refund the VAT to PR was unlawful.

15 The tax authorities brought an appeal on a point of law against that judgment before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the referring court. In support of that appeal, the tax authorities allege, in particular, infringement of Article 108(3) TFEU and of Article 11(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1).

16 In that regard, it should be noted that the Commission, by Decision (EU) 2016/195 of 14 August 2015 on State aid measures SA.33083 (12/C) (ex 12/NN) implemented by [the Italian Republic] providing for reduced taxes and contributions linked to natural disasters (all sectors except agriculture) and SA.35083 (12/C) (ex 12/NN) implemented by [the Italian Republic] providing for reduced taxes and contributions linked to the earthquake in Abruzzo in 2009 (all sectors except agriculture) (OJ 2016 L 43, p. 1), adopted on the conclusion of the procedure referred to in paragraph 13 above, found that the measures at issue, in particular those adopted on the basis of Article 33(28) of Law No 183/2011, were not compatible with the internal market.

17 The referring court considers that, in accordance with the principle of effectiveness of EU law, it has to rule that the measures by which the Italian Republic decided not to apply and/or collect amounts payable by way of VAT are incompatible with EU law, irrespective of the specific arguments put forward by the parties in the case before it.

18 That court states that there is no specific case-law on the application of Article 33(28) of Law No 183/2011 and is uncertain to what extent the principles set out in the order of 15 July 2015, *Nuova Invincibile* (C-82/14, EU:C:2015:510), as regards the advantage under Article 9(17) of legge n. 289 – Disposizioni per la formazione del bilancio annuale e pluriennale delle Stato (legge finanziaria 2003) (Law No 289 laying down measures for the drawing up of the annual and multiannual State budget (Financial Law 2003)) of 27 December 2002 (Ordinary Supplement to GURI No 305 of 31 December 2002) ('Law No 289/2002'), can be transposed to the case before it.

19 The referring court states that, in that order, the Court of Justice relied on the judgment of 17 July 2008, *Commission* v *Italy* (C-132/06, EU:C:2008:412), which concerned Articles 8 and 9 of Law No 289/2002, in order to hold that the measures at issue at that time had had the effect not of relieving the taxable persons of the tax burden in the form of VAT, but of allowing some of them to keep or recover sums paid by the final consumer and payable to the tax authorities, in breach of the principle of fiscal neutrality.

20 The referring court states that the advantage derived from the VAT reduction, on the basis of Article 33(28) of Law No 183/2011, leads to the same effects as those criticised by the Court in the decisions cited in paragraphs 18 and 19 above. It nevertheless refers, while doubting their relevance, to certain differences that PR claims exist between the Italian legislation concerned by those decisions and the legislation at issue in the case before it. In PR's submission, first, unlike Law No 289/2002, Law No 183/2011 does not preclude the tax authorities from carrying out checks, second, the amount of the VAT reduction laid down in Law No 183/2011 is smaller, and third, the territorial scope of Law No 183/2011 is more limited.

21 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the principles set out in the order [of the Court of 15 July 2015, *Nuova Invincibile* (C-82/14, EU:C:2015:510)] and in the judgment of 17 July 2008, *Commission* v *Italy* [(C-132/06, EU:C:2008:412)], preclude a legislative provision, such as that resulting from Article 33(28) of [Law No 183/2011], which allows taxpayers to obtain a refund, at the rate of 60%, of the VAT paid in the period between April 2009 and December 2010, in relation to the earthquake which affected the Abruzzo [region] on 6 April 2009?'

Consideration of the question referred

22 By its question, the referring court asks, in essence, whether Articles 2, 206 and 273 of the VAT Directive, read in conjunction with the principle of fiscal neutrality, must be interpreted as precluding national legislation that provides, for taxable persons affected by the earthquake that struck the region of Abruzzo, for a 60% reduction of the VAT amount normally payable by those persons for the period from April 2009 to December 2010.

23 In accordance with Article 99 of its Rules of Procedure, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order when the reply to the question referred for a preliminary ruling may be clearly deduced from existing case-law.

24 It is appropriate to apply that provision in the present case.

25 Although the cases which gave rise to the judgment of 17 July 2008, *Commission* v *Italy* (C-132/06, EU:C:2008:412), and to the order of 15 July 2015, *Nuova Invincibile* (C-82/14, EU:C:2015:510), did not concern Article 33(28) of Law No 183/2011, the conclusions to be drawn from that case-law can be transposed to the circumstances of the present case.

26 It is apparent from the order for reference that the national law provides only for a 60% reduction of the VAT amount normally payable, and not for a refund of VAT already paid, the beneficiaries of which are taxable persons for VAT purposes acting as such, within the meaning of Article 2(1)(a) and (c) of the VAT Directive.

27 In that regard, it follows, in the first place, from Articles 2, 206 and 273 of the VAT Directive, read in the light of recital 45 thereof, and from Article 4(3) TEU, that every Member State is under an obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory (see, to that effect, judgment of 17 July 2008, *Commission* v *Italy*, C-132/06, EU:C:2008:412, paragraph 37, and order of 15 July 2015, *Nuova Invincibile*, C-82/14, EU:C:2015:510, paragraph 22).

28 In the second place, the VAT Directive must be interpreted in accordance with the principle of fiscal neutrality inherent in the common system of VAT, according to which economic operators carrying out the same transactions must not be treated differently in relation to the levying of VAT. Any action by the Member States concerning the collection of VAT must comply with that principle (order of 15 July 2015, *Nuova Invincibile*, C-82/14, EU:C:2015:510, paragraph 23, and judgment of 7 April 2016, *Degano Trasporti*, C-546/14, EU:C:2016:206, paragraph 21 and the case-law cited).

29 In the third place, the deduction system is intended to ensure VAT neutrality, by relieving the taxable person entirely of the burden of the VAT payable or paid in the course of all of that person's economic activities, whatever their purpose or results, provided that those activities are themselves subject in principle to VAT (order of 15 July 2015, *Nuova Invincibile*, C-82/14, EU:C:2015:510, paragraph 24; see judgment of 7 September 2023, *Schütte*, C-453/22, EU:C:2023:639, paragraph 19).

30 In the order of 15 July 2015, *Nuova Invincibile* (C-82/14, EU:C:2015:510, paragraph 25), it was found that Article 9(17) of Law No 289/2002 – which provided, for taxable persons affected by the earthquake that struck the provinces of Catania, Ragusa and Syracuse (Italy), either for a 90% reduction of the VAT normally payable for the years 1990 to 1992 or for a refund, at that rate, of amounts already paid on that basis – had the effect not of relieving the taxable persons concerned of the tax burden in the form of VAT, but of allowing some of them to keep or recover sums paid by the final consumer and payable to the tax authorities.

31 In so far as that article, by providing for a reduction of the VAT normally payable, allowed the taxable persons concerned to keep or recover the greater part of the VAT levied on supplies of goods and services, whereas other taxable persons in Italy had to pay the full amount of VAT normally due to the tax authorities, on the basis of those transactions, it gave rise to a difference in treatment contrary to the principle of fiscal neutrality (order of 15 July 2015, *Nuova Invincibile*, C-82/14, EU:C:2015:510, paragraph 26; see also, to that effect, judgment of 17 July 2008, *Commission* v *Italy*, C-132/06, EU:C:2008:412, paragraph 44).

32 In the present case, as is apparent from the order for reference, Article 33(28) of Law No 183/2011 implements the same mechanism as that introduced by Law No 289/2002, namely a significant reduction of the amount payable by way of VAT that was suspended due to emergency situations resulting from natural disasters.

33 It is irrelevant in that regard that the VAT reduction provided for by that law is smaller than that resulting from Article 9(17) of Law No 289/2002, at issue in the order of 15 July 2015, *Nuova Invincibile* (C-82/14, EU:C:2015:510). Albeit to a lesser extent, such a reduction has the same effects as those identified by the Court in paragraphs 30 and 31 above.

34 That finding cannot be invalidated by the fact that the national legislation at issue in that order, unlike Article 33(28) of Law No 183/2011, deprived the authorities, by virtue of its automatic nature, of any possibility of carrying out checks as regards the taxable situations.

35 In the light of all the foregoing, the answer to the question referred is that Articles 2, 206 and 273 of the VAT Directive, read in conjunction with the principle of fiscal neutrality, must be interpreted as precluding national legislation that provides, for taxable persons affected by the earthquake that struck the region of Abruzzo, for a 60% reduction of the VAT amount normally payable by those persons for the period from April 2009 to December 2010.

Costs

36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby rules:

Articles 2, 206 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with the principle of fiscal neutrality,

must be interpreted as precluding national legislation that provides, for taxable persons affected by the earthquake that struck the region of Abruzzo (Italy), for a 60% reduction of the value added tax amount normally payable by those persons for the period from April 2009 to December 2010.

[Signatures]