Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 September 2012*

(Taxation — VAT — Directive 2006/112/EC — Article 9 — Meaning of taxable person — Right to deduct — Refusal — Principle of tax neutrality — Issuer of the invoice removed from the business register — Issuer of the invoice having failed to declare his employees to the tax authority — Obligation of the taxable person to satisfy himself as to the propriety of the conduct of the issuer of that invoice vis-à-vis the tax authority)

In Case C-324/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Legfelsőbb Bíróság (Hungary), made by decision of 21 April 2011, received at the Court on 29 June 2011, in the proceedings

Gábor Tóth

v

Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, R. Silva de Lapuerta, G. Arestis and T. von Danwitz (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Tóth, by G. Patakiné Schneider, ügyvéd,

— the Hungarian Government, by M. Fehér and K. Szíjjártó, acting as Agents,

— the European Commission, by V. Bottka and A. Sipos, acting as Agents,

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

gives the following

* Language of the case: Hungarian.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The reference has been made in proceedings between Mr Tóth and the Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága (Northern Region Tax Directorate, forming part of the National Treasury and Customs Authority), the successor to the Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály (a Local Tax Office, a branch office of the Northern Region Tax and Financial Control Authority), on the latter's refusal to allow the deduction of input value added tax ('VAT') on transactions considered to be suspect.

Legal context

European Union law

3 Under Article 2(1)(c) of Directive 2006/112, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT.

4 Article 9(1) of that directive provides:

'"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity".'

5 Under Article 167 of that directive which appears in Chapter 1, entitled 'Origin and scope of right of deduction', of Title X thereof, entitled 'Deductions', provides that '[a] right of deduction shall arise at the time the deductible tax becomes chargeable'.

6 Article 168(a) of Directive 2006/112 provides that, in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person is to be entitled, in the Member State in which he carries out those transactions, to deduct, from the VAT which he is liable to pay, the VAT due or paid in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person.

7 Article 178 of that directive, which appears in Chapter 4, entitled 'Rules governing exercise of the right of deduction', of Title X, provides:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;

…'

8 Under the first subparagraph of Article 213(1) of that directive, which appears in Chapter 2, entitled 'Identification', of Title XI thereof, entitled 'Obligations of taxable persons and certain non-taxable persons', every taxable person is to state when his activity as a taxable person commences, changes or ceases.

9 Article 220(1) of Directive 2006/112 appearing in Chapter 3, entitled 'Issue of invoices', of Title XI, provides that every taxable person is to ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party in respect of supplies of goods or services which he has made to another taxable person or to a non-taxable legal person.

10 Article 226 of Directive 2006/112 lists the only details which, without prejudice to the particular provisions laid down in that directive, are required for VAT purposes on invoices issued pursuant to Articles 220 and 221 of that directive.

11 Article 273 of that directive, appearing in Chapter 7, entitled 'Miscellaneous provisions', of Title XI, provides:

'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.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

Hungarian law

12 Paragraph 32(1)(a) of Law LXXIV of 1992 on value added tax (az általános forgalmi adóról szóló 1992. évi LXXIV. törvény, Magyar Közlöny 1992/128 (XII.19.); 'the Law on VAT'), provides that a taxable person is to have the right to deduct, from the tax that he is required to pay, the amount of tax which another taxable person has passed on to him in connection with the supply of goods or the performance of services.

13 According to Paragraph 35(1)(a) of that law, unless otherwise prescribed by the Law on Taxation, the right of deduction may only be exercised by persons who hold documentation attesting to the amount of tax charged. Invoices, simplified invoices and documents which take the place of an invoice, made out in the name of the taxable person, are to be considered to constitute such documentation.

14 Paragraph 44(5) of the Law on VAT provides:

'The issuer of the invoice or simplified invoice shall be responsible for the veracity of the information given therein. The taxation rights of the taxable person indicated as the purchaser in the receipt may not be called into question if that person acted with due diligence as regards the chargeable event, bearing in mind the circumstances under which the goods were supplied or the services performed.'

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

15 In 2007, Mr Tóth undertook building work for taxable persons partly using subcontractors, inter alia, an individual contractor, M.L. The contracts concluded between the latter and Mr Tóth imposed the obligation on the subcontractor to keep a record of works and to issue a certificate of completion of works. According to the records of works, M.L. employed 8 to 14 workers for the works. The certification of the works took place at the time of delivery by Mr Tóth to his customers. M.L. had issued 20 invoices in respect of the works in question, which had been accepted by Mr Tóth and appeared in his accounts and his tax return. Mr Tóth maintains that he paid the invoices in cash.

16 M.L. had not complied with his tax obligations since 2003, nor had he declared his employees to the tax authority as either permanent or temporary workers. By a final decision taken on 20 June 2007, the competent municipal authority revoked M.L.'s licence to operate as an individual contractor.

17 The tax authority ordered Mr Tóth to pay additional VAT totalling HUF 5 600 000 for the year 2007, on the ground that the tax included in the invoices issued by M.L. could not be deducted, because, as from 20 June 2007, the latter had ceased to be a taxable person and from that date could therefore not issue valid invoices. In addition, some of the invoices issued by M.L. bore an earlier date than that on the counterfoil invoice book from which they were taken, namely 7 September 2007. Finally, Mr Tóth had failed to ascertain the capacity in which the persons who had in fact carried out the works were present on the work site.

18 Following a complaint by Mr Tóth against that decision, it was confirmed by a decision of 8 January 2010 of the respondent in the main proceedings. The latter took the view that, when 16 of the 20 invoices were issued, the issuer, M.L., was no longer a taxable person and, therefore, had no right to pass on the tax. The fact that, during the tax year in question, M.L.'s tax identification number had not been removed from the tax authority's register was irrelevant in that regard.

19 The Nógrád Megyei Bíróság (Regional Court, Nógrád) dismissed the action filed by Mr Tóth against the decision of the respondent in the main proceedings by a decision of 9 June 2010. The grounds of that decision were that on 20 June 2007 M.L. had lost the status of taxable person and, consequently, any right to pass on the tax. In relation to the invoices issued by M.L. before that date, the Regional Court stated that M.L. had no declared or temporary workers and that, therefore, it had not been proved that he had carried out the works. Moreover, Mr Tóth had not verified whether the service indicated on the invoice had been actually provided by the issuer, nor whether those who had worked on the work site formed part of the workforce or were temporary workers of M.L.

20 Mr Tóth brought an appeal against the decision of the Nógrád Megyei Bíróság before the referring court. That court doubts first, whether the right to deduct can be limited by reason of the fact that the issuer of the invoice had been removed from the business register. Second, that court raises the question whether it is possible to consider that Mr Tóth knew or ought to have known that he was participating in a transaction connected with fraudulent evasion of VAT within the meaning of paragraph 59 of the judgment in Joined Cases C-439/04 and C-440/04 *Kittel and Recolta Recycling* [2006] ECR I-6161, given that he did not endeavour to verify whether a legal relationship existed between the persons carrying out the works and the issuer of the invoices.

21 Taking the view that resolution of the dispute before it depended on the interpretation of Community law, the Legfelsőbb Bíróság decided to stay the proceedings and to refer the following questions to the Court:

'(1) Is the principle of tax neutrality (Article 9 of [Directive 2006/112]) infringed by a legal interpretation which prevents the addressee of an invoice from exercising his right to deduct where the operator who issued it has, prior to full performance of the contract or issue of the invoice, had his business operator's licence withdrawn by the municipal authority?

(2) Can the fact that the individual operator who issued the invoice has not declared the workers whom he employs (who, as a result, work "in the black economy"), and the fact that, for that reason, the tax authority has found that the said operator "has no declared workers", prevent the addressee of that invoice from exercising the right to deduct, having regard to the principle of tax neutrality?

(3) Can it be held that the addressee of the invoice is guilty of a lack of care when he does not verify either whether a legal relationship exists between the workers employed on a work site and the issuer of the invoice or whether the latter has fulfilled his tax-return obligations or any other obligations relating to those workers? Can it be held that such conduct constitutes an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving fraudulent evasion of VAT?

(4) Having regard to the principle of tax neutrality, can the national court take the above circumstances into consideration when its overall assessment leads it to the conclusion that the economic transaction did not take place between the persons specified on the invoice?'

The questions referred

The first question

22 By its first question, the referring court seeks to know, essentially, whether Directive 2006/112 and the principle of tax neutrality must be interpreted as meaning that they preclude the tax authority from refusing a taxable person the right to deduct VAT due or paid for services provided to him on the ground that the business operator's licence of the issuer of the invoice had been withdrawn before he provided the services in question or issued the invoice for them.

23 According to settled case-law, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by the relevant European Union legislation (see, inter alia, Case C-78/00 *Commission* v *Italy* [2001] ECR I-8195, paragraph 28; Case C-25/07 *Sosnowska* [2008] ECR I-5129, paragraph 14; and Joined Cases C-80/11 and C-142/11 *Mahagében and Dávid* [2012] ECR, paragraph 37).

24 As the Court has repeatedly held, the right to deduct provided for in Article 167 et seq. of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. In particular, the right to deduct is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, inter alia, Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 43; *Kittel and Recolta Recycling*, paragraph 47; and *Mahagében and Dávid*, paragraph 38).

25 The deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see, in particular, *Gabalfrisa and Others*, paragraph 44; Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 78; and *Mahagében and Dávid*, paragraph 39).

26 As regards the material conditions to be met for the right to deduct to arise, it is apparent from Article 168(a) of Directive 2006/112 that the goods and services relied on to give entitlement to that right must be used by the taxable person for the purposes of his own taxed output transactions, and that, as inputs, those goods or services must be supplied by another taxable person.

27 In the main proceedings, it is apparent from the order for reference that the services in question were used by the applicant in the main proceedings for the purposes of his taxed output transactions.

28 As to whether the issuer of the invoice for the services in question was a taxable person, reference should be made to the definition of that concept in Article 9(1) of Directive 2006/112.

29 According to the first subparagraph of that provision, any person who independently carries on in any place any economic activity, whatever the purpose or results of that activity, is a 'taxable person'. Under the second subparagraph of that provision, 'economic activities' are defined as comprising 'all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions'.

30 It follows that the concept of 'taxable person' is defined widely, on the basis of the factual circumstances. On the other hand, it is not apparent from Article 9(1) that the status of taxable person depends on any authorisation or licence granted by the authorities for the exercise of an economic activity.

31 The first subparagraph of Article 213(1) of the directive provides that every taxable person is to state when his activity as a taxable person commences, changes or ceases. However, despite the importance of that declaration for the smooth functioning of VAT, it cannot constitute an additional condition to be met in order to have the status of a taxable person within the meaning of Article 9(1) of that directive, given that Article 213 appears in Chapter 2, entitled 'Identification', of Title XI of the directive.

32 Moreover, the Court has held that any failure by the service provider to meet the requirement to state when taxable activity commences cannot call in question the right of deduction to which the recipient of services supplied is entitled in respect of the VAT paid for those services. Accordingly, that recipient has a right to deduct even if the service provider is a taxable person who is not registered for VAT, where the invoices relating to the services supplied contain all the information required by Article 226 of Directive 2006/112, in particular the information needed to identify the person who drew up those invoices and to ascertain the nature of the services provided (see Case C-438/09 *Dankowski* [2010] ECR I-14009, paragraphs 33, 36 and 38).

33 It follows that the tax authorities cannot refuse the right to deduct on the ground that the issuer of the invoice no longer has a business operator's licence and that, accordingly, he no longer has the right to use his tax identification number, where that invoice contains all the information required by Article 226 of Directive 2006/112.

34 Having regard to the foregoing considerations, the answer to the first question is that Directive 2006/112 and the principle of tax neutrality must be interpreted as meaning that they preclude the tax authority from refusing a taxable person the right to deduct VAT due or paid for services provided to him solely on the ground that the business operator's licence of the issuer of the invoice had been withdrawn before he provided the services in question or issued the invoice for them, where that invoice contains all the information required by Article 226 of Directive 2006/112, in particular the information necessary to identify the person who drew up the invoice and the nature of the services supplied.

The second question

35 By this question the referring court asks, essentially, whether Directive 2006/112 and the principle of tax neutrality must be interpreted as meaning that they preclude the tax authority from refusing a taxable person the right to deduct VAT due or paid for services provided to him on the ground that the issuer of the invoice relating to those services did not declare the workers he employed.

36 In that it refers to a supplier of services whose activity was irregular in that he did not declare the workers he employed so that they carried out undeclared work when supplying the services at issue, this question concerns a situation similar to that at issue in Case C-142/11, which gave rise to the *Mahagében and Dávid* judgment.

37 In that judgment, the Court based its decision, first, on the principles governing the right to deduct and, second, on the case-law concerning the refusal to grant rights which are relied on fraudulently or abusively (*Mahagében and Dávid*, paragraphs 37 to 42 and 46 to 48).

38 The Court concluded, on that basis, that Directive 2006/112 precludes a national practice whereby the tax authority refuses a taxable person the right to deduct VAT on the ground that the issuer of the invoice relating to the services supplied acted improperly, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply (*Mahagében and Dávid*, paragraph 50).

39 Accordingly, the answer to the second question is that Directive 2006/112 must be interpreted as meaning that it precludes the tax authority from refusing a taxable person the right to deduct VAT due or paid for services provided to him on the ground that the issuer of the invoice relating to those services did not declare the workers he employed, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.

The third question

40 By its third question, the referring court seeks to know, essentially, whether Directive 2006/112 must be interpreted as meaning that the fact that a taxable person has not verified either whether a legal relationship exists between the workers employed on a work site and the issuer of the invoice or whether the latter has declared those workers constitutes an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving fraudulent evasion of VAT.

41 That question relates to a situation comparable to that at issue in the main proceedings in Case C-80/11, which gave rise to the *Mahagében and Dávid* judgment.

42 In paragraphs 53 and 54 of that judgment, the Court first recalled the case-law according to which traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT. Moreover, in paragraphs 55 to 57 and 62 to 65 of that judgment, the Court took account, respectively, of Article 273 of Directive 2006/112 and of the fact that it is, in principle, for the tax authorities to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud and to impose penalties on the taxable person committing such irregularities or fraud.

43 On that basis, the Court concluded that Directive 2006/112 precludes a national practice whereby the tax authority refuses the right to deduct on the ground that the taxable person did not satisfy himself that the issuer of the invoice relating to the goods in respect of which the exercise of the right to deduct is sought had the status of a taxable person, that he was in possession of the goods in question and was in a position to supply them, and that he had satisfied his obligations as regards declaration and payment of VAT, although the substantive and formal conditions laid down by Directive 2006/112 for exercising the right to deduct were fulfilled and the taxable person is not in possession of any material justifying the suspicion that irregularities or fraud have been committed within that invoice issuer's sphere of activity (*Mahagében and Dávid*, paragraph 66).

44 That conclusion in relation to a supply of goods also applies in the case of a supply of services as regards the question whether it may be considered that the taxable person knew or should have known that the supply relied on for entitlement to his right to deduct was connected with fraud committed by the issuer of the invoice, on the ground that he did not verify whether the issuer of the invoice had the necessary employees available to be able to supply the services at issue, whether that issuer had fulfilled his obligations as regards declaration of those employees and whether the employees of that issuer carried out the work at issue.

45 Consequently, the answer to the third question is that Directive 2006/112 must be interpreted as meaning that the fact that a taxable person did not verify either whether a legal relationship existed between the workers employed on a work site and the issuer of the invoice or whether the latter had declared those workers does not constitute an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving

fraudulent evasion of VAT, where the addressee was not in possession of any material justifying the suspicion that irregularities or fraud had been committed within that invoice issuer's sphere of activity. Accordingly, the right to deduct may not be refused on that ground where the material and formal conditions laid down by that directive for the exercise of that right are met.

The fourth question

46 By this question, the referring court asks, essentially, whether Directive 2006/112 and the principle of tax neutrality preclude it from taking the circumstances described in the first three questions into consideration when its overall assessment of the circumstances of the case leads it to the conclusion that the economic transaction did not in fact take place between the persons specified on the invoice.

47 According to the order for reference, it is not disputed that the applicant in the main proceedings who wished to exercise his right to deduct had the status of taxable person and supplied construction services, and thus made a taxable supply of services, to other taxable persons. Given that that taxable person carried out that work, not by using his own employees, but by having recourse to subcontractors, the services at issue were supplied to him by another operator and he used them for the purposes of his own taxed output transactions.

48 Moreover, it follows from the order for reference that the applicant in the main proceedings concluded a contract with M.L. for the performance of the work at issue and submitted invoices issued by M.L., concerning that work and containing all the information required by Directive 2006/112. The order for reference gives no details suggesting that the applicant in the main proceedings himself resorted to devices such as the submission of false declarations or the drawing-up of irregular invoices.

49 In those circumstances, it appears that the fourth question concerns a situation in which the services in question were carried out not by the employees of the issuer of the invoice but by those of another operator, which may be the result both of a fraudulent pretence by the supplier of the services and simply of recourse to another subcontractor. It is not apparent from the order for reference that this question calls into question the premiss on which the first to third questions are based, namely that, in the case in the main proceedings, the material and formal conditions laid down by Directive 2006/112 for the right to deduct to arise and be exercised are fulfilled.

50 It is true that, where the tax authority provides specific evidence of the existence of fraud, neither Directive 2006/112 nor the principle of tax neutrality preclude the national courts from verifying, in the course of litigation between the taxable person and the tax authority regarding the refusal of the right to deduct, whether the issuer of the invoice carried out the transaction in question himself, and from taking into consideration, to that end, all the circumstances of the case, including those mentioned in the first and second questions asked by the referring court.

51 However, it must be held that such verification cannot call into question the considerations which constitute the basis for the answers given to the first three questions, unless the tax authority establishes, on the basis of objective evidence that the taxable person concerned knew, or ought to have known that the transaction relied on as a basis for the right to deduct was connected with a fraud committed by the issuer of the invoice or another operator supplying inputs in the chain of supply.

52 That conclusion is borne out by the judgment in Case C-271/06 *Netto Supermarkt* [2008] ECR I-771, paragraphs 27 and 29, concerning VAT exemption for supplies of goods for export to a destination outside the European Union, in which the Court held that a supplier must be able to rely on the lawfulness of the transaction that he carries out without risking the loss of his right to exemption from

VAT, if he is in no position to recognise – even by exercising due commercial care – that the conditions for the exemption were in fact not met, because the export proofs provided by the purchaser had been forged.

53 Having regard to the foregoing considerations, the answer to the fourth question is that, where the tax authority provides specific evidence of the existence of fraud, Directive 2006/112 and the principle of tax neutrality do not preclude the national court from verifying, on the basis of an overall examination of the circumstances of the case, whether the issuer of the invoice carried out the transaction in question himself. However, in a situation such as that at issue in the main proceedings, the right to deduct may be refused only where it is established by the tax authority, on the basis of objective evidence, that the addressee of the invoice knew or should have known that the transaction relied on as a basis for the right to deduct was connected with a fraud committed by the issuer or another operator supplying inputs in the chain of supply.

Costs

54 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 (Third Chamber) hereby rules:

1. **Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principle of tax neutrality must be interpreted as meaning that they preclude the tax authority from refusing a taxable person the right to deduct value added tax due or paid for services provided to him solely on the ground that the business operator's licence of the issuer of the invoice had been withdrawn before he provided the services in question or issued the invoice for them, where that invoice contains all the information required by Article 226 of that directive, in particular the information necessary to identify the person who drew up the invoice and the nature of the services supplied.**

2. **Directive 2006/112 must be interpreted as meaning that it precludes the tax authority from refusing a taxable person the right to deduct value added tax due or paid for services provided to him on the ground that the issuer of the invoice relating to those services did not declare the workers he employed, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.**

3. **Directive 2006/112 must be interpreted as meaning that the fact that a taxable person did not verify either whether a legal relationship existed between the workers employed on a work site and the issuer of the invoice or whether the latter had declared those workers does not constitute an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving fraudulent evasion of value added tax, where the addressee was not in possession of any material justifying the suspicion that irregularities or fraud had been committed within that invoice issuer's sphere of activity. Accordingly, the right to deduct may not be refused on that ground where the material and formal conditions laid down by that directive for the exercise of that right are met.**

4. **Where the tax authority provides specific evidence of the existence of fraud, Directive 2006/112 and the principle of tax neutrality do not preclude the national court from verifying, on the basis of an overall examination of the circumstances of the case, whether**

the issuer of the invoice carried out the transaction in question himself. However, in a situation such as that at issue in the main proceedings, the right to deduct may be refused only where it is established by the tax authority, on the basis of objective evidence, that the addressee of the invoice knew or should have known that the transaction relied on as a basis for the right to deduct was connected with a fraud committed by the issuer or another operator supplying inputs in the chain of supply.

[Signatures]