JUDGMENT OF THE COURT (Second Chamber)

13 July 2006 *

In Case C-89/05,

REFERENCE for a preliminary ruling under Article 234 EC, from the House of Lords (United Kingdom), made by decision of 3 November 2004, received at the Court on 18 February 2005, in the proceedings

United Utilities plc

v

Commissioners of Customs & Excise,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen (Rapporteur), R. Silva de Lapuerta, G. Arestis and J. Klučka, Judges,

* Language of the case: English.

Advocate General: C. Stix-Hackl,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 2 February 2006,

after considering the observations submitted on behalf of:

— United Utilities plc, by D. Goy QC and C. McDonnell, Barrister, instructed by P. Drinkwater, Solicitor,

— the Commissioners of Customs & Excise, by R. Hill, Barrister,

— the United Kingdom Government, by C. White and T. Harris, acting as Agents, and K. Parker QC and R. Hill, Barrister

— the Portuguese Government, by L. Fernandes and A. Matos Barros, acting as Agents,

— the Commission of the European Communities, by R. Lyal, 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 Article 13B(f) 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 was made in the course of proceedings between United Utilities plc ('United Utilities') and the Commissioners of Customs & Excise ('the Commissioners'), who are responsible for the collection of value added tax ('VAT') in the United Kingdom, on the question of whether the services provided by Vertex Data Science Ltd ('Vertex') to Littlewoods Promotions Ltd ('Littlewoods'), which organises telephone bookmaking, are subject to VAT.

Legal context

Community legislation

3 Article 2 of the Sixth Directive, which constitutes Title II thereof, entitled 'Scope', 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 Under Article 13B(f) of the Sixth Directive, the Member States are to exempt from VAT 'betting, lotteries and other forms of gambling, subject to conditions and limitations laid down by each Member State'.

National legislation

5 Article 13B(f) of the Sixth VAT Directive was transposed into national law in Group 4 of Schedule 9 of the Value Added Tax Act 1994, which exempts from VAT the provision of any facilities for the placing of bets or the playing of any games of chance.

The main proceedings and the question referred for a preliminary ruling

6 United Utilities is the representative member of a group of companies treated as a single taxable person within the meaning of the second subparagraph of Article 4(4) of the Sixth Directive. Vertex is also a member of that group.

7 Littlewoods organises telephone bookmaking under the name of 'Bet Direct'. Its customers can bet on the outcome of sporting events or other random events, such as meteorological events. The bets are placed exclusively by telephone. In 1999, Littlewoods decided to outsource part of its operations and, for that purpose, entered into a contract with Vertex for the provision of call centre services. Pursuant to that contract, Vertex, which is also authorised to act as Littlewood's agent, is required to provide the staff, premises and telephone and computer equipment necessary to take the bets in question.

8 Littlewoods selects sporting or other events on which bets may be placed, fixes the odds, appraises the bets and manages the revenue and expenditure relating to the bets.

9 For its part, Vertex merely receives telephone calls and records the bets in accordance with the conditions stipulated by Littlewoods. In that respect, Vertex has no discretion. Moreover, at no stage do Vertex employees disclose to customers placing bets that they are dealing with Vertex and not with Littlewoods. In addition, the name 'Vertex' does not appear in any documentation intended for customers.

10 Vertex's fee consists of a fixed element and a variable element. The variable element is based on the number of call minutes for telephone calls received by Vertex. Various penalties are provided for if Vertex makes a mistake in the performance of its duties. The fee takes no account of either the number or value of bets recorded, or the odds on those bets. Vertex bears no financial risk in relation to the bets offered by Littlewoods.

11 United Utilities takes the view that the services provided by Vertex fall within the scope of Article 13B(f) of the Sixth Directive and must accordingly qualify for the exemption from VAT provided for by that provision.

12 In support of its position, United Utilities submits, firstly, that Article 13B(f) of the Sixth Directive is intended to exempt the activity of providing the framework within which gambling can take place. The provision of the framework, that is, the facilities, within which or by means of which gambling can take place is, therefore, an activity that may be exempted from charge.

13 Further, it is clear from Case C-2/95 *SDC* [1997] ECR I-3017 and Case C-235/00 *CSC Financial Services* [2001] ECR I-10237 that the exemption at issue in the main proceedings should apply to the services of an agent so long as the agent is instrumental in the gambling transaction itself. On any other interpretation, that exemption would apply only to certain of the elements which make up the framework within which a gambling transaction is carried on.

14 United Utilities then submits that it is clear from the case-law of the Court relating to the exemption from VAT of financial services (*SDC* Case C 349/96 *CPP* [1999]

ECR I-973, and *CSC Financial Services*, cited above) that, where an agent undertakes a transaction on behalf of a principal, then, for the purposes of exemption from VAT, the agent's supply to the principal is to be analysed by reference to its precise role in the underlying transaction between the principal and the end customer. Only if the agent carries out an 'essential act which alters the legal or financial situation between the parties', in a transaction falling within one of the exempt categories, will that agent's supply be exempt. It is irrelevant whether that agent is an agent for the principal or an agent for the customer.

15 That case-law applies, mutatis mutandis, to the exemption from VAT of betting and gambling. Thus, entering into the betting contract is the specific essential function of gambling or betting as it alters the legal and financial situation between the parties. Since Vertex's oral acceptance of bets is sufficient to establish a legal relationship between customers placing bets and Littlewoods, Vertex performs the specific essential function of betting organiser.

16 Lastly, United Utilities maintains that the interpretation it puts forward is not affected by the fact that Vertex does not have any discretion whether or not to accept bets on behalf of Littlewoods, since entering into a contract could never constitute an administrative act.

17 The Commissioners do not share that view and consider that the exemption provided for in Article 13B(f) of the Sixth Directive does not apply to the services provided by Vertex as they are merely physical, technical or administrative services supplied to the betting organiser.

18 The VAT and Duties Tribunal, the High Court of Justice and the Court of Appeal, in turn, rejected United Utilities' arguments.

19 In those circumstances, the House of Lords, before which the matter was brought, decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does the exemption for betting laid down in Article 13B(f) of the ... Sixth ... Directive ... apply where a person ('the agent') provides services on behalf of another person ('the principal') of accepting bets from customers and communicating their acceptance by the principal to customers where:

(a) the actions of the agent perform a necessary step in creating the legal relationship of a bet between the principal and its customer and thereby consummate the betting transaction; but

(b) the agent makes no decisions as to the setting of odds, the odds being set by the principal or in some cases determined by third parties under the rules of the sport in question; and

(c) the agent decides whether or not to accept bets on behalf of the principal in accordance with criteria laid down by the principal so that the agent has no discretion?'

The question referred for a preliminary ruling

20 By its question, the national court asks, in essence, whether Article 13B(f) of the Sixth Directive is to be interpreted as meaning that the provision of call centre services to a telephone bookmaking organiser, which entails the staff of the supplier of those services accepting bets on behalf of the organiser, constitutes a betting transaction within the meaning of that provision and may, therefore, qualify for the exemption from VAT laid down by that provision.

21 In order to answer that question, it is to be noted at the outset that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, inter alia, *SDC*, cited above, paragraph 20, and Case C-472/03 *Arthur Andersen* [2005] ECR I-1719, paragraph 24).

22 Moreover, the interpretation of the terms used in that provision must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT (Case C-45/01 *Dornier* [2003] ECR I-12911, paragraph 42).

23 More particularly, it should be noted that the exemption from which betting, lotteries and other forms of gambling benefit is based on practical considerations, gambling transactions not lending themselves easily to the application of VAT (Case C-86/99 *Freemans* [2001] ECR I-4167, paragraph 30) and not, as is the case with

certain public interest services supplied in the social sector, on a desire to afford those activities more advantageous VAT treatment.

24 It is in the light of those considerations that it is necessary to examine whether an activity such as that at issue in the main proceedings constitutes a betting transaction within the meaning of Article 13B(f) of the Sixth Directive which may, as such, be exempt from VAT.

25 The order for reference states that the services supplied by Vertex involve providing the staff, premises and telephone and computer equipment necessary to take bets, whilst the subject-matter of the bets and the odds are fixed by the recipient of that supply, namely, Littlewoods.

26 Clearly, in contrast to the betting transaction referred to in Article 13B(f) of the Sixth Directive, that activity alone cannot in any way be said to be characterised by the offer to customers placing bets of a chance of winning in consideration for accepting the risk of having to pay for winnings and cannot, therefore, be classified as a betting transaction within the meaning of that provision.

27 For the same reason, that interpretation is not affected by the fact that the acceptance of bets, in this case by Vertex staff, is a stage, however important , in the placing of those bets, since it is as a result of that acceptance that a legal relationship between Littlewoods and its customers is brought about.

28 Further, case-law to the effect that the change in the legal and financial relationship between a supplier of services and its customer is a specific aspect of transactions concerning transfers (*SDC*, cited above, paragraph 66, and *CSC Financial Services*, paragraph 26) cannot be applied, mutatis mutandis, to the activities referred to in Article 13B(f) of the Sixth Directive since the objectives on which exemptions for transactions concerning transfers under Article 13B(d) of that directive are founded are not the same as those on which the exemption in Article 13B(f) of that directive are based.

29 In the light of the foregoing, the answer to the question referred must be that Article 13B(f) of the Sixth Directive must be interpreted as meaning that the provision of call centre services to a telephone bookmaking organiser, which entails the staff of the supplier of those services accepting bets on behalf of the organiser, does not constitute a betting transaction within the meaning of that provision and cannot, therefore, qualify for the exemption from VAT laid down by that provision.

Costs

30 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 (Second Chamber) hereby rules:

Article 13B(f) 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 the provision of call centre services to a telephone bookmaking organiser, which entails the staff of the supplier of those services accepting bets on behalf of the organiser, does not constitute a betting transaction within the meaning of that provision and cannot, therefore, qualify for the exemption from VAT laid down by that provision.

[Signatures]