JUDGMENT OF THE COURT (Sixth Chamber)
8 March 1988 *

In Case 102/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the House of Lords for a preliminary ruling in the proceedings pending before it between

Apple and Pear Development Council

and

Commissioners of Customs and Excise

on the interpretation of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1),

THE COURT (Sixth Chamber),

composed of: O. Due (President of the Chamber), T. Koopmans, K. Bahlmann, C. Kakouris and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

the Apple and Pear Development Council, the appellant in the main proceedings, by Andrew Park, QC, and Gerald Barling, Barrister, instructed by Buss Murton Partnership, Solicitors,

* Language of the Case: English.

the United Kingdom, by H. R. L. Purse, of the Treasury Solicitor's Department, assisted by J. Laws and R. Jay, Barristers,

the Government of the Federal Republic of Germany, in the written procedure by Martin Seidel and in the oral procedure by W. Knapp,

the Commission of the European Communities, by its Legal Adviser, Johannes Føns Buhl,

having regard to the Report for the Hearing and further to the hearing on 11 June 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 October 1987,

gives the following

Judgment

1 By order of 20 March 1986 which was received at the Court on 28 April 1986, the House of Lords referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 2 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1) (hereinafter referred to as the 'Sixth Directive').

2 The question was raised in proceedings before that court between the Apple and Pear Development Council (hereinafter referred to as the 'Development Council'), a body governed by public law, and the Commissioners of Customs and Excise (hereinafter referred to as 'the Commissioners') relating to a decision by the Commissioners which resulted in the Development Council's being unable to deduct for the purposes of value-added tax the input tax on services provided to it in connection with those of its activities funded by the mandatory charges imposed upon commercial growers of apples and pears in England and Wales (hereinafter referred to as 'the growers'). The Development Council challenged that decision

before the Value-Added Tax Tribunal, which upheld its appeal. Thereafter, the ruling of the Tribunal was the subject of successive appeals, finally coming before the House of Lords.

3 The Development Council was established in 1966 by a statutory instrument made under the Industrial Organization and Development Act 1947 at the request of the growers. A statutory instrument of 6 May 1980 (the Apple and Pear Development Council Order 1980, SI 1980, No 623) (hereinafter referred to as 'the 1980 Order'), as subsequently amended, lays down the rules by which the Development Council is now governed.

4 It appears from the documents before the Court that the Development Council's functions relate essentially to advertising and the promotion and improvement of the quality of apples and pears grown in England and Wales.

5 The Development Council is authorized under the 1980 Order to impose on growers a mandatory annual charge at a rate not exceeding a specified amount in respect of each hectare of land planted with apple or pear trees or, in certain circumstances, a specified amount in respect of every 50 apple or pear trees planted on a grower's land. The charges are levied to enable the Development Council to meet the expenses incurred or to be incurred by it in the exercise of its functions.

6 Considering that the dispute raised questions concerning the interpretation of Community law, the House of Lords stayed the proceedings pending a preliminary ruling by the Court of Justice on the following question:

'Does the exercise by the Apple and Pear Development Council of their functions pursuant to Article 3 of the Apple and Pear Development Council Order 1980, SI No 623 (as amended by the Apple and Pear Development Council (Amendment) Order 1980, SI No 2001) and the imposition on growers pursuant to Article 9 (1)

of an annual charge for the purposes of enabling the Council to meet administrative and other expenses incurred or to be incurred in the exercise of such functions, constitute "the supply of . . . services effected for consideration" within the meaning of Article 2 of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes?'

7 Article 2 of the Sixth Directive provides as follows:

'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; . . .'

8 It appears from the documents before the Court that the House of Lords considers that the Development Council is a taxable person within the meaning of the Sixth Directive.

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and of the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 In order to reply to the question submitted by the national court it is necessary to interpret Article 2 (1) of the Sixth Directive. For that purpose, in view of the legislative objective common to the Sixth Directive and the Second Council Directive (67/228/EEC) of 11 April 1967 on the harmonization of the legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value-added tax (Official Journal, English Special Edition 1967, p. 16) (hereinafter referred to as 'the Second Directive'), it is appropriate to take into account the judgments of the Court concerning the Second Directive.

11 It should be noted that, in its judgment of 5 February 1981 (Case 154/80 *Staatssecretaris van Financiën* v *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445) the Court ruled that, for the provision of services to be taxable within the meaning of the Second Directive, there must be a direct link between the service provided and the consideration received.

12 It must therefore be stated that the concept of the supply of services effected for consideration within the meaning of Article 2 (1) of the Sixth Directive presupposes the existence of a direct link between the service provided and the consideration received.

13 The question then arises whether there is a direct link between the exercise of its functions by the Development Council and the mandatory charges which it imposes on growers.

14 It is apparent from the order for reference that the Development Council's functions relate to the common interests of the growers. In so far as the Development Council is a provider of services, the benefits deriving from those services accrue to the whole industry. If individual apple and pear growers receive benefits, they derive them indirectly from those accruing generally to the industry as a whole. In that connection, it must be stated that the possibility cannot be ruled out that, in certain circumstances, only apple growers or else only pear growers can derive benefit from the exercise of specific activities by the Development Council.

15 Moreover, no relationship exists between the level of the benefits which individual growers obtain from the services provided by the Development Council and the amount of the mandatory charges which they are obliged to pay under the 1980 Order. The charges, which are imposed by virtue not of a contractual but of a statutory obligation, are always recoverable from each individual grower as a debt due to the Development Council, whether or not a given service of the Development Council confers a benefit upon him.

16 It follows that mandatory charges of the kind imposed on the growers in this case do not constitute consideration having a direct link with the benefits accruing to individual growers as a result of the exercise of the Development Council's

functions. In those circumstances, the exercise of those functions does not therefore constitute a supply of services effected for consideration within the meaning of Article 2 (1) of the Sixth Directive.

17 It must therefore be stated in reply to the question submitted that the exercise by the Apple and Pear Development Council of its functions pursuant to Article 3 of the Apple and Pear Development Council Order 1980, SI No 623 (as amended by the Apple and Pear Development Council (Amendment) Order 1980, SI No 2001) and the imposition on growers pursuant to Article 9 (1) of an annual charge for the purpose of enabling the Development Council to meet administrative and other expenses incurred or to be incurred in the exercise of such functions do not constitute 'the supply of . . . services effected for consideration' within the meaning of Article 2 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment.

Costs

18 The costs incurred by the United Kingdom, the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in reply to the question submitted to it by the House of Lords, by order of 20 March 1986, hereby rules:

The exercise by the Apple and Pear Development Council of its functions pursuant to Article 3 of the Apple and Pear Development Council Order 1980, SI No 623

(as amended by the Apple and Pear Development Council (Amendment) Order 1980, SI No 2001) and the imposition on growers pursuant to Article 9 (1) of an annual charge for the purpose of enabling the Development Council to meet administrative and other expenses incurred or to be incurred in the exercise of such functions do not constitute 'the supply of . . . services effected for consideration' within the meaning of Article 2 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment.

Due Koopmans

Bahlmann Kakouris O'Higgins

Delivered in open court in Luxembourg on 8 March 1988.

J.-G. Giraud
Registrar

O. Due
President of the Sixth Chamber