Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

15 May 2014*

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Article 90 — Reduction of the taxable amount — Extent of obligations of Member States — Direct effect)

In Case C-337/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Hungary), made by decision of 23 May 2013, received at the Court on 20 June 2013, in the proceedings

Almos Agrárkülkereskedelmi Kft

v

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

THE COURT (Seventh Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, J.-C. Bonichot (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Almos Agrárkülkereskedelmi Kft, by T. Garadnai, ügyvéd,

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

— the Greek Government, by M. Germani, acting as Agent,

— the United Kingdom Government, by S. Brighouse, acting as Agent, and R. Hill, Barrister,

— the European Commission, by L. Lozano Palacios 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 request for a preliminary ruling concerns the interpretation of Article 90 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').

2 The request has been made in proceedings between Almos Agrárkülkereskedelmi Kft ('Almos') and Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága (National Tax and Customs Office, Regional Tax Directorate for Central Hungary, 'the tax authority') concerning the latter's refusal to allow the correction of invoices which Almos had made with a view to obtaining a reduction of the taxable amount for value added tax (VAT) because of the failure of a sale.

Legal context

European Union law

3 Title VII of the VAT Directive, 'Taxable amount', includes Articles 73 and 90.

4 According to Article 73 of that directive:

'In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.'

5 Under Article 90 of that directive:

'1. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

2. In the case of total or partial non-payment, Member States may derogate from paragraph 1.'

6 Article 273 of the directive 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

7 Under Paragraph 77 of Law CXXVII of 2007 on VAT (Általános forgalmi adóról szóló 2007. évi CXXVII. törvény, 'the Law on VAT'):

'(1) In the case of the supply of goods or services or intra-Community acquisitions of goods, the taxable amount is reduced subsequently by the amount of the consideration which is repaid or to be repaid to the person entitled if, following completion of the transaction:

(a) where the transaction is invalid:

(aa) the situation obtaining before the completion of the transaction is restored, or

(ab) the transaction is declared to have had effects in the period preceding the decision declaring that it is invalid;

(ac) the transaction is declared valid by way of elimination of a disproportionate advantage;

(b) where there are failures in the completion of the transaction:

(ba) the transaction is cancelled by the person entitled;

(bb) the person entitled is given a price reduction.

(2) The taxable amount is also reduced subsequently where

(a) the amount advanced is repaid because the transaction is not completed;

(b) in the case of the supply or hire of goods referred to in Paragraph 10(a), the tax debtor exercises his right to cancel as a result of the failure to pay the consideration in full and the parties restore the situation existing before completion of the transaction, or, if that is not possible, recognise that the transaction had effects until the time of the failure;

(c) in the case of goods on which a deposit is paid, the amount paid by way of deposit is returned.

(3) The taxable amount may be reduced subsequently in the case of a price reduction, in accordance with Paragraph 71(1)(a) and (b), following completion of the transaction.'

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

8 In August and September 2008 Almos sold rapeseed to another Hungarian undertaking, Bio-Ma Magyarország Energiaszolgáltató Zrt ('Bio-Ma'). The rapeseed was delivered and placed in a warehouse but the purchaser did not pay the purchase price.

9 For that reason, it was decided between the parties, in an agreement concluded on 1 October 2008, that the rapeseed was the property of Almos, that it alone was authorised to dispose of it and that Bio-Ma could not claim any charge over it, sell it or place it at the disposal of a third party. The deadline for the return of the rapeseed was fixed at 10 October 2008, until when Bio-Ma was required to observe the rules applicable to deposited goods.

10 However, the goods were not returned on 10 October 2008, because in the meantime they had been seized.

11 Almos brought a civil action for the return of the rapeseed. The Szegedi Ítélőtábla (Szeged Regional Court of Appeal) ordered the buyer, by a final judgment, to return 2 263.796 tonnes of rapeseed, or, failing that, to pay a sum of EUR 1 022 783. The judgment pointed out that the parties had cancelled the purchase agreement between them and the rapeseed was now the property of Almos.

12 Accordingly, Almos corrected the invoices relating to the sale to Bio-Ma and, in its tax return for the month of December 2009, entered the figure of 116 705 000 Hungarian forints (HUF) as recoverable VAT.

13 However, the tax authority considered that that figure was unjustified in respect of an amount of HUF 48 043 000, and a tax penalty of 10%. It pointed out that, despite the failure to pay the consideration, there had been a supply of goods within the meaning of Paragraph 9(1) of the Law on VAT. According to the authority, the correction of the invoices was not justified and the agreement between the parties after delivery had to be regarded as a new transaction. In addition, it took the view that the original situation had not been restored as there had been no return of the rapeseed and the agreed price had not been paid. The provisions of Paragraph 77(1) and (2) of the Law on VAT provide for a subsequent reduction of the taxable amount if the transaction is not valid, a situation which is different from cancellation of the contract, such as occurred in this case. The Law on VAT does not contain any provision which allows the subsequent reduction of the taxable amount solely by reason of total or partial non-payment for the goods at issue.

14 The first-instance court rejected Almos's action against the decision of the tax authority.

15 In its appeal on a point of law to the referring court, Almos states that, as a consequence of the cancellation of the contract, it once again became the owner of the goods sold. According to Almos, what took place was not, therefore, an independent transaction from the point of view of tax law, but a transaction closely and intrinsically connected with the original contract of sale, since the purchaser would have become the owner of the rapeseed only if it had paid the sale price. It claims that, in the light of Article 90(1) of the VAT Directive, no unlawful conduct can be attributed to it so far as concerns the situation granting it a right to reduction.

16 The referring court notes that, at the time of the introduction of the application for reimbursement, the Law on VAT did not cover all the situations listed in Article 90(1) of the VAT Directive and did not provide, inter alia, for the possibility of a reduction of the taxable amount in the case of cancellation, refusal or total or partial non-payment of the consideration. It questions whether that law deprived taxable persons of rights to which they should have been entitled in that regard.

17 In those circumstances the Kúria (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Paragraph 77(1) and (2) of [the Law on VAT], in the version in force until 31 December 2010, consistent with the provisions of Article 90(1) of [the VAT Directive]; does [the Law on VAT] cover all the cases of possible reduction of the taxable amount provided for in that provision?

(2) If the answer to the first question is no, is the taxable person entitled, in the absence of national legislation, to reduce the taxable amount, on the basis of the principles of tax neutrality and proportionality, and in the light of Article 90(1) of the VAT Directive, where it receives no consideration on completion of a transaction?

(3) If Article 90(1) [of the VAT Directive] has direct effect, under what circumstances is it possible to reduce the taxable amount? Is it sufficient for an amending invoice to be issued and sent to the purchaser or is it necessary, in addition, to demonstrate that, in fact, property in or possession of the goods has been recovered?

(4) If the answer to the third question is no, is it obligatory under European Union law to compensate the taxable person for the damage arising from the fact that the Member State did not fulfil its obligations as to harmonisation and, as a result, it was not possible for the taxable person to reduce its taxable amount?

(5) May Article 90(2) [of the VAT Directive] be interpreted as meaning that, in the case of total or partial non-payment, the Member States have the possibility of not applying a reduction in the taxable amount; if so, is an express prohibition in the Member State's legislation necessary or does the absence of any rule have the same legal effect?'

Consideration of the questions referred

The first and fifth questions

18 As a preliminary point, it should be noted that the cooperative arrangements established by Article 267 TFEU are based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of national rules with European Union law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of European Union law necessary to enable that court to rule on the compatibility of those national rules with Community law (see, inter alia, Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* EU:C:2007:133, paragraph 36).

19 While it is not, therefore, for the Court to rule, in this case, on the compatibility of Paragraph 77 of the Law on VAT with Article 90 of the VAT Directive, on the other hand, it is for it to provide all the guidance as to the interpretation of the latter provision necessary to enable the referring court to rule on that compatibility.

20 Thus, it must be considered that, by its first and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether the provisions of Article 90 of the VAT Directive require that the national provisions which transpose them expressly list all of the situations conferring entitlement, according to paragraph 1 of that article, to a reduction in the taxable amount for VAT.

21 According to the Court's case-law, the transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner, so that, in the case of a directive intended to confer rights on individuals, the persons concerned are enabled to ascertain the full extent of their rights and, where appropriate, rely on them before the national courts (see, inter alia, Case C-287/04 *Commission* v *Sweden* EU:C:2005:330, paragraph 6, and Case C-427/07 *Commission* v *Ireland* EU:C:2009:457, paragraph 54).

22 In that regard, it must be noted that Article 90(1) of the VAT Directive, which relates to cases of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, requires the Member States to reduce the taxable amount and, consequently, the amount of VAT payable by the taxable person whenever, after a transaction has been concluded, part or all of the consideration has not been received by the taxable person. That provision embodies one of the fundamental principles of the VAT Directive, according to which the taxable amount is the

consideration actually received and the corollary of which is that the tax authorities may not charge an amount of VAT exceeding the tax paid by the taxable person (see, to that effect, Case C-588/10 *Kraft Foods Polska* EU:C:2012:40, paragraphs 26 and 27).

23 However, Article 90(2) permits Member States to derogate from the abovementioned rule in the case of total or partial non-payment of the transaction price. Hence taxable persons cannot rely, under Article 90(1) of the VAT Directive, on a right to a reduction of their taxable amount for VAT in the case of non-payment of the price if the Member State concerned intended to apply the derogation provided for in Article 90(2) of that directive.

24 It must be accepted that a national provision which, in setting out the situations in which the taxable amount is reduced, does not refer to the situation of non-payment of the transaction price must be regarded as the result of the exercise by the Member State of the power of derogation granted it under Article 90(2) of the VAT Directive.

25 It must be noted in that regard that, if the total or partial non-payment of the purchase price occurs without there being cancellation or refusal of the contract, the purchaser remains liable for the agreed price and the seller, even though no longer proprietor of the goods, in principle continues to have the right to receive payment, which he can rely on in court. Since it cannot be excluded, however, that such a debt will become definitively irrecoverable, the European Union legislature intended to leave it to each Member State to determine whether the situation of non-payment of the purchase price, which, of itself, unlike cancellation or refusal of the contract, does not restore the parties to their original situation, leads to an entitlement to have the taxable amount reduced accordingly under conditions it determines, or whether such a reduction is not allowed in that situation.

26 In those circumstances, it must be considered, first, that the mere fact that, in setting out the situations in which the taxable amount is reduced, the national transposing provision does not reproduce all the situations referred to in Article 90(1) of that directive does not lead to the conclusion, with regard to the general legal context which that transposing measure is part of, that it cannot be capable of effectively ensuring the full application of the VAT Directive in a sufficiently clear and precise manner.

27 Secondly, it is important, on the other hand, that, for situations other than those linked to the non-payment of the price, national transposing provisions take into account all the situations in which, after a transaction has been concluded, part or all of the consideration has not been received by the taxable person, which is a matter for the national court to ascertain.

28 In the light of the foregoing considerations, the answer to the first and fifth questions is that the provisions of Article 90 of the VAT Directive must be interpreted as not precluding a national provision which does not provide for the reduction of the taxable amount for VAT in the case of non-payment of the price if the derogation provided for in Article 90(2) is applied. However, that provision must then mention all the other situations in which, under Article 90(1), after a transaction has been concluded, part or all of the consideration has not been received by the taxable person, which is a matter for the national court to ascertain.

The second to fourth questions

29 By its second to fourth questions, which it is appropriate to examine together, the referring court asks in essence, in the event that, on completion of the verification which it must carry out, it were to consider, other than in the case of non-payment of price, that the national provisions at issue in the main proceedings do not correctly transpose the provisions of Article 90(1) of the VAT Directive, what rights the taxable person could rely on, and, where relevant, in what circumstances, to obtain a reduction of the taxable amount for VAT or an equivalent measure.

30 The referring court is thus asking, in the first place, whether Article 90(1) of the VAT Directive fulfils the conditions for it to have direct effect as regards taxable persons.

31 It should be recalled that, according to settled case-law of the Court, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* EU:C:2004:584, paragraph 103, and Case C-176/12 *Association de médiation sociale* EU:C:2014:2, paragraph 31).

32 A provision of European Union law is unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States (see, to that effect, Case C-317/05 *Pohl-Boskamp* EU:C:2006:684, paragraph 41).

33 In the present case, Article 90(1) of the VAT Directive provides that, in the cases it refers to, the taxable amount is to be reduced accordingly under conditions which are to be determined by the Member States.

34 Although that article grants the Member States a certain degree of discretion when adopting the measures to determine the amount of the reduction, that does not alter the precise and unconditional nature of the obligation to allow the reduction in the taxable amount in the cases referred to by that article. It therefore fulfils the conditions for it to have direct effect (see by analogy, inter alia, *Association de médiation sociale* EU:C:2014:2, paragraph 33).

35 It follows that, since taxable persons may rely on Article 90(1) of the VAT Directive before national courts against the State to obtain a reduction in their taxable amount for VAT, the referring court's question asking whether the Member State concerned would be required to repair the damage that the persons in question would suffer due to the fact that that State, by not correctly transposing that directive, had deprived them of their right to a reduction is nugatory.

36 In the second place, as regards the question of the formalities to which the exercise of that right to a reduction of the taxable amount may be subject, it must be noted that, under Article 273 of the VAT Directive, Member States may impose the obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, provided, inter alia, that that option is not relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3 of that directive.

37 Given that Articles 90(1) and 273 of the VAT Directive do not, outside the limits laid down therein, specify either the conditions or the obligations which the Member States may impose, it must be held that those provisions give the Member States a margin of discretion, inter alia, as to the formalities to be complied with by taxable persons vis-à-vis the tax authorities of those States in order to ensure that the taxable amount is reduced (see, to that effect, *Kraft Foods Polska* EU:C:2012:40, paragraph 23).

38 It is also apparent from the case-law of the Court that measures to prevent tax evasion or avoidance may not, in principle, derogate from the rules relating to the taxable amount except within the limits strictly necessary for achieving that specific aim. They must have as little effect as possible on the objectives and principles of the VAT Directive and may not therefore be used in such a way that they would have the effect of undermining the neutrality of VAT (see, to that effect, *Kraft Foods Polska* EU:C:2012:40, paragraph 28, and Case C-271/12 *Petroma Transports and Others* EU:C:2013:297, paragraph 28).

39 Consequently, the formalities to be complied with by taxable persons to exercise, vis-à-vis the tax authorities, the right to reduce the taxable amount for VAT must be limited to those which make it possible to provide proof that, after the transaction has been concluded, part or all of the consideration will definitely not be received. It is for the national courts to ascertain whether that is true of the formalities required by the Member State concerned.

40 In the light of the foregoing considerations, the answer to the second to fourth questions is that taxable persons may rely on Article 90(1) of the VAT Directive before national courts against the Member State to obtain a reduction of their taxable amount for VAT. While Member States may provide that the exercise of the right to a reduction of that taxable amount is conditional on compliance with certain formalities which serve to prove in particular that, after the transaction was concluded, part or all of the consideration was definitively not received by the taxable person and that the taxable person was able to rely on one of the situations referred to in Article 90(1) of the VAT Directive, the measures thus adopted cannot exceed what is necessary for that proof, which is for the national court to ascertain.

Costs

41 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 (Seventh Chamber) hereby rules:

1. **The provisions of Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding a national provision which does not provide for the reduction of the taxable amount for value added tax in the case of non-payment of the price if the derogation provided for in Article 90(2) is applied. However, that provision must then mention all the other situations in which, under Article 90(1), after a transaction has been concluded, part or all of the consideration has not been received by the taxable person, which is a matter for the national court to ascertain.**

2. **Taxable persons may rely on Article 90(1) of Directive 2006/112 before national courts against the Member State to obtain a reduction of their taxable amount for value added tax. While Member States may provide that the exercise of the right to a reduction of that taxable amount is conditional on compliance with certain formalities which serve to prove in particular that, after the transaction was concluded, part or all of the consideration was definitely not received by the taxable person and that the taxable person was able to rely on one of the situations referred to in Article 90(1) of Directive 2006/112, the measures thus adopted cannot exceed what is necessary for that proof, which is for the national court to ascertain.**

[Signatures]