JUDGMENT OF THE COURT (Third Chamber)

26 May 2005 *

In Case C-498/03,

REFERENCE under Article 234 EC for a preliminary ruling by the VAT and Duties Tribunal, London (United Kingdom), by decision of 10 June 2003, received at the Court on 26 November 2003, in the proceedings

Kingscrest Associates Ltd,

Montecello Ltd

v

Commissioners of Customs and Excise,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Borg Barthet, A. La Pergola, J. Malenovský and A. Ó Caoimh (Rapporteur), Judges,

* Language of the case: English.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 January 2005,

after considering the observations submitted on behalf of:

— Kingscrest Associates Ltd and Montecello Ltd, by A. Hitchmough, Barrister, instructed by C. Mainprice, Solicitor,

— the United Kingdom, by K. Manji and C. White, acting as Agents, and N. Paines QC and P. Mantle, Barrister,

— the Commission of the European Communities, by R. Lyal, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2005,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 13A(1)(g) and (h) 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, hereinafter 'the Sixth Directive').

2 The reference was made in the course of proceedings between, on the one hand, Kingscrest Associates Ltd and Montecello Ltd and, on the other hand, the Commissioners of Customs and Excise ('the Commissioners'), the competent authority in the United Kingdom for matters concerning value added tax ('VAT') in respect of the exemption from VAT of supplies made by Kingscrest Residential Care Homes ('Kingscrest'), a partnership formed by the appellants in the main proceedings for the purpose of operating residential care homes in the United Kingdom, whereas, according to them, those supplies should be subject to VAT.

Legal framework

Community provisions

3 Article 13A(1) of the Sixth Directive provides:

'Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;

(h) the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;

...'

4 Article 13A(2) of the Sixth Directive provides:

'(a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1)(b), (g), (h), (i), (l), (m) and (n) of this article subject in each individual case to one or more of the following conditions:

— the organisations in question shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,

...'

National provisions

Provisions concerning the registration of persons operating residential care homes

5 Prior to 1 April 2002, the registration by the relevant local authorities of residential care homes for adults was governed by the Registered Homes Act 1984 and that of children's homes by the Children Act 1989. Since 1 April 2002, the registration by the National Care Standards Commission of persons or bodies operating such homes is provided for by the Care Standards Act 2000.

6 The Care Standards Act 2000 defines a 'children's home' as an establishment which provides care and accommodation wholly or mainly for children. It defines a 'care home' as an establishment which provides accommodation together with nursing or personal care for persons who are or have been ill, have or have had a mental disorder, are disabled or infirm, or are or have been dependent on alcohol or drugs.

7 Under the Care Standards Act 2000, persons or bodies who operate children's homes or care homes must be registered with the National Care Standards Commission. That Commission may grant an application for registration only if it is satisfied that the requirements of the legislation will be complied with. Registration

may subsequently be cancelled if, in particular, the applicant is convicted of an offence under the Care Standards Act 2000, the Registered Homes Act 1984 or the Children Act 1989, or if the establishment has not been run in accordance with the requirements of the Care Standards Act 2000 or any other relevant legislation.

8 The National Care Standards Commission may at any time require information regarding an establishment or enter and inspect it, examine or remove records and conduct private interviews with staff, and — subject to their consent — with the residents.

9 The Care Standards Act 2000 confers on the national authorities a power to adopt regulations imposing any appropriate further requirements or to publish statements of national minimum standards for those establishments.

VAT legislation

10 Under the Value Added Tax Act 1994 ('the VAT Act') supplies of welfare services are eligible for exemption from VAT.

11 Prior to 21 March 2002, item 9 of Group 7 in Schedule 9 to the VAT Act exempted only supplies, otherwise than for profit, by a charity or public body, of welfare services and of goods supplied in connection with those services.

12 Under domestic law, a 'charity' must be set up for exclusively charitable purposes and therefore cannot be run for profit.

13 Item 9 of Group 7 in Schedule 9 to the VAT Act, as amended by the Value Added Tax (Health and Welfare) Order 2002 (SI 2002/762), 'the amended VAT Act'), exempts 'the supply by

(a) a charity,

(b) a state-regulated private welfare institution or agency, or

(c) a public body,

of welfare services and of goods supplied in connection with those welfare services'.

14 According to note 6 to Group 7 in Schedule 9 to the amended VAT Act, the welfare services covered by the exemption are services which are directly connected with the

provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons and the care or protection of children and young persons.

The main proceedings and the questions referred for a preliminary ruling

15 The appellants in the main proceedings formed the partnership Kingscrest for the purpose of operating residential care homes in the United Kingdom. Kingscrest is run for profit and is therefore not a 'charity' within the meaning of the national legislation. It operates four homes, all of which were formerly registered by the relevant local authorities under the Registered Homes Act 1984 or the Children Act 1989 and are now registered under the Care Standards Act 2000.

16 According to the order for reference, it is common ground that Kingscrest's supplies are of 'welfare services' within the meaning of item 9 of Group 7 in Schedule 9 to the amended VAT Act and that the partnership is a 'state-regulated private welfare institution' within the meaning of that provision.

17 Until 21 March 2002, the supplies made by Kingscrest were subject to VAT. Since that date, they are exempt, by decision of the Commissioners, on the ground that, in accordance with item 9, the partnership ceased to make taxable supplies from that date.

18 The appellants in the main proceedings appealed against that decision on the ground that item 9 of Group 7 in Schedule 9 to the amended VAT Act is incompatible with Article 13A(1)(g) and (h) of the Sixth Directive. They claim that in introducing the concept of 'state-regulated private welfare institution', the national legislation has gone beyond what is permissible under the Sixth Directive.

19 The Commissioners replied that the expression 'charitable' used in Article 13A(1)(g) and (h) of the Sixth Directive refers to a Community law concept which does not have the same meaning as that of 'charitable' in domestic law. 'Organisations recognised as charitable by the Member State concerned', within the meaning of that provision, can include organisations registered under the Registered Homes Act 1984, the Children Act 1989 or the Care Standards Act 2000.

20 In those circumstances, the VAT and Duties Tribunal, London, decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it permissible to resort to other language versions of the Sixth ... Directive ... to elucidate the meaning of the word "charitable" in Article 13A(1)(g) and (h), or must the word have the same meaning as in domestic law?

(2) If Article 13A(1)(g) and (h) are to be interpreted as applying to an organisation that is recognised as having a social character, are they to be interpreted as applying to a profit-making entity such as the Kingscrest Residential Care Homes partnership?

(3) Are Article 13A(1)(g) and (h) of the Directive to be interpreted as meaning that they confer on Member States a discretion to recognise for the purposes of those provisions an organisation which is registered under the Care Standards Act 2000 (or the Registered Homes Act 1984 or the Children Act 1989) but which is not a body governed by public law and does not have the status of a charity under the domestic law of the Member State concerned?'

On the questions referred

The first question

21 By its first question, the national court asks, in essence, whether the word 'charitable', used in the English version of Article 13A(1)(g) and (h) of the Sixth Directive, must be given a definition distinct from that given it by domestic law and, if so, whether the word's interpretation must take account of all the language versions of the Sixth Directive.

22 In that regard, it should be observed that according to settled case-law the exemptions provided for in Article 13 of the Sixth Directive have their own independent meaning in Community law and they must therefore be given a Community definition (see Case C-358/97 *Commission* v *Ireland* [2000] ECR I-6301, paragraph 51; Case C-275/01 *SinclairCollis* [2003] ECR I-5965, paragraph 22; and Case C-284/03 *Temco Europe* [2004] ECR I-11232, paragraph 16).

23 That must also be true of the specific conditions laid down for those exemptions to apply and in particular of those concerning the status or identity of the economic agent performing the services covered by the exemption (Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341, paragraph 18).

24 As the Court has already held, although the introductory sentence of Article 13A(1) of the Sixth Directive states that Member States are to lay down the conditions for exemptions in order to ensure the correct and straightforward application of the exemptions and to prevent any possible evasion, avoidance or abuse, those conditions cannot affect the definition of the subject-matter of the exemptions envisaged (Case C-287/00 *Commission* v *Germany* [2002] ECR I-5811, paragraph 50).

25 From that point of view, whether a specific transaction is subject to or exempt from VAT cannot depend on its classification in national law (see Case C-76/99 *Commission* v *France* [2001] ECR I-249, paragraph 26, and Case C-315/00 *Maierhofer* [2003] ECR I-563, paragraph 26).

26 In addition, it follows from settled case-law that the need for a uniform interpretation of Community directives makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted and applied in the light of the versions existing in the other official languages (Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36, and Case C-321/96 *Mecklenburg* [1998] ECR I-3809, paragraph 29).

27 In those circumstances, the reply to the first question must be that the word 'charitable' in the English version of Article 13A(1)(g) and (h) of the Sixth Directive has its own independent meaning in Community law which must be interpreted taking account of all the language versions of that directive.

The second question

28 By its second question, the national court asks, in essence, whether the expression 'organisations recognised as charitable by the Member State concerned' in Article 13A(1)(g) and (h) of the Sixth Directive can apply to private profit-making entities.

29 According to the Court's case-law, the exemptions envisaged in 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 supplies of services for consideration by a taxable person (see, in particular, *Commission* v *Germany*, cited above, paragraph 43; Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 36; and *Temco Europe*, cited above, paragraph 17). However, 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).

30 In that regard, so far as concerns, first, the objectives pursued by the exemptions under Article 13A(1)(g) and (h) of the Sixth Directive, it is clear from that provision that those exemptions, by treating certain supplies of services in the general interest

in the social sector more favourably for the purposes of VAT, are intended to reduce the cost of those services and to make them more accessible to the individuals who may benefit from them.

31 In the light of that objective, it must be observed, first, that the commercial nature of an activity does not preclude it from being, in the context of Article 13A of the Sixth Directive, an activity in the general interest (Case C-144/00 *Hoffmann* [2003] ECR I-2921, paragraph 38).

32 Secondly, the expression 'organisations recognised as charitable' in Article 13A(1)(g) and (h) of the Sixth Directive does not call for a particularly narrow construction (see, to that effect, *Dornier*, cited above, paragraph 48).

33 It should be noted that, save perhaps the Danish and Swedish versions of the provision, which refer, in essence, to the pursuit of the general interest, none of the other language versions thereof limit entitlement to the exemptions thereunder to non-profit-making entities.

34 According to a literal interpretation of the wording of those other versions of Article 13A(1)(g) and (h) of the Sixth Directive, to be eligible for the exemption it is sufficient if two requirements are satisfied: first, that the supplies are connected either to welfare or social security work or to the protection of children or young persons, and secondly that such supplies are made by bodies governed by public law or other organisations recognised by the Member State concerned as essentially charitable.

35 The term 'organisation' is in principle sufficiently broad to include private profit-making entities (see, to that effect, Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 17, and *Hoffmann*, cited above, paragraph 24).

36 Thus the Court has already held, in respect of a private entity aiming to make a profit, that the expression 'other organisations recognised as charitable by the Member State concerned' in Article 13A(1)(g) of the Sixth Directive does not exclude from that exemption natural persons running a 'business' (see *Gregg*, cited above, paragraph 21).

37 Furthermore, as the Commission of the European Communities and the United Kingdom correctly argued, when the Community legislature intended to restrict the grant of the exemptions under Article 13A(1) of the Sixth Directive to certain non-profit-making or non-commercial entities, it said so expressly, as is clear from subparagraphs (l), (m) and (q) thereof.

38 Finally, it must be noted that the first indent of Article 13A(2)(a) of the Sixth Directive, which is an optional condition which Member States may also impose for the grant of certain exemptions mentioned in Article 13A(1) of that directive (see, to that effect, Case C-267/00 *ZoologicalSociety* [2002] ECR I-3353, paragraph 16), authorises, but does not oblige, the Member States to restrict entitlement to the exemptions under, inter alia, Article 13A(1)(g) and (h) to bodies other than public-law bodies which do not systematically seek to make profit (*Hoffmann*, cited above, paragraph 38).

39 As the Court has already held, the condition set out in the first indent of Article 13A (2)(a) of the Sixth Directive concerning the absence of systematic profit-seeking essentially replicates the criterion of non-profit-making organisation as contained, particularly, in Article 13A(1)(m) thereof (Case C-174/00 *Kennemer Golf* [2002] ECR I-3293, paragraph 33).

40 In those circumstances, in order not to deprive the first indent of Article 13A(2)(a) of the Sixth Directive of all purpose, it must necessarily be accepted that, where the Community legislature, as in Article 13A(1)(g) and (h), has not expressly made entitlement to the exemptions in question subject to the absence of a profit-making aim, the pursuit of such an aim cannot preclude entitlement to those exemptions (see, to that effect, *Kennemer Golf*, paragraph 34, and *Hoffmann*, paragraph 38).

41 As regards, secondly, the principle of fiscal neutrality, it must be remembered that that principle precludes, in particular, treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (see, to that effect, Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 30, and Case C-109/02 *Commission* v *Germany* [2003] ECR I-12691, paragraph 20).

42 Clearly, as the Advocate General observed, in essence, in paragraph 29 of his Opinion, that principle would not be observed if, where the national legislature has not made the exemption subject to the condition set out in the first indent of Article 13A(2)(a) of the Sixth Directive, the welfare services covered in Article 13A(1)(g) and (h) were treated differently for VAT purposes depending on whether the entities which provide them are profit-making or not.

43 It follows from all those considerations that the pursuit of such an aim does not preclude entitlement to the exemptions provided for under Article 13A(1)(g) and (h) of the Sixth Directive.

44 That conclusion is not undermined by the fact that the appellants in the main proceedings, in view of the fact that they pursue a profit-making aim, do not have charitable status under domestic law, in spite of the fact that the English version of Article 13A(1)(g) and (h) of the Sixth Directive reserves the exemptions thereunder for organisations recognised as 'charitable'. As is clear from the reply to the first question, the concepts mentioned in the Sixth Directive are independent concepts of Community law and not concepts of domestic law.

45 As a result, since the appellants in the main proceedings have the status of an organisation recognised as charitable within the meaning of Article 13A(1)(g) and (h) of the Sixth Directive, they are eligible for the exemptions under that provision, notwithstanding the fact that they pursue a profit-making aim and that, therefore, they do not have charitable status under domestic law.

46 In that regard, it must be pointed out that, at the hearing, the appellants in the main proceedings themselves accepted that the pursuit of a profit-making aim, whilst it may be a relevant criterion to be taken into account in determining whether an organisation is charitable within the meaning of that provision, by no means precludes it altogether from being charitable.

47 The answer to the second question must therefore be that the meaning of 'organisations recognised as charitable by the Member State concerned' in Article 13A(1)(g) and (h) of the Sixth Directive does not exclude private profit-making entities.

The third question

48 By its third question, the national court asks, in essence, whether the Member States have a discretion to recognise a private profit-making entity which does not have charitable status under domestic law as 'charitable' within the meaning of Article 13A(1)(g) and (h) of the Sixth Directive.

49 In that regard, it must be stated at the outset that Article 13A(1)(g) and (h) of the Sixth Directive do not specify the conditions and procedures for recognising organisations other than those governed by public law as charitable. It is thus in principle for the national law of each Member State to lay down the rules according to which such recognition may be granted to such organisations (see, to that effect, *Dornier*, cited above, paragraph 64).

50 The adoption of national rules in this area is, moreover, provided for in Article 13A (2)(a) of the Sixth Directive, under which 'the Member States may make the granting to bodies other than those governed by public law of each exemption provided for in

(1) ... (g), (h), ... subject in each individual case to one ... of the conditions' referred to later therein (see, to that effect, *Dornier*, cited above, paragraph 65).

51 It follows therefore that Article 13A(1)(g) and (h) of the Sixth Directive grant the Member States, as the Court has already held as regards the first of those provisions (see *Kügler*, cited above, paragraph 54), a discretion to recognise as charitable certain organisations not governed by public law.

52 However, it is also clear from the case-law that where a taxable person challenges the recognition of an organisation as charitable it is for the national courts to examine whether the competent authorities have observed the limits of the discretion granted by Article 13A(1)(g) and (h) of the Sixth Directive in applying Community principles, in particular the principle of equal treatment (see, to that effect, *Kügler*, paragraph 56, and *Dornier*, paragraph 69).

53 In that regard, it follows from the case-law that it is for the national authorities, in accordance with Community law and subject to review by the national courts, to take into account, in particular, the existence of specific provisions, be they national or regional, legislative or administrative, or tax or social security provisions, the general interest of the activities of the taxable person concerned, the fact that other taxable persons carrying on the same activities already have similar recognition, and the fact that the costs of the supplies in question may be largely met by health insurance schemes or other social security bodies (see *Kügler*, paragraphs 57 and 58, and *Dornier*, paragraph 72).

54 In addition, it must be recalled that the principle of fiscal neutrality precludes, in particular, treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (see, to that effect, *Kügler*, paragraph 30, and *Commission* v *Germany*, paragraph 20).

55 In the main proceedings, it is therefore for the national court to determine, having regard to all those matters, whether the recognition of Kingscrest as a charitable organisation for the purposes of the exemptions provided for in Article 13A(1)(g) and (h) of the Sixth Directive entails infringement of the principle of equal treatment in relation to other operators making the same supplies in comparable situations.

56 In that regard, it must be observed that it follows from the reply to the second question that the condition whereby private profit-making entities may be recognised as charitable does not exceed the limits of the discretion granted to the Member States by Article 13A(1)(g) and (h) of the Sixth Directive.

57 For the purposes of determining whether the limits of the discretion have been exceeded in this case, the national court may, on the other hand, take into account in particular the fact that, under the amended VAT Act, entitlement to the exemptions provided for in Article 13A(1)(g) and (h) of the Sixth Directive extends to all organisations registered under the Care Standards Act 2000, as well as the fact that that Act and the amended VAT Act contain specific provisions which not only reserve entitlement to those exemptions to organisations supplying welfare services,

the content of which is defined by those Acts, but also govern the conditions for providing those supplies, by making the organisations which provide them subject to restrictions and checks by the national authorities, in terms of registration, inspection and rules concerning both buildings and equipment and the qualifications of the persons authorised to manage them.

58 The reply to the third question must therefore be that it is for the national court to determine, having regard, in particular, to the principles of equal treatment and fiscal neutrality, and taking account of the nature of the supplies of services in question, as well as the conditions for making them, whether the recognition of a private profit-making entity, which as such does not have charitable status under domestic law, as charitable for the purposes of the exemptions provided for in Article 13A(1)(g) and (h) of the Sixth Directive exceeds the discretion granted by those provisions to the Member States for the purposes of such recognition.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the appeal pending before the national tribunal, 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. **The word 'charitable' in the English version of Article 13A(1)(g) and (h) 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 is a concept with its own independent meaning in Community law which must be interpreted taking account of all the language versions of that directive.**

2. **The meaning of 'organisations recognised as charitable by the Member State concerned' in Article 13A(1)(g) and (h) of the Sixth Directive 77/388 does not exclude private profit-making entities.**

3. **It is for the national court to determine, having regard, in particular, to the principles of equal treatment and fiscal neutrality, and taking account of the content of the supplies of services in question, as well as the conditions for making them, whether the recognition of a private profit-making entity, which as such does not have charitable status under domestic law, as charitable for the purposes of the exemptions under Article 13A(1)(g) and (h) of the Sixth Directive 77/388 exceeds the discretion granted by those provisions to the Member States for the purposes of such recognition.**

[Signatures]