JUDGMENT OF THE COURT

9 June 1992 *

In Case C-96/91,

Commission of the European Communities, represented by Daniel Calleja y Crespo, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, also of its Legal Service, Wagner Centre, Kirchberg,

and

Kingdom of Spain, represented by Alberto José Navarro Gonzalez, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Diaz, Abogado del Estado, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel-Servais,

APPLICATION for a declaration that, by exclusively requiring compulsory presentation of a document known as a 'special invoice' in an official standard form in order to obtain the remission of value added tax in international travel, thereby preventing the exercise of that right by travellers who are in possession of an ordinary invoice which duly complies with the Spanish legislation and with 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 (OJ 1977 L 145, p. 1), the Kingdom of Spain has failed to fulfil its obligations under Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232),

* Language of the case: Spanish.

THE COURT,

composed of: R. Joliet, President of Chamber, acting as President, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Diez de Velasco and M. Zuleeg, Judges,

Advocate General: C. Gulmann,
Registrar: D. Triantafyllou, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 April 1992,

after hearing the Opinion of the Advocate General at the sitting on 12 May 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 March 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by exclusively requiring compulsory presentation of a document known as a 'special invoice' in an official standard form in order to obtain the remission of value added tax (hereinafter 'VAT') in international travel, thereby preventing the exercise of that right by travellers who are in possession of an ordinary invoice which duly complies with the Spanish legislation and with 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 (OJ 1977 L 145, p. 1), the Kingdom of Spain has failed to fulfil its obligations under Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232) (hereinafter 'the Directive').

2 The Commission claims that the obligation thus imposed by the Spanish rules, contained in Articles 15 and 86 of Royal Decree 2028/85 of 30 October 1985, the latter article having been amended by Article 6 of Royal Decree 2105/86 of 25 September 1986, and in the Ministerial Decree of 20 December 1985, as amended by the Ministerial Decree of 5 December 1986, is contrary to the provisions of Article 6 of the Directive, as amended by the Second Council Directive — 72/230/EEC — of 12 June 1972 (OJ, English Special Edition 1972 (II), p. 565), the Third Council Directive — 78/1032/EEC — of 19 December 1978 (OJ 1978 L 366, p. 28) and Council Directive 85/348/EEC of 8 July 1985 (OJ 1985 L 183, p. 24).

3 Reference is made to the Report for the Hearing for a fuller account of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 It should be noted at the outset that Articles 1 and 2 of Directive 69/169 provide for the exemption of VAT on goods imported in travellers' personal luggage provided that such importation is not commercial in nature and that the value of the goods does not exceed certain limits, which differ according to whether travel is between third countries and the Community or between Member States. Article 6 of the Directive required Member States to take appropriate measures to ensure that tax remission on exportation was not granted to those benefiting from an exemption on importation.

5 Because of the technical difficulties which arose from application of Article 6, and in order to avoid instances of double taxation, tax-remission arrangements were gradually laid down for exportation at the retail stage. Thus Article 4 of the abovementioned Directive 72/230 provides that under certain conditions Member States may as regards sale at the retail trade stage authorize the remission of turnover tax on goods carried in the personal luggage of travellers leaving a Member State. Article 3 of Directive 78/1032 subsequently made this no longer an option but binding on the Member States.

6 In the current version of the Directive, resulting from the abovementioned texts and an additional amendment under Article 1(3) of Directive 85/348, Article 6 comprises five paragraphs, three of which contain the following provisions:

'2. Without prejudice to rules relating to sales made at airport shops under customs control and on board aircraft, Member States may, as regards sale at the retail trade stage, authorize in the cases and under the conditions provided for in paragraphs 3 and 4 the remission of turnover tax on goods carried in the personal luggage of travellers leaving a Member State. No remission may be granted in respect of excise duty.

3. As regards travellers whose domicile or habitual residence is situated outside the Community each Member State may set limits and lay down conditions of application in respect of tax remission.

As regards travellers whose domicile, habitual residence or place of work is situated in a Member State, there may be remission of tax only in respect of items the individual value of which, inclusive of tax, exceeds the amount specified in Article 2(1).

Member States may exclude their residents from the benefit of this tax remission.

4. Remission of tax shall be subject:

(a) in the cases referred to in the first subparagraph of paragraph 3, to production of a copy of the invoice or other document in lieu thereof, endorsed by the customs of the exporting Member States to certify exportation of the goods;

(b)in the cases referred to in the second subparagraph of paragraph 3, to production of a copy of the invoice or other document in lieu thereof, endorsed by the customs of the Member State where final importation takes place or by another authority of that Member State competent in matters of turnover tax proving that the turnover tax has been or will be applied.'

7 The Commission claims that the Spanish rules making remission of VAT under the scheme applicable to travellers subject to the use of a special document on an official standard form is contrary to the rule set out in Article 6(4) of the Directive, which makes tax remission subject merely to 'production of a copy of the invoice or other document in lieu thereof'. The Commission considers that those rules restrict, contrary to the purpose of the Directive, the exercise of a right provided by the Community legislature, that they are disproportionate to the objective they seek to achieve and that their possible consequences include the risk of double taxation within the territory of the Community.

8 The Kingdom of Spain contends that the Sixth Directive, which it acknowledges to be of fundamental importance in terms of the harmonization of the provisions covering value added tax, gives Member States the power to lay down certain rules which are necessary to check that the tax is levied, concerning in particular the details of the invoicing. It considers that the rules impugned by the Commission, which are intended solely to make it easier to monitor the conditions required by the Directive for entitlement to reimbursement, do not exceed the limits thus established by Community law and are in no way in breach of the obligation the Directive imposes on the Member States in terms of the result to be achieved.

9 That argument cannot be upheld.

10 As the Court has consistently held, in the field covered by the Directive, the Member States retain only the limited powers granted them by the actual provisions of

the Directive and of those directives amending it (Case 158/80 *REWE* [1981] ECR 1805, at paragraph 36, Case 278/82 *REWE* [1984] ECR 721, at paragraph 31, Case C-158/88 *Commission* v *Ireland* [1990] ECR I-2367, at paragraph 7, and Case 208/88 *Commission* v *Denmark* [1990] ECR I-4445, at paragraph 7).

11 The Directive does not contain any provision entitling Member States to require, for the remission of tax on goods carried in travellers' personal luggage, a special supporting document, whilst Article 6(4), cited above, requires only production of an invoice or other document in lieu thereof. That provision, which sets out the technical details for the exercise of the right to remission of tax, clearly provides that travellers have two ways of claiming reimbursement of the tax. It cannot therefore be interpreted as allowing Member States an option to limit exercise of that right only to those in possession of a special invoice.

12 It is true that Article 22 of the Sixth Directive, concerning obligations of taxable persons fpr the purposes of VAT under the internal system and relating, *inter alia*, to the details of invoicing, contains a provision authorizing Member States to impose obligations not provided for by the Directive. Paragraph 8 of that article states 'Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud'. However, as specified by the Court in a judgment cited by both parties, the exercise of that power must be limited to what is necessary to ensure the correct levying of value added tax and permit supervision by the tax authorities and the detailed requirements on the invoice must not render the exercise of the right to deduction practically impossible or excessively difficult (Joined Cases 123 and 330/87 *Léa Jeunehomme* [1988] ECR 4517, at paragraphs 15, 16 and 17).

13 In this case, the requirement to produce a special invoice in order to obtain the tax remission provided for under Article 6 of the Directive is not only contrary to the provisions of that article, for the reasons set out at paragraph 11 of this judgment. It also exceeds what is necessary to ensure that the tax is correctly levied, and is of

such a nature as to make the exercise of the right to remission very difficult and to give rise to double taxation although the objective of the relevant provisions is precisely to avoid that.

14 On the one hand, as the Commission has rightly pointed out, the combination of the invoicing provisions under the general system of VAT and those requiring a customs endorsement to obtain reimbursement of tax under the arrangements applying to travellers makes it possible for the competent authorities to achieve effective supervision of the manner in which travellers exercise their right to remission, without any need to require a special document as evidence. The first of those provisions provides, indeed, that all invoices must bear the majority of the details listed on that special document, with the exception of those referring to the destination of the goods purchased and their presentation to the customs authorities. The second series of provisions specifically requires the traveller to present the purchased goods either to the customs authorities of the exporting State if the traveller's residence is in a third country, or to the customs authorities of the importing State if he resides in a Member State of the Community, in order to obtain the endorsement necessary for remission of the tax.

15 On the other hand, it is apparent from the terms of the preamble to Directive 78/1032, that Article 6 of the Directive was amended with the aim of harmonizing the rules governing tax remission at the retail stage in order to prevent instances of double taxation. The fact that travellers residing in other Member States may find it impossible to obtain tax remission in Spain leads to double taxation within the territory of the Community, on goods the value of which exceeds the amount set for exemption and on which VAT is payable in the Member State of final importation.

16 Finally, even if, as the Kingdom of Spain asserts, any trader, or in general any taxable person for the purposes of VAT, may if he wishes obtain without any difficulty the official standard special invoice required by the relevant national rules, the traveller concerned, for his part, has no assurance that he will receive an invoice in the standard form. The taxable person may not possess the official form or may consider it easier to issue an ordinary invoice. In such a case, the traveller is unable to exercise his right to remission of tax, contrary to the purpose of the Directive.

17 Thus it must be stated that, by exclusively requiring compulsory presentation of a document known as a 'special invoice' in an official standard form in order to obtain the remission of value added tax in international travel, thereby preventing the exercise of that right by travellers who are in possession of an ordinary invoice which duly complies with Spanish legislation and with the Sixth Directive, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel.

Costs

18 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by exclusively requiring compulsory presentation of a document known as a 'special invoice' in an official standard form in order to obtain the remission of value added tax in international travel, thereby preventing the exercise of that right by travellers who are in possession of an ordinary invoice which duly complies with Spanish legislation and with 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, the Kingdom of

Spain has failed to fulfil its obligations under Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel;

2. Orders the Kingdom of Spain to pay the costs.

Joliet Grévisse Kapteyn

Moitinho de Almeida Rodríguez Iglesias Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 9 June 1992.

J.-G. Giraud

Registrar

R. Joliet, President of Chamber

acting as President