JUDGMENT OF THE COURT (Fourth Chamber)

3 December 2009 *

In Case C-433/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 13 August 2008, received at the Court on 1 October 2008, in the proceedings

Yaesu Europe BV

v

Bundeszentralamt für Steuern,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting for the President of the Fourth Chamber, R. Silva de Lapuerta, E. Juhász, G. Arestis (Rapporteur) and J. Malenovský, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 16 September 2009,

after considering the observations submitted on behalf of:

— Yaesu Europe BV, by B. Burgmaier, Rechtsanwalt,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by D. Triantafyllou, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Annex A to the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11; 'the Eighth Directive').

2 The reference was made in a dispute between Yaesu Europe BV ('Yaesu Europe'), a company established in the Netherlands, and the Bundeszentralamt für Steuern (Central Federal Tax Office; 'the Bundeszentralamt') regarding the refusal by the Bundeszentralamt of an application for a refund of value added tax ('VAT') which Yaesu Europe had paid in Germany.

Legal framework

Community legislation

3 The third, fourth and fifth recitals in the preamble to the Eighth Directive state as follows:

'… discrepancies between the arrangements currently in force in Member States, which give rise in some cases to deflection of trade and distortion of competition, should be eliminated;

… the introduction of Community rules in this field will mark progress towards the effective liberalisation of the movement of persons, goods and services, thereby helping to complete the process of economic integration;

… such rules must not lead to the treatment of taxable persons differing according to the Member State in the territory of which they are established.'

4 Article 3(a) of the Eighth Directive provides:

'To qualify for refund, any taxable person as referred to in Article 2 who supplies no goods or services deemed to be supplied in the territory of the country shall:

(a) submit to the competent authority referred to in the first paragraph of Article 9 an application modelled on the specimen contained in Annex A, attaching originals of invoices or import documents. Member States shall make available to applicants an explanatory notice which shall in any event contain the minimum information set out in Annex C.'

5 Article 6 of the Eighth Directive provides:

'Member States may not impose on the taxable persons referred to in Article 2 any obligation, in addition to those referred to in Articles 3 and 4, other than the obligation to provide, in specific cases, the information necessary to determine whether the application for refund is justified.'

6 At the bottom of the specimen form for a VAT refund application, set out in Annex A to the Eighth Directive, space is left not only for an entry indicating the place and date of the application, but also for a 'signature', with no further explanation.

National legislation

7 Paragraph 18(9) of the German Turnover Tax Law 2005 (Umsatzsteuergesetz 2005, BGBl. 2005 I, p. 386), in the version applicable at the material time ('UStG'), was worded as follows:

'… The application for refund shall be submitted within six months of the end of the calendar year in which the claim to a refund arose. The trader shall himself calculate the refund and furnish original invoices and import documents as proof of the amounts of input tax. The application for the refund shall bear the trader's own signature…'

8 Point 3 of Paragraph 79(1) of the Tax Code (Abgabenordnung; 'AO') provides, inter alia — under the heading 'Capacity to act', — that legal persons, associations or funds, through their statutory representatives or persons specially mandated for that purpose, have the capacity to carry out procedural formalities.

9 Paragraph 150(3) of the AO, which governs the form and content of tax declarations, provides:

'If the tax legislation requires the taxable person to sign the tax declaration in person, signature by an agent shall be permitted only if the taxable person, by reason of his physical or mental health, or long absence, is prevented from signing. The taxable person may subsequently be required to sign the declaration himself if the reason which prevented him from doing so ceases to exist.'

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

10 On 30 June 2006, Yaesu Europe applied for a refund of the input VAT paid in Germany for the period from January to December 2005. The application was submitted on the official form provided for that purpose in Germany, on which, in a box numbered 9, reference is made to 'personal signature and company seal'.

11 In a covering letter, the lawyers of Yaesu Europe, who are established in Germany and are also mentioned on the above form as being authorised to accept service of legal documents for that company, stated that they had signed the application on behalf of their client. Enclosed with the letter was an 'authorisation to act in the procedure for refund of the input tax', drawn up by the statutory representative of Yaesu Europe, empowering those lawyers to act as the company's legal representatives in all procedures relating to the refund of VAT.

12 By decision of 1 September 2006, the Bundeszentralamt refused the application for a refund, on the ground that it did not bear the personal signature of the taxable person, in breach of Paragraph 18(9) of the UStG.

13 After an unsuccessful objection, Yaesu Europe brought an action before the Finanzgericht (Finance Court). The Finanzgericht upheld the position of the Bundeszentralamt, holding that Paragraph 18(9) of the UStG did not infringe Articles 3 and 6 of the Eighth Directive and that the term 'signature' on the specimen application form set out in Annex A to that directive had of necessity to be construed as a reference to the personal signature of the taxpayer, the position being in any case that, for the purposes of implementation, the German legislature enjoys discretion in that regard under the third paragraph of Article 249 EC.

14 Yaesu Europe appealed to the Bundesfinanzhof on a point of law, maintaining essentially that the Finanzgericht had misinterpreted the term 'signature' on the specimen form set out in Annex A to the Eighth Directive and relying, in that regard, on the fact that a number of Member States expressly authorise signature of the refund application by an agent. Yaesu Europe argues, moreover, that the term must be interpreted uniformly throughout the European Community.

15 After ruling out the application, in the case before it, of Paragraphs 79(1)(3) and 150(3) of the AO, the Bundesfinanzhof — having doubts as to the compatibility of Paragraph 18(9) of the UStG with Community law — decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is the term "signature" in the specimen form in Annex A to the Eighth Directive … which is to be used to submit an application for refund of [VAT] pursuant to Article 3(a) of the directive, to be given a uniform Community law interpretation?

2. If the answer to the first question is in the affirmative:

Is the term "signature" to be understood as meaning that the application for a refund must be signed by the taxable person himself or, in the case of a legal person, by its statutory representative, or is the signature of an agent (for example, a representative for tax purposes or an employee of the taxable person) sufficient?'

The questions referred for a preliminary ruling

16 By its questions, which should be considered together, the referring court asks essentially whether 'signature' of an application for a VAT refund, as referred to in the specimen form set out in Annex A to the Eighth Directive, is a Community law notion which must be interpreted uniformly and, if so, whether it must be understood as requiring, in mandatory terms, that an application for a VAT refund be signed by the taxpayer in person, or whether it is sufficient if it is signed by an agent.

17 In that regard, it should be noted at the outset that the Eighth Directive does not contain any definition of 'signature'; nor does it make any express reference to the law of the Member States for the purposes of determining the meaning and scope of that term.

18 According to settled case-law, it follows from the need for uniform application of Community law and from the principle of equal treatment that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purposes of determining its meaning and scope must as a general rule be given an autonomous and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43; and Case C-5/08 *Infopaq International* [2009] ECR I-6569, paragraph 27).

19 Those requirements apply with particular force to the Eighth Directive, in view both of its title and of the content of the third and fifth recitals in the preamble thereto.

20 As is clear from the third and fifth recitals in the preamble to the Eighth Directive, the aim of that directive is to harmonise the arrangements for the refund of VAT paid in a Member State by taxable persons established in another Member State by eliminating the discrepancies between the arrangements in force at the material time in the various Member States and by seeking to ensure that taxable persons are not treated differently according to the Member State in which they are established.

21 The aim of the Eighth Directive is thus to harmonise the arrangements relating to the right to a refund of VAT, as provided for in Article 17(3) 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) (see, inter alia, Case C-136/99 *Monte Dei Paschi Di Siena* [2000] ECR I-6109, paragraph 20, and Case C-35/05 *Reemtsma Cigarettenfabriken* [2007] ECR I-2425, paragraph 26).

22 To that end, the Eighth Directive expressly provides, in Annex A thereto, a pre-established model for VAT refund applications, precisely with a view to harmonising the procedure to be followed in relation to such an application in the case of VAT paid in a Member State by taxable persons established in another Member State. However, that harmonisation objective cannot be attained unless the terms used in the specimen application form are understood in the same way in all the Member States.

23 It follows that 'signature', as referred to in the specimen form set out in Annex A to the Eighth Directive, is a Community law notion which must have the same meaning and scope in all Member States. Accordingly, it is for the Court to give that notion an autonomous and uniform interpretation in the Community legal order.

24 In that regard, it should be borne in mind that — according to the settled case-law of the Court — in interpreting a provision of Community law, it is necessary to consider not

only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, Case 292/82 *Merck* [1983] ECR 3781, paragraph 12; Case C-34/05 *Schouten* [2007] ECR I-1687, paragraph 25; and Case C-466/07 *Klarenberg* [2009] ECR I-803, paragraph 37).

25 It must be pointed out, first, that there is nothing in the actual wording of Annex A to the Eighth Directive to shed light on the term 'signature' as used therein. The annex simply indicates that a 'signature' is required, and in no way specifies that the signature must be of a particular kind, such as the signature of the taxpayer in person. That is in contrast with other terms used in that annex, such as 'name', or 'nature of' the business, which are expressly accompanied by the words 'of applicant' or 'applicant's'.

26 Secondly, it is clear from Article 3(a) of the Eighth Directive that, for a refund of VAT, the taxable person must submit 'an application modelled on the specimen contained in Annex A'. Moreover, under Article 6 of that directive, the Member States may not impose on taxable persons any obligation, in addition to those referred to in Articles 3 and 4, other than the obligation to provide, in specific cases, the information necessary to determine whether the application for a refund is justified. It follows that, with regard to the term 'signature' on the specimen form, Article 6 means that the taxable person may not be compelled to comply with requirements other than those provided for in that model — such as an obligation on the taxable person to sign in person.

27 Lastly, such a contextual interpretation is confirmed by the harmonisation aim of the Eighth Directive, which is clear from paragraphs 19 to 22 of the present judgment. The aim pursued by that directive, in expressly providing in Annex A thereto a specimen form for VAT refund applications, cannot be attained unless the terms used in that model are attributed the same meaning and scope in all the Member States, in a way that does not go beyond the requirements specifically provided for in the model. To

allow a Member State to impose on a taxable person requirements other than those provided for in such a model — for example, the requirement that the taxable person sign in person — would amount to imposing a procedural requirement which is incompatible with that objective.

28 In addition, it should be pointed out that while, contrary to the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ 1986 L 326, p. 40), the Eighth Directive does not expressly provide for the possibility of appointing an agent, the fact remains that the Eighth Directive none the less does not exclude that possibility, which means that an application for refund of VAT modelled on the specimen set out in Annex A to the Eighth Directive can be signed by an agent.

29 In view of all the foregoing considerations, the answer to the questions referred is that 'signature' of an application for a VAT refund, as referred to in the specimen form set out in Annex A to the Eighth Directive, is a Community law notion which must be interpreted uniformly to the effect that such a refund application need not necessarily be signed by the taxable person in person and that the signature of an agent may be sufficient for those purposes.

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 (Fourth Chamber) hereby rules:

'Signature' of an application for a refund of value added tax, as referred to in the specimen form set out in Annex A to the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, is a Community law notion which must be interpreted uniformly to the effect that such a refund application need not necessarily be signed by the taxable person in person and that the signature of an agent may be sufficient for those purposes.

[Signatures]