Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

1 March 2012 *

(Article 104(3), first subparagraph, of the Rules of Procedure — VAT Directive — Special tax scheme for travel agents — Supply to travel agents of a coach transport service but no other services)

In Case C-220/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Czech Republic), made by decision of 28 April 2011, received at the Court on 11 May 2011, in the proceedings

Star Coaches s. r. o.

v

Finanční ředitelství pro hlavní město Prahu,

THE COURT (Sixth Chamber),

composed of U. Lõhmus, President of the Chamber, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

the Court proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Article 306 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 reference has been made in proceedings between Star Coaches s. r. o. ('Star Coaches') and the Finanční ředitelství pro hlavní město Prahu (Prague City Tax Directorate) (Czech Republic) concerning a value added tax (VAT) recovery notice issued against Star Coaches in respect of January 2008.

* Language of the case: Czech.

Legal context

European Union law

3 Under Article 306 of the VAT Directive, which appears in Title XII, Chapter 3, of the directive, 'Special scheme for travel agents':

'1. Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.

This special scheme shall not apply to travel agents where they act solely as intermediaries and to whom point (c) of the first paragraph of Article 79 applies for the purposes of calculating the taxable amount.

2. For the purposes of this Chapter, tour operators shall be regarded as travel agents.'

4 Article 307 of the VAT Directive reads as follows:

'Transactions made, in accordance with the conditions laid down in Article 306, by the travel agent in respect of a journey shall be regarded as a single service supplied by the travel agent to the traveller.

The single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has carried out the supply of services.'

5 Article 308 of the VAT Directive provides:

'The taxable amount and the price exclusive of VAT, within the meaning of point (8) of Article 226, in respect of the single service provided by the travel agent shall be the travel agent's margin, that is to say, the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.'

6 Article 310 of the VAT Directive provides:

'VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in Article 307 and which are for the direct benefit of the traveller shall not be deductible or refundable in any Member State.'

Czech law

7 Law No 235/2004 on value added tax (Zákon č. 235/2004 Sb. o dani z přidané hodnoty, 'the Law on VAT') includes Paragraph 89, 'Special scheme for travel services', which read as follows in the version in force in 2008:

'(1) A provider of a travel service who deals with a customer in his own name in providing a travel service to the customer must use the special scheme.

(2) For the purposes of this Law:

(a) "provider of a travel service" means the taxpayer who provides a travel service to a customer,

(b) “customer” means the person to whom the travel service is provided,

(c) “travel service” means the provision to the customer of a service which contains a combination of tourism services and possibly goods, where individual tourism services and goods are purchased from other taxable persons; the provision of a travel service shall be regarded as the provision of a single service even if the realisation of the travel service involves the use of many tourism services and possibly goods purchased from other taxable persons; the provision of a service to the customer which contains only one purchased tourism service of accommodation or transport shall also be regarded as a travel service.’

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

8 Star Coaches is engaged in the transport of persons by coach in the Czech Republic and between the Member States. It operates that transport either with its own coaches or by using subcontractors, which are transport companies whose transactions are subject to VAT. Its customers are exclusively travel agents established in the Czech Republic or in other Member States. Star Coaches always deals with its customers in its own name. When it has recourse to a subcontractor, it draws up for its customers an invoice mentioning VAT and seeks a refund of the excess tax on the basis of the general scheme of VAT.

9 Star Coaches repeatedly deducted large amounts of excess VAT. In this respect the Finanční úřad pro Prahu 5 (Tax Office for Prague 5) considered that the company was supplying travel services and should have applied not the general scheme of VAT but the special scheme for travel agents laid down in Paragraph 89 of the Law on VAT. On 25 June 2008 it issued a VAT recovery notice for January 2008.

10 Star Coaches lodged a complaint against the recovery notice. When the complaint was rejected by decision of the Finanční ředitelství pro hlavní město Prahu of 16 December 2008, it brought an action before the Městský soud v Praze (City Court, Prague), which dismissed it by judgment of 18 June 2010. Star Coaches thereupon appealed on a point of law to the Nejvyšší správní soud (Supreme Administrative Court).

11 That court entertains doubts as to the application of the special scheme for travel agents laid down in Article 306 of the VAT Directive.

12 It notes, first, a difference between the Czech version of that provision and Paragraph 89 of the Law on VAT which transposed the provision into national law. While Article 306 refers to services supplied to travellers, Paragraph 89 covers those supplied to customers of travel agents, an expression which comprehends not only travellers but also other persons. The court points out, however, that there are also differences between the language versions of Article 306 of the VAT Directive and those of Article 26 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, ‘the Sixth Directive’), which applied before the entry into force of the VAT Directive, with some versions using the term ‘customer’ and others the term ‘traveller’. It states that actions for failure to fulfil obligations have moreover been brought against several Member States, including the Czech Republic, by the European Commission for using the term ‘customer’ and thus referring, in the Commission’s view, to too broad a class of persons.

13 It raises the question, second, should the Court hold that Article 306 of the VAT Directive extends to customers of a travel agent, whether an undertaking such as Star Coaches must be classified as a travel agent within the meaning of that provision. It indicates that, in its view, that is not the case where the undertaking provides only a transport service and no other tourist services. It follows that the present

case must be distinguished from Case C-163/91 *Van Ginkel* [1992] ECR I-5723, in which the undertaking concerned, in addition to accommodation, also supplied information, advice and reservation services.

14 Since it considered that an interpretation of Article 306 of the VAT Directive was necessary for it to give judgment in the case before it, the Nejvyšší správní soud decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does Article 306 of [the VAT Directive] relate only to supplies made by travel agents to end users of a travel service (travellers) or also to supplies made to other persons (customers)?

2. Must a transport company which merely carries out the transport of persons by providing coach transport to travel agents (not directly to travellers) and does not provide any other services (accommodation, information, advice etc.) be regarded as a travel agent for the purposes of Article 306 of [the VAT Directive]?’

Consideration of the questions referred

15 The referring court asks the Court, by its first question, as to the material scope of the special scheme of VAT laid down in Articles 306 to 310 of the VAT Directive and, by its second question, as to the personal scope of that scheme.

16 The second question should be answered first, by ascertaining whether that special scheme applies to an undertaking such as Star Coaches, before examining secondly, if need be, the first question relating to the extent of the material scope of the scheme.

The second question

17 Pursuant to the first subparagraph of Article 104(3) of the Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law, the Court may, after hearing the Advocate General, at any time give its decision by reasoned order referring to the existing case-law.

18 The Court considers that that is the situation in the present case. The answer to the referring court’s second question may be clearly deduced from the case-law on Article 26 of the Sixth Directive, a provision whose terms are repeated in Article 306 of the VAT Directive. The case-law on the concept of ‘travel agent’ within the meaning of Article 26 can consequently be applied to that concept within the meaning of Article 306 of the VAT Directive.

19 It must therefore be recalled, in accordance with settled case-law of the Court, that the objective of the special VAT scheme established by Article 26 of the Sixth Directive is to adapt the applicable rules to the specific nature of the activity of travel agents and tour operators. The services provided by those undertakings are characterised by the fact that they most frequently consist of multiple services, in particular transport and accommodation, supplied partly outside and partly inside the territory of the Member State in which the undertaking has established its business or has a fixed establishment. The application of the normal rules on place of taxation, taxable amount and deduction of input tax would, by reason of the multiplicity of services and the places in which they are provided, entail practical difficulties for those undertakings of such a nature as to obstruct their operations (see *Van Ginkel*, paragraphs 13 to 15; Joined Cases C-308/96 and C-94/97 *Madgett and Baldwin* [1998] ECR I-6229, paragraph 18; and Case C-149/01 *First Choice Holidays* [2003] ECR I-6289, paragraphs 23 and 24).

20 However, the fact that the travel agent provides only holiday accommodation for the traveller is not sufficient to exclude that service from the scope of Article 26 of the Sixth Directive. The service offered by the agent, even in such a case, may amount to more than a single service, since it may comprise, apart from the letting of the accommodation, services such as information and advice by means of which the travel agent provides a range of holiday offers and the reservation of accommodation (*Van Ginkel*, paragraph 24).

21 Moreover, the Court has considered that, regardless of the formal classification of the economic operator, the underlying reasons for the special scheme for travel agents and tour operators are equally valid where the operator is not a travel agent or tour operator in the normal sense of those terms but, in the context of another activity, effects transactions identical to theirs (see *Madgett and Baldwin*, paragraphs 20 and 21, and Case C-200/04 *iSt* [2005] ECR I-8691, paragraph 22).

22 It cannot therefore be ruled out that the services of an operator of passenger transport by coach who, when not using his own coaches, has recourse to the transport services of subcontractors liable to VAT may be subject to the special scheme in Article 306 of the VAT Directive. The circumstance that those services do not include accommodation services cannot suffice for them to be excluded from the scope of that provision.

23 However, following the approach adopted by the Court in *Van Ginkel*, it is also necessary that those services cannot be reduced to a single service and that they comprise, apart from the transport, other services such as information and advice relating to a range of holiday offers and the reservation of the coach journey. The Court has held that it cannot be inferred from *Van Ginkel* that any individual service provided by a travel agent or tour operator falls within the special scheme laid down in Article 26 of the Sixth Directive (Case C-31/10 *Minerva Kulturreisen* [2010] ECR I-12889, paragraph 19). That consideration applies in the same way to an economic operator who is not a travel agent or tour operator in the normal sense of those terms.

24 In the case of Star Coaches, the referring court states that it provides only a transport service for travel agents and no other services. That court expressly adds that the company does not provide any services such as accommodation, tour guiding or advice.

25 It follows that the services supplied by Star Coaches are not identical to those offered by a travel agent or tour operator.

26 The answer to the second question is therefore that a transport company which merely carries out the transport of persons by providing coach transport to travel agents and does not provide any other services such as accommodation, tour guiding or advice does not effect transactions falling within the special scheme for travel agents in Article 306 of the VAT Directive.

The first question

27 In view of the Court's answer to the second question, there is no need for it to answer the first question.

Costs

28 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 (Sixth Chamber) hereby rules:

A transport company which merely carries out the transport of persons by providing coach transport to travel agents and does not provide any other services such as accommodation, tour guiding or advice does not effect transactions falling within the special scheme for travel agents in Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[Signatures]