Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

26 May 2016*

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Reverse charge mechanism — Article 198(2) — Gold material or semi-manufactured products — Meaning — Article 199(1)(d) and Annex VI — Used materials, waste and scrap — Ingots resulting from the melting down of various objects and scrap used to enable the extraction of gold and with a purity in gold of 325 thousandths or greater)

In Case C-550/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (Eastern Regional Court, Denmark), made by decision of 26 November 2014, received at the Court on 28 November 2014, in the proceedings

Envirotec Denmark ApS

v

Skatteministeren,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader, A. Rosas, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Danish Government, by C. Thorning, acting as Agent, assisted by B. Søes Petersen, advokat,

— the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,

— the European Commission, by M. Owsiany-Hornung and M. Clausen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2015,

gives the following

* Language of the case: Danish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 198(2) 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 Envirotec Denmark ApS ('Envirotec') and the Skatteministeriet (Ministry of Taxation) concerning a decision of the tax authorities refusing the deduction of input value added tax (VAT) paid by Envirotec in the fourth quarter of 2011.

Legal context

EU law

3 The eighth recital of Council Directive 98/80/EC of 12 October 1998 supplementing the common system of value added tax and amending Directive 77/388/EEC — Special scheme for investment gold (OJ 1998 L 281, p. 31) states:

'Whereas experience has shown that, with regard to most supplies of gold of more than a certain purity the application of a reverse charge mechanism can help to prevent tax fraud while at the same time alleviating the financing charge for the operation ...'.

4 Entitled 'Special scheme for investment gold', Article 26b 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), as amended by Directive 98/80, provides:

'...

F. Reverse charge procedure

By way of derogation from Article 21(1)(a), as amended by Article 28g, in the case of supplies of gold material or semi-manufactured products of a purity of 325 thousandths or greater, or supplies of investment gold where an option referred to in C of this Article has been exercised, Member States may designate the purchaser as the person liable to pay the tax, according to the procedures and conditions which they shall lay down. When they exercise this option, Member States shall take the measures necessary to ensure that the person designated as liable for the tax due fulfils the obligations to submit a statement and to pay the tax in accordance with Article 22.

...'

5 Recitals 42 and 55 of the VAT Directive state:

'(42) Member States should be able, in specific cases, to designate the recipient of supplies of goods or services as the person liable for payment of VAT. This should assist Member States in simplifying the rules and countering tax evasion and avoidance in identified sectors and on certain types of transactions.

...

(55) In order to prevent tax evasion while at the same time alleviating the financing burden for the supply of gold of a degree of purity above a certain level, it is justifiable to allow Member States to designate the customer as the person liable for payment of VAT.'

6 According to Article 193 of that directive:

'VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 ...'

7 Article 198(2) of that directive provides:

'Where gold material or semi-manufactured products of a purity of 325 thousandths or greater, or investment gold ... is supplied by a taxable person, Member States may designate the customer as the person liable for payment of VAT.'

8 Article 199(1) of the same directive provides:

'Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

...

(d) the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non-industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI;

...'

9 Annex VI to the VAT Directive, entitled 'List of Supplies of Goods and Services as referred to in Point (d) of Article 199(1)' is worded as follows:

'(1) Supply of ferrous and non-ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of ferrous and non-ferrous metals and their alloys;

(2) supply of ferrous and non-ferrous semi-processed products and certain associated processing services;

(3) supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, scale and industrial residues containing metals or their alloys ...;

(4) supply of ... ferrous and non-ferrous waste as well as parings, scrap, waste ...;

(5) supply of the materials referred to in this annex after processing in the form of cleaning, polishing, selection, cutting, fragmenting, pressing or casting into ingots;

...'

Danish law

10 The Danish legislature exercised the option provided by Article 198(2) of the VAT Directive to make provision for a reverse charge mechanism for certain supplies of gold. For that purpose, Paragraph 46(1)(4) of the Momsloven (VAT Law) provides:

'The tax shall be payable by any taxable person carrying out a taxable supply of goods and services in Denmark. However, it shall be payable by the recipients of goods or services where:

...

(4) the recipient is a registered undertaking in Denmark which receives investment gold on which tax is payable ... or gold material or semi-manufactured products of a purity of 325 thousandths or greater.'

11 By contrast, at the material time in the main proceedings, the Danish legislature did not exercise the option provided by Article 199(1)(d) of the VAT Directive to make provision for a reverse charge mechanism for certain supplies of used material, waste and scrap, and certain related services.

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

12 Envirotec is a company operating in the precious metals sector. In the fourth quarter of 2011, it purchased, in 24 separate transactions, 24 ingots consisting of a variety of fused material with an average gold content, depending on the ingot, of between 500 and 600 thousandths.

13 Envirotec purchased the ingots from a Danish company, Dansk Metalopkøb ApS, which had melted them down. They consisted, inter alia, of old jewellery, cutlery, watches and industrial residues.

14 Before Envirotec purchased the ingots, they were sent to Remondis Argentia BV, Envirotec's partner established in the Netherlands, which was to buy them subsequently from Envirotec in order to extract the gold they contained, and which calculated the gold content of each ingot.

15 For all of those transactions, Envirotec paid DKK 1 099 695 (around EUR 147 000) in VAT to Dansk Metalopkøb, it declared that amount in its VAT return for the fourth quarter of 2011, and it applied to deduct it as input VAT. Dansk Metalopkøb did not pay the VAT to the tax authorities and was subsequently put into liquidation on grounds of insolvency.

16 On 7 March 2012, the tax authorities decided that the VAT paid by Envirotec to Dansk Metalopkøb could not be deducted on the ground that the ingots in question came under the reverse charge procedure under Paragraph 46(1)(4) of the VAT Law as 'gold material or semi-manufactured products of a purity of 325 thousandths or greater'.

17 Envirotec challenged that decision before the Landsskatteretten (National Tax Appeals Commission, Denmark) which upheld the decision by order of 24 May 2012. Envirotec brought an appeal against that order before the Helsingør Ret (Helsingør District Court, Denmark) which upheld the order by judgment of 25 February 2014.

18 On 10 March 2014, Envirotec lodged an appeal against that judgment before the Østre Landsret (Eastern Regional Court, Denmark). Before the Østre Landsret, Envirotec claimed that the court should order the Ministry of Taxation to pay it the sum of DKK 1 099 695 (around EUR 147 000), together with interest. In support of its appeal, it claims that the ingots at issue in the main proceedings do not fall within the scope of Article 198(2) of the VAT Directive, since the matter

concerns neither finished goods falling within the category of investment gold, nor gold material or semi-manufactured products. By contrast, those ingots do fall within the scope of Article 199(1)(d) of that directive which applies to scrap, including scrap of gold.

19 The Ministry of Taxation contends that the court should dismiss the appeal on the ground that the ingots fall within the scope of Article 198(2) of the VAT Directive. In that respect, the crucial elements are the fact that the case does not concern finished goods and the fact that that provision is, according to the Ministry, a *lex specialis* applicable to the gold trade, whereas Article 199 of that directive is a provision relating to scrap metal. That interpretation is borne out by the objective of the former provision, which is to combat tax evasion. The ingots in question should therefore be treated as gold or gold products, since it is their gold content which gives them their market value, and because they are manufactured in order to resell that gold content.

20 The referring court observes that neither the wording of Article 198(2) of the VAT Directive, nor the provision which preceded it, nor the preamble to Directive 98/80, nor the different language versions of Article 198(2) clearly state whether it applies to goods with a high gold content such as the ingots at issue in the main proceedings, which are not being processed directly into finished products.

21 The fact that the purpose of that article is to prevent tax evasion weighs in favour of a broad interpretation to the effect that, in addition to investment gold and gold material, it also applies to gold processed in any way and at any stage of the manufacturing process, if the purity of the product concerned is at least 325 thousandths and its value is fixed solely on the basis of the value of its gold content. However, it is also possible to adopt a strict interpretation to the effect that the provision applies only to gold which is at a stage between gold material and the finished product. Such an interpretation could be borne out, inter alia, by the fact that scrap metal falls within the scope of Article 199(1)(d) of the VAT Directive.

22 In those circumstances, the Østre Landsret (Eastern Regional Court) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Are ingots consisting of a random, rough fusion of various scrapped, gold-bearing metal objects covered by the terms ‘gold material or semi-manufactured products’ within the meaning of Article 198(2) of the VAT Directive?

It can be taken as established that the ingots consist of a random, rough fusion of various scrapped, gold-bearing metal objects and they can contain, in addition to gold, also organic materials, such as teeth, rubber, PVC and metals/materials such as copper, tin, nickel, amalgam, the remains of batteries containing mercury and lead, and various toxic substances, etc. There is thus no question of it being a gold-bearing product which is being processed directly into a finished product. On the other hand, the ingot is a processed product (a fusion), which — as a form of intermediate stage — is created with a view to extracting the gold content. The ingots have a high gold content, on average between 500 and 600 thousandths, and thus substantially over 325 thousandths gold. After extraction, the gold content is to be used to manufacture (gold/gold-bearing) products.

In answering the question, it can also be taken as established that the ingots cannot directly form part of other products, since first the ingots must be subjected to processing in which the metals are separated and the non-metals and hazardous substances etc., are melted away/excreted.’

Consideration of the question referred

23 By its question, the referring court asks, in essence, whether Article 198(2) of the VAT Directive must be interpreted as meaning that it applies to the supply of ingots, such as those at issue in the main proceedings consisting of a random, rough alloy obtained from the fusion of scrap and various metal objects containing gold, and other metals, materials and substances, and which, depending on the ingot, have a gold content of approximately 500 or 600 thousandths.

24 Article 198(2) of the VAT Directive provides that where gold material or semi-manufactured products of a purity of 325 thousandths or greater or investment gold is supplied by a taxable person, Member States may designate the customer as the person liable for payment of VAT, an option which the Danish legislature exercised, as is clear from the order for reference.

25 In the present case, it must be stated at the outset that it is clear from the wording of that provision that it does not apply to finished products, apart from 'investment gold'. However, it is common ground that that term cannot apply to goods such as the ingots at issue in the main proceedings.

26 In addition, neither Article 198 of the VAT Directive, nor any other provisions of the VAT Directive, nor Directive 98/80, from which the content of Article 198(2) derived, explain what is meant by the term 'gold material or semi-manufactured products of a purity of 325 thousandths or greater'.

27 According to the Court's settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objective pursued by the rules of which it is part (judgments of 26 January 2012 in *ADV Allround*, C-218/10, EU:C:2012:35, paragraph 26, and of 19 July 2012 in *A*, C-33/11, EU:C:2012:482, paragraph 27 and the case law cited). Similarly, the meaning and scope of terms for which EU law provides no definition must be determined by reference to their usual meaning in everyday language, while account is also taken of the context in which they occur and the purposes of the rules in question (see, to that effect, judgment of 13 December 2012 in *BLV Wohn- und Gewerbebau*, C-395/11, EU:C:2012:799, paragraph 25 and the case-law cited).

28 In addition, where the various language versions differ, the scope of the provision in question cannot be determined on the basis of an interpretation which is exclusively textual, but must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, to that effect, judgments of 3 March 2005 in *Fonden Marselisborg Lystbådehavn*, C-428/02, EU:C:2005:126, paragraph 42 and the case-law cited, and of 13 June 2013 in *Promociones y Construcciones BJ 200*, C-125/12, EU:C:2013:392, paragraph 22 and the case-law cited).

29 In the first place, as regards the wording 'gold material or semi-manufactured products of a purity of 325 thousandths or greater', as was pointed out, in essence, by the Advocate General in paragraphs 20 to 23, 26 to 30, 57 and 63 of her Opinion, it must be stated, first of all, that, according to the language versions of Article 198(2) of the VAT Directive, the term 'gold material' may cover unprocessed gold, pure gold or any material which consists partly of gold.

30 Next, although the term 'semi-manufactured products' in everyday language covers goods which have already been worked or processed, but which still have to undergo further processing, the usual meaning of that term does not make it possible to determine in a uniform manner, in the various language versions, which precise stage of the processing of the products in question is covered, apart from the fact that it does not concern either products which have never been worked or processed beforehand, or finished products.

31 Finally, the minimum purity requirement of 325 thousandths gold, laid down in Article 198(2) of the VAT Directive, may, taken literally, at least in some of the language versions, relate either to 'gold material or semi-manufactured products' or only to 'semi-manufactured products' referred to in that provision.

32 It is clear from the foregoing that the wording of Article 198(2) of the VAT Directive alone does not make it possible to determine whether, and, as the case may be, under what conditions, goods such as the ingots at issue in the main proceedings fall within its scope.

33 In the second place, with regard to the context in which Article 198(2) of the VAT Directive occurs, it must be recalled that that provision enables Member States to introduce, in the situations referred to in that article, a reverse charge mechanism whereby the person liable for payment of VAT is the person who is the recipient of the transaction subject to that tax. That provision is therefore an exception to the general rule set out in Article 193 of that directive that VAT is payable by any taxable person carrying out a taxable supply of goods or services. It must therefore be interpreted strictly, without, however, rendering it ineffective (see, by analogy, judgment of 13 June 2013 in *Promociones y Construcciones BJ 200*, C-125/12, EU:C:2013:392, paragraphs 23 and 31 and the case-law cited).

34 Like Article 198(2) of the VAT Directive, Article 199(1)(d) of that directive provides Member States with the option also to introduce a reverse charge mechanism for supplies of used material, waste and scrap, listed in Annex VI to that directive. Those supplies include in paragraph 5 of that annex 'supply of the materials referred to in this annex after processing in the form of ... casting into ingots'. In particular, paragraph 1 of that annex refers to the 'supply of ferrous and non-ferrous waste, scrap, and used materials', paragraph 2, to the 'supply of ferrous and non-ferrous semi-processed products', paragraph 3, to the 'supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals [and] their alloys', and paragraph 4, to the 'supply of ... ferrous and non-ferrous waste as well as parings, scrap [and] waste'. As is clear from the order for reference, the Danish legislature, at the time of the facts in the main proceedings, had not made use of the option in that provision to introduce a reverse charge mechanism for supplies of used material, waste and scrap, listed in Annex VI to that directive.

35 It is also clear from the order for reference that, although the ingots at issue in the main proceedings have a gold content of approximately 500 or 600 thousandths, depending on the ingot, they are fused from various old objects and from scrap and industrial residues, they contain various metals and materials, and they cannot be used in an unprocessed state, but must, before any use of their components, undergo treatment which makes it possible to separate the metals from the non-metallic elements and to extract certain substances.

36 Envirotec relies on those elements in claiming that Article 198(2) of the VAT Directive does not apply to those ingots, and therefore that the reverse charge mechanism does not apply to the supply of those goods, since it is a case of waste covered by Article 199(1)(d) of that directive.

37 It must be held that, in the light of the wording of those provisions alone, it is possible that goods, such as the ingots at issue in the main proceedings, may come under Article 199(1)(d) of the VAT Directive as ingots resulting from the melting down of non-ferrous waste, scrap and used materials and of recyclable materials consisting of such metals.

38 However, nothing in the VAT Directive indicates that the reverse charge mechanism provided for in Article 199(1)(d) of that directive is necessarily exclusive of the one provided for in Article 198(2), since the latter provision may, in that regard, be conceived as being a *lex specialis* relating to the specific products covered by its terms.

39 It must therefore be stated that the context of Article 198(2) within the VAT Directive does not make it possible to determine with certainty the scope of that provision. It is therefore appropriate, in the third place, to consider its objective.

40 In that regard, it is clear from recital 42 of the VAT Directive that the reverse charge procedures which Member States may choose to put in place in certain sectors or for certain transactions aim to simplify the rules and to counter tax evasion and avoidance. That same objective is expressly referred to in recital 55 of the VAT Directive which reflects, in that regard, the eighth recital of Directive 98/80, and which states: 'in order to prevent tax evasion while at the same time alleviating the financing burden for the supply of gold of a degree of purity above a certain level, it is justifiable to allow Member States to designate the customer as the person liable for payment of VAT'.

41 As the Advocate General pointed out, in essence, in paragraphs 49 and 50 of her Opinion, what increases the risk of tax evasion, and therefore justifies the use of a reverse charge mechanism for the supply of certain goods, including gold, is their high market value in relation to their size, which makes them easily transportable. As regards the trade in gold, and provided that it does not concern a finished product, such as a jewel, it is the gold content of the object concerned which determines its value. Consequently, the risk of tax evasion is all the greater given that the gold content of that object is high.

42 It follows therefore that, in the light of the principal objective pursued by the EU legislature, the degree of purity of the gold in the object concerned is crucial for the purposes of determining whether or not a supply of gold material or semi-manufactured products, not being a finished product, falls within the scope of Article 198(2) of the VAT Directive.

43 Furthermore, it must be held that adopting an interpretation of Article 198(2) of the VAT Directive, to the effect that that provision, once implemented by a Member State, would, nevertheless, not apply to ingots with a purity in gold of 325 thousandths or greater, could interfere with the full achievement of that objective of countering tax evasion specifically pursued by the EU legislature in view of the particularities of a precious metal such as gold. On the other hand, the foregoing does not prejudge the question whether ingots made up of 'waste' or 'used material', where they have a purity in gold of less than 325 thousandths, may come under the reverse charge mechanism provided for in Article 199(1)(d) of that directive, as long as that mechanism has been put in place by a Member State.

44 Finally, in order to answer the question referred, it is not necessary to determine whether goods, such as the ingots at issue in the main proceedings, are covered by the terms 'gold material' or 'semi-manufactured products', for the purposes of Article 198(2) of the VAT Directive.

45 In view of all the foregoing considerations, the answer to the question referred is that Article 198(2) of the VAT Directive must be interpreted as meaning that it applies to the supply of ingots, such as those at issue in the main proceedings, consisting of a random, rough alloy obtained from the fusion of scrap and various metal objects containing gold, and other metals, materials and substances, and which, depending on the ingot, have a gold content of approximately 500 or 600 thousandths.

Costs

46 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 (Second Chamber) hereby rules:

Article 198(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that it applies to the supply of ingots, such as those at issue in the main proceedings, consisting of a random, rough alloy obtained from the fusion of scrap and various metal objects containing gold, and other metals, materials and substances, and which, depending on the ingot, have a gold content of approximately 500 or 600 thousandths.

[Signatures]