JUDGMENT OF THE COURT (Third Chamber)
13 July 1989 *

In Case 173/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Højesteret (Danish Supreme Court) for a preliminary ruling in the proceedings pending before that court between

Skatteministeriet (Ministry of Fiscal Affairs)

and

Morten Henriksen

on the interpretation of Article 13B(b) of the Sixth Council Directive (77/388) 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 (Official Journal L 145, p. 1),

THE COURT (Third Chamber)

composed of: F. Grévisse, President of Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Mr Henriksen, by Mr Henriksen himself,

the Danish Government, by J. Molde, Legal Adviser, and by O. Fentz and F. Mejnertzen, of the Copenhagen Bar,

* Language of the case Danish.

the Commission of the European Communities, by its Legal Adviser, J. F. Buhl, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 18 April 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 May 1989,

gives the following

Judgment

1 By a decision of 21 June 1988, which was received at the Court on 27 June 1988, the Højesteret referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 13B(b) of the Sixth Council Directive (77/388) 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 (Official Journal L 145, p. 1).

2 Those questions arose in proceedings between Morten Henriksen and the Danish Ministry of Fiscal Affairs dealing essentially with the question whether the letting of garages situated in blocks of garages belonging to Mr Henriksen is exempt from value-added tax under the Sixth Directive.

3 The blocks of garages consist of two buildings, each containing 12 garages erected in conjunction with a building development consisting of 37 linked one-family houses. Some of the garages are let to residents of that development and some to other people resident in the neighbourhood. The garages are all closed and separated from each other by a wall, and each has a door.

4 At first instance, the case came before the Østre Landsret (Eastern Division of the High Court) which held that the letting of the garages at issue was not subject to value-added tax. The Østre Landsret considered that the exception to the principle of exemption normally applied to the letting of immovable property did not encompass garages such as those at issue, since such garages could not be regarded as 'sites for . . . parking' within the meaning of the Danish legislation on that subject. Furthermore, Article 13B(b) of the Sixth Directive did not support the contrary interpretation.

5 In order to assess those arguments, the Højesteret, before which the case came appeal, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Should Article 13B(b) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (Sixth VAT Directive) be understood as meaning that tax liability on the letting of "premises and sites for parking vehicles" also encompasses the letting of garages of the type in question in this case?

2. If the above question is answered in the affirmative, must the said Article be interpreted as meaning that the Member States are under a duty to subject the letting of garages of the type in question in the case to tax?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the Community and national provisions at issue, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

First question

7 Having regard to the documents contained in the file, the first question must be understood as seeking in substance to know whether Article 13B(b) of the Sixth Council Directive of 17 May 1977 (77/388) must be interpreted as meaning that the 'letting of premises and sites for parking vehicles' also encompasses closed

garages connected with immovable property the letting of which is exempt from value-added tax.

8 Article 13B(b) of the Sixth Directive provides that, without prejudice to other Community provisions, Member States are to exempt under conditions which they are to lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse, 'the leasing or letting of immovable property excluding . . . the letting of premises and sites for parking vehicles . . . . Member States may apply further exclusions to the scope of this exemption.'

9 Mr Henriksen contends that the phrase 'premises and sites for parking vehicles' in Article 13B(b) encompasses only open spaces for the short-term parking of vehicles. On the other hand, the Danish Government considers that that phrase, given its normal meaning, encompasses any space in which motor vehicles may be placed or parked regardless of whether it is open, covered or situated in a building. For its part, the Commission argues that, taken in its context, that phrase includes closed garages, with the exception of those which form an undivided part of a letting of immovable property which is itself exempt.

10 A comparison of the various language versions of Article 13B(b) of the Sixth Directive shows that there are differences of terminology in regard to the scope of the phrase 'the letting of premises and sites for parking vehicles'. Although certain versions suggest that only open spaces for the parking of vehicles are encompassed by that phrase, others suggest that it also encompasses enclosed garages such as those which are the subject of the main proceedings.

11 In view of those differences, the scope of the contested phrase cannot be determined exclusively on the basis of an interpretation of its terms. In order to determine its meaning, recourse must therefore be had to the context in which it occurs and to the structure of the Sixth Directive.

12 Account should be taken in that regard of the fact that the phrase 'excluding . . . the letting of premises and sites for parking vehicles' in Article 13B(b) of the directive introduces an exception to the exemption laid down in that provision in regard to the leasing or letting of immovable property. It thus places the transactions which it encompasses under the general rules of the directive, which make all taxable transactions subject to tax, except where exemptions are expressly provided for. That provision thus cannot be interpreted restrictively as meaning that only open parking places, to the exclusion of closed garages, come within its scope.

13 That interpretation is also in conformity with the view common to all the Member States, none of which has adopted legislation for the implementation of the common system of value-added tax which makes liability to that tax in respect of sites for parking vehicles dependant on whether or not the parking places are open.

14 However, it should be pointed out that the phrase 'leasing or letting of immovable property', which is the subject of the exemption laid down in Article 13B(b) of the Sixth Directive, necessarily also encompasses, in addition to the letting of the property which is the principal subject of the transaction, the letting of all property which is accessory to it.

15 Thus, the letting of premises and sites for parking vehicles cannot be excluded from the exemption where the letting thereof is closely linked to the letting of immovable property to be used for another purpose, such as residential or commercial property, which is itself exempt, so that the two lettings constitute a single economic transaction.

16 That is so, on the one hand, if the parking place and the immovable property to be used for another purpose are part of a single complex and, on the other, if both properties are let to the tenant by the same landlord.

17 The answer to the first question should therefore be that Article 13B(b) of the Sixth Council Directive (77/388/EEC of 17 May 1977) must be interpreted as meaning that the phrase 'premises and sites for parking vehicles' covers the letting of all places designed to be used for parking vehicles, including closed garages, but that such lettings cannot be excluded from the exemption in favour of the 'leasing or letting of immovable property' if they are closely linked to lettings of immovable property for another purpose which are themselves exempt from value-added tax.

18 In the context of the cooperation between the national courts and the Court of Justice provided for in Article 177 of the Treaty it is for the former to make the findings of fact necessary to establish whether the lettings in question meet that criterion.

Second question

19 The second question seeks essentially to determine whether Article 13B(b) of the Sixth Directive must be interpreted as meaning that the Member States are entitled to exempt the letting of premises and sites for parking vehicles from value-added tax.

20 It should be pointed out, on the one hand, that although, according to the opening words of Article 13B of the Sixth Directive, the Member States are to lay down the conditions for exemptions for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse, those 'conditions' cannot define the content of the exemptions provided for.

21 On the other hand, it should be pointed out that according to the last subparagraph of Article 13B(b), 'Member States may apply further exclusions to the scope of this exemption'. The terms of that provision show that although the Member States are free to limit the scope of the exemption by providing for additional exclusions, they may not exempt from tax liability transactions which are excluded from the exemption.

22 It follows that the Member States are required to impose value-added tax on 'the letting of premises and sites for parking vehicles', which is excluded from the exemption provided for in Article 13B(b) of the Sixth Directive as interpreted in the answer to the first question.

23 The answer to the second question should therefore be that Article 13B(b) of the Sixth Council Directive (77/388/EEC of 17 May 1977) must be interpreted as meaning that Member States may not exempt from value-added tax lettings of premises and sites for parking which are not covered by the exemption provided for in that provision, that is to say, those which are not closely linked to lettings of immovable property for another purpose which are themselves exempt from value-added tax.

Costs

24 The costs incurred by the Danish Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions submitted to it by the Højesteret, by a decision of 21 June 1988, hereby rules:

(1) Article 13B(b) of the Sixth Council Directive (77/388/EEC of 17 May 1977) must be interpreted as meaning that the phrase 'premises and sites for parking vehicles' covers the letting of all places designed to be used for parking vehicles, including closed garages, but that such lettings cannot be excluded from the exemption in favour of the 'leasing or letting of immovable property' if they are closely linked to lettings of immovable property for another purpose which are themselves exempt from value-added tax.

(2) Article 13B(b) of the Sixth Council Directive (77/388/EEC of 17 May 1977) must be interpreted as meaning that Member States may not exempt from value-added tax lettings of premises and sites for parking which are not covered by the exemption provided for in that provision, that is to say, those which are not closely linked to lettings of immovable property for another purpose which are themselves exempt from value-added tax.

Grévisse Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 13 July 1989.

J.-G. Giraud
Registrar

F. Grévisse
President of the Third Chamber