



Request for a preliminary ruling from the Corte di Giustizia Tributaria di primo grado di Pescara (Italy) lodged on 31 July 2024 – Harry et Associés Sarl v Agenzia delle entrate – Riscossione – Pescara, Agenzia delle entrate – Centro operativo di Pescara

(Case C-527/24, Harry et Associés)

(C/2024/6909)

Language of the case: Italian

Referring court

Corte di Giustizia Tributaria di primo grado di Pescara

Parties to the main proceedings

Applicant: Harry et Associés Sarl

Defendants: Agenzia delle entrate – Riscossione – Pescara, Agenzia delle entrate – Centro operativo di Pescara

Question referred

Do Article 167 of Directive 2006/112/EC⁽¹⁾ and the general principles of VAT neutrality and proportionality of the limitation of the right to deduct VAT preclude:

(a) national rules – identifiable with Article 21(2) of Legislative Decree 546/1992 and Article 38 bis.2 of Presidential Decree No 633/1972 – which, in domestic law, by allowing a refund application vitiated by technical computer errors to be declared as devoid of effect, preclude access to the courts, and are such as to entail forfeiture of the right to be refunded in a substantive situation in which the VAT refund is due to the taxpayer;

(b) a principle of law, such as that affirmed by the Supreme Court of Cassation, whereby ‘an application for refund of a VAT credit, which, owing to technical faults in the electronic transmission, is not visible to the tax authorities, is not suitable for creating a situation of appealable silent denial, as the tax authorities are not in a position to take action’, such as to preclude direct access to the courts in the case at hand, and therefore such as to entail forfeiture of the right to a refund even in a substantial situation in which the refund is due?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).