service listed in Annex B save in an exceptional case which justifies an adverse effect upon neutrality in competition. It must be concluded that the collection of the price of goods transported, a service ancillary to the transport of goods, cannot be exempted from turnover tax since it is included in the aforementioned Annex B, item 5, which contains the list of services compulsorily taxable under Article 6 of the directive. The national court must take account of the combined provisions of Article 6 (2) and of Annex B, item 5.

In Case 126/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad of the Netherlands for a preliminary ruling in the proceedings pending before that court between

N.V. NEDERLANDSE SPOORWEGEN, Utrecht,

and

STAATSSECRETARIS VAN FINANCIËN

on the interpretation of certain provisions of the Second Council Directive (No 67/228/EEC) of 11 April 1967 (Official Journal, English Special Edition 1967, p. 16) on the harmonization of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), P. Pescatore, M. Sørensen, A. O'Keeffe and A. Touffait, Judges

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. The company N.V. Nederlandse Spoorwegen, Utrecht, an undertaking within the meaning of the Wet op de omzetbelasting 1968 [Law of 1968 on turnover tax], Staatsblad, 1968, No 329 (hereinafter referred to as "the Law of 1968") is engaged in passenger and goods transport.

A subsidiary company, Van Gend & Loos N.V., Utrecht, together with which N.V. Nederlandse Spoorwegen is regarded as one undertaking for the application of the Law of 1968 provides *inter alia* a cash-on-delivery service for which, in addition to the transport charge, a separate fee termed the cash-on-delivery commission is charged.

It charged the cash-on-delivery commission increased by the turnover tax to its principals and subsequently included the tax in its tax declarations.

In determining the deduction of input tax on the basis of Article 15 of the Law of 1968 N.V. Nederlandse Spoorwegen accordingly did not declare the aforesaid collection as a service within the meaning of Article 11 of the Law of 1968 and exempt from tax. The Netherlands revenue authorities, however, took the view that the cash-on-delivery commission is charged for a service which is performed independently of the agreement for the carriage of the goods, with the result that such service, as the collection of moneys payable, is exempt from turnover tax on the basis of Article 11 (j) of the Law of 1968, which expressly covers *inter alia*, the collection of financial obligations (het innen ... van geldvorderingen).

By a tax demand by way of turnover tax for the years 1970 to 1974 the revenue authorities therefore retrospectively levied the amount of the input tax which N.V. Nederlandse Spoorwegen had deducted under Article 15 of the Law of 1968.

N.V. Nederlandse Spoorwegen challenged not the amount but the legal basis of the assessment. It contested the assessment in question before the Tariefcommissie, claiming that the service in question was indeed ancillary to the carriage of goods and as such subject to tax in the Netherlands under the Second Council Directive No 67/228/EEC of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (Official Journal, English Special Edition 1967, p. 16).

Article 6 (2) of the Directive provides:

"The rules laid down in this Directive as regards the taxation of the provision of

services shall be compulsorily applicable only to services listed in Annex B."

Annex B, item 5, to the Directive covers:

"transport and storage of goods, and ancillary services."

By judgment of 1 March 1977 the Tariefcommissie dismissed the claim of N.V. Nederlandse Spoorwegen, noting that Point 10 "Regarding Article 6 (2)" of Annex A to the Directive provides that:

"Member States shall refrain, as far as possible, from granting exemption from tax in respect of the provision of the services listed in Annex B."

Pursuant to that provision the Tariefcommissie found that quite apart from the question of whether the collection of the price of goods which N.V. Nederlandse Spoorwegen carries on a cash-on-delivery basis is an "ancillary" service within the meaning of Annex B, item 5, to the Second Directive, the powers which the Member States have in this matter rule out any recourse to Article 6 (2) of that Directive in this case.

When the Tariefcommissie thus found that it was not contrary to the provisions of the Second Directive to grant exemption in respect of the "cash-on-delivery" arrangement as provided for in Article 11 (j) of the Law of 1968, N.V. Nederlandse Spoorwegen brought an appeal against that judgment before the Hoge Raad of the Netherlands.

Since the Hoge Raad took the view that the problem relates to Community law, by judgment dated 24 May 1978 it stayed the proceedings and referred the following questions to the Court of Justice under Article 177 of the EEC Treaty:

"I. If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) is the collection of that price a service ancillary to the transport within the meaning of item 5 of Annex B to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes?

II. If so, are the Member States free, in the application of the turnover tax, to treat an ancillary service such as the aforesaid collection of the cash-on-delivery price separately in such a way that the services of transport and storage of goods referred to in item 5 of Annex B are not exempted from turnover tax but the ancillary service of collection of money is so exempted?

III. (a) If the answer to Question II is in the affirmative, can the exchange of letters between the Netherlands Government and the European Commission referred to in the opinion of Mr Advocate General Van Soest be regarded as the consultation referred to in Article 16 of the Second Directive?

(b) If not must the national court before which it is claimed that no consultation took place take account of this?

IV. If Question II is answered in the negative, must a national court before which Article 6 (2) of the Second Directive in conjunction with the provisions of item 5 of Annex B is invoked take account of this?"

2. A copy of the judgment making the reference was received at the Court on 2 June 1978.

The Government of the Kingdom of the Netherlands, represented by the Minister for Foreign Affairs, N.V. Nederlandse

Spoorwegen, represented by S. L. Buruma, and the Commission of the European Communities, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, submitted written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure after inviting the Commission to give written answers to certain questions.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. The following are the principal observations of *N.V. Nederlandse Spoorwegen:*

(a) First Question

In practice, at least in Netherlands practice, there is hardly any longer any collection of cash debts on a commission basis save as a service ancillary to transport. The former activity of the receipt bearer has disappeared both as a self-employed activity and as employment carried on on behalf of a company. This does not mean that the era of collecting cash debts for third parties is over. The exemption granted by Article 11 (j) of the Law of 1968 applies only to the normal business of collection and not to collection involving other duties.

The practice involved is as follows: the supplier sends goods by means of a carrier to the buyer; on dispatch the buyer has not yet paid for the goods; the supplier however does not use the services of a receipt bearer, but relies solely on a payment clause. Collection of the debt before delivery of the goods has therefore become a typical (ancillary) transport service. To conclude:

— Already during the appeal Van Gend & Loos maintained that the cash collection clause was not a service separate from the carriage but an integral part thereof, so that there was only a single contract (of carriage) and not an agency agreement in addition to a contract of carriage as if there were two contracts instead of one.

— The Advocate General also observed before the Hoge Raad that according to the accepted view of private law the contract entered into between the consignor and the carrier in the case of cash-on-delivery was considered as a single contract. It does not seem possible for the revenue court, interpreting fiscal provisions, unnecessarily to give civil contracts an interpretation differing from that of the accepted view of private law.

— In conclusion, the first question should be answered to the effect that in the case of carriage subject to cash-on-delivery, the collection cannot be separated from the contract of carriage (there cannot be said to be two distinct services) and that the collection therefore comes within the concept of "transport" within the meaning of Annex B, item 5, to the Second Directive No 67/228/EEC or at least that it must be treated as an "ancillary service" within the meaning of that provision.

(b) Second Question

It is necessary to consider the following provisions in answering this question:

— Article 6 (2) and Point 10 of Annex A;

— Article 10 and Point 19 of Annex A;

— Items 5 and 10 of Annex B, and

— Article 16

of the aforementioned Second Directive and Article 102 (1) of the EEC Treaty.

— The wording of Article 6 (2) of the Second Directive and of Point 10 of Annex A thereto (especially the French version) shows that the Member States have practically no discretion in the matter and reinforces the mandatory nature of the taxation of the services listed in Annex B.

— As for the possibility allowed by Article 10 (3), it should first of all be observed that the Netherlands is the only country of the Community which grants exemption from turnover tax in respect of cash-on-delivery commission. Without exaggerating the importance of the matter it would be difficult to deny that such a situation is likely to cause distortion.

Secondly, there is no document in the case showing that the Netherlands have considered this exemption necessary. The documents show, on the other hand, that it has been sought to maintain a practice followed for some time under the former law.

(c) Third Question

It appears from the correspondence between Van Gend & Loos and the Commission in March and April 1976 that there was no consultation within the meaning of Article 16 of the Second Directive. All that the Netherlands Government did was to consult the Commission generally about the draft law which led to the Law of 1968. On being notified of that draft the Commission could not have inferred that the Netherlands Government intended to continue the previous practice of exempting the cash-on-delivery commission from turnover tax. It may well be imagined that the Commission was not even aware of such a practice.

The first part of this question must therefore be answered in the negative. The second part should be considered in the context of the fourth question.

(d) Fourth Question

— The system of the provisions of the Second Directive and the annexes thereto are of a sufficiently legislative nature for it to be held to have a mandatory effect; this is moreover necessary for the effectiveness of the directive.

— It is apparent from the rules laid down in the said directive that the discretion allowed to the Member States to determine the exemptions which they consider necessary is very restricted and that the consultation expressly provided for by the rules is an essential, if not indispensable, condition and the national court must ascertain in each case, if called upon to do so, whether there has in fact been consultation.

— From this point of view Questions III (b) and IV must be answered in the affirmative. An answer in the negative would be justified only if the words "as far as possible" in Point 10 of Annex A to the Second Directive are interpreted as meaning "provided that in the view of the Member State there is no obstacle thereto from the national point of view". Such an interpretation would really be going too far.

— Questions III (b) and IV make no distinction between services rendered

before 1 January 1972 and those rendered after that date. The answer suggested above applies to both cases. Indeed:

(i) the Second Directive did not become applicable only as from 1 January 1972 but, pursuant to Article 191 of the EEC Treaty, upon notification to the Member States. In accordance with Article 1 of the Third Council Directive No 69/463/EEC of 9 December 1969 (Official Journal, English Special Edition 1969 (II), p. 551) the Member States had to adjust their laws to the Second Directive "not ... later than" 1 January 1972;

(ii) the Netherlands introduced value added tax on 1 January 1969; the Netherlands court should therefore decide what effect the absence of consultations regarding Article 6 (2) and Annex B, item 5, to the Second Directive has, including also the effect on services performed before 1 January 1972;

(iii) it is not possible to find that although the wording of Article 11 (j) of the Law of 1968 was the same before and after 1 January 1972 its meaning before that date differed from its meaning thereafter and that therefore the national court is free to interpret a given legal provision variously according to whether the date by which the Member States were required to have adjusted their revenue laws in accordance with the Second Directive was postponed.

2. The *Netherlands Government* takes the view that the only "ancillary services" within the meaning of Annex B, item 5, to the Second Directive are those which are a necessary adjunct to the transport service, that is to say which are intrinsically linked thereto, such as the loading of goods to be carried and unloading of goods after carriage, and which make a fundamental contribution to the very objective of the carriage (forwarding of goods to a particular destination).

Even if the collection of the sale price by the carrier is an "ancillary service" within the above-mentioned meaning, this does not mean that it cannot from the revenue point of view be treated separately. In particular, the words "as far as possible", used in Point 10 of Annex A to the Second Directive, show that the Member States have a certain discretion as to whether or not to grant exemption in respect of provision of the services listed in Annex B to the Directive. There is nothing to show that such exemption must be restricted to the services so listed.

As to the question of the "consultation" referred to in Article 16 of the Second Directive, it should be observed that the Netherlands Government several times contacted the Commission in 1967 and 1968 to inform it of the developments which had taken place in the sphere of adjusting the law on turnover tax to the provisions of the First and Second Directives. In supplying such information in connexion with the provisions of the Directives of the Council of the European Economic Community of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes the Netherlands Government also intended to fulfil its obligation to consult in connexion with certain provisions. The Commission never let it be known that the correspondence relating to that information did not constitute performance of the obligation to consult: since the

consultation did not have to follow any particular form the Netherlands Government fulfilled the obligation in that matter as far as it had to.

3. The observations of the *Commission* are as follows:

(a) First Question

Community law as contained in Annex B, item 5, to the Second Council Directive No 67/228/EEC of 11 April 1967 intended to govern transport and storage of goods as well as ancillary services strictly connected with such transport or storage. The requisite direct connexion between the transport itself and the ancillary services necessarily prevents the collection of the sale price of the goods by the carrier from being treated as a service ancillary to the transport within the meaning of the aforementioned provisions.

The first question should therefore be answered in the *negative.* Having regard to that answer, which makes the other questions unnecessary, the latter will be answered subject to that reservation.

(b) Second Question

— The obligation contained in Article 6 (2) to tax the services listed in Annex B to the Second Directive is not absolute. Article 10 (3) allows each Member State, subject to the consultations mentioned in Article 16, to "determine the other exemptions which it considers necessary". The possibility of granting exemptions to which Article 19 refers justifies the provision in Point 10 of Annex A: "Member States shall refrain, as far as possible, from granting exemption from tax in respect of the provision of the services listed in Annex B".

— In principle, therefore, the ancillary services referred to in Annex B, item 5, are taxable, like transport services and storage of goods, under Article 6 (2). If in relation to turnover tax they had to be treated independently, in a different manner from the transport operations to which they necessarily relate, the very concept of "ancillary services" would lose all meaning and, moreover, the transport of goods by road would distort the conditions of competition between the various modes of transport and in particular at the expense of the railways (cf. Point 19 "Regarding Article 10 (2) and (3)" of Annex A to the Second VAT Directive).

For these reasons the second question should also be answered in the *negative.*

(c) Third Question

— The consultation referred to in Article 16 of the Second Directive, which under Article 10 (3) is obligatory for Member States wishing to determine exemptions other than those provided for by the Directive, assumes that such Member State shall expressly and precisely give notice of the provision of the Directive which requires the consultation, as well as the proposed law and the Community rule from which such proposed law derogates. In the present case the Netherlands ought to have consulted the Commission under Article 10 (3) of the Second Directive; in fact that Member State merely forwarded to the Commission the draft law and subsequently the law itself, both in their entirety. In these circumstances it might seriously be doubted whether there was proper consultation in the present case within the meaning of Article 16 of the Second Directive.

— The Commission's consent is not required for the adoption by a Member State of measures for which consultation is mandatory. The Commission does not think that the defect of form resulting from the lack of due consultation with the Commission is alone capable of causing the national measure in question to be null and void.

(d) Fourth Question

It follows from the case-law of the Court that it is incompatible with the mandatory character attributed by Article 189 of the Treaty to a directive to prevent interested parties in principle from relying on the obligation arising therefrom (in the present case, Article 6 (2) and Annex B, item 5) before a national court to ascertain whether the responsible national authorities, in implementing the directive, have respected the limits placed by it on their discretion.

After making these observations the Commission proposes that the national court should be answered as follows:

"1. The collection of the sale price of goods is not, in relation to the carriage of those goods, an ancillary service within the meaning of Annex B, item 5, to the Second VAT Directive.

2. In principle, ancillary services must be taxed in the same way as the transport and storage of goods to which they are strictly connected.

3. The consultation provided for in Article 16 of the Second VAT Directive was not duly held in the present case in order to determine other exemptions in accordance with Article 10 (3) of the Directive. Nevertheless, the resulting defect of form does not appear in itself sufficient to involve the nullity of the national measure.

4. The national court must have regard to the mandatory character attributed to the Second Directive and ascertain whether in implementing the obligations imposed by the Directive the national authorities have remained within the limits placed by it on their discretion."

The Commission states that in putting forward the above answers it has not taken into account the fact that the last three questions are asked in the alternative.

III — Oral procedure

N.V. Nederlandse Spoorwegen, represented by S. L. Buruma, the Government of the Federal Republic of Germany, represented by A. Deringer and J. Sedemund, and the Commission of the European Communities, represented by its Agent, R. Baeyens, submitted oral observations at the hearing on 20 March 1979.

The Advocate General delivered his opinion on 8 May 1979.

Decision

1 By judgment dated 24 May 1978, received at the Court Registry on 2 June 1978, the Hoge Raad of the Netherlands referred several questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of certain provisions of the Second Council Directive No 67/228/EEC of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (Official Journal, English Special Edition 1967, p. 16) and more particularly Annex B, item 5, thereto.

2 Those questions have arisen in proceedings between the Secretary of State for Finance and a carrier engaged in the transport of goods on a cash-on-delivery basis subject to transport charges and a "cash-on-delivery commission", the latter being increased by turnover tax which it deducts in its tax declarations. The Secretary of State for Finance takes the view that the said commission, as the "collection of moneys payable" must be "exempt from tax" under Article 11 (j) of the Netherlands Law of 28 June 1968 replacing the existing turnover tax by a turnover tax in accordance with the system of value added tax.

3 The first question which the national court has put in connexion with that dispute is as follows:

"If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) is the collection of that price a service ancillary to the transport within the meaning of item 5 of Annex B to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes?"

4 To answer this question the objective of the directives on turnover taxes should be recalled, together with the fact that they are based on Articles 99 and 100 of the Treaty which are concerned with the harmonization of the laws of the Member States in the interests of the establishment and functioning of the common market.

5 The Council, in the First Directive No 67/227 of 11 April 1967 (Official Journal, English Special Edition 1967, p. 14), had regard to the following facts:

(a) that the main objective of the Treaty is to establish, within the framework of an economic union, a common market within which there is healthy competition and whose characteristics are similar to those of a domestic market;

(b) that the legislation of the Member States involving cumulative multi-stage taxes were distorting competition and hindering the free movement of goods and services within the common market,

and, after studying the matter, adopted a common system of value added tax for all Member States.

6 That system achieves "the highest degree of simplicity and of neutrality" when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution and the provision of services.

7 The objective of the first stage of this replacement of cumulative multi-stage tax systems by the common system of value added tax, even if the rates and exemptions are not harmonized at the same time, is the achievement of neutrality in competition in that within each country similar goods bear the same tax burden, whatever the length of the production and distribution chain.

8 A Second Council Directive, No 67/228, also of 11 April 1967, drew up a list of services to which Article 6 (2) compulsorily applied the common system in order to guarantee neutrality in competition between the Member States and to restrict progressively or abolish the differences in question so that the national systems of value added tax might be brought into alignment. That list, which is contained in Annex B to the Directive and is an integral part thereof, has an item 5 worded as follows: "transport and storage of goods, and ancillary services".

9 The question therefore is whether in the common system of value added tax made compulsory by that Second Directive in all Member States from 1 January 1972, which is the date on which all Member States had to

implement the provisions of the said Directive, the collection of the price of goods carried must or must not be treated as a service ancillary to the carriage of the goods.

10 If the contract for the carriage of goods on a cash-on-delivery basis is considered in the light of the aims of the directives on the harmonization of legislations of the Member States concerning turnover taxes, that question must be answered in the affirmative.

11 In stipulating that "a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system)", the national court is describing a contract involving two services, the second of which (the cash collection) is so tied up with the first (the carriage) by the intention of the parties that the performance of the two services cannot be separated, for the delivery by the carrier of the goods carried to the consignee can be effected only if the latter pays the price of the goods stipulated by the consignor and in the event of non-payment the carrier may not deliver the goods to the consignee.

12 It thus follows from this analysis that since the performance of those two services is inseparable, it is necessary, in order to achieve the objective of neutrality in competition sought by the directives on value added tax, that the collection of the price of goods carried should be treated as a service ancillary to the transport of goods and thus subject to value added tax in all Member States; in this way equality of treatment between the various modes of transport is assured and the same conditions apply to the taxation of the service in all Member States.

13 Otherwise, that is to say if the collection of the price of the goods carried were not treated as a service ancillary to the carriage of the goods, each Member State would regain its liberty to tax the cash collection service as an independent service, perhaps even having regard to the mode of transport used.

14 The first question therefore should be answered to the effect that if a carrier has undertaken, in addition to the transport of the goods, to collect the price

of the goods before delivering them to the consignee (cash-on-delivery system) the collection of that price is a service ancillary to the transport within the meaning of Annex B, item 5, to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes.

15 The following is the second question asked by the national court:

"If so, are the Member States free, in the application of the turnover tax, to treat an ancillary service such as the aforesaid collection of the cash-on-delivery price separately in such a way that the services of transport and storage of goods referred to in item 5 of Annex B are not exempted from turnover tax but the ancillary service of collection of money is so exempted?"

16 The answer to the first question based on a consideration of the aims of the directives on value added tax means that the second question must be answered in the negative.

17 For the sake of completeness, however, it is necessary to mention Point 10 "Regarding Article 6 (2)" of Annex A, which is worded as follows: "Member States shall refrain, as far as possible, from granting exemption from tax in respect of the provision of the services listed in Annex B". This provision advising the Member States to avoid "as far as possible" granting exemption to the provision of services compulsorily subject to the common system must be interpreted restrictively in order to safeguard the coherence of the new system and the neutrality in competition which it seeks to establish. It follows that a Member State cannot insert into its legislation a measure exempting a service listed in Annex B save in an exceptional case which justifies an adverse effect upon neutrality in competition.

18 Since no argument has been advanced to this effect it must be concluded that the ancillary service of collection cannot be exempted from turnover tax since it appears in item 5 of Annex B, which contains the list of services compulsorily taxable under Article 6 of the Second Directive of 11 April 1967.

19 That answer also satisfies the fourth question which is asked in the event of the second question being answered in the negative — as is the case — since the fourth question asks whether a national court must take account of Article 6 (2) of the Second Directive in conjunction with the provisions of Annex B, item 5, and that question must therefore be answered in the affirmative.

20 The two parts of the third question are essentially concerned with the circumstances in which a Member State must have recourse to the consultation procedure provided for in Article 16 of the Second Directive. That article provides that a Member State is obliged to engage in consultation only in the cases stipulated by the provisions of the Directive.

21 No consultation is provided for in the case of application of the combined provisions of Article 6 (2) of the Second Directive and Annex B, item 5. In those circumstances the third question does not call for an answer.

Costs

22 The costs incurred by the Government of the Netherlands, the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Moreover as these proceedings are, in so far as the appellant in the main proceedings is concerned, in the nature of a step in the proceedings pending before the Hoge Raad, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Hoge Raad by judgment of 24 May 1978, hereby rules:

1. **If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) the collection of that price is a service ancillary to the transport within the meaning of Annex B,**

item 5, to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes.

2. **For the purposes of the application of value added tax Member States are not empowered to treat an ancillary service such as the collection of the cash-on-delivery price separately from the service of the transport of goods.**

3. **The national court must take account of the combined provisions of Article 6 (2) of the Second Directive and of Annex B, item 5, thereto.**

Kutscher Mertens de Wilmars Mackenzie Stuart

Pescatore Sørensen O'Keeffe Touffait

Delivered in open court in Luxembourg on 12 June 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 MAY 1979 [1]

Mr President,
Members of the Court,

Just as in Joined Cases 181/78 and 229/78 on which I have recently given my opinion, the main proceedings giving rise to this case are concerned with the compatibility of the Netherlands Law of 1968 on turnover tax (Wet op de Omzetbelasting of 28 June 1968, Staatsblad 329) with the Second Council Directive of 11 April 1967 (67/288/EEC) on the harmonization of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (Official Journal, English Special Edition 1967, p. 16).

The following are the facts of the case:

The limited company Nederlandse Spoorwegen, the appellant in the main

1 — Translated from the German.