

Case C-62/93

BP Supergas Anonimos Etairia Geniki Emporiki-Viomichaniki
kai Antiprossopeion

v

Greek State

(Reference for a preliminary ruling
from the Dioikitiko Protodikeio, Athens)

(Interpretation of Articles 11, 17 and 27 of the Sixth VAT Directive —
Greek system for the taxation of petroleum products — Taxable amount —
Right to deduct — Exemption)

Opinion of Advocate General Jacobs delivered on 9 March 1995	I - 1888
Judgment of the Court (Sixth Chamber), 6 July 1995	I - 1907

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Manifestly irrelevant question — Examination of the compatibility of a national measure with Community law (EEC Treaty, Art. 177)*

2. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value added tax — Deduction of input tax — Taxation of an imported product only at the first marketing stage and on the price charged at that stage — Infringement of the provisions concerning the right to deduct and the taxable amount — Not permissible — Individuals may rely on the corresponding provisions*
(Council Directives 67/228, Art. 2 and 77/388, Arts 2, 11 and 17)

 3. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value added tax — Directive 77/388 — National measures derogating from it — Conditions under which permissible*
(Council Directive 77/388, Art. 27)

 4. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value added tax — Exemptions provided by the Sixth Directive — Supplies of services relating to the import of goods — Exemption of all services in respect of the transport and storage of imported petroleum products — Not permissible*
(Council Directive 77/388, Arts 11B(3)(b), 14(1)(i) and 17)

 5. *Preliminary rulings — Interpretation — Temporal effect of an interpretation in judgments of the Court — Collection of value added tax on the basis of national rules adopted in breach of the Sixth Directive — Refund with retroactive effect — Rules — Application of national law — Limits*
(EEC Treaty, Art. 177; Council Directive 77/388)
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1. Under the procedure for a preliminary ruling provided for in Article 177 of the Treaty it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court of Justice. A request for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law or the examination of the validity of a rule of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action.

Furthermore, the Court has no jurisdiction, in those proceedings, to rule on the compatibility of a national measure with Community law.

 2. Articles 2, 11 and 17 of the Sixth Directive (77/388) must be interpreted as

precluding national rules which, without an authorization having been obtained under Article 27 of that directive, make the importation of finished petroleum products subject to value added tax ("VAT") calculated on the basis of a basic price different from that provided for in Article 11 and which, by exempting traders in the petroleum sector from the obligation to submit returns, deprive them of the right to deduct the tax charged directly on transactions relating to inputs.

The fundamental principle which underlies the VAT system, and which follows from Article 2 of the First and Sixth Directives, is that VAT applies to each transaction by way of production or distribution after deduction has been made of the VAT which has been levied directly on transactions relating to inputs.

Moreover, as regards the supply of goods, Article 11 of the Sixth Directive, since its aim is in particular to ensure that VAT is applied at each marketing stage on the price or value of the goods at that stage, precludes the application of taxation arrangements under which the tax is determined, once only, on the price at the first marketing stage.

The right of deduction provided for in Article 17 et seq. of the Sixth Directive,

which forms an integral part of the VAT scheme, cannot be limited in principle and must be exercised immediately in respect of all the taxes charged on transactions relating to inputs, affects the level of the tax burden and must be applied in a similar manner in all the Member States, so that derogations are permitted only in the cases expressly provided for in the directive.

The provisions of Article 11A(1) and B(1) and (2) and Article 17(1) and (2), which specify the conditions giving rise to the right to deduct and the extent of that right and do not leave the Member States any discretion as regards their implementation, confer rights on individuals which they may invoke before a national court in order to challenge national rules which are incompatible with those provisions.

3. The special measures derogating from the Sixth Directive, as provided for in Article 27 of that directive, do not accord with Community law unless they remain within the limits of the objectives referred to in Article 27(1) and have also been notified to the Commission and impliedly or expressly authorized by the Council in the circumstances specified in paragraphs (1) to (4) of Article 27. In order to satisfy those conditions, it is not sufficient for a Member State merely to send to the Commission the whole of a draft law on

the application of value added tax without giving any particular indication regarding the special arrangements provided for. Only a notification referring expressly to Article 27(2) of the directive enables the Commission and, if necessary, the Council to verify whether the derogating arrangements in question are within the scope of the objectives referred to in Article 27(1).

Justice gives to a rule of Community law clarifies and defines, where necessary, the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the delivery of the judgment ruling on the request for interpretation, provided that in other respects the conditions under which an action relating to the application of that rule may be brought before the courts having jurisdiction are satisfied.

4. The provisions of the Sixth Directive, in particular Articles 13 to 17 thereof, must be interpreted as precluding a general exemption from VAT on all services in respect of the transport and storage of imported petroleum products. Article 14(1)(i), in conjunction with Article 11B(3)(b), of the directive provides an exemption solely for the transport costs incurred up to the first place of destination and, optionally, the costs in respect of transport to another known place of destination, and the general exemption also deprives a trader of the right to deduct VAT charged on services in respect of transport and storage after transport of the petroleum products to a second place of destination.

It follows more particularly that the right to obtain a refund of amounts charged by a Member State in breach of rules of Community law is the consequence and complement of the rights conferred on individuals by the Community provisions as interpreted by the Court. While it is true that such a refund may be sought only in the framework of the substantive and procedural conditions laid down by the various relevant national laws, those conditions and the procedural conditions and rules governing actions at law for protecting the rights which individuals derive from the direct effect of Community law may not be less favourable than those relating to similar, domestic actions, nor be framed in a way such as to render virtually impossible the exercise of rights conferred by Community law.

5. The interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, the Court of

Accordingly, a taxable person may claim, with retroactive effect from the date on which the national legislation contrary to the Sixth Directive came into force, a refund of VAT paid without being due, by following the procedural rules laid

down by the domestic legal system of the Member State concerned, provided that those rules are no less favourable than those satisfying the abovementioned requirements.