

Case C-317/94

Elida Gibbs Ltd
v
Commissioners of Customs and Excise

(Reference for a preliminary ruling
from the VAT and Duties Tribunal, London)

(Value added tax — Sixth Directive —
Money-off and cash-back coupons — Taxable amount)

Opinion of Advocate General Fennelly delivered on 27 June 1996	I - 5341
Judgment of the Court (Sixth Chamber), 24 October 1996	I - 5357

Summary of the Judgment

Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Taxable amount — Sales promotion scheme involving, after purchase by the final consumer, reimbursement from the manufacturer on presentation of a voucher issued by the manufacturer — Taxable basis constituted by the sale price charged by the manufacturer less the amount reimbursed

(Council Directive 77/388, Art. 11A(1)(a) and 11C(1))

Where

- (a) a manufacturer issues a money-off coupon, which is redeemable at the amount stated on the coupon by or at the expense of the manufacturer in favour of the retailer, (b) the coupon, which is distributed to a potential customer in the course of a sales promotion campaign, may be accepted by the retailer in payment for a specified item of goods, (c) the manufacturer has sold the specified item at the 'original supplier's price' direct to the retailer and (d) the retailer takes the coupon from the customer on sale of the item, presents it to the manufacturer and is paid the stated amount,

or

- (a) the manufacturer, in the course of a promotion scheme, sells items of goods at the 'manufacturer's price' direct to a retailer, (b) a cash-back coupon for an amount stated on the packaging of those items entitles the customer, if he proves purchase of one of those items and satisfies other conditions printed on the coupon, to present the coupon to the manufacturer in return for payment of the stated amount, and (c) a customer purchases such an item from a retailer, presents the coupon to the manufacturer and is paid the stated amount,

meaning that the taxable amount serving as a basis for determination of the value added tax payable by the manufacturer is equal to the selling price charged by the manufacturer, less the amount indicated on the coupon and refunded. The same applies if the original supply is made by the manufacturer to a wholesaler rather than directly to a retailer.

That interpretation necessarily follows from the principle that the taxable amount serving as a basis for the VAT to be collected by the tax authorities cannot exceed the consideration actually paid by the final consumer which is the basis for calculating the VAT ultimately borne by him and from the principle of neutrality of the tax whereby within each country similar goods should bear the same tax burden whatever the length of the production and distribution chain.

The VAT system is not disturbed as a result of that interpretation since there is no need to readjust the taxable amount for the intermediate transactions. That amount remains unchanged since, for those transactions, observance of principle of neutrality is ensured by application of the conditions for deduction set out in the directive, which enable the intermediate links in the distribution chain, such as wholesalers and retailers, to pay to the tax authorities only the part of the VAT representing the difference between the price paid by each to his supplier and the price at which he supplied the goods to his purchaser.

Article 11(A)(1)(a) and Article 11(C)(1) of the Sixth Directive are to be interpreted as