Case C-35/05

Reemtsma Cigarettenfabriken GmbH

v

Ministero delle Finanze

(Reference for a preliminary ruling
from the Corte suprema di cassazione)

(Eighth VAT Directive — Articles 2 and 5 — Taxable persons not established in the territory of the country — Tax paid in error — Arrangements for reimbursement)

Opinion of Advocate General Sharpston delivered on 8 June 2006 . . . . . I - 2428

Judgment of the Court (Second Chamber), 15 March 2007 . . . . I - 2452

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Refund of the tax to taxable persons not established in the country*

   (Council Directive 79/1072, Arts 2 and 5)

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons*

   (Council Directive 77/388, Art. 21, para. 1)

3. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Regularisation of tax unduly invoiced*

   (Council Directive 77/388)

1. Articles 2 and 5 of the Eighth Directive 79/1072 on the harmonisation of the laws of the Member States relating to turnover taxes — arrangements for the refund of value added tax to taxable persons not established in the territory of the country, must be interpreted as meaning that value added tax that is not due and has been invoiced in error to the beneficiary of the services and paid to the tax authorities of the Member State where those services were supplied, is not refundable under those provisions.

   The Eighth Directive, whose purpose is not to undermine the scheme introduced by the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, is designed to lay down detailed arrangements for the refund of value added tax paid in a Member State by taxable persons established in another Member State. Its objective is therefore to harmonise the right to refund as provided for in Article 17(3) of the Sixth Directive. Articles 2 and 5 of the Eighth Directive refer expressly to Article 17 of the Sixth Directive. In those circumstances, since the right to deduct, within the meaning of Article 17, cannot be extended to value added tax unduly invoiced and paid to the tax authorities, it must be found that that value added tax is not reimbursable on the basis of the provisions of the Eighth Directive.

   (see paras 25-28, operative part 1)

2. Except in the cases expressly provided for in Article 21(1) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Directive 92/111, only

the supplier must be considered to be liable for payment of value added tax for the purposes of the tax authorities of the Member State where the services were supplied.

(see para. 33, operative part 2)

3. The principles of neutrality, effectiveness and non-discrimination do not preclude national legislation according to which only the supplier may seek reimbursement of the sums unduly paid as value added tax to the tax authorities and the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due. However, where reimbursement of the value added tax would become impossible or excessively difficult, the Member States must provide for the instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.

That answer cannot be affected by the national legislation on direct taxation, since the system of direct taxation as a whole is not related to the value added tax system.

(see paras 42, 45, operative part 3)