

ORDER OF THE COURT (Fifth Chamber)

6 July 2006^{*}

In Joined Cases C-18/05 and C-155/05,

REFERENCES for a preliminary ruling under Article 234 EC, from the Commissione tributaria provinciale di Napoli (C-18/05) and the Commissione tributaria regionale di Firenze (C-155/05) (Italy), made by decisions of 15 July 2004 and 23 March 2005, received at the Court on 20 January 2005 and 6 April 2005, in the proceedings

Casa di cura privata Salus SpA (C-18/05)

v

Agenzia Entrate — Ufficio di Napoli 4,

and

Agenzia Entrate — Ufficio di Firenze 1 (C-155/05)

v

Villa Maria Beatrice Hospital Srl,

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of J. Makarczyk (Rapporteur), President of the Chamber, R. Schintgen and L. Bay Larsen, Judges,

Advocate General: J. Kokott,

Registrar: R. Grass,

after informing the national courts that the Court proposes to give its decision by reasoned order pursuant to the second subparagraph of Article 104(3) of its Rules of Procedure,

after inviting the persons referred to in Article 23 of the Statute of the Court of Justice to submit any observations they might have in that regard,

after hearing the Advocate General,

makes the following

Order

- 1 These references for a preliminary ruling principally concern the interpretation of the first part of Article 13B(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover

taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) ('the Sixth Directive').

Legal background

Community legislation

2 Under Article 13 of the Sixth Directive:

'A. Exemptions for certain activities in the public interest

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

...

B. *Other exemptions*

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

...

- (c) supplies of goods used wholly for an activity exempted under this Article or under Article 28(3)(b) when these goods have not given rise to the right to deduction, or of goods on the acquisition or production of which, by virtue of Article 17(6), value added tax did not become deductible; ...’.

3 Article 17(2) of the Sixth Directive provides:

‘In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

- (a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) value added tax due or paid in respect of imported goods;

...'

National legislation

- 4 Under Article 10 of the Decree of the President of the Republic No 633 of 26 October 1972 establishing and regulating value added tax (Decreto del Presidente della Repubblica No 633, 26 Ottobre 1972, istituzione e disciplina dell' imposta sul valore aggiunto) (Ordinary Supplement No 1, GURI No 292 of 11 November 1972) ('DPR 633/1972'), the following are exempted from value added tax ('VAT');

'...

(18) medical diagnosis, treatment and rehabilitation provided to persons in the exercise of the regulated medical professions, within the meaning of Article 99 of the consolidated text of the laws on health, approved by Royal Decree No 1265 of 27 July 1934, as subsequently amended, or provided for by decree of the Minister for Health together with the Minister for Finance;

(19) the provision of hospital and medical treatment by hospitals or clinics and other officially approved establishments providing medical care and mutual benefit societies with legal personality and [non-profit making organisations], including the

administering of medicines, medical instruments and food and the provision of treatment by thermal centres’.

- 5 Article 1(4) of Legislative Decree No 313 of 2 September 1997 (Decreto legislativo No 313, 2 settembre 1997) (‘LD 313/1997’) added paragraph 27d to Article 10 of DPR 633/1972, which provides for the VAT exemption for ‘supplies of goods acquired or imported without the right to deduct all of the tax relating to them, within the meaning of Articles 19, 19-a 1 and 19-a 2’.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-18/05

- 6 The Casa di cura privata Salus SpA (‘Salus’) is an establishment providing healthcare, which carries out those activities within the framework of agreements concluded with the Servizio Sanitario Nazionale (National Health Service). Those activities are exempt from VAT under of the national rules which transposed Article 13A(1)(b) of the Sixth Directive.
- 7 Arguing that Article 13B(c) of the Sixth Directive also requires Member States to exempt supplies of goods used wholly for exempt activities, Salus claimed reimbursement from the Agenzia Entrate — Ufficio di Napoli 4 (Public Revenue Office Naples 4) of the sum of ITL 2 880 535 000 (EUR 1 487 672.17) that it had paid in respect of VAT in the years 1998, 1999 and 2000. Following the implied rejection of its claim by the tax administration, Salus brought an action on 13 March 2003 before the Commissione tributaria provinciale di Napoli (Regional Tax Court, Naples).

8 The national court refers to divergences in Italian case-law concerning the application of the exemption provided for in Article 13B(c) of the Sixth Directive in respect of supplies of goods used for exempt activities.

9 The majority of cases interpret that provision as laying down an exemption of an objective nature, applicable merely upon the goods acquired being used for exempt activities, so that claims for reimbursement of undeducted tax in cases similar to the case in these proceedings are upheld.

10 However, according to a minority trend in the case-law to which the national court adheres, that provision refers only to the exemption of the sale of goods by taxpayers who do not enjoy a right of deduction because their activity is exempt, since the goods sold were intended to be used exclusively for an exempt activity.

11 In those circumstances, the Commissione tributaria provinciale di Napoli decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the exemption under Article 13B(c) of [the Sixth Directive] refer to input VAT paid on the acquisition of goods or services used for exempted activities or rather to cases in which a taxable person who has acquired goods intended for such activities subsequently sells those goods to other persons?

(2) Is that provision sufficiently precise and unconditional to be directly effective in the national legal system?

- (3) For the purposes of the direct applicability of the directive, what is the effect of the requirement in [Article 13B] whereby, in implementing [the rules in Article 13B(c)], Member States are to lay down conditions for “preventing any possible evasion, avoidance or abuse”?

Case C-155/05

- 12 On 16 September 2002, Villa Maria Beatrice Hospital Srl (“VMB Hospital”) brought nine claims for reimbursement before the Agenzia Entrate — Ufficio di Firenze 1 (Public Revenue Office Florence 1), first, for the sum of EUR 1 799 779.46, together with interest accrued and accruing in respect of VAT unduly paid in the years 1998 to 2000, and, second, for the total sum of EUR 1 987 090.64 paid in respect of VAT in the years 1992 to 1997. Since those claims were the subject of implied decisions of rejection, VMB Hospital brought an action on 15 April 2003 before the Commissione tributaria provinciale di Firenze (Regional Tax Court, Florence).
- 13 VMB Hospital submitted that its main activity consists of supplying hospital treatment and medical care under a system of accreditation by the Servizio Sanitario Nazionale, which is an activity exempt from VAT under the national rules which transposed Article 13 A(1)(b) of the Sixth Directive.
- 14 VMB Hospital submitted, in particular, that the supplies of goods used wholly for the activities referred to in Article 13 of the Sixth Directive have not been exempted by the Italian legislature, so that it was unable to deduct fully the VAT for the supplies concerned in the years 1992 to 2000. Furthermore, VMB Hospital submitted that LD 313/1997, adopted after the judgment in Case C-45/95 *Commission v Italy* [1997] ECR I-3605, did not fully transpose the Sixth Directive into national law.

- 15 By judgment of 3 December 2003 to 19 January 2004, the Commissione tributaria provinciale di Firenze upheld the action.
- 16 On 20 May 2004 the Agenzia Entrate — Ufficio di Firenze 1 brought an appeal against that judgment before the referring court, submitting, inter alia, that the court of first instance had wrongly interpreted Article 13B(c) of the Sixth Directive.
- 17 The referring court takes the view that the amendment to Article 10 of DPR 633/1972 by LD 313/1997 does not introduce a general exemption for all goods used wholly for an exempt activity or excluded from the right to deduction, as set out in the judgment *Commission v Italy*, but limits the exemption to supplies relating to goods acquired or imported without a right of full deduction of the tax on them. The exemption therefore concerns only goods acquired with non-deductible VAT, used for exempt activities and subsequently resold.
- 18 In those circumstances, the Commissione tributaria di Firenze decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Following the addition of paragraph 27d to Article 10 of Presidential Decree 633/1972, must the Italian Republic be regarded as still failing to fulfil its obligations under the [Sixth Directive] and, in particular, Article 13B(c) thereof ?’

The joinder of Cases C-18/05 and C-155/05

- 19 Given the close connection between these two cases, it is appropriate, in accordance with Article 43 of the Rules of Procedure, read together with Article 103 thereof, to join them for the purposes of the Order.

The first question referred for a preliminary ruling in Case C-18/05 and the question referred in Case C-155/05

- 20 Taking the view that the answer to those questions leaves no scope for any reasonable doubt, the Court, pursuant to the second paragraph of Article 104(3) of its Rules of Procedure, informed the referring courts that it proposed to give its decision by reasoned order and called on the interested parties referred to in Article 23 of the Statute of the Court of Justice to submit any observations they might have in that regard.
- 21 In their observations, Salus and VMB Hospital maintain their respective positions, and suggest that the answer to the question referred should be that Article 13B(c) of the Sixth Directive must be interpreted as meaning that goods sold to a person exercising exclusively an exempt activity, if they have not given rise to a right of deduction, must also be exempt from tax or give rise to a right of deduction.

Preliminary observations

- 22 First of all, as regards the question referred by the national court in Case C-155/05, it should be recalled that, in the context of Article 234 EC, the Court has no jurisdiction to rule either on the interpretation of provisions of national laws or regulations or on their conformity with Community law (see, to that effect, Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 33, and Joined Cases C-19/01, C-50/01 and C-84/01 *Barsotti and Others* [2004] ECR I-2005, paragraph 30).
- 23 However, if questions have been improperly formulated or go beyond the scope of the powers conferred on the Court by Article 234 EC, the Court is free to extract from all the factors provided by the national court and, in particular, from the statement of grounds contained in the reference, the elements of Community law requiring an interpretation having regard to the subject-matter of the dispute (see, to that effect Case 83/78 *Pigs Marketing Board* [1978] ECR 2347, paragraph 26; Case C-105/96 *Codiesel* [1997] ECR I-3465, paragraph 13; and Case C-536/03 *António Jorge* [2005] ECR I-4463, paragraph 16).
- 24 In the light of the order for reference in Case C-155/05, it is clear that the national court is seeking the interpretation of the first part of Article 13B(c) of the Sixth Directive.

The questions referred

- 25 By their questions, the national courts wish to know, essentially, whether the VAT exemption provided for by the first part of Article 13B(c) of the Sixth Directive

concerns VAT paid upstream at the time of acquisition of goods intended to be used wholly for one of the activities referred to in that article, or whether that exemption applies only where such goods are resold.

- 26 In that regard it must be recalled that, according to settled case-law, the exemptions referred to in Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all supplies of services for consideration by a taxable person (see, to that effect, inter alia, Case C-498/03 *Kingscrest Associates and Montecello* [2005] ECR I-4427, paragraph 29, and Case C-415/04 *Stichting Kinderopvang Enschede* [2006] ECR I-1385, paragraph 13).
- 27 Those exemptions constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another and must therefore be given a Community definition (see, to that effect, Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 37; Case C-284/03 *Temco Europe SA* [2004] ECR I-11237, paragraph 16; and Joined Cases C-394/04 and C-395/04 *Diagnostiko & Therapeftiko Kentro Athinon — Ygeia* [2005] ECR I-10373, paragraph 15).
- 28 As regards, in particular, the first part of Article 13B(c) of the Sixth Directive, it requires Member States to exempt supplies of goods used wholly for an activity exempted under that article where those goods have not given rise to a right of deduction (see, to that effect, *Commission v Italy*, paragraph 12).
- 29 The Court has further held that the purpose of Article 13B(c) of the Sixth Directive is to avoid double taxation contrary to the principle of fiscal neutrality inherent in the common system of value added tax (*Commission v Italy*, paragraph 15).

30 Thus, the first part of Article 13B(c) of the Sixth Directive provides for an exemption which prevents the resale of goods from being taxed anew, where they were acquired previously by a taxable person for the purposes of an activity which is exempt under that same article and on which therefore the VAT has been paid definitively and without possibility of deduction.

31 Accordingly, the answer to the first question referred in Case 18/05 and the single question referred in Case 155/05 must be that the first part of Article 13B(c) of the Sixth Directive must be interpreted as meaning that the exemption for which it provides applies only to the resale of goods previously acquired by a taxable person for an exempted activity under that article, in so far as the VAT paid upon initial acquisition of the goods in question was not deductible.

The second and third questions in Case C-18/05

32 It is clear from the order for reference that, given the answer to the first question in Case C-18/05, the second and third questions referred in that case are no longer relevant for the outcome of the dispute in the main proceedings. There is therefore, no need to answer those questions.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

The first part of Article 13B(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as meaning that the exemption for which it provides applies only to the resale of goods previously acquired by a taxable person for an exempted activity under that article, in so far as the VAT paid upon initial acquisition of the goods in question was not deductible.

[Signatures]