

## **Case C-271/06**

**Netto Supermarkt GmbH & Co. OHG**

**v**

**Finanzamt Malchin**

(Reference for a preliminary ruling from the Bundesfinanzhof)

(Sixth VAT Directive — Article 15(2) — Exemption for supplies of goods for export to a destination outside the Community — Conditions for exemption not fulfilled — Proof of export falsified by the purchaser — Supplier acting with due commercial care)

Opinion of Advocate General Mazák delivered on 25 October 2007 . . . . . I - 773  
Judgment of the Court (Fourth Chamber), 21 February 2008 . . . . . I - 787

### **Summary of the Judgment**

*Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for in the Sixth Directive  
(Council Directive 77/388, Art. 15(2))*

Article 15(2) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 95/7, must be interpreted as not precluding a Member State from granting an exemption from value added tax on the supply of goods for export to a destination outside the European Community, where the conditions for such an exemption are not met, but the taxable person was not able to recognise — even by exercising due commercial care — that they were not met, because the export proofs provided by the purchaser had been forged.

The objective of preventing tax evasion referred to in Article 15 of the Sixth Directive sometimes justifies stringent requirements as regards the obligations of suppliers as persons liable to payment of value added tax. However, any sharing of the risk between the supplier and the tax authorities, following fraud committed by a third party, must be compatible with the principle of proportionality. That will not be the case if a tax regime imposes the entire responsibility for the payment of value added tax on suppliers, regardless of whether or not they were involved in the fraud committed by the purchaser. It would clearly be disproportionate to hold a taxable person liable for the shortfall in tax caused by fraudulent acts of third parties over which he has no influence whatsoever.

On the other hand, it is not contrary to Community law to require the supplier to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion. Accordingly, the fact that the supplier acted in good faith, that he took every reasonable measure in his power and that his participation in fraud is excluded are important points in deciding whether that supplier can be obliged to account for the value added tax after the event.

Likewise, it would be contrary to the principle of legal certainty if a Member State which has laid down the conditions for the application of the exemption of supplies of goods for export to a destination outside the Community by prescribing, among other things, a list of the documents to be presented to the competent authorities, and which has accepted, initially, the documents presented by the supplier as evidence establishing entitlement to the exemption, could subsequently require that supplier to account for the value added tax on that supply, where it transpires that, because of the purchaser's fraud, of which the supplier had and could have had no knowledge, the conditions for the exemption were in fact not met.

(see paras 21-26, 29, operative part)