Case C-566/07

Staatssecretaris van Financiën

v

Stadeco BV

(Reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

(Sixth VAT Directive — Article 21(1)(c) — Tax due solely as a result of being mentioned on the invoice — Refund of tax improperly invoiced — Unjust enrichment)

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Tax due solely as a result of being mentioned on the invoice*
   (Council Directive 77/388, Art. 21(1)(c))

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Tax due solely as a result of being mentioned on the invoice*
   (Council Directive 77/388)

1. Article 21(1)(c) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 91/680, must be interpreted as meaning that turnover tax is due, in accordance with that provision, to the Member State to which the value added tax mentioned on an invoice or other document serving as invoice relates, even if the transaction in question was not taxable in that Member State. In contrast to the case of tax debt which may arise on the basis of a transaction subject to value added tax, the place of the supply of services giving rise to an invoice is not relevant with regard to the question whether a tax debt arises under Article 21(1)(c) of the Sixth Directive, which is due solely because the tax is mentioned on that invoice.

   It is for the national court to ascertain, taking into account all the relevant circumstances of the case, to which Member State the value added tax mentioned on the invoice in question is due. In particular, the rate mentioned, the currency in which the amount to be paid is expressed, the language in which the invoice was drawn up, the content and context of the invoice at issue, the place of establishment of the issuer of that invoice and the beneficiary of the services performed, as well as their behaviour, can be relevant in that regard.

   (see paras 27, 33, operative part 1)

2. The principle of fiscal neutrality does not generally preclude Member States from making the refund of value added tax, due in that Member State merely because it was erroneously mentioned on the invoice, subject to the requirement that the taxable person should have sent the beneficiary of the services performed a corrected invoice not mentioning that tax, if the taxable person has not completely eliminated in sufficient time the risk of the loss of tax revenue.

   In addition, in so far as the tax national authorities make the refund of the value added tax subject to the payment by the issuer of the invoice in question, to the beneficiary of the services performed, of the amount of tax incorrectly paid, Community law does not prevent a national legal system from disallowing repayment of charges which have been levied but were not due, where to allow such repayment would lead to unjust enrichment of those having the right.

   The existence and the degree of unjust enrichment which repayment of a charge which was levied though not due under Community law entails for a taxable person can be established only following an analysis in which all the relevant circumstances are taken into account. In

that regard, it is for the national court to carry out such an analysis. It could be relevant whether the contracts concluded between the issuer of the invoice and the recipient of the services provided relate to fixed amounts of remuneration for the services provided or basic amounts increased, where appropriate, by the tax applicable. In the first case, there might be no unjust enrichment of the issuer of the invoice.

(see paras 48-51, operative part 2)