

**Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės (Lithuania)) — Nidera Handelscompagnie BV v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos**

(Case C-385/09) <sup>(1)</sup>

*(Directive 2006/112/EC — Right of deduction of input VAT — National legislation excluding the right of deduction in respect of goods sold on before identification of the taxable person for VAT purposes)*

(2010/C 346/30)

Language of the case: Lithuanian

#### Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės

#### Parties to the main proceedings

Applicant: Nidera Handelscompagnie BV

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

#### Re:

Reference for a preliminary ruling — Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės — Interpretation of Articles 167, 168(1)(a) and 178(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation reserving the right to deduct VAT to taxable persons registered for VAT in that Member State — Right to deduct VAT excluded for goods and services acquired by the taxable person before his registration for VAT in the Member State concerned if those goods and services have already been used for the purposes of the taxable person's transactions

#### Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, and who identifies himself as a taxable person for VAT purposes within a reasonable period following the completion of transactions giving rise to that right of deduction, from being denied the possibility of exercising that right by national legislation which prohibits the deduction of VAT paid on the purchase of goods if the taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.

<sup>(1)</sup> OJ C 312, 19.12.2009.

**Judgment of the Court (Fifth Chamber) of 28 October 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Staatssecretaris van Financiën v X BV**

(Case C-423/09) <sup>(1)</sup>

*(Common Customs Tariff — Tariff classification — Combined Nomenclature — Dried vegetables (garlic bulbs) from which not all moisture has been removed)*

(2010/C 346/31)

Language of the case: Dutch

#### Referring court

Hoge Raad der Nederlanden

#### Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: X BV

#### Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281, p. 1) and of Commission Regulation (EC) No 1810/2004 of 7 September 2004 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2004 L 327, p. 1) — Tariff classification of dried vegetables (garlic bulbs), from which not all of the moisture has been removed and which are imported in a chilled state

#### Operative part of the judgment

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004, must be interpreted as meaning that garlic which has undergone an intensive drying process in accordance with a specific treatment as a result of which all, or almost all, of the moisture in the product is removed comes under tariff subheading 0712 90 90 of the Combined Nomenclature, but that partially dried garlic which retains the properties and characteristics of fresh garlic comes under tariff subheading 0703 20 00 of the Combined Nomenclature.

<sup>(1)</sup> OJ C 24, 30.1.2010.