Parties to the main proceedings

Applicant: SC Gran Via Moinești Srl

Defendants: Agenția Națională de Administrare Fiscală (ANAF), Administrația Finanțelor Publice București

Questions referred

1. In the light of Articles 167 and 168 of Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax, can the purchase, by a commercial company liable for VAT, of a number of buildings scheduled for demolition, together with a plot of land, with a view to developing a residential complex on that land constitute a preparatory activity, that is to say, investment expenditure for the purposes of developing a residential complex, entitling that company to deduct the VAT on the purchase of the buildings?

2. In the light of Article 185(2) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, is the demolition of the buildings scheduled for demolition, which were purchased together with the plot of land, with a view to developing a residential complex on the land, subject to adjustment of the VAT on the purchase of the buildings?

[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Action brought on 26 May 2011 — European Commission v Kingdom of Denmark

(Case C-261/11)

(2011/C 238/09)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: R. Lyal and N. Fenger, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— declare that, by introducing and maintaining legislation on immediate taxation on exit of companies' transfers of assets to another Member State without taxing corresponding transfers of assets within Denmark, the Kingdom of Denmark has failed to fulfil its obligations under Article 49 TFEU and Article 31 of the EEA Agreement;

— order the Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

Under Danish tax legislation, the transfer of an undertaking's assets for use outside Denmark is regarded as a sale and is taxed accordingly, whereas an undertaking within the country is regarded as having ceased only when the assets in question are in actual fact sold. An undertaking which transfers assets between different establishments within Denmark is thus not taxed on the value of those assets in connection with such a transfer. If, however, the same undertaking transfers assets to a fixed establishment outside Denmark, it will immediately pay tax on the value of the assets in the same way as if the assets had been sold.

In the Commission's view, that difference in treatment constitutes an obstacle to the freedom of establishment, contrary to Article 49 TFEU. The Commission does not call into question Denmark's ability to impose tax on increases in value received by an undertaking while it is established in Denmark. However, the Commission finds that the circumstances on the basis of which the tax liability arises should be the same, that is, the realisation of an asset or a factor as a result of which depreciation can be adjusted, regardless of whether the capital values concerned are transferred abroad or remain in Denmark.

In the Commission's view, there is no reason for tax to be collected immediately with respect to unrealised increases in value in connection with the transfer of assets in Denmark to another Member State if such a tax is not imposed in equivalent national situations. The Kingdom of Denmark could thus, for example, determine the value of the unrealised increases in value which it considers it has the right to tax, without that implying the immediate collection of tax or compliance with further conditions for deferring payment of tax.

Appeal lodged on 3 June 2011 by Viega GmbH & Co. KG against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-375/06, *Viega GmbH & Co. KG* v *European Commission*

(Case C-276/11 P)

(2011/C 238/10)

Language of the case: German

Parties

Applicant: Viega GmbH & Co. KG (represented by: J. Burrichter, T. Mäger and M. Röhrig, lawyers)

Other party to the proceedings: European Commission

Forms of order sought

— annul the judgment under appeal in so far as it adversely affects the appellant;

— annul, in so far as it concerns the appellant, Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Joints);

— ***in the alternative*** to the heads of claim appearing in points 1 and 2, refer the case back to the General Court for a ruling;

— order the defendant at first instance to pay the costs in relation to the whole dispute.

Pleas in law and main arguments

This appeal is directed against the judgment of the General Court whereby the latter dismissed the action by the appellant against Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Joints).

The appellant bases its appeal on the following grounds.

The General Court infringed the appellant's right to be heard, the principles governing the taking of evidence and the duty to state reasons for the decision given. In order to demonstrate the appellant's participation in the cartel, the judgment under appeal relied mainly on handwritten notes of a single witness and a plea for leniency without making any mention of the appellant's arguments on the subject of those documents. The appellant expressly cast doubt on the accuracy of those documents (the witness did not take part in the German meetings and did not speak German).

The appellant considers that the General Court should have ordered measures of inquiry in relation to the accuracy of the witness notes and the plea for leniency. By using those notes and the plea for leniency as evidence without verifying their accuracy, the General Court infringed the principles governing the taking of evidence.

The judgment under appeal infringed Article 81(1) EC inasmuch as the General Court held that the appellant had participated, on 30 April 1999, in a meeting 'of an anti-competitive nature'. Moreover, the judgment under appeal also infringed Article 23(1) of Regulation No 1/2003 insamuch as participation at that meeting was taken into account when determining the amount of the fine. As regards that meeting, the General Court merely held that the evidence pointed 'rather' to an anti-competitive purpose than to a purpose in accordance with the competition rules. The General Court thus infringed the criterion for assessing evidence that it itself had fixed, which requires that the infringement be proved certainly and beyond dispute.

The appellant argues that the finding that the meeting of 30 April 1999 was of an anti-competitive nature has an effect on the amount of the fine imposed. The taking into account of that meeting served as evidence of the appellant's participation in a pressfittings cartel. The appellant's turnover in the pressfittings sector was thus fixed, in the context of fixing the starting amount for the calculation of the fine, at an amount 11 times higher.

As regards the taking into account of turnover in pressfittings, the judgment further showed a defect in reasoning and offended the laws of logic. The imposition of a fine of more than EUR 50 million was, in the final analysis, based solely, in paragraph 85 of the judgment under appeal, on two meetings the relation of which to pressfittings is dealt with in two half-sentences and established without any assessment of the evidence. Moreover, the General Court assumed that the appellant had participated in anti-competitive agreements concerning pressfittings at the meeting of 30 April 1999, whereas it also held that the latter's competitors debated until June 2000 whether pressfittings (in which the appellant had a monopoly) should be the subject-matter of a cartel at all.

Finally, the judgment under appeal infringed the principle of proportionality. The Commission — with the approval of the General Court — applied the guidelines for the calculation of fines as follows: it first fixed a starting amount by taking account of the turnover for pressfittings, even though, according to the findings of the General Court itself, pressfittings could have been the subject-matter of an anti-competitive agreement only in 2000 and 2001. It then increased the starting amount by 90 % in order to reflect the alleged overall duration of the appellant's participation in the cartel (nine years and three months). The turnover figure for pressfittings having thus been taken into account for the whole of the period and not for the last part, of one year and three months, which was the most that could be relevant, the fixing of the amount of the fine infringed the principle of proportionality.

Appeal brought on 6 June 2011 by Council of the European Union against the judgment of the General Court (Third Chamber) delivered on 22 March 2011 in Case T-233/09: Access Info Europe v Council of the European Union

(Case C-280/11 P)

(2011/C 238/11)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: G. Maganza, B. Driessen, Cs. Fekete, Agents)