



Reports of Cases

Case C-18/12

Město Žamberk

v

Finanční ředitelství v Hradci Králové, now Odvolací finanční ředitelství

(Request for a preliminary ruling from the Nejvyšší správní soud)

(Taxation — VAT — Directive 2006/112/EC — Article 132(1)(m) — Exemption — Supply of services closely linked to sport or physical education — Taking part in sporting activities of a non-organised and unsystematic nature — Municipal aquatic park)

Summary — Judgment of the Court (Fifth Chamber), 21 February 2013

1. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Supplies of services closely linked to sport or physical education — Taking part in sport — Concept — Non-organised and unsystematic sporting activities which are not aimed at participation in sports competitions — Included*

(Council Directive 2006/112, Art. 132(1)(m))

2. *Harmonisation of fiscal legislation — Common system of value added tax — Supply of services — Transactions comprising several elements — Transaction having to be considered to be a single supply — Criteria for determination*

(Council Directive 2006/112)

3. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Supplies of services closely linked to sport or physical education — Access to an aquatic park — Included — Criteria — Determination by the national court*

(Council Directive 2006/112, Art. 132(1)(m))

1. Article 132(1)(m) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that non-organised and unsystematic sporting activities which are not aimed at participation in sports competitions may be categorised as taking part in sport within the meaning of that provision.

That article does not require, for it to be applicable, that the sporting activity be practised at a particular level, for example, at a professional level, or that the sporting activity at issue be practised in a particular way, namely in a regular or organised manner or in order to participate in sports competitions, provided, however, that engagement in that activity is not in a context of pure rest and of amusement.

(see paras 22, 25, operative part 1)

2. See the text of the decision.

(see paras 27-30)

3. Article 132(1)(m) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that access to an aquatic park which offers visitors not only facilities for engaging in sporting activities but also other types of amusement or rest may constitute a supply of services closely linked to sport. It is for the referring court to determine whether that is the case having regard to the specific circumstances of the case and in the light of the interpretative guidance above.

As regards the existence of a single complex supply, it is necessary to examine whether the facilities in the aquatic park at issue form a whole so that access to the whole constitutes a single supply which it would be artificial to split. In that regard, if the only type of entrance ticket offered for the aquatic park gives access to all of the facilities, without any distinction according to the type of facility actually used and to the manner and to the duration of its use during the period of the entrance ticket's validity, that fact constitutes a strong indication of the existence of a single complex supply.

In the context of such a single context supply, to know whether the predominant element is the opportunity to engage in sporting activities falling within Article 132(1)(m) of Directive 2006/112 or, rather, pure rest and amusement, it is necessary to take as a basis the point of view of the typical consumer, who must be determined on the basis of a group of objective factors. In the course of that overall assessment, it is necessary to take account, in particular, of the design of the aquatic park at issue resulting from its objective characteristics, namely the different types of facilities offered, their fitting out, their number and their size compared to the park as a whole.

(see paras 32, 33, 37, operative part 2)