Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

24 October 2013 *

(Taxation — Value added tax — Refund of excess VAT by set-off — Annulment of set-off decision — Obligation to pay default interest to the taxable person)

In Case C-431/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (Romania), made by decision of 21 June 2012, received at the Court on 24 September 2012, in the proceedings

**Agenția Națională de Administrare Fiscală**

v

**SC Rafinăria Steaua Română SA,**

THE COURT (Tenth Chamber),

composed of E. Juhász, President of the Tenth Chamber, acting for the President of the Chamber, A. Rosas and C. Vajda (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— SC Rafinăria Steaua Română SA, by D. Dascălu, avocat,

— the Romanian Government, by R.H. Radu and by E. Gane and A.-L. Crișan, acting as Agents,

— the European Commission, by L. Keppenne and L. Lozano Palacios, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Romanian.

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

2 The request has been made in proceedings between the Agenția Națională de Administrare Fiscală (National Tax Authority of Romania, 'the Agenția') and SC Rafinăria Steaua Română SA ('Steaua Română') concerning a claim for payment of interest relating to the delayed refund of the excess input value added tax ('VAT') over the VAT which Steaua Română was liable to pay.

## Legal context

### *European Union law*

3 The first paragraph of Article 183 of the VAT Directive provides:

'Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period.'

4 Under Article 252(2) of the VAT Directive:

'The tax period shall be set by each Member State at one month, two months or three months.

Member States may, however, set different tax periods provided that those periods do not exceed one year.'

### *Romanian law*

5 The tax procedure is established by Government Order No 92 on the Tax Procedure Code (Ordonanța Guvernului nr. 92 privind Codul de procedură fiscală) of 24 December 2003 (*Monitorul Oficial al României*, Part I, No 941 of 29 December 2003, republished in *Monitorul Oficial al României*, Part I, No 513 of 31 July 2007), in the version in force at the date of the facts in the main proceedings ('the Tax Procedure Code').

6 Article 124(1) of the Tax Procedure Code provides:

'Taxpayers shall have a right to interest on amounts which are to be refunded or reimbursed from public funds with effect from the day following the expiry of the period prescribed ... Interest shall be awarded on application by the taxpayer.'

7 Decree No 1857/2007 of the Minister for the Economy and Finance of 1 November 2007 (*Monitorul Oficial al României*, Part I, No 785 of 20 November 2007) on the approval of the methodology for dealing with VAT returns showing a negative balance with a refund option states in paragraph 6 of section B of Chapter 1 thereof:

'Claims for refund shall be dealt with in the chronological order of their registration with the tax authority within 45 calendar days from the date of submission of the VAT return showing a negative balance with a refund option.'

**Facts giving rise to the dispute in the main proceedings and the question referred for a preliminary ruling**

8 Steaua Română's VAT returns for the months of December 2007 and January 2008 showed a negative balance of RON 3 697 738, refund of which was approved by the Agenția following an inspection.

9 However, following the same inspection, the Agenția drew up a notice of assessment by which it unlawfully imposed two supplementary tax charges on Steaua Română in the amount of RON 19 002 767 in respect of VAT and RON 5 374 404 by way of penalty for default. It subsequently issued two notices by which it refunded the excess VAT by setting it off against those two tax liabilities, thereby settling them.

10 Since Steaua Română's complaints against the notice of assessment and the notices of set-off were rejected, it brought legal proceedings before the Curtea de Apel Ploiești (Court of Appeal, Ploiești) which set aside those notices by judgments of 4 December 2008 and 14 October 2009. The appeals of the Agenția against those judgments were dismissed by the Înalta Curte de Casație și Justiție (Supreme Court of Cassation and Justice) by judgments of 9 June 2009 and 13 May 2010. The Agenția has therefore been ordered to refund to Steaua Română the sum of RON 3 697 738 claimed by that company as its principal claim.

11 On the ground of the unlawfulness of the notice of set-off and the delayed refund of the amount of VAT unlawfully set off Steaua Română made a further claim against the Agenția for the payment of interest on that amount, calculated with effect from the date of expiry of the statutory period of 45 days for reaching a determination on VAT returns until the date of the actual refund of that amount. It quantified the amount of interest at RON 1 793 972.

12 Since the Agenția did not reply to that claim within the period set by the applicable rules, Steaua Română twice lodged tax claims requesting payment of a total amount of RON 1 793 972 by way of statutory interest.

13 Since that claim was rejected by decision of the Agenția of 30 September 2010, the Curtea de Apel București (Court of Appeal, Bucharest), by judgment of 14 February 2011, annulled that decision and ordered the Agenția to pay to Steaua Română the amount of RON 1 793 972, by way of statutory interest up to 27 July 2009.

14 The Agenția brought an appeal against that judgment before the Înalta Curte de Casație și Justiție.

15 In its appeal, the Agenția claimed, inter alia, that the Curtea de Apel București had erred in law by ordering it to pay RON 1 793 972 by way of statutory interest, given that the applicable law does not concern the manner in which the taxable person's claims are dealt with but only penalises failure to deal with those claims within the prescribed period. It claims that the VAT returns and the other claims submitted by Steaua Română were examined within the periods prescribed. Default interest is therefore not due for the period during which the set-off notices were in force.

16 Steaua Română relied on the judgment in Case C-107/10 *Enel Maritsa Iztok 3* ECR I-3873 maintaining that, in that judgment, the Court expressly ruled on the interpretation and application of the principle of VAT neutrality in the light of respect for the right of persons to obtain interest on the delayed refund of excess VAT. Steaua Română, therefore, sought dismissal of the appeal as unfounded, claiming, in essence, that the Agenția had not respected the deadline for the refund of VAT.

17 In those circumstances, considering itself, as the court of appeal of final resort, obliged to bring the matter before the Court of Justice under paragraph 3 of Article 267 TFEU, the Înalta Curte de Casație și Justiție decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is it contrary to Article 183 of ... Directive 2006/112/EC ... if Article 124 of the Romanian Tax Procedure Code is interpreted as meaning that the State is not liable for payment of interest on amounts claimed under VAT declarations in respect of the period between the date of set-off of those amounts and the date on which those set-off decisions are annulled by a national court?'

**The question referred for a preliminary ruling**

18 By its question the referring court asks, in essence, whether Article 183 of the VAT Directive must be interpreted as precluding a situation in which a taxable person, having made a claim for refund of excess input VAT over the VAT which it is liable to pay, cannot obtain from the tax authorities of a Member State default interest on a refund made late by those authorities in respect of a period during which administrative measures precluding the refund, which were subsequently annulled by a court ruling, were in force.

19 It should be noted that although Article 183 of the VAT Directive does not lay down any obligation to pay interest on a refund of excess VAT or the date from which such interest is payable, it cannot be concluded from that fact alone that that article must be interpreted as meaning that no control may be exercised under European Union law over the procedures established by Member States for the refund of excess VAT (*Enel Maritsa Iztok 3*, paragraphs 27 and 28 and the case-law cited).

20 While the implementation of the right to a refund of excess VAT provided for in Article 183 of the VAT Directive falls, as a general rule, under the procedural autonomy of the Member States, the fact remains that that autonomy is circumscribed by the principles of equivalence and effectiveness (*Enel Maritsa Iztok 3*, paragraph 29).

21 Furthermore, it follows from the case-law that specific rules must be complied with by the Member States in implementing the right to reimbursement of excess VAT arising from Article 183 of the VAT Directive, interpreted in the light of the general context and principles governing VAT. The right of taxable persons to deduct the VAT they have already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by the relevant European Union legislation. That right is an integral part of the VAT scheme and as a general rule may not be limited. That right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (*Enel Maritsa Iztok 3*, paragraphs 30 to 32 and the case-law cited).

22 It is in the light of those considerations that the Court has held that conditions for the refund of excess VAT cannot undermine the principle of fiscal neutrality of the VAT system by making the taxable person bear the burden of the VAT in whole or in part, which implies that the refund is made within a reasonable period of time (*Enel Maritsa Iztok 3*, paragraph 33).

23 For the same reasons, when the refund to the taxable person of the excess VAT is not made within a reasonable period, the principle of fiscal neutrality of the VAT system requires that the financial losses incurred by the taxable person owing to the unavailability of the sums of money at issue are compensated through the payment of default interest.

24 In that respect, it follows from the case-law of the Court that the calculation of the interest payable by the Treasury which does not take as its starting point the date on which the excess VAT would have had to be repaid in the normal course of events in accordance with the VAT Directive would be

contrary, in principle, to the requirements of Article 183 of that directive (*Enel Maritsa Iztok 3*, paragraph 51). It is apparent from the order for reference that, in the main proceedings, the applicable national law provides, in principle, for the calculation of default interest from the expiry of a period of 45 days for reaching a determination on VAT returns.

25 In addition, it should be stated that, from the taxable person's perspective, the reason why the refund of excess VAT is delayed is irrelevant. There is no material difference in that situation between a refund delayed because a claim was dealt with administratively after the expiry of the time-limits and one delayed by administrative measures which unlawfully preclude the refund and are subsequently annulled by a court ruling.

26 In the light of those considerations, the answer to the question is that Article 183 of the VAT Directive must be interpreted as precluding a situation in which a taxable person, having made a claim for a refund of excess input VAT over the VAT which it is liable to pay, cannot obtain from the tax authorities of a Member State default interest on a refund made late by those authorities in respect of a period during which administrative measures precluding the refund, which were subsequently annulled by a court ruling, were in force.

## Costs

27 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

**Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a situation in which a taxable person, having made a claim for refund of excess input value added tax over the value added tax which it is liable to pay, cannot obtain from the tax authorities of a Member State default interest on a refund made late by those authorities in respect of a period during which administrative measures precluding the refund, which were subsequently annulled by a court ruling, were in force.**

[Signatures]