Reports of Cases

Case C-18/13

Maks Pen EOOD
v
Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia

(Request for a preliminary ruling from the Administrativen sad Sofia-grad)

(Taxation — Common system of value added tax — Directive 2006/112/EC — Deduction of input tax — Supplies made — Tax inspection — Supplier not having the necessary resources — Concept of tax evasion — Obligation to make a finding of tax evasion of the court's own motion — Requirement that the service actually be supplied — Requirement to keep accounts in sufficient detail — Legal proceedings — National court prohibited from classifying the tax evasion as a criminal offence and adversely affecting the applicant's situation)

Summary — Judgment of the Court (Seventh Chamber), 13 February 2014

1. *Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax — Tax included in invoices issued by a supplier without the necessary resources to supply the invoiced services — Supplies made by another supplier — Exclusion of the right to deduct — Lawfulness — Conditions — Verification a matter for the national court*

   (Council Directive 2006/112)

2. *EU law — Legal proceedings before the national court — Application by the court of its own motion of a provision of EU law leading to the disapplication of the national rule prohibiting reformatio in peius — Obligation on the national court — None — Exception*

3. *Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax — National legislation prohibiting the deduction of value added tax where there is tax evasion or tax abuse — Obligation on the court to find tax evasion of its own motion — Interpretation of the national law by the national court in the light of the wording and the purpose of Directive 2006/112 — Whole body of domestic law to be taken into consideration and interpretative methods of that law to be applied*

   (Council Directive 2006/112)

4. *Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax — Obligation to keep accounts in sufficient detail — Scope — Obligation for a taxable person to comply with international accounting standards — Lawfulness — Conditions*

   (European Parliament and Council Regulation No 1606/2002; Council Directive 2006/112, Arts 242 and 273)

1. Directive 2006/112 on the common system of value added tax must be interpreted as precluding a taxable person from deducting the value added tax included in the invoices issued by a supplier where, although the supply was made, it is apparent that the supply was not actually made by that supplier or by its sub-contractor, inter alia because they did not have the personnel, equipment or assets required, there was no record of the costs of making the supply in their accounts and the identification of persons signing certain documents as the suppliers was shown to be inaccurate, subject to the twofold condition that such facts constitute fraudulent conduct and that it is established, in the light of objective evidence provided by the tax authorities, that the taxable person knew or should have known that the transaction relied on to give entitlement to the right to deduct was connected with that fraud, which it is for the referring court to determine.

(see para. 32, operative part 1)

2. EU law cannot oblige a national court to apply EU legislation of its own motion where this would have the effect of disregarding the principle, enshrined in its national procedural law, of the prohibition of *reformatio in peius*.

However, it is not obvious that, in a dispute which, from its origin, concerns the right to deduct the value added tax included in a number of specific invoices, such a prohibition can apply to the submission by the tax authorities during court proceedings of new evidence which, concerning those same invoices, cannot be regarded as adversely affecting the situation of the taxable person who is relying on that right to deduct.

(see para. 37)

3. Where the national courts must or may raise of their own motion points of law based on binding rules of national law, they must do so in relation to a binding rule of EU law such as that which requires that the national courts and authorities refuse entitlement to the right to deduct value added tax where it is established, in the light of objective evidence, that that right is being relied on for fraudulent or abusive ends. It is incumbent on those courts, in the assessment of whether that right to deduct was relied on for fraudulent or abusive ends, to interpret the national law, so far as possible, in the light of the wording and the purpose of Directive 2006/112 on the common system of value added tax, in order to achieve the result sought by that directive, which requires that they do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by that law.

In this connection, even if a rule of national law were to classify the tax evasion as a criminal offence, where only a criminal court could make that classification, it is not obvious that such a rule would preclude the court responsible for assessing the legality of an amended tax notice which contests the value added tax deduction made by a taxable person from being able to rely on objective evidence submitted by the tax authorities to establish the existence of tax evasion, where, pursuant to another provision of national law, value added tax which is 'unlawfully invoiced' cannot be deducted.

(see paras 38, 39, operative part 2)

4. Directive 2006/112 on the common system of value added tax, by requiring in particular, pursuant to Article 242 thereof, that any taxable person keep accounts in sufficient detail to allow the value added tax to be applied and its application checked by the tax authorities, must be interpreted as not precluding the Member State concerned, within the limits provided for in Article 273 of that directive, from requiring that any taxable person observe in that regard all the national accounting rules consistent with international accounting standards, provided that the measures adopted to that effect do not go beyond what is necessary to attain the objectives of ensuring the correct levying and

collection of the tax and preventing tax evasion. In that regard, Directive 2006/112 precludes a national provision according to which a service is deemed to have been supplied at the time when the conditions governing recognition of the revenue arising from that service are satisfied.

Therefore, the time when the tax becomes chargeable, and thus deductible for the taxable person, cannot be determined, generally, by the completion of formalities such as the entering, in the supplier's accounts, of the costs borne by them in respect of the supply of their services. Moreover, provided that they comply with those limits, EU law does not preclude additional national accounting rules which are established by reference to international accounting standards applicable within the European Union under the conditions provided for by Regulation No 1606/2002 on the application of international accounting standards.

(see paras 44, 46, 48, operative part 3)