



Reports of Cases

Case C-499/13

Marian Macikowski

v

Dyrektor Izby Skarbowej w Gdańsku

(Request for a preliminary ruling from the Naczelny Sąd Administracyjny)

(Reference for a preliminary ruling — Common system of value added tax — Principles of proportionality and fiscal neutrality — Taxation of a supply of immovable property in a procedure for compulsory sale by auction — National legislation requiring the court enforcement officer executing such a sale to calculate and pay VAT on the transaction — Payment of the purchase price to the competent court and need for the VAT to be paid to be transferred by that court to the court enforcement officer — Liability for damages and criminal liability of the court enforcement officer for non-payment of VAT — Difference between the general statutory time-limit for the payment of VAT by a taxable person and the time-limit imposed on the court enforcement officer — Impossibility of deducting the input VAT paid)

Summary — Judgment of the Court (First Chamber), 26 March 2015

1. *Harmonisation of fiscal legislation — Common system of value added tax — Persons liable to pay the tax — Compulsory sale procedure — National legislation requiring the court enforcement officer executing such a sale to calculate, collect and pay value added tax on the transaction within the prescribed time-limits — Whether permissible*

(Council Directive 2006/112, Arts 9, 193 and 199(1)(g))

2. *Harmonisation of fiscal legislation — Common system of value added tax — Obligations of persons liable for the tax — National legislation requiring a court enforcement officer to bear liability in the event of failure to fulfil an obligation as paying agent — Whether permissible — Condition — Observance of the principle of proportionality — Verification a matter for the national court*

(Council Directive 2006/112)

3. *Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax — National legislation requiring the paying agent as referred to in that legislation to calculate, collect and pay value added tax on a sale of goods effected through enforcement without any possibility of deduction — Whether permissible*

(Council Directive 2006/112, Arts 206, 250 and 252)

1. Articles 9, 193 and 199(1)(g) of Directive 2006/112 on the common system of value added tax must be interpreted as not precluding a provision of national law which, within the context of a sale of immovable property effected through enforcement, imposes on a person — namely the court enforcement officer who made the sale — obligations to calculate, collect and pay the value added tax on the proceeds of that transaction within the prescribed time-limits.

Where the national legislation seeks to prevent the taxable person, having regard to his financial situation, from infringing his fiscal obligation to pay value added tax, such legislation is capable of ensuring the correct collection of the tax and thus of falling within Article 273 of Directive 2006/112. In addition, although it is true that Articles 193 and 199(1)(g) of Directive 2006/112 provide that the tax may be payable only by a taxable person carrying out a taxable supply of goods or, in certain circumstances, by the purchaser of the immovable property, the function of the court enforcement officer as the intermediary responsible for the collection of that tax does not fall within those provisions. His obligation limited to ensuring the collection of the amount of the tax and its payment to the tax authority on behalf of the taxable person by whom it is payable, within the prescribed time-limit, is not a fiscal obligation, because that obligation still lies with the taxable person.

(see paras 38, 39, 41, 42, 45, operative part 1)

2. The principle of proportionality must be interpreted as not precluding a provision of national law under which a court enforcement officer must be liable with his entire assets for the amount of value added tax due on the proceeds of the sale of immovable property effected through enforcement where he does not discharge his obligation to collect and pay that tax, provided that the court enforcement officer concerned actually has all legal means to discharge that obligation, which it is for the referring court to determine.

(see para. 53, operative part 2)

3. Articles 206, 250 and 252 of Directive 2006/112 on the common system of value added tax and the principle of fiscal neutrality must be interpreted as not precluding a provision of national law under which the paying agent as referred to in that provision is required to calculate, collect and pay an amount of value added tax on a sale of goods effected through enforcement without being able to deduct the amount of value added tax paid as input tax from the beginning of the tax period to the date of the collection of that tax from the taxable person.

This is so where it is the taxable person who owns the goods auctioned by the court enforcement officer, and not the paying agent, who is required to submit a value added tax return taking account of the sale of his goods, and where it is also the taxable person, and not the paying agent, who has the right to deduct the value added tax paid as input tax from the value added tax owed on the basis of that transaction. That deduction concerns the tax period during which that transaction took place.

(see paras 57, 61, operative part 3)