2. Is Article 314 of Directive 2006/112 to be understood and interpreted as meaning that, although the VAT invoice states that the goods are exempt from VAT (Article 226(11) of Directive 2006/112) and/or the seller has applied the margin scheme in order to supply the goods (Article 226(14) of Directive 2006/112), the taxable person acquires the right to apply the VAT margin scheme only when the supplier of the goods actually applies the margin scheme and duly discharges his obligations in the sphere of payment of VAT (pays VAT on the margin in his State)?

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

Appeal brought on 01 December 2015 by VSM Geneesmiddelen BV against the order of the General Court (Eighth Chamber) delivered on 16 September 2015 in Case T-578/14: VSM Geneesmiddelen BV v European Commission

(Case C-637/15 P)

(2016/C 048/27)

Language of the case: English

Parties

Appellant: VSM Geneesmiddelen BV (represented by: U. Grundmann, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— set aside the Order of the General Court (Eighth Chamber) in the case T-578/14, dated 16 September 2015, served by telefax on 21 September 2015.

— set aside the decision of the President of the Chamber not to place the letters lodged on 22/07/2015 and 24/07/2015 on the case file in case T-578/14, served on 21 September 2015.

— declare that the Commission has unlawfully failed to initiate the assessment of health claims on botanical substances by the European Food Safety Authority pursuant to Article 13 Section 3 of Regulation (EC) 1924/2006 since 01/08/2014, and, in the alternative, annul the decision, allegedly contained in the Commission's Letter of 29/06/2014, not to initiate the assessment of health claims on botanical substances by EFSA, pursuant to Article 13 before 01/08/2014.

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

According to Article 13 chapter 3 of the Regulation (EC) 1924/2006 — the Health Claims Regulation — ('HCR') the European Commission was under an obligation to adopt a list of permitted claims for substances used in food at the latest by 31/01/2010. In preparation for the adoption of such a list the European Food Safety Authority (EFSA) was commissioned to evaluate claims that had been submitted by the Member States. However, in September 2010 the Commission announced the suspension and review of the assessment procedure as regards claims for botanical substances, whereupon EFSA ceased to process those claims. The Commission suspended only the assessment procedure on botanical substances, but not the procedure on other, similar chemical substances.

VSM Geneesmiddelen B.V. called upon the European Commission, with a letter dated 23/04/2014, to instruct EFSA to resume, without delay, the assessment of health claims for botanical substances used in food.

VSM Geneesmiddelen B.V. is strongly affected by the present legal backlog and the uncertainty in the field of health claims on botanical substances used in food. A number of the health claims that have been submitted to the European Commission refer to botanical substances used in the product range of VSM Geneesmiddelen B.V. Among these are claims for stinging nettle/*urtica* (claims 2346, 2498 and 2787), St. John's wort/*hypericum perforatum* (claims 2272 and 2273), melissa (claims 3712, 3713, 2087, 2303 and 2848) and witch hazel/*lhamamelis virginiana* (claim 3383). None of these claims has so far been assessed by the EFSA and has accordingly not been included in the Commission's list according to Article 13 III HCR.

The responsible Commissioner informed the Appellant in a letter dated 19/06/2014 that the Commission has received expressions of concern from various Member States and stakeholders with regard to the differentiated treatment of products containing such substances under the legislation on health claims for food on the one hand, and on the traditional herbal medicinal products on the other. The Commissioner informed the Appellant, that the Commission will not initiate the assessment of health claims on botanicals at this stage. The Commission needs some time to identify the best course of action needed.

The answer of the Commissioner is not acceptable to the Appellant. For this reason, the legal representative of the Appellant in this procedure, sent a further letter to the Commissioner, dated 08/07/2014, setting a deadline for the initiation of the assessment of health claims on botanicals by EFSA ending 31/07/2014. No reply has been received to that letter.

The Appellant brought a complaint before the General Court asking the Court to declare that the Commission has unlawfully failed to initiate the assessment of health claims on botanical substances by EFSA, and, in the alternative, for annulment of the decision not to initiate the assessment of health claims on botanical substances by EFSA. The General Court dismissed the complaint as inadmissible in case T-578/14 by an order dated 16 September 2015. With this appeal the Appellant claims that the Court should set aside the aforementioned order of the General Court and take the decision sought in the complaint before the General Court.

The contested judgment contains breaches of procedure which adversely affect the interests of the Appellant, and, in addition, the General Court infringed Union law in aforementioned court order. The General Court found the complaint to be inadmissible because (i) the Appellant missed time limits set by law; (ii) the Appellant did not properly demonstrate that it has an interest, in bringing the proceedings; (iii) the transitional measures in Art. 28 of Regulation No. 1924/2006 are sufficient to protect food business operators and there would not be a definite advantage in the adoption of a definitive list of permitted health claims for food business operators, and (iv) the provisions of the health claims regulation leave it to the discretion of the Commission to define the timeframe in which the list of permitted claims should be adopted and that the Commission enjoys a wide discretion in doing so. These findings of the General Court violate the TFEU, the Charter of the Fundamental Rights of the European Union and other EU law.

The Commission does not enjoy a wide discretion as to when to act and how to act. It is stated in Art. 13 Sec. 3 of Regulation No. 1924/2006 that the Commission has to consult with EFSA prior to taking any decision, and that the Commission has to finalize the list by 31 January 2010 at the latest. Both in consulting with EFSA and adopting the list by 31 January 2010 the latest the Commission has no discretion. The General Court failed in its arguments. Since Member States have to adopt the content of EU Directives within the time limit set by the Directive and, therefore, are bound by EU law, the same applies to the European Commission, which is also bound by time limits given in the Regulation. If missing time limits by the Member States is considered as a clear violation of EU law, the same applies to the Commission's missing time limits in the Health Claims Regulation.

The General Court failed when arguing that food business operators, such as the Appellant, are protected by transitional measures. Art. 28 Sec. 5 of the Regulation refers directly to Art. 13 Sec. 3 of the Regulation which means that the transitional measures ended on 31 January 2010 the latest. It may be acceptable that this time limit may not be met and that the transitional measures shall apply after 31 January 2010 for a couple of months, but missing the time limits set by law by six years is not fulfilling the goals of the health claim regulation itself.

Since the Appellant brought Claims which are now under observation by EFSA the Appellant is directly affected and, therefore, in a position to bring an action against the Commission. The arguments of the General Court in the case T-296/12 apply to this case.

The Appellant has met all time limits provided in Art. 265 and 263 TFEU. The General Court violated the Appellant's rights of effective protection by a tribunal in accordance with the Charter of the Fundamental Rights of the European Union.

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 3 December 2015 — Trustees of the P Panayi Accumulation & Maintenance Settlements v Commissioners for Her Majesty's Revenue and Customs

(Case C-646/15)

(2016/C 048/28)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Trustees of the P Panayi Accumulation & Maintenance Settlements

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. Is it compatible with the freedom of establishment, the free movement of capital, or the freedom to provide services for a Member State to enact and maintain legislation such as section 80 of the Taxation of Chargeable Gains Act 1997 under which a charge to tax arises on the unrealised gains in value of the assets comprised in a trust fund if the trustees of a trust become at any time neither resident nor ordinarily resident in the Member State.

2. On the assumption that such a charge to tax restricts the exercise of the relevant freedom, is such a charge justifiable in accordance with the balanced allocation of powers of taxation, and is such a charge proportionate where the legislation neither grants the trustees the option to defer the charge to tax or to pay in instalments, nor does it take into account any subsequent fall in the value of the trust assets.

3. Are any of the fundamental freedoms engaged where a Member State imposes a charge to tax on unrealised capital gains on the increase in value of assets held by trusts at the time when the majority of the trustees cease to be resident or ordinarily resident in that Member State?