



Reports of Cases

Case C-360/11

European Commission

v

Kingdom of Spain

(Failure of a Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Application of a reduced rate — Articles 96 and 98(2) — Points 3 and 4 of Annex III — ‘Pharmaceutical products normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’ — ‘Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled’)

Summary — Judgment of the Court (Third Chamber), 17 January 2013

1. *EU law — Interpretation — Provision which constitutes a derogating measure — Strict interpretation*
2. *EU law — Interpretation — Provision containing no express reference to the law of the Member States — Independent and uniform interpretation*
3. *Harmonisation of fiscal legislation — Common system of value added tax — Discretionary power of the Member States to apply a reduced rate to certain supplies of goods and services — Pharmaceutical product — Definition — Definition including that of the medicinal product — Products which may be used to manufacture medicinal products — Not included*

(Council Regulation No 2658/87, as amended by Regulation No 1238/2010, Annex I; European Parliament and Council Directive 2001/83; Council Directive 2006/112, Art. 98 and Annex III, point 3)

4. *Harmonisation of fiscal legislation — Common system of value added tax — Discretionary power of the Member States to apply a reduced rate to certain supplies of goods and services — Medicinal equipment — Definition — Equipment for general use on humans and animals — Not included*

(Council Directive 2006/112, Art. 98 and Annex III, point 4)

5. *Harmonisation of fiscal legislation — Common system of value added tax — Discretionary power of the Member States to apply a reduced rate to certain supplies of goods and services — Medical equipment used to alleviate human handicap — Definition — Equipment used for animals — Equipment not reserved for personal use — Not included*

(Council Directive 2006/112, Art. 98 and Annex III, points 3 and 4)

1. See the text of the decision.

(see para. 18)

2. See the text of the decision.

(see para. 19)

3. The concept of ‘pharmaceutical products’ to which reduced rates of value added tax (VAT) may be applied for the purposes of point 3 of Annex III to Directive 2006/112 on the common system of value added tax must be interpreted as meaning that, while including the concept of ‘medicinal product’ within the meaning of Directive 2001/83 on the Community code relating to medicinal products for human use, it has a broader meaning than the latter. That interpretation is also in line with the concept of ‘pharmaceutical product’, used in Chapter 30 of the Combined Nomenclature in Annex I to Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Regulation No 1238/2010, which lists as pharmaceutical products not only medicinal products, but also preparations and pharmaceutical articles, such as wadding, gauze, bandages and similar articles.

Moreover, it is apparent from the wording of point 3 of Annex III to Directive 2006/112 that the goods must be ‘normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’. The result of those considerations is that point 3 concerns only finished goods which may be used directly by final consumers, other than goods which may be used in the production of medicinal products, which normally require further processing.

That interpretation is corroborated by the purpose of Annex III to Directive 2006/112, which is to render less onerous, and thus more accessible to final consumers — who ultimately bear the VAT — certain goods regarded as being particularly necessary.

(see paras 43, 44, 46-48)

4. Point 4 of Annex III to Directive 2006/112 on the common system of value added tax does not authorise a reduced rate of VAT to be applied to a category of goods consisting of medical devices, material, equipment and appliances used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments.

First, that provision does not cover all medical devices, material, equipment and appliances, irrespective of their intended use and, second, it concerns only human use and not veterinary use. Not only must the categories referred to in Annex III to Directive 2006/112 be interpreted strictly, in so far as the EU law measure at issue is a derogating measure, but the concepts used in that annex must also be interpreted in accordance with the normal sense of the terms at issue.

(see paras 59, 63, 64)

5. It is clear from the wording of the second sentence of point 4 of Annex III to Directive 2006/112 on the common system of value added tax that that provision authorises the application of a reduced rate of VAT only to medical equipment, aids and other appliances normally intended to alleviate or treat human disabilities.

The term ‘disabled’, used in the second sentence of that provision, does not refer to animals affected by a physical handicap, but only to persons.

Moreover, it is apparent from the very meaning of the words ‘personal’ and ‘exclusive’ in point 4 of Annex III that that point does not relate to apparatus and accessories used essentially or primarily to alleviate physical disability in humans, but which are not intended for the exclusive personal use of the disabled. The objective of reducing the cost for final consumers of certain essential goods does not justify the application of a reduced rate of VAT to medical devices for general use which are used in

hospitals and by health-care professionals. The application of a reduced rate of VAT, in the case of a product which may be put to uses different from those listed in point 4, is subject, for each supply of goods, to the product being used for its intended purpose by the purchaser.

(see paras 73, 85-87, operative part)