



Reports of Cases

Order of the Court (Fifth Chamber) of 28 February 2013 — Forwards V

(Case C-563/11)

(Article 99 of the Rules of Procedure — Taxation — VAT — Sixth Directive — Right to deduct — Refusal — Invoice issued by a company considered fictitious)

Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax — Refusal on the ground that the delivery of the goods was not carried out due to fraud or irregularities — Not permissible — Limits — Conditions — Recipient of the invoice who was aware or should have been aware of the existence of fraud — Verification incumbent on national court (Council Directive 77/388, Art. 17(2)(a)) (see paras 29, 34, 35, 38-44, operative part)

Re:

Request for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Right to deduct input VAT — Taxable person fulfilling the requirements imposed by national law for deduction of the tax paid when goods are purchased, without any abusive conduct having been demonstrated — Refusal of the right to deduct VAT if it is established that the other party to the transaction is unable to supply the goods listed on the invoice which is formally in order.

Operative part

Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as precluding the recipient of an invoice from being denied the right to deduct input value added tax on the ground that, in the light of the fraud or irregularities committed by the issuer of that invoice, the transaction corresponding to the invoice is considered not to have been actually carried out, unless it is established, on the basis of objective factors and without requiring of the recipient of the invoice checks which are not its responsibility, that the recipient knew or should have known that that transaction was connected with value added tax fraud, a matter which it is for the referring court to determine.