Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 January 2017 [1]

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Special scheme for taxing the profit margin — Concept of 'second-hand goods' — Sales of parts removed from end-of-life vehicles)

In Case C-471/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vestre Landsret (Western Regional Court, Denmark), made by decision of 2 September 2015, received at the Court on 7 September 2015, in the proceedings

Sjelle Autogenbrug I/S

v

Skatteministeriet,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras (Rapporteur), J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 September 2016,

after considering the observations submitted on behalf of:

— Sjelle Autogenbrug I/S, by C. Bachmann, advokat,

— the Danish Government, by C. Thorning, acting as Agent, and by D. Auken, advokat,

— the Greek Government, by E. Tsaousi and K. Nasopoulou, acting as Agents,

— the European Commission, initially by L. Lozano Palacios and M. Clausen, and subsequently by L. Lozano Palacios, L. Grønfeldt and M. Clausen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2016,

gives the following

1 — Language of the case: Danish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 311(1)(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between Sjelle Autogenbrug I/S and Skatteministeriet (Ministry of Taxation, Denmark), concerning the applicability of the scheme for taxing the profit margin to the sale of parts from end-of-life vehicles intended to be sold as spare parts.

Legal context

EU law

Directive 2006/112

3 Recital 51 of Directive 2006/112 states:

‘It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors’ items, with a view to preventing double taxation and the distortion of competition as between taxable persons.’

4 Article 1(2) of that directive provides:

‘The principle of the common system of [value added tax “VAT”] entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

…’

5 Title XII of Directive 2006/112, entitled ‘Special Schemes’, includes a Chapter 4, entitled ’Special arrangements for second-hand goods, works of art, collectors’ items and antiques’, comprising Articles 311 to 343.

6 Article 311(1), (1) and (5) of that directive provides:

‘For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

‘(1) “second-hand goods” means movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors’ items or antiques and other than precious metals or precious stones as defined by the Member States;

…

(5) “taxable dealer” means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collectors’ items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale’.

7 Section 2 of Chapter 4 in Title XII of Directive 2006/112 is entitled ‘Special arrangements for taxable dealers’, and includes, inter alia, a subsection 1, entitled ‘Margin scheme’, which comprises Articles 312 to 325.

8 Article 312 of that directive provides:

‘For the purposes of this Subsection, the following definitions shall apply:

(1) “selling price” means everything which constitutes the consideration obtained or to be obtained by the taxable dealer from the customer or from a third party, including subsidies directly linked to the transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the customer, but excluding the amounts referred to in Article 79;

(2) “purchase price” means everything which constitutes the consideration, for the purposes of point (1), obtained or to be obtained from the taxable dealer by his supplier.’

9 Article 313(1) of Directive 2006/112 states:

‘In respect of the supply of second-hand goods, works of art, collectors’ items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.’

10 Article 314 of Directive 2006/112 provides:

‘The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors’ items or antiques where those goods have been supplied to him within the Community by one of the following persons:

(a) a non-taxable person;

…’

11 Article 315 of that directive provides:

‘The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.’

12 Article 318 of Directive 2006/112 provides:

‘1. In order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 250.

In the event that such provision is made in accordance with the first subparagraph, the taxable amount in respect of supplies of goods to which the same rate of VAT is applied shall be the total profit margin made by the taxable dealer less the amount of VAT relating to that margin.

2. The total profit margin shall be equal to the difference between the following two amounts:

(a) the total value of supplies of goods subject to the margin scheme and carried out by the taxable dealer during the tax period covered by the return, that is to say, the total of the selling prices;

(b) the total value of purchases of goods, as referred to in Article 314, effected by the taxable dealer during the tax period covered by the return, that is to say, the total of the purchase prices.

3. Member States shall take the measures necessary to ensure that the taxable dealers referred to in paragraph 1 do not enjoy unjustified advantage or sustain unjustified harm.'

Directive 2000/53/EC

13 Recital 5 of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ 2000 L 269, p. 34) provides that there is a fundamental principle that waste should be reused and recovered, and that preference be given to reuse and recycling. Recital 14 of that directive acknowledges the need to encourage the development of markets for recycled materials.

14 Article 3 of Directive 2000/53, entitled 'Scope', provides in paragraph 1:

'This Directive shall cover vehicles and end-of life vehicles, including their components and materials. Without prejudice to Article 5(4), third subparagraph, this shall apply irrespective of how the vehicle has been serviced or repaired during use and irrespective of whether it is equipped with components supplied by the producer or with other components whose fitting as spare or replacement parts accords with the appropriate Community provisions or domestic provisions'.

Danish law

15 In Chapter 17, under the heading 'Special provisions governing second-hand goods, works of art, collectors' items and antiques' of the lov om merværdiafgift nr. 106 (Law No 106 on value added tax), of 23 January 2013, in the version applicable at the material time ('the Law on VAT'), Paragraph 69(1)(1) and (3) provides:

'1. Undertakings which, with a view to resale, purchase, inter alia, second-hand goods, works of art, collectors' items and antiques, may, upon resale, pay the tax on the second-hand goods in question, under the rules in this Chapter. The application of those rules to, in particular, second-hand goods, is conditional on those goods being supplied to the undertaking in Denmark or from another EU country by:

(1) a non-taxable person,

…

3. "Second-hand goods" means movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or stones. A means of transport supplied to or from another EU country shall be deemed to be second-hand in so far as it is not covered by the definition in Paragraph 11(6).'

16 The *travaux préparatoires* for the 1994 Law on VAT (Folketingstidende 1993-1994, Annex A, column 4368), which inserted the VAT rules on second-hand goods, state that, 'the purpose of the proposed rules is to avoid the full VAT being paid on the same goods two or more times. This occurs, for example, where traders purchase second-hand goods from individuals with a view to resale'.

17 It is apparent from those *travaux préparatoires* that the concept of 'second-hand goods' referred to in Paragraph 69(3) of the Law on VAT means 'movable tangible property that is suitable for further use as it is or after repair. It therefore follows that movable tangible property must retain its identity'.

18 In an information circular of 10 February 2006 concerning VAT on the scrapping of vehicles, the tax authorities indicated that the VAT rules for second-hand goods do not apply to the resale of spare parts by an auto scrap dealer, as the vehicle changes character in that it becomes spare parts.

The dispute in the main proceedings and the question referred for a preliminary ruling

19 Sjelle Autogenbrug is a vehicle reuse undertaking whose principal activity is trading in used motor vehicle parts from end-of-life vehicles.

20 Sjelle Autogenbrug's engages, inter alia, in the environmental and waste treatment of end-of-life vehicles, a prerequisite for being entitled to remove the spare parts. Lastly, sale of scrap metal (scrap), which remains following the treatment and removal of the motor vehicle parts, forms a lesser part of the undertaking's overall turnover.

21 Sjelle Autogenbrug purchases end-of-life vehicles from private individuals and insurance companies. Neither the individuals nor the insurance companies declare VAT on the sales made. The referring court stated, in its decision, that the question it refers to the Court relates only to the characterisation of the used parts from vehicles Sjelle Autogenbrug purchased from private individuals.

22 When end-of-life vehicles are scrapped, this gives the entitlement to a scrappage payment, paid by the Environment Ministry to the vehicle owner most recently registered in the national vehicle register. The aim of the scheme is to give owners an incentive to ensure that the vehicle is scrapped in an environmentally sound manner. As from 2014, vehicle owners themselves, and no longer Sjelle Autogenbrug, have had to ensure that they receive payment of the allowance.

23 The referring court states that there is no information on the composition of the purchase price of the vehicles and, in particular, on how the value of the motor vehicle parts, the scrap metal and the scrappage payment provided for in respect of the environmental and waste treatment of vehicle waste is determined and included in the selling price.

24 The referring court points out that Sjelle Autogenbrug declares VAT in accordance with the general rules. On 15 July 2010, it requested a binding decision from the Danish tax authorities on whether the VAT arrangements for second-hand goods set out in Chapter 17 of the Law on VAT could be applied in relation to its business of reselling used motor vehicle parts.

25 According to the binding decision the authorities issued to it on 6 August 2010, Sjelle Autogenbrug is not eligible for the tax arrangements relating to the profit margin of the sales of second-hand goods, on the ground that the motor vehicle parts at issue do not fall within the concept of 'second-hand goods' within the meaning of the legislation applicable.

26 The Landsskatteretten (National Tax Tribunal, Denmark) upheld that decision by a judgment of 12 December 2011. The applicant in the main proceedings lodged an appeal against that decision in the referring court.

27 In those circumstances the Vestre Landsret (Western Regional Court, Denmark) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In the circumstances of the present case, can parts from end-of-life vehicles which a VAT-registered vehicle reuse undertaking removes from a vehicle with a view to resale as spare parts be regarded as second-hand goods as referred to in Article 311(1)(1) of [Directive 2006/112]?'

Consideration of the question referred

28 By its question, the referring court asks, in essence, whether Article 311(1)(1) of Directive 2006/112 must be interpreted as meaning that used parts, from end-of-life motor vehicles purchased by a vehicle reuse undertaking from a private individual, intended to be sold as spare parts, constitute 'second-hand goods' within the meaning of that provision, with the result that the supplies of such parts, effected by a taxable dealer, are subject to the application of the profit margin scheme.

29 In that regard, it should be borne in mind that, in determining the scope of a provision of EU law, its wording, objective and context must all be taken into account (judgment of 3 March 2011, *Auto Nikolovi*, C-203/10, EU:C:2011:118, paragraph 41 and the case-law cited).

30 In that regard, as set out in Article 311(1)(1) of Directive 2006/112, 'movable tangible property that is suitable for further use as it is or after repair' constitutes 'second-hand goods'.

31 It must be found that it is not apparent from that provision that the concept of 'second-hand goods', within the meaning thereof, excludes movable tangible property that is suitable for further use as it is or after repair, coming from other property in which it was incorporated as a component. The fact that used property which forms part of other property is separated from the latter does not call into question the characterisation of the property removed as 'second-hand goods', to the extent that it may be reused 'as it is or after repair'.

32 In addition, in order to be characterised as 'second-hand goods', it is only necessary that the used property has maintained the functionalities it possessed when new, and that it may, therefore, be reused as it is or after repair.

33 That is the case of motor vehicle parts removed from an end-of-life motor vehicle, in so far as, even if separated from that vehicle, they maintain the functionalities they possessed when new and may, therefore, be reused for the same purposes.

34 That interpretation is, moreover, consistent with the fundamental principle laid down in recital 5 of Directive 2000/53 that motor vehicle waste, which includes, inter alia, the components and materials of end-of-life vehicles, should be reused and recovered.

35 The Danish Government's argument that the characterisation as 'second-hand goods', within the meaning of Article 311(1)(1) of Directive 2006/112, presupposes that the property purchased retains its identity as the property sold, which would not be the case where a complete motor vehicle is purchased and the parts removed from that vehicle are resold, cannot call such an interpretation into question. The Danish Government contends that the parts removed from a used vehicle were produced when the waste from the vehicle was treated. They did not, therefore, retain their identity between the time when they were purchased by the undertaking as parts of an end-of-life vehicle and when they were sold as spare parts.

36 It must, however, be noted that a motor vehicle is composed of a set of parts which have been assembled and may be removed and resold, as they are or after repair.

37 In those circumstances, the parts from end-of-life motor vehicles must be regarded as constituting 'second-hand goods' within the meaning of Article 311(1)(1) of Directive 2006/112, with the result that the supplies of such parts, effected by taxable dealers, are subject to the application of the profit margin scheme, in accordance with Article 313(1) of that directive.

38 In that regard, as for the profit margin scheme, it is to be noted that, in the words of the second paragraph of Article 315 of Directive 2006/112, the profit margin of the taxable dealer is to be equal to the difference between the selling price charged by him for the goods and the purchase price.

39 The failure to apply those arrangements to spare parts, taken from end-of-life vehicles purchased from private individuals, would be contrary to the objective of the special margin scheme which seeks, as is apparent from recital 51 of Directive 2006/112, to avoid double taxation and distortions of competition between taxable persons in the area of second-hand goods (see, to that effect, judgments of 1 April 2004, *Stenholmen*, C-320/02, EU:C:2004:213, paragraph 25; of 8 December 2005, *Jyske Finans*, C-280/04, EU:C:2005:753, paragraph 37; and of 3 March 2011, *Auto Nikolovi*, C-203/10, EU:C:2011:118, paragraph 47).

40 Making transactions for the supply of such spare parts effected by a taxable dealer subject to VAT would lead to double taxation, in so far as, first, the sale price of those parts necessarily already takes account of input VAT paid at the time of the vehicle's purchase by a person falling within Article 314(a) of Directive 2006/112 and, secondly, neither that person nor the taxable dealer was able to deduct that amount (see judgment of 3 March 2011, *Auto Nikolovi*, C-203/10, EU:C:2011:118, paragraph 48 and the case-law cited).

41 Admittedly, the Danish and Greek Governments refer to possible difficulties in determining, in accordance with Article 315 of Directive 2006/112, the taxable amount of the profit margin and, in particular, the purchase price of each of the parts removed.

42 However, any practical difficulties in applying the profit margin scheme cannot justify excluding certain categories of taxable dealers from that scheme, since the possibility of such an exclusion is provided for in neither Article 313 nor any other provision of Directive 2006/112.

43 In addition, the taxable amount determined in accordance with the profit margin scheme must be on the basis of accounts from which it may be ascertained that all the conditions for applying that scheme have been fulfilled.

44 Furthermore, it must be borne in mind that, in order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme and to which the same rate of VAT is applied, will be the total profit margin made, as defined in Article 318 of Directive 2006/112.

45 In the light of all the foregoing considerations, the answer which must be given to the referring court is that Article 311(1)(1) of Directive 2006/112 must be interpreted as meaning that used parts, from end-of-life motor vehicles purchased by a vehicle reuse undertaking from a private individual, intended to be sold as spare parts, constitute 'second-hand goods' within the meaning of that provision, with the result that the supplies of such parts, effected by a taxable dealer, are subject to the application of the profit margin scheme.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 311(1)(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that used parts, from end-of-life motor vehicles purchased by a vehicle reuse undertaking from a private individual, intended to be sold as spare parts, constitute 'second-hand goods' within the meaning of that provision, with the result that the supplies of such parts, effected by a taxable dealer, are subject to the application of the profit margin scheme.

[Signatures]