Reports of Cases

Case C-33/16
Proceeding brought by A Oy

(Request for a preliminary ruling from the Korkein hallinto-oikeus)

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 148(d) — Exemption — Supply of services to meet the direct needs of vessels used for navigation on the high seas — Loading and unloading of cargo by a subcontractor on behalf of an intermediary)

Summary — Judgment of the Court (Eighth Chamber), 4 May 2017

1. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Supply of services to meet the direct needs of vessels used for navigation on the high seas — Scope — Loading and unloading of cargo onto and off a vessel — Included*

   (Council Directive 2006/112, Art. 148(d))

2. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Supply of services to meet the direct needs of vessels used for navigation on the high seas — Scope — Loading and unloading of cargo by a subcontractor on behalf of an intermediary — Included — Services of loading and unloading cargo supplied to the owner of that cargo at the end of the commercial chain — Included*

   (Council Directive 2006/112, Art. 148(d))

1. Article 148(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that loading and unloading of cargo are services supplied for the direct needs of the cargo of the vessels referred to in Article 148(a) thereof.

In that connection, it must be recalled that Article 148(c) of Directive 2006/112, to which Article 148(d) expressly refers, aims, like the latter, to exempt services related to international maritime transport and refers, in order to designate those services, to the same vessels, namely those referred to in point (a) thereof. Those two provisions thus being similar and complementary, the concept of 'direct needs of a vessel and its cargo' must be interpreted being guided by the general scheme of the provisions of Article 148(c) of that directive.

It must be observed that Article 148(c) of Directive 2006/112 exempts, inter alia, hire, repairs and maintenance if the latter pertains to something used for the operation of vessel covered by point (a) of that article. Essentially, Article 148(c) therefore lays down a requirement for the existence of a link between the supply of services made and the operation of the vessel concerned (see, to that effect, judgment of 4 July 1985, *Berkholz*, 168/84, EU:C:1985:299, paragraph 21).

The services of loading and unloading of cargo satisfy that requirement. The transport of cargo constitutes a usual form of operating vessels used for navigation on the high seas. In order for cargo to be transported and, thus for a vessel to be operated, it is necessary for that cargo to be transported from the port of departure and then unloaded at the port of arrival.

(see paras 22-24, 26, operative part 1)

2. In those circumstances, the answer to the second and third questions is that Article 148(d) of Directive 2006/112 must be interpreted as meaning that, first, not only supplies of services concerning loading or unloading cargo onto or from a vessel covered by Article 148(a) of that directive which take place at the end of the commercial chain of such a service may be exempt, but also supplies of services made at an earlier stage, such as services supplied by a subcontractor to an economic operator which then re-invoices them to a freight forwarder or transporter and, second, services for loading and unloading of cargo supplied to the holders of that cargo, such as the exporter or importer may also be exempt.

In such a context, the Court held, in paragraph 24 of the judgment of 14 September 2006, *Elmeka* (C-181/04 to C-183/04, EU:C:2006:563) to which the national court refers, that the exemption laid down in Article 15(8) of the Sixth Directive, whose wording is repeated in Article 148(d) of Directive 2006/112, applies only to operations made at the end of the commercial chain concerned.

Such case-law, adapted to the specificities of the cases which gave rise to that judgment, concerning supplies of services liable to be diverted and used for purposes other than those originally intended, cannot be transposed to situations in which, having regard to its nature, the purpose of a supply of services may be guaranteed once it is agreed. In such situations the correct and straightforward application of the exemption laid down in Article 148(d) of Directive 2006/112 is guaranteed without the need for guarding and surveillance services.

Such is the situation with services of loading and unloading of cargo, such as those at issue in the main proceedings. It is clear from the answer to the first question that the verification of whether those services fulfil the conditions for the application of the exemption laid down in Article 148(d) of Directive 2006/112 depends solely on the type of vessels onto or from which the loading and unloading is to be carried out. Therefore, the use which is made of those services may be guaranteed once the implementation is agreed.

However, in the case of loading and unloading of cargo, which is directly related to the cargo transported and where therefore may be passed on, as such, to the holders of that cargo, the supply of those services to the holder of that cargo must be regarded as always being part of the commercial chain of those services. It follows that such supplies of services may be exempt on the basis of Article 148(d) of Directive 2006/112.

(see paras 31, 33, 34, 45, 46, operative part 2)