



C/2023/726

20.11.2023

Judgment of the Court (Eighth Chamber) of 5 October 2023 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny we Wrocławiu — Poland) — YD v Dyrektor Krajowej Informacji Skarbowej

(Case C-146/22, ⁽¹⁾ Dyrektor Krajowej Informacji Skarbowej (VAT on hot dairy beverages))

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 98(2) — Discretionary power of the Member States to apply a reduced rate to certain supplies of goods and services — Points 1 and 12a of Annex III — Similar foodstuffs prepared from the same main ingredient — Hot beverages prepared on the basis of milk — Application of different reduced VAT rates — Goods with the same objective characteristics and properties — Goods accompanied by preparation and serving services on the part of the supplier or not accompanied by such services)

(C/2023/726)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: YD

Defendant: Dyrektor Krajowej Informacji Skarbowej

Interested party: Rzecznik Małych i Średnich Przedsiębiorców

Operative part of the judgment

Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2018/1713 of 6 November 2018, read in conjunction with points 1 and 12a of Annex III thereto, Article 6 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112, and the principle of fiscal neutrality,

must be interpreted as not precluding national legislation which provides that foodstuffs consisting of the same main ingredient and meeting the same need on the part of the average consumer are subject to two different reduced value added tax (VAT) rates, depending on whether they are sold at retail level in shops or are prepared and served hot to a customer at his or her request, with a view to their immediate consumption, provided that those foodstuffs do not have similar properties despite having a main ingredient in common or that the differences between those foodstuffs, including as regards the support services accompanying their supply, have a significant influence on the decision of the average consumer to purchase one or the other of those foodstuffs.

⁽¹⁾ OJ C 284, 25.7.2022.