



C/2024/3900

1.7.2024

**Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 17 April 2024 –
Granulines Invest Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága**

(Case C-270/24, Granulines Invest)

(C/2024/3900)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Granulines Invest Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Is a practice of a tax authority consistent with Article 167, Article 168(a), Article 178(a) and Article 226 of Council Directive 2006/112/EC ⁽¹⁾ of 28 November 2006 on the common system of value added tax ('the VAT Directive') and with the right to a fair trial recognised as a general principle of law by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), in light of the principles of fiscal neutrality, effectiveness and proportionality, where that practice involves refusing a taxable person the right to a refund of VAT, arguing that, even though the delivery of the goods has actually taken place and there is an invoice and other supporting accounting documents, the invoice is fictitious because the business transactions recorded in it did not actually take place and, consequently, the transactions were not concluded between the parties appearing in that invoice, because
 - a) it was the taxable person who negotiated all of the details with the manufacturers and only after the taxable person had abandoned the transaction did the issuer of the invoice, established in the national territory, become involved in it, in order to satisfy the requirements for the loan,
 - b) the machines were delivered to the establishment of the taxable person by the manufacturer directly,
 - c) the execution date stated in the invoice is false,
 - d) the price appearing in the invoice has been inflated,
 - e) the issuer of the invoice only complied with its obligation to pay [the VAT] in part and late?
2. Must Article 178(a) of the VAT Directive be interpreted as meaning that it precludes the national tax authority from being able to refuse the right to a refund of VAT for the sole reason that the taxable person has an invoice which does not comply with the requirements laid down in Article 226(6) and (7) of that directive, even if that authority has at its disposal all of the documentation and information necessary to be able to check, on the basis of that documentation and information, whether the substantive requirements established by law for the exercise of that right are satisfied?
 - a) If the answer to the second question referred is in the affirmative, does it, in such a case, constitute a prerequisite for the refund of the VAT that the taxable person be requested to rectify the invoice?
 - b) If the answer to the second question referred is in the negative, and in view of the principles of fiscal neutrality and proportionality, is it, in such a case, proportional to impose on the taxable person a tax penalty of 200 %, which is the amount of the fine which may be imposed in cases of concealment of income or falsification or destruction of supporting documents, accounting documents and records?

⁽¹⁾ OJ 2006 L 347, p. 1.

3. Is a practice of a tax authority consistent with the above-mentioned provisions of the VAT Directive, with the right to a fair trial conferred by Article 47 of the Charter and with the principles of effectiveness, proportionality and fiscal neutrality, where that practice involves refusing a taxable person the right to a refund of VAT, arguing that, even though the business transaction recorded in the invoice actually took place, on the basis that the invoice is fictitious in nature – for the reasons enumerated in the first question referred and considered to be objective by the tax authority – without examining any other factors, it automatically finds the conduct of the taxable person to be contrary to the requirements for the legitimate exercise of that right and, on the basis of that conduct and without expressly examining the aspect of what the taxable person knew, finds the taxable person to have deliberately avoided payment of the tax by means of the artificial transactions recorded in the invoice?
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