

JUDGMENT OF THE COURT (Third Chamber)

26 May 2005^{*}

In Case C-43/04,

REFERENCE under Article 234 EC for a preliminary ruling by the Bundesfinanzhof (Germany), by decision of 27 November 2003, received at the Court on 4 February 2004, in the proceedings

Finanzamt Arnsberg

v

Stadt Sundern,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, A. La Pergola, J. Malenovský and A. Ó Caoimh, Judges,

^{*} Language of the case: German.

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by C.-D. Quassowski and A. Tiemann, acting as Agents,
- the Greek Government, by E. Svolopoulou and K. Marinou, acting as Agents,
- the Commission of the European Communities, by D. Triantafyllou and K. Gross, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ The reference for a preliminary ruling concerns the interpretation of Article 25 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) ('the Sixth Directive').

- 2 That reference has been made in the context of proceedings between Stadt Sundern (Sundern municipality) and the Finanzamt Arnsberg (Tax Office Arnsberg) ('the Finanzamt') concerning the application of the flat-rate scheme for farmers, as set out in Article 25 of the Sixth Directive, to the grant of hunting licences within the framework of a municipal forestry undertaking.

Law

Community legislation

- 3 Article 25 of the Sixth Directive, entitled 'Common flat-rate scheme for farmers', provides:

'1. Where the application to farmers of the normal value added tax scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the value added tax charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

2. For the purposes of this Article, the following definitions shall apply:

- “farmer”: a taxable person who carries on his activity in one of the undertakings defined below,
- “agricultural, forestry or fisheries undertakings”: an undertaking considered to be such by each Member State within the framework of the production activities listed in Annex A,
- “flat-rate farmer”: a farmer subject to the flat-rate scheme provided for in paragraphs 3 et seq.,
- “agricultural products”: goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex A,
- “agricultural service”: any service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him,
- ...

5. The flat-rate percentages provided for in paragraph 3 shall be applied to the price, exclusive of tax ... This compensation shall exclude all other forms of deduction.

...

9. Each Member State may exclude from the flat-rate scheme certain categories of farmers and farmers for whom the application of the normal value added tax scheme, or the simplified scheme provided for in Article 24(1), would not give rise to administrative difficulties.

...'

4 Annex B to that directive, entitled 'List of agricultural services', provides:

'Supplies of agricultural services which normally play a part in agricultural production shall be considered the supply of agricultural services, and include the following in particular:

...

— hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings,

...'

National legislation

- 5 Paragraph 2 of the Umsatzsteuergesetz (Law on Turnover Tax; ‘the UStG’), in the version in force at the time of the facts at issue in the main case, provides:

‘(1) “Trader” shall mean any person who independently carries on a trade, business or professional activity. “Business” includes the entire trade, business or professional activity of the trader. ...

...

- (3) Legal persons governed by public law carry on a trade, business or professional activity only in the course of their operations of a trade or business nature (Paragraphs 1(1)(6) and 4 of the Körperschaftsteuergesetz (Law on Corporation Tax)) and of their agricultural or forestry operations.’

- 6 Paragraph 24 of the UStG provides:

‘(1) For transactions carried out in the course of agricultural and forestry operations, the tax shall, without prejudice to the second, third and fourth sentences of this subparagraph, be set as follows:

1. for supplies of forestry products, excluding sawmill products, at 5% of the basis for assessment,

...

3. for the remaining transactions for the purposes of Paragraph 1(1)(1), at 9% of the basis for assessment. ... The input-tax amounts shall, in so far as they are to be attributed to the transactions set out in subparagraph (1)(1) above, be set at 5%, and in the other cases in subparagraph (1) at 9%, of the basis for assessment for those transactions. No further input tax shall be deducted. ...

(2) The following shall be considered to be an agricultural and forestry operation:

1. agriculture, forestry, viticulture, horticulture, fruit and vegetable farming, tree nurseries, all operations which obtain plants and parts of plants with the help of natural forces, freshwater fishing, fish farming in ponds, fish breeding for freshwater fishing and for fish farming in ponds, apiculture, migratory sheep farming and seed growing;

2. ...

An agricultural and forestry operation also includes ancillary operations designed to serve the agricultural and forestry operation. ...

- (3) If the trader carries out transactions in addition to those set out in paragraph 1, the agricultural and forestry operation is to be treated as an operation carried on separately in the structure of the business.

...'

The main proceedings and the questions referred for a preliminary ruling

- 7 From 1994 to 1999, the Stadt Sundern obtained income from the sale of wood and the use of forest land as well as from the licensing of private hunting areas. As it initially treated those licensing operations as transactions within the meaning of the 'flat-rate scheme' under Paragraph 24 of the UStG, it declared no turnover tax in that connection.
- 8 Following an on-site inspection, the Finanzamt found that the grant of hunting licences for the areas in question did not constitute agricultural and forestry transactions for the purposes of that provision, but was to be taxed at the normal rate in accordance with the general tax provisions. It therefore instructed the Stadt Sundern to pay the value added tax ('VAT') on the income derived from those licensing operations.
- 9 The Stadt Sundern brought an action before the Finanzgericht (Finance Court) challenging the tax assessments in issue. That court upheld the action, finding that the grant of hunting licences did not involve either an agricultural or forestry operation or a professional or business activity within the meaning of Paragraph 2(3) of the UStG, and that it did not go beyond mere property management.
- 10 The Finanzamt brought an appeal on a point of law before the Bundesfinanzhof (Federal Finance Court). It maintained that the licences had been granted, in accordance with Paragraph 2(3) of the UStG, in the course of the Stadt Sundern's

agricultural and forestry operations, but that there was no agricultural transaction for the purposes of Paragraph 24 of the UStG. It thus found that the grants of licences were subject to normal taxation.

- 11 The Bundesfinanzhof inquires whether its case-law, according to which the grant of hunting licences does not come within the flat-rate scheme for farmers and falls within the normal taxation scheme, is compatible with Article 25 of the Sixth Directive, when the land connected with the hunting licences is part of an agricultural or forestry undertaking. In those circumstances, that court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) May or must the Member States which have incorporated into their domestic law the common flat-rate scheme for farmers provided for in Article 25 of [the Sixth] Directive ... ultimately exempt flat-rate farmers from payment of turnover tax?
- (2) If Question 1 is answered in the affirmative: is that the case only for supplies of agricultural products and for agricultural services or also for other transactions of a flat-rate farmer, or are the other transactions subject to the general scheme under [the Sixth] Directive?

What are the consequences for the grant of a hunting licence by a flat-rate farmer?’

Preliminary observations

- 12 The Court observes, as a preliminary point, that the exact scope of the first question and its relationship to the second question are not immediately clear from the order for reference.
- 13 Nevertheless, the first question may be construed as seeking to determine whether a Member State which, pursuant to Article 25 of the Sixth Directive, has opted to apply the common flat-rate scheme to farmers, must apply that scheme to those farmers when they carry out operations coming within that scheme, or whether it may choose to do so.
- 14 The second question comprises essentially two parts. First, the national court asks whether operations performed by a flat-rate farmer, other than the supply of agricultural products and agricultural services, are subject to the common flat-rate scheme. Second, it seeks to know whether the grant of hunting licences is an agricultural service within the meaning of Article 25 of the Sixth Directive.
- 15 It appears necessary to answer the first question, as interpreted in paragraph 13 above, only if the second part of the second question is answered in the affirmative.
- 16 Accordingly, first it is appropriate to reverse the order of the questions and to examine the two parts of the second question and then, if necessary, the first question.

The first part of the second question

17 By the first part of its second question, the national court asks whether Article 25 of the Sixth Directive is to be interpreted as meaning that the common flat-rate scheme for farmers applies only to the supply of agricultural products and agricultural services, as defined in Article 25(2), and whether other operations carried out by flat-rate farmers are subject to the general VAT scheme.

18 The German and Greek Governments, and the Commission, submit that that question should be answered in the affirmative.

19 It should be borne in mind that the Court has already had the opportunity to rule on the relationship between the common flat-rate scheme for farmers and the general VAT scheme in the judgment of 15 July 2004 in Case C-321/02 *Harbs* [2004] ECR I-7101.

20 It follows from that judgment that operations other than the supply of agricultural products and agricultural services within the meaning of Article 25(2) of the Sixth Directive provided by the flat-rate farmer within the framework of agricultural undertakings remain subject to the general scheme under the Sixth Directive (see, to that effect, *Harbs*, paragraphs 31 and 36).

- 21 Accordingly, the answer to the first part of the second question should be that Article 25 of the Sixth Directive is to be interpreted as meaning that the common flat-rate scheme for farmers applies only to the supply of agricultural products and agricultural services, as defined in Article 25(2), and that other operations carried out by flat-rate farmers are subject to the general scheme under that directive.

The second part of the second question

- 22 By the second part of its second question, the national court asks essentially whether the grant of hunting licences by a flat-rate farmer is an agricultural service within the meaning of the fifth indent of Article 25(2) of the Sixth Directive, read together with Annex B thereto, which lists the agricultural services.
- 23 The German Government and the Commission submit that this question should be answered in the negative, as the grant of hunting licences is not listed in Annex B to the Sixth Directive. They argue in this regard that Article 25 of that directive should be interpreted narrowly, as it is an exception to the general scheme.
- 24 It should be observed that, in determining the scope of a provision of Community law, its wording, context and objectives must all be taken into account (Case C-162/91 *Tenuta il Bosco* [1992] ECR I-5279, paragraph 11, and *Harbs*, paragraph 28). Moreover, it follows from the need for uniform application of Community law

and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, *inter alia*, the judgment of 17 March 2005 in Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and Case C-170/03 *Feron* [2005] ECR I-2299, paragraph 26).

25 It is clear that the interpretation advocated by the German Government and the Commission is supported by the wording of the provisions in question, by the context in which they are situated and by the objectives pursued by the common flat-rate scheme.

26 First of all, under the fifth indent of Article 25(2) of the Sixth Directive and Annex B thereto, the term 'agricultural services' refers to services which normally play a part in agricultural production, *inter alia* the 'hiring out, for agricultural purposes, of equipment normally used in agricultural ... undertakings'. The grant of hunting licences is not expressly covered by those provisions, and nor does it fulfil the conditions laid down therein.

27 Turning next to the context in which those provisions are situated, the Court notes that they relate to a special scheme which is an exception to the general scheme under the Sixth Directive. It is settled case-law that any derogation from or exception to a general rule must be interpreted strictly (see, *inter alia*, Case C-399/93 *Oude Luttikhuis and Others* [1995] ECR I-4515, paragraph 23, and Case C-5/01 *Belgium v Commission* [2002] ECR I-11991, paragraph 56). Like the other special schemes provided for in the Sixth Directive, the scheme under Article 25 must

therefore be applied only to the extent necessary to achieve its objective (see *Harbs*, paragraph 27).

- 28 Lastly, as regards examination of the objectives pursued by the common flat-rate scheme, it should be borne in mind that this responds to a need for simplification. As evidenced by paragraph 29 of *Harbs*, that scheme aims to offset the tax charged on purchases of goods and services made by farmers by way of a flat-rate compensation payment to farmers who carry on their activity in an agricultural, forestry or fisheries undertaking when they supply agricultural products or agricultural services.
- 29 Application of the common flat-rate scheme is not dependent on satisfaction of a sole criterion, namely the formal status of farmer, but is also contingent on the nature of the economic transactions effected by him (see, to that effect, *Harbs*, paragraph 31). It would, moreover, be contrary to the nature and purpose of that scheme to interpret the concept of 'agricultural service' in the fifth indent of Article 25(2) of the Sixth Directive as covering a licensing operation, such as the grant of hunting licences, which is not intended for agricultural purposes and which does not relate to equipment normally used in agricultural, forestry or fisheries undertakings.
- 30 Thus, when, in a situation such as that at issue in the main proceedings, a farmer grants hunting licences, he cannot be said to be supplying an agricultural service within the meaning of the fifth indent of Article 25(2) of the Sixth Directive, read together with Annex B thereto.

- 31 Accordingly, the answer to the second part of the second question should be that the fifth indent of Article 25(2) of the Sixth Directive, read together with Annex B thereto, is to be interpreted as meaning that the grant of hunting licences by a flat-rate farmer is not an agricultural service within the meaning of that directive.
- 32 In the light of the answer given to the second part of the second question and for the reasons given in paragraphs 12 to 16 of this judgment, it is not necessary to answer the first question.

Costs

- 33 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:

1. **Article 25 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 is to be interpreted as meaning that the common flat-rate scheme for farmers**

applies only to the supply of agricultural products and agricultural services, as defined in Article 25(2), and that other operations carried out by flat-rate farmers are subject to the general scheme under that directive.

- 2. The fifth indent of Article 25(2) of Directive 77/388, read together with Annex B thereto, is to be interpreted as meaning that the grant of hunting licences by a flat-rate farmer is not an agricultural service within the meaning of that directive.**

[Signatures]