JUDGMENT OF THE COURT (Third Chamber)

19 April 2007 *

In Case C-455/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Finanzgericht Hamburg (Germany), made by decision of 1 December 2005, received at the Court on 23 December 2005, in the proceedings

Velvet & Steel Immobilien und Handels GmbH

v

Finanzamt Hamburg-Eimsbüttel,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J.N. Cunha Rodrigues, U. Lõhmus (Rapporteur), A. Ó Caoimh and P. Lindh, Judges,

* Language of the case: German.

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the German Government, by M. Lumma and U. Forsthoff, acting as Agents,

— the Greek Government, by K. Georgiadis and Z. Chatzipavlou, acting as Agents,

— the French Government, by G. de Bergues and J.-C. Gracia, acting as Agents,

— Ireland, by D. O'Hagan, acting as Agent, G. Clohessy SC and C. Ramsay BL,

— the Italian Government, by I.M. Braguglia, acting as Agent, and S. Fiorentino, avvocato dello Stato,

— the Cypriot Government, by D. Ergatoudi, acting as Agent,

— the United Kingdom Government, by T. Harris and T. Ward, acting as Agents,

— the Commission of the European Communities, by D. Triantafyllou, acting as Agent,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13B(d)(2) 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 The reference has been made in the context of proceedings between Velvet & Steel Immobilien und Handels GmbH ('Velvet & Steel') and Finanzamt (Tax Office) Hamburg-Eimsbüttel ('the Finanzamt') regarding the charging of value added tax ('VAT') on the assumption by Velvet & Steel of the obligation to renovate a building.

Legal context

Community law

3 Under Article 13B(d)(2) of the Sixth Directive:

'Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(d) the following transactions:

...

2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit'.

National law

4 According to Paragraph 1(1)(1) of the Law on Turnover Tax (Umsatzsteuergesetz, 'the UStG'), in the version in force at the time of the events in the main proceedings, turnover tax is chargeable on supplies of goods and services which an operator, in the course of his business, makes for consideration within Germany.

5 Paragraph 4(8)(g) of the UStG provides that the following transactions falling under Paragraph 1(1)(1) to 1(1)(3) are to be exempt from turnover tax:

'The assumption of obligations, guarantees and other securities and the negotiation of those transactions.'

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

6 In September 1998, Burmeister Immobilien GmbH ('Burmeister') sold a piece of land with a rented apartment building on it. In July 1999, two individuals executed a similar sale. In the two contracts of sale relating to those transactions, the vendors undertook to carry out the renovation work needed on the buildings concerned. The two individuals also assumed a rent guarantee.

7 Following the sales, the vendors concluded, on 25 September 1998 and 12 July 1999 respectively, contracts with Velvet & Steel entitled 'assignment of a part of the purchase price in return for assumption of obligations'.

8 By those contracts, Velvet & Steel assumed responsibility for the vendors' obligation to renovate the buildings as well as for the rent guarantee in return for a part of the purchase price of those buildings, namely DEM 200 000 for the contract concluded with Burmeister and DEM 250 000 for the contract concluded with the individuals. Under those contracts, Velvet & Steel undertook to indemnify the vendors against all costs and claims to which the purchasers of the buildings were entitled in respect of the renovation works and the rent guarantee.

9 The two purchasers of the buildings subsequently agreed to release Velvet & Steel from its obligations in return for payment to them of part of that fraction of the

purchase price ceded to it. The profit resulting from that transaction, namely DEM 11 000 and DEM 13 750 respectively with regard to the contracts concluded with Burmeister and with the individuals concerned, was to remain with Velvet & Steel as 'payment or lump-sum compensation/indemnity in respect of any loss of profit'. Velvet & Steel declared that profit for VAT purposes.

10 Following an inspection, the Finanzamt deemed the assumption by Velvet & Steel of the obligation to renovate to be a provision of services and necessarily subject to VAT pursuant to the first sentence of Paragraph 1(1)(1) of the UStG. Velvet & Steel lodged a complaint against the decision by the Finanzamt to charge tax, which the latter dismissed on 10 June 2003.

11 On 14 July 2003, Velvet & Steel challenged that decision before the Finanzgericht (Finance Court) Hamburg (Germany). Basing itself on the argument that neither of the two obligations which it had assumed had actually been carried out, it maintained before that court that the transactions at issue should be classed as an 'assumption of obligations' within the meaning of Paragraph 4(8)(g) of the UStG, which is the transposition into national law of Article 13B(d)(2) of the Sixth Directive. The Finanzamt contended, conversely, that the provision of Community law relied on refers exclusively to the assumption of pecuniary obligations, whereas the assumption of the obligation to renovate a building comes within the category of service obligations.

12 The national court asks whether the assumption of the obligation to renovate property constitutes a transaction which is exempt from turnover tax pursuant to Paragraph 4(8)(g) of the UStG. It considers that the wording of that provision

excludes any limitation of the exemption to pecuniary obligations. The court is uncertain, nevertheless, whether that interpretation is in conformity with Article 13B(d)(2) of the Sixth Directive since, unlike the German and French language versions, the English language version of that provision refers not to the assumption of obligations generally but solely to special forms of guarantees or securities. Against that background, the Finanzgericht Hamburg decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 13B(d)(2) of [the] Sixth ... Directive ... to be interpreted, with respect to the concept of ... assumption of obligations ..., as meaning that only pecuniary obligations are to be subsumed under that concept or does that provision also include the assumption of other obligations, for example, service obligations?'

The question referred for a preliminary ruling

13 By its question, the referring court asks essentially whether Article 13B(d)(2) of the Sixth Directive must be interpreted as meaning that the concept of assumption of obligations excludes from the scope of that provision obligations which are non-pecuniary, such as the obligation to renovate a property.

14 As a preliminary point, it should be noted that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be

levied on all services supplied for consideration by a taxable person (see, inter alia, Case C-472/03 *Arthur Andersen* [2005] ECR I-1719, paragraph 24; Case C-415/04 *Stichting Kinderopvang Enschede* [2006] ECR I-1385, paragraph 13; and Case C-89/05 *United Utilities* [2006] ECR I-6813, paragraph 21).

15 It is also settled case-law that those exemptions constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another (Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 37, and Joined Cases C-394/04 and C-395/04 *Ygeia* [2005] ECR I-10373, paragraph 15).

16 Community provisions must therefore be interpreted and applied uniformly in the light of the versions existing in all the Community languages (see Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28, and Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 31).

17 In that respect, it must be noted that the Sixth Directive does not lay down any definition of the concept of assumption of obligations contained in Article 13B(d)(2).

18 A comparative analysis of the different language versions of that provision of the Sixth Directive reveals terminological differences regarding the concept of assumption of obligations. In certain language versions, such as the German,

French and Italian, that expression has a general meaning, whereas in others, such as English and Spanish, it clearly refers to pecuniary obligations.

19 It is settled case-law that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement of the uniform application of Community law (see Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16).

20 In view of the linguistic differences, the scope of the phrase in question cannot be determined on the basis of an interpretation which is exclusively textual. That expression must therefore be interpreted in the light of the context in which it is used and of the aims and scheme of the Sixth Directive (see, to that effect, Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 22; Case C-428/02 *Fonden Marselisborg Lystbådehavn* [2005] ECR I-1527, paragraph 42; and *Jyske Finans*, paragraph 31).

21 Concerning the context in which the expression is used, it is clear that the exemption provided for in Article 13B(d)(2) of the Sixth Directive concerns, in addition to the assumption of obligations, the negotiation and assumption of credit guarantees or any other security for money and the management of credit guarantees. It is common ground that all those transactions are, by their nature, financial services.

22 The same conclusion is also valid for the other transactions set out in subparagraphs 1 and 3 to 6 of Article 13B(d) of the Sixth Directive. Thus, subparagraph 1 concerns

credit; subparagraph 3, deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments; subparagraph 4, legal tender; subparagraph 5, shares and other securities, and subparagraph 6, management of special investment funds. Although those transactions, defined according to the nature of the services provided, do not necessarily have to be carried out by banks or other financial institutions (see, to that effect, *SDC*, paragraph 32; Case C-305/01 *MKG-Kraftfahrzeuge-Factoring* [2003] ECR I-6729, paragraph 64; and Case C-169/04 *Abbey National* [2006] ECR I-4027, paragraph 66), they relate, nevertheless, as a whole, to the sphere of financial transactions.

23 In the present case, the assumption of the obligation to renovate a building is not, by its nature, a financial transaction within the meaning of Article 13B(d) of the Sixth Directive and therefore it does not come within the scope of that provision.

24 That interpretation is, moreover, supported by the purpose of the exemption for financial transactions, which, as the Commission of the European Communities explains in its written observations, is to alleviate the difficulties connected with determining the tax base and the amount of VAT deductible and to avoid an increase in the cost of consumer credit. Since subjecting the assumption of an obligation to renovate a property to VAT does not present such difficulties, that transaction cannot be exempted.

25 Consequently, the conclusion that it was the intention of the Community legislature to exempt from VAT the assumption of non-pecuniary obligations is not supported

by the wording, context or purpose of Article 13B(d)(2) of the Sixth Directive. It follows that the assumption of such obligations is subject to VAT.

26 Therefore, the reply to the question submitted must be that Article 13B(d)(2) of the Sixth Directive must be interpreted as meaning that the concept of assumption of obligations excludes from the scope of that provision obligations which are non-pecuniary, such as the obligation to renovate a property.

Costs

27 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 13B(d)(2) 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 must be interpreted as meaning that the concept of assumption of obligations excludes from the scope of that provision obligations which are non-pecuniary, such as the obligation to renovate a property.

[Signatures]