JUDGMENT OF THE COURT (Fourth Chamber)

12 February 2009 *

In Case C-515/07,

REFERENCE for a preliminary ruling under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands), made by decision of 2 November 2007, received at the Court on 22 November 2007, in the proceedings

Vereniging Noordelijke Land- en Tuinbouw Organisatie

v

Staatssecretaris van Financiën,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta (Rapporteur), E. Juhász, G. Arestis and J. Malenovský, Judges,

* Language of the case: Dutch.

Advocate General: P. Mengozzi,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 October 2008,

after considering the observations submitted on behalf of:

— the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the United Kingdom Government, by T. Harris, acting as Agent, assisted by K. Lasok QC,

— the Commission of the European Communities, by D. Triantafyllou and W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 December 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(2) and Article 17(2) and (6) 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 directive').

2 The reference has been made in proceedings between Vereniging Noordelijke Land- en Tuinbouw Organisatie ('VNLTO') and the Staatssecretaris van Financiën (State Secretary for Finance) (Netherlands) concerning an adjustment in respect of value added tax ('VAT').

Legal framework

Community legislation

3 Article 2 of the directive provides:

‘The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

…’

4 Article 6(2) of the directive provides:

‘The following shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the [VAT] on such goods is wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.

Member States may derogate from the provisions of this paragraph provided that such derogation does not lead to distortion of competition.'

5 Under Article 17(2) and (6) of the directive:

'2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) [VAT] due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

…

6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of [VAT]. [VAT] shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.'

National legislation

6 Article 2 of the Law of 1968 on turnover tax (Wet op de omzetbelasting 1968) states:

'A trader may deduct from the tax to be paid on supplies of goods and services the tax charged on supplies of goods and services to him, acquisitions of goods effected by him within the Community and imports of goods intended for him.'

7 Article 15 of that Law provides:

‘1. The tax referred to in Article 2 which is deductible by the trader shall be:

(a) the tax which, in the period covered by the return, other traders have charged him by means of an invoice issued in accordance with the applicable rules, in respect of supplies of goods and services which they have made to him;

…

in so far as the trader uses the goods and services for the purposes of his business …

…

4. Deduction of the tax is made in accordance with the intended use of the goods and services at the time when the tax is invoiced to the trader or at the time when the tax becomes chargeable. If it appears, at the time when the trader is preparing to use the goods or services, that he is deducting the tax relating to them to an extent which is higher or lower than that to which the use of the goods or services entitles him, the

excess deducted shall be chargeable from that time. The tax which becomes chargeable shall be paid in accordance with Article 14 [of the Law of 1968 on turnover tax].

The amount of tax which could have been deducted and was not deducted shall be refunded to him on request.

…'

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

8 VNLTO promotes the interests of the agricultural sector in the provinces of Groningen, Friesland, Drenthe and Flevoland. Its members, who are traders in that sector, pay a membership subscription to it, the greater part of which goes towards activities designed to promote their general interests.

9 In addition to promoting those interests, VNLTO provides a number of individual services to its members, for which it charges a fee. Those services are also offered to non-members. The profits generated by those economic activities are allocated to safeguarding the general interests of members.

10 During 2000, VNLTO acquired goods and services which it used both for its activities subject to VAT and for other, unrelated activities. VNLTO applied for full deduction of the amounts of input VAT paid in respect of those goods and services, including those relating to its activities in promoting the general interests of its members.

11 For the 2000 tax year, VNLTO deducted the amounts of input VAT paid relating to taxable supplies. It also deducted part of the amounts of input VAT paid with regard to activities connected with the promotion of the general interests of its members. On 14 May 2001, VNLTO applied for reimbursement of an additional amount of VAT relating to those activities. In this way, VNLTO claimed the right to deduct an amount representing 79% of the total goods and services which it had acquired. By decision of 3 August 2001, the Tax Inspectorate refused the reimbursement applied for.

12 By decision of 26 March 2002, the Tax Inspectorate sent VNLTO an adjustment notice for the tax year in question. By that notice, the amounts of input VAT relating to activities in promoting the general interests of VNLTO's members were reincorporated in proportion to the income which those activities generated for VNLTO. This resulted in a deduction representing 49% of the total goods and services acquired by VNLTO.

13 By letter of 26 April 2002, VNLTO lodged a complaint against that adjustment notice. By decision of 15 May 2002, the Tax Inspectorate confirmed that notice.

14 VNLTO subsequently appealed that decision to the Gerechtshof (Regional Court of Appeal) Leeuwarden (Netherlands). On 17 June 2005, that court dismissed the appeal, holding that activities relating to the promotion of general interests did not constitute a direct, durable and necessary extension of VNLTO's economic activities. According to that court, VNLTO was not entitled to deduct the tax it had been charged in so far as the goods and services acquired had been used to promote the general interests of its members.

15 On 27 July 2005, VNLTO appealed on a point of law against the decision of the Gerechtshof Leeuwarden.

16 The case accordingly came before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which stated that the dispute in the main proceedings concerns the deduction of amounts of VAT levied when expenditure is incurred in the acquisition of goods and services used both for economic activities subject to VAT and for other transactions unrelated to those activities.

17 The Hoge Raad der Nederlanden therefore wishes to determine whether VNLTO is entitled to treat as assets of its business goods other than capital goods and services, thereby enabling it immediately to deduct the total amount of VAT paid in respect of their acquisition even though they are used in part for activities unrelated to supplies taxable under Article 2 of the directive.

18 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are Articles 6(2) and 17(1), (2) and (6) of the [directive] to be interpreted as permitting a taxable person to allocate wholly to his business not only capital goods

but all goods and services used both for business purposes and for purposes other than business purposes and to deduct immediately and in full the VAT due on the acquisition of those goods and services?

(2) If the answer to Question 1 is affirmative, does the application of Article 6(2) of the [directive] to services and goods other than capital goods mean that VAT is collected once during the tax period over which the deduction in respect of those services and goods is enjoyed, or must collection also occur in ensuing periods and, if so, how is the taxable amount to be determined in respect of goods and services which the taxable person does not write off?'

The questions referred for a preliminary ruling

The first question

Observations submitted to the Court

19 The Netherlands Government states that, with regard to the acquisition of capital goods or goods and services other than capital goods, a taxable person cannot deduct the VAT invoiced inasmuch as those services are used for purposes of transactions which are not subject to VAT. That is the case where the activities in question consist in the promotion of general interests.

20 The Netherlands Government points out that, according to its statutes, VNLTO's purpose is to promote the interests of the agricultural sector in a number of provinces of the Netherlands as well as those of traders operating within that sector. It explains that, for that purpose, VNLTO is affiliated to the Land- en Tuinbouw Organisatie Nederland and, through that organisation, seeks to safeguard farmers' interests at local, provincial, national and international levels. The Netherlands Government states that VNLTO seeks to stimulate the implementation of an agricultural development policy in the fields of research, awareness-raising, training and teaching.

21 During the hearing before the Court, the Netherlands Government specified that no distinction is to be made between a natural and a legal person for the purpose of replying to the first question referred. It added, however, that, in the case in the main proceedings, VNLTO seeks to obtain a deduction of VAT in connection with its non-economic activities, in this case, those related to the promotion of the general interests of its members.

22 The German Government takes the view that a taxable person is permitted to allocate wholly to his business not only capital goods but also all goods used both for business purposes and for purposes other than those of his business. That option applies to services only in so far as they are acquired in connection with the use of goods wholly allocated to the business. With regard to taxing the use of such goods or services for purposes other than those of the business, it is for the Member States to determine the taxing arrangements and the periods in respect of which tax is to be charged.

23 The Portuguese Government submits that a legal person cannot wholly deduct the VAT charged on capital goods or any other goods or services for use exclusively in pursuit of its own objectives, where, at the moment of their acquisition, those goods have been used both for carrying out activities subject to that tax and in pursuit of transactions not subject to that tax.

24 The United Kingdom Government states that, with the exception of capital goods and services used in order to create new capital goods, a taxable person is not entitled to allocate wholly to his business goods and services in mixed use, that is to say, in use for business purposes and for private or non-business purposes.

25 The Commission takes the view that a taxable person is authorised to allocate to his business only capital goods and, by way of exception, services exhibiting characteristics comparable to those of capital goods, used both for business purposes and for purposes other than business purposes, and to deduct immediately and in full the input VAT paid.

Findings of the Court

26 By its first question, the national court seeks essentially to determine the extent of the right to deduct VAT, provided for in Articles 6(2) and 17(2) of the directive, in a situation where the taxable person has used goods and services, upon the acquisition of which it paid the input VAT due, both for the purposes of its business and, according to the wording of the question referred, 'for purposes other than business purposes', in other words, in this case, for purposes of transactions other than taxable transactions.

27 It is necessary to recall, at the outset, that the deduction system established by the directive is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. Thus, the common system of VAT seeks to ensure complete neutrality of taxation of all economic activities, whatever their

purpose or results, provided that they are themselves subject, in principle, to VAT (see Case C-408/98 *Abbey National* [2001] ECR I-1361, paragraph 24 and the case-law cited).

28 Consequently, where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (see Case C-184/04 *Uudenkaupungin kaupunki* [2006] ECR I-3039, paragraph 24, and Case C-72/05 *Wollny* [2006] ECR I-8297, paragraph 20).

29 In order to give a meaningful answer to the first question raised, it is necessary to place it in the factual context described by the national court in its order for reference.

30 It follows from the summary of the facts by the Hoge Raad der Nederlanden that VNLTO carries out not only taxable activities, but also non-taxable activities, namely, promotion of the general interests of its members. That court also pointed out that the acquisition of goods and services by VNLTO was entered in the accounts as general costs of VNLTO, without those transactions being exclusively allocated to output taxable activities carried out by VNLTO.

31 In view of that factual situation, and in the light of the application by VNLTO for deduction of amounts of VAT paid on the acquisition of the goods and services both for taxable activities and for activities not linked to taxable activities, namely activities consisting in the promotion of the general interests of its members, the national court is uncertain whether those latter activities could be regarded as having been performed

'for purposes other' (within the meaning of Article 6(2)(a) of the directive) than those carried out by the association in the economic field.

32 In its observations, the national court referred to, inter alia, Case C-434/03 *Charles and Charles-Tijmens* [2005] ECR I-7037, particularly paragraphs 23 to 25 of that judgment, in which the Court referred to the case-law on the system of VAT applicable to capital goods in mixed use, that is to say, in use for both business and private purposes. It follows that the taxable person has the choice, for VAT purposes, of (i) allocating goods wholly to the assets of his business, (ii) retaining them wholly within his private assets, thereby excluding them entirely from the system of VAT, or (iii) integrating them into his business only to the extent to which they are actually used for business purposes. Should the taxable person choose to treat capital goods used for both business and private purposes as business goods, the input VAT due on the acquisition of those goods is, in principle, immediately deductible in full. In those circumstances, when the input VAT paid on goods forming part of the assets of a business is wholly or partly deductible, their use for the private purposes of the taxable person or of his staff or for purposes other than those of his business is treated as a supply of services for consideration pursuant to Article 6(2)(a) of the directive.

33 The Hoge Raad der Nederlanden is of the view that those principles are capable of being applied equally to 'a legal person engaged in, inter alia, certain activities as a taxable person which are not subject to VAT', with the result that Article 6(2)(a) of the directive may be applicable to that person.

34 It is common ground that activities such as those by which an association promotes the general interests of its members are not activities 'subject to [VAT]' under the terms of Article 2(1) of the directive, since they do not consist of the supply of goods or services effected for consideration (see, to that effect, Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2006] ECR I-483, paragraph 42 and the case-law cited).

35 With regard to the question whether such activities may be considered to be carried out for 'purposes other than' those of the business within the meaning of Article 6(2)(a) of the directive, it should be noted that in Case C-437/06 *Securenta* [2008] ECR I-1597, judgment in which was delivered after the present order for reference had been lodged, inter alia, a question was referred to the Court as to how to determine the right to a deduction of the input VAT paid in the case of a taxable person simultaneously carrying out economic activities and non-economic activities.

36 In that regard, the Court stated, at paragraph 26 of that judgment, that non-economic activities do not fall within the scope of the directive, specifying, at paragraph 28 thereof, that the deductions scheme laid down by the directive relates to all economic activities of a taxable person, whatever their purpose or results, provided that they are, in principle, themselves subject to VAT.

37 The Court accordingly held, at paragraphs 30 and 31 of the judgment in *Securenta*, that the input VAT relating to expenditure incurred by a taxable person cannot give rise to a right to deduct in so far as it relates to activities which, in view of their non-economic nature, do not come within the scope of the directive and that, where a taxable person simultaneously carries out economic activities, whether taxed or exempt, and non-economic activities outside the scope of the directive, deduction of the input VAT relating to expenditure is allowed only to the extent to which that expenditure may be attributed as an output to the economic activity of the taxable person.

38 It follows from these considerations that, as the Advocate General has noted in point 38 of his Opinion, Article 6(2)(a) of the directive is not intended to establish a rule that transactions outside the scope of the system of VAT may be considered to be carried out

for 'purposes other than' those of the business within the meaning of that provision. Such an interpretation would have the effect of rendering Article 2(1) of the directive meaningless.

39 It is also appropriate to state that, unlike *Charles and Charles-Tijmens*, which concerned immoveable property allocated to the assets of the business before being attributed, in part, to private use, by definition completely different from the business of the taxable person, the situation in the main proceedings in the present case relates to transactions other than VNLTO's taxable transactions, consisting in safeguarding the general interests of its members, and not capable of being considered, in this case, to be non-business transactions, given that they constitute the main corporate purpose of that association.

40 Consequently, the answer to the first question is that Articles 6(2)(a) and 17(2) of the directive must be interpreted as not being applicable to the use of goods and services allocated to the business for the purpose of transactions other than the taxable transactions of the taxable person, as the VAT due in respect of the acquisition of those goods and services, and relating to such transactions, is not deductible.

The second question

41 In the light of the answer given to the first question referred for a preliminary ruling, it is not necessary to answer the second question.

Costs

42 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 (Fourth Chamber) hereby rules:

Articles 6(2)(a) and 17(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 not being applicable to the use of goods and services allocated to the business for the purpose of transactions other than the taxable transactions of the taxable person, as the value added tax due in respect of the acquisition of those goods and services, and relating to such transactions, is not deductible.

[Signatures]