JUDGMENT OF THE COURT (First Chamber)

21 January 2010 *

In Case C-472/08,

REFERENCE for a preliminary ruling under Article 234 EC, from the Augstākās tiesas Senāts (Latvia), made by decision of 23 October 2008, received at the Court on 4 November 2008, in the proceedings

Alstom Power Hydro

v

Valsts ieņēmumu dienests,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits, A. Borg Barthet, J.-J. Kasel (Rapporteur) and M. Berger, Judges,

* Language of the case: Latvian.

Advocate General: P. Cruz Villalón,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 22 October 2009,

after considering the observations submitted on behalf of:

— Alstom Power Hydro, by V. Gencs, advokāts,

— the Valsts ieņēmumu dienests, by D. Jakāns and I. Pētersone, acting as Agents,

— the Latvian Government, by D. Jakāns, K. Drēviņa and E. Eihmane, acting as Agents,

— the United Kingdom Government, by H. Walker, acting as Agent, and M. Angiolini, Barrister,

— the Commission of the European Communities, by A. Sauka and M. Afonso, acting as Agents,

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 18(4) 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 was made in the course of proceedings between Alstom Power Hydro ('Alstom'), the Latvian subsidiary of Alstom Hydro France, and the Valsts ieņēmumu dienests (the Latvian tax authority, 'the VID') concerning the refund of excess value added tax ('VAT') paid by Alstom.

Legal context

The Sixth Directive

3 Article 18(2) to (4) of the Sixth Directive provides:

'2. The taxable person shall effect the deduction by subtracting from the total amount of value added tax due for a given tax period the total amount of the tax in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1.

…

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorised to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2.

4. Where for a given tax period the amount of authorised deductions exceeds the amount of tax due, the Member States may either make a refund or carry the excess forward to the following period according to conditions which they shall determine.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.'

National legislation

4 According to Article 12(10) of the Law on value added tax (likums par pievienotās vērtības nodokļi, *Latvijas Vēstnesis*, 1995, No 49,'the Law on VAT'), on application by the taxable person the amount of VAT paid though not due may be set against the payment of other taxes, duties or charges payable to the State.

5 Pursuant to Article 12(11) of that law, the VID has 30 days from receipt of a reasoned application by the taxable person, accompanied by supporting documents, in which to refund the amount overpaid to that person.

6 Article 16(10) of the Law on direct and indirect taxes (likums par nodokļiem un nodevām, *Latvijas Vēstnesis*, 1995, No 26, 'the Law on direct and indirect taxes'), applicable to all taxes, provides that taxable persons may submit their application for the refund of overpaid tax within a period of three years following the expiry of the period for the payment of that tax.

7 Article 18(2) of the Law on direct and indirect taxes imposes on the VID the duty to ascertain whether the computation of the direct and indirect taxes was carried out correctly by the taxable person and whether payment was actually made. According to Article 23(1) of that Law, the VID may, where an inquiry reveals an infringement of the tax provisions, amend the amount of VAT due and impose a fine within the period of three years from the expiry of the period for the payment of that tax.

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

8 On 7 October 2004, Alstom requested, pursuant to Article 12(10) and (11) of the Law on value added tax, a refund of the sums which it considered that it had overpaid for the period from 1998 to 1 October 2004.

9 The VID decided not to refund excess VAT in the sum of LVL 288 184 and decided to conduct an inquiry in respect of the balance, amounting to LVL 31 265. In its decision, it noted that the applicant had exceeded the period of three years allowed for applying for the refund of overpaid tax laid down by Article 16(10) of the Law on direct and indirect taxes.

10 Alstom brought an action against that decision claiming, in particular, that the VID was required to apply Article 18(4) of the Sixth Directive, which does not lay down a temporal limit on the exercise of the right to apply for a refund and that, accordingly, it was not entitled to raise in its defence the limitation period laid down in Article 16(10) of the Law on direct and indirect taxes.

11 Its action having been dismissed both at first instance and on appeal, Alstom brought an appeal on a point of law before the national court, claiming, in particular, that the Republic of Latvia, as a Member State of the European Union, is obliged to transpose Article 18(4) of the Sixth Directive into its domestic law and that it follows from the case-law of the Court that Member States cannot, as in the present case, extinguish the right to a refund of overpaid VAT.

12 In the order for reference, the Augstākās tiesas Senāts states that, where the VID examines applications for refunds of overpaid VAT, it is entitled to undertake inquiries. However, in such a situation, it must comply with the period of three years laid down in Article 23(1) of the Law on direct and indirect taxes. In the absence of a limitation

period for the right for taxable persons to apply for a refund of excess VAT corresponding to the period during which the VID is entitled to adopt an amended assessment to tax following its inspection, it would have to consider the applications in every case. In those circumstances, the national legislation could be abused by a person liable to pay tax, where that person applies for a refund of overpaid VAT relating to a period in respect of which the VID can no longer undertake an inquiry.

13 It is in those circumstances that the Augstākās tiesas Senāts decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'On a proper construction of Article 18(4) of [the Sixth Directive], is it contrary to that provision for domestic legislation to lay down a limitation period of three years for the exercise of the right to recover sums of VAT overpaid (the difference between output tax and deductible input tax)?'

The question referred for a preliminary ruling

14 By its question, the national court asks, essentially, whether Article 18(4) of the Sixth Directive is to be interpreted as precluding legislation of a Member State which lays down a limitation period of three years in which to make an application for the refund of excess VAT collected by, though not due to, the tax authority of that State.

15 It should, at the outset, be noted that, although, as Alstom claims, Article 18(4) of the Sixth Directive does not expressly lay down such a limitation period, that fact does not

in itself permit the conclusion that the provision must be interpreted as meaning that the exercise of the right to a refund of excess VAT cannot be subject to a limitation period.

16 First, by analogy with the situation applicable to the exercise of the right to deduct, the possibility of making an application for the refund of excess VAT without any temporal limit would be contrary to the principle of legal certainty, which requires the tax position of the taxable person, having regard to his rights and obligations vis-à-vis the tax authority, not to be open to challenge indefinitely (Joined Cases C-95/07 and C-96/07 *Ecotrade* [2008] ECR I-3457, paragraph 44).

17 Second, it is settled case-law that, in the absence of Community rules on the refund of national charges levied though not due, it is for the domestic legal system of each Member State, in particular, to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, inter alia, Case C-228/96 *Aprile* [1998] ECR I-7141, paragraph 18, and Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 34).

18 Concerning the principle of equivalence, it does not appear from the case-file, nor has it been argued before the Court, that the limitation period provided for in Article 16(10) of the Law on direct and indirect taxes does not comply with that principle.

19 With regard to the principle of effectiveness, it should be pointed out that the Court has stated that it is compatible with Community law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty which protect both the taxpayer and the authorities concerned (see Case C-228/96 *Aprile*, paragraph 19 and the case-

law cited). Such time-limits do not make it impossible in practice or excessively difficult to exercise the rights conferred by European Union law.

20 As regards the question of what period is to be considered 'reasonable', it should also be pointed out that the Court has already held that a two-year time-limit cannot, in itself, render the exercise of the right to deduct virtually impossible or excessively difficult, since Article 18(2) of the Sixth Directive allows Member States to require that the taxable person exercise his right to deduct during the same period as that in which it arose (see *Ecotrade*, paragraph 48).

21 The same finding is all the more compelling as regards a limitation period of three years, such as that applicable in the main proceedings, since that period is, in principle, such as to permit any normally attentive taxable person validly to assert his rights derived from European Union law.

22 In the light of the foregoing, the answer to the question referred must be that Article 18(4), of the Sixth Directive is to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which lays down a limitation period of three years in which to make an application for the refund of excess VAT collected by, though not due to, the tax authority of that Member State.

Costs

23 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 (First Chamber) hereby rules:

Article 18(4) 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 not precluding legislation of a Member State, such as that at issue in the main proceedings, which lays down a limitation period of three years in which to make an application for the refund of excess value added tax collected by, though not due to, the tax authority.

[Signatures]