Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

15 September 2016*

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Article 167, Article 178(a), Article 179 and Article 226(3) — Deduction of input tax — Invoices not showing a tax number or VAT identification number — Legislation of a Member State excluding the ex tunc correction of an invoice)

In Case C-518/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony, Germany), made by decision of 3 July 2014, received at the Court on 18 November 2014, in the proceedings

Senatex GmbH

v

Finanzamt Hannover-Nord,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos, E. Juhász, C. Vajda (Rapporteur) and K. Jürimäe, Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 14 January 2016,

after considering the observations submitted on behalf of:

— Senatex GmbH, by D. Hippke, Prozessbevollmächtigter, and A. Hüttl, Rechtsanwalt,

— the German Government, by T. Henze and K. Petersen, acting as Agents,

— the European Commission, by M. Wasmeier and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 February 2016,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between Senatex GmbH and the Finanzamt Hannover-Nord (Hannover-Nord Tax Office, Germany, 'the tax office') concerning the tax office's refusal to allow the deduction of input value added tax (VAT) paid by Senatex for the years in which the invoices held by Senatex were issued, on the ground that in their original form they did not satisfy the requirements of national tax legislation.

Legal context

EU law

3 Under Article 63 of Directive 2006/112:

'The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.'

4 Article 167 of Directive 2006/112 provides:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

5 Under Article 168 of Directive 2006/112:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…'

6 Article 178 of Directive 2006/112 provides:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;

…'

7 Article 179 of Directive 2006/112 reads as follows:

'The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.'

8 Article 219 of Directive 2006/112 provides:

'Any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice.'

9 Under Article 226 of Directive 2006/112:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

(3) the VAT identification number referred to in Article 214 under which the taxable person supplied the goods or services;

…'

10 Article 273 of Directive 2006/112 provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

German law

11 In accordance with the first sentence of Paragraph 15(1)(1) of the Umsatzsteuergesetz (Law on turnover tax, 'the UStG'), an operator may deduct as input tax the tax lawfully due in respect of supplies of goods and services effected by another operator in the course of his business (input supplies).

12 The second sentence of Paragraph 15(1)(1) of the UStG provides that the exercise of the right to deduct VAT is subject to the operator holding an invoice drawn up in accordance with Paragraphs 14 and 14a of the UStG. Such an invoice must in particular include all the details listed in Paragraph 14(4)(1) to (9) of the UStG.

13 According to the settled case-law of the Bundesfinanzhof (Federal Finance Court, Germany), amounts of input tax paid may be deducted only in the tax period in which all the substantive conditions for the exercise of that right within the meaning of the first sentence of Paragraph 15(1) of the UStG are satisfied.

14 Paragraph 31(5) of the Umsatzsteuer-Durchführungsverordnung (Regulation implementing turnover tax) provides generally that an invoice may be corrected if it does not contain all the information required by Paragraph 14(4) or Paragraph 14a UStG or if information in the invoice is inaccurate. For

that purpose, it suffices to communicate the missing or inaccurate information by a document which specifically and clearly refers to the invoice. The correction is subject to the same formal and substantial requirements as those provided for in Paragraph 14 of the UStG.

15 In the particular cases of the incorrect or unfounded mention of VAT, Paragraph 14c(1) and (2) of the UStG provides that Paragraph 17(1) of the UStG is to apply by analogy. Under that provision, corrections to invoices take effect not retrospectively but for the period in which the corrected invoice is transmitted to its addressee or in which the application for correction is granted after any risk to the collection of tax has been eliminated.

16 If the deduction is refused because of missing or incorrect details in the invoice, the right to deduction of VAT may, in German law, arise as a result of the correction of the invoice at the time of correction. In that event, while the tax authorities' receipts from VAT remain the same, the application of the interest for late payment provided for by Paragraph 233a of the Abgabenordnung (Tax Code) entails an additional financial burden.

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

17 Senatex operates a wholesale textile business. In each of its tax returns for 2008 to 2011 it included deductions of input VAT in respect of commission statements issued to its commercial agents and the invoices of an advertising designer.

18 On 21 January 2013 the tax office decided to carry out between 11 February and 17 May 2013 an on-the-spot check to ascertain the correctness of Senatex's tax returns for 2008 to 2011. In that check, the tax office found that the deduction of input tax in respect of commission statements issued by Senatex to its commercial agents was not possible, since those statements did not constitute regular invoices within the meaning of Paragraph 15(1) in conjunction with Paragraph 14(4) of the UStG. According to the tax office, the documents did not contain, either in the commission statements or in their annexes, the addressee's tax number or VAT registration number. In addition, they did not refer to any other document from which those details could be deduced. For the same reasons, the tax office found that the deduction on the basis of the invoices issued by the advertising designer was also not allowed.

19 On 2 May 2013, while the on-the-spot check was still in progress, Senatex corrected the commission statements for 2009 to 2011 issued to its commercial agents, so that the tax number or VAT identification number of each commercial agent was added to those documents. The advertising designer's invoices for 2009 to 2011 were also corrected in like manner on that date, that is, during the on-the-spot check.

20 Nonetheless, the tax office on 2 July 2013 issued amended tax notices for 2008 to 2011 in which, on the basis of the findings made in its on-the-spot check, they reduced the sums which Senatex was entitled to deduct as VAT, on the ground that the conditions for deduction had not been satisfied for those years, but were met only from the time of correction of the invoices in 2013.

21 By letter of 19 July 2013, Senatex brought an objection against the tax notices. In the objection procedure it turned out that Senatex had not corrected the commission statements issued in 2008 to which the tax notices referred. Consequently, it was only on 11 February 2014 that Senatex corrected, for 2008, the commission statements issued to its commercial agents and the invoices of the advertising designer by adding their tax number or VAT identification number.

22 By decision of 3 March 2014, the tax office dismissed Senatex's objection and maintained its view that, since the conditions for the deduction of VAT were satisfied only from the time of correction of the invoices, in other words in 2013 and 2014, the correction of an invoice could not have retroactive effect from the date of supply of the service to which the invoice related.

23 That decision was the subject of the action brought on 5 March 2014 by Senatex before the referring court, the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony, Germany). Senatex submits that the corrections it carried out have retroactive effect, as they were carried out before the final administrative decision, namely the decision of the tax office of 3 March 2014 dismissing its objection. By its action, Senatex therefore asks the referring court to annul the amended tax notices issued by the tax office for 2008 to 2011.

24 In those circumstances, the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the *ex nunc* effect of the first issue of an invoice, as established by the Court of Justice in the judgment of 29 April 2004, *Terra Baubedarf-Handel* (C-152/02, [EU:C:2004:268]), qualified by the judgments of the Court of Justice of 15 July 2010, *Pannon Gép Centrum* (C-368/09, [EU:C:2010:441]), and of 8 May 2013, *Petroma Transports and Others* (C-271/12, [EU:C:2013:297]), as regards cases, such as the present, in which an incomplete invoice is completed, in so far as the Court of Justice ultimately intended to permit retrospective effect in such cases?

(2) What are the minimum requirements for an invoice to be capable of correction with retrospective effect? Is it necessary that the original invoice bears a tax number or a VAT identification number, or can these be added later with the consequence that the right to deduct input tax on the basis of the original invoice is retained?

(3) Is a correction to an invoice in time if it is only made in the course of objection proceedings against the decision (amended tax notice) of the tax authority?'

Consideration of the questions referred

Questions 1 and 2

25 By its first and second questions, which should be considered together, the referring court asks in substance whether Article 167, Article 178(a), Article 179 and Article 226(3) of Directive 2006/112 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the correction of an invoice in relation to a detail which must be mentioned, namely the VAT identification number, does not have retroactive effect, so that the right to deduct VAT exercised on the basis of the corrected invoice relates not to the year in which the invoice was originally drawn up but to the year in which it was corrected.

26 It should be recalled that, according to settled case-law of the Court, the right of taxable persons to deduct from the VAT which they are liable to pay the VAT due or paid on goods purchased and services received by them as inputs is a fundamental principle of the common system of VAT established by EU legislation (judgment of 13 February 2014, *Maks Pen*, C-18/13, EU:C:2014:69, paragraph 23 and the case-law cited).

27 The deduction system is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his economic activities. The common system of VAT therefore ensures that all economic activities, whatever their purpose or results, provided that they are in principle themselves subject to VAT, are taxed in a neutral way (judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 27 and the case-law cited).

28 Under Article 167 of Directive 2006/112, the right to deduct arises at the time when the deductible tax becomes chargeable. The substantive conditions which must be met in order for the right to arise are set out in Article 168(a) of that directive. Thus, for that right to be available, first, the person concerned must be a taxable person within the meaning of that directive and, secondly, the goods or services relied on to give entitlement to the right of deduction must be used by the taxable person for the purposes of his own taxed output transactions and those goods or services must be supplied by another taxable person as inputs (see, to that effect, judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 28 and the case-law cited).

29 As regards the formal conditions for the right of deduction, in accordance with Article 178(a) of Directive 2006/112, the exercise of that right is subject to holding an invoice drawn up in accordance with Article 226 of that directive (see, to that effect, judgments of 1 March 2012, *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. Wąsiewicz*, C-280/10, EU:C:2012:107, paragraph 41, and of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 29). Under Article 226(3) of that directive, the invoice must mention inter alia the VAT identification number under which the taxable person made the supply of goods or services.

30 In the present case, according to the order for reference, the VAT identification number provided for in Article 226(3) of Directive 2006/112 was originally missing from the invoices and statements at issue in the main proceedings, that number not being added by Senatex until several years after the date of issue of those documents. It is not contested that the invoices and statements contained the other information required by that article.

31 The referring court asks whether Directive 2006/112 precludes national legislation, such as that at issue in the main proceedings, under which the right to deduct VAT may in such circumstances be exercised only for the year in which the original invoice was corrected, and not for the year in which the invoice was drawn up.

32 It should be noted, to begin with, that Directive 2006/112 provides for the possibility of correcting an invoice from which certain mandatory details have been omitted. That is apparent from Article 219 of the directive, which indicates that 'any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice'.

33 It is common ground that the invoices at issue in the main proceedings were properly corrected.

34 Next, the Court has indeed confirmed, in paragraph 43 of the judgment of 15 July 2010, *Pannon Gép Centrum* (C-368/09, EU:C:2010:441), and paragraph 34 of the judgment of 8 May 2013, *Petroma Transports and Others* (C-271/12, EU:C:2013:297), that Directive 2006/112 does not prohibit the correction of incorrect invoices. However, as the Advocate General observes in points 36 and 37 of his Opinion, the Court did not address in those judgments the question of the temporal effect of such a correction on the exercise of the right to deduct VAT.

35 On this point, it must be recalled that, in accordance with the first paragraph of Article 179 of Directive 2006/112, the deduction is to be made by subtracting from the total amount of VAT due for a given tax period the total amount of VAT 'in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178'. It follows that the right to

deduct VAT must in principle be exercised in respect of the period during which, first, the right has arisen and, secondly, the taxable person is in possession of an invoice (see, to that effect, judgment of 29 April 2004, *Terra Baubedarf-Handel*, C-152/02, EU:C:2004:268, paragraph 34).

36 According to the German Government, when an invoice is corrected by adding a VAT identification number that was missing from the invoice originally drawn up, the requirement for an invoice mentioning the VAT identification number is not satisfied until the time of that correction, so that, by virtue of Articles 178 and 179 of Directive 2006/112, the right to deduct VAT can be exercised only at the time of the correction.

37 It should be recalled here, first, that the Court has repeatedly held that the right to deduction of VAT provided for in Article 167 et seq. of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited, and that the right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, to that effect, judgment of 13 February 2014, *Maks Pen*, C-18/13, EU:C:2014:69, paragraph 24 and the case-law cited). The deduction system, as pointed out in paragraph 27 above, is meant to relieve the operator entirely of the burden of the VAT due or paid in the course of all his economic activities. However, national legislation, such as that at issue in the main proceedings, which applies interest for late payment on the amounts of VAT it considers to be due before correction of the invoice originally drawn up imposes a tax burden deriving from VAT on those economic activities, even though the common system of VAT guarantees the neutrality of that tax.

38 Secondly, the Court has held that the fundamental principle of the neutrality of VAT requires deduction of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with some formal conditions (see, to that effect, judgments of 21 October 2010, *Nidera Handelscompagnie*, C-385/09, EU:C:2010:627, paragraph 42 and the case-law cited, and of 1 March 2012, *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. Wąsiewicz*, C-280/10, EU:C:2012:107, paragraph 43). As noted in paragraph 29 above, holding an invoice showing the details mentioned in Article 226 of Directive 2006/112 is a formal condition, not a substantive condition, of the right to deduct VAT.

39 Thirdly, while the Court held, in paragraph 38 of the judgment of 29 April 2004, *Terra Baubedarf-Handel* (C-152/02, EU:C:2004:268), that the right of deduction must be exercised in respect of the tax period in which the goods or services are supplied and in which the taxable person is in possession of the invoice, it must be noted that that case concerned an undertaking which did not hold an invoice at the time when it exercised the right of deduction, and that the Court did not therefore rule on the temporal effect of a correction of the original invoice. As the Advocate General observes in point 39 of his Opinion, that case may be distinguished from the case at issue in the main proceedings, in which Senatex held invoices at the time of exercising its right to deduct VAT and had paid input VAT.

40 Fourthly, the German Government itself acknowledged at the hearing that in certain circumstances the subsequent correction of an invoice, for example with the aim of correcting a mistake in the VAT identification number in the invoice, does not prevent the right of deduction from being exercised for the year in which the invoice was drawn up. However, the government did not put forward convincing reasons for distinguishing such circumstances from those of the main proceedings.

41 Finally, it must be stated that the Member States have power to lay down penalties for failure to comply with the formal conditions for the exercise of the right to deduct VAT. In accordance with Article 273 of Directive 2006/112, the Member States can adopt measures to ensure the correct collection of VAT and to prevent evasion, provided that those measures do not go further than is necessary to attain those objectives and do not undermine the neutrality of VAT (see, to that effect, judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 62).

42 At the hearing, the German Government submitted that the postponement of the right to deduct VAT until the year in which the invoice is corrected was the equivalent of a penalty. However, to penalise the failure to comply with formal requirements, penalties other than the refusal of the right to deduct tax in respect of the year in which the invoice was drawn up might be considered, such as the infliction of a fine or financial penalty proportionate to the seriousness of the offence (see, to that effect, judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 63). Moreover, under the legislation at issue in the main proceedings, the postponement of that right, entailing the application of interest for late payment, occurs in any event without account being taken of the circumstances necessitating the correction of the invoice originally drawn up, which goes further than is necessary to attain the objectives referred to in the preceding paragraph of this judgment.

43 Having regard to the above considerations, the answer to Questions 1 and 2 is that Article 167, Article 178(a), Article 179 and Article 226(3) of Directive 2006/112 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the correction of an invoice in relation to a detail which must be mentioned, namely the VAT identification number, does not have retroactive effect, so that the right to deduct VAT exercised on the basis of the corrected invoice relates not to the year in which the invoice was originally drawn up but to the year in which it was corrected.

Question 3

44 By its third question, the referring court asks whether Directive 2006/112 must be interpreted as precluding national legislation or a national practice under which a taxable person is refused the right to deduct VAT where the correction of an invoice takes place after the tax authorities have adopted a decision refusing the deduction of VAT.

45 This question seeks essentially to determine whether the tax authorities are allowed to consider that a correction to an invoice relating to a detail that must be mentioned, namely the VAT identification number, has taken place belatedly if it occurs only after those authorities have adopted a decision refusing the deduction of VAT.

46 It is clear from the observations of the German Government and Senatex that in the case in the main proceedings the tax office stated that it intended to accept the corrected invoices submitted by Senatex, and does not thus consider that the corrections made by Senatex were made belatedly.

47 In those circumstances, there is no need to answer Question 3.

Costs

48 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:

Article 167, Article 178(a), Article 179 and Article 226(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the correction of an invoice in relation to a detail which must be mentioned, namely the value added tax identification number, does not have retroactive effect, so that the right to deduct value added tax exercised on the basis of the corrected invoice relates not to the year in which the invoice was originally drawn up but to the year in which it was corrected.

[Signatures]