Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 March 2018 *

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 167 to 171 — Right to deduct VAT — Right to refunds of VAT for taxable persons not established in the Member State of refund — Article 178(a) — Rules governing the exercise of the right to deduct VAT — Directive 2008/9/EC — Detailed rules for the refund of VAT — Limitation period — Principle of fiscal neutrality — VAT charged and paid several years after delivery of the goods in question — Refusal to allow the exercise of the right to a refund due to the expiry of the time limit which should have started to run from the date of supply of the goods)

In Case C-533/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), made by decision of 29 September 2016, received at the Court on 20 October 2016, in the proceedings

Volkswagen AG

v

Finančné riaditeľstvo Slovenskej republiky,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– the Finančné riaditeľstvo Slovenskej republiky, by F. Imrecze, acting as Agent,

– the Slovak Government, by B. Ricziová, acting as Agent,

– the European Commission, by A. Tokár, R. Lyal and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 October 2017,

* Language of the case: Slovak.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 167 and of Article 178(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11) ('Directive 2006/112'), of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23), and Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') and of the principles of fiscal neutrality and proportionality.

2 The request has been made in proceedings between Volkswagen AG and the Finančné riaditeľstvo Slovenskej republiky (Finance Directorate of the Slovak Republic) concerning the partial refusal by that authority of an application for a refund of value added tax ('VAT') due to the expiry of the limitation period.

Legal context

European Union law

Directive 2006/112

3 Article 9(1) of Directive 2006/112 provides:

'"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

4 Under Article 167 of the directive, 'a right of deduction shall arise at the time the deductible tax becomes chargeable'.

5 Article 168 of Directive 2006/112 states:

'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 169 of Directive 2006/112 provides:

‘In addition to the deduction referred to in Article 168, the taxable person shall be entitled to deduct the VAT referred to therein in so far as the goods and services are used for the purposes of the following:

(a) transactions relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;

…’

7 Article 170 of Directive 2006/112 is worded as follows:

‘All taxable persons who, within the meaning of … Article 2(1) and Article 3 of Directive 2008/9/EC and Article 171 of this Directive, are not established in the Member State in which they purchase goods and services or import goods subject to VAT shall be entitled to obtain a refund of that VAT insofar as the goods and services are used for the purposes of the following:

(a) transactions referred to in Article 169;

…’

8 Under Article 171(1) of the directive:

‘VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9/EC.’

9 Title X of Directive 2006/112, concerning deductions, includes a Chapter 4, entitled ‘Rules governing exercise of the right of deduction’. Article 178 of that directive, which appears in Chapter 4, 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;

…’

10 Under the first paragraph of Article 179 of that directive:

‘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.’

11 Article 180 of the same directive provides that: ‘Member States may authorise a taxable person to make a deduction which he has not made in accordance with Articles 178 and 179.’

12 Article 182 of Directive 2006/112 provides that ‘Member States shall determine the conditions and detailed rules for applying Articles 180 and 181.’

13 Under Article 273 of that directive:

‘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.’

Directive 2008/9

14 Article 1 of Directive 2008/9 provides:

‘This Directive lays down the detailed rules for the refund of [VAT], provided for in Article 170 of Directive 2006/112/EC, to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3.’

15 Under Article 2 of that directive:

‘For the purposes of this Directive, the following definitions shall apply:

1. “taxable person not established in the Member State of refund” means a taxable person within the meaning of Article 9(1) of Directive 2006/112/EC who is not established in the Member State of refund but established in the territory of another Member State;

…’

16 Article 3 of that directive sets out the conditions that must be met in order for it to apply to a taxable person not established in the Member State of refund.

17 Under Article 5 of Directive 2008/9:

‘Each Member State shall refund to any taxable person not established in the Member State of refund any VAT charged in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State, in so far as such goods and services are used for the purposes of the following transactions:

(a) transactions referred to in Article 169(a) and (b) of Directive 2006/112/EC;

…

Without prejudice to Article 6, for the purposes of this Directive, entitlement to an input tax refund shall be determined pursuant to Directive 2006/112/EC as applied in the Member State of refund.’

18 The first subparagraph of Article 6 of Directive 2008/9 is worded as follows:

‘To be eligible for a refund in the Member State of refund, a taxable person not established in the Member State of refund has to carry out transactions giving rise to a right of deduction in the Member State of establishment.’

19 Article 28(1) of that directive states that the provisions of the directive are to apply to refund applications submitted after 31 December 2009.

Slovak law

20 Paragraph 49(1) and (2) of zákon č. 222/2004 Z. z. o dani z pridanej hodnoty (Law No 222/2004 concerning value added tax), in the version applicable to the dispute in the main proceedings, is worded as follows:

'(1) The right to deduct the tax paid on the goods or service shall accrue to the taxpayer on the day when a tax liability in respect of those goods or that service arises.

(2) The taxpayer may deduct, from the tax he is liable to pay, the tax paid on goods and services which he uses for supplies of goods and services as a taxpayer, subject to the exception laid down in subparagraphs 3 and 7. The taxpayer may deduct the tax if the tax is

(a) claimed as against him in Slovakia by another taxpayer in respect of goods and services which have been or are to be supplied to the taxpayer,

…'

21 Under Paragraph 51(1) of that law:

'A taxpayer may exercise the right to deduct tax in accordance with Paragraph 49, provided that

(a) in respect of deductions under Paragraph 49(2)(a), he holds an invoice drawn up by a taxpayer in accordance with Paragraph 71;

…'

22 Paragraph 55b(1) of that law provides:

'In order to claim a tax refund, the applicant shall submit an electronic refund application via the electronic portal set up in the Member State in which the applicant has its seat, place of business, fixed establishment, domicile or habitual residence. The refund application shall be submitted no later than 30 September of the calendar year following the period in respect of which the refund is claimed. The Daňový úrad Bratislav I [(Bratislava I Tax Office, Slovak Republic)] shall notify the applicant by electronic means, without delay, of the date on which the refund application has been received.'

23 Paragraph 71(1) and (2) of Law No 222/2004 provide:

'(1) For the purposes of the present law,

(a) "an invoice" means any document or notice which is drawn up in paper or electronic form in accordance with this law or a law applicable in another Member State governing the drawing up of invoices,

…

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

24 Paragraph 45(1) of zákon č. 511/1992 Zb. o správe daní a poplatkov a o zmenách v sústave územných finančných orgánov (Law No 511/1992 on administration of taxes and other charges, and amendment of the organisation of regional tax authorities), in the version applicable to the main proceedings, is worded as follows:

'Except as otherwise provided in this law or in a separate law, it is not permissible to charge tax or an additional tax or grant a right to refund of an overpayment of tax or a tax refund after the expiry of a five-year period from the end of the year in which the obligation to submit the tax return or tax statement arose or in which the taxable person was obliged to pay the tax without being obliged to submit a tax return or tax statement, or in which the taxable person's right to a refund of the excess deduction or tax refund arose …'

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

25 Between 2004 and 2010, Hella Leuchten-Systeme GmbH, a company established in Germany, and two companies based in Slovakia, Hella Slovakia Front Lighting, s. r. o. and Hella Slovakia — Signal Lighting ('the Hella Companies'), supplied Volkswagen AG, a company established in Germany, with moulds for the manufacture of lights for motor vehicles. During this time, the Hella Companies did not include VAT on the invoices they issued, as they considered the transactions not as supplies of goods but of 'financial compensation', which is exempt from VAT.

26 In 2010, the Hella Companies realised that the transactions were not being carried out in accordance with Slovak law. They issued invoices charging the VAT due by Volkswagen for supply of the goods in question, and in accordance with Law No 222/2004, filed supplementary tax returns for all years from 2004 to 2010, and paid the relevant VAT to the Treasury.

27 On 1 July 2011, Volkswagen submitted to the Bratislava I Tax Office (Slovak Republic) an application for a refund of the VAT charged on the supplied goods.

28 By a decision of 3 April 2012, the tax office partially upheld that application and ordered a refund of VAT amounting to EUR 1 536 622.92, for the supply of goods carried out from 2007 to 2010. However, it dismissed the application in so far as it related to the period from 2004 to 2006, due to the expiry of the limitation period of five years provided for by Slovak law. In this regard, it held that the entitlement to a refund of VAT arose on the date of delivery of the goods, namely the date the VAT had become due, with the result that the right to claim a refund for the period from 2004 to 2006 had expired by the time the application for a refund was submitted. This decision was confirmed by the Finance Directorate of the Slovak Republic, acting as an appellate body.

29 Volkswagen brought an action seeking the annulment of the latter decision before the Krajský súd v Bratislave (Regional Court, Bratislava, Slovak Republic), which dismissed the action.

30 Volkswagen then appealed that decision before the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), the referring court, asserting that the interpretation of national law on the fixing of the starting date for the five-year limitation period provided for in Article 45(1) of Law No 511/1992, in the version applicable to the dispute in the main proceedings, was neither compatible with EU law nor with the case-law of the Court of Justice as, in its view, the right to refund of VAT only arises when goods and services have been supplied and the VAT has been applied by the supplier through the issuing of an invoice. The limitation period cannot therefore begin to run if these two conditions have not been met.

31 Before assessing whether or not Volkswagen's arguments are well founded and, consequently, determining the relevant starting date of the five-year period during which taxable persons may apply for a refund of the VAT chargeable, the Najvyšší súd Slovenskej republiky (Supreme Court of the

Slovak Republic) questions the compatibility with EU law of the practice of the tax authorities according to which that period begins to run from the date of the delivery of goods or the supply of services that is subject to VAT.

32 In those circumstances, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Directive 2008/9 and the right to a tax refund be interpreted to the effect that the cumulative satisfaction of two conditions is required to exercise the right to a VAT refund, namely:
(a) the supply of the goods or services and
(b) the inclusion of VAT on the invoice by the supplier?

In other words, is it possible for a taxable person who has not been charged VAT on an invoice to claim a tax refund?

(2) Is it in accordance with the principle of proportionality or VAT fiscal neutrality for the time limit for the tax refund to be calculated from a point at which not all the substantive law conditions required to exercise the right to a tax refund were satisfied?

(3) Are Articles 167 and 178(a) of [Directive 2006/112], in the light of the principle of fiscal neutrality, to be interpreted to the effect that, in circumstances such as those of the present case, and assuming that the other substantive law and procedural law conditions required to claim a right to a tax deduction are satisfied, they preclude an approach by the tax authorities which refuses the taxable person the right, claimed within the time limit under Directive 2008/9, to be refunded VAT which was charged to it by the supplier on the invoice and [collected] by the supplier before the expiry of the limitation period for relying upon the right under national law?

(4) Did the Slovak tax authorities, in the light of the principle of neutrality and the principle of proportionality, which are the fundamental principles of the common system of VAT, exceed the limits of what was necessary for achieving the objective defined by the VAT Directive when they refused the taxable person the right to a refund of the deducted tax on the ground that the limitation period laid down by national law for claiming a tax refund had expired, even though the taxable person could not exercise its right to a tax refund within that period and even though the tax was correctly collected and the risk of tax evasion or non-payment of the tax had been completely excluded?

(5) May the principles of legal certainty, legitimate expectations and the right to good administration under Article 41 of the Charter of Fundamental Rights of the European Union be interpreted as precluding an interpretation of the national legislation under which, for the purposes of observance of the time limit for claiming a tax refund, the time of the decision of the administrative authority on the tax refund is decisive, and not the time at which the tax refund is claimed by the taxable person?'

Consideration of the questions referred

The first four questions

33 By its first four questions, which it is appropriate to examine together, the referring court asks, in essence, whether EU law must be interpreted as precluding legislation of a Member State under which, in circumstances such as those at issue in the main proceedings in which the VAT was

charged to the taxable person and paid by it several years after delivery of the goods in question, the benefit of the right to a refund of VAT is denied on the grounds that the limitation period provided for by that regulation for the exercise of that right began to run from the date of supply of the goods and expired before the application for a refund was submitted.

34 In order to respond to that question, it must be reiterated that in accordance with Article 1 of Directive 2008/9, the purpose of that directive is to define the rules for the refund of VAT, provided for in Article 170 of Directive 2006/112, to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3 of Directive 2008/9.

35 Nevertheless, it is not the purpose of Directive 2008/9 to define the conditions for exercising the right to a refund, nor the extent of that right. The second subparagraph of Article 5 of Directive 2008/9 provides that, without prejudice to Article 6, and for the purposes of that directive, entitlement to a refund of VAT which is paid as an input tax is to be determined pursuant to Directive 2006/112 as applied in the Member State of refund.

36 Consequently, the right of a taxable person established in a Member State to obtain the refund of VAT paid in another Member State, in the manner governed by Directive 2008/9, is the counterpart of such a person's right established by Directive 2006/112 to deduct input VAT in his own Member State (see, to that effect, judgment of 25 October 2012, *Daimler and Widex*, C-318/11 and C-319/11, EU:C:2012:666, paragraph 41 and the case-law cited).

37 According to settled case-law of the Court, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation (judgment of 15 September 2016, *Senatex* (C-518/14, EU:C:2016:691, paragraph 26 and the case-law cited).

38 The deduction system, and accordingly the refund 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 neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves, in principle, subject to VAT (see, to that effect, judgments of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 27, and of 21 September 2017, *SMS Group*, C-441/16, EU:C:2017:712, paragraph 40 and the case-law cited).

39 As the Court has repeatedly held, the right to deduct 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. In particular, the right to deduct is exercisable immediately in respect of all the taxes charged on input transactions (judgments of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 37, and of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 36 and the case-law cited).

40 The right to deduct VAT is, however, subject to compliance with both substantive and formal requirements or conditions (judgment of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 38).

41 With regard to the substantive requirements or conditions, it is apparent from the wording of Article 168(a) of Directive 2006/112 that, in order to have a right to deduct, it is necessary, first, that the interested party be a 'taxable person' within the meaning of that directive and, second, that the goods or services relied on to confer entitlement to the right to deduct VAT be used by the taxable person for the purposes of his own taxed output transactions, and that, as inputs, those goods or services must be supplied by another taxable person (see, to that effect, judgments of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 28 and the case-law cited, and of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 39).

42 As to the detailed rules governing the exercise of the right to deduct, which may be considered formal requirements or conditions, Article 178(a) of Directive 2006/112 provides that the taxable person must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238 to 240 of that directive (judgment of 19 October 2017, *Paper Consult*, C-101/16, EU:C:2017:775, paragraph 40).

43 It follows from the foregoing that, as the Advocate General observed at point 58 of his Opinion, although, under Article 167 of Directive 2006/112, the right to deduct VAT arises at the same time as the tax becomes chargeable, Article 178 of that directive provides that it can be exercised only once the taxable person holds an invoice (see, to that effect, judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691, paragraph 35 and the case-law cited).

44 According to Article 167 and the first paragraph of Article 179 of Directive 2006/112, the right to deduct must, in principle, be exercised during the same period as that during which it has arisen, namely once the tax becomes due.

45 Nevertheless, pursuant to Articles 180 and 182 of that directive, a taxable person may be authorised to make a VAT deduction even if he did not exercise his right during the period in which the right arose, subject, however, to compliance with the conditions and procedures determined by national legislation (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 32 and the case-law cited).

46 However, the possibility of exercising the right to deduct 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 (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 33 and the case-law cited).

47 The Court has thus already held that a limitation period the expiry of which has the effect of penalising a taxable person who has not been sufficiently diligent and has failed to claim deduction of the input VAT, by making him forfeit his right to deduct, cannot be regarded as incompatible with the regime established by Directive 2006/112, in so far as, first, that limitation period applies in the same way to analogous rights in tax matters founded on domestic law and to those founded on EU law (principle of equivalence) and, second, that it does not render in practice impossible or excessively difficult the exercise of the right to deduct VAT (principle of effectiveness) (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraphs 34 and 35 and the case-law cited).

48 In addition, under Article 273 of Directive 2006/112, the Member States may impose other obligations which they deem necessary for the correct collection of VAT and for the prevention of evasion. The prevention of tax evasion, avoidance and abuse is a recognised objective and is encouraged by that directive. However, the measures which the Member States may adopt under Article 273 of that directive must not go further than necessary to attain such objectives. Therefore, they cannot be used in such a way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT (see, to that effect, judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraphs 49 and 50 and the case-law cited).

49 In the present case, it is apparent from the order for reference that, even though the supply of goods at issue was carried out during 2004 to 2010, the Hella Companies did not make an adjustment of the VAT until 2010 when they drew up invoices including the VAT, sent supplementary tax returns to the competent national authority and paid the amount of VAT that was due to the State treasury. It is equally apparent that the risk of tax evasion or non-payment of VAT has been excluded. In these circumstances, it was objectively impossible for Volkswagen to exercise its right to a refund before this adjustment, as, prior to that, it had neither been in possession of the invoices nor aware that the VAT was due.

50 Indeed, it was only following that adjustment that the substantive and formal conditions giving rise to a right to deduct VAT were met and that Volkswagen could therefore request to be relieved of the VAT burden due or paid, in accordance with Directive 2006/112 and the principle of fiscal neutrality. Accordingly, since Volkswagen did not demonstrate a lack of diligence, and in the absence of an abuse or fraudulent collusion with the Hella Companies, a limitation period which began from the date of supply of the goods and which, for certain periods, expired before this adjustment, cannot validly deny Volkswagen the right to a refund of VAT.

51 Consequently, the answer to the first four questions is that EU law must be interpreted as precluding legislation of a Member State under which, in circumstances such as those at issue in the main proceedings in which the VAT was charged to the taxable person and paid by it several years after delivery of the goods in question, the benefit of the right to claim a refund of VAT is denied on the grounds that the limitation period provided for by that legislation for the exercise of that right began to run from the date of supply and expired before the application for a refund was submitted.

The fifth question

52 In view of the answer given to the first to fourth questions, from which it follows that the compatibility of national legislation or national practice with EU law may, in circumstances such as those at issue in the main proceedings, be assessed in light of Directive 2006/112, there is no need to answer the fifth question.

Costs

53 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 (Second Chamber) hereby rules:

EU law must be interpreted as meaning that it precludes legislation of a Member State under which, in circumstances such as those at issue in the main proceedings in which the value added tax (VAT) was charged to the taxable person and paid by it several years after delivery of the goods in question, the benefit of the right to claim a refund of VAT is denied on the grounds that the limitation period provided for by that legislation for the exercise of that right began to run from the date of supply and expired before the application for a refund was submitted.

[Signatures]