Judgment of the Court (Third Chamber) of 18 June 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — Staatssecretaris van Financiën v Stadeco BV

(Case C-566/07) [1]

(Sixth VAT Directive — Article 21(1)(c) — Tax due solely as a result of being mentioned on the invoice — Refund of tax improperly invoiced — Unjust enrichment)

(2009/C 180/17)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden Den Haag

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Stadeco BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Article 21(1)(c) of the 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) — Tax not payable in the Member State of residence of the issuer of an invoice in respect of an activity in another Member State or in a non-member country — Correction of the erroneously invoiced tax

Operative part of the judgment

1. *Article 21(1)(c) of the 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, as amended by Council Directive 91/680/EEC of 16 December 1991 must be interpreted as meaning that turnover tax is due, in accordance with that provision, to the Member State to which the VAT mentioned on an invoice or other document serving as invoice relates, even if the transaction in question was not taxable in that Member State. It is for the national court to ascertain, taking into account all the relevant circumstances of the case, to which Member State the VAT mentioned on the invoice in question is due. In particular, the rate mentioned, the currency in which the amount to be paid is expressed, the language in which the invoice was drawn up, the content and context of the invoice at issue, the place of establishment of the issuer of that invoice and the beneficiary of the services performed, as well as their behaviour, can be relevant in that regard.*

2. *The principle of fiscal neutrality does not generally preclude Member States from making the refund of VAT due in that Member State merely because it was erroneously mentioned on the invoice subject to the requirement that the taxable person have sent the beneficiary of the services performed a corrected invoice not mentioning that VAT, if the taxable person has not completely eliminated in sufficient time the risk of the loss of tax revenue.*

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[1] OJ C 64, 8.3.2008.

Judgment of the Court (Second Chamber) of 4 June 2009 — Commission of the European Communities v Hellenic Republic

(Case C-568/07) [1]

(Failure of a Member State to fulfil obligations — Articles 43 EC and 48 EC — Opticians — Conditions of establishment — Establishment and operation of opticians' shops — Incomplete compliance with a judgment of the Court — Lump sum)

(2009/C 180/18)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and E. Traversa, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to comply fully with the Court's judgment of 21 April 2005 in Case C-140/03 *Commission* v *Greece* concerning infringement of Articles 43 and 48 EC with regard to the ownership, establishment and operation of shops for the sale of optical articles — National law allowing only authorised opticians to own opticians' shops — Application for the setting of a penalty payment

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, by the date on which the time-limit set in the reasoned opinion issued by the Commission pursuant to Article 228 EC expired, all the measures necessary to comply with the judgment of 21 April 2005 in Case*