

**Parties to the main proceedings**

*Applicant:* PARAT Automotive Cabrio Textiltetőket Gyártó Kft.

*Defendant:* Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

**Re:**

Reference for a preliminary ruling — Nógrád Megyei Bíróság — Interpretation of Article 17 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) — National legislation restricting the deductibility of the tax relating to the subsidised acquisition of equipment to the non-subsidised portion

**Operative part of the judgment**

1. Article 17(2) and (6) 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, must be interpreted to the effect that it precludes national legislation which in the case of acquisition of goods subsidised by public funds, allow the deduction of related VAT only up to the limit of the part of the costs of that acquisition that is not subsidised.
2. Article 17(2) of the Sixth Directive confers on taxable persons rights on which they may rely before a national court to contest national rules that are incompatible with that Article.

<sup>(1)</sup> OJ C 116, 9.5.2008.

**Judgment of the Court (Fourth Chamber) of 2 April 2009 (reference for a preliminary ruling from the Thüringer Finanzgericht, Gotha (Germany)) — Glückauf Brauerei GmbH v Hauptzollamt Erfurt**

(Case C-83/08) <sup>(1)</sup>

*(Harmonisation of the structures of excise duties — Directive 92/83/EEC — Article 4(2) — Small independent brewery which is legally and economically independent of any other brewery — Criteria of legal and economic independence — Possibility of being subject to indirect influence)*

(2009/C 141/27)

Language of the case: German

**Referring court**

Thüringer Finanzgericht, Gotha

**Parties to the main proceedings**

*Applicant:* Glückauf Brauerei GmbH

*Defendant:* Hauptzollamt Erfurt

**Re:**

Reference for a preliminary ruling — Thüringer Finanzgericht, Gotha (Germany) — Interpretation of Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Classification as 'independent small brewery' for the purposes of application of reduced rates of duty — Criterion of 'economic independence' — Brewery liable, because of shareholdings and the allocation of voting rights, to be indirectly influenced by two other breweries

**Operative part of the judgment**

Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that a situation characterised by the existence of structural links in terms of shareholdings and voting rights, and which results in a situation in which one individual, performing his duties as manager of a number of the breweries concerned, is able, independently of his actual conduct, to exercise influence over the taking of business decisions by those breweries, prevents them from being considered economically independent of each other.

<sup>(1)</sup> OJ C 128, 24.5.2008.

**Judgment of the Court (Fifth Chamber) of 2 April 2009 (Reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Hauptzollamt Bremen v J.E. Tyson Parketthandel GmbH hanse j.**

(Case C-134/08) <sup>(1)</sup>

*(Regulation (EC) No 2193/2003 — Additional customs duties on imports of certain products originating in the United States of America — Temporal scope — Article 4(2) — Products exported after the entry into force of that regulation for which it can be demonstrated that they were already on their way to the Community when those duties were first applied — Whether subject to duty)*

(2009/C 141/28)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Hauptzollamt Bremen

*Defendant:* J.E. Tyson Parketthandel GmbH hanse j.