V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 28 February 2018 by Wenger SA against the judgment of the General Court (First Chamber) delivered on 23 January 2018 in Case T-869/16: Wenger v EUIPO

(Case C-162/18 P)

(2018/C 311/02)

Language of the case: English

Parties

Appellant: Wenger SA (represented by: A. Sulovsky, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office, Swissgear Sàrl

By order of 5 July 2018 the Court of Justice (Seventh Chamber) held that there is no need to adjudicate on the present appeal.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 24 April 2018 — KrakVet Marek Batko sp. K. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-276/18)

(2018/C 311/03)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: KrakVet Marek Batko sp. K.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Must the objectives of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax (['the VAT Directive']), in particular the requirements for the prevention of jurisdictional conflicts between Member States and double taxation, referred to in recitals 17 and 62 thereof, and Council Regulation (EU) No 904/2010, ([2]) in particular recitals 5, 7 and 8 and Articles 7, 13 and 28 to 30 thereof, be interpreted as precluding a practice of the tax authorities of a Member State which, by attributing to a transaction a qualification that differs both from the legal interpretation of the same transaction and the same facts that was carried out by the tax authorities of another Member State and from the response to the binding inquiry provided by those authorities on the basis of that interpretation, as well as from the confirmatory conclusion of both that those authorities reached in the tax inspection they carried out, gives rise to the double taxation of the taxable person?

2. If the answer to the first question is that such a practice is not contrary to EU law, can the tax authorities of a Member State, taking into account Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, and EU law, unilaterally determine the tax obligation, without taking into consideration that the tax authorities of another Member State have already confirmed, on various occasions, first at the request of the taxable person and later in its decisions as a result of an inspection, the lawfulness of that taxable person's actions?

   Or should the tax authorities of both Member States cooperate to reach an agreement, in the interests of the principle of fiscal neutrality and the prevention of double taxation, so that the taxable person has to pay [VAT] in only one of those countries?

3. If the response to the second question is that the tax authorities of a Member State can change the qualification of a tax unilaterally, should the provisions of the [VAT Directive] be interpreted as meaning that the tax authorities of a second Member State are obliged to return to the taxable person required to pay VAT the tax determined by those authorities in response to a binding inquiry and paid in relation to a period closed with an inspection, so that both the prevention of double taxation and the principle of fiscal neutrality are guaranteed?

4. How should the expression in the first sentence of Article 33(1) of the Harmonised VAT Directive, according to which the transport is carried out 'by or on behalf of the supplier', be interpreted? Does this expression include the case in which the taxable person offers as a seller, in an online shopping platform, the possibility for the buyer to enter into a contract with a logistics company, with which the seller collaborates for operations other than the sale, when the buyer can also freely choose a carrier other than the one proposed, and the transport contract is concluded by the buyer and the carrier, without the intervention of the seller?

   Is it relevant, for interpretative purposes — especially taking into account the principle of legal certainty — that by the year 2021 the Member States must amend legislation transposing the aforementioned provision of the [VAT Directive], so that Article 33(1) of that directive must also be applied in case of indirect collaboration in the choice of carrier?

5. Should EU law, specifically the [VAT Directive], be interpreted as meaning that the facts mentioned below, taken as a whole or separately, are relevant to examine whether, among the independent companies that carry out a delivery, expedition or transport of goods the taxable person has arranged, to circumvent Article 33 of the [VAT Directive] and thereby infringe the law, legal relationships that seek to take advantage of the fact that the VAT is lower in the other Member State:

   5.1. the logistics company carrying out the transport is linked to the taxable person and provides other services, independent of transport,

5.2. at the same time, the customer may at any time depart from the option proposed by the taxable person, which is to order the transport to the logistics company with which it maintains a contractual link, being able to entrust the transport to another carrier or personally collect the goods?

(1) OJ 2006 L 347, p. 1.
(2) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ 2010 L 268, p. 1).

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 16 May 2018 — Tesco-Global Áruházak Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-323/18)

(2018/C 311/04)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Tesco-Global Áruházak Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Is the fact that taxable persons under foreign ownership which operate a number of retail establishments through a single company and which are engaged in store retail trade in fact have to pay the special tax corresponding to the highest band of a steeply progressive tax rate, whereas taxable persons under domestic ownership operating as a franchise under a single banner — through stores which generally constitute independent companies — are in fact included in the exempt band or are subject to one of the lower tax rates following that band, with the result that the proportion of the tax paid by companies under foreign ownership of the total tax collected through the special tax is substantially higher than in the case of taxable persons under domestic ownership, compatible with the provisions of the FEU Treaty governing the principles of non-discrimination (Articles 18 TFEU and 26 TFEU), freedom of establishment (Article 49 TFEU), equal treatment (Article 54 TFEU), equal treatment as regards financial participation in the capital of companies or firms within the meaning of Article 54 TFEU (Article 55 TFEU), freedom to provide services (Article 56 TFEU), free movement of capital (Articles 63 TFEU and 65 TFEU) and equality of taxation of companies (Article 110 TFEU)?

2. Is the fact that taxable persons which operate a number of retail establishments through a single company and which are engaged in store retail trade in fact have to pay the special tax corresponding to the highest band of a steeply progressive tax rate, whereas taxable persons under domestic ownership which are their direct competitors and which operate as a franchise under a single banner — through stores which generally constitute independent companies — are in fact included in the exempt band or are subject to one of the lower tax rates following that band, with the result that the proportion of the tax paid by companies under foreign ownership of the total tax collected through the special tax is substantially higher than in the case of taxable persons under domestic ownership, compatible with the provisions of the FEU Treaty governing the principle of the prohibition of State aid (Article 107(1) TFEU)?