

Judgment of the Court (Second Chamber) of 15 March 2007 (reference for a preliminary ruling from the Corte suprema di cassazione — Italy) — Reemtsma Cigarettenfabriken GmbH v Ministero delle Finanze

(Case C-35/05) ⁽¹⁾

(Eighth VAT Directive — Articles 2 and 5 — Taxable persons not established in the territory of the country — Tax paid in error — Arrangements for reimbursement)

(2007/C 95/10)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Reemtsma Cigarettenfabriken GmbH

Defendant: Ministero delle Finanze

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Articles 2 and 5 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) — Tax paid when not due as a result of an incorrect invoice.

Operative part of the judgment

- 1) Articles 2 and 5 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, must be interpreted as meaning that value added tax that is not due and has been invoiced in error to the beneficiary of the services and paid to the tax authorities of the Member State where those services were supplied, is not refundable under those provisions.
- 2) Except in the cases expressly provided for in Article 21(1) 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, as amended by Council Directive 92/111/EEC of 14 December, only the supplier must be considered to be liable for payment of value added tax for the purposes of the tax authorities of the Member State where the services were supplied.

- 3) — The principles of neutrality, effectiveness and non-discrimination do not preclude national legislation, such as that at issue in the main proceedings, according to which only the supplier may seek reimbursement of the sums unduly paid as value added tax to the tax authorities and the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due. However, where reimbursement of the value added tax would become impossible or excessively difficult, the Member States must provide for the instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.

— This ruling shall not be affected by national legislation on direct taxation.

⁽¹⁾ OJ C 93, 16.4.2005.

Judgment of the Court (Second Chamber) of 15 March 2007 — Commission of the European Communities v Republic of Finland

(Case C-54/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Importation of a vehicle registered in another Member State — Obligation to obtain a transfer licence)

(2007/C 95/11)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and M. Huttunen, acting as Agents)

Defendant: Republic of Finland (represented by: T. Pynnä and A. Guimaraes-Purokoski, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 28 and 30 EC — Import by a person resident in Finland of a vehicle already registered in another Member State — Obligation to obtain, at the frontier point, a transfer licence usually valid for seven days and to take out an insurance policy for the vehicle