Case C-396/20

Request for a preliminary ruling

Date lodged:

30 July 2020

Referring court:

Kúria (Supreme Court, Hungary)

Date of the decision to refer:

2 July 2020

Applicant:

CHEP Equipment Pooling NV

Defendant:

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Resources Directorate of the National Tax and Customs Authority, Hungary)

Decision of the KÚRIA (Supreme Court, Hungary),

as the court of appeal on a point of law

[…]

Applicant: CHEP Equipment Pooling [NV] ([…] Mechelen […], Belgium)

[…]

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság[a] (Resources Directorate of the National Tax and Customs Authority, Hungary) ([…] Budapest […])

[…]

Subject matter of the proceedings: administrative tax decision

[…]

Operative part

The Supreme Court […] [procedural considerations of domestic law] refers the following question to the Court of Justice of the European Union for a preliminary ruling:

Must Article 20(1) 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 (Directive 2008/9/EC) be interpreted as meaning that, even where there are clear numerical discrepancies (not involving a proportional deduction) between the refund application and the invoice that are to the disadvantage of the taxable person, the Member State of refund may deem that there is no need to request additional information and that it has received all the relevant information on which to make a decision in respect of the refund?

Grounds

Provisions of EU law cited

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 (‘the directive’), Article 20(1) and Article 8(2)(e).

Provisions of national law cited

Az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on Value Added Tax, ‘the VAT Law’).

Paragraph 249(1) of the VAT Law: A taxable person not established in the national territory may exercise the right to a refund of the tax by addressing a written application to the competent body of the national tax authority stated in the legislation (‘the refund application’).

Paragraph 251/F(1)(a) of the VAT Law: Where the national tax authority considers that it is not possible to take a reasoned decision on the refund application based on the details it has received and other information, it may address a written request to the taxable person not established in the national territory to provide further details and information within the time period established in Paragraph 251/E(1).

Paragraph 251/E(1) of the VAT Law: Unless otherwise provided in this Law, the national tax authority shall make a decision on the refund application within four months.

Paragraph 251/F(3) of the VAT Law: Where there is reasonable doubt regarding the legal basis for the tax refund or the amount of the input tax refund applied for, the information requested in the written request referred to in subparagraphs 1 and 2 may include the submission of the original or a certified copy of the document referred to in Paragraph 127(1)(a)(c) and (d) issued to the taxable person not established in the national territory which attests to the performance of the transaction. In that case, the maximum amounts established in Paragraph 250(1) shall not apply.

Paragraph 127(1)(a) of the VAT Law: Where Paragraph 120(a) applies, the exercise of the right of deduction is conditional on the taxable person being in personal possession of an invoice issued in in that person's name which attests to the performance of the transaction.

Paragraph 120(a) of the VAT Law: In so far as taxable persons, acting as such, use or otherwise exploit goods or services in order to make taxable supplies of goods or services, they shall be entitled to deduct from the tax that they are liable to pay the amount of tax charged to them, in connection with the purchase of goods or services, by another taxable person, including a person or entity subject to simplified corporation tax.

Paragraph 4(2)(e) of the a belföldön nem letelepedett adóalanyokat a Magyar Köztársaságban megillető általános forgalmiadó-visszatérítettési jognak, valamint a belföldön letelepedett adóalanyokat az Európai Közösség más tagállamában megillető hozzáadottértékadó-visszatérítettési jognak érvényesítésével kapcsolatos egyes rendelkezésekről szóló 32/2009. (XII. 21.) PM rendelet (Order 32/2009 of the Minister of Finance of 21 December 2009 concerning certain provisions regarding the exercise of the right of taxable persons not established in the national territory to the refund of value added tax in the Republic of Hungary and the right of taxable persons established in the national territory to the refund of value added tax in other Member States of the European Community; 'the Order of the Minister of Finance'): In addition to the requirements laid down in subparagraph 1, the refund application must also include, for each of the documents referred to in Paragraph 127(1)(a)(c) and (d) of the VAT Law issued in the name of the taxable person established in another Member State of the Community which attests to the performance of the transaction, the taxable amount and amount of the tax expressed in forints.

Brief summary of the grounds for the appeal and the reasons for the request for a preliminary ruling

[1] The applicant, a company incorporated in Belgium, owns the CHEP European pallet factory: it used to buy the new pallets and then rent them to its companies, which operated in different EU Member States. Its invoices for renting the pallets were issued under a Belgian tax number.

[2] On 28 September 2017, the applicant, as a taxable person established in another Member State of the Community, submitted an application for a refund of the input VAT on goods and services purchased in the national territory during the period from 1 January 2016 to 31 December 2016. Attached to the application was a document containing various columns labelled invoice number/invoice date/invoice issuer/taxable amount/tax/tax deductible/denomination/codes, together with the invoices referred to in the document. In the document, the applicant also listed invoices in respect of which it had already received a full or partial VAT refund, and invoices in which the actual amount of VAT stated in the invoice was less than the amount stated in the application. The document also included cases where the actual amount of VAT stated in the invoice was more than the amount stated in the application.

[3] On 2 November 2017, the first-tier tax authority asked the applicant to provide documents and statements regarding the circumstances surrounding the financial transactions relating to 143 invoices. After receiving the additional details on 29 November 2017, the first-tier tax authority upheld the application in part, authorising a VAT refund of HUF 254 636 343 and refusing the refund of HUF 92 803 004. The refusal was made partly on the ground that the amount claimed had already been fully or partially refunded, and partly on the ground that Paragraph 247(3) of the VAT Law does not permit the refund of an amount of tax in excess of the amount stated in the invoice. In those cases where the amount of VAT stated in the document attached to the application was less than the VAT stated in the invoice, the first-tier tax authority approved the refund of the amount stated in the attachment.

[4] The defendant confirmed the first-tier decision. The ground for its decision was that the amount of the refund applied for is the most important element of the application, and any alteration to that amount gives rise to a new application. The correction of the administrative error invoked by the applicant in its appeal would also entail a new application. The applicant was unable to submit a new application because, although it was entitled to submit an application for the year in question from the start of the following year, that is, from January 2017, it did not do so until 28 September 2017, and the application period expired on 30 September 2017. The applicant was responsible for misstating the amount of the claim and for the date of the application. In the applicant's case, there was clear evidence to support the facts, and no corrective action was necessary. Where an application has been completed incorrectly, the tax authority cannot be required to verify the reason for the error.

[5] The applicant brought an action under administrative law seeking a review of the defendant's decision in respect of the invoices for which, based on the information in the document attached to the application, the defendant had determined a VAT refund that was less than the actual amount of VAT stated in the invoices.

[6] In a final judgment, the court of first instance dismissed the administrative-law action brought by the applicant. According to the grounds in the judgment, it is for

the applicant to assert the right to a refund, to initiate the procedure and to determine the amount of VAT eligible for a refund. The argument invoked by the applicant would render the application meaningless since, on that basis, it would be sufficient merely to attach the invoices that provide the legal basis for the entitlement to a refund and, other than in the case of a proportional deduction, the tax authority would invariably have to order a refund of the maximum amount of tax as recorded in the invoices. Additional information may be requested by the defendant only where it is needed in order to arrive at a reasoned decision or where the relevant information is missing, which was not the case here.

[7] In its appeal on a point of law, the applicant is seeking to have the final judgment overturned and to obtain judgment upholding the claims in its administrative-law action. In its opinion, the final judgment breaches the principle of tax neutrality established in Article 1(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('Directive 2006/112'). The court of first instance did not take into account the fundamental principle of the right to due process in tax matters, but merely verified that the refund procedure complied with the technical rules.

[8] When hearing the appeal on a point of law, the Supreme Court observed that the applicable rules contain no limit on the number of refund applications that may be submitted during the refund period; in other words, applicants may correct previous possible errors by submitting new applications. However, where an application is submitted close to the expiry of the application period, the correct interpretation of the question whether a reasoned decision can be made on an application where discrepancies between [the amount of VAT stated in the application and the amount stated in the invoices submitted] remain unresolved assumes vital importance.

[9] The EU law and the national law applicable to the facts at issue contain identical provisions. Both Article 8(2)(e) of the directive and Paragraph 4(2)(e) of the Order of the Minister of Finance stipulate that the amount of VAT must be included in the application. Under both Article 20(1) of the directive and Paragraph 251/F(3) of the VAT Law, a decision on the refund can be made only if all the relevant information on which to make a reasoned decision has been received. According to both the directive and the VAT Law, the precise amount of the refund applied for constitutes relevant information that is needed in order to make a reasoned decision. Under the directive, additional information may be requested in respect of 'relevant information' where there are reasonable doubts regarding the validity or accuracy of a particular claim. Under the VAT Law, the taxable person may also be asked to provide such information where there are reasonable doubts regarding the amount of the refund of input tax applied for.

[10] The national tax authority considers that it is for the applicant to determine the scope of the case, and that, therefore, doubts over the amount of the claim for a VAT refund can arise only in connection with an error in the financial transaction or where the amount exceeds the amount permitted by law.

[11] With regard to the directive, the question to be decided is whether, in the event of a discrepancy that is detrimental to the taxable person, the national tax authority may deem that it has received all the relevant information on which to make a reasoned decision in respect of the refund, without requesting additional information. In other words, the issue is whether the discrepancy between the amount stated in the application and the invoices submitted does not constitute relevant information in respect of which the tax authority must request additional information, [with the result that the authority] is not required to draw attention to the errors in the application in this regard.

[12] However, in the view of the Supreme Court, the national tax authority may have reasonable doubts over the accuracy of the application even where the amount of the VAT refund applied for is less than the amount stated in the invoice, and even where the application incorrectly states a taxable amount for VAT purposes that differs from the amount stated in the invoice. In these circumstance too, a reasoned decision may be made only after additional information has been requested.

[13] […] [procedural considerations of domestic law]

Budapest, 2 July 2020.

[…] [signatures]