

Case C-282/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

26 April 2022

Referring court:

Naczelny Sąd Administracyjny (Poland)

Date of the decision to refer:

23 February 2022

Applicant at first instance:

P. in W.

Defendant at first instance:

Dyrektor Krajowej Informacji Skarbowej

Subject matter of the main proceedings

Individual interpretation of the provisions of tax law concerning the classification of activities carried out at recharging points for electric vehicles.

Subject matter and legal basis of the request

The question whether activities carried out at recharging points for electric vehicles must be classified as a supply of goods under Article 14(1) of the VAT Directive or as a supply of services under Article 24(1) thereof.

Question referred for a preliminary ruling

Does a complex supply made to electric vehicle users at recharging points which encompasses:

- (a) the provision of recharging devices (including integration of the charger with the vehicle operating system),
- (b) the supply of electricity, within duly adjusted parameters, to the batteries of the electric vehicle,
- (c) the necessary technical support for vehicle users, and
- (d) the provision of a special platform, website or application whereby users may reserve a particular connector and view their transaction and payment history, and of the option to use an ‘e-wallet’ to pay the balance due for individual recharging sessions

- constitute a supply of goods within the meaning of Article 14(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [...], or a supply of services within the meaning of Article 24(1) thereof?

Provisions of European Union law relied on

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (‘the VAT Directive’): Article 14(1), Article 24(1).

Provisions of national law relied on

Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on the tax on goods and services) (‘the VAT Law’): Articles 7 and 8.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The company P. in W. (‘the applicant at first instance’ [or ‘the company’]) lodged a request with the Dyrektor Krajowej Informacji Skarbowej (Director of National Tax Information) [(‘the tax authority’ or ‘the authority’)] for an individual interpretation of the provisions of tax law relating to the tax on goods and services. In that request for interpretation, the applicant at first instance stated that it intended to engage in activity relating to ‘publicly accessible recharging stations

for electric vehicles'. As part of that activity, the company may install and provide for consideration recharging stations at which electric vehicle users will be able to recharge those vehicles from stations with different recharging standards and speeds.

- 2 The company envisages that the recharging stations will be equipped with 'multi-standard chargers', which have both DC quick-charge connectors and an AC slow charger. The standard time for recharging a vehicle to 80% battery capacity using DC quick-charge connectors is, as a rule, around 20 to 30 minutes. The vehicle recharging time using slow-charge AC connectors, by contrast, is normally around four to six hours (depending on the power of the connector).
- 3 The price will depend in particular on the recharging time and the standard of the connector used by the user concerned. Depending on the recharging standard, the price will be calculated on the basis of the recharging time expressed in hours (in the case of slow-charge connectors) or minutes (in the case of quick-charge connectors).
- 4 The supplies made by the company each time as part of the recharging session may, depending on the needs of the user concerned, encompass, as a rule, the following activities:
 - 5 - the provision of recharging devices (including integration of the charger with the vehicle operating system),
 - 6 - the supply of electricity, within duly adjusted parameters, to the batteries of the electric vehicle, as well as
 - 7 - the necessary technical support for vehicle users.
- 8 In addition, the company also intends to create a special platform, website or application through which individual users will be able, when using the company's recharging stations, to reserve a particular connector and view their transaction and payment history.
- 9 Settlement for vehicle recharging will be effected on the basis of the recharging time – depending on the arrangements with the user concerned, payments may be made after each recharging session or at the end of the agreed settlement period. In addition, it is possible that the company will, in future, also introduce the option for users to use an 'e-wallet' through which they will be able to pay for individual recharging sessions. The company envisages that users using an 'e-wallet' will deposit the amounts they select, which they will then be able to use to pay the balance due to the company. As part of this settlement system, the company would also provide a website or application which would make it possible to identify the user concerned, who would then be able to check the current status of the funds in his or her e-wallet. It is possible that the company will also issue users with a card enabling them to be identified before each individual recharging session begins.

- 10 All the above supplies will be covered by a single charge paid by users, calculated solely on the basis of the duration of the individual recharging sessions. The company does not intend to impose a separate charge for the additional activities carried out in connection with a particular recharging session – including technical support, reservation of a particular device or access to the abovementioned platform, website or application. Use of those facilities will be included in the price of the recharging session concerned.
- 11 In the light of the above description, the tax authority was asked the following question:
- ‘Does the entirety of the described supplies made by the company to electric vehicle users constitute a single taxable activity, that is to say a supply of services for consideration, as referred to in Article 8(1) of the VAT Law?’
- 12 In the view of the company, the entirety of the supplies made by the company to users of vehicle recharging stations must be regarded as constituting a single taxable activity, that is to say a supply of services for consideration, as referred to in Article 8(1) of the VAT Law.
- 13 In the contested interpretation, the Director of National Tax Information stated that the position of the applicant at first instance, as set out in the request for an individual interpretation, is incorrect.
- 14 As a result of an action brought by the applicant at first instance, by judgment of 6 June 2018, the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw, Poland) annulled the individual interpretation described above.
- 15 The tax authority appealed the judgment of the court of first instance in its entirety.

The essential arguments of the parties in the main proceedings

- 16 The company has put forward the following arguments in support of its position:
- 17 - from the users’ point of view, the individual activities carried out by the company constitute a single service purchased from that company,
- 18 - the principal aim pursued by individual users is to use the specialist recharging station devices, thus enabling them to recharge a battery quickly and more efficiently,
- 19 - all the additional activities are aimed exclusively at facilitating the use of the recharging station devices or enhancing the attractiveness of what the company has to offer in terms of recharging services,

- 20 - users are not charged in any way for the additional supplies which accompany recharging at the recharging station.
- 21 The Director of National Tax Information takes the view that, on the basis of Article 5(1), Article 7(1) and Article 8(1) of the VAT Law, as well as the case-law of the Court of Justice of the European Union [(‘the Court of Justice’)], the supply of the electricity necessary to recharge an electric vehicle must be regarded as the principal supply in the present case, and the other services offered by the company must be regarded as ancillary.
- 22 In the view of that authority, the activities carried out by the company should be divided into two parts – those related to the supply of electricity (that is to say the provision of recharging devices, the supply of the electricity itself, and the technical support) and those unrelated to the supply of electricity (that is to say the provision of a platform/website/application or of an e-wallet).
- 23 However, the Wojewódzki Sąd Administracyjny w Warszawie, ruling at first instance, began by drawing attention to Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (‘Directive 2014/94’), pointing out that that directive does not link the recharging of an electric vehicle at a station to the sale of electricity as goods.
- 24 That court agreed with the applicant at first instance that the main intention of individual users of recharging stations is to use the devices that enable them to recharge their vehicles quickly and efficiently. Thus, from the user’s point of view the principal supply made by the company is the provision of vehicle recharging station devices (together with the necessary integration of the charger with the vehicle’s operating system). The purpose of the supply is not to offer electricity but the technically advanced recharging devices with which the stations are equipped.
- 25 In the view of the above court, the purpose of the supply is not the purchase of electricity, since, if that were so, each electric vehicle owner would, instead of using a recharging station, use his or her home network or that of his or her workplace, which contains the same electricity as the network covering the stations of the applicant at first instance. The customer would have no reason to use a recharging station. The fundamental difference therefore lies in the recharging infrastructure.
- 26 That court also finds convincing the claim made by the applicant at first instance that customers, when deciding to use a recharging station, are primarily interested in accessing the devices at that station, without which they would be unable to power their vehicles or recharge them within a relatively short amount of time. It is therefore the possibility of using the specialist and technologically advanced devices equipped with charging connectors with different standards and not the supply of electricity to batteries that must be regarded as the fundamental need of

customers which is satisfied by the company. In the case of a recharging station, the supply of electricity to batteries is secondary to the provision of devices enabling electric vehicles to be recharged quickly and more efficiently.

- 27 That court also held that the facts of the case did not show that the price was calculated on the basis of the amount of electricity drawn (when stating in the request what the price will depend on ‘in particular’, no mention was made of electricity). The facts of the case show that the supplier (the applicant at first instance) is above all engaged in providing access to chargers with the appropriate technical parameters. However, there is no basis for finding that the supplier is substantially engaged in the purchase and subsequent resale of electricity.
- 28 In that court’s view, the fact that electricity constitutes goods within the meaning of Article 2(6) of the VAT Law does not mean that in all cases where electricity is used to supply a service there will be a supply of goods as the principal supply. The attractiveness of what the vehicle recharging station offers is reflected principally in the recharging time and not the access to electricity. Regardless, recharging a vehicle at home involves the purchase of goods, namely electricity, as the key and sole element of the supply.
- 29 According to that court, the supply of charging at the recharging station, as described in the request, is a broader concept than the sale of electricity. The access to electricity itself is relevant but it is not the drawing of the electricity which is the dominant element of the supply, but the way in which it is drawn. The court held that it is the element relating to the provision of technological solutions for consideration, that is to say the service of providing the relevant infrastructure, that is of decisive importance and that determines the nature of the supply of electrical vehicle recharging as a service. This is indicated by the usefulness of the supply from the customer’s point of view, the way in which the price is calculated and the extent to which the supplier’s involvement in providing the recharging infrastructure dominates the activities connected with the sale of electricity.
- 30 According to that court, the interpreting authority’s comparison of the facts of that case with the situation of filling up with fuel at a petrol station is inaccurate. From the point of view of an electrical vehicle user, it is not the type of fuel which is important (because it is the same everywhere) but the standard of the vehicle recharging device which is on offer. Therefore, unlike traditional service stations, in the case of recharging stations for electric vehicles it is the individual recharging devices which act as the element that distinguishes the offer of a particular entity. The effectiveness of a connector is of vital importance to vehicle battery recharging time, unlike in the case of a fuel pump.
- 31 Consequently, that court held that, in the circumstances described by the company, its supply does not constitute a supply of goods, but a service encompassing also – contrary to the position taken by the authority – the provision of a specialist platform, website or application for reserving a particular connector

and viewing transaction and payment history, and of the option to use an ‘e-wallet’.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 32 In the view of the referring court, in order for it to rule on the appeal on a point of law brought by the tax authority, it is necessary that the Court of Justice answer a question relating to the interpretation of and rules for implementing Article 14(1) of the VAT Directive and Article 24(1) thereof.
- 33 According to the case-law of the Court of Justice, every transaction must normally be regarded, for VAT purposes, as distinct and independent but, on the other hand, a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system.
- 34 That position was expressed in the judgment of the Court of Justice of 27 October 2005 in Case C-41/04, *Levob Verzekeringen [and OV Bank]*, which confirmed the position expressed in the judgments of 25 February 1999 in Case C-349/96, *Card Protection Plan Ltd (CPP)*, and of 2 May 1996 in Case C-231/94, *Faaborg-Gelting Linien*.
- 35 In the present case, the purpose of the company’s supply is:
- (1) the provision of recharging devices (including integration of the charger with the vehicle operating system),
 - (2) the supply of electricity, within duly adjusted parameters, to the batteries of the electric vehicle,
 - (3) the necessary technical support for vehicle users, and
 - (4) the provision of a special platform, website or application whereby users may reserve a particular connector and view their transaction and payment history, and of the option to use an ‘e-wallet’ to pay the balance due for individual recharging sessions.

It follows from the foregoing that the first three elements of the supply made by the company are certainly necessary to carry out the vehicle recharging activity since they are closely linked. Consequently, the supply of electricity and the provision of recharging devices together with technical support must, in the circumstances of the present case, be regarded as elements forming a single transaction, for the purposes of VAT.

The activities which comprise the fourth element do not have such a close connection with the vehicle recharging activity, although they may, as ancillary activities, undoubtedly make it easier for customers to carry out that activity.

- 36 Next, in order to determine whether the above complex transaction is to be classified as a supply of goods or a supply of services, it is vital to identify the predominant elements thereof (see, *inter alia*, judgments in *Faaborg-Gelting Linien*, paragraphs 12 and 14, and in *Levob Verzekeringen and OV Bank*, paragraph 27).
- 37 It is necessary to answer the question as to what constitutes, for the average consumer, the dominant element in the transaction at issue.
- 38 In the view of the referring court, the authority's position is more convincing, since a vehicle user does not go to a recharging point (station) for the purpose of using a recharging device, but for the purpose of recharging the battery of his or her vehicle with electricity so that he or she may use it. There he or she has a choice of slow and quick recharging points which he or she uses not only on account of the recharging time, but also having regard to the characteristics of his or her vehicle's battery. Thus, it would appear that the provision of recharging devices does not constitute for the vehicle user an aim in itself, but a means of better enjoying the principal activity, which is the drawing (supply) of electricity, by means of those devices. Therefore, use of the recharging device would be only a means for the user to recharge the battery of his or her vehicle with electricity.
- 39 However, the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) notes that Article 4(8) of Directive 2014/94 provides that: 'Member States shall ensure that operators of recharging points accessible to the public are free to purchase electricity from any Union electricity supplier, subject to the supplier's agreement. The operators of recharging points shall be allowed to provide electric vehicle recharging services to customers on a contractual basis, including in the name and on behalf of other service providers.'
- 40 It follows from that provision that the EU legislature regards the recharging of electrical vehicles (at recharging points) as a service (at least, it uses that terminology). It should also be borne in mind that current economic practice shows that, in calculating the charge for recharging, account is taken of both the measurement of the electricity consumed and the fee for the standing time during recharging.
- 41 Therefore, the referring court considers that, having regard to the importance of the matter at issue not only for national operators of recharging points, but the entire EU market (that is to say as regards determining the place of supply in respect of those activities), it is essential to resolve the question of how the supply at issue is to be classified under Directive 2006/112/EC – either as a supply of goods within the meaning of Article 14(1) of that directive, or as a supply of services within the meaning of Article 24(1) thereof.