

Case C-429/23**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:**

11 July 2023

Referring court:

Administrativen sad Varna (Administrative Court, Varna, Bulgaria)

Date of the decision to refer:

30 June 2023

Applicant:

NARE-BG EOOD

Defendant:

Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Subject matter of the main proceedings

The main proceedings concern examination of a tax assessment notice by which a tax authority refused to allow the applicant in the main proceedings to make a correct in respect of an earlier period and exercise the right to deduct input tax in respect of supplies which it had received before registering under the Zakon za danak varhu dobavenata stoynost (Law on value added tax; 'the ZDDS').

Subject matter and legal basis of the request

In the present case, special legal provisions were adopted in Bulgaria in connection with the COVID 19 pandemic while the 12-month period provided for in the ZDDS for exercising the right to deduct input tax in respect of supplies received by the applicant prior to its registration under the ZDDS was running. In view of the difficulties which the pandemic entailed for economic operators, those legal provisions extended the time limits for the declaration and payment of

certain taxes, but did not provide for such possibility for the declaration, payment and right to deduct VAT. The applicant argues that, precisely because of COVID 19 and the subsequent self-isolation of its accountant, it made a technical error, which it was not permitted to correct in accordance with the tax assessment notice contested in the main proceedings. As a result, the applicant is unable in practice to exercise its right to deduct input tax in respect of the supplies which it received prior to its registration under the ZDDS.

The referring court asks the Court of Justice whether the applicable national legislation and practices render the exercise of the right to deduct input tax in those circumstances practically impossible or excessively difficult and whether they are compatible with Articles 184 and 186 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'), and the principles of fiscal neutrality, equivalence and effectiveness.

The referring court further asks the Court of Justice whether it is permissible under the abovementioned provisions of the VAT Directive to refuse the right to deduct input tax in respect of supplies received by a taxable person prior to its registration pursuant to the ZDDS, where it has declared VAT on those supplies by means of a correcting declaration for a period falling within the last tax period of the 12-month limitation period for exercising the right to deduct input tax in respect of those supplies.

The request is made pursuant to Article 267 TFEU.

Questions referred for a preliminary ruling

1. In the context of the measures introduced by law to contain the epidemic, including the imposition of administrative measures to restrict people from leaving home and moving freely in localities, restrict contact with other persons and close retail premises, where, in connection with those measures to contain the epidemic, the time limits for declaring and paying tax debts pursuant to the *Zakon za korporativnoto podohodno oblagane* (Law on corporation tax) (ZKPO) (which lays down the time limits for declaring and paying taxes on income in national law) were extended, does a limitation period such as that at issue in the present proceedings have the effect of rendering practically impossible or excessively difficult the exercise of the right to deduct input tax by taxable persons during the period in which the measures to contain the epidemic are in force, and, from that point of view, are national legislation and tax administration practices such as those at issue in the present proceedings compatible with Article 184 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, 'the VAT Directive'), in conjunction with Article 186 thereof, in the light of the principle of fiscal neutrality introduced by the VAT Directive and the principles of equivalence and

effectiveness enshrined in European Union law (judgment of 8 May 2008, *Ecotrade*, C-95/07 und C-96/07, EU:C:2008:267)?

2. In the light of the possibility provided for in the *Zakon za danak varhu dobavenata stoynost* (Law on value added tax) (ZDDS) of correcting the information declared by means of a VAT declaration pursuant to the ZDDS, is, in the circumstances of the present case, a practice of the tax authority permitted under Article 184 of the VAT Directive, in conjunction with Article 186 thereof, whereby a taxable person is refused the right to deduct input tax on the ground that the VAT was declared by means of a correcting declaration submitted in order to correct the data in respect of the last tax period of the limitation period (12 months) for exercising the right to deduct input tax in respect of supplies, received by the taxable person before the date of its registration pursuant to the ZDDS, provided that the transactions were not concealed, the data on the performance thereof were available in the applicant's accounts, the tax administration had the necessary information, and there is no evidence that the budget was damaged?

Provisions of European Union law and EU case-law relied on

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Articles 167, 168, 178, 179, 180, 182, 184, 185, 250 to 252, and 273

Judgment of 7 July 2022, *Staatssecretaris van Financiën (Limitation of the right of deduction)* (C-194/21, EU:C:2022:535); 'judgment in *Staatssecretaris van Financiën*'

Judgment of 8 May 2008, *Ecotrade* (C-95/07 and C-96/07, EU:C:2008:267); 'judgment in *Ecotrade*'

Judgment of 12 July 2012, *EMS-Bulgaria Transport* (C-284/11, EU:C:2012:458); 'judgment in *EMS-Bulgaria Transport*'

Judgment of 9 July 2015, *Salomie and Oltean* (C-183/14, EU:C:2015:454); 'judgment in *Salomie and Oltean*'

Provisions of national law relied

Zakon za danak varhu dobavenata stoynost (Law on VAT; 'the ZDDS') – Articles 74, 75, 125 and 126

Zakon za merkite i deystviyata po vreme na izvanrednoto polozhenie, obyaveno s reshenie na Narodnoto sabranie ot 13 mart 2020 i za preodolyavane na posleditsite (Law on measures and actions to be taken during the state of emergency, imposed by the decision of the National Assembly on 13 March 2020, and addressing the

consequences thereof; ‘the ZMDIPPP’) (the title of that law was supplemented with effect from 14 May 2020; the previous title was: Zakon za merkite i deystviyata po vreme na izvanrednoto polozhenie, obyaveno s reshenie na Narodnoto sabranie ot 13 mart 2020 [Law on measures and actions to be taken during the state of emergency imposed by the decision of the National Assembly of 13 March 2020]) – Paragraphs 25, 27, 28, 29, and 49 of the transitional and final provisions of that law

Zakon za korporativnoto podohodno oblagane (Law on corporation tax; ‘the ZKPO’) – Articles 92, 93, and 219(1), (4) and (5)

Succinct presentation of the facts and procedure in the main proceedings

- 1 The subject matter of the investigation in the proceedings before the referring court is a tax assessment notice of 24 January 2022, which was issued by a tax authority of the Teritorialna direktsia na Natsionalnata agentsia za prihodite (Regional Directorate of the National Agency for Revenues) in Varna.
- 2 The scope of the investigation in terms of the nature of the liability and the period concerned is as follows: VAT for the period from 1 July 2021 to 31 July 2021 and VAT for the period from 1 October 2020 to 30 June 2021.
- 3 When issuing the tax assessment notice, the tax authority identified irregularities committed by the applicant in applying the provisions of the ZDDS in relation to the amounts which can be offset or are to be refunded.
- 4 Those amounts are set out in detail in the form a table showing the invoice number, date, supplier, subject matter, taxable amount, and VAT amount. Listed are 71 invoices issued during the period 2017 to 2019. That period is prior to the date of registration of the undertaking under the ZDDS. The total taxable amount in respect of the 71 invoices listed is 587 293.93 leva (BGN), and the total amount of VAT is BGN 117 458.80. It is not disputed that the supplies were made. It is also common ground that the VAT was paid by the suppliers.
- 5 It was established that the undertaking was registered under the ZDDS on 25 November 2019.
- 6 In respect of the period from 25 November 2019 to 30 September 2020, the applicant submitted a VAT declaration for BGN 0.
- 7 On 10 December 2020, the applicant submitted a VAT declaration for the tax period November 2020, in which it declared supplies with an entitlement to full input tax deduction in the amount of BGN 50 627 and VAT in the amount of BGN 10 125.40 (resulting in recoverable VAT in the amount of BGN 10 125.40); on 14 January 2021, it submitted a VAT declaration for December 2020, in which it declared supplies with an entitlement to full input tax deduction in the amount

of BGN 587 293.93 and VAT in the amount of BGN 117 458.93 (resulting in recoverable VAT in the amount of BGN 117 458.80).

- 8 By letter of 15 January 2021, the applicant informed the tax authorities, pursuant to Article 126(3) of the ZDDS, that it had made the following technical errors in the accounting ledgers under the ZDDS for the tax periods November and December 2020: Invoices that should have been included in the accounting ledgers under the ZDDS for November 2020 had been erroneously included in the purchase ledger and the tax declaration for December 2020. As the reason for the errors, the applicant cites the fact that the accountant acquired COVID 19 and subsequently self-isolated, as a result of which the work was transferred to a colleague who replaced him.
- 9 The period for exercising the right to deduct input tax in respect of the supplies in question was 12 months and ended in November 2020, and the right to deduct input tax had to be exercised by submitting a tax declaration by 14 December 2020 at the latest. The right to deduct input tax in respect of those supplies was not exercised in the declaration for November 2020.
- 10 The tax authority refused the right to deduct input tax from the abovementioned invoices with reference to Article 72(1) of the ZDDS, which provides that a person registered under the ZDDS is entitled to exercise the right to deduct input tax in respect of the tax period in which that right arose or in one of the 12 subsequent tax periods.
- 11 The tax authority notes that under Article 75(1) and (2) of the ZDDS, the right to deduct input tax in respect of assets and services existing before the taxable person's registration arises on the date of its registration under the ZDDS and is exercised in the tax period in which it arose or in one of the 12 subsequent tax periods. In the light of the foregoing, the tax authority concludes that the limitation period for exercising the right to deduct input tax in respect of the invoices referred to in the tax assessment notice expired in the tax period December 2020 and that the right to deduct input tax was precluded.
- 12 In addition, the tax authority states that the undertaking under investigation exercised the right to full deduction of input tax in breach of Article 72 of the ZDDS and that the deduction of input tax for December 2020 in respect of those invoices should be adjusted downwards.
- 13 Therefore, by tax assessment notice of 24 January 2022 the applicant was refused the right to deduct input tax in respect of 71 invoices from suppliers registered under the ZDDS for the period 2017 to 2019 with a taxable amount of BGN 587 293.93 and a total VAT amount of BGN 117 458.80.
- 14 On 13 March 2020, the National Assembly of the Republic of Bulgaria imposed a state of emergency in the territory of the country in connection with the COVID-19 pandemic for the period from 13 March 2020 to 13 April 2020. Subsequently, the ZMDIPPP was adopted. Through a series of decisions of the Council of

Ministers and orders of the Minister for Health, measures to combat the epidemic were introduced in the country throughout 2020, and the period of the epidemic-related state of emergency was gradually extended until 30 April 2021.

The essential arguments of the parties in the main proceedings

- 15 The applicant takes the view that the dispute set out in the reference for a preliminary ruling is of a purely legal nature in view of the undisputed facts. The questions referred for a preliminary ruling relate to provisions of the VAT Directive, in particular Articles 179(1), 180 and 273, and the principles of fiscal neutrality, effectiveness and equivalence, as addressed in the judgments in *Ecotrade* and *EMS-Bulgaria Transport*.
- 16 The applicant considers that the judgment in *Staatssecretaris van Financiën* cited by the defendant is not applicable.
- 17 The defendant argues that the applicant exercised the right to deduct input tax in respect of the 71 invoices at issue in breach of Article 75(2) of the ZDDS. Those invoices relate to services and advances which the applicant received prior to its registration under the ZDDS and which existed at the time of its registration, but which it was late in declaring in its VAT declaration – it included them in its purchase ledger for the tax period December 2020 rather than the tax period November 2020 at the latest. According to the information provided by the applicant, the reason for that delay was that its accountant in charge had been ill with COVID-19 for a certain period in December 2020.
- 18 In the light of those circumstances, the defendant takes the view that the dispute before the referring court concerns the application of Article 75(2) of the ZDDS, in conjunction with Article 75(1) thereof, and not the conditions for correcting errors in submitted declarations under Article 125 of the ZDDS since the applicant did not submit a VAT declaration for the period from 25 November 2019 to 30 September 2020 and did not enter the invoices at issue in its purchase ledger for the tax periods October 2020 and November 2020 in accordance with Article 124 of the ZDDS.

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

- 19 In the view of the referring court, the question is whether it is permissible for the applicant – by submitting a VAT declaration for December 2020 and a notice of correction for November 2020 – to make a correction in respect of a previous period (November 2020) and exercise the right to deduct input tax in respect of supplies received before the date of its registration under the ZDDS, namely 25 November 2019, provided that, within the one-year period laid down in national law for the right to deduct input tax in respect of supplies received by taxable persons before the date of their registration under the ZDDS, measures have been introduced by law in Bulgaria which lay down time limits for the

declaration and payment of certain taxes, having regard to the epidemic situation, but no such provision is made for the declaration and payment of VAT.

- 20 The referring court takes the view that that the Court of Justice, in its previous case-law, has ruled on cases in which the facts and the national tax rules differed from those at issue in the present case and that, therefore, the guidelines for the interpretation and application of the relevant provisions of national law transposing the VAT Directive are partially irrelevant and thus a reference for a preliminary ruling is necessary.
- 21 The first question referred arises from the difference between the circumstances of the present case and those examined in the judgments in *EMS-Bulgaria Transport* and *Ecotrade*. In that regard, the referring court, states, with reference to paragraph 49 of the judgment in *EMS-Bulgaria Transport* and paragraphs 46 and 48 of the judgment in *Ecotrade*, that the difference in the present case lies in the special legal provisions which, on account of the difficulties faced by economic operators in connection with the COVID 19 pandemic, lay down longer time limits for the declaration and payment of taxes due under the ZKPO, but does not provide for a similar possibility for declaration, payment and the right of deduction in respect of VAT.
- 22 The second question referred arises from the difference between the circumstances of the case in which the judgment in *Staatssecretaris van Financiën* was delivered and the circumstances of the present case, as regards the period during which the correcting declaration was submitted. In that judgment, that period covered the years 2006 to 2015, during which the taxable person received a tax assessment notice (2015) and, after that notice was issued, claimed a deduction of input tax in respect of the VAT paid on the purchase of the goods in 2006, whereas in the present case, the applicant itself identified the discrepancy in the data declared and, in the following tax period, after the expiry of the time limit for exercising the right to deduct input tax in November 2020 (but within the period for submitting a correcting declaration – December 2020), submitted the correcting declaration.