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Case C-365/22

Request for a preliminary ruling

Date lodged:

7 June 2022

Referring court:

Cour de cassation (Belgium)

Date of the decision to refer:

16 May 2022

Appellant:

IT

Respondent:

État belge (Belgian State)

Cour de cassation de Belgique (Court of Cassation, Belgium)

Judgment

…

… **IT** … [contact details of the appellant],

appellant in cassation,

…, [representative of the appellant]

v

ÉTAT BELGE (BELGIAN STATE), represented by the Minster for Finance, rue de la Loi, 12, Brussels

respondent in cassation,

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… [representative of the respondent]

I. Procedure before the Cour de Cassation

The appeal on a point of law has been brought against the judgment delivered on 1 March 2019 by the Cour d'appel de Liège (Court of Appeal, Liège).

… [procedural aspects]

II. Facts of the case and background to the proceedings

In so far as they are apparent from the judgment under appeal and from the documents to which the Cour de Cassation may have regard, the facts of the case can be summarised as follows:

Since 1 October 2013, the appellant has been identified for the purposes of value added tax in respect of a business activity consisting in selling second-hand vehicles and wrecks; it purchases, among other things, scrapped (written-off) vehicles from insurance companies and resells them to third parties as wrecks or 'for parts'.

In 2015, the appellant underwent an inspection which resulted in a statement of adjustment on account of infringements of the rules on VAT deduction and of the margin scheme; the taxing officer excluded invoices mentioning the words 'cars sold for parts' or invoices relating to wrecks from the margin scheme.

The judgment under appeal upholds this position.

III. The ground of appeal

In the application for review, … the appellant puts forward a single ground of appeal.

IV. The decision of the Cour de Cassation

The ground of appeal:

The second limb:

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Under the first subparagraph of Article 1(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, the principle of the common system of value added tax entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

According to recital 51 of the directive, it is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors' items, with a view to preventing double taxation and the distortion of competition as between taxable persons.

Article 311 of the directive defines, in paragraph 1(1), second-hand goods as movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones as defined by the Member States and, in paragraph 1(5), taxable dealer as any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods.

Article 313(1) provides that in respect of the supply of second-hand goods carried out by taxable dealers, Member States are to apply a special scheme for taxing the profit margin made by the taxable dealer under the conditions laid down, including the condition that the goods have been supplied to the taxable dealer by one of the persons listed in Article 314 of the directive.

Those provisions are transposed by Article 58(4) of the Code de la taxe sur la valeur ajoutée (Value Added Tax Code) and Article 1 of Arrêté royal nº 53 du 23 décembre 199[4] relatif au régime particulier d'imposition de la marge bénéficiaire applicable aux biens d'occasion, objets d'art, de collection ou d'antiquité (Royal Decree No 53 of 23 December 1994 on the special scheme for taxing the profit margin applicable to second-hand goods, works of art, collectors' items or antiques).

The judgment under appeal holds that the appellant 'wrongly relies on the judgment delivered by the Court of Justice of the European Union on 18 January 2017 (*Sjelle Autogenbrug I/S* v *Skatteministeriel*) in order to claim that its vehicles sold "for parts" are not excluded from that scheme' because 'the case at issue related … to parts first removed by the taxable person before being resold as they are, not to vehicles resold "for parts", without those parts being tailored for individual needs'.

The judgment under appeal notes that although, according to the abovementioned judgment, 'the concept of "second-hand goods" does not exclude "movable tangible property that is suitable for further use as it is or after repair, coming from other property in which it was incorporated as a component"' and although 'in order to be characterised as "second-hand goods", it is only necessary that the

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used property has maintained the functionalities it possessed when new, and that it may, therefore, be reused as it is or after repair', the appellant 'did not trade in second-hand parts at all, but in cars, even though some of its invoices mentioned that the cars were "sold for parts"'. It concludes that 'it is therefore in respect of the goods sold, namely motor vehicles, that it must be ascertained whether they have maintained the functionalities they possessed when new and that they are therefore suitable for reuse as they are or after repair'.

It holds, first, that 'this is clearly not the case for the vehicles sold by [the appellant] "for parts" since these words objectively show that the vehicle is in principle no longer suitable for reuse as it is' and that 'it is indeed the objective circumstances in which the resale transaction took place that must be taken into account' and, second, that 'as far as the other vehicles are concerned, if they have been reduced to wrecks, it is not evident how they could be described as "second-hand goods" as they cannot be put to further use having maintained the characteristics they possessed when new and their use can now be limited only to the reuse of certain parts and the materials from which they are made'.

Because a question concerning the interpretation of Article 311(1)(1) of the abovementioned directive has been raised, the question set out in the operative part of the present judgment should be referred to the Court of Justice of the European Union for a preliminary ruling.

On those grounds,

The Court

Stays the proceedings until the Court of Justice of the European Union has given an answer to the following question referred for a preliminary ruling:

Is Article 311(1)(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax to be interpreted as meaning that end-of-life motor vehicles purchased from persons referred to in Article 314 of the directive by an undertaking selling second-hand vehicles and wrecks, which are intended to be sold 'for parts' without the parts having been removed from them, constitute second-hand goods within the meaning of that provision?

… [procedural wording]

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