HMRC - VATSC82060 - Madgett And Baldwin (C-308/96 & C-94/97)

This is another pre-CPP case referred to the ECJ, and considered several issues, including the application of the Special Scheme for Travel Agents (The Tour Operators Margin Scheme - TOMS - in the UK) and how to calculate the margin for VAT accounting purposes, but it also set a precedent which is still quoted in evidence, as it gave a definition of ancillary as; ‘if, first, it contributes to the proper performance of the principal service and, second, it takes up a marginal proportion of the package price compared to the principal service. It does not constitute an object for customers or a service sought for its own sake, but a means of better enjoying the principal service’.

The case concerned a hotel in Devon that offered bought-in return passenger transport between distant pick-up points (mostly in the north of England) and a coach excursion. This offer was taken up by approximately 90% of the customers. These customers paid a single inclusive charge for coach travel and hotel accommodation and the charge also included the sight-seeing tour.

The court considered whether the bought-in transport should be treated as ancillary to the in-house supply of hotel accommodation by the hotelier, on which VAT would be accounted for under the normal rules, or a separate supply of a service in respect of a journey supplied by a travel agent.

In the latter case the VAT should be accounted for under the special scheme described at Article 26 of the 6th Directive (now Articles 306 - 310 of the Principal VAT Directive) for the supply of services of other taxable persons.

The ECJ found that where the hotelier provided travel services traditionally or habitually entrusted to such traders, and these services took up a small proportion of the package price, such services were not an aim in themselves. They were a means of enjoying the principal service (the accommodation), and were therefore ancillary and did not fall under Article 26. (This definition is open to interpretation and subjective analysis, but taking into account the remainder of the judgment, it is regarded as applying only to something as insignificant as a bought-in taxi journey to transport a holidaymaker from the station to the hotel).

The court then contrasts this with bought-in travel services that go beyond the tasks traditionally entrusted to hoteliers, and which have a substantial effect on the price charged. In Madgett & Baldwin’s case this was the passenger transport (coach + driver) they bought in to bring guests from the North of England to the hotel and home again at the end of the package, plus taking them on an excursion during the week’s stay. The ECJ saw such services as being supplied separately from the accommodation and eligible to be treated as a single service in respect of a journey under Article 26 (now Articles 306 - 310 of the Principal VAT Directive).

Therefore, there were two separate principal supplies for VAT purposes of accommodation and transport. However in this case, because of the special rules of the TOMS, these two separate principal supplies are then treated as a single margin scheme supply, which the scheme calculation apportions for VAT purposes.

Clearly these principles about what can be regarded as ancillary are returned to by the ECJ in CPP, but the Madgett and Baldwin decision remains important because it gives reasons as to why in these particular circumstances the transport was not ancillary and there was a multiple supply situation.

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