HMRC - VATSC82120 - FDR Limited (Court Of Appeal 2000 STC 672)

This case was mainly about liability, but the issue of whether there was a single supply informed the decision. Its importance is still relevant today because the Court of Appeal considered CPP but decided there could not always be a single or unitary dominant supply to which all the other supplies in question are then regarded as ancillary.

The appeal concerned the VAT treatment of credit card services provided by FDR to banks that the Commissioners had ruled were taxable at the standard rate. The court considered whether some or all of FDR’s activities should be treated as a core or principal supply (and thus a single supply) for VAT purposes by addressing the application of CPP and other earlier related cases.

FDR was said to be in effect acting as a clearing house for card transactions involving its clients whether issuers or acquirers or both. The Court found there to be a single exempt supply under Article 13B(d)(3) of the Sixth Directive (now Article 135(1)(d) of the Principal VAT Directive).

However, the issue was never really one of whether there was a single or multiple supply. Rather it was concerned with how to decide the liability of a transaction that consisted of a number of elements where no one element or bundle of them clearly predominated and pointed to the true nature of the transaction.

In this context, the Court found a divergence between ancillary and incidental. It found that several elements may be incidental to one another but with none predominating - a situation it described as table top. The idea of ancillary is that such elements are clearly subordinate to a predominate element, serving a purpose of helping to better enjoy the predominant element - referred to as the apex model. In fact, some transactions will involve a core supply of a number of integral elements with others that are outside the core but are still ancillary.

In the end, the Court warned against needless complexity. They advised that where the core supply is based on a tabletop model (and it is not apparent from this core what the overall nature of the transaction is) it may be necessary to decide by reference to which of the taxable or exempt elements are most numerous.

This case remains important as it provides a substitute to a CPP-type analysis where there is no clear dominant or ancillary feature within a single supply, although the Levob decision gives a similar but more recent and helpful alternative.

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