HMRC - VATSC82130 - Dr Beynon (2004 UKHL 53)

The issue in this appeal concerned whether the personal administration of a drug such as a vaccine by a NHS doctor to a patient was a taxable supply. The European Sixth Directive (77/388/EEC) required that the provision of medical care in the exercise of the medical and paramedical professions should be exempt from VAT but the supply of goods is taxable. The question considered was therefore whether the doctor was making a single supply of medical services to which the provision of the drug is merely ancillary or whether he is also supplying goods when, for example, the drug is injected into the patient.

The Tribunal considered the application of CPP and as a result ruled that the administration of the drugs was ancillary to the supply of medical exempt services by the doctor as set out below citing the absence of a separate price for the goods element as a key factor;

“there is a single supply from an economic point of view: the commercial reality is that the appellants in personally administering or applying drugs and appliances to their…patients provide a single package of medical services of the type usually provided by GPs…

it is artificial to regard supplies of drugs and appliances personally administered or applied…as independent and distinct supplies : they are supplied as part of a single package of medical services

the essential feature of the supply of a drug or appliance personally administered to a…patient is that of medical services appropriate and proportionate to the condition of the patient at the time of administration: the supply is not an aim in itself, having no free standing utility to the patient, but merely a means of his obtaining the benefit of medical services provided by the appellants as no prescription charge is made for drugs and appliances personally administered or applied to any patient…(a fact which we find indicative of the NHS expecting the drug or appliance to be supplied by the doctor from in-house stock), there is no separate price that might point to the supply being separate from that of medical services.”

When the case reached the House of Lords, this decision was upheld this and the judgment discouraged referral to and citation of earlier cases by confirming CPP was a restatement of principle and therefore it should not be necessary to go back any further.

The judgment at para 19 counselled against citing precedents earlier than the ECJ’s guidance in CPP:

‘In the course of argument your Lordships were also referred, as were the courts below, to a number of cases, both in this country and in the Court of Justice, which were decided before the Card Protection case. Submissions were made as to whether the principles upon which those cases were decided had application to this case. Their Lordships think that there is no advantage in referring to such earlier cases and their citation in future should be discouraged. The Card Protection case was a restatement of principle and it should not be necessary to go back any further’.

Therefore this judgment reconfirmed CPP’s prominence as the foundation of our policy.

Previous page

Next page