HMRC - VATSC82170 - Aktiebolaget NN (C-111/05)

This Swedish referral dealt with various issues around the laying, maintaining and repairing fibre-optic cables. The ECJ restated CPP principles and ruled the laying/installation of the cable was essential to the supply of the cable itself and so there was a single supply because it would be artificial to separate out those elements.

Aktiebolaget was a business established in Sweden, intended to conclude contracts to supply and lay undersea fibre-optic cable for the supply of transmission services to telecommunications operators. The cable was to be laid from mainland Sweden, across the seabed outside community territory and onto the mainland of other coastal member states. Depending upon difficulties encountered in installing the cable, the cost of the materials was estimated to account for approximately 80-85% of the total cost. Ownership of the cable was to be transferred to the purchaser.

The ECJ was asked to decide the nature and place of the supplies. The court commented that all the elements of the transaction appeared necessary to its completion and that they were all closely linked. The supply and installation of the cable were therefore to be regarded as a single transaction for VAT purposes. In order to determine whether this single complex supply was of goods or services, the court said that the predominant elements had to be identified. They re-stated that a service was to be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but as a means of better enjoying the principal service supplied. In this case the laying of the cable could not be regarded as ancillary due to the complex and specialized nature of the service, its inseparability from the delivery of the goods and it being vital to the use and exploitation of the goods.

Although the service was not ancillary to the supply of the goods, the court found that one or other must dominate with regard to the classification of the transaction. The court observed that the installation of goods did not prevent their classification as goods, neither did their incorporation into the ground mean that they became works of construction. Also the relative cost of the materials should be taken into account, but should not be, of itself, a decisive factor.

In considering the relative importance of the services to the goods, the court noted that the work was limited to installation and neither the purpose nor the effect of the work was to alter the nature of the cable or to adapt it to the specific requirements of the client. The supply was thus found to be a single supply of goods.

This decision was significant because it reinforced the importance of economic reality and the intention of the legislation - ‘an analysis of a complex transaction must not depart from the established principle governing VAT, that account must be taken of commercial reality’ (para 45).

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