HMRC - VATSC82210 - RLRE Tellmer Property Sro (C-572/07)

This was a referral from the Czech Republic where a landlord invoiced for rent but also separately invoiced tenants in respect of charges for cleaning the common parts of the apartment blocks.

The referring court asked about the relationship between the letting of property and the service of cleaning the common parts of an apartment block. More particularly, it asked whether the charges relating to that cleaning service fall within the concept of letting for the purposes of article 13(B)(b) and therefore share the tax treatment of the letting of property which is exempt from VAT by virtue of article 13(B)(b).

The ECJ found

the cleaning of common parts does not necessarily fall within the concept of letting (para 21);

cleaning services of the common parts of an apartment block can be supplied in various ways and not necessarily by the landlord (para 22);

since the letting of apartments and the cleaning of common parts can be separated from each other, such letting and such cleaning cannot be regarded as constituting a single transaction within the meaning of the case-law (para 24).

The ECJ thus found them to be independent, mutually divisible operations and not a single supply.

This case is important because it has been used within the UK courts, for example the Court of Appeal considered the application of Tellmer in its judgment in David Baxendale VATSC82180 where it stated:

“The ECJ therefore considered the question of economic divisibility in relation to lettings in general terms which included cases where the lease did not oblige the landlord to carry out the cleaning and the tenant to pay for it. The comments in paragraphs 21 to 22 of the judgment have to be read in this context and I think explain why the court felt able to conclude that letting and cleaning could not be regarded as economically indivisible given the absence of any necessary contractual link between the letting and the cleaning arrangements. I do not regard the reasoning of the court as going any further than that.”

The reference by the Court of Appeal to the fact that there was no economic indivisibility between letting and cleaning was because there was no “necessity” in the contractual link between them. It was the absence of any “necessary” relationship between these two services and their provision that was important: this observation merely reflected the fact that, as the ECJ had observed, “the cleaning services of the common parts of an apartment block can be supplied in various ways” whether by a third party invoicing the cleaning costs to the tenants, or by the landlord or a cleaning company and that these two services can be separated from each other. In other words, there was no relationship of necessity in either the general sense or on the facts of the case:

In the general sense, the letting could be provide by A while the cleaning services could be provided by B;

On the specific facts, even though the owner/landlord provided both, there was nothing making it necessary that he should and in any event, conceptually those particular services could not be described as indivisible even when supplied by the same person.

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