HMRC - VATWELF2120 - Which Bodies Provide Exempt Welfare Services?: What Are State-Regulated Private Welfare Institutions And Agencies?: Commercial Welfare Providers

Kingscrest made a further appeal, challenging the legitimacy of the 2002 amendment to Item 9, maintaining that a profit making body could not be an ‘organisation recognised as charitable’ within the meaning of Article 13A(1)(g) and (h) of the Sixth Directive. The matter was referred to the European Court (case C-498/03) which gave a preliminary ruling on:

Whether the UK could resort to other language versions of the Sixth Directive to throw more light on the meaning of the word ‘charitable’;

Whether an ‘organisation recognised as having a social character under the wording of Article 13A(1)(g) and (h) could be interpreted to include a profit making entity like Kingscrest.

In answer to the first question, the Court held in paragraphs 24 - 27 of the judgement:

whether a specific transaction is subject to or exempt from VAT cannot depend on its classification in national law …

In addition, it follows from settled case-law that the need for a uniform interpretation of Community directives makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted and applied in the light of the versions existing in the other official languages …

In those circumstances, the reply to the first question must be that the word ‘charitable’ in the English version of Article 13A(1)(g) and (h) of the Sixth Directive has its own independent meaning in Community law which must be interpreted taking account of all the language versions of that directive.

In answer to the second question, the Court said, in paragraphs 34 - 36 of its judgment:

According to a literal interpretation of the wording of those other versions of Article 13A(1)(g) and (h) of the Sixth Directive, to be eligible for the exemption it is sufficient if two requirements are satisfied: first, that the supplies are connected either to welfare or social security work or to the protection of children or young persons, and secondly that such supplies are made by bodies governed by public law or other organisations recognised by the Member State concerned as essentially charitable.

The term ‘organisation’ is in principle sufficiently broad to include private profit-making entities (see, to that effect, Case C-216/97 Gregg [1999] ECR I-4947, paragraph 17, and Hoffmann, cited above, paragraph 24).

Thus the Court has already held, in respect of a private entity aiming to make a profit, that the expression ‘other organisations recognised as charitable by the Member State concerned’ in Article 13A(1)(g) of the Sixth Directive does not exclude from that exemption natural persons running a ‘business’ (see Gregg, cited above, paragraph 21).

The European Court of Justice’s decision therefore confirmed that the UK’s exemption for welfare services supplied on a commercial basis is entirely consistent with its EU vires.

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