

Price of € 1 not symbolic for used goods

By **Editors** - July 9, 2020



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A foundation aims to provide financial and practical support to refugee children in their studies. To obtain proceeds to finance its objective, the foundation acquires used goods such as books, clothing and CDs free of charge and sells these goods for € 1 in its shop.

The question is whether VAT is due on these sales.

The court rules that a price of € 1 is not symbolic and that the deliveries therefore take place for consideration. Because the foundation actively takes steps by using resources that are comparable to those of a manufacturer, trader or service provider, such as thrift shops, it carries

out economic activities for the supply of second-hand goods. The foundation is therefore an entrepreneur for these deliveries. The additional assessment has been correctly imposed.

Court

Authority

Gelderland court

Date of judgment

06/19/2020

Date of publication

09-07-2020

Case number

AWB - 19 _ 1546

Jurisdictions

Tax law

Special characteristics

First instance - multiple

Content indication

Sales tax. Plaintiff is a foundation with the aim of providing financial and practical support to refugee children in their studies. In order to obtain proceeds to finance her objective, Plaintiff acquires used goods such as books, clothing and CDs free of charge and sells these goods for € 1 in her shop. It is disputed whether turnover tax is due on these sales. The court rules that a price of € 1 is not symbolic and that the deliveries therefore take place for consideration. Since the claimant actively takes steps by using resources comparable to those of a manufacturer, trader or service provider, such as thrift shops, she carries out economic activities for the supply of second-hand goods. Plaintiff is therefore an entrepreneur for those deliveries. The additional assessment has been correctly imposed.

Locations

Rechtspraak.nl

VN Today 2020/1773

Viditax (FutD), 09-07-2020

Enriched statement

Statement

COURT OF GELDERLAND

Meeting place Arnhem

Tax law

case number: AWB 19/1546

ruling of the multiple tax office of

in the case between

[claimant] in [place], claimant

(authorized representative: [authorized representative]),

and

the inspector of the Tax and Customs Administration,
Utrecht office, defendant.

Process flow

The defendant has imposed a sales tax assessment (assessment number [XXX]) of € 100 on the claimant for the period from 1 April 2017 to 30 June 2017. In addition, € 3 in tax interest was charged.

By decision of 15 March 2019, the respondent maintained the additional assessment and the tax interest decision.

Plaintiff brought an appeal against this by letter of March 15, 2019, received by the court on March 18, 2019.

The defendant submitted the documents pertaining to the case and lodged a statement of defense.

A session was held on Skype on 25 May 2020 with the consent of the parties.

Her agent and [person A] attended the hearing on behalf of plaintiff and on behalf of defendant Mr. [person B].

Considerations

Facts

1. Plaintiff is a foundation with the statutory objective to provide financial and practical support for the study of asylum seekers and refugee children in and outside the Netherlands.
2. The claimant has been designated as a General Benefit Organization from 1 January 2017.
3. Plaintiff receives goods from donors such as used books, clothing, CDs and the like. Plaintiff sells these second-hand goods for a price of € 1. Plaintiff uses the sales price of € 1 in principle for all second-hand goods. A limited number of books and clothing are sold under the heading 'leftovers' for a price of € 0.50. Occasionally goods are sold for a higher amount. This concerns, for example, a children's bicycle or beautiful clothing for a sales price of € 5.
4. The second-hand goods are sold from a publicly accessible space called the [room name]. The following has been stated on the claimant's website¹:

“(…)

The [room name] is a place:
 - ☐ where you can bring clothes, books and CDs to charity;
 - ☐ where people with a 'small wallet' can buy good things for one euro (sometimes a little more);
 - ☐ where you can browse, looking for special items;
 - ☐ where fifteen refugees volunteer to run the shop;
 - ☐ where no subsidy goes;

- ☐ where refugees learn Dutch and gain all kinds of skills and work experience;
- ☐ where refugees, who sometimes do not know what to do with their time, feel appreciated;
- ☐ where you can get coffee and tea for one euro and extra apple pie or a sandwich for one euro;
- ☐ where a turnover of € 140,000 was achieved in 2018;
- ☐ where you can come into contact with refugees;
- ☐ where the proceeds enabled 43 young refugees to receive an education and 146 families were brought back together thanks to our financial support;
- ☐ where refugees and Dutch people can feel at home together;
- ☐ where you care to share!

You can hand in clothes, books and CDs in the store during opening hours (Tuesday to Saturday from 10 am to 5 pm). Outside opening hours, clothes can be deposited in the clothes container to the left of the building. Books can be put there under the shelter.

Do you appreciate that we pick up clothes and / or books at your home, would you like to let us know by email ([the e-mail address])?

Even without returning or buying (used) clothing or books, you can contribute to the work of [claimant] by making a donation to bank account number: [IBAN] in the name of [claimant] in [place in NL]

Visit the Facebook page of the [room name].

(...) "

5. The proceeds from the sales are used by the claimant to finance the education of asylum seekers and refugee children in and outside the Netherlands.

6. In 2016, the claimant realized a turnover of € 186,341. In the first quarter of 2017, the claimant realized a turnover of € 20,433 (general rate) and € 13,850 (low rate). In the

second quarter of 2017, the claimant realized a turnover of € 16,600 (general rate) and € 16,600 (low rate).

7. Plaintiff does not perform any other activities for which she is an entrepreneur for turnover tax.

Dispute

8. It is disputed whether the plaintiff owes sales tax in connection with the deliveries of the second-hand goods. The dispute focuses on whether the claimant supplies the second-hand goods for consideration and whether she carries out economic activities with the deliveries thereof.

Assessment of the dispute

Offensive title

9. Plaintiff takes the position that she does not supply the second-hand goods for consideration, because the compensation of € 1, or incidentally € 0.50 and € 5, is symbolic. The price does not take into account the actual value of the second-hand goods. It is not common for second-hand goods to be sold at that price without distinction. According to plaintiff, the prize has no social significance. Essentially there are acts of generosity with a moral, educational and guiding motive. The price is kept so low that people with little money can buy the goods.

10. The defendant takes the view that there is no symbolic compensation. He points out in this connection that the claimant obtained the goods free of charge and that the price used is therefore a fair value. Plaintiff also varies in price, for some goods € 0.50 is requested, for others € 5. The aim is to generate revenue for the purpose, so that there is no generosity. Plaintiff also competes with thrift shops.

11. An act for consideration assumes a direct link between the goods supplied and the consideration received. Such a direct relationship exists only if there is a legal relationship between the supplier and the buyer of the good whereby performance is exchanged reciprocally, and the compensation received by the supplier is the actual equivalent of the good delivered to the buyer. The consideration must be a subjective value actually received and expressed in monetary terms.² If there is symbolic consideration, so that there is essentially generosity, the requirement of an equivalent for the delivery of the good is not met. ³ To determine whether there is a symbolic compensation in this sense, it may be

important which compensation is stipulated for similar services rendered in society. The fact that a reimbursement is far from cost-effective is not important here

12. In the opinion of the court, the buyer, who buys a second-hand item from the plaintiff's shop, and the plaintiff have a legal relationship under which the plaintiff delivers the item to the buyer in exchange for payment of a fee. The compensation of € 1 is also the actual equivalent for the delivery of a second-hand good such as clothing, books and CDs. In addition, the amount of the compensation is entirely determined by the claimant. Nor is this compensation so low that it is essentially a matter of generosity. Plaintiff sells the goods to generate a profit for a good cause. According to Plaintiff's website, people with small wallets can buy the second-hand goods from Plaintiff's store. Plaintiff also stated that the sale of the second-hand goods to poorer people is an additional objective of the sales. So essentially supply and demand come together. Plaintiff offers second-hand goods at a price that suits the target group. The compensation therefore has social significance.

13. Plaintiff has not demonstrated that the fees for similar social services are significantly higher. Plaintiff has generally stated that prices are higher in thrift shops, but she has not substantiated this further. Based on the limited number of examples submitted by the claimant, the prices in thrift shops may be four or five times higher than the prices used by the claimant. In general, such a price difference is not such that a compensation of € 1 for a second-hand good such as clothing, books and CDs is to be regarded as symbolic.

14. Plaintiff further stated at the hearing that a prize of € 1 is popularly symbolic. Insofar as the claimant intended to state that a price of € 1 is by definition symbolic, this statement fails. For example, in real estate trading, a price of € 1 is used as a symbolic consideration, but the symbolic price is then related to the much higher economic value of the property. Such a price difference with the economic value cannot be distinguished when the second-hand clothes, books and CDs are sold for € 1.

15. The claimant therefore supplies the second-hand goods for a non-symbolic fee and thereby makes deliveries for consideration. 5

Economic activities

16. Pursuant to Article 7 (1) of the Sales Tax Act 1968 (DB Act 1968), an entrepreneur is anyone who conducts a business independently. Under Article 9 of the VAT Directive, a taxable person for VAT is any person who independently carries out an economic activity in any place. It must be assumed that the Dutch legislator did not want to assign the term

company any meaning other than that due to the term economic activity from the VAT Directive.⁶

17. It follows from the case-law of the Court of Justice on Article 9 of the VAT Directive that the fact that an act is carried out for consideration is not sufficient to establish that there is an economic activity within the meaning of Article 9, first paragraph, of the VAT Directive. ⁷

18. The term 'economic activity' has an objective character. The activity is considered on its own, regardless of its purpose or result. The term 'economic activity' is defined in Article 9 (1) of the VAT Directive as all activities of a manufacturer, trader or service provider, and in particular the activities in connection with the exploitation of a physical or intangible object in order to make it sustainable. proceeds from. The mere purchase and sale of a business is not an operation of a business in order to obtain sustainable profit from it, because the only proceeds from these transactions result from any profit on the sale of the business. Such acts cannot, in principle, as such constitute economic activities within the meaning of this Directive.

19. The claimant's activity consists of the acquisition and sale of second-hand books, clothing CDs and the like, the sale taking place from a space (the shop) that is open to the public at specific opening hours. The public can walk through the store and view the goods. The shoppers can eat and drink something if desired and for a fee. Plaintiff also advertises the store on its website. Plaintiff therefore actively takes steps by using resources that are comparable to those used by a manufacturer, trader or service provider. A thrift shop generally uses the same resources and a thrift shop is a trader within the meaning of Article 9 of the VAT Directive.⁹ Plaintiff has argued that it differs from thrift shops because of its price and purpose. However, these differences cannot lead to a different outcome, because the activity is considered by itself, without the purpose or result of that activity. The fact that the claimant uses volunteers that she does not pay does not alter this for the same reason. This circumstance is particularly relevant for the size of the costs that the claimant incurs for its activity and thus for the result. The magnitude of this result is irrelevant for the question whether it is an economic activity. Plaintiff also carries out the activity sustainably, namely over several years, and in view of the turnover achieved she generates substantial revenues.

Conclusion

20. In view of the above, it is the same on the defendant's side. The parties stated at the hearing that in that case the additional assessment must be maintained. Parties will identify the right to deduct resulting from the making of the taxed deliveries outside this profession.

The respondent has therefore correctly imposed the additional assessment. The appeal will be declared unfounded.

21. Since the claimant has not put forward any separate grounds for appeal against the tax interest charged, the appeal against the tax interest decision will also be dismissed as unfounded.

22. The court sees no reason for a legal costs order.

Decision

The court declares the appeal unfounded.

This decision was made by Mr. FM Smit, Chairman, Mr. AMF Geerling and Mr. WW Monteiro, Judges, in the presence of Mr. L. Ketner, Registrar.

The decision was publicly pronounced on:

Due to corona measures, the registrar is not able to
to co-sign this ruling

chairman

Copy sent to parties on:

Remedy

The parties may lodge an appeal against this decision with the Arnhem-Leeuwarden Court of Appeal, PO Box 9030, 6800 EM Arnhem, within six weeks of the date of dispatch.

When lodging an appeal, the following must be observed:

- 1 - a copy of this decision must be submitted with the notice of appeal;
- 2 - the notice of appeal must be signed and state at least the following:
 - a. The name and address of the petitioner;
 - b. a date;
 - c. a description of the judgment against which the appeal has been lodged;
 - d. the grounds of appeal.

1 <https://vluchtelingkinderen.nl/euro-winkel/>

2 cf. Court of Justice, 13 June 2018, Gmina Wroclav, C-665/16, ECLI: EU: C: 2018: 431.

3 cf. Supreme Court 7 November 2014, ECLI: NL: HR: 2014: 3122.

4 cf. Supreme Court 11 February 2005, ECLI: NL: HR: 2005: AQ0284.

Cf. Supreme Court March 13, 2009, ECLI: NL: HR: 2009: BH5557.

6 See Supreme Court, 27 August 1985, BNB 1985/316.

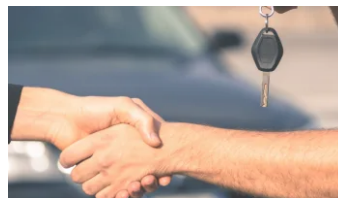
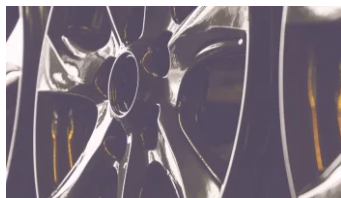
7 Fl. Court of Justice 12 May 2016, [Municipality of Borsele](#), C-520/14, ECLI: EU: C: 2016: 334.

8 cf. Court of Justice 19 July 2012, Redlihs, C-263/11, ECLI: EU: C: 2012: 497 and Court of Justice 15 September 2011, [Staby](#) and others, C-180/10 and C-181/10, ECLI: EU : C: 2011: 589.

9 Fl. Supreme Court March 13, 2009, ECLI: NL: HR: 2009: BH5557 and court Zeeland-West Brabant October 30, 2018, ECLI: NL: RBZWB: 2018: 6406.

[ECLI: NL: RBGEL: 2020: 2998](#)

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