

THE PREVALENCE OF SUBSTANCE OVER FORM IN TAXATION CASE LAW

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Abstract: *The principle of prevalence of form over the substance in regulation is a fundamental principle of law in general, but in taxation disputes its effects are reversed. This is one of the many changes in the EU legal order that is born in the EUCJ' s jurisprudence, which aims at insuring the respect of fundamental rights and liberties. The paper analysis this case law and points out that currently the domestic courts should respect the solution of the court in Luxembourg, ensuring the prevalence of substance over form in the fiscal jurisprudence they are asked to draw.*

Keywords: *regulation, substance, form, EUCJ, jurisprudence.*

JEL Classification: *K34, K41*

INTRODUCTION

In a global world, taxation is not international, as it refers to a particular system of taxation, in a certain state (Philippe Malherbe, 2017). Each state is allowed to define its own tax policy but in the context of the EU cooperation, the taxation is influenced by the rules of the free market. VAT is one of the taxes with double regulation: at the EU level, there is a system of regulation concerning the VAT and also at the Member States level, there are 28 (27 to be) different particular regime for VAT (Saguna & Tofan, 2010). The deduction of VAT is a mandatory mechanism that insures the neutrality of the this tax (Costea, 2016) and in the context of the EU law, each Member State is required to respect the general framework that is described in regulation of wider legal force (Bercu et al., 2015).

The Romanian National Fiscal Authority settlement body breached the principle of prevalence of substance over form. Deduction system is meant to relieve the traders entirely of the burden of VAT; it ensures neutrality perfect taxation of all economic activities, whatever the purpose or results of such activities, under the condition that the activities referred to are, in principle, themselves subject to VAT. The principle of fiscal neutrality requires that deduction of VAT for input of goods is allowed if the substantive requirements are satisfied, even if certain formal requirements were omitted by taxable persons (Bilan et al., 2016).

The firms' right to deduct VAT must be respected even if the documents do not fulfil all the formal requirements, the High Court of Cassation and Justice said in a decision, of after a lawsuit between a firm and ANAF. The Supreme Court ruled that companies are entitled to deduct VAT even when the documents do not fulfil all the formal requirements; deductibility cannot be conditional on the existence of supporting documents, except appropriate invoices (Paun, 2015).

NIDERA CASE IN ROMANIAN COURTS

In Romanian legal system, the decision of the High Court of Cassation and Justice HCCJ's have a consistent influence on the interpretation and applicability of the law (Lazar, 2013). One of the most recent and interesting case law in the Romanian courts is the Nidera case. The dispute was for the annulment of the National Authority of Fiscal Administration (NAFA) 's decision to deny the right to deduct VAT, on the basis that certain documents do not contain all the formal elements. Fiscal authorities arguments used the previous decision of HCCJ from 2007, which cancelled the right of deduction of a company. The decision from 2015 showed once again the prevalence of the substantive elements (the right of deduction) to the form (how the documents are completed) in tax law; also, the 2015 decision removes the 2007 decision's effects, although adopted after Romania's EU accession. This solution confirms that an appeal in the high court cannot be enforced against European Union (EU) law.

2.1. The circumstances of the dispute

The applicant company, Nidera ROMANIA, is a limited liability company, which has main activity wholesale of grain, seeds, animal feeds and unmanufactured tobacco (Cristea & Stoica, 2008). In order to achieve the object of activity, the company is purchasing for resale agricultural products from domestic, on the EU free market and third countries markets. Also, the company acquired the services necessary to achieve the object of activity, such as warehousing, auditing, accounting, transport, freight certification services etc. As the company does not have the necessary storage space for received goods, it uses various logistics operators who hold special places (silos), drawing in this regard contracts with various independent companies for services of reception, supervision and certification of the products. The procurement contracts for agricultural products mainly provide one of the following two delivery clauses:

- INCOTERMS CPT - Delivery place when the receipt of the goods is done by the depositary at the agreed deposit and the operation is overseen by an independent company
- INCOTERMS FCA - loading place, when the products are weighed at the moment of uploading by the supplier, or by another person designated by him, in the presence of a representative of the company

In the period 2008-2011, the applicant company was subject to general tax auditing, carried on many taxes, contributions and VAT for the period May 2004 - August 2011. For the period 2004 - 2006, the tax authority refused the deduction of VAT for the invoices issued by Grain House, on the ground of partially filling of the invoices and notices accompanying the goods, and for Cereal Cargo invoices, for not filling the cartridge bottom left of the invoices. For the period 2007 - 2009 fiscal authority refuse deduction of VAT for the invoices issued by several partners (Cereal Cargo, Western Grain, Forest, Anpo, Primera Agro, Iulis Trans, Andoflor, Gilacom, Florcereal, Primera Trading), each time blaming omissions on the invoices issued, such as lack of unit price, no date of issue, the lack of signature, time and date of the expedition, miss-recording of the names of the company on the documents accompanying the goods etc.

The applicant company drew a complaint and then a legal action in front of the contentious administrative courts, addressed to the competent judge at the Court of Appeal from Bucuresti, Romania.

2.2 Main topics of solution of the court of first instance (Court of Appeal)

Court of first instance held that this case raises the question of the legality of the tax authority's refusal to recognize the right to deduct VAT on the grounds for which the invoices do not contain all the elements provided by fiscal and accounting legislation. The Court notes that, pursuant to art. 145 par. (8) of the Tax Code, the taxable person must hold an invoice that includes all information provided in art. 155 par. (8) Fiscal Code (applicable for the period prior to 1 January 2007), in order to exercise the right to deduct VAT on the purchase invoices. Also legislature provided at pt. 51 par. (2) in the Methodological Norms the possibility of justifying the right to deduct VAT on "[...] documents referred in art. 145 par. (8) of the Tax Code and / or other specific documents approved by Government Decision no. 831/1997 (...) or by order of the Minister of Finance issued under Government Decision no. 831/1997, as amended. "

Accordingly, the right to deduct VAT shall be exercised:

- Mainly, only on the invoice (art. 145 par. (8) of the Tax Code);
- Alternatively,
- Based on the invoice and other documents provided by Government Decision no. 831/1997 for the approval of the models forms regarding financial and accounting activities and detailed procedures for establishing the utilization thereof (Government Decision no. 831/1997);
- Either only on the documents provided by GD. 831/1997, which contain all the information required by art. 155 par. (8) of the Tax Code. (Bufan, 2016)

First, the Court notes that tax authorities, in tax inspection report, specifically says that invoices from Grain and Cereal House Cargo contain all mandatory elements specified in art. 155 par. 8 Tax Code, namely: a) series and the invoice number; b) date of invoice; c) the name, address and tax identification code of the person issuing the invoice; d) name, address and tax identification code, if applicable, of the recipient of goods or services; e) the name and quantity of goods delivered, name of the services; f) The unit price without value added tax and the tax base for each rate or exemption; g) value added tax rate applied; h) the amount of VAT payment.

Second, the Court notes that the information in the cartridge below the invoice contains information on shipment of goods (name of the person delegated, identification number of the person delegated, number of means of transport, date and time to which they dispatch the goods signatures) and these information was identified as missing or incorrectly filled out by tax inspectors - and that it is the only reason for what the tax authority refused the right to deduct VAT for the applicant. The missing information is not included among the mandatory elements required by art. 155 paragraph (8) of the Tax Code for exercising the right to deduct VAT on purchases of goods.

The court notes that the legislature has regulated the content of "cartridge" in the bottom of the invoice by GD 831/1997, which includes descriptions of models of forms for financial and accounting activity, including model (form) for the invoice, containing a cartridge comprising consignment identification elements, as follows: "data expedition, delegate name ID. Series ... no. ... Issued (a) ..., the number of transport; Sending was performed in our presence, on..., Time ... signatures ...".

In accordance with Articles 3 paragraphs. (2) the Minister of Finance Order no. 29/2003 on the implementation of Government Decision no. 831/1997 for the approval of the models forms regarding financial and accounting activities and detailed procedures for establishing and using them, "in the bottom left of invoice will be mentioned and the identification of the person delivering the goods, ie: name and surname series and number of identity document (identity card or passport), identification number. " But the GD 831/1997 or MFP Order No.29 / 2003 does not expressly establish formal requirements beyond those imposed by the Tax Code for exercising the right to deduct VAT.

Moreover, such an amendment, made through acts of lower legal power would be illegal, because it would add to regulations and texts which provide limitations on the right to deduct VAT, covering exceptional situations; these norms must be interpreted restrictively and not extensive. Also, it would be impossible to make changes on the legal framework regulating the forms to be used in relations between operators (invoices, slips, etc.) in terms of the issuance, redemption and acceptance of transport documents, which are governed by lower power legal acts. The fiscal liabilities are subject only to the tax Code and the regulations issued on its basis (Gherghina, 2015).

Accordingly, the findings of the tax authority regarding the lack of the above mentioned elements from the documents can not have any relevance regarding the possibility of deduction of VAT by the applicant company, as long as the rules of tax legislation binds only justification for the right of deduction on the possession of an invoice containing the information described in art. 155 par. 8 Tax Code. Regarding the errors found on the other documents, the Court also notes that there is no provision of lawful order to condition the exercise of the right to deduct VAT on the content of delivery notes, which remains exclusively subject to the conditions imposed by art. 155 paragraph 8 from the Tax Code. The errors occurring on the documents can not have the effect of removing the right of deduction, as long as the applicant company exercised its right on a correct invoice.

2.3 Decision V from 2007 of the HCCJ

The fiscal authority raises the arguments in the Decision V of 15.01.2007 issued by the United Sections of the High Court of Cassation and Justice, in which the court held that "value added tax is not deductible nor taxable base may be diminish for the establishment of the corporation tax if the supporting documents do not contain or do not provide all information required by the laws in force at the time of the operation for requesting the deduction of value added tax". The decision V / 2007 should be interpreted in light of considerations that straight it. As can be gleaned from decision text, it uses the term "supporting documentary" for both income tax and VAT. Therefore, for explaining the decision in the part concerning VAT deduction, we should consider only the arguments that aimed at a particular matter of law. Regarding this aspect, the text of the Decision V / 2007 provide: "(...) in all normative acts adopted before or after the Tax Code, in cases of performing operations to deduct VAT, there is ruled the express liability to provide supporting documents, legally or under law issued", without namely indicating, however, the type of document required.

The Accounting Law no.82/1991 and the Regulation for its application did not contain claims or criteria to determine what information should contain the supporting documents, and by Law no.345/2002, applicable from 1 June 2002-31 December 2003, it is ruled for the first

time the liability to provide supporting documents, specifying particular information that they should contain; the Law no. 571/2003 unitary ruled on the obligation to provide supporting documents and the particular information that result from them (Tofan, 2016). In this regard, the Decision V / 2007 recalls the art. 145 of the Tax Code, that provided at par. (8) that "to exercise the right to deduct VAT, any taxable person must demonstrate the right of deduction, depending on the kind of operation", stating in the regulations issued at point a) and b) the documents to be presented to prove each specific situation.

Therefore, the analysis of the arguments above clearly indicates that in Decision V / 2007 High Court made a summary analysis of legislation on "supporting documents", prior and after the entry into force of the Tax Code, concluding that in light of the latter, the "supporting documents" (in the broad sense) are clearly specified in art. 145 a and b of the Fiscal Code. In addition, it is important to note that Decision V/2007 can be applied only in the light of European Union law and the case-law of the Luxembourg Court on VAT, as detailed in the following subsection.

ANALYSIS OF THE CONTESTED ACTS IN THE LIGHT OF EU LAW

The Court considers that the national judge became after January 1, 2007 the judge in the EU area, so he is obliged to directly apply EU law if he finds it incompatible with national law, in compliance with the principles and the direct effect of its rule. Any national court must apply EU law in its entirety and protect rights, which it confers on citizens, in a case falling within its jurisdiction. The national court is bound, as such, not to apply any provision of national law which may be in conflict with EU law, either adopted before or after the entry into force of the EU rule (Romanian High Court of Cassation and Justice HCCJ, Civil and Intellectual Property Section, civil decision no. 2119 from 31 March 2008).

As regards to EU law, the dispute raises the question of knowing whether the VAT Directive 2006/112 allows imposing any further condition for the exercise of the right to deduct VAT for the purpose of accounting nature that are not mentioned in the Directive, respectively if the VAT deductibility condition may refer to:

- The existence of the original of the notice of delivery, with all the information required by the regulated standard, when the goods are circulating without invoice and the invoice issued after transportation refers to this notice of delivery;
- The filling of other forms of claims on invoices of the supplier, when they are not included among the requirements laid down in art. 226 of the VAT Directive.

At the same time, the court has to examine whether art. 168 of the VAT Directive and the principles of neutrality and proportionality allow a Member State to refuse the right to deduct VAT on purchases of goods, only to the failure to specify the content of the invoice date of delivery of goods, when all other requirements of form and substance to exercise of the right of deduction are met.

Art.167 of the VAT Directive 2006/112 regulates the right of taxable persons to deduct VAT paid upstream for the supplies of goods or services used for the taxable transactions, stating that "the right to deduct arises when the deductible tax becomes due". Art.168 lit. (A) of Directive 2006/112 provides that "To the extent to which goods and services are used for taxable transactions, the taxable person shall be entitled, in the Member State where these transactions

are carried out, to deduct from the tax which is liable to pay the following amounts: VAT payable or paid in the Member State in respect of goods which are or will be delivered or services which are or will be provided by another taxable person". Art.178 of Directive 2006/112 provides that "to exercise the right of deduction, a taxable person must meet the following conditions: for deductions under Article 168 (a) in respect of the supply of goods or services, it is obliged to hold an invoice issued in accordance with Articles 220-236 and art.238, 239 and 240; [...]"

Under art. 226 of Directive 2006/112 "without prejudice to any special provisions of this Directive, for VAT purposes, on invoices issued pursuant to art. 220 and 221 there should be only the following details:

- a) date of issue;
- b) a sequential number, based on one or more series, which uniquely identifies the invoice;
- c) identification number for VAT purposes under art. 214 under which the taxable person supplied the goods or services;
- d) identification number for VAT purposes the client referred to in Article 214 under which the customer received a supply of goods or services in respect of which he is liable to pay VAT, or received a supply of goods, as provided in Article 138;
- e) the name and address of the taxable person and the customer;
- f) the quantity and nature of goods supplied or the extent and nature of services rendered;
- g) date when the delivery of goods or services was made or completed or the date on which the payment in advance referred to in paragraphs 4 and 5 of Article 220, as far as it can be determined and it differs from the date of issuing the invoice;
- h) the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price;
- i) the VAT rate applied;
- j) the VAT amount payable, unless they apply for special treatment for which this Directive excludes such a detail. "

According to the case law of the EUCJ, the invoice is a document that certifies a transaction between two traders, containing data about transaction (transaction date, the transaction purpose, the transaction value) and information about participants (name, address and Taxpayer Identification Number), and lack of evidence of the information that the control bodies refer to can not constitute a sufficient and essential element in the exercise of the right of deduction; it is required to be taken into account all relevant aspects of the case in this regard. The EUCJ ruled that the right to deduct laid down in art. 167 et seq of the VAT Directive and it is part of the mechanism of VAT and, in principle, it may not be limited (see judgment of 21 March 2000 *Gabalfrisa* Cases C-110/98 -C-147/98, ECR. 1-1577, paragraph 43, Judgment of 15 December 2005, *Centralan Property*, C-63/04, ECR. 1-11087, paragraph 50, judgment of 6 July 2006 *Kittel and Recolta Recycling*, C-439/04 and C-440/04, Rec. p. 1-6161, paragraph 47, and Case and *David Mahageben* June 21, 2012, C-80/11 and C-M2/11, paragraph 38.

Deduction system is meant to relieve the traders entirely of the burden of VAT, due or paid in all economic activities in which they engage. Common system of VAT consequently ensures neutrality perfect taxation of all economic activities, whatever the purpose or results of such activities, under the condition that the activities referred to are, in principle, themselves subject to VAT (see Case February 14, 1985 *Rompelman*. C-268/83, ECR. 655, paragraph 19,

judgment of 15 January 1998 Ghent Coal Terminal, C-37/95, ECR. I-1, paragraph 15; Case Gabalfrisa and others cited above, paragraph 44, judgment of 3 March 2005, Fini H, C-32/03, ECR. I-I599, paragraph 25, judgment of 21 February 2006, Halifax Cases C-255/02, Rec, p. 1-1609, paragraph 78; Case Kittel and Recolta Recycling, cited above, paragraph 48, judgment of 22 December 2010, Dankowski, C-438/09, Rep., p. 1-14009, paragraph 24, and Case Mahageben David, cited above, paragraph 39).

Also, the EUCJ held that the principle of fiscal neutrality requires that deduction of VAT for input of goods is allowed if the substantive requirements are satisfied, even if certain formal requirements were omitted by taxable persons (judgment of 30 September 2010, Uszodaepito C-392 / 09, paragraph 39; Case 8 May 2008 Ecotrade C-95/07 and C-96/07, Rep., p. 1-3457, paragraph 63).

Moreover, the combined cases C-123/87 and C-330/87 "Jorion Lea, nee Jeunehomme, and Societe anonyme de gestion immobiliere EGI v. Belgian State" ("Cause Lea Jorion"), the ECJ decided that Directive VI VAT (which underpins the current VAT Directive) provides imperatively that Member States must include into their national legislation two formal requirements on the right of deduction of VAT by taxpayer, namely the provisions of art.22 par.3b the content of the 6th VAT Directive, which refers to the amount invoiced and share of the applicable VAT.

However, in case law Lea Jorion ECJ stated that VAT Directive allows Member States to make the right deduction of VAT on the basis of existence of an invoice containing the elements to ensure the levy and to allow supervision the tax authorities. Without these elements, by the number or by nature, the right to deduct is impossible or excessively exercised.

THE RELATIONSHIP BETWEEN THE SUBSTANTIVE AND FORMAL CONDITIONS FOR THE DEDUCTION OF VAT

4.1 The arguments of the EUCJ

Ab initio, the court noted that the company respects all the substantive conditions for the right to deduct VAT and conducted effectively taxable transactions in the exercise of its object, collected and paid to the state budget the VAT and the substantive conditions are demonstrated by an expert report given to the court. In the light of the EUCJ's opinion, in Case C-146/2005 Albert Colee, the fiscal authority settlement body breached the principle of prevalence of substance over form when ejecting the appeal: "The principle of fiscal neutrality requires that exemption is allowed if the substantive requirements are satisfied, even if certain formal requirements were not met by taxpayers, the VAT exemption of an intra-Community supply, which actually took place, can not be refused simply because proof of such delivery was not filed in a timely manner."

Also, in Case C-368/09 Pannon GEP Centrum Kft, the ECJ held that Community law "precludes a national practice under which national authorities refuse the right to deduct the VAT to a taxable person which must pay the amount of tax due or paid for services that have been provided, for reasons that initial invoice, in its possession at the time of deduction, contained a wrong date of completion of service provision and that there was a continuous numbering bill corrected later and the credit note canceling the initial invoice, if the substance of deduction are met. "

The judgment of the Court from 15.07.2010 in Case C-368/09 Pannon GEP Centrum Kft against EH AP KÖZPONT Hatóság Foosztaly Hivatal Del-DUNÁNTÚLI Kihelyezett Hatóság osztály court in Luxembourg showed that Articolul 167, Article 178 (a), Article 220 paragraph 1 and Article 226 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as precluding legislation or a national practice in the terms that the authorities national refuses a taxable person the right to deduct from the value added tax they have to pay the amount of tax due or paid for services that have been provided, for reasons that initial invoice, in his possession at the time of deduction, included a wrong date of completion of service provision and that there was a continuous numbering of the bill subsequently corrected and the credit note cancelling the initial invoice, in case the substance of deduction are satisfied and, before the decision by the authority concerned, the taxable person latter provided a corrected invoice, which stated the exact date of ending the services that, even if there is a continuous numbering of that invoice and credit note cancelling the initial invoice.

In joint cases C-123/87 and C-330/87 "Jorion Lea, nee Jeunehomme, and Societe anonyme d'etude et de gestion immobiliere" EGL "v. Belgian State" Belgian tax authorities refused the right to deduct VAT for purchases made by Ms. Jorion and EGI on the grounds that the purchases invoices do not contain all the information required by Belgian law: beneficiary's address, registration code for VAT purposes, description of goods and services (Sararu, 2012). Thus, the EUCJ ruled that the Directive VI VAT provides the imperative obligation of Member States to take into their national legislation two formal requirements on exercising the right to deduct VAT by taxpayers, those provided by art.22 para.3 letter b) the content of the Directive, which refers to the invoiced amount and rate of VAT applicable.

The ECJ held that it is possible, according to art.22 paragraph 8 of the sixth VAT Directive, Member States should impose in their national legislation other formal requirements to be included in the taxpayer invoices, for exercising the right to deduct VAT, in order to ensure fair settlements VAT and enable tax authorities to exercise control of the VAT system (para. 16 of the judgment).

4.2 The arguments of the Romanian courts

This principle and ECJ decision was considered by the Romanian HCCJ - Department of administrative and fiscal decision in a particular case (decision no. 4739 / 14.10.2011), stating that "first court correctly granted priority for the substance elements for VAT exemption with deductibility retaining occurrence of intra-community supply of goods to a taxable person established in the community by promoting the prevalence of substance over form (in this respect the ECJ rulings in court cases Cole Connon, Teleos). However, the principle of formalism must not take precedence over the essence of the dispute, namely the occurrence highlighted by the submitted supporting documents and reviewed by the court. The recent European regulation and the practice in the field showed that payment of VAT by the company are not in direct connection with the errors occurred in commercial transactions, the essence is the reality of trade".

However, the right of Member States to impose additional formal requirements for the content of the invoices, as a condition for exercising the right to deduct VAT by taxpayers, is not absolute and it must be limited to what is necessary to achieve the pursued aim (par. 17 of the judgment). Such additional requirements may not limit the right to deduct VAT, not by their

number or by technical nature, in such manner so it becomes practically impossible or excessively difficult. Therefore, the fiscal authority arguments, based on Decision V / 15.01.2007 of the ICCJ, that the prevalence of form over substance is established and that it is inconsistent with EU regulations and case-law of the EUCJ. On the other hand, when the reality of the operation presented on the invoice and the existence of commercial relationship which led to issuing that invoices were determined by tax inspectors, not allowing the deduction of VAT by the control bodies would contravene obviously not only the principle of proportionality but also to that of the neutrality of VAT relief steadily in ECJ case law (Case Jeunehomme) ".

Against the decision of the Court of Appeal, the National Authority for Fiscal Administration appealed, considering that the solution was pronounced with the wrong application of the law in terms of VAT and its related accessories. Given that the applicant did not submit documents to provide all information required by applicable regulations, designed to ensure complete registration of the transactions and to confirm the respect of the cumulative conditions for exercising the right to deduct VAT, the applicant company has, in NAFA's opinion, the right to deduct VAT on the purchase invoices from 11 partners. The National Fiscal Authority considers that the court which solved the conflict has misinterpreted the provisions of Decision V / 2007 United Sections HCCJ regarding the right to deduct the VAT shown on the invoice that does not contain or does not supply all the information provided by legal provisions in force on the date of the operation for requesting a VAT deduction.

The HCCJ found there are no grounds for reforming the solution pronounced by the court of first instance. Solution of the Court of Appeal is correct and has been maintained by the HCCJ, after conducting its own examination of the case.

Refusal of the tax authority has no legal justification, as long as there is the deductibility of VAT on invoices submitted by suppliers for procurement when the following conditions are fulfilled:

- the operation substance (art. 145 par. 3-4 Fiscal Code in force before the date of January 1, 2007 and the respectively art. 146 alin. 2 of the Tax Code in force after 1 January 2007
- the form of the provided documents relating to operations performed, art. 145 Fiscal Code in force before 1 January 2007 respectively art. 146 Fiscal Code in force after 1 January 2007

The judge who solved the case in the first instance correctly observed that the National Fiscal Authority did not deny the reality of the transactions made by the applicant company. On the one hand, these operations were noted throughout the report of fiscal inspection, and although later, in the decision rejecting the applicant administrative request. The National Fiscal Authority body has an oscillatory position, proving no occurrence in their arguments and concluding that the documents presented did not justify correlating invoices opinions accompanying the goods or other documents and, moreover, the applicant is not entitled to deduct VAT.

Regarding the conditions of form, HCCJ notes that first court concluded judiciously that the lack of elements mentioned by National Fiscal Authority in the invoices can not have any relevance regarding the possibility of the tax authority to deny the right of deduction of VAT by the applicant company, as long as the tax legislation binds owning this right exclusively on justifying that the submitted invoices include the information in the art. 155 par. 8 Tax Code.

High Court holds that regulation on the content of the cartridge at the bottom of each invoice was made by GD 831 / 1997 and by Order 29/2003, but none of these acts do not contain

additional requirements as those stipulated in the Fiscal Code. The provisions of the Tax Code can not be modified or supplemented by acts of lower power, regulating model invoiced used in the relations between economic agents. The errors in the delivery notes accompanying the goods do not justify denying the right to deduct VAT because no legal provision condition the right to deduct VAT for the accuracy of the accompanying documents for delivering goods, but condition the deduction of VAT by complete documents imposed law but also VAT Directive.

CONCLUSIONS

From the jurisprudence of the EUCJ in the matter of VAT, we notice that the court in Luxembourg focuses primarily on ensuring the principle of VAT neutrality and proportionality of the measures imposed by Member States relating to the right of deduction of value added tax. When they verify the conditions for exercising the right to deduct, the administrative authorities of Member States shall ensure in particular that the requirements were met, permitting to accept a deduction, even if certain formal requirements were distort by the taxable person.

Both in administrative appeals and during the first instance lawsuit, the domestic courts stated that the principle of prevalence of substance over form should prevail. As a direct consequence, if the tax auditors raised no objections to the substance of transactions, but found only some flaws form, than these arguments cannot be accepted in a settlement favourable to grant the right to deduct VAT. The taxable person who purchases goods on the basis of invoices and who accepts the registration in supporting documents as taxable transactions, is responsible for receiving and recording in its accounts the improperly prepared documents, incomplete, not in accordance with the legal provisions in force. The domestic courts ruled that the decision to reject the appeal in this regard is unlawful, as it is contrary to the settled case law of the EUCJ, that the information to be included in the invoice should not be a determining factor in granting the right to deduct VAT, as long as other elements can attest commercial relationship between the parties to the transaction.

This ruling is binding for Romania upon accession and applied priority, recent case law proving its effects. Still, the effects are mainly present in the courts of law and there is certain inertia in improving the fiscal authority action.

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