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In case no. 6553-24, **Virtual Gym Sweden AB** (Appellant) v. the **Swedish Tax Agency** (Respondent), the Supreme Administrative Court delivered the following judgment on 24 April 2025.

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RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the claim to obtain a preliminary ruling from the European Court of Justice.

The Supreme Administrative Court affirms the advance ruling of the Board for Advance Tax Rulings.

BACKGROUND

1. As a general rule, value added tax is charged at a tax rate of 25 per cent. For certain services within the area of sports, however, a reduced tax rate of 6 per cent is applied.

2. Virtual Gym Sweden AB applied for an advance ruling to learn whether the supply of a subscription service in the form of an internet-based training platform is subject to the reduced tax rate.

3. Through the subscription service, the users obtain access to both pre-recorded, instructor-guided workout videos and broadcasts of workout sessions conducted by an instructor, which are played by the user in real time.

4. The Board for Advance Tax Rulings found that the reduced tax rate for services in the area of sports was not applicable to the company's supply in so far as it pertains to pre-recorded workout videos. According to the Board, the company's supply of internet-based workout sessions which take place in real time constitutes a minor part in relation to the pre-recorded videos. The provision of the subscriber service as a whole shall therefore be subject to the tax rate of 25 per cent.

CLAIMS, ETC.

5. *Virtual Gym Sweden AB* claims that the Supreme Administrative Court is to change the advance ruling and find that the subscription service is subject to the reduced tax rate for sports services. The company also claims that a preliminary ruling shall be obtained from the European Court of Justice.

6. *The Swedish Tax Agency* is of the position that the advance ruling is to be affirmed.

REASONS FOR THE RULING

Legislation, etc.

7. Pursuant to Chapter 9, section 2 of the Value Added Tax Act (2023:200), tax shall be charged at a rate of 25 per cent of the tax base unless otherwise provided for in sections 3–18.

8. Chapter 9, section 18 and Chapter 10, sections 28 and 29 provide that tax shall be charged at a rate of 6 per cent of the tax basis for services whereby someone is afforded the possibility to engage in sporting activities.

9. The provisions of the Value Added Tax Act regarding reduced tax rates for sales of services within the area of sports are based on Article 98 of the Value Added Tax Directive (2006/112/EC) and item 13 of Annex III of the directive. It follows from these provisions that the Member States may apply a reduced tax rate on the use of sporting facilities, and the supply of sport or physical education, including when the lessons are livestreamed.

The Court's assessment

Preliminary ruling from the European Court of Justice

10. The Supreme Administrative Court is of the opinion that the Value Added Tax Directive and the case law of the European Court of Justice provide sufficient guidance in order to determine the EU law questions which arise in the case.

Accordingly, there is no cause to obtain a preliminary ruling from the European Court of Justice. The claim for this shall therefore be rejected.

One or more supplies?

11. The parties agree that the subscription service constitutes a single composite supply for value added tax purposes. The Supreme Administrative Court makes the same assessment. According to the case law of the European Court of Justice, all components must then be subject to the reduced tax rate for that rate to be applicable to the supply (*Baštová*, C-432/15, EU:C:2016:855, para. 75).

Can the subscription service be compared to the use of a sporting facility?

12. According to the company, the platform to which the customers obtain access through the subscription service should be compared to a use of a sporting facility for which the reduced tax rate can be applied.

13. The concept of "the use of sporting facilities" must be understood, according to the European Court of Justice, as covering the right to use facilities for the practice of sport or physical education, and the use of the facilities for those purposes (*Baštová*, para. 65). It is apparent from the company's description in the application for a preliminary ruling that the service in question does not entail any right for the customers to use any sporting facility intended to conduct sport or physical education. Thus, the supply cannot be subject to the reduced tax rate on this basis.

Are the pre-recorded workout videos subject to the reduced tax rate?

14. The Supreme Administrative Court notes that the provisions of the Value Added Tax Act regarding the tax rate for services whereby someone is afforded the opportunity to engage in sporting activities are general, and that the provisions are not to be given a broader interpretation than that for which the Value Added Tax Directive provides scope. Where, as here, it involves the supply of a service to a customer by electronic means, it follows directly from the wording of the directive that only sport and physical exercise classes which are livestreamed are subject to the reduced tax rate.

15. The Value Added Tax Directive does not contain a definition of "livestream". The starting point is that exceptions to the principle that the standard rate applies must be interpreted strictly (*Baštová*, paras. 58 and 59). In the view of the Supreme Administrative Court, the term cannot be understood in any other way than that the recipient is to be able to access the broadcast at the same time as the class takes place. This interpretation of the term aligns with its normal meaning in customary speech and appears compatible with the purposes of the relevant regulation (*cf. English Bridge Union*, C-90/16, EU:C:2017:814, para. 18). The aforementioned entails that the company's supply as far as pre-recorded workout videos are concerned is not covered by the exemption from the standard tax rate.

The principle of tax neutrality

16. The subscription service thus contains components which are not subject to the reduced tax rate for services in the area of sports. This entails that the subscription service as a whole is not subject to the reduced tax rate (see para. 11 above).

17. The company has stated that such an application contravenes the principle of tax neutrality since workout sessions provided "on demand" and livestreamed are to be regarded as comparable. However, it follows from the case law of the European Court of Justice that this principle cannot extend the scope of a reduced value added tax rate in the absence of clear wording to that effect even if perceived by the consumer as being similar to products to which that reduced rate applies (*Oxycure Belgium*, C-573/15, EU:C:2017:189, paras. 31 and 36).

Conclusion

18. Accordingly, the advance ruling of the Board for Advance Tax Rulings shall be affirmed.

Case no.
6553-24

Justices Henrik Jermsten, Margit Knutsson, Mahmut Baran, Martin Nilsson and Mikael Westberg have participated in the ruling.

Judge Referee: Gustav Svensk.