

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 12 October 1998 No. 24-II

in the case concerning the review of the constitutionality of provisions of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation” of 27 December 1991.

Moscow, 12 October 1998

The Constitutional Court of the Russian Federation sitting as a Plenary Court composed of Presiding Judge Yu. D. Rudkin and Judges N. V. Vitruk, G. A. Gadzhiev, L. M. Zharkova, A. L. Kononov, N. V. Seleznev, O. I. Tiunov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of representatives of the party that submitted a constitutional complaint to the Constitutional Court of the Russian Federation, V. M. Reznichenko, Director of the Nauchno-Issledovatelsky Tsentr po Ispytaniyam I Dovodke Avtomototekhniki and attorney I. Ya. Lesho; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 96, 97, 99 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation” of 27 December 1991.

The reason for the consideration of the case is complaints of the Kondopozhsky Kombinat Khleboproduktov JSC and the Nauchno-Issledovatelsky Tsentr po Ispytaniyam I Dovodke Avtomototekhniki” (NITsIAMT) about violation of their constitutional rights and freedoms by application of the provision set out in Section 3, Article 11 of the Federal Law “On Fundamentals of the Taxation System in the Russian Federation”.

Insofar as all the complaints concern essentially the same subject matter and by virtue of Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian

Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur G. A. Gadzhiev, statements by the parties’ representatives, the expert opinion of S. G. Pepelyayev, PhD in Law, interventions by M. A. Motorin for the Ministry of Finance of the Russian Federation, V. M. Puchkov for the State Tax Service of the Russian Federation, V. N. Isaichev for the Supreme Arbitration Court of the Russian Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. In their complaints to the Constitutional Court of the Russian Federation, the Kondopozhsky Kombinat Khleboproduktov JSC and NITsIAMT challenge the constitutionality of the provision of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”, pursuant to which “the duty of a legal person to pay a tax is terminated by payment of the tax”.

The Kondopozhsky Kombinat Khleboproduktov JSC and NITsIAMT in due time provided instructions for commercial banks to pay taxes. Money was transferred from the settlement accounts of the abovementioned organizations but was not received on the accounts of the budgetary system, and the tax inspectorates collected the tax arrears from the taxpayers by directly debiting their accounts.

The Supreme Arbitration Court of the Republic of Karelia ruled in favour of the lawsuit of the Kondopozhsky Kombinat Khleboproduktov JSC against the tax authorities aimed at recovering the collected arrears from the budget. However, this judgment and the judgment of the appellate instance of this court were annulled by the Presidium of the Supreme Arbitration Court of the Russian Federation upon a request of the Deputy President of the Supreme Arbitration Court of the Russian Federation. The lawsuit of NITsIAMT against the tax authorities was rejected by the Arbitration Court of Moscow Region and by the appellate instance of the same court.

In the reasoning, the arbitration courts referred to Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation” and to Information Letter No. 1 of the Presidium of the Supreme Arbitration Court of the Russian Federation, of 4 April 1996, “On the Liability of Taxpayers and Banks for Non-Receipt of Tax Revenues by the Budget”, where the court clarified that the taxpayer’s duty to pay taxes “may be deemed as duly performed if the respective amounts of money have been received on the budgetary accounts”.

The applicants believe that this arbitrary, unlawful interpretation of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation” by the Presidium of the Supreme Arbitration Court of the Russian Federation became possible due to uncertainty of the abovementioned provision which, as applied, leads to violation of the constitutional rights of individuals guaranteed by Articles 34 and 35 of the Constitution of the Russian Federation.

2. Pursuant to Section 1, Article 96 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, citizens and their associations have the right to lodge, with the Constitutional Court of the Russian Federation, an individual or a collective complaint about violation of the constitutional rights and freedoms if their rights and freedoms are violated by a law which was applied or is to be applied in a specific case. The right of joint stock companies to lodge a complaint with the Constitutional Court of the Russian Federation is substantiated by the Constitutional Court of the Russian Federation in the Judgment of 24 October 1996 in the case concerning the review of the constitutionality of Section 1, Article 2 of the Federal Law “On Amendments to the Law of the Russian Federation ‘On Excises’” of 7 March 1996. Pursuant to this legal opinion, the complaint of the Kondopozhsky Kombinat Khleboproduktov JSC is admissible in the light of the requirements of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

Unlike joint stock companies that have the right of property to their possessions, NITsIAMT as a state unitary enterprise is not the owner of its possessions but has the right of economic management of these possessions. However, pursuant to Article 8 (Section 2) of the Constitution of the Russian Federation, private, state, municipal and other forms of property shall be recognized and equally protected in the Russian Federation. Legal persons, either private or public (irrespective of the legal form of incorporation), shall pay legally established taxes and duties as provided by Article 57 of the Constitution of the Russian Federation.

Disputes upon legal persons’ complaints which arise in determining the conformity of laws to Article 57 of the Constitution of the Russian Federation, concern certain constitutional rights of individuals, *inter alia* the right to equality, right to private property, right to freely use abilities and property for entrepreneurial activity.

Since the constitutional duty to pay legally established taxes and duties applies to all taxpayers, public enterprises are also covered by the constitutional principles and guarantees to the extent that these principles and guarantees are applicable to them. Consequently, the complaint of NITsIAMT may also be recognized as admissible in the light of the requirements of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

3. As is stated in the Judgment of the Constitutional Court of the Russian Federation of 17 December 1996 in the case concerning the review of the constitutionality of Subsections 2 and 3, Section 1, Article 11 of the Law of the Russian Federation “On Federal Fiscal Police Authorities” of 24 June 1993, the constitutional duty to pay legally established taxes and duties prescribed by Article 57 of the Constitution of the Russian Federation has special public law (not private law/civil law) nature which is predetermined by the public law nature of the state and state power. The legal form of establishing taxes, their compulsory nature and coercive collection, unilateral character of tax obligations are triggered by the public law nature of taxes, treasury, and fiscal state sovereignty. Thus disputes about failure to perform tax obligations fall within the public law, rather than civil law domain.

Pursuant to Article 2 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”, taxes, duties and fees are understood as mandatory contributions to the budget of an appropriate level. The constitutional duty to pay legally established taxes and duties may be considered performed when the taxpayer’s money is received on budgetary accounts. Not only taxpayers, but also credit institutions and state authorities participate in the performance of this obligation.

The constitutional duty to pay taxes implies that the taxpayer has the public duty to pay legally established taxes and duties, and credit institutions have the public duty to effect transfer of the payments to the budgetary system. In this context, the interpretation of Article 57 of the Constitution of the Russian Federation in conjunction with other provisions of the Constitution of the Russian Federation does not permit to reach the conclusion that the taxpayer is responsible for actions of all organizations participating in this multiple-stage process of payment and transfer of taxes to the budgetary system.

Tax relations between taxpayers and credit institutions exercising taxpayers’ payment instructions to transfer tax payments are regulated by the tax legislation. The relations concerning the receipt of money paid as taxes on budgetary accounts are budgetary relations and at the moment, before the Budgetary Code of the Russian Federation comes into force, are regulated by the Law of the Russian Federation “On Fundamentals of the Budgetary Rights and the Right to Form and Use Non-Budgetary Funds of Representative and Executive Bodies of State Power of the Republics within the Russian Federation, Autonomous District, Autonomous Regions, Territories, Regions, the Cities of Moscow and Saint Petersburg, and Bodies of Local Self-Government” of 15 April 1993. Thus, the tax and budget legislation in force distinguish the notions of “tax paid” and “tax received”.

The taxpayers who are legal persons, under the tax legislation in force, effect their tax payments primarily through banks by giving them payment instructions to transfer taxes to the

budget. Pursuant to the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”, enterprises are obliged to provide the bank with payment instructions to transfer taxes to the budget before the payment is due; no commission is charged for these bank operations of legal persons or individuals (Sections 6 and 7, Article 15).

Thus, the tax legislation regulates the public law obligations of banks in their relations with taxpayers – legal persons. Through tax and other authorities, the state supervises the performance of these public functions by banks. For example, on the grounds stipulated by the Federal Law “On Banks and Banking” (as amended on 3 February 1996), the bank’s license for banking operations may be called off.

The provision of Article 57 of the Constitution of the Russian Federation implies that the constitutional duty of the taxpayer – legal person to pay taxes is considered duly performed on the day the money is transferred from the settlement account with a credit institution (provided that the account balance is sufficient for the payment).

In the Judgment of 17 December 1996, the Constitutional Court of the Russian Federation highlighted that the tax is lawful taking of a part of property based on the constitutional public law duty. The taxpayer has no right to dispose of that part of his property, which must be contributed to the treasury as a certain sum of money.

The constitutional duty of every taxpayer to pay taxes is duly performed at the moment when taking of the part of his property to be paid as a tax is *de facto* effected. Such taking is effected at the moment when the bank transfers the money payable as taxes to the budget from the taxpayer’s settlement account. After the transfer from the settlement account, the property of the taxpayer is taken, i.e. the tax is paid. Therefore, the provision of Article 57 of the Constitution of the Russian Federation concerning the payment of a tax shall be interpreted as *de facto* taking of a tax from a taxpayer.

Thus, the Constitution of the Russian Federation distinguishes between property which a taxpayer may not freely dispose of, since it must be contributed to the budget as a certain sum of money, and private property protected under Article 35 of the Constitution of the Russian Federation.

Repeated collection of taxes not received on the budgetary accounts from the *bona fide* taxpayer violates the constitutional guarantees of private property. In this case the money collected is not arrears, because the constitutional duty to pay taxes is duly performed when the taking of a part of property owned by a *bona fide* taxpayer is *de facto* effected within the scope of public law relations. Consequently, the collection of these amounts of money by directly debiting the settlement accounts contradicts the constitutional prohibition to deprive anyone of

property without a court decision (Section 3, Article 35 of the Constitution of the Russian Federation).

Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”, stipulating that “the duty of a legal person to pay a tax is terminated by payment of the tax” shall be interpreted with consideration of interrelated constitutional provisions. Any other interpretation is not in conformity with the Constitution of the Russian Federation, in particular, its Article 35 (Section 1) establishing guarantees for private property rights.

The interpretation according to which the duty of a taxpayer – legal person to pay a tax is considered performed when the money is received by budgetary accounts, violates the constitutional right of equality of different categories of taxpayers, namely legal persons and individuals, which stems from Articles 19 (Section 1) and 57 of the Constitution of the Russian Federation. For individual taxpayers, the tax legislation giving due regard to the multiple-stage tax payment process provides that the tax is considered paid when an employer withheld it, not when the taxpayers’ money was received on the budgetary accounts. The diverging approach to legal persons and individuals in determining the moment when the duty to pay taxes is performed has no constitutional basis.

It is not permissible to interpret the challenged provision as resulting in the taxpayer’s responsibility for the actions which are lawful and mandatory under imperative public law norms, since it contradicts the rule of law principle (Article 1 of the Constitution of the Russian Federation).

4. Pursuant to Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, when deciding cases the Constitutional Court of the Russian Federation considers not only the literal meaning of the normative act under review, but also the meaning these norms acquire in law-enforcement practice.

In the law-enforcement practice, the provision of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”, is applied by courts in the interpretation given by the Presidium of the Supreme Arbitration Court of the Russian Federation in its Information Letter of 4 April 1996, “On the Liability of Taxpayers and Banks for Non-Receipt of Tax Revenues by the Budget”. Essentially, for the Presidium of the Supreme Arbitration Court of the Russian Federation and the tax authorities the duty to pay a tax is recognized as performed when the respective amounts of money are received on budgetary accounts; otherwise, these are arrears on taxes, which may be collected from the taxpayer by directly debiting his settlement accounts. This approach is reflected in a number of

decisions of the Presidium of the Supreme Arbitration Court of the Russian Federation and clarifications by the State Tax Service of the Russian Federation.

In the context of Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, there is no need for complete unanimity of legal opinions of the law-enforcement authorities in order to consider the law-enforcement practice established. In the present case, the existence of the established practice is proven by the uniform application of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”, in certain decisions of the Presidium of the Supreme Arbitration Court of the Russian Federation, which has the power to annul decisions of inferior arbitration courts, although the Ministry of Finance of the Russian Federation and certain arbitration courts rely on a diverging understanding of the challenged provision considering the duty to be duly performed when the bank receives payment instructions to pay the respective tax. Analogous understanding also guided certain tax inspectorates.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 74, 75, and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize, as conforming to the Constitution of the Russian Federation, the provision of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation” of 27 December 1991, prescribing that the duty of a legal person to pay a tax is terminated by payment of the tax; as regards the constitutional norms it means that the tax is recognized as paid by the taxpayer, which is a legal person, from the date the payment was transferred from the payer’s settlement account by a credit institution, irrespective of the moment when the amounts of money were received on a budgetary or non-budgetary account.

To recognize, as non-conforming to the Constitution of the Russian Federation, its Articles 19 (Section 1) and 35 (Section 3), the abovementioned provision of Section 3, Article 11 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation” of 27 December 1991 in their interpretation by the current law-enforcement practice, which considers the duty of the taxpayer, which is a legal person, to pay a tax terminated only from the moment the amounts of money were received on budgetary accounts, and thereby permitting repeated collection from the taxpayer of taxes not received by the budget.

2. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the court judgments delivered in the cases of the

Kondopozhsky Kombinat Khleboproduktov JSC and the Nauchno-Issledovatel'sky Tsent'r po Ispytaniyam i Dovodke Avtomototekhniki on the basis of the provision of Section 3, Article 11 of the Law of the Russian Federation "On Fundamentals of the Taxation System in the Russian Federation" of 27 December 1991 to the extent that it is recognized non-conforming to the Constitution of the Russian Federation, as set in Paragraph 2, Section 1 of the reasoning of the present Judgment, are to be reconsidered by courts according to the established procedure.

3. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, and shall be directly applicable.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 24-II