Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

12 December 2013 *

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 7307 and 7321 — Stove pipe sets — Notions of 'parts' of stoves and 'tube or pipe fittings')

In Case C-450/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Germany), made by decision of 19 September 2012, received at the Court on 8 October 2012, in the proceedings

HARK GmbH & Co. KG Kamin- und Kachelofenbau

v

Hauptzollamt Duisburg,

THE COURT (Tenth Chamber),

composed of E. Juhász, President of the Chamber, A. Rosas and C. Vajda (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 20 June 2013,

after considering the observations submitted on behalf of:

— HARK GmbH & Co. KG Kamin- und Kachelofenbau, by H.-D. Eich, Rechtsanwalt,

— the European Commission, by B.-R. Killmann and L. Keppenne, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of headings 7307 and 7321 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008 (OJ 2003 L 291, p. 1) ('the CN').

2 The request has been made in proceedings between Hark GmbH & Co. KG ('Hark') and the Hauptzollamt Duisburg (Principal Customs Office, Duisburg) concerning the tariff classification of stove pipe sets and the customs duties and anti-dumping duties on imports of that product originating in the People's Republic of China.

Legal context

Harmonised Commodity Description and Coding System

3 The International Convention on the Harmonised Commodity Description and Coding System ('the HS'), concluded in Brussels on 14 June 1983, and its amending protocol of 24 June 1986 ('the HS Convention') were approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 Under Article 3(1)(a) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS, to use all the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. That same provision also provides that the contracting party must apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and must not modify the scope of the sections, chapters, headings or subheadings.

5 The Customs Cooperation Council, now the World Customs Organisation, established by the Convention establishing that Council, concluded in Brussels on 15 December 1950, is to approve, in accordance with the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee, a body the organisation of which is governed by Article 6 thereof. Under Article 7(1) of the HS Convention, the functions of that committee include proposing amendments to the Convention and preparing Explanatory Notes, Classification Opinions and other advice as guides to the interpretation of the HS.

6 Note 2 to Section XV of the HS, concerning 'parts of general use' provides:

'Throughout the nomenclature, the expression "parts of general use" means:

(a) articles of heading 73.07, 73.12, 73.15, 73.17 or 73.18 and similar articles of other base metal;

...

In Chapters 73 to 76 and 78 to 82 (but not in heading 73.15), references to parts of goods do not include references to parts of general use as defined above.

...'

7 The HS Explanatory Note concerning Section XV, entitled 'Parts of Articles', reads as follows:

'... parts of general use (as defined in Note 2 to this Section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialised for central heating radiators or springs specialised for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles)'.

8 According to the HS Explanatory Note concerning heading 7307, this heading 'covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture. This heading does not however cover articles used for installing pipes and tubes but which do not form an integral part of the bore (e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc.) (heading 73.25 or 73.26)'.

9 The HS Explanatory Note concerning heading 73.21, as regards 'parts' of articles under that heading, provides as follows:

'The heading also covers clearly identifiable iron or steel parts of the above-mentioned appliances (e.g., internal oven shelves, cooking-plates and rings, ash-pans, removable fire-boxes and fire-baskets, gas burners, oil burners, doors, grills, feet, guard rails, towel rails and plate racks).'

The CN

10 The CN, established by Regulation No 2658/87 and based on the HS, is designed to meet the requirements of both the Common Customs Tariff and the external trade statistics of the European Union.

11 Part One of the CN consists of a number of preliminary provisions. Under Section I of the CN, setting out general rules, Section A lays down general rules for the interpretation of the CN in accordance with which the classification of goods in the CN are to be governed. It is, inter alia, provided that for legal purposes, classification is to be determined according to the terms of the headings and any relative section or chapter note, the titles of sections, chapters and sub-chapters being provided for ease of reference only.

12 Goods consisting of more than one material or substance are to be classified according to the principles, inter alia, of rule 3 of the CN, paragraph (b) of which states:

'Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.'

13 Part Two of the CN contains Section XV, concerning base metals and articles of base metal. That section, comprised of chapters 72 to 83, contains chapter 73, which is entitled 'Articles of iron or steel'. Note 2 of the introductory notes to Section XV states:

'Throughout the nomenclature, the expression "parts of general use" means:

(a) articles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metal;

...

In Chapters 73 to 76 and 78 to 82 (but not in heading 7315), references to parts of goods do not include references to parts of general use as defined above.

...'

14 Heading 7307 of the CN is worded as follows:

'Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel:

...

— Other:

7307 99 – – Other:

…

7307 99 90 – – – Other'.

15 Heading 7321 of the CN reads as follows:

'Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel:

...

7321 90 00 – Parts'.

16 Heading 7326 of the CN reads as follows:

'Other articles of iron or steel:

...'

Regulation EC No 964/2003

17 By Regulation (EC) No 964/2003 of 2 June 2003 imposing definitive anti-dumping duties on imports of certain tube or pipe-fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan or not (OJ 2003 L 139, p. 1), the Council of the European Union imposed a definitive anti-dumping duty on imports of certain tube or pipe-fittings, of iron or steel, with a greatest external diameter not exceeding 609.6 mm, of a kind used for butt-welding or other purposes, classifiable within, inter alia, CN code ex 7307 99 90 and originating, inter alia, in China. The rate of anti-dumping duty in force at the material time for such goods imported from China was 58.6%.

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 Hark imported steel stove pipe sets into Germany from China. Those sets, packaged for retail sale, consist of a tubular right-angled elbow component, which has a closing flap to allow internal cleaning, a chimney connection and an appropriate surround, all of which are covered in heat-resistant paint.

19 On 28 July 2009, Hark submitted to the Hauptzollamt Duisburg an import declaration for those stove pipe sets under CN subheading 7321 90 00, which covers parts of 'stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel', for which the customs duty is 2.7%. The stove pipe sets at issue in the main proceedings were, as was requested, put into free circulation.

20 As a result of an inspection carried out on the occasion of a later importation by Hark of such sets, the Hauptzollamt Duisburg, concluding that the stove sets should be classified under CN subheading 7307 99 90, relating to other 'tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel,' issued, on 20 May 2010, a notice of assessment seeking post-clearance payment of customs duty – set at 3.7% – and, pursuant to Regulation No 964/2003, anti-dumping duty – set at 58.6% – on the ground that those articles originated in China.

21 Hark lodged an objection against that notice of assessment, which was rejected by the Hauptzollamt Duisburg on 10 August 2011.

22 The Hauptzollamt Duisburg considered that, in accordance with both the HS and CN Explanatory Notes, heading 7307 includes goods which are essentially designed to connect the bores of two tubes together, or to connect a tube to some other apparatus, or to close the tube aperture. In addition, the Hauptzollamt Duisburg was of the view that the goods under heading 7307 are, within the meaning of note 2(a) to Section XV of the CN, parts of general use which do not have to be referred to in the wording of the heading. It adds that the goods which come under heading 7307 of the CN must be regarded as parts of general use and must therefore be classified under their own appropriate headings, even where the goods can clearly be used for particular principal goods. Furthermore, according to the Hauptzollamt Duisburg, there is no reference in the HS Explanatory Notes to any rule to the effect that that heading applies only to pipes and fittings for the conveyance of liquid media.

23 Hark applied to the referring court for annulment of that notice of assessment. Before that court, it claimed, inter alia, that smoke pipes, designed specifically to remove the flue gases from a stove, cannot be regarded as being of general use. It adds that the goods which it imports are not designed for the installation of tubes and pipes, but for stoves, so that it is not possible to regard them as falling under heading 7307 of the CN, read in the light of the HS Explanatory Notes. In addition, the goods at issue in the main proceedings are finished goods which are easy to install, unlike tubes and pipes which are designed for further treatment and must be connected by technical means.

24 The referring court states that, according to general rule 3(b) of the CN, a product put up in sets which cannot be classified by reference to CN general rule 3(a), is to be classified as if it consisted of the material or component which gives it its essential character. In the case pending before it, that court considers that the tubular elbow component determines the essential character of the stove pipe sets at issue. It also notes that the sets are essential to the functioning of stoves. Without the connection between the stove pipe set and the chimney flue, it would not be possible to operate the stove in an enclosed room because flue gases would escape, not allowing the stove to be operated safely. Similarly, the referring court notes that the stove pipe set is intended exclusively for use with stoves. In addition, it notes that, due to its dimensions, namely an external diameter of 154 mm and external dimensions of 495 mm x 595 mm, it is not merely a connection but an essential connection for the evacuation of flue gases from the stove.

25 However, as it has doubts regarding the tariff classification of such goods as 'tube or pipe fittings' under CN heading 7307 or as 'parts', in steel, of 'stoves, ranges, grates, and cookers' under CN heading 7321, the Finanzgericht Düsseldorf decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is heading 7321 of the [CN] to be interpreted as meaning that the stove pipe sets described in greater detail in the grounds can be regarded as parts of stoves, ranges, grates, and cookers?

2. If the answer to Question 1 is in the negative, can the stove pipe sets then be classified under [CN] heading 7307?'

Consideration of the questions referred

26 By its two questions, which it is appropriate to consider together, the referring court asks, in essence, whether the CN must be interpreted as meaning that a stove pipe set, such as that at issue in the main proceedings, which comprises a right-angled elbow in steel with an external diameter of 154 mm and external dimensions of 495 mm x 595 mm, which is covered in heat-resistant paint and has a closing flap to allow internal cleaning, a chimney connection and an appropriate surround, falls under CN heading 7321 as a part, in steel, of a stove, or CN heading 7307 as a tube or pipe fitting.

27 As regards the stove pipe sets at issue in the main proceedings, packaged for retail sale in sets, it is not disputed before the referring court that, among their three components, the tubular elbow component gives those sets their essential character within the meaning of CN general rule 3(b), which will therefore determine the tariff classification of the three components at issue.

28 Hark claims that the tubular elbow component is a part designed exclusively to connect the stove to the chimney flue and states that, in the absence of such a connection, there would be no draught facilitating the extraction of flue gases from the stove to the chimney. Therefore, the fire would be smothered shortly after it had started to burn due to flue gases remaining in the fireplace. In those circumstances, opening the stove door could cause an explosion of the unburned gases in the stove. Consequently, it considers that the tubular elbow component is essential to the functioning of the stove and must, therefore, be classified under CN heading 7321 as a part of a stove.

29 The Commission takes the view, on the contrary, that, due to its objective characteristics and properties, that component must be classified under CN heading 7307 as a tube or pipe fitting. According to that institution, the fact that the tubular elbow component is designed exclusively for the functioning of the stove and is essential thereto are not relevant criteria for the purposes of determining whether that component is to be classified under one heading or the other. The Commission claims, in that respect, that the intended use of a product is merely an additional criterion for the purposes of tariff classification of the product and that, as regards a product falling under 'parts of general use' within the meaning of note 2 to Section XV of the CN, the intended use of such a product cannot be taken into account determining its tariff classification.

30 According to settled case-law, in the interests of legal certainty and for ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties, as defined in the wording of the relevant heading of the CN and the notes to the sections or chapters (see, inter alia, Case C-336/11 *Rohm & Haas Electronic Materials CMP Europe and Others* [2012] ECR, paragraph 31).

31 It follows from the general rules for the interpretation of the CN that the classification of goods is determined for legal purposes by the terms of the headings and subheadings and by the section and chapter notes, which are legally binding (Case C-291/11 *TNT Freight Management (Amsterdam)* [2012] ECR, paragraph 31).

32 The Explanatory Notes drawn up by the Commission as regards the CN and by the World Customs Organisation as regards the HS may be an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (*TNT Freight Management*, paragraph 32).

33 For the purposes of classification under the appropriate heading, the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (*TNT Freight Management*, paragraph 33 and the case-law cited).

34 Tubular elbow components, such as those at issue in the main proceedings, are not expressly referred to by the wording of CN headings 7321 or 7307, by the notes to the CN sections or chapters, or by the CN or HS Explanatory Notes.

35 As regards CN heading 7321, it is apparent from an examination of that heading that it includes, inter alia, 'stoves' and 'parts thereof, of iron or steel', whereas CN subheading 7321 90 00 refers specifically to 'parts'.

36 The CN does not define 'parts' within the meaning of CN heading 7321. None the less, it is clear from the Court's case-law, developed in the context of Chapters 84 and 85 of Section XVI and of Chapter 90 of Section XVIII of the CN, that the notion of 'parts' implies a whole for the operation of which the part is essential (see, inter alia, Case C-183/06 *RUMA* [2007] ECR I-1559, paragraph 31; Case C-152/10 *Unomedical* [2011] ECR I-5433, paragraph 29; and *Rohm & Haas Electronic Materials CMP Europe and Others*, paragraph 34). It follows from that case-law that, in order to classify an article as 'parts' within the meaning of those chapters, it is not sufficient to show that, without that article, the machine or apparatus is not able to carry out its intended functions. It must be established that the mechanical or electric functioning of the machine or apparatus in question is dependent on that article (see, to that effect, Case C-276/00 *Turbon International* [2002] ECR I-1389, paragraph 30, and *Rohm & Haas Electronic Materials CMP Europe and Others*, paragraph 35). Furthermore, account should be taken of note 2(a) to Section XV of the CN, which specifies that references to 'parts of goods', inter alia in CN heading 7321, do not include references to 'parts of general use'.

37 In the interests of a consistent and uniform application of the Common Customs Tariff, the notion of 'parts', within the meaning of CN heading 7321, must be given the same definition as that established by the case-law on other chapters of the CN, such as that referred to at paragraph 36 above.

38 In this case, it is apparent from the factual findings of the referring court that the tubular elbow component at issue in the main proceedings, as well as the chimney connection and the surround, are intended exclusively for use with stoves. Furthermore, that component serves to connect the stove to the chimney flue. In the absence of such a connection, the stove could not be operated because flue gases would escape.

39 Therefore, it must be concluded that the tubular elbow component is essential for the operation of the stove. In the light of the case-law referred to at paragraph 36 above, such a component may therefore be regarded as 'part' of a stove and, therefore, classified under CN heading 7321.

40 However, it is necessary to examine whether the tubular elbow component must be classified under CN heading 7307 as a 'tube or pipe fitting', which would rule out, in accordance with note 2 to Section XV of the CN, referred to at paragraph 36 above, the classification of that piece as 'part' of a stove for the purposes of CN heading 7321.

41 CN heading 7307 refers to tube or pipe fittings (for example, couplings, elbows, sleeves), 'of iron or steel'. According to the HS Explanatory Note concerning heading 7307, that heading covers fittings 'of iron or steel', mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture.

42 In the main proceedings, it is apparent from the factual findings of the referring court that a tubular elbow component such as that at issue, is intended not to connect the bores of two tubes together or to connect a tube to some other apparatus, but to connect a stove to a chimney flue. Consequently, that piece cannot be considered to be a part of general use within the meaning of note 2(a) to Section XV of the CN.

43 Therefore, it must be concluded that an article such as that at issue in the main proceedings cannot be classified under CN heading 7307 and does not fall within 'parts of general use' within the meaning of note 2(a) to Section XV of the CN. By contrast, in view of its objective characteristics and properties and the inherent intended use of that article, it must be classified under CN heading 7321, as a 'part', in steel, of a stove.

44 Taking account of all the foregoing considerations, the answer to the questions referred is that the CN must be interpreted as meaning that a stove pipe set, such as that at issue in the main proceedings, which comprises a right-angled tubular elbow component in steel with an external diameter of 154 mm and external dimensions of 495 mm x 595 mm, which is covered in heat-resistant paint and has a closing flap to allow internal cleaning, a chimney connection and an appropriate surround, must be classified under CN heading 7321 as a part, in steel, of a stove.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008, must be interpreted as meaning that a stove pipe set, such as that at issue in the main proceedings, which comprises a right-angled tubular elbow component in steel with an external diameter of 154 mm and external dimensions of 495 mm x 595 mm, which is covered in heat-resistant paint and has a closing flap to allow internal cleaning, a chimney connection and an appropriate surround, must be classified under CN heading 7321 as a part, in steel, of a stove.

[Signatures]