JUDGMENT OF THE COURT (Third Chamber)

2 December 2010 *

In Case C-199/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Augstākās tiesas Senāta Administratīvo lietu departaments (Latvia), made by decision of 30 April 2009, received at the Court on 4 June 2009, in the proceedings

Schenker SIA

v

Valsts ieņēmumu dienests,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby (Rapporteur), E. Juhász, G. Arestis and T. von Danwitz, Judges,

* Language of the case: Latvian.

Advocate General: J. Kokott,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Schenker SIA, by A. Tauriņš, valdes loceklis,

— the Valsts ieņēmumu dienests, by A. Drulle, acting as Agent,

— the Latvian Government, by K. Drēviņa and K. Krasovska, acting as Agents,

— the Commission of the European Communities, by A. Sauka and L. Bouyon, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1602/2000 of 24 July 2000 (OJ 2000 L 188, p. 1) ('the Implementing Regulation').

2 The reference has been made in proceedings between Schenker SIA ('Schenker') and the Valsts ieņēmumu dienests (the Latvian State Tax Authority, 'the Tax Authority') concerning the Tax Authority's refusal to issue binding tariff information for the goods referred to as 'LCD liquid crystal displays' on the ground that a single application for binding tariff information had been submitted for several types of goods.

Legal context

3 Article 6(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) ('the Customs Code') provides:

'Where a person requests that the customs authorities take a decision relating to the application of customs rules that person shall supply all the information and documents required by those authorities in order to take a decision.'

4 Article 11(1) of the Customs Code provides:

'Any person may request information concerning the application of customs legislation from the customs authorities.

Such a request may be refused where it does not relate to an import or export operation actually envisaged.'

5 Article 12 of the Customs Code provides:

‘1. The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

…

3. The holder of such information must be able to prove that:

— for tariff purposes: the goods declared correspond in every respect to those described in the information;

…

4. Binding information shall be valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue. By way of derogation from Article 8, it shall be annulled where it is based on inaccurate or incomplete information from the applicant.

…'

6 Article 5 of the Implementing Regulation provides:

'For the purpose of this Title:

(1) binding information: means tariff information or origin information binding on the administrations of all … Member States when the conditions laid down in Articles 6 and 7 are fulfilled;

…'

7 Article 6 of the regulation implementing the Customs Code provides:

'1. Applications for binding information shall be made in writing, either to the competent customs authorities in the Member State or Member States in which the information is to be used, or to the competent customs authorities in the Member State in which the applicant is established.

Applications for binding tariff information shall be made by means of a form conforming to the specimen shown in Annex 1B.

2. An application for binding tariff information shall relate to only one type of goods. An application for binding origin information shall relate to only one type of goods and one set of circumstances conferring origin.

3. (A) Applications for binding tariff information shall include the following particulars:

(a) the holder's name and address;

(b) the name and address of the applicant where that person is not the holder;

(c) the customs nomenclature in which the goods are to be classified. Where an applicant wishes to obtain the classification of goods in one of the nomenclatures referred to in Article 20(3)(b) and (6)(b) of the [Customs] Code, the application for binding tariff information shall make express mention of the nomenclature in question;

(d) a detailed description of the goods permitting their identification and the determination of their classification in the customs nomenclature;

(e) the composition of the goods and any methods of examination used to determine this, where the classification depends on it;

(f) any samples, photographs, plans, catalogues or other documents available which may assist the customs authorities in determining the correct classification of the goods in the customs nomenclature, to be attached as annexes;

(g) the classification envisaged;

(h) agreement to supply a translation of any attached document into the official language (or one of the official languages) of the Member State concerned if requested by the customs authorities;

(i) any particulars to be treated as confidential;

(j) indication by the applicant whether, to his knowledge, binding tariff information for identical or similar goods has already been applied for, or issued in the [European Union];

…

4. Where, on receipt of the application, the customs authorities consider that it does not contain all the particulars required to give an informed opinion, the customs authorities shall ask the applicant to supply the required information. …

…'

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

8 On 15 February 2005, Schenker applied to the Tax Authority for binding tariff information on LCD liquid crystal displays which, it submitted, ought to be classified under subheading 9013 80 20 of the combined nomenclature set out 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 1810/2004 of 7 September 2004 (OJ 2004 L 327, p. 1; 'the CN'). By way of description of the goods at issue, Schenker stated that they were liquid crystal displays used as components in the manufacture of electronic apparatus and that the goods at issue were unable either to receive or to process information by themselves.

9 On the view that Schenker's application had not been made in accordance with Article 6(1) of the Customs Code and Article 6(2) and (3) of the Implementing Regulation, the Tax Authority refused to issue binding tariff information. It found, first, that Schenker had not provided sufficient information to enable the Tax Authority to

classify the goods at issue and, second, that Schenker had not submitted separate applications according to the different characteristics of the goods at issue, as the liquid crystal displays were of different sizes, that is to say, 26, 29 and 32 inches, respectively.

10 Schenker challenged the decision of the Tax Authority before the Administratīvā rajona tiesa (District Administrative Court) and was successful both at first instance before that court and on appeal before the Administratīvā apgabaltiesa (Administrative Court of Appeal). The Administratīvā apgabaltiesa held that none of the provisions of the Customs Code or of the Implementing Regulation precluded several goods which were to be classified under the same CN code from being covered by a single application for binding tariff information.

11 The Tax Authority therefore brought an appeal on a point of law before the Augstākās tiesas Senāta Administratīvo lietu departaments (Administrative Law Division of the Latvian Supreme Court), which decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 6(2) of [the Implementing Regulation] be interpreted as meaning that, with regard to an application for binding tariff information, binding information must be issued on identical goods, which share the same commercial denomination trade name?, article number or any other criterion which distinguishes or identifies the goods concerned?'

The question referred for a preliminary ruling

12 By its question the national court asks, in essence, whether Article 6(2) of the Implementing Regulation, under which an application for binding tariff information is to

relate to only one type of goods, must be interpreted as meaning that such an application must be confined to goods which are the same and cannot therefore relate to various different goods even if the differences between them are minimal.

13 The question asked by the national court effectively implies an examination as to whether LCD liquid crystal displays, such as those at issue in the main proceedings, constitute 'one type of goods' for the purposes of Article 6(2) of the Implementing Regulation.

14 It should be noted at the outset that neither the Customs Code nor the Implementing Regulation contains a definition of the term 'one type of goods', as used in Article 6(2) of that regulation. It is necessary, therefore, when interpreting that term, to take account of the wording, the context and the objectives of that provision (see, to that effect, Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 17 and the case-law cited).

15 In that connection, it should be observed, first, that, according to the wording of Article 6(2), which refers to 'one type of goods', an application for binding tariff information may relate to various different goods provided that they are all of the same type. In the light of the ordinary meaning of that word, only goods with similar characteristics are likely to constitute 'one type of goods'.

16 Second, for the purposes of ascertaining which distinguishing features preclude goods with similar characteristics from being regarded as belonging to one type of goods, for the purposes of Article 6(2) of the Implementing Regulation, it should

be recalled that the aim of the system of binding tariff information is to provide the trader with legal certainty where there is a doubt as to the tariff classification of goods (see Case C-315/96 *Lopex Export* [1998] ECR I-317, paragraph 28). Thus, binding tariff information assures the holder of that information that the goods are classified under a precise tariff heading, making it possible to know in advance the amount of duty payable on completion of the customs formalities in relation to those goods.

17 In addition, that system facilitates the work of the customs services themselves, since the tariff classification of the goods that are the subject of binding tariff information is set for any future customs declaration relating to those goods while the information is valid (see *Lopex Export*, paragraph 19).

18 In order to ensure that the objective of the system of binding tariff information can be attained, Article 6(3) of the Implementing Regulation requires the applicant for such information to provide, in the application, a detailed description of the goods as well as any useful information which may enable the customs authorities concerned to determine the correct classification of the goods in the customs nomenclature.

19 In the light of the objective pursued by the legislation in question, goods cannot - even if they have similar characteristics - be regarded as belonging to one type of goods for the purposes of Article 6(2) of the Implementing Regulation if they are likely to be classified under different headings or subheadings of the customs nomenclature. In addition to complicating the work of the customs services, the inclusion in the same

application for binding tariff information of several goods likely to fall under different headings or subheadings would entail a high risk of error in the assessment of the information provided in the application and, as a consequence, in the determination of the classification of the goods.

20 In those circumstances, an application for binding tariff information cannot relate to different goods, even if they have similar characteristics, if the features which distinguish those goods from one another are likely to have any bearing on their tariff classification.

21 It should be noted that, in the main proceedings, the applicant made an application for binding tariff information in order to dispel any doubt as to the tariff classification of various LCD liquid crystal displays. It is apparent from the order for reference that the application related to displays of different sizes, that is to say, 26, 29 and 32 inches, respectively. If, as the applicant in the main proceedings argues, the size of the LCD liquid crystal displays were the only feature distinguishing from one another the various goods covered by the application, it must be found that that distinguishing feature is not irrelevant for the purposes of the tariff classification of those displays.

22 Even if the classification envisaged by the applicant in the main proceedings in the application for binding tariff information fell within CN heading 9013, which does not refer to the size of goods as one of the relevant factors for the purposes of their classification under one or other of the subheadings of that heading, a classification such as that envisaged is not binding on the customs authorities. It is apparent from paragraphs 19, 20 and 30 of the judgment of 11 June 2009 in Case C-16/08 *Schenker* [2009] ECR I-5015 that the uncertainty concerning the tariff classification of LCD liquid crystal displays, which existed at the material time, concerned essentially their

classification under CN headings 8528, 8529 or 9013. It should be noted that the size of goods under CN heading 8528 can constitute a relevant factor for the purposes of their classification under one of the subheadings of that heading.

23 In those circumstances, displays such as those at issue in the main proceedings, which have distinguishing features which are not completely irrelevant for the purposes of the tariff classification of those displays, cannot be regarded as belonging to one type of goods for the purposes of Article 6(2) of the Implementing Regulation.

24 In the light of the foregoing, the answer to the question is that Article 6(2) of the Implementing Regulation must be interpreted as meaning that an application for binding tariff information may relate to different goods provided that these all belong to one and the same type of goods. Only goods which have similar characteristics and whose distinguishing features are completely irrelevant for the purposes of their tariff classification may be regarded as belonging to one type of goods for the purposes of that provision.

Costs

25 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

Article 6(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1602/2000 of 24 July 2000, must be interpreted as meaning that an application for binding tariff information may relate to different goods provided that these all belong to one and the same type of goods. Only goods which have similar characteristics and whose distinguishing features are completely irrelevant for the purposes of their tariff classification may be regarded as belonging to one type of goods for the purposes of that provision.

[Signatures]