Case 40/84

Casteels PVBA
v
Commission of the European Communities

'Tariff classification of windscreen-wiper motors'

Summary

Action for a declaration that a measure is void — Natural or legal persons — Measures of direct and individual concern to them — Regulation on the tariff classification of goods (EEC Treaty, Art. 173, second para.; Commission Regulation No 3529/83)

A regulation on the classification of particular goods under a heading of the Common Customs Tariff is a legislative measure, the provisions of which are of general application since they concern all products of the type described, regardless of their individual characteristics and origin, and take effect, in the interests of the uniform application of the Common Customs Tariff, in relation to all customs authorities in the Community and all importers. Consequently, such a regulation cannot be of direct and individual concern to a particular trader, within the meaning of the second paragraph of Article 173 of the Treaty, even if that trader deals in the goods classified by the regulation.

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT delivered on 13 December 1984 [1]

Mr President,
Members of the Court,

1. The relevant facts

Casteels PVBA and Casteels-France S.à R.L., undertakings established in Brussels and Paris respectively, have for some years imported from the German Democratic Republic rotary electric windscreen-wiper motors, without arms or wiper blades but with appropriate transmission mechanisms which convert the rotary motion into an oscillating one.

1 — Translated from the Dutch.

Between 12 May 1978 and 21 November 1980, Casteels-France imported 13 consignments of electric windscreen-wiper motors, which it declared with the French customs authorities as falling under heading No 85.09 of the Common Customs Tariff (Electrical lighting and signalling equipment and electrical windscreen-wipers, defrosters and demisters, for cycles or motor vehicles). The French customs authorities, however, classified the goods under heading No 85.01 (which covers electrical goods of the following descriptions: generators, motors, converters (rotary or static), transformers, rectifiers and rectifying apparatus, inductors), and initiated proceedings against Casteels for making a false declaration. As a result of those proceedings a fine of FF 590 000 was imposed on Casteels on 7 August 1981.

It appears that Casteels France declared the goods under tariff heading No 85.09 because the authorities in Belgium regarded that as the correct classification. The difference of opinion resulted in correspondence being exchanged between Belgium and France, on the one hand, and the Commission, on the other. In the letters, which have been put before the Court, Belgium put the case for classification under heading No 85.09 while France argued in favour of heading No 85.01. The question was put before the Committee on Common Customs Tariff Nomenclature, which by a qualified majority voted for the goods to be classified under heading No 85.01. The Belgian and Netherlands delegations dissented, taking the view that heading No 85.09 was applicable. In order to give effect to the Committee's opinion, the Commission drew up a draft regulation incorporating the solution supported by France and the majority of the Committee. After a favourable opinion had been obtained from the Committee, the draft was published in the Official Journal on 12 December 1983 as Regulation No 3529/83 (1983 No L 352, p. 32).

2. Background to the application

Before considering the admissibility of this application, I consider it useful to make certain remarks on the background to the case. At first sight, this dispute concerns the somewhat technical question as to whether windscreen-wiper motors should be classified under heading No 85.01 or heading No 85.09. However, it is not in my view entirely clear that the goods should, as the Commission asserts, be classified under heading No 85.01. As the Commission itself admits, a different point of view was put forward on the Committee by Belgium and the Netherlands. Furthermore, Belgium requested that the question should be submitted to the Customs Cooperation Council for its opinion, before the contested regulation was adopted. Indeed it was apparent that a number of non-member countries consider heading No 85.09 to be applicable. However, that request was not granted by the Committee. At the hearing it also became clear that the technical characteristics of the goods in question do not in themselves necessitate their classification under heading No 85.01. The real reason for France's preference for heading No 85.01 was apparent from the reply given at the hearing to the quesion put by the Court as to why the applicant preferred heading No 85.09 in spite of the fact that a lower rate of duty applied to heading No 85.01. From Council Regulation (EEC) No 3420/83 (Official Journal 1983 L 346, p. 6) on input arrangements for products originating in state-trading countries not liberalized at Community level, it appears that quotas may be imposed by France on imports of products falling under heading No 85.01 from the German Democratic Republic (see p. 71 of the Official Journal). I would refer here to the remarks which I set out in my opinion delivered on 11 December 1984 in Case 147/83, *Binderer*, and I consider it possible that in this case

the Commission, in preparing Regulation No 3529/83, was in fact espousing the protectionist clause. In relation to the arguments relating to customs technique put forward by both parties in support of their preferred classification, I have only two comments to make. On the one hand, it seems to me that a regulation is an appropriate means of ensuring the uniform application of the Common Customs Tariff, but at the same time persuasive arguments have been put forward by the parties in support of each possible heading.

3. Admissibility

Although the Commission has not raised an objection of inadmissibility, the application is nonetheless in my view inadmissible. Although it seems to me highly desirable, partly because of the above-mentioned background of protectionism, to obtain the Court's decision on the substance of the case, I nevertheless consider that the cases decided by the Court do not admit of any other conclusion. That is not altered by the fact — important though it may be — that the only recourse open to the applicant will be the laborious and time-consuming method of initiating proceedings in the national courts, which might then refer to the Court of Justice under Article 177 of the EEC Treaty questions concerning the legality of Regulation No 3529/83.

The second paragraph of Article 173 of the EEC Treaty lays down two conditions for the admissibility of proceedings instituted by individuals challenging Community measures. It is true that in this case the applicant could perhaps be considered to be directly concerned by the contested regulation, since decisions adopted by the customs authorities implementing that regulation will be more of a declaratory than a constitutive nature. However, the regulation is certainly not of 'individual concern' to the applicant in the sense in which that phrase from Article 173 has been interpreted in the Court's judgment in Case 35/62 (*Plaumann*, [1963] ECR 95) and in many subsequent judgments. In relation to the regulation, the applicant is not distinguished from all other importers by reason of special attributes or special circumstances. The applicant is concerned only in its capacity as an undertaking importing the products in question into the Community, a capacity which may apply to any other person. The regulation does not rule out the possibility of adding to that group of importers, the size of which is in any event not known. For the sake of completeness I would add here that even if the size of the group is established and even if it is possible to identify the individual importers, that does not, on the basis *inter alia* of the judgment of this Court in case 6/68 (*Zuckerfabrik Watenstedt*, [1968] ECR 409), constitute evidence of individual concern.

4. Conclusion

In conclusion, I propose that the Court should declare the action inadmissible and order the applicant to pay the costs.