JUDGMENT OF THE COURT (Sixth Chamber)

13 July 2006 *

In Case C-14/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Gerechtshof te Amsterdam (Netherlands), made by decision of 28 December 2004, received at the Court on 19 January 2005, in the proceedings

Anagram International Inc.

v

Inspecteur van de Belastingdienst — Douanedistrict Rotterdam,

THE COURT (Sixth Chamber),

composed of J. Malenovský, President of the Chamber, S. von Bahr and U. Lõhmus (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Anagram International Inc., by K. Winters, advocaat and J.A.H. Hollebeek, adviser,

— the Netherlands Government, by H.G. Sevenster and D.J.M. de Grave, acting as Agents,

— the Commission of the European Communities, by J. Hottiaux, acting as Agent, and by F. Tuytschaever, avocat,

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, first, the interpretation of the Combined Nomenclature of the Common Customs Tariff ('the CN'), 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 1832/2002 of 1 August 2002 (OJ

2002 L 290, p. 1) and, secondly, the interpretation and, if necessary, the validity of point 3 of the table set out in the Annex to Commission Regulation (EC) No 442/2000 of 25 February 2000 concerning the classification of certain goods in the Combined Nomenclature (OJ 2000 L 54, p. 33).

2 The reference was made in proceedings between Anagram International Inc. ('Anagram'), a company established in the United States of America, and the Inspecteur van de Belastingdienst — Douanedistrict Rotterdam (the Rotterdam district customs inspector) ('the Inspector') concerning the tariff classification for a helium-filled balloon.

Legal framework

Community law

3 The CN is based on the worldwide Harmonised Commodity Description and Coding System ('the HS') drawn up by the Customs Cooperation Council (now the World Customs Organisation). The International Convention which established the HS, concluded at Brussels on 14 June 1983, and the Protocol of Amendment thereto of 24 June 1986 were approved on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The CN takes six-digit headings and subheadings from the HS. Only the seventh and eighth digits of the CN form subdivisions specific to it.

4 The version of the CN applicable at the material time is that deriving from Regulation No 1832/2002. The relevant headings in Chapter 95, entitled 'Toys,

games and sports requisites; parts and accessories thereof', of Section XX, entitled 'Miscellaneous manufactured articles', of the CN are worded as follows:

'9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:
...	
9503 90	— Other:
9503 90 10	...
	— — Other:
	— — — Of plastics:
9503 90 32	— — — — Not mechanically operated
...	
9505	Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes:
...	
9505 90 00	— Other'.

5 Article 9(1)(a) of Regulation No 2658/87 provides that the Commission of the European Communities is to be responsible for the application of the CN and, in particular, for the explanatory notes and the classification of goods in the CN.

6 Regulation No 442/2000 was adopted by the Commission pursuant to Article 9 of Regulation No 2658/87. In point 3 of the Annex to Regulation No 442/2000, the products to which these proceedings relate were classified as follows:

'9503 90 32 Balloons, made of aluminised, bonded plastic foil. The plastic foil forms the exterior of the balloon. The balloons have a filler neck, in which a valve in the form of a strip of synthetic material is inserted. This strip automatically seals the gas inside the balloon and prevents it from leaking out. The balloons will be filled with gas (air or helium).'

7 The classification of those products is determined, according to the accompanying statement of reasons, by the provisions of General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 2(v) to Chapter 39 and the wording of heading 9503 and of subheadings 9503 90 and 9503 90 32 of the CN. That statement of reasons also provides that those products may be printed with different motifs which do not influence the classification as a toy balloon.

8 By way of guidance, the HS Explanatory Notes on heading 9503 state:

'This heading covers toys intended essentially for the amusement of persons (children or adults). ... The heading includes:

(A) All toys not included in headings 95.01 and 95.02. Many of the toys of this heading are mechanically or electrically operated.

These include:

...

(6) Toy balloons and toy kites [other than those of heading 88.01].

...

(18) Hoops, skipping ropes, diabolo spools and sticks, spinning and humming tops, balls (other than those of heading 95.04 or 95.06).

...'

9 The HS Explanatory Notes on heading 9505 state:

'This heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Decorations such as festoons, garlands, Chinese lanterns,

...

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival tape), cardboard trumpets, "blow-outs", confetti, carnival umbrellas, etc.

...'

The main proceedings and the questions referred for a preliminary ruling

10 On 5 February 2003, Anagram applied to the Inspector for the issue of a binding tariff information for a product which it proposed be classified under subheading 9505 90 00 of the CN. The product was described as follows:

'A plastic festive balloon with an aluminium coating, in various shapes, printed with different motifs depending on the occasion for which it is to be used, such as an anniversary or birthday, a birth, Valentine's Day etc. The balloon is filled once with helium and is equipped with a cut-off valve to protect it against gas leakage.'

11 In the binding tariff information issued on 27 February 2003, the Inspector, contrary to Anagram's proposal, classified the product under subheading 9503 90 32 of the CN, taking as the description of the product the wording of point 3 of the table set out in the Annex to Regulation No 442/2000.

12 Following the Inspector's decision dismissing the objection made by Anagram against that binding tariff information, Anagram brought proceedings before the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam).

13 After examining a sample of the product, that court expressed doubts as to the justification for classifying the balloon at issue as a toy, observing that it does not possess the characteristics of a toy to be used for amusement or play, but rather that it fits the concept of 'festive articles' as referred to in heading 9505 of the CN.

14 As regards Regulation No 442/2000, the referring court observes that the product at issue does not have exactly the same characteristics as those described in point 3 of the table set out in the Annex to that regulation. However, that court considers that, having regard to Case C-130/02 *Krings* [2004] ECR I-2121, paragraph 35, Regulation No 442/2000 should be applied by analogy to the product at issue, as the Inspector proposes. Consequently, the referring court raises the question of whether that regulation is consistent with the wording of the CN.

15 It was in those circumstances that the Gerechtshof te Amsterdam decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) Must point 3 of the Annex to Regulation ... No 442/2000 be interpreted as meaning that it also relates to the goods described in the statement of facts ...?

(2) If so, is the regulation valid in that respect?

(3) If the regulation is invalid or if it does not cover the goods at issue, can the Common Customs Tariff be interpreted as meaning that those goods must be classified as "festive articles" of [sub]heading 9505 90 00 [of the CN]?'

The questions

16 It should be noted as a preliminary point that the dispute in the main proceedings concerns the tariff classification for gas-filled balloons made of aluminised, bonded plastic foil, the plastic foil forming the inside of the balloon. Balloons having the same composition, but in which the plastic foil forms the exterior, are classified under subheading 9503 90 32 of the CN (relating to toys of plastics, not mechanically operated) in terms of point 3 of the table set out in the Annex to Regulation No 442/2000.

17 By its second question, which it is appropriate to examine first, for, if the answer to this question is in the negative, the first question would be redundant, the referring court raises the question of the validity of point 3 of the table set out in the Annex to Regulation No 442/2000 in so far as it classifies balloons made of aluminised, bonded plastic foil, in which the plastic foil forms the exterior, under subheading 9503 90 32 of the CN.

18 According to settled case-law, the Council of the European Union has conferred upon the Commission, acting in cooperation with the customs experts of the Member States, a broad discretion to define the subject-matter of tariff headings falling to be considered for the classification of particular goods. However, the Commission's power to adopt the measures referred to in Article 9 of Regulation No

2658/87 does not authorise it to alter the subject-matter and the scope of the tariff headings (see, to that effect, *Krings*, paragraph 26, and the case-law cited).

19 It is therefore necessary to consider whether subheading 9503 90 32 of the CN must be interpreted as covering products such as the balloons described in point 3 of the table set out in the Annex to Regulation No 442/2000.

20 It is also settled case-law that, 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. 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 (see Case C-467/03 *Ikegami* [2005] ECR I-2389, paragraph 17).

21 The intended use of a product may constitute an objective classification criterion if it is inherent in the product; the inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (see *Ikegami*, paragraph 23, and the case-law cited).

22 Anagram submits that the balloon described in point 3 of the table annexed to Regulation No 442/2000 cannot be characterised as a 'toy' as referred to in subheading 9503 90 32 of the CN. Since such a balloon can only float in the air, it cannot be used for amusement or play. Moreover, because of the material from which it is made, it is not sufficiently resistant or durable to be used as a toy. It does not correspond to the description of heading 9503 of the CN or to the description of the HS Explanatory Notes on that heading.

23 In that connection, it follows from the HS Explanatory Notes on heading 9503 that a toy as referred to in that heading is an object intended essentially for the amusement of persons (children or adults).

24 It must be held that the balloons in question have that characteristic notwithstanding that the material from which they are made is not resistant or durable, since the fact that they do not last long and that they float in the air does not prevent children in particular from enjoying and playing with those objects.

25 Moreover, the Commission's classification of the balloons in Regulation No 442/2000 is supported by the HS Explanatory Notes on heading 9503, which state that that heading includes toy balloons and toy kites, as well as balls (other than those for funfair, table, parlour or sporting games).

26 Furthermore, it is irrelevant that those balloons can also be used as festive articles. If the objective characteristic of a product can be established at the time of customs clearance, the fact that it may also be possible to envisage another use for that product will not preclude its classification for legal purposes. For its classification for customs purposes, that product does not have to be solely or exclusively intended for use corresponding to that objective characteristic. It suffices if that is the main use for which it is intended (see, to that effect, Case C-395/93 *Neckermann Versand* [1994] ECR I-4027, paragraphs 8 and 9).

27 Finally, the wording of subheadings 9503 90 and 9503 90 32 of the CN does not provide a distinct criterion which identifies gas-filled balloons. It contains only two general conditions in order for a product to fall within subheading 9503 90 32 of the CN, namely, that it is made from plastic and that it is not mechanically operated. Those two conditions are met by the goods referred to in point 3 of the table set out in the Annex to Regulation No 442/2000.

28 Consequently, the answer to be given to the referring court is that consideration of the second question has disclosed nothing capable of affecting the validity of Regulation No 442/2000 in so far as the products referred to in point 3 of the table set out in its Annex are classified under subheading 9503 90 32 of the CN.

29 As regards the first question, which asks whether the product at issue in the main proceedings must also be classified under subheading 9503 90 32 of the CN, it should be noted that a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the Customs Code Committee which has given its opinion for the purposes of that regulation. In the interpretation of a classification regulation, in order to determine its scope, account must be taken, inter alia, of its statement of reasons (*Krings*, paragraph 33, and the case-law cited).

30 Anagram maintains that, having regard to the description set out in point 3 of the table set out in the Annex to Regulation No 442/2000, the product at issue does not fall within the scope of that point. It draws attention to the explicit manner in which the balloon is described, namely that it consists of plastic foil on the exterior of which an aluminium layer is bonded. According to Anagram, that type of balloon is the only one referred to in that provision. In the product at issue, the plastic foil forms the inside of the balloon.

31 In that regard, it should be stated that the product at issue in the main proceedings is admittedly not identical to the product described in point 3 of the table set out in the Annex to Regulation No 442/2000, in that it does not correspond, in every respect, to the description of the goods contained in that point. Consequently, as the Netherlands Government correctly points out in its written observations, that regulation is not directly applicable to that product.

32 Nevertheless, as the Court has already held, the application by analogy of a classification regulation, such as Regulation No 442/2000, to products similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders (see *Krings*, paragraph 35).

33 The only difference between the product at issue and the product referred to by the description contained in point 3 of the table set out in the Annex to Regulation No 442/2000 consists in a mere inversion of the materials from which the product is made and, as the Commission also notes, its principal characteristics are not affected. It follows that that regulation is applicable to Anagram's product by analogy.

34 Moreover, that finding is confirmed by the statement of reasons relating to point 3, according to which products may be printed with different motifs, which, in the present case, relate mainly to various festive occasions, without however influencing the classification as a toy balloon.

35 Accordingly, the reply to the first question must be that the classification decided upon by the Commission in Regulation No 442/2000, as regards the product described in point 3 of the table set out in the Annex thereto, is applicable by analogy to gas-filled balloons made of aluminised, bonded plastic foil, the plastic foil forming the inside of the balloon.

36 In the light of the foregoing, it is not necessary to reply to the third question.

Costs

37 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 (Sixth Chamber) hereby rules:

1. **Consideration of the second question has disclosed nothing capable of affecting the validity of Commission Regulation (EC) No 442/2000 of 25 February 2000 concerning the classification of certain goods in the Combined Nomenclature in so far as the products referred to in point 3 of the table set out in the Annex thereto are classified under subheading 9503 90 32 of the Combined Nomenclature of the Common Customs Tariff, 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, as amended by Commission Regulation (EC) No 1832/2002 of 1 August 2002.**

2. **The classification decided upon by the Commission of the European Communities in Regulation No 442/2000, as regards the product described in point 3 of the table set out in the Annex thereto, is applicable by analogy to gas-filled balloons made of aluminised, bonded plastic foil, the plastic foil forming the inside of the balloon.**

[Signatures]