JUDGMENT OF THE COURT (Third Chamber)
27 February 1986 *

In Case 57/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Seventh Senate of the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the action pending before that court between

Senelco GmbH, Ratingen,

and

Oberfinanzdirektion München [Principal Revenue Office, Munich]

on the interpretation of Section XVI of the Common Customs Tariff (Official Journal 1983, L 313, p. 317),

THE COURT (Third Chamber)

composed of: U. Everling (President of Chamber), Y. Galmot and C. Kakouris, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the Government of the Federal Republic of Germany, by Ernst Röder and Martin Seidel, acting as Agents,

the Commission of the European Communities, by its Legal Adviser, Peter Kalbe,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 December 1985,

gives the following

* Language of the Case: German.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 29 January 1985, which was received at the Court on 27 February 1985, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Section XVI of the Common Customs Tariff.

2 The question was raised in the context of proceedings between Senelco and the Oberfinanzdirektion München (hereinafter referred to as 'the Revenue Office') with regard to the tariff classification notice issued by the latter in relation to plastic tags, known as Alligator tags, which are attached to goods and are designed to activate an alarm in the event of shoplifting. The tags are imported by Senelco from the United States of America.

3 The Alligator tags consist of two antenna plates linked together by a diode chip which, on being brought within range of the alarm system, known as the overhead system, receive the high- and low-frequency impulses produced by the latter; the diode converts them into oscillations at a pre-determined frequence which are emitted to an alarm console.

4 According to the notice issued by the Revenue Office, the Alligator tags have an independent function, namely to generate an electrical oscillation, and must therefore be classified under tariff heading No 85.22 C II of the Common Customs Tariff, which covers:

'Electrical appliances and apparatus . . . not falling within any other heading in this Chapter.'

5 Senelco lodged an objection against that classification with the Revenue Office and contended that the Alligator tags should be classified under tariff heading No 85.17 of the Common Customs Tariff, which covers:

'Electric sound or visual signalling apparatus (such as bells, sirens, indicator panels, burglar and fire alarms), other than those of heading No 85.09 or 85.16.'

6 The Revenue Office rejected Senelco's objection on the ground that the burglar alarm systems falling within heading No 85.17 of the Common Customs Tariff have two functions, one of detection and the other of activating the alarm, which are performed in this case by the overhead system and the alarm console. It stated that the Alligator tags which are the subject of the contested tariff classification notice do not detect anything but merely disturb the field of sensitivity of the overhead system. It also stated that they should be classified under tariff heading No 85.22 C II of the Common Customs Tariff in accordance with Note 2 (a) to Section XVI of the Common Customs Tariff, which provides that parts of machines are to be classified as follows:

'Goods of a kind described in any of the headings of Chapters 84 and 85 . . . are in all cases to be classified in their respective headings.'

7 Senelco appealed against that decision to the Bundesfinanzhof and contended that the overhead system, the alarm console and the tags constituted a single unit intended as an anti-theft device and that the individual components had no independent function capable of individual tariff classification. In support of its view Senelco stated that the French and Belgian customs authorities classified Alligator tags under heading No 85.17 of the Common Customs Tariff in accordance with Note 2 (b) to Section XVI of the Common Customs Tariff, which provides as follows:

'Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same heading (including a machine falling within heading No 84.59 or 85.22) are to be classified with the machines of that kind . . . '.

8 In order to resolve the dispute between the parties the Bundesfinanzhof referred the following question to the Court of Justice for a preliminary ruling:

'Is Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tarif to be interpreted to the effect that individual electrical appliances, which are presented independently, are to be regarded as "parts" within the meaning of that note where they are intended to be fixed to goods in such a manner that if the goods are brought within range of another appliance they release an audible or visible signal, and are the individual electrical appliances to be classified as a result of that function under tariff heading No 85.17 of the Common Customs Tariff pursuant to those notes?'

9 The Government of the Federal Republic of Germany is of the opinion that the expression 'signalling apparatus' contained in heading No 85.17 of the Common Customs Tariff is limited to those components (principal piece of equipment and accessories) which enable the apparatus to perform the function assigned to it, namely the activation of the alarm, which in this case is performed by the overhead system and the alarm console. The Alligator tags must, consequently, be classified under some other tariff heading. In support of its view the Federal Government cites the example, in particular, of data processing equipment and its software which, despite their inter-dependence, do not fall within the same tariff heading.

10 The Commission maintains that Alligator tags do not have a function which may be performed 'distinctly from and independently of any other machine or appliance' and cannot therefore be regarded as 'appliances having individual functions' within the meaning of Explanatory Note 84.59 (A) and (B) of the Explanatory Notes to the Nomenclature of the Customs Cooperation Council, to which Note 85.22 thereof refers. In its view the Alligator tags should be regarded as parts 'suitable for use solely or principally' with Senelco's anti-shoplifting apparatus and should therefore be classified under heading No 85.17 in accordance with the aforementioned Note 2 (b) to Section XVI of the Common Customs Tariff.

11 It must be stated that in accordance with Note 3 to Section XVI of the Common Customs Tariff concerning composite machines and the relevant Explanatory Notes to the Nomenclature of the Customs Cooperation Council (General Notes to Section XVI, Note VI, headed 'Multi-purpose machines and combinations of machines', at p. 1159), the machines are classified on importation according to the principal function of the machinery as a whole provided they are presented to the customs authorities at the same time. Where, however, the components of such composite units are presented separately they must be the subject of a separate classification according to their own appropriate heading.

12 In the case of a part of a functional unit comprising two or more machines which is presented to the customs authorities separately it is necessary, in order to determine the tariff heading within which it falls, to refer to Note 2 to Section XVI of the Common Customs Tariff, which covers 'parts of machines'. In order to clarify the scope of that note it is necessary to refer, in addition, to the Explanatory Notes to the Nomenclature of the Customs Cooperation Council (General Notes to Section XVI, Note II, headed 'Parts', at p. 1156).

13 If, as was stated by the Bundesfinanzhof in its order for reference, it is not possible to classify appliances such as those which are the subject of the main proceedings under one of the headings of Chapter 85 on the basis of their individual function, it is necessary to consider whether Note 2 (b) is applicable, that is to say to consider whether the appliances may be regarded as 'suitable for use solely or principally with a particular kind of machine', in which case they must be classified under the heading within which the machine falls.

14 That possibility must be excluded in the case of goods such as magnetic cards which, by means of certain simple alterations, may be used for many different types of machine (machines controlling entry into multi-storey car parks, bank cash-dispensers, credit-card machines, and so on). In contrast, however, appliances which are suitable for use solely with a particular type of machine are to be classified under the heading within which the machine falls. That is the position with regard to plastic tags which are fixed to goods and whose sole function is to activate an alarm on entry into the field of sensitivity of the principal machine.

15 The reply to the question referred to the Court by the Bundesfinanzhof must therefore be that Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff must be interpreted as meaning that parts or detached pieces of electrical equipment for emitting a signal which are presented separately fall, pursuant to paragraph (b) of the aforementioned Note 2, within the same tariff heading as the equipment in question if by virtue of their function they are intended exclusively for that equipment.

Costs

16 The costs incurred by the Government of the Federal Republic of Germany and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action before the Bundesfinanzhof the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Bundesfinanzhof by an order of 29 January 1985, hereby rules:

Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff must be interpreted as meaning that parts or detached pieces of electrical equipment for emitting a signal which are presented separately fall, pursuant to paragraph (b) of the aforementioned Note 2, within the same tariff heading as the equipment in question if by virtue of their function they are intended exclusively for that equipment.

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 27 February 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber