Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

5 September 2019*

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs Union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheading 8504 40 30 — Static converters — Classification criteria — Main intended use)

In Case C-559/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany), made by decision of 19 June 2018, received at the Court on 4 September 2018, in the proceedings

TDK-Lambda Germany GmbH

v

Hauptzollamt Lörrach,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, A. Rosas (Rapporteur) and L. Bay Larsen, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– TDK-Lambda Germany GmbH, by U. Reimer and R. Welzel, Steuerberater,

– the European Commission, by B.-R. Killmann and A. Caeiros, 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 tariff subheading 8504 40 30 of the Combined Nomenclature contained 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 Implementing Regulation (EU) No 927/2012 of 9 October 2012 (OJ 2012 L 304, p. 1) and Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1) ('the CN').

2 The request has been made in proceedings between TDK-Lambda Germany GmbH and the Hauptzollamt Lörrach (Principal Customs Office, Lörrach, Germany, 'the customs office') concerning the tariff classification of electric static converters imported by TDK-Lambda Germany.

Legal context

GATT 1994 and the ITA

3 The 1994 General Agreement on Tariffs and Trade (OJ 1994 L 336, p. 11, 'GATT 1994') and, in particular, the Understanding on the Interpretation of Article II:1(b) of GATT 1994, are part of the Agreement Establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

4 The agreement on trade in information technology products, in the form of the Ministerial Declaration on Trade in Information Technology Products, adopted on 13 December 1996 at the first WTO Conference in Singapore, together with its annexes and attachments ('the ITA'), and the Communication on its implementation were approved, on behalf of the Community, by Council Decision 97/359/EC of 24 March 1997 concerning the elimination of duties on information technology products (OJ 1997 L 155, p. 1).

5 The first paragraph of the ITA stipulates that the trade regime of each contracting party should evolve in a manner that enhances market access opportunities for information technology products.

6 Under paragraph 2 of the ITA, each contracting party is required to bind and eliminate customs duties and other duties and charges of any kind, within the meaning of Article II:1(b) of GATT 1994, with respect to certain products, including 'static converters for automatic data processing machines and units thereof, and telecommunication apparatus'.

European Union law

The CN

7 The tariff classification of goods imported into the European Union is governed by the CN.

8 Article 12 of Regulation No 2658/87 provides that every year, the European Commission is to adopt, by means of a regulation, a complete version of the CN together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as it results from measures adopted by the Council of the European Union or by the Commission. That regulation is published in the *Official Journal of the European Union* not later than 31 October, to apply from 1 January of the following year.

9 The versions of the CN that apply to the facts in the main proceedings are those for the years 2013 and 2014, in Regulation No 927/2012 and Regulation No 1001/2013, respectively. The provisions of the CN that apply in the main proceedings are, however, identical in both versions.

10 Part One of the CN, containing the preliminary provisions, includes a Section I on general rules, under which Subsection A, entitled 'General rules for the interpretation of the Combined Nomenclature', provides, inter alia, as follows:

'Classification of goods in the [CN] shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification is to be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

…

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.'

11 Part Two of the CN, entitled 'Schedule of Customs Duties' contains, in Section XVI, Chapter 85 thereof, entitled 'Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'. That chapter includes CN heading 8504, entitled 'Electrical transformers, static converters (for example, rectifiers) and inductors'.

12 Subheading 8504 40, under that heading in the CN, is worded as follows:

8504 40	– Static converters
8504 40 30	– — Of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof .....
	— — Other:
8504 40 55	– — — Accumulator chargers
	– — — Other:
8504 40 82	– — — –Rectifiers .....
	– — — — Inverters:
8504 40 84	– — — — — Having a power handling capacity not exceeding 7.5 kVA .....
8504 40 88	– — — — — Having a power handling capacity exceeding 7.5 kVA .....
8504 40 90	– — — Others .....

13 With the exception of the goods under subheading 8504 40 30, which are exempt from import duty, the goods classified in the other subheadings of that CN heading are subject to conventional rates of import duty ranging from 3.3% to 3.7%, depending on the subheading in question.

The explanatory notes to the CN

14 The explanatory notes to the CN (OJ 2011 C 137, p. 1), as amended by a communication published on 29 November 2012 (OJ 2012 C 369, p. 7) (the 'explanatory notes to the CN'), specified, regarding CN subheading 8504 40 30, that 'this subheading includes static converters for telecommunication apparatus or for automatic data-processing machines and units thereof, which:

– generally have stabilising circuits,

– have a typical output voltage of, for example, 3.3, 5, 12, 24, 48 or 60 V.

Static converters for telecommunication apparatus or for automatic data-processing machines and units thereof serve to convert, for example, the alternating current (AC) drawn from the mains supply into the requisite direct current (DC).

Used with automatic data-processing machines, a so-called Uninterruptible Power Supply (UPS) ensures a 'back-up' of energy (with a 'power good' signal) in the event of a power failure, thus preventing data loss.'

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

15 The dispute in the main proceedings concerns the tariff classification of regulated power supplies.

16 The applicant in the main proceedings, TDK-Lambda Germany, is a subsidiary of TDK-Lambda Corporation, established in Tokyo (Japan). That company develops, manufactures, markets and services electronic devices and components, including electrical power supplies. Between 2 April 2013 and 4 February 2014, the applicant in the main proceedings imported regulated power supplies ('the converters at issue') of the HFE, FPS and RFE series in 75 instances into the European Union. The applicant in the main proceedings indicated in its customs declarations that the converters at issue should be classified under CN subheading 8504 40 30, as goods originating from third countries that are exempt from customs duties. In line with those declarations, no customs duties were levied on the imported goods initially.

17 It is apparent from the order for reference that the main technical characteristics of the HFE, FPS and RFE converters at issue are similar: the HFE model is merely the most recent and advanced model in the FPS series, whereas the RFE model is a non-pluggable installation variant of the FPS or HFE series.

18 More specifically, the three types of the converters at issue transform alternating current or direct current at different voltages, that is to say input voltage into direct current of 12 volts, 24 volts, 32 volts or 48 volts, on output. The converters ensure stable output voltage, with only tiny variations in the region of the millivolt. Furthermore, even in the event of a power failure from the mains, the converters at issue ensure that the output current continues to flow for a certain time. That feature is known as the 'power-good signal', and acts as a 'back up'.

19 The order for reference also indicates that some of the converters at issue supplied by the applicant to end users in the main proceedings are used not only in the field of telecommunications and data processing, but also in mechanical engineering and medical technology.

20 During a customs inspection conducted in 2015, the customs office took the view, on the basis of information to that effect provided by the Bildungs- und Wissenschaftszentrum der Bundesfinanzverwaltung (Training and Science Centre of the Federal Revenue Administration, Germany), that the converters at issue, as regulated power supply units, were static converters that

could not be classified as being 'of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof', within the meaning of CN subheading 8504 40 30, and therefore could not be regarded as goods originating from third countries that are exempt from customs duties.

21 In that regard, the customs office found inter alia that the HFE series converters at issue which were inspected were intended for use in devices used in various fields, and not, principally, in telecommunication devices and automatic data processing machines and units thereof. On that basis, the customs office concluded that the converters at issue did not fall within CN subheading 8504 40 30, as goods originating from third countries that are exempt from customs duties, but within CN subheading 8504 40 90, as goods originating from third countries that are subject to the 3.3% customs tariff. The same conclusion was reached in relation to the FPS and RFE series converters at issue.

22 Based on the outcome of the inspection, the customs office issued the applicant in the main proceedings with a notice for the post-clearance recovery of import duty on 10 February 2016 in the amount of EUR 18935.51 and, by decision of 30 August 2016, rejected as unfounded the complaint made by the applicant against that recovery notice.

23 Following that rejection, the applicant in the main proceedings brought proceedings before the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg), the referring court, on 23 September 2016, contesting, in particular, the decision to classify the converters at issue under CN tariff subheading 8504 40 90.

24 In those circumstances, the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is [the CN] to be interpreted as meaning that static converters such as those in the present case are to be classified under [CN] subheading 8504 40 30 only if they are used principally with telecommunication apparatus, automatic data-processing machines and units thereof, or is it sufficient, for the purpose of satisfying the characteristic "of a kind used", if the converters can also, in view of their objective characteristics, be used with telecommunication apparatus, automatic data-processing machines and units thereof, in addition to other applications?'

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether CN subheading 8504 40 30 must be interpreted as meaning that in order to fall within that subheading, it is sufficient that static converters such as those at issue in the main proceedings are, owing to their technical characteristics and objective properties, compatible with 'telecommunication apparatus, automatic data-processing machines and units thereof', within the meaning of that provision.

26 In the first place, it should be recalled that the decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined in the wording of the relevant CN heading and of the section or chapter notes (see, in particular, judgment of 26 May 2016, *Invamed Group and Others*, C-198/15, EU:C:2016:362, paragraph 18 and the case-law cited). In that regard, the explanatory notes to the CN may be an important aid to interpretation of the various customs headings, but are not legally binding (see, to that effect, 20 September 2018, *2M-Locatel*, C-555/17, EU:C:2018:746, paragraph 29 and the case-law cited).

27 In the second place, the intended use of a product may also constitute an objective criterion for classification, provided that 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 (see, in particular, judgment of 26 May 2016, *Invamed Group and Others*, C-198/15, EU:C:2016:362, paragraph 22 and the case-law cited). However, the intended use of the product is a relevant criterion only where the classification cannot be made on the sole basis of the objective characteristics and properties of the product (see, to that effect, judgment of 28 April 2016, *Oniors Bio*, C-233/15, EU:C:2016:305, paragraph 33 and the case-law cited).

28 In the third place, as regards the classification of goods under a heading related to a use, that is to say a heading whose criterion for classification is a particular use of the goods concerned, the product to be classified need not be solely or exclusively intended for that use. It suffices that the use referred to in the heading is the main use for which the product is intended (see, to that effect, judgment of 17 July 2014, *Sysmex Europe*, C-480/13, EU:C:2014:2097, paragraph 32 and the case-law cited).

29 As regards CN subheading 8504 40 30, it must be noted that neither the wording of that subheading nor the section or chapter notes specify whether in order for a static converter to be regarded as being 'of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof', within the meaning of that sub-heading, it is sufficient that the converter can, in view of its technical characteristics and objective properties, be used with such products.

30 However, the wording of CN subheading 8504 40 30 clearly refers to a specific use of the static converters covered by that provision, namely use with telecommunication apparatus, automatic data-processing machines and units thereof.

31 The explanatory notes to the CN on subheading 8504 40 30 of that nomenclature confirm, further, that the classification criterion for the heading in question is founded on a specific use of the goods concerned. The notes specify, in particular, that the static converters under that subheading are for telecommunication apparatus or automatic data-processing machines and units thereof.

32 Admittedly, those notes also refer, by way of example, to technical characteristics that static converters must have to come within CN subheading 8504 40 30. However, the fact that converters have such general characteristics, which are shared by a large number of static converters under CN subheading 8504 40, in no way precludes classification of such converters under another subheading of CN subheading 8504 40.

33 As pointed out in paragraph 28 above, where the tariff heading in question adopts a classification criterion based on a specific use of the goods concerned, that criterion is decisive for the purposes of classification of those goods under that heading.

34 Therefore, as regards static converters that may come within the scope of CN subheading 8504 40 30, such as the converters at issue, the mere fact that they are compatible with the apparatus referred to in that subheading does not constitute sufficient grounds for classifying those converters within that subheading, unless the main use for which those converters are intended corresponds to the use referred to in that subheading.

35 In that regard, the fact referred to by the referring court, that CN subheading 8504 40 30 does not refer to the 'exclusive' or 'principal' use of the goods in conjunction with telecommunication apparatus, automatic data-processing machines and units thereof is immaterial.

36 First, it must be pointed out that, unlike the other subheadings within CN subheading 8504 40, subheading 8504 40 30 designates static converters intended for a specific use, namely use in conjunction with telecommunication apparatus, automatic data-processing machines and units

thereof. Under those circumstances, it cannot be inferred from the fact that there is no mention of exclusive or principal use with the products referred to by subheading 8504 40 30 that any converter which is compatible, in principle, with such products, may fall within that subheading.

37 Secondly, secondary legislation, such as the CN, must be interpreted, so far as possible, in a manner that is consistent with the international agreements entered into by the European Union (judgment of 20 September 2018, *2M-Locatel*, C-555/17, EU:C:2018:746, paragraph 45 and the case-law cited).

38 In that regard, as the Commission stated in its written observations, CN subheading 8504 40 30 reflects the undertakings given by the European Union in the ITA. Therefore, that subheading must be interpreted in a manner that is consistent with that agreement, and with the aim of enhancing market access opportunities for information technology products. For the purposes of attaining that objective, paragraph 2 of the ITA provides that each contracting party is required to bind and eliminate customs duties and other duties and charges of any kind, with respect to certain products, including static converters for automatic data processing machines and units thereof, and telecommunication apparatus.

39 In the light of the specific context of CN subheading 8504 40 30, the interpretation that that subheading must be understood as encompassing only static converters whose main use is intended to be with telecommunication devices, automatic data processing machines and units thereof is compatible with the objectives of the ITA.

40 In the present case, it is apparent from the order for reference that the power supply units at issue are static converters which, owing to their objective characteristics and properties, may be used in telecommunication apparatus or automatic data-processing machines and units thereof, as well as in other electrically operated apparatus, including printing machines and medical apparatus.

41 While it is ultimately for the referring court to decide how the converters at issue are to be classified, the documents provided to the Court indicate that those converters do not seem to have characteristics from which it can be inferred that their main use is intended to be with telecommunication apparatus or automatic data processing machines and units thereof. Rather, those documents indicate that the converters at issue are designed for use in a large number of different machines, and therefore, it seems, prima facie, that they may not be classified in CN subheading 8504 40 30.

42 In the light of the foregoing, the answer to the question is that CN subheading 8504 40 30 must be interpreted as meaning that static converters such as those at issue in the present proceedings may fall within that subheading only if the main use for which they are intended is with ‘telecommunication apparatus or automatic data processing machines and the units thereof’, within the meaning of that subheading, which is a matter for verification by the referring court.

Costs

43 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:

Subheading 8504 40 30 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, and Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013, must be interpreted as meaning that static converters such as those at issue in the main proceedings may fall within that subheading only if the main use for which they are intended is with 'telecommunication apparatus or automatic data processing machines and the units thereof', within the meaning of that subheading, which is a matter for verification by the referring court.

[Signatures]