JUDGMENT OF THE COURT (Second Chamber)
8 December 1987 *

In Case 42/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commercial Chamber of the Cour de cassation (Court of Cassation) of the French Republic for a preliminary ruling in the action pending before that court between

Directeur général des douanes et droits indirects (Director-General of Customs and Indirect Duties)

and

Artimport and Others

on the interpretation of subheadings 39.07 E IV and 42.02 B of the Common Customs Tariff,

THE COURT (Second Chamber),

composed of: O. Due, President of the Chamber, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Artimport and Société nouvelle de transit et de courtage (SNTC), Tramar, the applicants in the main proceedings, by J. M. Leonelli, of the Paris Bar,

the Spanish Government, by F. Mansito Caballero, Director-General for Community Legal and Institutional Cooperation, in the written procedure, and by D. F. J. Conde de Saro, in the oral procedure, acting as Agents,

* Language of the Case: French.

the Commission of the European Communities, by X. Yataganas, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 9 June 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 23 September 1987,

gives the following

Judgment

1 By an order of 11 February 1986, which was received at the Court on 14 February 1986, the Commercial Chamber of the Cour de cassation of the French Republic referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of subheadings 39.07 E IV and 42.02 B of the Common Customs Tariff.

2 That question was raised in proceedings between the Directeur général des douanes et droits indirects (hereinafter referred to as 'the appellant') and Artimport SA, Paris, (hereinafter referred to as 'the respondent') on the classification by the appellant of suitcases and attaché cases under subheading 39.07 E IV.

3 On 23 May 1979 the respondent had imported from Taiwan suitcases and attaché cases which it had declared to fall under subheading 42.02 B of the Common Customs Tariff. The respondent claimed payment of FF 32 708.18 as customs duties on the ground that the suitcases and attaché cases in question came under heading 39.07 E IV of the Common Customs Tariff because their rigidity was derived from the material of which they were made, not from any rigid foundation.

4 The appellant then brought the matter before the Commission de conciliation et d'expertise douanière (Committee for conciliation and expert opinions on customs matters), which took the view that the products in question came under

subheading 42.02 B. The appellant appealed to the tribunal de grande instance (Regional Court) which held that the products should be classified under subheading 39.07 E IV. The respondent appealed to the cour d'appel (Court of Appeal), Rouen, which considered that the proper classification was subheading 42.02 B. The appellant thereupon brought an appeal in cassation in which it contended that the rigidity of the suitcases in issue, which were made of 'artificial plastic materials', had been obtained by vacuum moulding or pressing and not by means of any foundation and that they accordingly came under Chapter 39. Travel goods made of 'plastic sheeting', on the other hand, came under heading 42.02. In consequence the suitcases in question should be classified as articles made of 'artificial plastic material' (subheading 39.07 E IV).

5 The Cour de cassation stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'On 23 May 1979 was Regulation No 1/71 of the Council of 17 December 1970 to be interpreted as meaning that suitcases and attaché cases made from plastic sheeting composed of styrene resin, butadiene and acrylo-nitril made rigid by moulding or pressing and not by means of a rigid foundation, originating in Taiwan and imported into a Member State of the Community, fell within subheading 39.07 E IV, subheading 42.02 B, or some other heading of the Common Customs Tariff?'

6 The Common Customs Tariff distinguishes between 'artificial . . . plastic materials . . . and articles thereof' (Chapter 39) and 'travel goods . . . and similar containers, of leather or of composition leather, of vulcanized fibre, of artificial plastic sheeting, of paperboard or of textile fabric' (heading 42.02). Within Chapter 39, leaving aside the goods listed under subheadings E I to E III, subheading 39.07 E IV covers articles of materials of the kinds described in headings 39.01 to 39.06 which are not included in the previous headings of the chapter or in other more specific chapters of the Common Customs Tariff.

7 Reference is made to the Report for the Hearing for a fuller description of the facts, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

8 As a preliminary matter it should be pointed out that the regulation applicable at the material time was not the regulation referred to by the Cour de cassation in its question but Council Regulation No 2800/78 of 27 November 1978 (Official Journal 1978, L 335, p. 1), which contains the Common Customs Tariff in force at that time.

9 The Commission and the Kingdom of Spain observe that goods such as those referred to in the question were the subject of a classification opinion of the Nomenclature Committee of the Customs Cooperation Council of 29 April 1967. That opinion, to the effect that such goods come under subheading 39.07, is based on the fact that as regards plastic materials heading 42.02 mentions only sheeting and cannot therefore cover articles manufactured by moulding or vacuum shaping. That classification is confirmed by an opinion of the Committee on Common Customs Tariff Nomenclature which also held that articles such as those in question should be classified under heading 39.07.

10 As the Court has repeatedly held, opinions of the Nomenclature Committee are an important means of ensuring uniform application of the Common Customs Tariff by the customs authorities of the Member States and as such may be regarded as valid aids in the interpretation of the Common Customs Tariff. However, such opinions are not binding in law, and it may be necessary to consider whether they correspond to the actual provisions of the Common Customs Tariff and do not alter their scope. For the purpose of interpreting the tariff headings referred to in the present case it is also necessary to have regard to the relevant explanatory notes.

11 It is apparent from the actual wording of heading 42.02 that it covers only the articles listed in it and similar containers. The notes of the Customs Cooperation Council on heading 42.02 (in their French version) state that it covers articles which 'may be soft, lacking any rigid foundation, . . . or made rigid by means of a foundation on which the material forming the outer covering is applied'. Heading 42.02 mentions only 'travel goods . . . of artificial plastic sheeting'.

12 Suitcases and attaché cases such as those at issue are manufactured from rigid plates of artificial plastic material which is subsequently moulded. According to the notes of the Customs Cooperation Council on heading 39.07 'the heading also covers a wide variety of other articles, finished or unfinished . . . obtained by stamping, moulding, or any other process'. The same notes state that heading 39.07 excludes 'travel goods (e. g. trunks, suitcases) . . . and similar containers of heading 42.02, of artificial plastic sheeting'.

13 It follows from the foregoing considerations that the criterion for classification under heading 39.07 is the manner of manufacture of the articles, by moulding or vacuum shaping. Heading 42.02, on the other hand, covers only travel goods 'of artificial plastic sheeting'. That interpretation is consistent with the requirement of classification on the basis of the objective characteristics and properties of goods as defined by the wording of the heading of the Common Customs Tariff and the notes to sections or chapters.

14 In consequence the answer to the question put by the Cour de cassation must be that on 23 May 1979 Council Regulation No 2800/78 of 27 November 1978 was to be interpreted as meaning that suitcases and attaché cases made from plastic sheeting composed of styrene resin, butadiene and acrylo-nitril made rigid by moulding or pressing and not by means of a rigid foundation, originating in Taiwan and imported into a Member State of the Community, fell within heading 39.07 E IV of the Common Customs Tariff.

Costs

15 The costs incurred by the Commission of the European Communities and the Spanish Government, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in reply to the question submitted to it by the Commercial Chamber of the Cour de cassation of the French Republic by order of 11 February 1986, hereby rules:

On 23 May 1979 Council Regulation No 2800/78 of 27 November 1978 was to be interpreted as meaning that suitcases and attaché cases made from plastic sheeting composed of styrene resin, butadiene and acrylo-nitril made rigid by moulding or pressing and not by means of a rigid foundation, originating in Taiwan and imported into a Member State of the Community, fell within heading 39.07 E IV of the Common Customs Tariff.

Due Bahlmann O'Higgins

Delivered in open court in Luxembourg on 8 December 1987.

P. Heim
Registrar

O. Due
President of the Second Chamber