JUDGMENT OF THE COURT (First Chamber)
20 November 1997 *

In Case C-338/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between

Wiener S. I. GmbH

and

Hauptzollamt Emmerich

on the interpretation of subheading 60.04 B IV b 2 bb of the Common Customs Tariff, in the version resulting from Council Regulation (EEC) No 3400/84 of 27 November 1984 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (OJ 1984 L 320, p. 1),

THE COURT (First Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges,

* Language of the case: German.

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Wiener S. I. GmbH, by G. Kroemer II, Rechtsanwalt, Düsseldorf,

— the Commission of the European Communities, by F. de Sousa Fialho, of its Legal Service, acting as Agent, assisted by H.-J. Rabe, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Wiener S. I. GmbH and the Commission at the hearing on 17 April 1997,

after hearing the Opinion of the Advocate General at the sitting on 10 July 1997,

gives the following

Judgment

1 By order of 12 September 1995, received at the Court on 26 October 1995, the Bundesfinanzhof (Federal Finance Court) (Germany) referred for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of subheading 60.04 B IV b 2 bb of the Common Customs Tariff ('the CCT'), in the version resulting from Council Regulation (EEC) No 3400/84 of 27 November 1984 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (OJ 1984 L 320, p. 1).

2 That question has arisen in a dispute between Wiener S. I. GmbH ('Wiener') and the Hauptzollamt (Principal Customs Office) Emmerich ('the Hauptzollamt') concerning post-clearance recovery of customs duties on imports into the Community of garments from Thailand.

3 In 1985, Wiener imported from Thailand garments which it declared as 'women's nightdresses' under subheading 60.04 B IV b 2 bb of the CCT. Following a partial inspection, those garments were released into free circulation and recorded against the tariff quota for 'nightdresses'.

4 Following a subsequent examination, however, the German customs authorities formed the view that the goods were 'dresses of synthetic textile fibres' coming under subheading 60.05 A II b 4 cc 22 of the CCT and accordingly proceeded to post-clearance recovery of customs duty at a higher rate.

5 Subheadings 60.04 B IV b 2 bb and 60.05 A II b 4 cc 22 are worded as follows:

'60.04 Under garments, knitted or crocheted, not elastic nor rubberized:

...

B. Other:

...

IV. Other:

...

b) Of synthetic textile fibres:

...

2. Women's, girls' and infants':

...

bb) Nightdresses

...

...

60.05 Outer garments and other articles, knitted or crocheted, not elastic nor rubberized:

A. Outer garments and clothing accessories:

..

II. Other:

...

b) Other:

...

4. Other outer garments:

...

cc) Dresses:

...

22. Of synthetic textile fibres

...'

6 By application of 10 April 1989, Wiener appealed against the Hauptzollamt's claim for recovery to the Finanzgericht (Finance Court) Düsseldorf, which dismissed that appeal by judgment of 15 December 1994.

7 According to the order for reference, the Finanzgericht Düsseldorf, in that decision, described the goods in question as lightweight knitted garments (mixed cotton fabric; 65% polyester, 35% cotton; cotton) intended to cover the upper body, loose-fitting, boat-necked, short-sleeved or sleeveless, extending down to the knee or thigh, printed and with a tie-belt, and regarded by independent specialists, in view of their characteristics or use, as being nightdresses.

8 Since it took the view that the cut and presentation of the garments suggested that they could also be worn as leisure wear, the Finanzgericht considered that, for purposes of tariff classification, the goods were not nightdresses, which were garments

capable exclusively of being worn in bed, but rather dresses. The Finanzgericht Düsseldorf referred in this regard to a judgment of the Bundesfinanzhof of 21 August 1990 (VII K 16-26/89, BFH/NV 1991, 422) in which it was held that 'nightdresses' within the meaning of heading 6108 of the Combined Nomenclature applicable in 1989, resulting from Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 298, p. 1), were exclusively intended to be worn as nightwear.

9 By application of 30 January 1995, Wiener appealed on a point of law against the judgment of the Finanzgericht Düsseldorf to the Bundesfinanzhof, which decided to refer the following question to the Court for a preliminary ruling:

'Is the term "nightdresses" within the meaning of tariff heading 60.04 of the 1985 Common Customs Tariff, specifically tariff subheading 60.04 B IV b 2 bb, to be interpreted as covering exclusively "other" under garments which, in view of their characteristics, are clearly intended only to be worn as nightwear, or does it also cover products which, on the basis of their appearance, are intended mainly, but not exclusively, to be worn in bed?'

10 It is settled case-law that, in the interests of legal certainty and 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 Common Customs Tariff and of the notes to the sections or chapters (Case 145/81 *Hauptzollamt Hamburg-Jonas* v *Wünsche* [1982] ECR 2493, paragraph 12; Case 40/88 *Weber* v *Milchwerke Paderborn-Rimbeck* [1989] ECR 1395, paragraph 13; and Case C-395/93 *Neckermann Versand* v *Hauptzollamt Frankfurt am Main-Ost* [1994] ECR I-4027, paragraph 5).

11 Likewise, for the purpose of interpreting the Common Customs Tariff, the Court has consistently held that both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (Case 200/84 *Daiber* v *Hauptzollamt Reutlingen* [1985] ECR 3363, paragraph 14, and *Neckermann Versand*, paragraph 5).

12 In this case, it should be noted that the wording of subheading 60.04 B IV b 2 bb of the CCT, namely 'nightdresses' for women or girls, does not contain any definition of those products. Nor is there any such definition in the explanatory notes of the CCT or in those on the Nomenclature of the Customs Cooperation Council.

13 In *Neckermann Versand*, the Court stated in paragraph 7 that in the absence of a definition of 'pyjamas' in the Combined Nomenclature in force in 1988 and 1989, in the versions resulting from 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), and from Regulation No 3174/88, as well as from the Explanatory Notes to the Combined Nomenclature and the Harmonized System, the objective characteristic of pyjamas, which was capable of distinguishing it from all other ensembles, could be sought only in the use for which pyjamas were intended, that is to say to be worn in bed as nightwear.

14 The Court accordingly took the view that not only sets of two knitted garments which, according to their outward appearance, were to be worn exclusively in bed but also sets used mainly for that purpose had to be considered to be 'pyjamas' within the meaning of tariff heading 6108 of the Combined Nomenclature applicable at the time (*Neckermann Versand*, paragraph 14).

15 That reasoning must be applied in a case such as that in the main proceedings here. Since the goods in question are intended to be worn essentially in bed, they must be regarded as 'nightdresses' within the meaning of subheading 60.04 B IV b 2 bb of the CCT, even though they may be used for other purposes.

16 That conclusion cannot be affected by the adoption, on 28 February 1989, of Commission Regulation (EEC) No 548/89 concerning the classification of certain goods in the Combined Nomenclature (OJ 1989 L 60, p. 31), the annex to which provides that lightweight knitted garments, intended to cover the upper part of the body and reaching down to mid-thigh, having a rounded, loose-fitting neckline and short, loose-fitting sleeves, and a tie string sewn into the left seam at the waist, cannot be classified as 'nightdresses', but are rather 'dresses' within the meaning of heading 6104 of the Combined Nomenclature resulting from Regulation No 2658/87, as most recently amended by Commission Regulation (EEC) No 20/89 of 4 January 1989 (OJ 1989 L 4, p. 19), on the ground that they are not clearly identifiable as being intended to be worn exclusively as nightwear.

17 Nor can this interpretation be placed in question on the basis of Commission Regulation (EEC) No 812/89 of 21 March 1989 concerning the classification of certain goods in the Combined Nomenclature (OJ 1989 L 86, p. 25), which rejects classification as 'nightdresses' in the case of various lightweight knitted garments (100% cotton) reaching down to mid-thigh, with a loose-fitting rounded neckline, short loose-fitting sleeves, without a tie string at the waist.

18 Irrespective of whether, in adopting a restrictive interpretation of 'nightdress' in the aforementioned classification regulations, the Commission remained within the limits of the competence conferred on it to specify the content of the headings or subheadings of the Common Customs Tariff without, however, amending the text thereof, according to the terms used in the second recital in the preamble to Regulation (EEC) No 97/69 of the Council of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff (OJ, English Special Edition 1969 (I), p. 12), it must be pointed out that in any event the facts of the dispute in the main proceedings predate those classification regulations.

The provisions of those regulations cannot therefore be applied by analogy for the purpose of interpreting earlier tariff rules, even though, as the Commission argues, those regulations seek only to clarify and did not amend the wording of the headings or subheadings in question.

19 Next, it must be borne in mind that the Court has consistently held that the principle of legal certainty is a fundamental principle of Community law (Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* v *Germany* [1983] ECR 2633, paragraph 30), which requires, *inter alia*, that rules imposing charges on the taxpayer must be clear and precise so that he may know without ambiguity what are his rights and obligations and may take steps accordingly (Case 169/80 *Administration des Douanes* v *Gondrand Frères and Garancini* [1981] ECR 1931, paragraph 17, and Joined Cases 92/87 and 93/87 *Commission* v *France and United Kingdom* [1989] ECR 405, paragraph 22).

20 In the present case, before the Commission's abovementioned classification regulations could operate to impose a restrictive interpretation of 'nightdress', it was perfectly in keeping with the principle of legal certainty for that term to be generally understood as covering not only under garments intended to be worn exclusively in bed, but also those intended essentially for such a use.

21 Finally, it remains to point out that it is, in any event, for the national court, within the context of the dispute before it, to determine, in the light of the cut of the garments, their composition and presentation, and developments in fashion within the Member State concerned, whether those garments do have such objective characteristics or whether, on the contrary, they may be worn equally in bed and elsewhere.

22 The answer to the question submitted must therefore be that subheading 60.04 B IV b 2 bb of the CCT must be construed as covering under garments which, by reason of their objective characteristics, are intended to be worn exclusively or essentially in bed.

Costs

23 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Bundesfinanzhof by order of 12 September 1995, hereby rules:

Subheading 60.04 B IV b 2 bb of the Common Customs Tariff, in the version resulting from Council Regulation (EEC) No 3400/84 of 27 November 1984 amending Regulation (EEC) No 950/68 on the Common Customs Tariff, must be construed as covering under garments which, by reason of their objective characteristics, are intended to be worn exclusively or essentially in bed.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 20 November 1997.

R. Grass M. Wathelet

Registrar President of the First Chamber