JUDGMENT OF THE COURT (Fourth Chamber)

7 July 2005 *

In Joined Cases C-304/04 and C-305/04,

REFERENCES under Article 234 EC for preliminary rulings from the Gerechtshof te Amsterdam (Netherlands), made by decisions of 13 July 2004, received at the Court on 19 July 2004, in the proceedings

Jacob Meijer BV (C-304/04),

Eagle International Freight BV (C-305/04)

v

Inspecteur van de Belastingdienst — Douanedistrict Arnhem,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, N. Colneric and M. Ilešič (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

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

— the Commission of the European Communities, by J. Hottiaux and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 These references for preliminary rulings concern the validity of Commission Regulation (EC) No 2086/97 of 4 November 1997 and Commission Regulation (EC) No 2261/98 of 26 October 1998 amending 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 1997 L 312, p. 1, and OJ 1998 L 292, p. 1, respectively).

2 The references were made in the course of proceedings between Jacob Meijer BV ('Jacob Meijer') and Eagle International Freight BV ('Eagle International') and the Inspecteur van de Belastingdienst — Douanedistrict Arnhem (Arnhem District customs inspector, 'the inspector') regarding the tariff classification of sound cards for computers.

Law

3 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), established a nomenclature for goods known as the 'Combined Nomenclature' which is based on the Harmonised Commodity Description and Coding System ('the Harmonised System'), from which it takes the six-digit headings and subheadings, only the seventh and eight digits forming subdivisions specific to the Combined Nomenclature.

4 Heading 8471 of the Combined Nomenclature, in chapter 84 of Annex I to Regulation No 2658/87, relates to 'Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included'.

5 Heading 8471 is the subject of note 5 to chapter 84, which states in the version applicable at the material time:

'(A) ...

(B) Automatic data-processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) it is of a kind solely or principally used in an automatic data-processing system;

(b) it is connectable to the central processing unit either directly or through one or more other units; and

(c) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data-processing machine are to be classified in heading No 8471.

(D) ...

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data-processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.'

6 Chapter 85 of Annex I to Regulation 2658/87 contains heading 8543 of the Combined Nomenclature: 'Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter'.

7 Commission Regulation (EC) No 1153/97 of 24 June 1997 amending Annex I to Council Regulation (EEC) No 2658/87 (OJ 1997 L 168, p. 35), added subheading 8543 89 79:

'Upgrade kits, for automatic data-processing machines and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphone, and an electronic assembly that enables the automatic data processing machine and units thereof to process audio signals (sound cards)'.

8 That subheading was amended by Regulation 2086/97, which extended the range of products it covers. In the version as amended by that regulation, in force since 1 January 1998, the subheading is worded as follows:

'Apparatus enabling automatic data-processing machines and units thereof to process audio signals (sound cards); upgrade kits, for automatic data-processing machines and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphone, and an electronic assembly that enables the automatic data processing machine and units thereof to process audio signals (sound cards).'

9 The same definition of subheading 8543 89 79 was maintained for the year 1999 by Regulation 2261/98.

The main proceedings and the questions referred for preliminary rulings

10 During 1998 Jacob Meijer made declarations to the Arnhem customs authorities with a view to the release for free circulation of sound cards for computers.

11 During that year and in 1999, Eagle International also made declarations to the Arnhem customs authorities with a view to the release for free circulation of sound cards for computers.

12 In both cases the inspector made a decision to classify the sound cards under subheading 8543 89 79 and his decisions were appealed to the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal).

13 Before that court the parties to the main proceedings confirmed that the imported goods corresponded to the description of sound cards given by the Court of Justice in paragraph 3 of the judgment in Case C-479/99 *CBA Computer* [2001] ECR I-4391, namely: 'printed circuit boards with active and passive components, which are connected to the mainboards of personal computers by plugging their connectors into specially designed sockets. Their primary function is to convert sounds processed by certain software in digital form into analogue signals and thereby make them audible. The sound cards are also designed to convert analogue signals into digital data to permit processing and storage.'

14 In *CBA Computer,* which related to import declarations made in 1997, the Court ruled, for the reasons given at paragraphs 21 to 28 of that decision, that sound cards 'are to be classified under heading 8471 of the Combined Nomenclature, as amended by ... Regulation... No 1153/97 ...'.

15 In the same case, the Court was asked about the validity of Regulation No 2086/97 in so far as that regulation provided that sound cards for computers were to be classified under heading 8543 of the Combined Nomenclature. The Court did not decide on this question, given that Regulation No 2086/97 entered into force on 1 January 1998 and, accordingly, did not apply to the facts of the case (*CBA Computer,* paragraph 31).

16 Before the national court, Jacob Meijer and Eagle International relied on the *CBA Computer* decision in favour of the classification of sound cards under heading 8471, whereas the inspector emphasised, in support of a classification under heading 8543, the fact that in 1998 and 1999 the new definition of subheading 8543 89 79, introduced by Regulation No 2086/97 and retained by Regulation No 2261/98, was in force and that the *CBA Computer* decision gave no indication as to the validity of those regulations.

17 In these circumstances, in Case C-304/04, the Gerechtshof te Amsterdam decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is ... Regulation ... No 2086/97 ... valid in so far as it provides that heading 8543 89 79 of the Combined Nomenclature includes the sound cards [at issue in the main proceedings]?'

18 In Case C-305/04 that same court also decided to stay the proceedings and refer the following question, in substantially similar terms, to the Court for a preliminary ruling:

'Are ... Regulation ... No 2086/97 ... and ... Regulation ... No 2261/98 ... valid in so far as they provide that heading 8543 89 79 of the Combined Nomenclature includes the sound cards [at issue in the main proceedings]?'

19 By order of the President of the Court of 22 November 2004, Cases C-304/04 and C-305/04 were joined for the purposes of the procedure and the judgment.

The questions referred for preliminary rulings

20 The referring court asks whether Regulations Nos 2086/97 and 2261/98 are valid in so far as they classify the sound cards at issue in the main proceedings under heading 8543 89 79 of the Combined Nomenclature.

21 The Netherlands Government and the Commission of the European Communities submit that the regulations are invalid. According to the Commission, it follows from *CBA Computer* that the change in subheading 8543 89 79 which it introduced by Regulation No 2086/87 and confirmed by Regulation No 2261/98 is incorrect.

According to the Netherlands Government, Regulations Nos 2086/97 and 2261/98 are invalid in so far as they alter the scope of tariff heading 8543.

22 It should be noted that the Commission has a broad discretion to define the subject-matter of tariff headings, but that it is not authorised to alter the subject-matter of the tariff headings which have been defined on the basis of the Harmonised System (Case C-267/94 *France* v *Commission* [1995] ECR I-4845, paragraphs 19 and 20, and Case C-309/98 *Holz Geenen* [2000] ECR I-1975, paragraph 13).

23 In paragraph 27 of the *CBA Computer* judgment, the Court decided, in relation to the year 1997, that the sound cards at issue, because they had no specific function within the meaning of note 5(E) to chapter 84 of Annex I to Regulation No 2658/87, had to be classified under heading 8471 of the Combined Nomenclature.

24 Even if the Court did not, in *CBA Computer*, rule on whether the sound cards, in relation to the years 1998 and 1999, were to be classified under heading 8471 or heading 8543 of the Combined Nomenclature, in the version of Regulations Nos 2086/97 and 2261/98, as stated at paragraph 15 above, its finding that those cards do not have a specific function other than the processing of data is applicable to the present proceedings, which concern the same type of sound cards as those at issue in *CBA Computer*, as previously noted at paragraph 13 above.

25 It must be concluded that, by including, by Regulations Nos 2086/97 and 2261/98, the sound cards at issue under subheading 8543 89 79, the Commission did not

respect the content of heading 8543, which relates solely to electrical machines and apparatus having individual functions.

26 The reply to the questions referred must therefore be that Regulations Nos 2086/97 and 2261/98 are invalid in so far as they classify sound cards for computers such as those at issue in the main proceedings under heading 8543 89 79 of the Combined Nomenclature.

Costs

27 Since these proceedings are, for the parties to the main actions, a step in the actions 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 (Fourth Chamber) rules as follows:

Commission Regulation (EC) No 2086/97 of 4 November 1997 and Commission Regulation (EC) No 2261/98 of 26 October 1998 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff are invalid in so far as they classify sound cards for computers such as those at issue in the main proceedings under heading 8543 89 79 of the Combined Nomenclature.

[Signatures]