JUDGMENT OF THE COURT (FIRST CHAMBER)
9 FEBRUARY 1984 [1]

Metro International Kommanditgesellschaft v Oberfinanzdirektion München (reference for a preliminary ruling from the Bundesfinanzhof)

(Tariff classification — Electronic cash registers)

Case 60/83

Common Customs Tariff — Tariff headings — "Cash registers" within the meaning of subheading 84.52 B — Product consisting of several parts — Classification pursuant to General Rule 3 (b) (goods put up in sets)

A product which, on importation, consists of several parts separately packed in one carton, namely a multi-purpose electronic desk calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover), cannot be regarded as a functional unit or, therefore, as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff.

The articles which together constitute the product referred to in the first question must be considered as goods put up in sets within the meaning of General Rule 3 (b) for the Interpretation of the Nomenclature of the Common Customs Tariff, the tariff classification of which is based on the component which gives them their essential character.

In Case 60/83

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

1 — Language of the Case: German

METRO INTERNATIONAL KOMMANDITGESELLSCHAFT, Düsseldorf,

and

OBERFINANZDIREKTION MÜNCHEN [Principal Revenue Office, Munich],

on the interpretation of subheading 84.52 B or General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, or both,

THE COURT (First Chamber),

composed of: T. Koopmans, President of Chamber; Lord Mackenzie Stuart and G. Bosco, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and issues

The order for reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. On 15 April 1981, Metro International Kommanditgesellschaft, hereinafter referred to as "Metro", the

plaintiff in the main action, applied to the Oberfinanzdirektion München for a binding customs tariff ruling relating to a product described as a "PCR 1300 electronic cash register". The product consists of several parts, separately packed in one carton, namely a multi-purpose electronic desk calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculation with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover).

By a binding tariff ruling of 11 June 1981, the Oberfinanzdirektion classified the product under subheading 84.52 A of the Common Customs Tariff. Heading 84.52 reads as follows:

"84.52 Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device;

A. Electronic calculating machines

B. Other"

Goods classified under subheading 84.52 A were, at that time, liable to an autonomous duty of 14 % and a conventional duty of 13.5%.

In support of the classification under subheading 84.52 A, the Oberfinanzdirektion referred to General Rule 3 of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, which reads as follows:

"3. When, for any reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description.

(b) mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) . . .".

According to the Oberfinanzdirektion, the desk calculator, the cash-box and the accessories accompanying them are goods put up in sets which as such are not directly covered by any heading of the Common Customs Tariff. Consequently, they must be classified according to Rule 3 (b). In the view of the Oberfinanzdirektion, the electronic calculator is the article which gives the goods their essential character, so that all the equipment constituting the model, as an "electronic cash register", should be classified under subheading 84. A of the Common Customs Tariff.

By a decision of 18 December 1981, the Oberfinanzdirektion dismissed the objection lodged against the notice of classification. Referring to the Customs Cooperation Council's Explanatory Notes, Section XVI, 84.52, (C), it pointed out that, in general, cash registers consist of an appliance for recording and a till or drawer in which the cash is kept, the recording appliance and the till forming a single unit. They can only total the amounts recorded. By

contrast, the article in question is capable of several arithmetical operations including the calculation of percentages and roots. Its character as an electronic calculating machine is not altered by the fact that the desk calculator and the cash-box are linked by electric cable and that the calculator is equipped with a double-sheeted tally roll ("doppellagiger Journalstreifen"). The ancillary appliances referred to in the aforementioned Explanatory Notes (C, fifth paragraph) merely increase the calculating capacity of cash registers; they do not however enable them to perform calculations other than addition.

The plaintiff in the main action considers that the goods in question ought to be classified under subheading 84.52 B of the Common Customs Tariff. The duties provided for under that subheading were, at the time, 12% autonomous duty and 5.2% conventional duty.

It contended in support of the action which it brought before the Bundesfinanzhof against the rejection of its objection and the official notice of classification made by the Oberfinanzdirektion that the calculator, cash-box and accessories were not goods put up in sets but rather a functional unit, namely, a cash register. The different components are purchased abroad and sold in the customs territory as a cash register. Moreover certain special technical attachments identify it as a cash register. The calculator is manufactured for combination with the cash-box. Unlike ordinary desk calculators, it has a socket for the cable linking it to the cash-box and an additional reel for a double-sheeted tally roll.

In economic terms the cash-box has no value unless it is connected to the electronic calculator. Conversely, the economic significance of the calculator depends on its accessories which are designed to enable it to function as a cash register. A comparable desk calculator without those accessories would be sold at a lower price.

In the view of the plaintiff in the main action, the express reference in the aforementioned Explanatory Notes to ancillary appliances with which cash registers may be equipped allows the whole product to be classified as a cash register.

Metro then points out that the Oberfinanzdirektion relied exclusively on the Customs Cooperation Council's Explanatory Notes. However, as there are no legally binding provisions relating to tariff classification, the view generally accepted must be decisive. In that regard, the plaintiff relies on an expert opinion of the Rationalisierungs-Gemeinschaft des Handels eV [trade rationalization association], Cologne, which was put before the national court, to the effect that since the beginning of the 1970s, electronic cash registers have progressively replaced mechanical ones. Electronics have made it possible to equip registers with the capacity for subtraction and the calculation of percentages. This has facilitated the registration of cash receipts, in particular with regard to the return of deposits and the calculation of discounts, rebates and value added tax. Since then therefore, cash registers have been able to do far more than merely record and add. To that extent therefore the aforementioned Explanatory Notes are outdated. It may thus be concluded that a machine which both records and calculates is a modern electronic cash register suitable, as such, for use in numerous commercial undertakings.

2. According to the grounds set out in the order for reference, the national court considers that the decision as to the legality of the notice of classification at issue depends on how the concept of "cash register" (subheading 84.52 B of the Common Customs Tariff) is to be interpreted. The fact that one of the components of the "electronic cash register" is an electronic calculator which falls under subheading 84.52 A is not contested.

It cannot be concluded, however, from the terms of heading 84.52 of the Common Customs Tariff that composite goods made up of an electronic calculator, cash-box and accessories may be classified as a cash register nor can it be concluded that a cash register within the meaning of that heading exists only when the recording device and the cash-box form a unit, as the Oberfinanzdirektion believes.

The Bundesfinanzhof points out that the distinction from the point of view of the tariff between electronic calculators and cash registers does not mean that an electronic calculator used as a cash register with a flexible connection with a cash-box must not be considered as a functional unit to be classified under subheading 84.52 B. It refers in this connection to the Customs Cooperation Council's Explanatory Notes which, according to the established case-law of the Court, are an authoritative source for the purposes of the interpretation of the headings of the Common Customs Tariff. According to the Explanatory Notes, a machine or appliance consisting of separate components which are designed to contribute together to a single clearly defined function are to be classified in the heading appropriate to that function even if the components remain separate and are merely interconnected by electric cables (Section XVI, General, (VI), dealing with Note 3 to Section XVI of the Common Customs Tariff, ninth paragraph). Such a functional unit may be said to exist when the cash-box and the electronic calculator are simply placed one on top of the other and interconnected by means of an electric cable notwithstanding the fact that one component of the unit, namely, the electronic calculator, may be used separately.

In the light of the technical developments which have taken place in electronics and which also affect cash registers, the national court doubts whether the Explanatory Note invoked by the Oberfinanzdirektion (Section XVI, 84.52, (C)) is still an authentic interpretation of the meaning of the concept for tariff purposes.

On the other hand, it accepts that if the description as a functional unit is rejected, the individual parts may be considered as composite goods made up of different components or goods put up in sets. Pursuant to General Rule 3 (b) of the Common Customs Tariff, they are to be classified in both cases as if they consisted of the component which gives them their essential character, which in this case is the electronic calculator.

3. The Bundesfinanzhof, by an order of the Seventh Senate dated 1 March 1983, decided, pursuant to Article 177 of the EEC Treaty, to suspend proceedings until the Court of Justice had delivered a preliminary ruling on the following questions:

"1. Is the term 'cash register' within the meaning of subheading 84.52 B of the Common Customs Tariff to be interpreted as including an article

described as an 'electronic cash register', which on importation consists of several parts separately packed in one carton, namely a multipurpose electronic desk calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover)? May such parts taken as a whole be regarded as a functional unit and therefore as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff, in view of the fact that, before it can be used as a cash register, the electronic desk calculator must be placed on top of the cash-box and joined to it not by any permanent connection but by means of the accompanying attachments (electric cable with a plug attached to the cash-box, corresponding socket in the calculator, matching rubber pads on both parts)?

2. If the answer to Question 1 is in the negative:

   May such articles consisting of several parts be regarded as 'goods put up in sets' or 'goods . . . made up of different components' within the meaning of General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff?"

The order for reference was lodged at the Court Registry on 11 April 1983.

By order of 21 September 1983, the Court, pursuant to Article 95 (1) and (2) of the Rules of Procedure, assigned the case to the First Chamber.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities, represented by Christoph Bail, a member of its Legal Department, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The *Commission* considers that goods such as those in question in the main action, which, in addition to the calculations normally carried out by cash registers (addition, multiplication, subtraction), can also carry out more complex operations (extraction of roots for example), cannot be regarded as a functional unit or, consequently, as a single product which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff.

It points out that it is the objective capacity of goods to perform certain functions rather than the functions actually performed which is decisive in deciding whether or not goods composed of several elements constitute a functional unit within the meaning of a given tariff heading. In order to avoid frauds based on rates of duty, classification cannot be based on the intended use of

the goods in question but purely on their objective characteristics.

The Customs Cooperation Council's Explanatory Notes to which the national court refers, gives a very narrow definition of the concept of a functional unit: the machine or appliance must perform a single clearly defined function described by one of the tariff headings (Section XVI, General, (VI), relating to Note 3 to Section XIV of the Common Customs Tariff, ninth paragraph). The narrowness of that definition is due to the fact that the explanatory note can only extend the interpretation of the concept in question in conformity with the general rules for the interpretation of the Common Customs Tariff, which are very restrictive. However, if one of the above-mentioned conditions is not met, it is difficult to argue that a single heading or subheading enters into consideration. In such a case, the classification should be made on the basis of General Rule 3.

Moreover, it is necessary to inquire whether the goods which constitute a functional unit perform the precise function referred to in the tariff heading in question and whether that function is the only one which they perform. In this case the multipurpose electronic desk calculator could, by itself or with the other pieces of equipment, perform the function of a calculating machine within the meaning of subheading 84.52 A. The object described as an "electronic cash register" is therefore capable of performing functions other than those described in the Explanatory Note relating to the concept of cash register, and particularly functions referred to in several tariff headings or subheadings. Consequently, it does not meet the aforementioned criterion of a single function. In those conditions a classification carried out on the basis of the concept of a functional unit would be contrary to the mandatory provisions of General Rules 1 and 3 for the Interpretation of the Common Customs Tariff.

The Commission also points out that all the Customs Cooperation Council's Explanatory Notes are regularly brought into line with technical developments. The part dealing with heading 84.52 was last amended in June 1979. There are thus no grounds for questioning the validity of the notes in the light of technical developments in electronics.

As regards the second question, the Commission states that the "electronic cash register" in question cannot be considered to be goods made up of different components within the meaning of General Rule 3 for the Interpretation of the Common Customs Tariff. According to paragraph VIII of the Customs Cooperation Council's Explanatory Notes relating to Rule 3 (b), composite goods made up of different components are to be taken to be not only those in which the components are attached to each other so as to form a practically inseparable whole but also those with separable components, provided that those components are adapted one to the other and are mutually complementary and that together they form a whole which it would be difficult to sell in separate parts. The goods in question are indeed composed of separable components, adapted to one another and mutually complementary but the second condition requiring that they should be difficult to sell in separate parts is not met as regards the office calculator, which is in fact a multipurpose electronic calculator and could be sold separately.

In the Commission's view, the goods to be classified are on the contrary goods put up in sets within the meaning of General Rule 3 (b). Paragraph IX of the Customs Cooperation Council's Explanatory Notes regarding that rule states that the term "goods put up in sets" shall be taken to mean goods which:

(a) consist of products or articles having independent or complementary uses, grouped together for meeting a need or carrying out a specific activity, and

(b) are put up in retail packings (in boxes or cases or on boards, etc).

The components of the goods in question are articles which have complementary uses and which are grouped together for carrying out a specific activity. They are put up in the same carton and intended for retail sale.

For the purposes of classifying the "electronic cash register" in question as goods put up in sets, the Commission refers to paragraph VII of the Customs Cooperation Council's Explanatory Notes dealing with General Rule 3 (b). According to that paragraph, the essential character of goods may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. In the light of all these factors, and particularly of its value and role as regards the article as a whole, the electronic calculator should be considered to be the component which gives the goods their essential character. Consequently, the goods in question should be classified as an electronic calculating machine under subheading 84.52 A of the Common Customs Tariff.

III — Oral procedure

At the sitting on 20 October 1983 the plaintiff in the main action, represented by Günther Kroemer II, Rechtsanwalt, Düsseldorf, and the Commission of the European Communities, represented by Christoph Bail, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 8 December 1983.

Decision

1 By order of 1 March 1983, received at the Court on 11 April 1983, the Bundesfinanzhof [Federal Finance Court] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of the Common Customs Tariff.

2 Those questions arose in the course of the proceedings concerning the tariff classification of a product which had been described as an "electronic cash register" by the importing firm but which, according to the binding customs tariff ruling ("verbindliche Zolltarifauskunft") of the competent customs office, should be considered to be an electronic calculating machine falling under subheading 84.52 A of the Common Customs Tariff.

3 Heading 84.52 of the Common Customs Tariff reads as follows:

"84.52 Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device:

A. Electronic calculating machine

B. Other".

4 For the purposes of its questions, the Bundesfinanzhof provided the following description of the product in question: "An article described as an 'electronic cash register' which on importation consists of several parts separately packed in one carton, namely a multipurpose desk calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover)". It pointed out that "before it can be used as a cash register, the electronic desk calculator must be placed on top of the cash-box and joined to it not by any permanent connection but by means of the accompanying attachments (electric cable with a plug attached to the cash-box, corresponding socket in the calculator, matching rubber pads on both parts)".

5 In its first question, the Bundesfinanzhof asks if such parts taken as a whole may be regarded as a functional unit and therefore as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff. If the answer is in the negative, it asks, in its second question, if such articles consisting of several parts may be regarded as "goods put up in sets" or "goods ... made up of different

components" within the meaning of General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff.

6 Note 3 to Section XVI of the tariff, of which Chapter 84 is part, provides that composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

7 According to the Customs Cooperation Council's Explanatory Notes, Note 3 to Section XVI does not apply when a machine or appliance consists of separate components which are designed to contribute together to a single clearly-defined function described by one of the headings in Chapter 84. The Explanatory Notes add that the whole falls to be classified in the heading appropriate to that function even if, as a matter of convenience, for example, the various components remain separate and are merely interconnected by devices used to transmit power or by electric cables.

8 The national court asks if the cash-box and the electronic calculator which are simply placed one on top of the other and joined to each other by means of an electric cable, may be regarded as a functional unit of the kind described in those Explanatory Notes. If such is the case, all the components of the product would be intended to contribute together to a single clearly-defined function, namely, that of a cash register within the meaning of sub-heading 84.52 B of the Common Customs Tariff. The fact that the electronic calculator, one component of the unit, may also be used separately does not necessarily exclude such a possibility.

9 It should be pointed out however that the Explanatory Notes are intended to allow classification under a given heading of machines and appliances made up of components falling under several tariff headings, in cases where those components as a whole are intended to perform the single clearly-defined function referred to in the tariff heading in question. Thus, the Explanatory Notes do not cover the product described by the national court, in view of

the fact that it consists, among other components, of an electronic calculator which may be used independently of the other components and for functions other than those which may be performed by all the components together.

10 Consequently the answer to the first question must be that a product which, on importation, consists of several parts separately packed in one carton, namely a multipurpose electronic desk calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover), cannot be regarded as a functional unit or, therefore, as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff.

11 The answer to the first question being negative, the second question relating to General Rule 3 (b) for the interpretation of the Common Customs Tariff must be examined. According to that rule, composite goods consisting of different materials or made up of different components, and goods put up in sets, are to be classified "as if they consisted of the material or component which gives them their essential character", when they cannot be classified by reference to Rule 3 (a). That rule lays down that the heading which provides the most specific description shall be preferred to headings providing a more general description.

12 The order for reference points out that if the product in question is to be considered as "goods put up in sets" or "goods ... made up of different components" within the meaning of the said General Rule 3 (b), the essential character of the goods is rather determined by the calculator, in view of its greater value in comparison to the other components and the use which may be made of the composite article, namely, the performance of more complicated arithmetical operations in addition to recording by calculation and addition of numbers.

13 As regards General Rule 3 (b), the Customs Cooperation Council's Explanatory Notes state that the expression "goods put up in sets" is to be taken to mean goods which consist of products or articles having

independent or complementary uses, grouped together for meeting a need or carrying out a specific activity, and are put up in retail packings.

14 The Court considers that the product described by the national court corresponds to those criteria and thus falls under General Rule 3 (b). In those conditions, its classification for tariff purposes must be determined, as the national court has rightly held, by the component which gives it its essential character.

15 The reply to the second question should therefore be that the articles which together constitute the product referred to in the first question must be regarded as goods put up in sets within the meaning of General Rule 3 (b) for the interpretation of the Common Customs Tariff, the tariff classification of which is based on the component which gives them their essential character.

Costs

16 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 questions referred to it by the Bundesfinanzhof by order of 1 March 1983, hereby rules:

1. **A product which, on importation, consists of several parts separately packed in one carton, namely a multipurpose electronic desk**

calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover), cannot be regarded as a functional unit or, therefore, as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff.

2. The articles which together constitute the product referred to in the first question must be regarded as goods put up in sets within the meaning of General Rule 3 (b) for the Interpretation of the Nomenclature of the Common Customs Tariff, the tariff classification of which is based on the component which gives them their essential character.

Koopmans Mackenzie Stuart Bosco

Delivered in open court in Luxembourg on 9 February 1984.

The Registrar by order

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 DECEMBER 1983 [1]

Mr President,
Members of the Court,

Heading 84.52 of the Common Customs Tariff is at the centre of this reference for a preliminary ruling pursuant to Article 177 of the EEC Treaty made by the Seventh Senate of the Bundesfinanzhof [Federal Finance Court] by order of 1 March 1983. That tariff heading covers calculating machines, accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device. Subheading

1 — Translated from the German.