Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

6 November 2014*

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 8471 and 8518 — Loudspeakers reproducing sound by transforming an electromagnetic signal into sound waves, which can be connected only to a computer and marketed separately)

In Case C-546/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Italy), made by decision of 19 March 2013, received at the Court on 22 October 2013, in the proceedings

Agenzia delle Dogane,

Ufficio di Verona dell'Agenzia delle Dogane

v

ADL American Dataline Srl,

THE COURT (Tenth Chamber),

composed of C. Vajda (Rapporteur), President of the Chamber, A. Rosas and E. Juhász, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Italian Government, by G. Palmieri, acting as Agent, and by F Urbani Neri, avvocato dello Stato,

— the European Commission, by A. Caeiros and G. Gattinara, acting as Agents,

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

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of subheadings 8471 60 90 and 8518 22 90 of the Combined Nomenclature ('the CN') set out 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 Regulation (EC) No 2388/2000 of 13 October 2000 (OJ 2000 L 264, p. 1), Commission Regulation (EC) No 2031/2001 of 6 August 2001 (OJ 2001 L 279, p. 1), Commission Regulation (EC) No 1832/2002 of 1 August 2002 (OJ 2002 L 290, p. 1) and Commission Regulation (EC) No 1789/2003 of 11 September 2003 (OJ 2003 L 281, p. 1).

2 The request has been made in proceedings between the Agenzia delle Dogane (Customs Authority) and the Ufficio di Verona dell'Agenzia delle Dogane (Verona Customs Office) ('the Ufficio di Verona'), on the one hand, and ADL American Dataline Srl ('ADL'), on the other hand, concerning the tariff classification of loudspeakers within the CN.

Legal context

The Harmonised Commodity Description and Coding System

3 The Customs Cooperation Council, now the World Customs Organisation (WCO), was established by the convention creating that council, concluded in Brussels on 15 December 1950. The Harmonised Commodity Description and Coding System ('the HS') was drawn up by the WCO and established by the International Convention on the Harmonised Commodity Description and Coding System ('the HS Convention') concluded in Brussels on 14 June 1983 and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures are in conformity with the HS, to use all of the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the General Rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope.

5 The WCO is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee.

6 At the material date, the Explanatory Note to the HS concerning heading 8471 of the CN was worded as follows:

'I. Automatic data-processing machines and units thereof Data processing consists in handling information of all kinds, in pre-established logical sequences and for a specific purpose or purposes.
…'

7 The Explanatory Note to the HS relating to tariff heading 8471, which entered into force on 1 February 2002, in accordance with Article 8(2) of the HS Convention, was worded as follows:

'D. Separately presented units A unit is to be regarded as being a part of a complete data processing system, if it performs a data processing function and satisfies 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. If the unit performs a specific function other than data processing, it is to be classified in the heading appropriate to that function or, failing that, in a residual heading (see Note 5(E) to this Chapter). …'

8 The Explanatory Note to the HS relating to tariff heading 8518, which entered into force on 1 February 2004, in accordance with Article 8(2) of the HS Convention, was worded as follows:

'B. Loudspeakers, whether or not mounted in their enclosures … Loudspeakers may be mounted on frames, chassis or in cabinets of different types (often acoustically designed), or even in articles of furniture. They remain classified in this heading provided the main function of the whole is to act as a loudspeaker. Separately presented frames, chassis, cabinets, etc., also fall in this heading provided they are identifiable as being mainly designed for mounting loudspeakers; articles of furniture of Chapter 94 designed to receive loudspeakers in addition to their normal function remain classified in Chapter 94. The heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.'

Regulation No 2658/87

9 Article 10(2) of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16), provides as follows:

'Where reference is made to this paragraph, Articles 4 and 7 of [Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23)] shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.'

10 Article 12 of that regulation, as amended, provides:

'(1) The Commission shall adopt each year, a regulation reproducing the complete version of the [CN], together with the rates of duty in accordance with Article 1, as resulting from measures adopted by the Council or the Commission. The said Regulation shall be published not later than 31 October in the *Official Journal of the European Communities* and it shall apply from 1 January of the following year.

(2) Measures and information concerning the Common Customs Tariff or TARIC [(the Integrated Tariff of the European Communities)] shall, whenever possible, be disseminated in electronic format by using computerised means.

(3) In order to ensure the uniform application of the Common Customs Tariff and the TARIC, the Commission shall promote coordination and harmonisation of practices in Member States' customs laboratories, using wherever possible, computerised means.'

The CN

11 The customs classification of goods imported into the European Union is governed by the CN. The versions of the CN applicable to the facts in the main proceedings, which cover the years 2001 to 2003, are those resulting from Regulations No 2388/2000, No 2031/2001, No 1832/2002 and

No 1789/2003. In each of the versions resulting from those regulations, the general rules and the tariff headings of Chapter 84 of the CN and the notes to that chapter mentioned in the questions referred for a preliminary ruling are worded identically.

12 The general rules for the interpretation of the CN, which are set out in Part One, Title I A, provide:

'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 shall 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.

…

(3) When ... 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. However, when two or more headings each refer to only part of the materials or substances contained in mixed or composite goods or to only part of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, 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) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

…

(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.'

13 The second part of the CN includes Section XVI, entitled 'Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'.

14 Notes 3, 4 and 5 to Section XVI of the CN are worded as follows:

'(3) Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed 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.

(4) Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function.

(5) For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.'

15 Section XVI of the CN includes Chapter 84, entitled 'Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof'. That chapter contains, inter alia, the following tariff headings:

'8471 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:

…

— Other digital automatic data-processing machines:

…

8471 60 – Input or output units, whether or not containing storage units in the same housing:

…

8471 60 90 — — — Other

…'

16 Note 5 to Chapter 84 is worded as follows:

'…

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.

…

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.'

17 Note 5(C) and (D) to Chapter 84 of the CN was, subsequently, amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1), which entered into force on 1 January 2007. Note 5(C) to that chapter is worded as follows:

‘Subject to paragraph (D) and (E) below, a unit is to be regarded as being a part of an automatic data-processing system if it meets all of the following conditions:

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

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

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

Separately presented units of an automatic data-processing machine are to be classified in heading 8471.

…’

18 Note 5(D) to Chapter 84 of the CN, as amended by Regulation No 1549/2006, is worded as follows:

‘Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in note 5(C) above:

…

(3) loudspeakers and microphones;

…’

19 Section XVI of the CN also includes Chapter 85, 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’.

20 In the version of the CN resulting from Regulation No 2388/2000, heading 8518 of the latter is worded as follows:

‘8518 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets:

…

8518 22 — — Multiple loudspeakers, mounted in the same enclosure:

…

8518 22 90 — — — Other’.

21 Both in the version of the CN resulting from Regulation No 2031/2001 and in that resulting from Regulation No 1832/2002, heading 8518 of the CN is worded as follows:

‘8518 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets:

…

8518 22 — — Multiple loudspeakers, mounted in the same enclosure:

…

8518 22 90 — — — Other’.

22 In the version of the CN resulting from Regulation No 1789/2003, heading 8518 of the latter is worded as follows:

‘8518 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets:

…

8518 22 — — Multiple loudspeakers, mounted in the same enclosure:

…

8518 22 90 — — — Other’.

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

23 From December 2001 to October 2003, ADL imported into the European Union loudspeakers produced by Harman Multimedia, a company established in the United States, and designed for exclusive use as output peripheral units for Apple computers.

24 For the purpose of its customs declaration, ADL classified the imported loudspeakers in subheading 8471 60 90 of the CN, as computer peripherals, thus benefiting from an exemption from customs duties. During an inspection of the goods carried out by the Ufficio di Verona and the Treviso Customs Office on some of those imports, no comments were made regarding that classification.

25 In 2005, following a procedure reviewing the final customs report, the Ufficio di Verona calculated *a posteriori* the duties owed by ADL, noting that those loudspeakers had been wrongly classified in subheading 8471 60 90 of the CN as computer peripherals, resulting in an exemption from customs duties, instead of in subheading 8518 22 90 of the CN as loudspeakers, resulting in the application of customs duties at 4.5%.

26 The competent Commissioni tributarie (Tax Courts), hearing an action seeking the annulment of the decisions imposing customs duties on ADL, upheld the latter’s application.

27 In a judgment delivered on 10 July 2009, the Commissione tributaria della regione Veneto (Regional Tax Court for the Veneto) held that the loudspeakers concerned had been correctly classified in subheading 8471 60 90 of the CN in so far as those loudspeakers, according to their technical instructions, were 'usable only if connected via USB cable to a computer using the operating system MAC OS 9.04 or a more advanced version of that operating system', and were incompatible with 'audio apparatus other than personal computer apparatus, or with a personal computer using an operating system other than MAC OS 9'.

28 The Agenzia delle Dogane appealed against that judgment before the referring court, claiming, inter alia, that those loudspeakers had been given the wrong customs classification. It claimed, in essence, that the goods imported were described as loudspeakers ('multimedia speakers'), their purpose being to reproduce sound by transforming an electromagnetic signal into sound waves and could only be connected to a personal computer. According to the Agenzia delle Dogane, the goods imported had therefore all the characteristics allowing them to be classified either in heading 8518 of the CN, as loudspeakers, or in subheading 8471 60 of the CN, as output units of automatic data processing machines.

29 The referring court considers, on the one hand, that the technical point, established by the court at first instance, that the goods may be used only if connected to a personal computer and work only with a specific operating system supports the use of a classification in subheading 8471 60 90 of the CN. On the other hand, it considers that the function of the loudspeakers, which is to reproduce sound, suggests a classification in subheading 8518 22 90 of the CN, in so far as that specific function is accepted as a function 'other than data processing', as is apparent from Note 5(E) to Chapter 84 of the CN.

30 In those circumstances, the Corte suprema di cassazione (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it contrary to Articles 10(2) and 12 of … Regulation … No 2658/87 … and to the principle of legal certainty to interpret the amendments made to the Explanatory Notes accompanying Chapter 84 of the Schedule of Customs duties set out in Part II of Annex I thereto by … Regulation … [No 1549/2006] … (which excludes loudspeakers from heading 8471 [of the CN] where they are presented separately from automatic data-processing machines) in order to find that the goods imported by ADL … perform a specific function (reproduction and amplification of sound) "other" than data processing?

(2) Must the goods imported by ADL …, namely "loudspeakers" marketed separately from automatic data-processing machines, be regarded as devices "performing a specific function other than data processing" — assuming that the reproduction and amplification of sound is indeed an example of that type of function — or is it not possible to regard them as system units performing a specific function other than data processing, since, having regard to their specific technical characteristics (connection only via USB cable; operating system MAC OS 9 required), they "have no function which they would be capable of performing without the assistance of such a machine [that is to say, without the assistance of an automatic data-processing machine]" (see [*Peacock*, C-339/98, EU:C:2000:573], paragraphs 14 and 15, and [*Olicom*, C-142/06, EU:C:2007:449], paragraphs 20, 29 and 30, which, although referring to other types of device — network cards and "combination" cards — seem to indicate that a lack of any "other" specific function stems from the fact that (i) the device cannot function without a personal computer and (ii) the device has the capacity to accept and to convert at output signals transmitted by the processor)?'

Consideration of the questions referred for a preliminary ruling

The second question

31 By its second question, which should be examined first, the referring court asks, in essence, whether the goods at issue in the main proceedings should be classified as output units of automatic data processing machines in subheading 8471 60 90 of the CN or, as loudspeakers in subheading 8518 22 90 of the CN.

32 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 CN and in the section or chapter notes (*Delphi Deutschland*, C-423/10, EU:C:2011:315, paragraph 23 and case-law cited).

33 The explanatory notes drawn up by the Commission as regards the CN and by the WCO as regards the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (*Delphi Deutschland*, EU:C:2011:315, paragraph 24 and case-law cited).

34 Moreover, for the purposes of classification under the appropriate heading, it should be recalled that the intended use of a product may constitute an objective criterion for classification if 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 the judgment in *Olicom*, C-142/06, EU:C:2007:449, paragraph 18).

35 It should be noted that the wording of subheading 8471 60 90 of the CN is 'other'. However, as is apparent from the wording of the subheading preceding subheading 8471 60, subheading 8471 60 90 of the CN refers to 'other digital automatic data-processing machines'. It should be noted also that the wording of subheading 8518 22 90 of the CN is 'other'. Nevertheless, it is apparent from the wording of subheading 8518 22 of the CN that subheading 8518 22 90 of the latter refers to multiple loudspeakers, mounted in the same enclosure.

36 In that regard, it should be noted that, under Note 5(E) to Chapter 84 of the CN, '[m]achines 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'.

37 It follows from the wording of that note that the 'specific function' performed by a machine working with an automatic data-processing machine must be a function 'other than data processing' (judgment in *Kip Europe and Others*, C-362/07 and C-363/07, EU:C:2008:710, paragraph 32 and case-law cited).

38 Furthermore, it follows from the general scheme and purpose of that note that the expression 'are to be classified in the headings appropriate to their respective functions' does not seek to have one function take priority over others also performed by the apparatus to be classified and which also constitute data processing, but to prevent apparatus whose function has nothing to do with data processing from being classified under heading 8471 for the sole reason that they incorporate an automatic data-processing machine or work in connection with such a machine (judgment in *Kip Europe and Others*, EU:C:2008:710, paragraph 33).

39 With regard to the concept of 'data-processing', the first paragraph of Chapter I of the Explanatory Note to the HS concerning heading 8471 of the CN provides that such processing consists in handling information of all kinds, in pre-established logical sequences and for a specific purpose or purposes. Moreover, in the light both of the general scheme of that explanatory note and its context,

it is apparent that that concept must be understood as involving, in principle, the exploitation of data, such as recording, modifying, storing, converting or publishing that data (see judgment in *Data I/O*, C-370/08, EU:C:2010:284, paragraph 35).

40 It follows therefrom that the goods at issue in the main proceedings, the independent function of which is to reproduce sound by transforming an electromagnetic signal into sound waves, perform a function different from that of data processing. As is apparent from paragraph 38 of the present judgment, the fact that a loudspeaker must be connected to another apparatus, such as an automatic data-processing machine in heading 8471 of the CN, does not prevent it from being classified in accordance with its own function.

41 Moreover, with regard to the interpretation of the word 'loudspeaker' in heading 8518 of the CN, it is necessary to take into account Point B of the explanatory note of the HS relating to heading 8518, even for the period of importation of the goods concerned prior to the entry into force of that explanatory note. Since the wording of that heading, as regards 'loudspeakers', as amended by Regulation No 1789/2003, is identical to that of the same heading of the CN, as amended by Regulations No 2388/2000, 2031/2001 and 1832/2002, a different meaning should not, in principle, be given to the word 'loudspeaker' from that which should be given to it taking into account Point B of that explanatory note (see, to that effect, the judgment in *Delphi Deutschland*, EU:C:2011:315, paragraph 26).

42 It follows from Point B of that explanatory note relating to heading 8518 of the CN that it includes loudspeakers designed to be connected to an automatic data-processing machine, where they are presented separately.

43 Having regard to all of the foregoing, the answer to the second question is that the CN must be interpreted as meaning that goods such as those at issue in the main proceedings, which are connected to a computer equipped with the operating system 'MAC OS 9' or a more advanced system, must be classified as loudspeakers in subheading 8518 22 90 of that nomenclature.

The first question

44 Given the answer to the second question, there is no need to answer the first question.

Costs

45 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 (Tenth Chamber) hereby rules:

The Combined Nomenclature set out 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, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, Commission Regulation (EC) No 2031/2001 of 6 August 2001, Commission Regulation (EC) No 1832/2002 of 1 August 2002 and Commission Regulation (EC) No 1789/2003 of 11 September 2003, must be interpreted as meaning that goods such as those at issue in the main proceedings, which are connected to a computer equipped with the operating system 'MAC OS 9' or a more advanced system, must be classified as loudspeakers in subheading 8518 22 90 of that nomenclature.

[Signatures]