JUDGMENT OF THE COURT (Second Chamber)

10 May 2001 *

In Case C-288/99,

REFERENCE to the Court under Article 234 EC by the Hessisches Finanzgericht, Kassel, Germany, for a preliminary ruling in the proceedings pending before that court between

VauDe Sport GmbH & Co. KG, formerly vauDe Sport Albrecht von Dewitz,

and

Oberfinanzdirektion Koblenz,

on the interpretation of the Combined Nomenclature set out in Annex I to Commission Regulation (EC) No 1359/95 of 13 June 1995 amending Annexes I

* Language of the case: German.

and II to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, and repealing Regulation (EEC) No 802/80 (OJ 1995 L 142, p. 1),

THE COURT (Second Chamber),

composed of: V. Skouris, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— vauDe Sport GmbH & Co. KG, by H. Glashoff, Mr Steuerberater and U. Reimer, Außenwirtschaftsberater,

— the Commission of the European Communities, by J.C. Schieferer, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of vauDe Sport GmbH & Co. KG and the Commission at the hearing on 16 November 2000,

after hearing the Opinion of the Advocate General at the sitting on 23 January 2001,

gives the following

Judgment

1 By order of 11 March 1999, received at the Court on 2 August 1999, the Hessisches Finanzgericht, Kassel, (Finance Court for Hessen, Kassel) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of the Combined Nomenclature (hereinafter 'the CN') set out in Annex I to Commission Regulation (EC) No 1359/95 of 13 June 1995 amending Annexes I and II to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, and repealing Regulation (EEC) No 802/80 (OJ 1995 L 142, p. 1).

2 That question was raised in the course of proceedings between the company vauDe Sport GmbH & Co. KG (hereinafter 'vauDe Sport') and the Oberfinanzdirektion Koblenz (Principal Revenue Office, Koblenz, hereinafter 'the Revenue Office') concerning the tariff classification within the CN of a product known as a 'child carrier'.

The relevant Community legislation

3 The headings within the CN that call for consideration in the main proceedings are the following:

'*CHAPTER 42*

... TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS ...

...

4202 Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and

similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, or vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper:

— Trunks, suit-cases, vanity cases, executive-cases, brief-cases, school satchels and similar containers:

...

— Handbags, whether or not with shoulder strap, including those without handle:

...

— Articles of a kind normally carried in the pocket or in the handbag:

...

— Other:

4202 91 — — With outer surface of leather, of composition leather or of patent leather:

...

4202 92 — — With outer surface of plastic sheeting or of textile materials:

— — — Of plastic sheeting:

4202 92 11 — — — — Travelling-bags, toilet bags, rucksacks and sports bags

4202 92 15 — — — — Musical instrument cases

4202 92 19 — — — — Other

— — — Of textile materials:

4202 92 91 — — — — Travelling-bags, toilet bags, rucksacks and sports bags

4202 92 98 — — — — Other

4202 99 00 — — Other

...

CHAPTER 63

OTHER MADE-UP TEXTILE ARTICLES; ...

...

6307 Other made up articles, including dress patterns:

6307 10 — Floor-cloths, dish-cloths, dusters and similar cleaning cloths:

...

6307 20 00 — Life-jackets and life-belts

6307 90 — Other:

6307 90 10 — — Knitted or crocheted

— — Other:

6307 90 91 — — — Of felt

6307 90 99 — — — Other

...

CHAPTER 76

ALUMINIUM AND ARTICLES THEREOF

...

7616	Other articles of aluminium:
7616 10 00	— Nails, tacks, staples (other than those of heading No 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles
7616 90	— Other:
7616 90 10	— — Knitting needles and crochet hooks
7616 90 30	— — Cloth, grill, netting and fencing
	— — Other:
7616 90 91	— — — Cast
7616 90 99	— — — Other

...

CHAPTER 94

FURNITURE; ...

...

9401	Seats (other than those of heading No 9402), whether or not convertible into beds, and parts thereof:
9401 10	— Seats of a kind used for aircraft:
...	
9401 20 00	— Seats of a kind used for motor vehicles
9401 30	— Swivel seats with variable height adjustment:
...	
9401 40 00	— Seats other than garden seats or camping equipment, convertible into beds
9401 50 00	— Seats of cane, osier, bamboo or similar materials
	— Other seats with wooden frames:
...	
	— Other seats with metal frames:
9401 71 00	— — Upholstered
9401 79 00	— — Other
9401 80 00	— Other seats
9401 90	— Parts:

...'.

4 The general rules for the interpretation of the CN (hereinafter 'the general rules'), which are set out in Part One, Section 1, A of the CN, provide as follows:

'[c]lassification of goods in the combined nomenclature shall be governed by the following principles:

...

2. (a)...

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other 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. However,

when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only 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.

...'

The main proceedings and the question referred for a preliminary ruling

5 On 16 August 1995 vauDe Sport, which designs, manufactures and sells rucksacks, amongst other things, applied for binding tariff information in respect of a product which it described as a 'Comfort collapsible child carrier, with

height-adjustable Tergoform carrying system and integrated rucksack'. According to vauDe Sport, the proper tariff heading for classification of the product is subheading 4202 92 98 0900.

6 On 20 September 1995 the Revenue Office classified the product in question under tariff subheading 6307 90 99 0990, describing it as follows:

'Other made up textile articles of woven fabric, known as Comfort child carriers,...

— support frame made of steel tubing (this was subsequently corrected to "aluminium tubing") and woven fabric made of synthetic fibres sewn together,

— essentially comprising a seat for a child, padded on the sides and at head height, and fitted out with safety belts, made from textile,

— there is a zipped compartment for storing small items under the seat,

— with padded shoulder straps and a textile waist band,

— not hand made,

— the parts made of woven fabric are determinant features by bulk and value and in the light of their role in relation to the use of the product.'

7 The Revenue Office based its decision on the finding that, of the various different materials making up the composite product in question, it was the textile parts that gave it its essential character for the purposes of general rule 3(b). However, the product could not be classified under heading 4202, as suggested by vauDe Sport, because a child carrier was not comparable to a rucksack, the latter being designed to carry objects and not people.

8 Following the dismissal of its objection to that classification decision vauDe Sport brought an action on 17 July 1996 before the Hessisches Finanzgericht.

9 The Hessisches Finanzgericht was not persuaded that 4202 was the appropriate heading in the present case, or 9401, which vauDe Sport proposed in the alternative, and hesitated between headings 6307 and 7616 of the CN. It nevertheless had a slight preference for classifying the child carrier under heading 7616, pursuant to general rule 3(c), because, in its view, the aluminium support frame and the textile parts were equally important and, without either component, the product would lose its characteristic qualities.

10 It was in those circumstances that the Hessisches Finanzgericht, Kassel, decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Is the term "similar containers" in CN heading 4202 of the Common Customs Tariff to be interpreted as including a product described as a child carrier consisting essentially of a support frame made of aluminium tubing and woven fabric made of synthetic fibres — assembled by being sewn together — in which a child may be carried in a seated position on a person's back and small items stored under the seat,

or

is the aforementioned product to be classified pursuant to general rule 3(b) among other made up textile articles of woven fabric under CN subheading 6307 90 99 0990

or

is the aforementioned product covered by another heading?'

11 It is apparent from the documents before the Court that, by its question, the national court is essentially asking whether a product called a 'child carrier', which is designed for carrying a child in a seated position on an adult's back, consists essentially of a support frame of aluminium tubing and a child's seat of

synthetic material, is assembled by being sewn together, is padded at the sides and at head level, and fitted out with safety belts, padded shoulder straps and a textile waist band, and which includes a pocket for storing small items under the seat, is to be classified under tariff heading 4202, which refers *inter alia* to travelling-bags and 'similar containers', or under subheading 9401 71 00, which covers 'other seats, with metal frames — upholstered', or heading 6307, which covers 'other made up articles', or heading 7616, which covers 'other articles of aluminium'.

12 It is appropriate to recall at the outset the settled case-law of the Court according to which, in the interests of legal certainty and for 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 (see, *inter alia*, Case C-42/99 *Eru Portuguesa* [2000] ECR I-7691, paragraph 13).

13 Furthermore, the explanatory notes drawn up, as regards the CN, by the Commission and, as regards the harmonised commodity description and coding system, by the Customs Cooperation Council ('the explanatory notes'), are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (see, *inter alia*, Case C-309/98 *Holz Geenen* [2000] ECR I-1975, paragraph 14).

14 As regards, first of all, heading 4202 of the CN, it must be observed at the outset that the child carrier at issue in the main proceedings is not expressly mentioned therein, and consequently the product can be classified under that heading only by assimilation to goods explicitly referred to therein, on the basis of being a 'similar container'.

15 For the purpose of establishing whether the child carrier is a container similar to a rucksack, as vauDe Sport submits, it is important to note that both products are indeed carried on the back by means of shoulder straps and a waist band and that, furthermore, the support frame made of aluminium tubing serving to stabilise the child's seat is comparable to the system for carrying special rucksacks used for trekking. Nevertheless, the fact remains that, like the other items listed under heading 4202, a rucksack is a piece of equipment designed for carrying objects, whereas a child carrier is an open seat meant for carrying a child. The zipped storage compartment below the child's seat does not give the child carrier its objective, determining characteristics. On the contrary, it is a mere accessory and of no relevance to the product's classification for customs purposes.

16 That being so, a child carrier such as that as issue in the main proceedings cannot be classified under heading 4202 of the CN.

17 As regards, secondly, tariff heading 9401, that too is inappropriate for the purposes of the case in the main proceedings.

18 In that regard, it need merely be observed that, according to note 2 to Chapter 94 of the CN and the general remarks contained in the explanatory notes to that chapter, the items to which heading 9401 refers must be designed to be placed on the floor or ground and be used, mainly with a utilitarian purpose, to equip, amongst other things, private dwellings and also motor vehicles and other similar means of transport.

19 Whilst, like any other object, the child carrier can be placed on the ground, it is not designed for that purpose and, furthermore, it unquestionably fails to fulfil the second cumulative condition laid down in Chapter 94 of the explanatory notes.

20 That finding is, moreover, in no way affected by the fact, raised by vauDe Sport, that the product in question in the main proceedings is equipped with a folding tripod allowing the carrier to be placed on the floor.

21 Accordingly, given that there is no specific tariff heading under which the product may be classified, it is necessary, thirdly, to establish whether it may be classified under heading 6307 or 7616 by applying the general rules.

22 The product at issue in the main proceedings is made up of several component parts, essentially aluminium tubing and woven material of synthetic fibre assembled by being sewn together, and is therefore a mixed or composite product in the sense contemplated in general rule 2(b), which, in such a case, refers to general rule 3.

23 The product in the present case cannot be classified by applying general rule 3(a) because, as was pointed out in paragraph 21 of the present judgment, there is no specific tariff heading for the classification of child carriers.

24 Under general rule 3(b) composite goods which cannot be classified by reference to general rule 3(a) are to be classified according to the material or component which gives them their essential character in so far as this criterion is applicable.

25 In this connection, it is settled case-law that, in order to identify, from among the materials of which a product is composed, which is the one that gives it its essential character, it is necessary to determine whether the product would retain its characteristic properties if one or other of its constituents were removed from it (see, to that effect, Case 253/87 *Sportex* [1988] ECR 3351, paragraph 8).

26 In the case of a child carrier such as that in issue in the main proceedings, it must be observed that the fabric parts sewn together are by themselves sufficient to enable a child to be carried by an adult. An aluminium frame, on the other hand, is in no way necessary for this, but merely enables the child to be carried with the maximum degree of comfort for both adult and child.

27 Contrary to vauDe Sport's argument, the aluminium support frame cannot therefore be regarded as the material or component that gives the child carrier its characteristic properties.

28 That being the case, the most important component of a child carrier such as the one at issue in the main proceedings is comprised of the textile parts, and it is these that give the product its essential character for the purposes of general rule 3(b).

29 It follows that the child carrier is classifiable under heading 6307 of the CN, which, read together with note 1 to chapter 63 of the CN, relates to made up articles of any textile fabric. There is, however, no reason why such articles

should not also be fitted with a support frame made of a different material and designed to make them easier to use.

30 That interpretation is, moreover, corroborated by point 17 of the explanatory notes to heading 6307, according to which that heading includes carry cots and similar pieces of equipment for the transportation of children. As with child carriers, it is the textile parts that characterise such products, although they can be made easier to use by the addition of a support frame made from a different material.

31 In light of all of the foregoing considerations, the answer to the question referred for a preliminary ruling must be that the CN is to be interpreted in such a way that a product called a 'child carrier', which is designed for carrying a child in a seated position on an adult's back, consists essentially of a support frame of aluminium tubing and a child's seat of synthetic material, is assembled by being sewn together, is padded at the sides and at head level, and fitted out with safety belts, padded shoulder straps and a textile waist band, and which includes a pocket for storing small items under the seat, is to be classified under tariff heading 6307.

Costs

32 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Hessisches Finanzgericht, Kassel, by order of 11 March 1999, hereby rules:

The Combined Nomenclature, set out in Annex I to Commission Regulation (EC) No 1359/95 of 13 June 1995 amending Annexes I and II to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, and repealing Regulation (EEC) No 802/80 is to be interpreted in such a way that a product called a 'child carrier', which is designed for carrying a child in a seated position on an adult's back, consists essentially of a support frame of aluminium tubing and a child's seat of synthetic material, is assembled by being sewn together, is padded at the sides and at head level, and fitted out with safety belts, padded shoulder straps and a textile waist band, and which includes a pocket for storing small items under the seat, is to be classified under tariff heading 6307.

Skouris Schintgen Colneric

Delivered in open court in Luxembourg on 10 May 2001.

R. Grass

Registrar

V. Skouris

President of the Second Chamber