JUDGMENT OF THE COURT
OF 23 OCTOBER 1975 [1]

Matisa-Maschinen-GmbH
v Hauptzollamt Berlin-Packhof
(preliminary ruling requested by the Finanzgericht Berlin)

Case 35/75

Summary

1. Preliminary rulings — Powers of the Court — Limits (EEC Treaty, Article 177)

2. Common Customs Tariff — Classification of goods — Interpretation — Absence of Community provisions — Authority of the explanatory notes and the classification opinions of the Brussels Convention on Nomenclature

3. Common Customs Tariff — Classification of goods — Mechanically propelled within the meaning of heading 86.04 — Interpretation

1. Although the Court in ruling under Article 177 does not have jurisdiction to apply the Community rule to a specific case, it may however supply the national courts with the principles of interpretation relating to Community law which may be useful in the application of this rule.
2. In the absence of relevant Community provisions on the subject, the explanatory notes and the classification opinions provided for by the Convention on Nomenclature for the classification of goods in customs tariffs are an authoritative source for the purposes of the interpretation of the headings to the Common Customs Tariff.
3. The phrase 'mechanically propelled' in heading 86.04 of the Common Customs Tariff must be interpreted as covering self-propelled vehicles for track maintenance, equipped with one or more engines enabling the vehicle to move about from place to place rapidly on the track and quite independently.

In Case 35/75

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Berlin for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

MATISA-MASCHINEN-GMBH, Bielefeld

and

HAUPTZOLLAMT BERLIN-PACKHOF, Berlin

on the interpretation of headings 86.04 B and 84.23 A II b of the Common Customs Tariff, Regulation (EEC) No 950/68 of the Council of 28 June 1968 (OJ L 172 of 22. 7. 1968, p. 1).

THE COURT

composed of: R. Lecourt, President, R. Monaco and H. Kutscher, Presidents of Chambers, A. M. Donner (Rapporteur), J. Mertens de Wilmars, P. Pescatore, M. Sørensen, A. J. Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts, procedure and 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

On 3 June 1971 Matisa-Maschinen-GmbH applied to the Hauptzollamt Berlin-Packhof for customs clearance for free circulation of a Matisa machine for tamping, levelling and adjusting railway tracks. This machine is a vehicle running on rails for use in the repair of railways. It is used for tamping or ramming down under the sleepers the bedding materials on which railway tracks are laid and straightening the railway lines. The machine consists of a roofed railway track chassis equipped with the machinery necessary to execute the works for which it was designed, in particular for tamping boxes each with two pairs of tampers, track lifting, track shifting and levelling devices. The diesel engine not only drives the working machinery and propels the vehicle during its work, but also enables it to move about rapidly from place to place at speeds of up to 80 km per hour in both forward and reverse directions.

The Hauptzollamt first of all classified the machine under heading 84.23 A II b of the Common Customs Tariff.

Heading 84.23 is worded as follows:

'84.23 Excavating, levelling, tamping, boring and extracting machinery, stationary or mobile, for earth, minerals or ores (for example, mechanical shovels, coal cutters, excavators, scrapers, levellers and bulldozers); pile drivers, snow ploughs, not selfpropelled (including snow-plough attachments):

A — Excavating, levelling, tamping, boring and extracting machinery for earth, minerals or ores:

I. Self-propelled, track laying or wheeled, not capable of running on rails

II. Other:

(a) Boring and sinking machinery

(b) Other

B — Pile drivers; snow ploughs, not self-propelled (including snow-plough attachments).'

By a notice of amendment dated 2 March 1972 the Hauptzollamt classified the machine under heading 86.04 B on the ground that it was not just a working machine, but a railway maintenance vehicle on account of its capacity for moving rapidly under its own power from place to place within the railway network.

Heading 86.04 is worded as follows:

'86.04 Mechanically propelled railway and tramway coaches, vans and trucks, and mechanically propelled track inspection trolleys:

A — electric railway and tramway coaches, vans and trucks (powered from an external source of electricity)

B — other.'

After unsuccesfully objecting to the new notice of recovery, Matisa-Maschinen-GmbH brought a action before the Finanzgericht Berlin for the annulment of the notice.

In these proceedings the Hauptzollamt maintains that it is not a question of a working machine within the meaning of heading 84.23 since the machine has great mobility on the railway network and by reason of this it should be classified, as mechanically propelled, under heading 86.04. It relies mainly on paragraph 13 of the Explanatory Notes to the Brussels Nomenclature on heading 86.04. This note is worded as follows:

'This heading further covers self-propelled vehicles for track maintenance (in particular, railway track liners), equipped with one or more engines which not only power the working machines mounted thereon (track-setters, ballast-tampers, etc), and propel the vehicle while work is in progress but also enable it to travel rapidly along the track, as a self-propelled unit, when the working machines are not in operation.'

The Hauptzollamt maintains that the concept 'mechanically propelled' within the meaning of heading 86.04 covers not only railway vehicles intended to carry passengers and goods, but also service vehicles intended to maintain railway track and vehicles.

Matisa-Maschinen-GmbH considers on the other hand that the concept 'mechanically propelled' can include only vehicles basically intended to carry passengers or goods. The machine in question must be regarded as a working machine.

It is of the opinion that the Hauptzollamt cannot rely on the Explanatory Notes to the Brussels Nomenclature in support of the opposite argument. In the plaintiff's view these notes are invalid in law in that they widen the scope of heading 86.04 far beyond the subject-matter which forms

the legal content of this heading. Finally 'levellers' are expressly mentioned in heading 84.23 by way of example.

By order dated 19 March 1975 the Finanzgericht Berlin (IIIrd Senate) stayed the proceedings and submitted the following question to the Court of Justice of the European Communities under Article 177 of the EEC Treaty:

'Is the Matisa machine for tamping, levelling and adjusting railway tracks, imported by the plaintiff in the present action on 3 June 1971 into the territory of the European Economic Community, to be classified under subheading 86.04 B (as a mechanically propelled railway coach) or under subheading 84.23 A II b (as earth moving machinery) of the Common Customs Tariff (CCT) — Regulation (EEC) of the Council No 950/68 of 28 June 1968 — OJ L 172 of 22 July 1968, p. 1?

In particular, are the Explanatory Notes to the Brussels Nomenclature — Bundesgesetzblatt 1953 II, p. 2; GVBl Berlin 1954, p. 284 — according to which the import machine might possibly be classified as a mechanically propelled railway coach, binding under Community law for the interpretation of the CCT?'

The order of the Finanzgericht Berlin was registered at the Court Registry on 1 April 1975.

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 its Legal Adviser, Jean Amphoux, acting as Agent, assisted by Mr. Götz zur Hausen, a member of the Legal Department.

II — Written observations submitted to the Court

With regard to the scope of the Explanatory Notes to the Brussels Nomenclature, the *Commission* cites the case-law of the Court according to which in the absence of Community provisions in the matter the Explanatory Notes 'afford an authoritative source for the purpose of the interpretation' of the provisions of the Common Customs Tariff.

The Commission stresses the necessity of the uniform application of the Common Customs Tariff throughout the whole of the Community and considers that the Explanatory Notes constitute an important instrument of interpretation enabling a correct application of Community law to be arrived at.

With regard to the question of classifying the machine for tamping, levelling and adjusting railway tracks, the Commission states that according to the wording of Note 1 k of Section XVI of the Common Customs Tariff (machinery and mechanical applicances; electrical parts thereof) classification under heading 84.23 is automatically ruled out if the machine comes under 'vehicles, aircraft, ships or boats'.

Accordingly, it is necessary to define the concept of 'vehicles, aircraft, ships or boats' in the sense of Section XVII, in particular that of 'railway and tramway locomotives, rolling-stock' in Chapter 86 of the Common Customs Tariff.

Since it concerns in the present case a self-propelled vehicle, the question ultimately relates to the interpretation of the concept of 'mechanically propelled' within the meaning of heading 86.04.

The Commission recalls that when the Council's Committee on Common Customs Tariff Nomenclature was previously consulted on a tariff classification of a machine very similar to the one in the present case, it pronounced itself in favour of a classification under heading 86.04 and that as a result the Explanatory Notes on this heading were accordingly amended.

In the Commission's opinion the present case is likewise concerned with 'mechanically propelled' coming under heading 86.04.

A consideration of the structure of Chapter 86 shows that it was intended to include therein all railway or tramway track construction material, including not only rolling stock but also track fixtures and fittings. This is moreover confirmed by the Explanatory Notes to the Brussels Nomenclature to Chapter 86 which is worded as follows:

'This Chapter covers locomotives and rolling-stock, and parts thereof, and certain track fixtures and fittings, for railways or tramways of any kind (including narrow gauge railways, single rail railways, etc.). It also covers containers specially designed and equipped for carriage by one or more modes of transport; also mechanical equipment, not electrically powered, for signalling to or controlling traffic of all kinds.'

It is true that the mere fact of moving from place to place by rail would not make a machine a railway vehicle within the meaning of Chapter 86. The decisive criterion for such classification is that the machines are intended to travel over a network of a certain extent. As regards, in particular, the concept of 'mechanically propelled' within the meaning of heading 86.04, the determining factor is the vehicle's capacity to move from place to place by its own means over the whole network without, as distinct from the case of locomotives, traction or the pushing of other railway vehicles being the main objective.

The fact that self-propelled machines intended for track maintenance come under heading 86.04 is, moreover, confirmed by a comparison with the wording of heading 86.06 which covers track maintenance vehicles moving from place to place on rails which are not self-propelled but moved by locomotives. The Explanatory Notes to the Brussels Nomenclature on this heading also expressly refer to tampers (under 4). As regards the classification of track maintenance machines it thus appears that the notes to heading 86.06 agree with those to heading 86.04, save with regard to the matter of self-propulsion which distinguishes the two headings.

Finally it would appear quite unjustified and illogical to infer that a means of self-propulsion is a reason for not regarding the machine as a vehicle and thus classifying it under Chapter 84. A non-self-propelled machine is even less assimilable to rolling-stock than a self-propelled machine which is much more akin to locomotives.

The Commission therefore considers that the questions raised should be answered as follows:

1. In the absence of relevant Community explanatory notes, the explanatory notes provided for by the Convention on Nomenclature for the Classification of Goods in Customs Tariffs are an authoritative source for the purposes of the interpretation of the headings to the Common Customs Tariff.
2. The phrase 'mechanically propelled' in heading 86.04 of the Common Customs Tariff must be interpreted as meaning that it covers all railway or tramway track vehicles having a means of propulsion enabling them to move from place to place over the whole of the network even if their main object is not to move other railway or tramway non-self-propelled vehicles.

III — Oral procedure

Matisa-Maschinen-GmbH, represented by Wolfgang Schlüter, Advocate of Bielefeld and the Commission of the European Communities, represented by its Legal Adviser Jean Amphoux, acting as Agent, assisted by Mr Götz zur Hausen, member

of the Legal Department, presented their oral observations at the hearing on 24 September 1975.

The Advocate-General delivered his opinion at the hearing on 14 October 1975.

Law

1 By order dated 19 March 1975, which arrived at the Registry on 1 April 1975, the Finanzgericht Berlin referred two questions to the Court for a preliminary ruling on the interpretation of the Common Customs Tariff (OJ L 172, 1968).

The first question asks whether the 'Matisa machine for tamping, levelling and adjusting railway-tracks' is to be classified under subheading 86.04 B (as a mechanically propelled railway coach) or under subheading 84.23 A II b (as earthmoving machinery) of the Common Customs Tariff.

The second question asks whether the Explanatory Notes to the Brussels Nomenclature relating to the aforementioned headings are binding under Community law for the interpretation of the Common Customs Tariff.

2 As regards this latter question, the Court, in its Judgment of 8 December 1970 in Case 14/70, *Bakels* v *Oberfinanzdirektion München,* ([1970] ECR) stated:

'In the absence of relevant Community provisions, the explanatory notes and the classification opinions provided for by the Convention on Nomenclature for the Classification of Goods in Customs Tariffs are an authoritative source for the purpose of the interpretation of the headings to the Common Customs Tariff.'

Since there is nothing in the present case capable of leading to a different conclusion, it is proper to reply to the same effect.

3 The machine in question is described by the order as a vehicle running on rails intended for the maintenance of railways and used for tamping or ramming down under the sleepers the bedding materials on which the railway-tracks are laid and for straightening the railway lines; it consists of a roofed railway track chassis equipped with machinery necessary to execute the works for which it was designed, in particular for tamping boxes, each with two pairs of tampers, track lifting, track shifting and levelling devices, while the diesel engine not only drives the working machinery and propels

the vehicle during its work, but also enables it to move about rapidly from place to place at speeds of up to 80 km per hour in both forward and reverse directions.

Although the Court in ruling under Article 177 does not have jurisdiction to apply the Community rule to a specific case, it may however supply the national courts with the principles of interpretation relating to Community law which may be useful in the application of this rule.

4 Heading 84.23 A II b relates to:

'Excavating, levelling, tamping, boring and extracting machinery, stationary or mobile, for earth, minerals or ores (for example, mechanical shovels, coal cutters, excavators, scrapers, levellers and bulldozers); pile drivers, snow ploughs, not self-propelled (including snow plough attachments):

A — Excavating, levelling, tamping, boring and extracting machinery for earth, minerals or ores:

I. Self-propelled, track laying or wheeled, not capable of running on rails

II. Other:

(a) boring and sinking machinery

(b) other.'

Heading 86.04 B is worded:

'Mechanically propelled railway and tramway coaches, vans and trucks, and mechanically propelled track inspection trolleys:

A — Electric railway and tramway coaches, vans and trucks (powered from an external source of electricity)

B — Other.'

5 Heading 84 comes in Section XVI of the Common Customs Tariff and heading 86 in Section XVII.

The introductory notes to Section XVI are worded.

'1. This Section does not cover:... (k) vehicles, aircraft, ships or boats, of Section XVII.'

It is therefore necessary to define the concept 'vehicles, aircraft, ships or boats'.

6 A perusal of Chapter 86 of the Common Customs Tariff headed 'Railway and tramway locomotoves, rolling stock and parts thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)', shows an intention to bring under this chapter all railway equipment and in particular rolling stock.

Although the word 'Triebwagen' in the German version of heading 86.04 is capable of giving the impression that it refers only to vehicles intended to carry passengers and goods, a comparison with the versions in the other languages shows that it can in addition cover vehicles running on rails intended for railway maintenance.

In these circumstances the wording of this heading is no obstacle to the Explanatory Notes to the Brussels Nomenclature relating thereto being accepted as an authoritative source for the purpose of interpretation when it states:

'This heading further covers self-propelled vehicles for track maintenance (in particular, railway trackliners), equipped with one or more engines which not only power the working machines mounted thereon (track setters, ballast-tampers, etc.), and propel the vehicle while work is in progress but also enable it to travel rapidly along the track, as a self-propelled unit, when the working machines are not in operation.'

7 It is therefore proper to reply to the first question that the phrase 'mechanically propelled' in heading 86.04 of the Common Customs Tariff must be interpreted as covering self-propelled vehicles for track maintenance, equipped with one or more engines enabling the vehicle to move about from place to place rapidly on the track and quite independently.

Costs

8 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action before the Finanzgericht Berlin, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Finanzgericht Berlin by order dated 19 March 1975, hereby rules:

In the absence of relevant Community provisions on the subject, the explanatory notes and the classification opinions provided for by the Convention on Nomenclature for the Classification of Goods in Customs Tariffs are an authoritative source for the purposes of the interpretation of the headings to the Common Customs Tariff.

The phrase 'mechanically propelled' in heading 86.04 of the Common Customs Tariff must be interpreted as covering self-propelled vehicles for track maintenance, equipped with one or more engines enabling the vehicle to move about from place to place rapidly on the track and quite independently.

Lecourt Monaco Kutscher Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 23 October 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 14 OCTOBER 1975

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Finanzgericht of Berlin. The question that that Court has to decide is as to the classification under the Common Customs Tariff of a piece of equipment