JUDGMENT OF THE COURT (Sixth Chamber)

11 June 2009 *

In Case C-16/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Administratīvā apgabaltiesa (Latvia), made by decision of 13 December 2007, received at the Court on 15 January 2008, in the proceedings

Schenker SIA

v

Valsts ieņēmumu dienests,

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann (Rapporteur) and C. Toader, Judges,

* Language of the case: Latvian.

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

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Schenker SIA, by E. Āboliņa, authorised representative,

— Valsts ieņēmumu dienests, by D. Jakāns, acting as Agent,

— the Hungarian Government, by R. Somssich, J. Fazekas and K. Borvölgyi, acting as Agents,

— the Commission of the European Communities, by G. Wilms and E. Kalnins, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of the Combined Nomenclature constituting 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 1789/2003 of 11 September 2003 (OJ 2003 L 281, p. 1; 'the CN').

2 The reference has been made in the course of proceedings between Schenker SIA ('Schenker') and Valsts ieņēmumu dienests (Latvian tax administration; 'the VID') concerning the tariff classification of certain active matrix liquid crystal devices (LCD).

Legal context

3 The Combined Nomenclature, introduced by Regulation No 2658/87, is based on the International Harmonised Commodity Description and Coding System ('the HS') drawn up by the Customs Cooperation Council, now the World Customs Organisation, established by the International Convention concluded at Brussels on 14 June 1983 and the Protocol of Amendment thereto of 24 June 1986, and approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 Part One of the CN contains preliminary provisions. In that part, Section I, which contains general rules, Subsection A, entitled 'General rules for the interpretation of the [CN]' ('the general rules'), provides:

'Classification of parts 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.

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

…'

5 Part Two of the CN, which contains the table of customs duties, 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'.

6 Heading 8528 of the CN ('heading 8528') is worded as follows:

'8528 Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:

…

— Video monitors

8528 21 — — colour:

…

8528 21 90 — — — Other

…'

7 Heading 8529 is worded as follows:

‘8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
…	
8529 90	— others:
…	
8529 90 81	— — — — for television cameras of subheading 8525 30 and apparatus of headings 8527 and 8528
…’	

8 Under Heading 9013 of the CN:

‘9013 Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter:

…

9013 80 — other devices appliances and instruments:

— — Liquid crystal devices:

9013 80 20 — — — Active matrix liquid crystal devices

…’

9 The Explanatory Notes to the CN published by the Commission on 23 October 2002 (OJ 2002 C 256, p. 1) refer, with regard to subheadings 8528 21 14 to 8528 21 90, to the Explanatory Notes for heading 8528 of the HS, second paragraph of Section 6,

appearing in the *HS Compendium of Classification Opinions* published by the World Customs Organisation.

10 The Explanatory Notes to the HS regarding heading 8528 provide as follows:

'…

This heading includes reception apparatus for television, whether or not incorporating radio-broadcasting receivers or sound video recording or reproducing apparatus: video monitors and video projectors.

Apparatus falling under this heading includes:

…

(6) Video monitors which are receivers connected directly to the video camera or recorder by means of co-axial cables, so that all the radio-frequency circuits are eliminated. They are used by television companies or for closed-circuit television (airports, railway stations, steel plants, hospitals, etc.). These [appliances] consist essentially of devices which can generate a point of light and display it on a screen synchronously with the source signals. They incorporate one or more video amplifiers with which the intensity of the point can be varied. They can, moreover, have separate inputs for red (R), green (G) and blue (B), or be coded in accordance with a particular standard (NTSC, SECAM, PAL, D-MAC, etc.). For reception of

coded signals, the monitor must be equipped with a decoding device covering (the separation of) the R, G and B signals. The most common means of image reconstitution is the cathode-ray tube, for direct vision, or a projector with up to three projection cathode-ray tubes; however, other monitors achieve the same objective by different means (e.g., liquid crystal screens, diffraction of light rays on to a film of oil). These may be in the form of CRT monitors or flat panel displays e.g., LCD, LED, plasma, etc.

…

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus of this heading are classified under heading 85.29.'

11 The Explanatory Note to the HS concerning heading 9013 is worded as follows:

'… This heading includes:

(1) Liquid crystal devices consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastics, whether or not fitted with electrical connections, presented in the piece or cut to special shapes and not constituting articles described more specifically in other headings of the CN.

…'

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

12 On 29 December 2004, Schenker filed a customs declaration in respect of a series of articles, namely TFT LCD active matrix liquid crystal devices LTA320W2-L01, LTA260W1-L02 and LTM170W1-L01, with an aggregate value of USD 108 720, classifying them under subheading 9013 80 20 of the CN and therefore applying to them a rate of import duty of 0%.

13 It is apparent from the documents submitted to the Court that those devices are constituted of two glass plates, a layer of liquid crystal inserted between the two plates, vertical and horizontal signal drivers, a backlight, an inverter providing high-voltage power for the backlight and, finally, a control block — data transmission interface (control PCB or PWB) to ensure sequential transmission of data to each pixel (dot) of the LCD unit using specific technology — LVDS (low-voltage differential signalling).

14 When Schenker's declaration regarding those parts was checked, the Rīgas Muitas reģionālā iestāde (Riga Region Customs Office) of the VID was doubtful as to whether the subheading of the CN given was correct. Samples were therefore retained and sent to the appropriate customs service in order to establish the applicable code of the CN. The customs officials took the view that the correct tariff classification was subheading 8528 21 90 and not the classification used by Schenker, namely subheading 9013 80 20. The rate of import duty corresponding to the classification used by the VID which, in the view of that administration, should have been applied to the parts is 14%.

15 Consequently, on 24 February 2005, the VID adopted a decision by which it held that Schenker had committed an administrative infringement on the basis of the provisions of the Latvian Administrative Infringements Code and imposed on it a fine of LVL 300, which decision was confirmed by the Director-General of the VID on 7 June 2005.

16 On 11 July 2005, Schenker brought an action before the Administratīvā rajona tiesa (District Administrative Court) for annulment of the decision of the Director-General of the VID submitting, essentially, that the parts at issue in the main proceedings should not have been classified under subheading 8528 21 90 of the CN, that is to say, as finished articles within the meaning of the CN, since they are not equipped with any interfaces for the transmission or reception of video signals.

17 On 12 May 2006, the Administratīvā rajona tiesa dismissed Schenker's action. While agreeing with Schenker that the parts in question must not be declared as complete or finished articles, that court held that the technical documentation before it shows that they contain the principal components which ensure performance of the basic function of the parts, namely the transmission of data. The classification made by the VID is therefore justified, since the parts constitute incomplete or unfinished articles which already have the essential character of the complete article.

18 On 2 June 2006, Schenker lodged an appeal before the Administratīvā apgabaltiesa (Administrative Court of Appeal). That court, having regard to the doubts which it entertained as to the tariff classification of the parts at issue in the main proceedings, decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must [sub]heading [8528 21 90] of the Combined Nomenclature be interpreted as meaning that, as at 29 December 2004, it was also applicable to active matrix liquid crystal devices (TFT LCD — LTA320W2-L01, LTA260W1-L02, LTM170W1-L01) principally made up of the following elements:

— two glass plates;

— a layer of liquid crystal inserted between the two plates;

— vertical and horizontal signal drivers;

— backlight;

— inverter providing high-voltage power for backlight;

— control block — data transmission interface (control PCB or PWB) to ensure sequential transmission of data to each pixel (dot) of the LCD unit using specific technology — LVDS (low-voltage differential signalling)?'

The question referred for a preliminary ruling

Arguments of the parties

19 Schenker submits, essentially, that the devices at issue in the main proceedings are not intended for a single, specific use and can be used to manufacture numerous articles, such as computers, video monitors, televisions, electronic signs, medical installations, automatic monitoring installations or game machines. For that reason, those devices do not fall within subheading 8528 21 90 of the CN which covers video monitors and, more generally, finished articles.

20 The VID and the Commission contend, however, that the devices at issue in the main proceedings, since they include additional parts not listed in subheading 9013 80 20 of the CN, such as a backlight, an inverter providing high-voltage power for the backlight and a control block ensuring sequential transmission of data to each pixel, cannot be classified in that subheading.

21 Moreover, the VID submits that the devices in question are able to receive and display video images and so technically can perform the principal function of a video monitor. Accordingly, in accordance with the General Rule set out in Section I(2)(a) of Part I A of the CN, they can be regarded as unfinished or incomplete articles equivalent to finished/complete articles and therefore as coming under subheading 8528 21 90 of the CN covering video monitors.

22 For its part, the Commission submits that, in accordance with the relevant Explanatory Note to the HS, the parts at issue in the main proceedings, which can be regarded as parts intended for machines coming under heading 8528 of the CN, must be classified under heading 8529 and more specifically under subheading 8529 90 81 of the CN.

23 In the view of the Hungarian Government, the devices in question do not have the essential characteristics of the completed or finished article since, at this stage, it is not yet possible to determine in which type of finished article those devices will be used. Consequently, the most appropriate heading of the CN would be heading 9013.

Findings of the Court

24 First of all, it is settled case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of parts 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 (see, inter alia, Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 16, and the case-law cited).

25 In addition, the intended use of an article may constitute an objective criterion for classification if it is inherent to the article, and that inherent character must be capable of being assessed on the basis of the article's objective characteristics and properties (see Case C-403/07 *Metherma* [2008] ECR I-8921, paragraph 47).

26 Both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the HS are important means of ensuring the uniform application of the tariff and as such may be regarded as useful aids to its interpretation (Joined Cases C-362/07 and C-363/07 *Kip Europe and Others* [2008] ECR I-9489, paragraph 27).

27 In the present case, having regard to the description of the parts at issue in the main proceedings supplied by the national court, their characteristics do not correspond to subheading 9013 80 20 of the CN, which covers 'active matrix liquid crystal devices'. The devices at issue in the main proceedings are in fact also equipped with parts not listed in that heading, including, inter alia, a backlight, an inverter providing high-voltage power for the backlight and a control block ensuring sequential transmission of

data to each pixel. Those devices may have a number of intended uses, but different vital components must be added to them in order for those parts to acquire the basic characteristics of a complete article. Thus, nor is subheading 8528 21 90 of the CN, which covers 'video monitors', that is to say, finished articles, the appropriate subheading for classification of the liquid crystal devices at issue in the main proceedings.

28 It is true that, under the rule stated in Section I(2)(a) of Part I A of the CN, a particular heading covers an incomplete or unfinished article, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. Such does not appear to be the case with the items at issue in the main proceedings since their end use depends on the additional parts added to them during the next stage of manufacture.

29 Consequently, the liquid crystal devices at issue in the main proceedings cannot be classified under subheadings 9013 80 20 or 8528 21 90 of the CN.

30 However, those devices may, as parts which can be used in apparatus coming under heading 8528 of the CN ('Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors'), be classified, in accordance with the Explanatory Notes to the HS relating to heading 8528, under heading 8529 of the CN ('Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528'), more specifically under subheading 8529 90 81 ('for television cameras of subheading 8525 30 and apparatus of headings 8527 and 8528').

31 It is for the national court to ascertain whether the liquid crystal devices at issue in the main proceedings have the objective characteristics and properties necessary to be regarded as parts suitable for use solely or principally with the apparatus of headings 8525 to 8528 of the CN.

32 Consequently, the answer to the question referred must be that subheading 8528 21 90 of the CN must be interpreted as not applying, as at 29 December 2004, to active matrix liquid crystal devices (LCD) principally made up of the following elements:

— two glass plates;

— a layer of liquid crystal inserted between the two plates;

— vertical and horizontal signal drivers;

— backlight;

— inverter providing high-voltage power for backlight;

— control block — data transmission interface (control PCB or PWB) to ensure sequential transmission of data to each pixel (dot) of the LCD unit using specific technology — LVDS (low-voltage differential signalling).

Costs

33 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 (Sixth Chamber) hereby rules:

Subheading 8528 21 90 of the Combined Nomenclature constituting 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 1789/2003 of 11 September 2003, must be interpreted as not applying, as at 29 December 2004, to active matrix liquid crystal devices (LCD) principally made up of the following elements:

— **two glass plates;**

— **a layer of liquid crystal inserted between the two plates;**

— **vertical and horizontal signal drivers;**

— **backlight;**

— **inverter providing high-voltage power for backlight;**

— **control block — data transmission interface (control PCB or PWB) to ensure sequential transmission of data to each pixel (dot) of the LCD unit using specific technology — LVDS (low-voltage differential signalling).**

[Signatures]