JUDGMENT OF THE COURT (Seventh Chamber)

22 December 2010 *

In Case C-12/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Germany), made by decision of 28 December 2009, received at the Court on 8 January 2010, in the proceedings

Lecson Elektromobile GmbH

v

Hauptzollamt Dortmund,

THE COURT (Seventh Chamber),

composed of D. Šváby, President of the Chamber, E. Juhász and J. Malenovský (Rapporteur), Judges,

* Language of the case: German.

Advocate General: N. Jääskinen,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the European Commission, by L. Bouyon and B.-R. Killmann, 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 concerns the interpretation of headings 8703 and 8713 of the Combined Nomenclature of the Common Customs Tariff ('the CN') in Annex 1 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 1810/2004 of 7 September 2004 (OJ 2004 L 327, p. 1).

2 The reference has been made in proceedings between Lecson Elektromobile GmbH ('Lecson') and Hauptzollamt Dortmund (Principal Customs Office, Dortmund; 'the

Hauptzollamt') concerning the tariff classification of three or four-wheeled electric vehicles designed for the transport of one person, powered by a battery-operated electric motor and reaching a maximum speed of 6 to 15 km/h, known as 'electric mobility scooters'.

Legal context

3 The CN, established by Regulation No 2658/87, is based on the Harmonised Commodity Description and Coding System drawn up by the Customs Cooperation Council, now the World Customs Organisation, and established by the International Convention on the Harmonised Commodity Description and Coding System concluded at Brussels on 14 June 1983 and the Protocol of Amendment thereto, which were approved on behalf of the European Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The CN takes the headings and six-digit subheadings from the harmonised system, only the seventh and eighth digits forming subdivisions specific to the CN.

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

'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.

…'

5 In Part Two of the CN, Section XVII, headed 'Vehicles, aircraft, vessels and associated transport equipment', contains Chapter 87, which is headed 'Vehicles other than railway or tramway rolling stock, and parts and accessories thereof' and includes in particular the following tariff headings:

'8703 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.

8703 10 – Vehicles specially designed for travelling on snow; golf cars and similar vehicles:

8703 10 11 – – Vehicles specially designed for travelling on snow, with compression-ignition internal combustion piston engine (diesel or semi-diesel), or with spark-ignition internal combustion piston engine:

8703 10 18 – – Other

…

8713 Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled:

8713 10 00 – Not mechanically propelled

8713 90 00 – Other.'

6 Under the second indent of Article 9(1)(a) and Article 10 of Regulation No 2658/87, the European Commission adopts explanatory notes to the CN, which are published in the *Official Journal of the European Union*.

7 On 4 January 2005, the following text was inserted in the explanatory notes to the CN, with a view to the latter's uniform application (OJ 2005 C 1, p. 3):

'8713 Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled

8713 90 00 Other

Motorised vehicles specifically designed for disabled persons are distinguishable from vehicles of heading 8703 mainly because they have:

— a maximum speed of 10 km per hour, i.e. a fast walking pace;

— a maximum width of 80 cm;

— 2 sets of wheels touching the ground;

— special features to alleviate the disability (for example, footrests for stabilising the legs).

Such vehicles may have:

— an additional set of wheels (anti-tips);

— steering and other controls (for example, a joystick) that are easy to manipulate; such controls are usually attached to one of the armrests; they are never in the form of a separate, adjustable steering column.

This subheading includes electrically-driven vehicles similar to wheelchairs which are only for the transport of disabled people. They can have the following appearance:



However, motor-driven scooters (mobility scooters) fitted with a separate, adjustable steering column are excluded from this subheading. They can have the following appearance and are classified in heading 8703:



»

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

8 Between July and October 2005, Lecson lodged seven customs declarations regarding various electric mobility scooters made in China and Taiwan. Those customs declarations describe the goods as 'wheelchairs and other vehicles for the disabled, electric mobility scooters' and classify them under subheading 8713 90 00 of the CN. The goods were released for free circulation in accordance with the applications, without customs duties being levied and with import turnover tax being charged at a reduced rate.

9 Following an audit of Lecson, carried out in 2008, the Hauptzollamt classified the goods under subheading 8703 10 18 of the CN as 'other vehicles' and by a decision of 2 July 2008 applied tax adjustments to that company for customs duties and turnover tax relating to those goods.

10 Lecson lodged an objection against that decision, which was rejected by decision of the Hauptzollamt of 14 May 2009. The company then brought an action against the decision rejecting its objection before the Finanzgericht ('Finance Court') Düsseldorf.

11 The objection and the action both refer to judgments delivered by the Customs Chamber of the Amsterdam Court of Appeal on 8 April 2008, according to which electric mobility scooters should be classified under subheading 8713 90 00 of the CN. The Hauptzollamt considered however that electric mobility scooters are not specially designed for the transport of disabled people and as a result fall within subheading 8703 10 18 of the CN.

12 According to the wording of the order for reference, electric mobility scooters are three or four-wheeled motor vehicles designed for the transport of one person. Depending on the type, these vehicles reach a maximum speed of 6 to 15 km/h. They are between 100 and 152 cm long and between 47 and 67 cm wide. They are manufactured

in such a way that they always have a platform on which the driver can place his feet. Some of the vehicles also have a small additional axle, intended to serve as an anti-tipping system. The vehicles are operated by an adjustable steering column to which the steering and other controls for driving and braking, and often a metal basket, are attached.

13 The Finanzgericht Düsseldorf starts from the premiss that key elements support the classification of the electric mobility scooters at issue under subheading 8703 10 18 of the CN. The Finanzgericht also has doubts as to the contrary position adopted by the Amsterdam Court of Appeal in its decisions cited in paragraph 11 of this judgment.

14 However, in order to ensure uniformity in the application of European Union law, the Finanzgericht Düsseldorf decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the electric mobility scooters which are described more precisely in the order [for reference] fall within heading 8713 or heading 8703 of the [CN], as amended by Regulation (EC) No 1810/2004...?'

Consideration of the question referred

15 As a preliminary point, it should be borne in mind that, when the Court is requested to give a preliminary ruling on a matter of tariff classification, its task is to provide the national court with guidance on the criteria which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself,

in particular since the Court does not necessarily have available to it all the information which is essential in that regard. In any event, the national court is in a better position to do so (Joined Cases C-260/00 to C-263/00 *Lohmann and Medi Bayreuth* [2002] ECR I-10045, paragraph 26, and Case C-500/04 *Proxxon* [2006] ECR I-1545, paragraph 23). However, in order to give the national court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary (see, in particular, Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraph 30).

16 It should also be recalled that 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 found in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the section or chapter notes (see, in particular, Case C-396/02 *DFDS* [2004] ECR I-8439, paragraph 27; Case C-495/03 *Intermodal Transports* [2005] ECR I-8151, paragraph 47; and Case C-183/06 *RUMA* [2007] ECR I-1559, paragraph 27).

17 Finally, the explanatory notes to the CN drawn up by the Commission are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (Case C-250/05 *Turbon International* [2006] ECR I-10531, paragraph 16, and Case C-370/08 *Data I/O* [2010] ECR I-4401, paragraph 30).

18 Here, it is apparent from the wording of headings 8703 and 8713 of the CN themselves that the difference between them results from the fact that the first covers means of transport for persons in general, whereas the second applies specifically to means of transport for disabled persons.

19 Furthermore, it is clear from the explanatory note to the CN relating to heading 8713 that the decisive criterion for classification under that heading is the special design of the vehicle to help disabled persons. Accordingly, that heading covers electrically-driven vehicles similar to 'electric wheelchairs' ('Elektrorollstühle'), specifically

designed for the transport of disabled persons and with characteristics such as, in particular, a maximum speed of 10 km/h (which may correspond to a fast walking pace), special features to alleviate the disability (for example, footrests for stabilising the legs) and steering and other controls (such as a joystick) which are easy to reach and manipulate and therefore are usually attached to one of the armrests.

20 That explanatory note states in the last paragraph that, conversely, motor-driven scooters (mobility scooters) fitted with a separate, adjustable steering column are excluded from this heading and come under heading 8703 of the CN.

21 The electric mobility scooters on the classification of which the referring court must rule all have a separate, adjustable steering column, to which the steering and other controls for driving and braking and, as the case may be, a metal basket are attached.

22 Furthermore, those electric mobility scooters are equipped with a platform on which the driver can place his feet, but this does not constitute a support to stabilise the legs. The anti-tipping system of the electric mobility scooters also contributes to user comfort, but it does not include any specific feature which is aimed at aiding disabled persons' use of the scooters.

23 Lastly, as the information supplied by the referring court shows, the electric mobility scooters at issue in the main proceedings can reach a speed exceeding 10 km/h, being able to go at up to 15 km/h.

24 Consequently, in view of those characteristics as a whole, the electric mobility scooters at issue must be considered to be means of transport of persons falling within heading 8703 of the CN, and not vehicles for disabled persons for the purposes of heading 8713 of the CN.

25 Finally, it should be added that the mere fact that those electric mobility scooters may be used, where appropriate, by disabled persons or even may be adapted for use by disabled persons does not affect the tariff classification of such vehicles, since they are suitable for being used for a number of other activities by persons who do not suffer from any disability, but who for one reason or another prefer to travel short distances other than on foot, like, as the referring court indicates, golfers or persons going shopping.

26 Having regard to the foregoing considerations, the answer to the question referred is that heading 8703 of the CN must be interpreted as covering three or four-wheeled vehicles designed for the transport of one person who is not necessarily a disabled person, powered by a battery-operated electric motor, reaching a maximum speed of 6 to 15 km/h and equipped with a separate, adjustable steering column, known as 'electric mobility scooters', such as those at issue in the main proceedings.

Costs

27 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 (Seventh Chamber) hereby rules:

Heading 8703 of the Combined Nomenclature in Annex 1 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 1810/2004 of 7 September 2004 must be interpreted as covering three or four-wheeled vehicles designed for the transport of one person who is not necessarily a disabled person, powered by a battery-operated electric motor, reaching a maximum speed of 6 to 15 km/h and equipped with a separate, adjustable steering column, known as 'electric mobility scooters' such as those at issue in the main proceedings.

[Signatures]