JUDGMENT OF THE COURT (Second Chamber)
7 October 1985 *

In Case 163/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the proceedings pending before that court between

Hauptzollamt Hannover,

supported by

Bundesminister der Finanzen, Bonn,

and

Telefunken Fernseh und Rundfunk GmbH, Hannover,

on the interpretation of Heading No 85.15 of the Common Customs Tariff,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

Telefunken Fernseh und Rundfunk GmbH, the plaintiff in the main proceedings, by B. Bott, Rechtsanwalt, Karben,

the Government of the French Republic, by J. C. Antonetti, of the General Secretariat of the Interdepartmental Committee for Questions of European Economic Cooperation, acting as Agent,

* Language of the Case: German.

the Italian Government, by J. M. Braguglia, of the Avvocatura dello Stato, acting as Agent,

the Commission of the European Communities, by Ch. Bail, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 26 September 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By order of 8 May 1984, which was received at the Court on 27 June 1984, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Heading No 85.15 of the Common Customs Tariff (CCT).

2 That question was raised in the course of proceedings between the Hauptzollamt [Principal Customs Office] Hannover and Telefunken Fernseh und Rundfunk GmbH, Hannover, (hereinafter referred to as 'Telefunken') concerning the tariff classification of a number of combined tuners, record-players and cassette recorders (hereinafter referred to as 'music centres') imported together with loud-speaker boxes by Telefunken from Japan.

3 With a view to obtaining customs clearance, the goods in question were presented to the customs office in cartons each containing one music centre and two loud-speaker boxes. On the invoices from the Japanese suppliers attached to the customs declarations the goods were described, *inter alia*, as 'Telefunken music centre 3022 BF, ... complete with two speaker boxes . . . '.

4 At the hearing the Commission presented to the Court examples of the technical literature that is used for the purpose of marketing the goods; it is clear from that literature that the goods are offered to retailers and consumers as a single unit.

5 The customs office classified all the goods under tariff Heading No 85.15 (radio-broadcasting transmission and reception apparatus, including receivers incorporating sound recorders or reproducers) and calculated the customs duties accordingly.

6 Following an unsuccessful objection, Telefunken brought an action before the Finanzgericht [Finance Court] Hamburg claiming that the loudspeakers should be classified separately from the music centres under tariff Heading No 85.14 (microphones and stands therefor; loudspeakers; audio-frequency electric amplifiers) and that the customs duties should be reduced accordingly.

7 The Finanzgericht upheld the action and the Hauptzollamt, supported by the Bundesminister der Finanzen [Federal Minister of Finance] appealed to the Bundesfinanzhof, which with a view to giving a decision in the dispute referred the following question to the Court for a preliminary ruling:

'Is the Common Customs Tariff to be interpreted as meaning that a combined tuner, record-player and cassette recorder which is imported together with two loudspeakers specially intended for use with it falls within Heading No 85.15 of the Common Customs Tariff as constituting *one* item of goods?'

8 In the grounds of its order the Bundesfinanzhof observes that the goods should not be classified together merely because they were presented for customs clearance together; separate tariff classification is only ruled out if it follows from the CCT that the music centre and the loudspeakers are to be regarded for tariff classification purposes as one item and must therefore fall under a single tariff heading.

9 The Bundesfinanzhof states that the music centre and the two loudspeakers do not constitute a composite machine within the meaning of Note 3 to Section XVI of the CCT, but raises the question whether the 'functional unit' principle referred to

in the Explanatory Notes to the Customs Cooperation Council Nomenclature (ninth paragraph relating to Note 3 to Section XVI) is applicable in this case.

10 The Bundesfinanzhof observes that the Court not only recognized that principle in its judgments of 15 December 1977 (*Fuss* v *Oberfinanzdirektion München* [1977] ECR 2453) and 9 February 1984 (*Metro* v *Oberfinanzdirektion München* [1984] ECR 671), but has also consistently held the Explanatory Notes to be an authoritative guide to the interpretation of the CCT. However, those Notes may only be taken into account in so far as the rules contained therein are derived directly from the CCT itself, which is the only legal measure which falls for judicial consideration. The 'functional unit' principle can therefore only be applied if it is embodied in the CCT itself, for example in the second sentence of General Rule A 2 (a) or in Note 3 to Section XVI of the CCT.

11 As regards the definition of the term 'functional unit', the Bundesfinanzhof observes that the Explanatory Notes (*loc. cit.*) state that a machine or appliance constitutes a functional unit only where it 'consists of separate components which are designed to contribute together to a single clearly defined function described by one of the headings in Chapter 84 or, more frequently, Chapter 85'.

12 According to the Bundesfinanzhof, the Court's judgment in *Metro* (cited above) would seem to support the view that the loudspeakers are not components of a unit and do not, together with the music centre, perform a single function, because they may be used separately. In that judgment the Court held that no functional unit existed where a product which might have been regarded as a component of a functional unit could be used for functions other than those which could be performed by all the components together.

13 The Bundesfinanzhof adds that, if the music centre and the loudspeakers were regarded as forming a unit, they could not be classified under tariff subheading 85.14 because they would not then be parts of machines within the meaning of Note 2 to Section XVI of the CCT and therefore could not be classified according to paragraph (a) of that Note. The Bundesfinanzhof concludes from the judgments of the Court, in particular the aforesaid judgment of 15 December 1977 (Case 60/77, *Fuss*) and the judgment of 29 May 1979 (*IMCO-Michaelis* v *Oberfinanz-*

direktion Berlin [1979] ECR 1837), and from the Explanatory Notes to the Customs Cooperation Council Nomenclature (Notes relating to Section XVI) that a functional unit does not exist merely because the components of that unit are presented as such for the purposes of customs clearance.

The relevant provisions

14 Tariff subheading 85.15 A III covers:

'A. Radiotelegraphic and radiotelephonic transmission and reception apparatus; radio-broadcasting and television transmission and reception apparatus (including receivers incorporating sound recorders or reproducers) and television cameras:

...

III. Receivers, whether or not incorporating sound recorders or reproducers:

(a) Radio receivers and radiotelegraphic and radiotelephonic apparatus for use in civil aircraft

(b) Other:

1. ...

2. Other'.

15 Tariff subheading 85.14 reads as follows:

'85.14 Microphones and stands therefor; loudspeakers; audio-frequency electric amplifiers'.

16 Note 2 (a) to Section XVI of the CCT provides that, subject to certain other provisions:

'Goods of a kind described in any of the headings of Chapters 84 and 85 (other than Heading Nos 84.65 and 85.28) are in all cases to be classified in their respective headings.'

17 Note 3 to the same section provides that:

'Unless the headings otherwise require, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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 peforms the principal function.'

18 The Customs Cooperation Council's Notes to Section XVI of the CCT contain the following statement with regard to parts (Note 2 to Section XVI):

'In general, parts which are recognizable as specialized to or mainly for use with particular machines or apparatus (including those of Heading No 84.59 or Heading No 85.22), or with a group of machines or apparatus falling in the same heading, are classified under the same heading as those machines or apparatus subject, of course, to the exclusions mentioned in Part (I) above ... The above rules do not apply to parts which in themselves constitute an article covered by a heading of this Section (other than Heading Nos 84.65 and 85.28); these are in all cases classified in their own appropriate heading even if specially designed to work as part of a larger machine.'

19 The aforesaid Explanatory Notes (ninth paragraph of the notes concerning Note 3 to Section XVI) state, with regard to 'multi-purpose machines . . . and combinations of machines', that Note 3 to Section XVI:

'does not apply when a machine or appliance consists of separate components which are designed to contribute together to a single clearly defined function described by one of the headings in Chapter 84 or, more frequently, Chapter 85.'

20 Rule 3 of the Rules for the Interpretation of the Nomenclature of the CCT (General Rule A 3) provides as follows:

'When for any 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.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, 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) ...'.

21 Observations have been submitted in this case by Telefunken, the Italian and French Governments and the Commission.

22 According to Telefunken, the music centre and the loudspeakers should not be classified together merely because they were presented for customs clearance together; they should be so classified only if they are to be regarded as a single apparatus. The music centre and the loudspeakers do not constitute a 'functional unit' within the meaning of the Explanatory Notes (ninth paragraph of the notes concerning Note 3 to Section XVI) because the developments in modern stereophonic equipment are such that the loudspeakers are no longer part of the reception apparatus but are independent apparatus capable of general use and, hence, separate goods for the purposes of the CCT.

23 In addition, Telefunken maintains that the circumstances of this case are similar to those in *Metro* (judgment of 9 February 1984, Case 60/83, cited above), where the Court held that a product which, on importation, consisted of several components separately packed in one carton could not be regarded as a functional unit where one of the components could be used 'independently of the other components and for functions other than those which may be performed by all the components together'. The function of making electromagnetic waves audible can be performed in conjunction with other apparatus such as, for example, a tape-recorder; it is not, on the other hand, inherent in the nature of a radio-broadcasting reception apparatus, within the meaning of the CCT, that sound reproduction should be possible by means of directly linked loudspeakers.

24 The Italian Government considers that the loudspeakers must be classified separately from the music centre under tariff heading 85.14 even if they are

intended for use with the music centre, since they are expressly referred to by that heading and do not constitute components of the reception apparatus or music centres. The functional unit principle is inapplicable because the loudspeakers may also be used with apparatus other than the music centres with which they were imported, and the music centres, even without the loudspeakers, can perform certain independent functions.

25 The French Government is of the opinion that there is no reason to apply the functional unit principle in this case, because the goods in question, which were imported together in a single package, constitute a set. Since the music centre gives the goods their essential character, they must be classified under tariff subheading 85.15 A III, pursuant to General Rule A 3 (b).

26 The Commission stresses that the rules and notes in the CCT make no reference to the functional unit principle; however General Rule A 2 (a) and Notes 2 (b) and 3 to Section XVI of the CCT justify a functional approach, which must also be applicable to the interpretation of the terms used in the tariff headings themselves. The Commission considers that that principle may therefore be relied upon in this case for the purpose of interpreting a tariff heading in Chapters 84 and 85.

27 The Commission is of the opinion that the music centre and the loudspeakers constitute a functional unit, because they together perform exactly the function described in tariff subheading 85.15 A III. On the one hand, without loudspeakers the reproduction of sound is not possible and consequently the music centre is not complete. On the other hand, the loudspeakers can perform no other function than that of making audible the impulses transmitted to them from the receiver, records or magnetic tapes. It is immaterial that individual components of a functional unit may be used otherwise than as part of the unit, provided that they cannot be used for a function described in another tariff heading and are presented for customs clearance and are marketed in a single package.

28 The Commission subscribes to the Bundesfinanzhof's view that, in the event of an affirmative reply to the question whether the goods constitute a functional unit,

Note 2 (a) to Section XVI of the CCT is inapplicable, since the music centre was presented for customs clearance in a single package with the loudspeakers.

29 During the oral procedure the Commission contended in the alternative that, if the Court took the view that the music centre and the loudspeakers did not constitute a functional unit, they should at least be regarded as a set, within the meaning of the General Rules (in particular General Rule A 3 (b)), falling under tariff Heading No 85.15. The concept of a set is slightly wider than that of a functional unit and covers goods which are combined in order to meet a need or perform a specific activity. In this case those conditions are satisfied because the music centres are intended to be sold with the loudspeakers, which are designed to perform a specific function in the best possible way in order to meet a particular need. Where the goods are supplied to the dealer in a single package, they will normally be sold to the customer together.

30 The Court wishes to emphasize first of all that the question submitted by the Bundesfinanzhof concerns the specific case of a combined tuner, record-player and cassette recorder and two separate loudspeakers which are imported together in a single package and are intended to be marketed in that form. Moreover, it is clear that the loudspeakers are intended, or are even specifically designed, for use with the music centre.

31 That having been said, it should be noted that the CCT contains separate headings for loudspeakers (85.14), on the one hand, and radio-broadcasting reception apparatus (85.15), on the other. However, it is necessary to consider whether the goods may be classified together either as a 'functional unit' within the meaning of the Explanatory Notes to the Customs Cooperation Council Nomenclature (ninth paragraph of the notes concerning Note 3 to Section XVI of the CCT) or as 'goods put up in sets' within the meaning of the aforesaid General Rules.

32 As regards the first possibility, it should be noted that, according to the aforesaid Explanatory Notes (*loc. cit.*), Note 3 to Section XVI does not apply where a machine or appliance consists of separate components which are designed to

contribute together to a single clearly defined function described by one of the headings in Chapter 84 or, more frequently, Chapter 85.

33 It must be remembered, however, that the Explantory Notes are intended to allow classification under a given heading of machines and appliances made up of components falling under several tariff headings, in cases where those components as a whole are intended to perform the single clearly defined function referred to in the tariff heading in question. Consequently, the Explantory Notes do not cover the product described by the national court, since its components include loud-speakers which may be used independently of the other components and for functions other than those which may be performed by all the components together.

34 The fact that goods are intended, or are even specifically designed, to be used together and that they are presented for customs clearance together in the same package is not therefore a sufficient reason for classifying them as a 'functional unit' within the meaning of the aforesaid Note, if they can be used separately.

35 As regards the question whether, by virtue of General Rule A 3 (b), goods imported together in a single package constitute 'goods put up in sets', it should be noted that that expression implies that the goods are closely linked from the marketing point of view, with the result that they are not only presented together for customs clearance but are also normally supplied together, at the various marketing stages and in particular the retail stage, in a single package in order to satisfy a demand or to perform a specific function.

36 Moreover, the classification of different goods under a single heading as a set within the meaning of General Rule A 3 is possible only where the conditions laid down by that rule are met, that is to say where goods are *prima facie* classifiable under two or more headings and there is no specific heading taking precedence over more general headings.

37 General Rule A 3 (b) therefore applies only where classification is not possible under General Rule A 3 (a), that is to say where there is no specific heading taking precedence over more general headings.

38 As far as the goods referred to by the national court are concerned, Heading No 85.14 does not give a more specific description than Heading No 85.15, since the loudspeakers and the music centre are imported together in retail packs and are intended to be sold together. They therefore constitute goods combined to satisfy a specific demand.

39 It must therefore be concluded that, in the particular circumstances of this case, the goods in question constitute a set within the meaning of General Rule A 3 (b) and that they must therefore be classified by reference to the component which gives them their essential character, namely the music centre.

40 In reply to the question submitted it must therefore be held that a combined tuner, record-player and cassette recorder imported together with two loudspeakers intended for use with it constitutes a set of goods falling under Heading No 85.15 of the CCT where the goods concerned are put up in a single package and are intended to be marketed together in order to satisfy a specific demand.

Costs

41 The costs incurred by the Italian and French Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 questions referred to it by the Bundesfinanzhof by order of 8 May 1984, hereby rules:

A combined tuner, record-player and cassette recorder imported together with two loudspeakers intended for use with it constitutes a set of goods falling under Heading No 85.15 of the Common Customs Tariff, where the goods concerned are put up in a single package and are intended to be marketed together in order to satisfy a specific demand.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 7 October 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber