

JUDGMENT OF THE COURT (First Chamber)
13 December 1994 *

In Case C-401/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Rheinland-Pfalz, Germany, for a preliminary ruling in the proceedings pending before that court between

GoldStar Europe GmbH

and

Hauptzollamt Ludwigshafen

on the interpretation and validity of Commission Regulation (EEC) No 2275/88 of 25 July 1988 concerning the classification of certain goods in the combined nomenclature (OJ 1988 L 200, p. 10) and on the interpretation of Commission Regulation (EEC) No 3085/91 of 21 October 1991 amending Regulation (EEC) No 2275/88 concerning the classification of certain goods in the combined nomenclature (OJ 1991 L 291, p. 12),

* Language of the case: German.

THE COURT (First Chamber),

composed of: G. C. Rodríguez Iglesias, President of the Court, acting as President of the Chamber, R. Joliet, President of Chamber, and D. A. O. Edward (Rapporteur), Judge,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of the Commission of the European Communities by Francisco Fialho, of its Legal Service, acting as Agent, assisted by Hans-Jürgen Rabe, Rechtsanwalt with Schön Nolte Finkelnburg & Clemm, Hamburg and Brussels,

having regard to the Report for the Hearing,

after hearing the oral observations of GoldStar Europe GmbH, represented by Hinrich Glashoff, tax adviser, Schürmann & Partner, Frankfurt am Main, and the Commission of the European Communities, represented by Hans-Jürgen Rabe, at the hearing on 7 July 1994,

after hearing the Opinion of the Advocate General at the sitting on 21 September 1994,

gives the following

Judgment

¹ By order of 27 August 1993, received at the Court on 14 September 1993, the Finanzgericht Rheinland-Pfalz (Rhineland-Palatinate Finance Court) referred to

the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation and validity of Commission Regulation (EEC) No 2275/88 of 25 July 1988 concerning the classification of certain goods in the combined nomenclature and on the interpretation of Commission Regulation (EEC) No 3085/91 of 21 October 1991 amending Regulation (EEC) No 2275/88 concerning the classification of certain goods in the combined nomenclature, to the extent that those two regulations relate to the classification of goods in subheading 8521 10 39 of the combined nomenclature.

- 2 Those questions were raised in proceedings between GoldStar Europe GmbH (hereinafter 'GoldStar') and the Hauptzollamt (Principal Customs Office), Ludwigshafen, on the tariff classification of magnetic tape drive mechanisms for video recorders.

- 3 Between 25 October 1988 and 25 October 1991, in particular, GoldStar imported such mechanisms labelled 'deck ass'y' (deck assembly) from South Korea, either separately or combined with main boards labelled 'main board ass'y' (main board assembly).

- 4 Apart from certain specific cases, 'video recording or reproducing apparatus' of 'magnetic tape type' was classified under subheading 8521 10 39 of the combined nomenclature, which was originally set out 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), and not amended on that point by the regulations subsequently adopted by the Commission during the relevant period. Parts and accessories of such apparatus were classified, apart from certain specific cases, under subheading 8522 90 99, which was not amended during the period in question either.

- 5 The goods classified under subheading 8521 10 39 were subject to Community customs duty at a rate of 14%, while goods classified under subheading 8522 90 99 were subject to customs duty at a rate of 5.8%.
- 6 Articles 9 and 10 of Regulation No 2658/87 authorize the Commission to adopt measures concerning the classification of goods in the combined nomenclature.
- 7 In item 9 of the annex to Regulation No 2275/88 the Commission introduced a new classification within subheading 8521 10 39. The description of the goods in question was 'mechanical assembly for a video recording or reproducing apparatus ... equipped with recording and reproducing heads (Mecadeck)'.
- 8 The reasons stated by the Commission for that classification are as follows:

'Classification is determined by the provisions of general rules 1, 2(a) and 6 and the texts of CN codes 8521, 8521 10 and 8521 10 39.

This mechanical assembly presents the essential characteristics of a video recording or reproducing apparatus.'

9 General rule 2(a) states that:

'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.'

10 Before the entry into force of Regulation No 2275/88, the Hauptzollamt had classified the drive mechanisms imported by GoldStar as 'parts' of video recorders under subheading 8522 90 99, attracting customs duty at a rate of 5.8%. After the entry into force of that regulation, it classified them under subheading 8521 10 39, as mecadecks. The drive mechanisms accordingly became liable to customs duty at a rate of 14%.

11 On 7 April 1991 the Customs Cooperation Council issued an opinion to the effect that mecadecks should be classified under subheading 8522 90 as 'parts' of video recorders.

12 Item 9 of the annex to Regulation No 2275/88 was thereupon repealed by Regulation No 3085/91.

13 From 23 October 1991, when Regulation No 3085/91 entered into force, the Hauptzollamt once more classified the drive mechanisms imported by GoldStar under subheading 8522 90 99, thus attracting customs duty at a rate of 5.8%.

- 14 On 25 October 1991 GoldStar applied to the Hauptzollamt for reimbursement, in respect of all the 'deck ass'y' imported since 25 October 1988 and all the 'board ass'y' imported together with them, of the difference between the duty of 14% which had been paid and the duty of 5.8% which should have been paid. The Hauptzollamt refused the application.
- 15 The Hauptzollamt's refusal to reimburse GoldStar led to the initiation of proceedings in the Finanzgericht Rheinland-Pfalz.
- 16 The Finanzgericht Rheinland-Pfalz considered that the case raised certain questions concerning the validity and the interpretation of Community law and, by order of 27 August 1993, stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Was Commission Regulation (EEC) No 2275/88 of 25 July 1988 concerning the classification of certain goods in the combined nomenclature (OJ 1988 L 200, p. 10) valid in so far as it classified under CN Code 8521 10 39 the "mechanical assembly for a video recording or reproducing apparatus of CN Code 8521, equipped with recording and reproducing heads (mecadeck)" described in item 9 of the annex to the regulation?

(2) If Question 1 is answered in the affirmative:

Does Commission Regulation (EEC) No 3085/91 of 21 October 1991 amending Commission Regulation (EEC) No 2275/88 (OJ 1991 L 291, p. 12) have

retroactive effect, in the sense that it is applicable to goods imported before it entered into force?

(3) If Question 2 is answered in the negative:

What are the essential characteristics (see the reasons stated at item 9 of the annex to Regulation No 2275/88) or the essential character (see general rule 2(a)) which led the Commission to classify "mecadecks" as complete video recording or reproducing apparatus under Code 8521?

Question 1

17 In its first question the national court asks essentially whether Regulation No 2275/88 was valid in so far as it classified mecadecks under tariff subheading 8521 10 39, which applies to complete video recording or reproducing apparatus of magnetic tape type.

18 It is important to note that if the Customs Cooperation Council has not given an interpretation of the nomenclature, the Community legislature has the power to interpret, by means of regulations and subject to review by the Court of Justice, the nomenclature as it is to be applied by the Community (see the judgment in Case C-233/88 *Van de Kolk* [1990] ECR I-265, paragraph 10).

- 19 To that end, the Council has conferred on the Commission, acting in cooperation with the customs experts of the Member States, a wide discretion in defining the subject-matter of tariff headings falling to be considered for the classification of particular goods, provided only that the provisions adopted by the Commission do not amend the text of the Tariff (see the judgment in Case C-265/89 *Vismans Nederland* [1990] ECR I-3411, paragraph 13).
- 20 It follows that, in the present case, the Court must examine whether the Commission committed a manifest error of assessment in classifying mecadecks, pursuant to Regulation No 2275/88, under tariff subheading 8521 10 39.
- 21 In its observations to the Court, the Commission stated that a mecadeck comprises all the components of the drive mechanism, including the motor which allows the tape to advance and be wound backwards and forwards. It also includes the two video heads (reading and recording), the audio head, the erasing head, and the capstan which regulates the speed at which the tape advances.
- 22 The other components of a video recorder consist essentially of the power supply, the housing and, in particular, the electronic circuits.
- 23 The Commission takes the view that a mecadeck constitutes the essential part of a video recorder, because it contains in itself all the components of the apparatus which are characteristic of its function, namely video recording and reproduction.

- 24 That argument cannot be accepted.
- 25 The description of the goods in heading 8521 of the combined nomenclature refers to video recording or reproducing 'apparatus', whereas the classification by the Commission in Regulation No 2275/88 refers to a 'mechanical assembly for a video recording or reproducing apparatus'.
- 26 It must be observed that although the mechanical components which make up a mecadeck are essential as regards the specific manner in which a video recorder functions, the electronic components are also indispensable. The essential character of a video recorder is to be found in the combination of the mechanical and electronic components.
- 27 The Commission has even accepted that a mecadeck represents only 30% to 40% of the value of a complete video recorder.
- 28 In view of the distinction drawn in the combined nomenclature between apparatus and parts of apparatus, and in view of the obvious importance of the electronic components, the Commission could not reasonably consider that the mechanical

assembly of a mecadeck on its own had the essential character of a video recorder, enabling it to be classified under the same tariff heading as complete video recorders.

29 It follows that the Commission committed a manifest error of assessment in classifying mecadecks under subheading 8521 10 39.

30 The answer to Question 1 must therefore be that Regulation No 2275/88 was invalid in so far as, in item 9 of the annex thereto, it classified mecadecks under tariff subheading 8521 10 39.

Questions 2 and 3

31 In view of the answer to Question 1, there is no need to examine Questions 2 and 3.

Costs

32 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Finanzgericht Rheinland-Pfalz by order of 27 August 1993, hereby rules:

Commission Regulation (EEC) No 2275/88 of 25 July 1988 concerning the classification of certain goods in the combined nomenclature was invalid in so far as, in item 9 of the annex thereto, it classified mecadecks under tariff subheading 8521 10 39.

Rodríguez Iglesias

Joliet

Edward

Delivered in open court in Luxembourg on 13 December 1994.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President of the Court,
acting as President of the First Chamber