

JUDGMENT OF THE COURT (Fifth Chamber)

7 June 2001 *

In Case C-479/99,

REFERENCE to the Court under Article 234 EC by the Finanzgericht Düsseldorf (Germany) for a preliminary ruling in the proceedings pending before that court between

CBA Computer Handels- und Beteiligungs GmbH, formerly VOBIS Microcomputer AG,

and

Hauptzollamt Aachen,

on the interpretation of headings 8471, 8473 and 8543 of the Combined Nomenclature of the Common Customs Tariff, set out in 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 1153/97 of 24 June 1997 (OJ 1997 L 168, p. 35), and the validity of Regulation No 1153/97 and Commission Regulation (EC) No 2086/97 of 4 November 1997 amending Annex I to Council Regulation No 2658/87 (OJ 1997 L 312, p. 1),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, D.A.O. Edward (Rapporteur), P. Jann, L. Sevón and C.W.A. Timmermans, Judges,

Advocate General: A. Tizzano,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- CBA Computer Handels- und Beteiligungs GmbH, by H. Brüning-Sudhoff, Steuerberater,
- the Commission of the European Communities, by J.-C. Schieferer, acting as Agent, assisted by M. Núñez Müller, Rechtsanwalt,

having regard to the Report for the Hearing,

after hearing the oral observations of CBA Computer Handels- und Beteiligungs GmbH, represented by J. Metzner, Steuerberater, and the Commission, represented by J.-C. Schieferer, assisted by M. Núñez Müller, at the hearing on 11 January 2001,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2001,

gives the following

Judgment

- 1 By order of 8 December 1999, received at the Court on 16 December 1999, the Finanzgericht Düsseldorf referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of headings 8471, 8473 and 8543 of the Combined Nomenclature of the Common Customs Tariff, set out in 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 1153/97 of 24 June 1997 (OJ 1997 L 168, p. 35), and the validity of Regulation No 1153/97 and Commission Regulation (EC) No 2086/97 of 4 November 1997 amending Annex I to Council Regulation No 2658/87 (OJ 1997 L 312, p. 1).

- 2 Those questions have arisen in proceedings between CBA Computer Handels- und Beteiligungs GmbH, formerly VOBIS Microcomputer AG (hereinafter 'CBA Computer'), and Hauptzollamt Aachen (Principal Customs Office, Aachen, hereinafter 'the Hauptzollamt'), with regard to the tariff classification of computer 'sound cards'.

- 3 According to the documents before the Court sound cards are printed circuit boards with active and passive components, which are connected to the mainboards of personal computers by plugging their connectors into specially designed sockets. Their primary function is to convert sounds processed by certain software in digital form into analogue signals and thereby make them audible. The sound cards are also designed to convert analogue signals into digital data to permit processing and storage.

Community law

4 Regulation No 2658/87 established a goods nomenclature, called the combined nomenclature, to meet, at one and the same time, the requirements both of the Common Customs Tariff and of the external trade statistics of the Community.

5 Heading 8471 of the Combined Nomenclature is worded as follows:

‘Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included’.

6 In the version of the Combined Nomenclature applicable at the material time, which under Regulation No 1153/97 came into force on 1 July 1997, heading 8471 includes subheading 8471 80 relating to ‘other units of automatic data processing machines’, which itself contains subheading 8471 80 10 relating to ‘[p]eripheral units’ and subheading 8471 80 90 relating to ‘other’.

7 Note 5 to Chapter 84 of Section XVI of Part Two of the Combined Nomenclature, as applicable at the material time, reads as follows:

‘(A) ...

(B) Automatic data-processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) it is of a kind solely or principally used in an automatic data-processing system;

(b) it is connectable to the central processing unit either directly or through one or more other units; and

(c) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data-processing machine are to be classified in heading No 8471.

(D) ...

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data-processing

machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.’

8 Heading 8473 of the Combined Nomenclature is worded as follows:

‘Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472’.

9 In the version of the Combined Nomenclature applicable at the material time, heading 8473 included subheading 8473 30 relating to ‘[p]arts and accessories of the machines of heading No 8471’, which itself includes subheading 8473 30 10 relating to ‘[e]lectronic assemblies’.

10 Heading 8543 of the Combined Nomenclature is worded as follows:

‘Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter’.

- 11 Regulation No 1153/97 introduced, among others, subheading 8543 89 79, worded as follows:

‘Multimedia upgrade kits, for automatic data-processing machines and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphones, and a printed circuit assembly that enables the automatic data processing and units thereof to process audio signals (sound cards)’.

- 12 That subheading was amended by Regulation No 2086/97, which extended the range of products it covers. In the version as amended by that latter regulation, in force since 1 January 1998, the subheading is worded as follows:

‘Apparatus enabling automatic data-processing machines and units thereof to process audio signals (sound cards); upgrade kits, for automatic data-processing machines and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphones, and an electronic assembly that enables the automatic data processing and units thereof to process audio signals (sound cards)’

- 13 By virtue of that amendment, that subheading of the Combined Nomenclature covers both sound cards as such and sound cards which form part of a kit.

The dispute in the main proceedings

- 14 On 31 July 1997, in respect of the accounting month July 1997 CBA Computer declared imports of sound cards from Taiwan intended for free circulation, stating that the cards fell within subheading 8543 90 60 of the Combined Nomenclature. Accordingly, CBA Computer calculated customs duty at the rate of 3.8%. On 11 August 1997, the Hauptzollamt assessed the customs duties on the basis of the information provided by CBA Computer.
- 15 Subsequently, CBA Computer lodged an administrative objection arguing that the sound cards should have been classified under subheading 8473 30 10 of the Combined Nomenclature, so that it should only have paid customs duty at the rate of 2.5%. CBA Computer submitted that the observations of the Court of Justice in its judgment in Case C-382/95 *Techex* [1997] ECR I-7363 concerning graphics cards were capable of being applied to the sound cards at issue in the main proceedings and that, therefore, such cards should not be considered as having a 'specific function' within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature, in the version in force at the material time. Moreover, the Danish customs authorities also purportedly classified the sound cards under subheading 8473 30 10 of the Combined Nomenclature.
- 16 By decision of 20 May 1998 the Hauptzollamt not only rejected that administrative objection but also decided that CBA Computer should pay additional duties of DEM 111.29 on the ground that Regulation No 2086/97, which had meantime entered into force, classified sound cards in subheading 8543 89 90 of the Combined Nomenclature and made them subject to customs duty at 5%. According to the Hauptzollamt, although the regulation did not enter into force until 1 January 1998, that is to say after the material time, it was applicable to goods imported before that date in so far as it did not amend Regulation No 2658/87 but merely clarified the wording of heading 8543 of the Combined Nomenclature.
- 17 On 4 June 1998, CBA Computer appealed against that decision to the Finanzgericht Düsseldorf, claiming on that occasion that sound cards were to

be classified under subheading 8471 80 90 of the Combined Nomenclature, and that, when Regulation No 2086/97 was adopted, the Commission had manifestly misinterpreted headings 8471 and 8543 of the Combined Nomenclature.

- 18 The Finanzgericht Düsseldorf takes the view that the reasoning followed by the Court of Justice regarding graphics cards in the *Techex* judgment, cited above, is also valid for sound cards and that, accordingly, such cards are to be classified under heading 8471 of the Combined Nomenclature. None the less, given that under Regulations No 1153/97 and No 2086/97 sound cards are to be classified under heading 8543 of the Combined Nomenclature, it found that there was doubt as to the correct classification of such cards.
- 19 In those circumstances, the Finanzgericht Düsseldorf decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Is the Combined Nomenclature, as amended by Annex I to Commission Regulation (EC) No 1153/97 of 24 June 1997 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, to be interpreted as meaning that electronic assemblies which enable automatic data-processing equipment and units thereof to process audio signals (sound cards) must be classified under heading 8471, 8473 or 8543?’
 2. Are Commission Regulation (EC) No 1153/97 of 24 June 1997 and Commission Regulation (EC) No 2086/97 of 4 November 1997 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff valid in so far as they require that the sound cards described in Question 1 be classified in heading 8543 of the Combined Nomenclature?’

The first question

- 20 By its first question, the national court seeks to ascertain whether electronic circuit boards which enable automatic data-processing equipment and units thereof to process audio signals (sound cards) must be classified under heading 8471, 8473 or 8543 of the Combined Nomenclature, as amended by Regulation No 1153/97.
- 21 As the Court has repeatedly held, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters (see, in particular, Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 11).
- 22 In the present case, it is clear from the wording of heading 8471 of the Combined Nomenclature that this heading includes automatic data-processing machines and units thereof. It follows from Note 5(B) to Chapter 84 of the Combined Nomenclature, as worded at the material time, that any unit of a kind solely or principally used in an automatic data-processing system, which is connectable to the central processing unit and is able to accept or deliver data in a form — codes or signals — which can be used by the system must be regarded as being a part of a complete system of an automatic data-processing machine, and, accordingly, is to be classified in heading 8471.
- 23 However, Note 5(E) to Chapter 84 of the Combined Nomenclature, in the version applicable at the material time, states that machines performing a specific function other than data processing and incorporating or working in conjunction

with an automatic data-processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

- 24 As regards the precise meaning of 'specific function', it must be recalled that the Court held in *Techex* (cited above) that image processing, when made by an automatic data-processing machine unit which includes, *inter alia*, an analogue/digital converter, a high-quality graphics processor and a digital/analogue converter, is not to be regarded as the performance of a 'specific function' for the purposes of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature, as in force at the material time in that case.
- 25 It must be pointed out that the instruction in the last paragraph of note 5(B) to Chapter 84 of the Combined Nomenclature, as worded at the material time for the main proceedings in *Techex* (cited above), now appears, in essence, in Note 5(E) to Chapter 84 of the Combined Nomenclature, as worded at the material time for the main proceedings in the present case.
- 26 It is common ground that sound cards, like the graphics cards which were at issue in *Techex*, are designed, first, to convert external analogue signals into digital data, enabling them to be processed by the machine, and, secondly, to convert digital data used by certain software into analogue signals. The Commission, despite objecting to classifying sound cards under heading 8471 of the Combined Nomenclature, admitted at the hearing that there is no substantial difference, either in use or in *modus operandi*, between the two types of card as regards their classification according to the Combined Nomenclature.
- 27 Sounds and images are data, irrespective of the form they may take, and the processing of either constitutes data processing. For that reason, as well as for

those set out by the Advocate General in points 31 to 39 of his Opinion, the sound cards at issue in the present case, like the graphics cards at issue in *Techex*, have no specific function within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature, as worded at the material time for the main proceedings, and must therefore be classified under heading 8471.

- 28 The reply to the first question must therefore be that electronic circuit boards which enable automatic data-processing equipment and units thereof to process audio signals (sound cards) are to be classified under heading 8471 of the Combined Nomenclature, as worded in Regulation No 1153/97.

The second question

- 29 By its second question, the national court asks whether Regulations Nos 1153/97 and 2086/97, in so far as they provide that the sound cards at issue in the main proceedings are to be classified in heading 8543 of the Combined Nomenclature, are valid.

- 30 In that regard, as is apparent from the wording of subheading 8543 89 79 of the Combined Nomenclature in Regulation No 1153/97, the tariff classification in that regulation does not concern sound cards as such, but only sound cards which are part of upgrade kits for automatic data-processing machines and units thereof. Since the tariff classification of such kits is not at issue in the main proceedings, it does not seem, in the absence of any further explanation by the

national court, that the validity of Regulation No 1153/97 is called in question in the present case.

31 On the other hand, Regulation No 2086/97 provides for the classification of sound cards as such. None the less, it is not disputed that that regulation entered into force after the material time for the main proceedings and that it was not given retroactive effect. Moreover, even if Regulation No 2086/97 was only intended to clarify the tariff classification of sound cards without amending its substance, as the Hauptzollamt claims, a regulation specifying the conditions for classification in a tariff heading or subheading is of a legislative nature and cannot have retroactive effect (see Case 158/78 *Biegi* [1979] ECR 1103, paragraph 11). Consequently, the issue of the validity of Regulation No 2086/97 is likewise not germane to the main proceedings.

32 There is therefore no need to reply to the second question.

Costs

33 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Fifth Chamber),

in answer to the questions referred to it by the Finanzgericht Düsseldorf by order of 8 December 1999, hereby rules:

Electronic circuit boards which enable automatic data-processing equipment and units thereof to process audio signals (sound cards) are to be classified under heading 8471 of the Combined Nomenclature, as amended by Commission Regulation (EC) No 1153/97 of 24 June 1997 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

La Pergola

Edward

Jann

Sevón

Timmermans

Delivered in open court in Luxembourg on 7 June 2001.

R. Grass

A. La Pergola

Registrar

President of the Fifth Chamber