



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

11 June 2015*

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs union and Common Customs Tariff — Combined Nomenclature — Heading 8543 70 — Electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85 of the Combined Nomenclature — Subheadings 8543 70 10 and 8543 70 90 — Reading devices for electronic books with translation or dictionary functions)

In Case C-58/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 12 November 2013, received at the Court on 6 February 2014, in the proceedings

Hauptzollamt Hannover

v

Amazon EU Sàrl,

THE COURT (Seventh Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Arabadjiev and J.L. da Cruz Vilaça (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hauptzollamt Hannover, by T. Röper,
- Amazon EU Sàrl, by S. Maunz and H. Menzel, Rechtsanwälte,
- the European Commission, by A. Caeiros and B.-R. Killmann, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of subheadings 8543 70 10 and 8543 70 90 of the Combined Nomenclature ('the CN') 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 (EU) No 861/2010 of 5 October 2010 (OJ 2010 L 284, p. 1) ('Regulation No 2658/87').
- 2 The request has been made in proceedings between the Hauptzollamt Hannover (Principal Customs Office, Hanover, Germany, 'the HZA') and Amazon EU Sàrl ('Amazon') concerning the tariff classification in the CN of reading devices for electronic books.

Legal context

- 3 Under Article 12(1) of Regulation No 2658/87, the European Commission is to adopt each year a regulation reproducing the complete version of the CN, together with the rates of duty, as resulting from measures adopted by the Council of the European Union or the Commission. That regulation is to apply from 1 January of the following year.
- 4 The version of the CN applicable to the case in the main proceedings is that which results from Regulation No 861/2010, which entered into force on 1 January 2011.
- 5 Part One of the CN consists of a number of 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.
...
3. When, by application of rule 2(b) or for any other 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. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;
...
6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.'

- 6 Part Two of the CN contains a 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’. Note 3 to that section states the following:

‘Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed 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 performs the principal function.’

- 7 That section includes Chapter 84 relating to nuclear reactors, boilers, machinery and mechanical appliances, and parts thereof, and Chapter 85, which covers electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles. Note 5(E) to Chapter 84 states the following:

‘Machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.’

- 8 Chapter 85 of the CN contains inter alia the following headings and subheadings:

‘CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
...			
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter:		
...			
8543 70	– Other machines and apparatus:		
8543 70 10	– – Electrical machines with translation or dictionary functions	Free	–
...			
8543 70 90	– – Other	3.7	–
... ²			

- 9 At the time material to the facts in the main proceedings, the rate of customs duty on imports applicable to machines and apparatus classified under subheading 8543 70 90 of the CN was 3.7%, whereas machines and apparatus coming under subheading 8543 70 10 of the CN were free from duty.

- 10 Pursuant to the second indent of Article 9(1)(a) of Regulation No 2658/87, and in accordance with the procedure laid down in Article 10 of that regulation, the Commission must draw up Explanatory Notes to the CN. Those Explanatory Notes, published on 6 May 2011 in the *Official Journal of the European Union* (OJ 2011 C 137, p. 1) and which apply to the facts of the main proceedings, stipulate, with regard to subheading 8543 70 90, the following:

‘8543

Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter

8543 70 90

Other

This subheading includes:

...

This subheading also covers small electronic devices not mounted on a base-plate (including so-called “minicomputers”), which can be used to form words and sentences which are translated into a chosen foreign language depending on the memory modules used with these devices. They have an alphanumeric keyboard and a rectangular display. However, this subheading does not cover similar devices with calculating functions (heading 8470).’

The facts in the main proceedings and the questions referred for a preliminary ruling

- 11 Amazon is a company which imports inter alia reading devices for electronic books. In addition to the hardware and software necessary for reading books, a speech output option and a programme for the reproduction of audio formats, the devices have a dictionary function. The *Oxford American Dictionary* and the *Oxford Dictionary of English* are thus pre-installed in the apparatus, and additional dictionaries may be downloaded and installed.
- 12 Reading devices for electronic books imported into Germany by Amazon in June 2011 were classified under CN subheading 8543 70 90 by the competent customs authorities. In July 2011 Amazon brought an objection against that classification. By decision of 20 October 2011, the Hauptzollamt Itzehoe (Principal Customs Office, Itzehoe, Germany), the competent authority at that time, reclassified the reading devices under CN subheading 8543 70 10. On 26 October 2011 Amazon sought binding tariff information from the HZA and proposed that the reading devices be classified under CN subheading 8543 70 10. However, in the binding tariff information thus delivered, the HZA decided to classify the reading devices under CN subheading 8543 70 90 on the ground that their main function is the reproduction of books stored in electronic form and not the translation or dictionary function.
- 13 Amazon then brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) which, by judgment of 14 February 2013, ordered the HZA to issue binding tariff information classifying the reading devices at issue in the main proceedings under CN subheading 8543 70 10. The HZA appealed on a point of law against that judgment before the Bundesfinanzhof (Federal Finance Court).
- 14 The Bundesfinanzhof considers that, where apparatus is to be classified in the CN, the subheading with the most precise description of that apparatus takes precedence over the subheadings relating to general descriptions. That court points out that the conditions for the application of the general rule of interpretation in Part One, Section I, A, 3(a) of the CN are not fulfilled, since there are not two subheadings capable of being taken into consideration for classifying the reading devices at issue in

the main proceedings. Subheading 8543 70 90 of the CN does not constitute another possible classification for the purposes of that general rule of interpretation. As it is only a residual subheading, it can be applied only where classification in a more specific subheading is not possible, which is not the case in the main proceedings.

15 It was in those circumstances that the Bundesfinanzhof decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Is the description of goods in subheading 8543 70 10 of the [CN] to be understood as covering only apparatus which have exclusively translation or dictionary functions?’

(2) If the first question is to be answered in the negative, does subheading 8543 70 10 of the [CN] cover also apparatus the translation or dictionary function of which is insignificant by comparison with their principal function (in this case, a reading function)?’

Consideration of the questions referred

16 By its questions referred for a preliminary ruling, which it is appropriate to consider together, the referring court asks, in essence, whether the CN must be interpreted as meaning that a reading device for electronic books which has a translation or dictionary function must be classified under subheading 8543 70 10 as an electrical machine with translation or dictionary functions, or under subheading 8543 70 90 as other electrical apparatus.

17 As a preliminary point, it should be made clear that, when the Court is requested to give a preliminary ruling on a matter of classification for customs purposes, its task is to provide the national court with guidance on the criteria which will enable that court to classify the products at issue in the main proceedings correctly in the CN, rather than to effect that classification itself (judgment in *Rohm Semiconductor*, C-666/13, EU:C:2014:2388, paragraph 23 and the case-law cited).

18 In a case such as that at issue in the main proceedings, it is for the national court to determine inter alia the principal and ancillary functions of the product which is to be classified for tariff purposes.

19 As is clear from the very wording of the second question referred for a preliminary ruling, set out in paragraph 15 above, the referring court considers that the principal function of the reading devices at issue in the main proceedings is a reading function.

20 It should be noted in that regard 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 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, judgment in *Digitalnet and Others*, C-320/11, C-330/11, C-382/11 and C-383/11, EU:C:2012:745, paragraph 27 and the case-law cited).

21 The referring court rightly states that the CN does not contain any subheading the wording of which expressly refers to an electrical apparatus whose principal function is that of reading.

22 However, it cannot be concluded that, in default of a subheading in the CN corresponding exactly to the principal function of such an apparatus, the apparatus must be classified under a specific subheading on the basis of one of its ancillary functions.

23 The tariff classification of a product must be made having regard to its principal function. Thus, Note 3 to Section XVI of Part Two of the CN provides that a machine which has a number of functions must be classified according to its principal function.

- 24 Similarly, the Court has previously pointed out that, for the purposes of classifying a product, it is necessary to take into account what consumers would consider to be ancillary or principal (see, to that effect, judgment in *British Sky Broadcasting Group*, C-288/09 and C-289/09, EU:C:2011:248, paragraph 77).
- 25 A product is therefore classified having regard, not to one of its ancillary functions, but to its principal function, even in a situation such as that at issue in the main proceedings where there is no CN subheading corresponding specifically to that principal function.
- 26 It follows from the foregoing that, in the absence in the CN of a subheading corresponding to the principal function of a product, that product must be classified under a residual subheading of the CN, in the present case subheading 8543 70 90.
- 27 Therefore, the answer to the questions referred for a preliminary ruling is that the CN must be interpreted as meaning that a reading device for electronic books which has a translation or dictionary function must, where that function is not its principal function, that being a matter for the national court to ascertain, be classified under subheading 8543 70 90 and not under subheading 8543 70 10.

Costs

- 28 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

The Combined Nomenclature 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, as amended by Commission Regulation (EC) No 861/2010 of 5 October 2010, must be interpreted as meaning that a reading device for electronic books which has a translation or dictionary function must, where that function is not its principal function, that being a matter for the national court to ascertain, be classified under subheading 8543 70 90 and not under subheading 8543 70 10.

[Signatures]