



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

2 May 2019*

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheadings 8526 91 20 and 8528 59 00 — Multi-functional GPS navigation system)

In Case C-268/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Bacău (Court of Appeal, Bacău, Romania), made by decision of 5 April 2018, received at the Court on 18 April 2018, in the proceedings

SC Onlineshop SRL

v

Agencia Națională de Administrare Fiscală (ANAF) — Direcția Generală a Vămilelor,

THE COURT (Tenth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- SC Onlineshop SRL, by S. Ionașcu-Strungariu,
- the Romanian Government, by C. Canțăr, O.–C. Ichim and A. Wellman, acting as Agents,
- the European Commission, by A. Caeiros and A. Armenia, acting as Agents,

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

gives the following

* Language of the case: Romanian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of subheadings 8526 91 20 and 8528 59 00 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), in the version resulting from Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 (OJ 2016 L 294, p. 1), and from Commission Implementing Regulation (EU) No 698/2012 of 25 July 2012 concerning the classification of certain goods in the Combined Nomenclature (OJ 2012 L 203, p. 34), as amended by Commission Implementing Regulation (EU) No 459/2014 of 29 April 2014 (OJ 2014 L 133, p. 43) ('Implementing Regulation No 698/2012').
- 2 The request has been made in proceedings between SC Onlineshop SRL ('Onlineshop') and the Agenția Națională de Administrare Fiscală — Direcția Generală a Vămilelor (National Agency for Tax Administration — Directorate-General for Customs, Romania) ('the ANAF-DGV') concerning the tariff classification of a multifunctional piece of apparatus of a kind used in motor vehicles and performing radio navigation, audio/video reproduction, radio broadcasting and display functions.

Legal context

The CN

- 3 Pursuant to Article 9(1) and Article 10 of Regulation No 2658/87, the European Commission, assisted by the Customs Code Committee, is to adopt the measures relating to the application of the CN, which constitutes Annex I to that regulation, concerning the classification of goods.
- 4 As can be seen from Article 12 of Regulation No 2658/87, the Commission is to adopt each year a regulation setting out the complete version of the CN together with the corresponding rates of duty of the Common Customs Tariff, as it results from measures adopted by the Council of the European Union or by the Commission. That regulation is to be published not later than 31 October in the *Official Journal of the European Union* and is to apply from 1 January of the following year.
- 5 On the basis of those provisions, the Commission adopted Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Regulation No 2658/87 (OJ 2015 L 285, p. 1) and Implementing Regulation 2016/1821. Each of those regulations amended the CN with effect from 1 January 2016 and 1 January 2017 respectively.
- 6 Section I of Part One of the CN contains Section A, entitled 'General rules for the interpretation of the Combined Nomenclature', which provides:

'Classification of goods in the Combined Nomenclature 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 ... goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

...

- (c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

...

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.'
- 7 Part Two of the CN, entitled 'Schedule of Customs Duties', contains 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:

'Unless the context otherwise requires, ... 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.'

- 8 In that same section, Chapter 85, entitled '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', contained, in the version resulting from Regulation 2015/1754, applicable to the year 2016, the following headings and subheadings:

CN Code	Description
...	...
8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus:
8526 10 00	– Radar apparatus
	– Other:
8526 91	– — Radio navigational aid apparatus
8526 91 20	– — — Radio navigational receivers
...	...
8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:
	– Cathode-ray tube monitors:
...	...
	– Other monitors:
8528 51 00	– — Of a kind solely or principally used in an automatic data-processing system of heading 8471
8528 59	– — Other:
	– — — Flat panel displays able to display signals from automatic data-processing machines with an acceptable level of functionality:
...	...
8528 59 70	– — — Other

...	...
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- 9 Implementing Regulation 2016/1821, applicable to the year 2017, left heading 8526 of the CN, as defined in Implementing Regulation 2015/1754, unaltered, but amended heading 8528 as follows:

8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:
...	...
	– Other monitors:
8528 52	– — Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471:
...	...
8528 59 00	– — Other
...	...

Implementing Regulation No 698/2012

- 10 Article 1 of Implementing Regulation No 698/2012 provides:

‘The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.’

- 11 The annex to that regulation is worded as follows:

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
...	...	...
3. A multifunctional apparatus (so-called ‘multimedia centre for motor vehicles’) of a kind used in motor vehicles. It combines, in the same housing, a reception apparatus for radio-broadcasting, a sound and a video reproducing apparatus, a radio navigational apparatus and a colour liquid crystal display (LCD) with a diagonal measurement of the screen of approximately 18 cm (7 inches) and an aspect ratio of 16:9. The apparatus is equipped with connectors enabling the reception of video signals from external sources such as a rear-view camera or a DVB-T tuner. The apparatus can also reproduce sound and images from a memory card. The apparatus is presented with two remote controls. An additional display can be connected to the apparatus.	8528 59 70	Classification is determined by general rules (GIR) 1, 3(c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8528, 8528 59 and 8528 59 70. The apparatus is designed for the purposes of performing various functions (sound reproduction, video reproduction, radio navigational aid, radio-broadcasting, displaying video), none of which, in view of its design and concept, gives the apparatus its essential character. By application of GIR 3(c), the apparatus is therefore to be classified under CN code 8528 59 70 as other monitors.

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

- 12 On 18 July 2016 Onlineshop requested the ANAF-DGV to issue a binding tariff information ('BTI') decision for a piece of apparatus known as the 'GPS navigation system PNI S 506'; it proposed that the apparatus be classified under subheading 8526 91 20 of the CN, corresponding to radio navigational receivers.
- 13 It is apparent from the order for reference that that apparatus fulfils, in essence, four functions, namely radio navigation, audio/video reproduction, radio broadcasting and display. It may thus be used as a GPS navigation system (GPS module and antenna are included), and as a PC tablet, and is provided with several accessories (windscreen mounting, vehicle charger and data-transmission cable). It weighs 152 g and its dimensions are 132 x 184 x 12 mm.
- 14 By decision of 23 December 2016, the ANAF-DGV issued a BTI decision to the applicant classifying the apparatus under subheading 8528 59 00 of the CN, relying, as the grounds for that classification, on General Rules 1, 3(c) and 6 for the interpretation of that nomenclature. That decision also referred to Implementing Regulation No 698/2012.
- 15 Following the rejection of the preliminary complaint which it lodged against that decision on 11 January 2017, Onlineshop brought an action before the referring court on 2 August 2017.
- 16 That court observes that Onlineshop claims, in support of its request for the apparatus at issue in the main proceedings to be classified under subheading 8526 91 20 of the CN, that the principal function performed by the apparatus is GPS navigation through two pre-installed navigation applications, while the ANAF-DGV contends that none of the functions of the apparatus gives it its essential character and that the apparatus must therefore be classified under the heading which occurs last in numerical order among those which equally merit consideration, namely heading 8528, which corresponds to its function as a monitor for video reproduction.
- 17 In support of the classification requested by Onlineshop, the referring court mentions that the German, French and Netherlands customs authorities have adopted that classification for goods which, according to Onlineshop, have functions similar to those of the apparatus at issue in the main proceedings, in consideration of the fact that the principal function of those goods is GPS navigation. Furthermore, it observes that, having regard to the specific characteristics of its navigation function, the apparatus is intended to be used in a motor vehicle and that its small dimensions (5 inches, or 12.7 cm) may argue that, in the eyes of the consumer, its use as a PC tablet would be merely secondary.
- 18 The referring court observes that, although it mentioned in the BTI decision of 23 December 2016 the provisions of Implementing Regulation No 698/2012, the ANAF-DGV classified the apparatus at issue in the main proceedings under subheading 8528 59 00 of the CN in the version resulting from Implementing Regulation 2016/1821, although the latter regulation did not enter into force until 1 January 2017. According to the referring court, if the ANAF-DGV had in fact relied on Implementing Regulation No 698/2012, the apparatus ought to have been classified under subheading 8528 59 70.
- 19 The referring court observes, in that regard, that the ANAF-DGV justified the reference to Implementing Regulation No 698/2012 by the fact that the third product in the annex to that regulation 'exhibits a significant similarity to the product covered by the BTI decision as regards the functions performed and the composition of the apparatus', and for that reason that regulation 'was included as one of the legal justifications for the classification'.

- 20 Consequently, the referring court wonders whether the provisions of Implementing Regulation No 698/2012 are indeed applicable to the dispute in the main proceedings and, if so, what the effects of their application in the present case would be, in so far as the classification of the apparatus in question was not made in accordance with their CN code.
- 21 In those circumstances, the Curtea de Apel Bacău (Court of Appeal, Bacău, Romania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must the [CN] in Annex I to [Regulation No 2658/87], as amended by [Implementing Regulation 2016/1821], be interpreted as meaning that apparatus such as the GPS navigation system PNI S 506, at issue in the present dispute, is to be classified under tariff subheading 8526 91, subheading 8526 91 20, or heading 8528, subheading 8528 59 00, thereof?
- (2) Are the versions of the [CN], as amended, successively, by [Implementing Regulation No 698/2012] and [Implementing Regulation No 459/2014], relevant for the purposes of determining the correct tariff classification of apparatus such as the navigation system at issue in the present dispute, in the sense that they may be applicable, by analogy, to products which are similar to the navigation system in question, and does the application by analogy of those provisions support the interpretation of the [Combined Nomenclature] provided by the customs authority?’

Consideration of the questions referred

- 22 As a preliminary point, it should be noted that, according to the case-law of the Court, the applicable version of the CN is the version that was in force on the day on which the national decision which established the contested tariff classification was adopted (see, to that effect, judgment of 8 June 2006, *Sachsenmilch*, C-196/05, EU:C:2006:383, paragraph 18).
- 23 In this instance, although Implementing Regulation 2016/1821, to which the first question refers, was adopted on 6 October 2016, it did not enter into force until 1 January 2017. It is therefore not applicable to the main proceedings, which arose as a result of a BTI decision issued on 23 December 2016.
- 24 Therefore, as the Commission maintains, the version of the CN applicable in those proceedings is the version resulting from Implementing Regulation 2015/1754, adopted on 6 October 2015 and applicable to the year 2016.
- 25 Although, by reference to the latter implementing regulation, Implementing Regulation 2016/1821 left subheading 8526 91 20 of the CN unaltered, it did on the other hand amend certain subheadings of heading 8528 of the CN, in particular the last subheading (‘Other’), which no longer has code 8528 59 70, but code 8528 59 00.
- 26 It must therefore be considered that, by its questions, which should be examined together, the referring court is asking, in essence, whether the CN, in the version resulting from Implementing Regulation 2015/1754, must be interpreted as meaning that a piece of apparatus, such as that at issue in the main proceedings, which performs radio navigation, audio/video reproduction, radio broadcasting and display functions, and which has accessories enabling it to be used in a motor vehicle, comes under heading 8526 91 20 or under heading 8528 59 70 of that nomenclature.

- 27 In that regard, it should be borne in mind that the general rules for the interpretation of the CN provide that the classification of goods is to be determined according to the terms of the headings and any section or chapter notes, the titles of sections, chapters and sub-chapters being provided for ease of reference only (judgment of 15 November 2018, *Baby Dan*, C-592/17, EU:C:2018:913, paragraph 49 and the case-law cited).
- 28 In the interests of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods is in general to be sought in their objective characteristics and properties, as defined in the wording of the relevant CN heading and of the notes to the sections or chapters (judgment of 13 September 2018, *Vision Research Europe*, C-372/17, EU:C:2018:708, paragraph 22 and the case-law cited).
- 29 The intended use of a product may also constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (judgment of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraph 40 and the case-law cited). Among the factors relevant in that regard, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use (judgment of 4 March 2015, *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 52).
- 30 Furthermore, in accordance with note 3 to Section XVI of Part Two of the CN, a machine designed for the purpose of performing two or more complementary or alternative functions must be classified as if consisting only of that component or as being that machine which performs the principal function.
- 31 The Court has made clear, in that regard, that it is necessary to take into account what consumers would consider to be ancillary or principal (judgment of 11 June 2015, *Amazon EU*, C-58/14, EU:C:2015:385, paragraph 24 and the case-law cited).
- 32 In this instance, it is apparent from the order for reference that, contrary to the ANAF-DGV's assertions, the principal function among the four functions performed by the apparatus at issue in the main proceedings is, having regard to the place and the methods of its intended use, radio navigation.
- 33 Furthermore, that principal function is inherent in the apparatus, since it follows from its characteristics and its objective properties. In fact, apart from the fact that it is designed as a 'GPS navigation system', the apparatus is intended to be used as a motor vehicle radio navigation monitor using the two pre-installed applications, even though one of them requires an internet connection via wi-fi technology, and by means of the accessories, namely the windscreen mounting and the vehicle charger.
- 34 In addition, it is apparent from the factual information set out in the order for reference that the apparatus's other three functions, mentioned in paragraph 26 above, constitute merely added value supplied with the apparatus, none of which can in itself be decisive for the consumer's decision to purchase it.
- 35 In fact, and as the referring court observes, first, the broadcasting function is of a rudimentary nature since it is not effected by means of a radio broadcasting receiver but by means of an FM transmitter by which it is possible to listen on a vehicle's FM radio to songs contained in the internal or external memory of the apparatus.
- 36 Second, the audio/video reproduction function is limited because the apparatus at issue in the main proceedings is not equipped with connectors that would make it possible to receive video signals from an external source.

- 37 Third, the display function is also limited, having regard, first, to the small screen size (5 inches, or 12.7 cm), which does not offer good visual comfort, and, second, to the fact that, while that function allows the reproduction of installed applications or of video files, it does not allow an additional display to be connected to the apparatus.
- 38 Thus, having regard to the principal function which it performs, a piece of apparatus such as that at issue in the main proceedings must be classified under subheading 8526 91 20 of the CN, corresponding to radio navigational receivers.
- 39 That analysis cannot be called into question by the information relating to the third product classified under subheading 8528 59 70 of the CN in the annex to Implementing Regulation No 698/2012, to which reference is made in the order for reference.
- 40 In that regard, it should be noted that, according to settled case-law, a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the Customs Code Committee. In the interpretation of a classification regulation, in order to determine its scope, account must be taken, inter alia, of its statement of reasons (judgment of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraph 35 and the case-law cited).
- 41 If a classification regulation is not directly applicable to products which are not identical, but only similar to the product covered by that regulation, the latter is applicable by analogy to such products. The application by analogy of a classification regulation to products similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders (judgment of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraph 37 and the case-law cited).
- 42 It is still necessary, in order for a classification regulation to be applied by analogy, for the goods to be classified and those covered by the classification regulation to be sufficiently similar. In that regard, it is also necessary to take into account the reasons given for that regulation (judgment of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraph 38 and the case-law cited).
- 43 In the present case, although the referring court rejects the direct application of Implementing Regulation No 698/2012, since neither of the parties to the main proceedings maintains that the apparatus at issue in the main proceedings is identical to the third product described in the annex to that regulation, it wonders whether that regulation may be applied by analogy.
- 44 However, having regard to the findings of fact made by that court with respect to the apparatus at issue in the main proceedings, it should be observed that that apparatus and the third product described in the annex to Implementing Regulation No 698/2012 do not display such similarities as to justify an application of that regulation by analogy.
- 45 In fact, apart from the fact that the latter product performs a genuine radio broadcasting function, it has, for its display function, a screen with a diagonal measurement of approximately 7 inches, or 18 cm, while an additional display can be connected to it. It is also equipped with connectors enabling video signals to be received from external sources, such as a rear-view camera or a DVB-T tuner. Lastly, it comes with two remote controls.
- 46 Conversely, as has been noted in paragraphs 35 to 37 above, the apparatus at issue in the main proceedings either does not offer such functionalities or provides a weaker performance.
- 47 Thus, Implementing Regulation No 698/2012 is not applicable either directly or by analogy to a piece of apparatus such as that at issue in the main proceedings.

- 48 Having regard to the foregoing considerations, the answer to the questions referred for a preliminary ruling must be that the CN, in the version resulting from Implementing Regulation 2015/1754, must be interpreted as meaning that a piece of multifunctional apparatus of a kind used in motor vehicles which, like that at issue in the main proceedings, combines, in the same housing, by way of primary function, a radio navigation monitor using pre-installed GPS navigation applications and, by way of ancillary functions, a radio broadcasting apparatus, a sound and video reproducing apparatus and a screen with a diagonal measurement of approximately 5 inches (12.7 cm), must be classified under subheading 8526 91 20 of that nomenclature.

Costs

- 49 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 (Tenth 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, in the version resulting from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015, must be interpreted as meaning that a piece of multifunctional apparatus of a kind used in motor vehicles which, like that at issue in the main proceedings, combines, in the same housing, by way of primary function, a radio navigation monitor using pre-installed GPS navigation applications and, by way of ancillary functions, a radio broadcasting apparatus, a sound and video reproducing apparatus and a screen with a diagonal measurement of approximately 5 inches (12.7 cm), must be classified under subheading 8526 91 20 of that nomenclature.

[Signatures]