



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

27 April 2023 *

(Reference for a preliminary ruling – Common Customs Tariff – Classification of goods – Combined Nomenclature – Interpretation – General rules – General rule 2(a) – Article presented unassembled or disassembled – Components intended to make up, after assembly, satellite receivers – Classification as a complete receiver)

In Case C-107/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands), made by decision of 8 February 2022, received at the Court on 16 February 2022, in the proceedings

X BV

other party:

Inspecteur van de Belastingdienst/Douane district Rotterdam,

THE COURT (Sixth Chamber),

composed of P.G. Xuereb, President of the Chamber, T. von Danwitz (Rapporteur) and A. Kumin, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- X BV, by R. Andringa, advocaat,
- the Netherlands Government, by M.K. Bulterman and H.S. Gijzen, acting as Agents,
- the European Commission, by M. Salyková and P. Vanden Heede, acting as Agents,

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

* Language of the case: Dutch.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of General Rule 2(a) of the General rules for the interpretation of 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 (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) ('the CN').
- 2 The request has been made in proceedings between X BV and the Inspecteur van de Belastingdienst/Douane district Rotterdam (Tax and Customs Inspector of the district of Rotterdam, Netherlands) ('the Inspector') concerning the tariff classification of components of satellite receivers.

Legal context

The HS

- 3 The Harmonised Commodity Description and Coding System ('the HS') was established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 within the framework of the World Customs Organization (WCO), and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The Explanatory Notes to the HS are drawn up within the WCO in accordance with the provisions of that convention.
- 4 Under Article 3(1)(a)(ii) of that convention, each contracting party undertakes to apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes, and is not to modify the scope of the sections, chapters, headings or subheadings of the HS.
- 5 General Rule 2(a) for the interpretation of the HS provides, first, that any reference in a heading to an article is to 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 and, second, that such a reference is also to be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.
- 6 Points V to VII of the Explanatory Note relating to General Rule 2(a) of the HS state:
 - '(V) The second part of [General] Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.
 - (VI) This Rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of this Rule.

(VII) For the purposes of this Rule, “articles presented unassembled or disassembled” means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.’

The CN

- 7 The General Rules for the interpretation of the CN, which are set out in Annex I, Part One, Section I(A) to Regulation No 2658/87, provide:

‘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:
2. (a) 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. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

...’

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

- 8 During the period from 3 July 2006 to 22 January 2007, X submitted in the Netherlands, in its own name and on its own behalf, 38 declarations for the release for free circulation of components of satellite receivers. Those components all came from the same supplier, established in China, and were transported on the same ship, in a single container.
- 9 On each occasion, on the same day, X made two separate declarations, namely a declaration for the goods intended for the German undertaking C GmbH and a declaration for those intended for the German undertaking D GmbH, those undertakings belonging to the same group. Those declarations were made to the same customs office in Rotterdam (Netherlands).
- 10 The two declarations covered each time all the components of the same model of satellite receiver in corresponding quantities. Although they were addressed to two separate undertakings, those components were nevertheless complementary and intended to be assembled into a complete satellite receiver, after having been released for free circulation.

- 11 In addition, on 23 July 2007 X made a declaration in the Netherlands for the release for free circulation of components of satellite receivers intended for undertaking C. Those components had been transported in the same container as components intended for undertaking D. However, the latter components were declared under another customs procedure, namely the external Community transit procedure, and transported to Germany under customs supervision, in order to be subsequently released for free circulation in that Member State.
- 12 According to the Inspector, the goods imported by X into the Netherlands must be regarded as not being components of satellite receivers, but as complete satellite receivers in a disassembled state. That finding led it to send X, on 1 July 2009, a payment notice for all the satellite receivers concerned. That notice concerns a total amount of EUR 389 973.70 in customs duties.
- 13 Having unsuccessfully lodged an objection with the Inspector, X brought an action against the demand for payment before the rechtbank Noord-Holland (District Court, North Holland, Netherlands). That court upheld the action and annulled the payment notice in part. Both X and the Inspector appealed against that judgment to the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands), which is the referring court.
- 14 The dispute in the main proceedings concerns the question whether the imported goods must be classified as separate components under the relevant CN tariff headings or whether, as the Inspector maintains, it is appropriate, under General Rule 2(a) of Annex I, Part One, Section I(A) to Regulation No 2658/87, to regard them as complete satellite receivers, in a disassembled state.
- 15 In those circumstances, the Gerechtshof Amsterdam (Court of Appeal, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - ‘(1) Must general interpretative rule 2(a) be interpreted as applying to the separate components of a satellite receiver which are intended, after their release for free circulation, to be assembled into a complete satellite receiver, which components are transported in a single container and are declared for release for free circulation on the same day, at the same customs post, by the same declarant in its own name and on its own behalf, under two separate declarations, and which are owned by two associated undertakings at the time of being put into free circulation?
 - (2) If question 1 is answered in the affirmative, must general interpretative rule 2(a) then be interpreted as also applying to the separate components of a satellite receiver which are declared for release for free circulation by the same declarant in its own name and on its own behalf, on the same day and at the same customs post as that at which the other components for that satellite receiver are placed under the external Community transit procedure, when the components, at the time when the declarations are made, are the property of two associated undertakings and all the components together are intended, after being put into free circulation, to be assembled into a complete satellite receiver?’

Consideration of the questions referred

The first question

- 16 By its first question, the referring court asks whether General Rule 2(a) for the interpretation of the CN must be interpreted as meaning that components of a satellite receiver which are intended, after their release for free circulation, to be assembled into a complete satellite receiver, which components are transported in a single container and are declared for release for free circulation on the same day at the same customs office by the same declarant, in its own name and on its own behalf, by means of two separate declarations for release for free circulation, and which, at the time of their release for free circulation, are owned by two associated undertakings, must be regarded as constituting such a receiver, presented unassembled or disassembled, within the meaning of that rule, and therefore come under a single tariff heading.
- 17 It should be noted, at the outset, 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 courts with guidance on the criteria which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself. The description, for classification purposes, of the goods at issue is the result of a purely factual finding which it is not for the Court to make in the context of a reference for a preliminary ruling (judgment of 28 April 2022, *PRODEX*, C-72/21, EU:C:2022:312, paragraph 27 and the case-law cited).
- 18 It should also be specified that, in accordance with General Rule 1 for the interpretation of the CN, the classification of goods is to be determined according to the terms of the headings and any relative section or chapter notes to that nomenclature. 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 that nomenclature and of the notes to the sections or chapters (judgment of 28 April 2022, *PRODEX*, C-72/21, EU:C:2022:312, paragraph 28 and the case-law cited).
- 19 Moreover, the Court has repeatedly held that, although the Explanatory Notes to the HS and to the CN do not have binding force, they are an important means of ensuring the uniform application of the Common Customs Tariff and, as such, may be regarded as useful aids to its interpretation (judgment of 28 April 2022, *PRODEX*, C-72/21, EU:C:2022:312, paragraph 29 and the case-law cited).
- 20 General Rule 2(a) for the interpretation of the CN, which corresponds to General Rule 2(a) for the interpretation of the HS, provides 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. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled’.
- 21 It is apparent from point VII of the Explanatory Note relating to General Rule 2(a) of the HS that articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved. No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

- 22 According to the case-law of the Court of Justice, an article is to be considered to be imported unassembled or disassembled where the component parts, that is the parts which may be identified as components intended to make up the finished product, are all presented for customs clearance at the same time and no account is to be taken in that regard of the assembly technique or the complexity of the assembly method (judgment of 16 June 1994, *Develop Dr. Eisbein*, C-35/93, EU:C:1994:252, paragraph 19).
- 23 In the present case, it is apparent from the information provided by the referring court that the component parts of the article at issue, namely a satellite receiver, were all presented at the same time for customs clearance.
- 24 Although a simultaneous presentation of those parts for customs clearance is required in order for them to be regarded as an article presented unassembled or disassembled, it is not, however, apparent from the wording of General Rule 2(a) for the interpretation of the CN or from the Explanatory Note relating to General Rule 2(a) for the interpretation of the HS that those component parts must be covered by a single customs declaration.
- 25 The fact that such goods are the subject of a single declaration at the time of their presentation to customs does not constitute a condition *sine qua non* in order to consider that they belong together as a unit and hence constitute an ‘article ... presented unassembled or disassembled’, within the meaning of General Rule 2(a) for the interpretation of the CN, but merely evidence that allows the inference of such a finding (see, by analogy, judgment of 10 March 2016, *VAD and van Aert*, C-499/14, EU:C:2016:155, paragraph 38).
- 26 To interpret the concept of an article presented unassembled or disassembled differently would, in practice, permit importers themselves to choose, by means of a relatively simple manipulation, such as the presentation of the goods in separate declarations, the tariff classification of the goods at issue – whether together as a unit, or separately – that is the most favourable for them (see, by analogy, judgment of 10 March 2016, *VAD and van Aert*, C-499/14, EU:C:2016:155, paragraph 39).
- 27 Such a possibility would be contrary to the principle that the decisive criterion for the tariff classification of goods is in general to be found in their objective characteristics and properties and would therefore undermine the objective of ensuring ease of verification and legal certainty which must govern the tariff classification of imported goods (see, by analogy, judgment of 10 March 2016, *VAD and van Aert*, C-499/14, EU:C:2016:155, paragraph 40 and the case-law cited).
- 28 Consequently, the fact that goods are presented to customs in separate declarations cannot, in itself, preclude those goods from being classified as unassembled or disassembled articles, within the meaning of General Rule 2(a) for the interpretation of the CN, if, at the time of customs clearance, it is apparent from other objective factors that the goods belong together as a unit and are intended to be assembled subsequently into a single device (see, by analogy, judgment of 10 March 2016, *VAD and van Aert*, C-499/14, EU:C:2016:155, paragraph 43).
- 29 In the present case, the referring court refers to objective factors which militate in favour of the components at issue in the main proceedings being classified as an unassembled or disassembled article, within the meaning of that General Rule 2(a). In particular, the referring court notes that those components were intended, once released for free circulation, to be assembled into a single finished product, that they were transported in a single container, that they were the subject of

declarations for release for free circulation from the same declarant, in its own name and on its own behalf, at the same customs office, and that, at the stage of their release for free circulation, those components were owned by two associated undertakings.

- 30 Such circumstances are capable of confirming that the article in question is unassembled or disassembled. As the European Commission rightly observed, the fact that those components are presented in separate declarations for release for free circulation must be assessed in parallel with the other relevant circumstances, but is not in itself decisive.
- 31 Consequently, General Rule 2(a) of the General rules for the interpretation of the CN must be interpreted as meaning that components of a satellite receiver which are intended, after their release for free circulation, to be assembled into a complete satellite receiver, which components are transported in a single container and are declared for release for free circulation on the same day at the same customs office by the same declarant, in its own name and on its own behalf, by means of two separate declarations for release for free circulation, and which, at the time of their release for free circulation, are owned by two associated undertakings, must be regarded as constituting such a receiver, presented unassembled or disassembled, within the meaning of that rule, and therefore come under a single tariff heading, in so far as it is established in the light of objective factors that those components belong together as a unit and include all the component parts of that receiver.

The second question

- 32 By its second question, the referring court asks whether General Rule 2(a) for the interpretation of the CN must be interpreted as also applying where some of the goods at issue are declared for release for free circulation while others are placed under the external Community transit procedure.
- 33 In the light of the answer given to the first question, it must be held that the fact that such goods are presented to customs in separate declarations with a view to being assembled subsequently cannot, in itself, preclude those goods from being classified as an unassembled or disassembled article, within the meaning of General Rule 2(a) for the interpretation of the CN, if, at the time of customs clearance, it is apparent from other objective factors that those goods belong together as a unit and that they are intended to be assembled subsequently into a single article.
- 34 As the Commission rightly observed, the manner in which the goods were declared or the customs procedure under which they were transported to their final destination may be one of the relevant objective factors for assessing whether General Rule 2(a) is applicable. Those circumstances cannot, however, be decisive in themselves, and the referring court must take into account any other relevant objective factor for the purposes of that assessment.
- 35 The fact that Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), applicable to the period covered by the dispute in the main proceedings, did not expressly provide for the possibility of considering together, for the purposes of their tariff classification, goods declared for release for free circulation and goods declared under the external Community transit procedure is irrelevant in that regard.

- 36 As the Netherlands Government rightly observed, any other interpretation would make it possible to circumvent General Rule 2(a) for the interpretation of the CN, since importers could, by a fairly simple operation, namely by splitting the consignment and declaring the goods under two different customs procedures before their release for free circulation, ensure that they are classified as a whole or as separate components, depending on which tariff is more advantageous.
- 37 Consequently, that General Rule 2(a) for the interpretation of the CN must be interpreted as also applying where some of the goods at issue are declared for release for free circulation while others are placed under the external Community transit procedure.

Costs

- 38 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 (Sixth Chamber) hereby rules:

- 1. General Rule 2(a) of the General rules for the interpretation of 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 1549/2006 of 17 October 2006,**

must be interpreted as meaning that components of a satellite receiver which are intended, after their release for free circulation, to be assembled into a complete satellite receiver, which components are transported in a single container and are declared for release for free circulation on the same day at the same customs office by the same declarant, in its own name and on its own behalf, by means of two separate declarations for release for free circulation, and which, at the time of their release for free circulation, are owned by two associated undertakings, must be regarded as constituting such a receiver, presented unassembled or disassembled, within the meaning of that rule, and therefore come under a single tariff heading, in so far as it is established in the light of objective factors that those components belong together as a unit and include all the component parts of that receiver.

- 2. General Rule 2(a) of the General rules for the interpretation of the combined nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006,**

must be interpreted as also applying where some of the goods at issue are declared for release for free circulation while others are placed under the external Community transit procedure.

[Signatures]