



TC01570

Appeal number: TC/2011/00568

Anti-Dumping Duty – Customs classification – top tube child seat – was the product imported a saddle – no – appeal allowed

FIRST-TIER TRIBUNAL

TAX

SPRINT C.P.A. LTD

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)
ALBAN HOLDEN (MEMBER)**

Sitting in public Birmingham on 18 October 2011

Mr J Lambdon appeared for the Appellant

Simon Charles, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This appeal concerns the correct customs classification of Top Tube Child Seats (“the product”) imported into the UK by the Appellant from China. The Respondents
5 contend that the product is “a saddle” and if this classification is correct the import attracts Anti Dumping Duty (“ADD”) for which a C18 Post Clearance Demand Note has been issued for £10,880.26 ADD and £1,785.24 additional VAT.

2. We heard submissions from Mr Simon Charles of counsel for the Respondents and Mr J Lambdon, former Co Director and owner of the Appellant Company. We
10 were greatly assisted by Mr Lambdon’s production for our inspection of a bicycle with the product attached; the boxed product as would be purchased over the counter; a variety of saddles and a couple of bicycle child seats of a different design.

The Legal Principles

3. Article 1 of Council Regulation (EC) Number 691/2007 imposes a definitive anti-dumping duty on the import of ‘saddles and essential parts thereof i.e., bases,
15 cushions and covers, of bicycles..., falling within CN code 8714 95 00... and originating in the ‘People’s Republic of China’. The rate of duty depends on the factory of origin and it was common ground in this case that the originating company falls within the category of ‘all other companies and the rate to be applied is 29.6%.’

4. The Combined Nomenclature Regulations (Reg EEC Number 2658/87) provides the legal basis for the Community’s Tariff and the issue for determination by the
20 tribunal is the correct classification code or CN code for the product. It was common ground that the product fell within the code 8714, parts and accessories of a bicycle. The conflicting contentions thereafter were that of the Respondents that the correct code was 8714950000 ‘Saddles’ and that of the Appellant that it should be 871499 90
25 89, ‘Other’. Mr Charles accepted that if the tribunal were to find the product was not a saddle, then the Appellant’s classification of ‘Other’ would be the correct one. It was one or the other.

5. In classifying the product, the Tribunal applies the General Interpretive Rules (GIRs) set out in Annex 1 of Council Regulation (EEC) Number 2658/87. The rules
30 relevant to the issue before us are Rules 1, 2(a), 3(a) and 6 which read as follows:

“1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined
35 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, providing that, as presented,
40 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.

5 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

10 (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.

15 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 the rule the relative section and chapter notes also apply, unless the context otherwise requires.”

20 6. Further guidance on construction is given in the Harmonized System Explanatory Notes (HSEs) although these Notes are exactly what they say they are, explanatory rather than legally binding. HSEN8714 includes under the sub heading ‘Parts and accessories of this heading include:’ at number 11 ‘Saddles (seats) and saddle pillars (seat posts); saddle-covers.

25 7. We will also set out here as we were referred to it by Mr Charles paragraph 15 of the pre-ambles to Commission Regulation (EC) Number 1999/2006 which preceded Council Regulation 691/2007.

30 ‘(15) A saddle is typically made up of three parts: a base or support on which the saddle is built, is generally produced through a plastic injection moulding process; the cushion which is applied to the base to make the saddle comfortable which can be made from different types of synthetic foam or other materials; the cover, made from synthetic material or natural leather which covers the cushion and the edges of the base giving the saddle its feeling and aesthetic properties. As well as the above three components a saddle normally incorporates an attaching mechanism made from metal such as a fork, or clamp and may also include a spring or elastomer shock-absorbing mechanism. ‘

8. The preamble to the Council Regulation 691/2007 to which we were referred to Mr Lambdon reads at paragraphs 4 and 5 as follows:

40 ‘(4) One importer argued against the inclusion into the scope of the investigation of essential parts of saddles (bases, cushions and covers) on the grounds that the inclusion of the latter was not justified by any evidence of

dumping from either the complaint or the investigation. This importer claimed also that it is not sufficient to consider saddles and saddle parts as one single product on the basis that both were used for the same end product (i.e. bicycles and similar). The same importer further alleged that certain saddle parts were included in the product definition to prevent circumvention in case anti-dumping duties were imposed. On this basis, it was argued that importers in the Community should be allowed to request exemptions from the anti-dumping duty within the meaning of Article 13(4) of the basic Regulation.

(5) It should be noted, first of all, that the complaint mentions saddles and essential parts thereof. It is considered, however, that the prima facie evidence of dumping necessary for initiating an investigation does not need to cover all product types included in the scope of the investigation. As long as the parts of a saddle have the same basic technical, physical and chemical characteristics and cannot have another end-use than being incorporated in the whole (i.e. into saddles) and, as such, they are not a distinct product, they are defined as part of the product concerned and should form part of the investigation. Furthermore, the fact that essential parts were not exported as such to the Community by the cooperating exporting producers during the IP does not preclude that this could have happened for the exporters which have not cooperated. It is recalled that the latter exporters represent over 75% of the exports of the product concerned to the Community.'

9. In the recent joined cases of British Sky Broadcasting Group Plc and Pace Plc v HMRC (C288/09 and C289/09) the ECJ confirmed that classification of goods is 'to be determined first according to the terms of the headings and section or chapter notes, and that titles to sections, chapters and sub-headings are provided for ease of reference only' (para 59). The Court went on to hold (para 60) that:

"In that regard, it should be borne in mind that, according to settled case law, in the interests of legal certainty and for 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 by the wording of the relevant heading of the CN and the notes to the sections or chapters....."

The Top Tube Child Seat

10. The Top Tube Child Seat is designed to carry children aged approximately 2-4 years old and up to 40lbs in weight. It comes boxed in kit form and is then assembled and attached to the bicycle. It consists of a small seat which can only be described as similar in shape and appearance to a saddle. It is of a plastic mould, covered by cushioning. Integrated into the moulding is a unique fitment mechanism by which it is clamped to the down tube of a ladies bicycle or the top tube of a gentleman's. It is supplied with footrests and straps to accommodate and restrain the child's feet, a safety belt and a metal backrest which is secured into the flanges of the seat moulding. The child will thus be seated in front of the cyclist, further restrained by the cyclist's outstretched arms as he holds the handlebars.

The Appellant's Contentions

11. The definition of a saddle adopted by Mr Lambdon is from Wikipedia and is in the following terms.

5 "Often called a seat, is one of 3 contact points on an upright bicycle, the other being the pedals and the handlebars.

It performs a similar role as that of a horse's saddle by not bearing all of the weight of the rider as the other contact points also take some of the load.

10 A bicycle saddle is commonly attached to the seat post and the height of the saddle can usually be adjusted by the seat telescoping in and out of the seat tube.

A bicycle saddle is constructed with double rails for forward/backward linear and tilt adjustment."

12. Mr Lambdon's primary contention was that the product is not a saddle as it cannot under any circumstances be used as a replacement for a normal saddle because it lacks the conventional fitments which, in his estimate, some 99 % of saddles have. The product is of a specific design which means it can only be used with the metal parts supplied with it and its sole purpose is that of a child's seat. It also differs from a conventional saddle in that it is incapable of adjustment such as forward/backward tilt or height.

13. Mr Lambdon stressed that the product as sold on the market is described as a child seat and is but one of a number of differing designs of such seats. We were shown two very much more substantial plastic bucket seats but as Mr Lambdon pointed out even on the bucket seats, the seat part is cushioned and ridged to fit the child's contours. In his submission, bucket seats and the product all serve exactly the same function – to transport a child passively and yet the bucket seats could not be remotely described as saddles. Similarly, the product is not a conventional saddle but is a child seat.

14. Mr Lambdon pointed out that within his definition of the word "saddle", the saddle does not bear all the weight of the rider as the other contact points also take some of the load (i.e. the handle bars and the pedals). By contrast the product will carry the child's entire weight. The child also, argued Mr Lambdon, is not a rider. A rider, he submitted, was the person controlling or propelling the cycle unlike a passenger who would be passive and merely carried.

15. Mr Lambdon also drew our attention, as cited above, to the preamble of Council Regulation 691/2007 of paragraph 5. His argument here was that the product cannot be incorporated into a saddle in the whole and as such is a distinct product.

The Respondents' Contentions

16. The definitions of a saddle drawn upon by Mr Charles were from the Collins English Dictionary (2003 Reprint)

“1. a seat for a rider, usually made of leather, placed on a horse’s back and secured with a girth under the belly.

5 2. a similar seat on a bicycle, tractor etc.

3. a backpack forming part of the harness of a packhorse.

4. anything that resembles a saddle in shape, position or function.”

and from the Oxford Dictionary of English

10 “a seat fastened on the back of a horse or other animal for riding, typically made of leather and raised at the front and rear. A seat on a bicycle or motorcycle”

15 17. The product, in Mr Charles’s submission fell within both of the above definitions in that it provided a ‘seat’ for a ‘rider’ on a ‘bicycle’. It was his view that in the light of the HSEN referring to a ‘saddle (seat)’, no distinction for the purposes of classification could be drawn between a saddle and a seat.

18. We were also referred by Mr Charles to the Fitting Instructions which accompanied the product, step one of which reads “Insert the back support flange fixing into the under saddle moulding...”.

Conclusions

20 19. ADD is levied under Code 8714 95 00 on the importation of saddles from China. We therefore address first what has actually been imported. The product, as imported, comes in kit form, unassembled. It is a composite, the constituent parts being a seat, a backrest, a seatbelt, straps and footrests. Once assembled the totality is used as a child seat.

25 20. We have no doubt, and so we find, that the seat component of the product is a saddle. Examining the objective characteristics and properties of the seat, in shape and design it is virtually identical to that of a saddle. It is triangular in shape, made of a plastic moulding and covered in a cushioning material. Its process of manufacture will be the same as for any other saddle. This saddle comes with its own unique
30 fitment by which it clamps to one of the bicycle tubes. We accept that this fitment is not one that would be compatible with a conventional saddle but, in our view, this matters not. The nature of the fitment cannot detract from the essential properties of the seat itself. Equally, the fact that the saddle is static rather than adjustable is, to us, immaterial. The purpose for which this saddle is used does not require it to be
35 adjustable but again this cannot prevent it from being seen as a saddle. We reject Mr Lambdon’s distinction between a rider and a passenger. Whether the person sitting on this saddle is merely being carried or is actively propelling the cycle does not alter the properties or characteristics of what he is sitting on and it is these properties and

characteristics which define the thing and which determines whether or not it is a saddle. Looking at the objective characteristics and properties, above all the appearance and shape, of the seat, it can only be defined for these purposes as a saddle.

5 21. However, although, in our finding, the seat is a saddle, the saddle is not imported
as a single discreet item. It is but one part of a larger composite whole. The totality
of what is imported is a child seat, one of the components of which is a saddle. The
saddle is not manufactured to or imported to, and in terms of its practical use could
never, stand alone. We therefore find that although the product includes, as one of its
10 component parts, a saddle, the product itself is not a saddle and it is not a saddle that
is imported. The correct classification is therefore 'other' – 8714 99 90 89. The
appeal is therefore allowed.

22. This document contains full findings of fact and reasons for the decision. Any
party dissatisfied with this decision has a right to apply for permission to appeal
15 against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax
Chamber) Rules 2009. The application must be received by this Tribunal not later
than 56 days after this decision is sent to that party. The parties are referred to
"Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE

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RELEASE DATE: 14 November 2011