



**TC02240**

**Appeal numbers: TC/2011/03140, TC/2012/07460**

*Customs Duty –TARIC classification code for radio navigational receiver unit intended to be incorporated into GPS system of motor vehicle – whether "assembly for GPS system having a position determination function" – whether existence of housing surrounding and protecting the unit precluded it from being an "assembly" – EU Customs Code Committee statement on classification of "assemblies for GPS systems having a position determination function" considered – held the unit in question was an "assembly" within the normal meaning of that word and no uncertainty arose which was required to be resolved by reference to the statement – in any event, the effect of the statement as argued by HMRC would be inconsistent with the true meaning of the relevant TARIC subheading – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LAND ROVER**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE KEVIN POOLE  
CHRISTOPHER JENKINS**

**Sitting in private at 45 Bedford Square, London on 26 July 2012**

**Valentina Sloane of counsel, instructed by the Appellant, for the Appellant**

**Owain Thomas of counsel, instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

### Introduction

1. This decision concerns the correct classification of a particular piece of  
5 electronic apparatus for Customs Duty purposes.

2. The apparatus in question is a reasonably nondescript black box, about the size  
of half a foolscap box file. It is called a "multi-media module" and is known by the  
abbreviation "MMM". It is incorporated into motor vehicles manufactured in the UK  
by the Appellant and its associated companies, being housed either under the driver's  
10 seat or in the boot. It provides the "heart" of the vehicle's GPS navigation system. It  
contains a DVD reader, into which is inserted a DVD containing relevant mapping  
data. It has a number of electrical, electronic and fibre-optic connections and once it  
has been appropriately installed, wired in and configured, it can be controlled via a  
touch screen display installed in the vehicle's dashboard, through which it also  
15 displays the relevant information in the form of moving maps, traffic information,  
turning instructions and so on. It also provides audio instructions through its  
connection to the vehicle's entertainment audio system. In one configuration, it also  
controls the vehicle's voice activated functions for navigation, audio and telephone  
systems.

3. On its own, the unit can do nothing. It needs to be connected up to the  
20 appropriate other systems and components (and a power supply), through wiring and  
other connections built into the vehicle, before it can perform its function.

4. The parties are agreed that, for Customs Duty purposes, the MMM falls under  
heading 8526 91 20 of the Combined Nomenclature ("Radio navigational receivers").  
25 The dispute that has arisen is whether it is proper to the TARIC sub-heading  
"Assembly for GPS system having a position determination function" or the sub-  
heading "Other". The significance of the difference is that whilst import duty at the  
rate of 3.7% is payable on both categories, there is in force a quota which, up to a  
maximum number of units, applies a zero rate of duty on items falling within the  
30 former sub-heading. The Appellants wish to avail themselves of part of that quota.

5. To that end, they sought a "Binding Tariff Information" ("BTI") from HMRC,  
asking for the product to be classified under the "assembly" sub-heading. Instead,  
HMRC issued a BTI classifying it under the "other" sub-heading. The Appellants  
appealed against this BTI.

6. There was a slight twist to the story at that point. Because of a change in the  
35 TARIC code numbers, HMRC cancelled the disputed BTI. Strictly speaking, the  
Appellant's original appeal was against the original BTI but when it realised the  
position it quickly applied for a new BTI, receiving exactly the same ruling from  
HMRC (though with the updated TARIC code). It did not formally lodge an appeal  
40 against the new BTI until the day of the hearing, but with the consent of HMRC the  
new appeal was permitted to proceed out of time and be heard together with the

original appeal. There was no prejudice involved, as the issues were precisely the same on both appeals. This decision therefore applies in relation to both appeals.

### **The facts**

7. These were entirely undisputed. The unit in question is described in sufficient  
5 detail in the introduction above, apart from one feature of it, the casing or housing.

8. For reasons which will become apparent, the casing of the unit was considered  
in some detail. It is unremarkable in appearance, finished in black. It contains a slot,  
through which the DVD is inserted. It carries three buttons, one to eject the DVD and  
two which have open and closed padlocks next to them, clearly related to the locking  
10 and unlocking of the unit in some way (though we were not given details). A sample  
MMM was produced at the hearing for our examination.

9. We were provided with a witness statement from Mr Mark Poole, the  
Appellant's Engineering Manager for Navigation Systems and Mr Poole also gave  
brief verbal evidence. On his evidence, the casing of the unit provided "robust  
15 mechanical protection for the electronic components", it also provided the  
"mechanism by which the unit is mounted and fixed into the vehicle via four fixing  
bolts" and "a mechanism for insertion & ejection of the map DVD". He made the  
point that there were lots of delicate components, especially the DVD reader, and not  
only did the casing protect those components during their journey from Japan (where  
20 the units are made) but it also protected them from damage and dust during  
installation in the vehicle and during its lifetime.

### **The general legal background**

10. The basic law underpinning the Combined Nomenclature ("CN") and its  
interpretation was not in dispute between the parties. We do not therefore propose to  
25 set it out at length in this decision. Ms Sloane referred us to the judgment of  
Henderson J in the High Court in *HMRC v Flir Systems AB* [2009] EWHC 82 (Ch)  
which provides, at [6] to [14], a brief summary of that law.

11. It is clear that the headings and subheadings in the CN must, as a matter of  
law, be interpreted and applied by reference to the General Rules of Interpretation  
30 ("GIRs") which appear in Part One, Section 1, A, of the CN. Under GIR 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  
35 require, according to the following provisions".

12. GIR 3 makes it clear that when goods could prima facie be classifiable under  
two or more headings, "the heading which provided the most specific description shall  
be preferred to headings providing a more general description". If that (and certain  
other tests, irrelevant in this case) does not resolve the issue, then GIR3 goes on to say

that the goods should be classified in the heading which occurs last in numerical order.

13. Finally, in relation to sub-headings, GIR 6 says:

5 "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 note 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."

10 14. Neither party argued that there were any relevant section, chapter or subheading notes contained in the CN itself.

15 15. With this basic structure in mind, we are required to carry out our own exercise of allocating the MMM to the appropriate subheading in the CN.

15 16. The ECJ has given guidance on how the task is to be approached. As stated by the ECJ in *Holz Geenen GmbH v Oberfinanzdirektion München* [2000] Case C-309/98 at [14]:

20 "It is settled case-law that, 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 in the wording of the relevant heading of the CN."

17. Thus we are concerned with the "objective characteristics and properties" of the MMM and must decide whether, in the light of them, the MMM is "an assembly for GPS system having a position determination function".

25 18. It is clear that there are also non-legally binding "aids to interpretation" of the CN. In particular, these include:

- 30 (1) the Harmonised System Explanatory Notes issued by the World Customs Organisation ("the HSEs");
- (2) the Combined Nomenclature Explanatory Notes issued by the European Commission ("the CNENs"); and
- (3) Classification statements issued by the Customs Code Committee (the "CCC") established under Article 247a of the Community Customs Code (Regulation 2913/92).

35 19. In addition, the EU may adopt Regulations to clarify the classification in doubtful cases, but no such Regulation is relevant in this case. Such Regulations have binding legal force but only insofar as they are consistent with the CN, and the ECJ has struck down Regulations for non-compliance with this requirement of consistency.

20. In the present case, neither side argued that there were any directly relevant HSEs or CNENs, but there was a relevant classification statement from the CCC. HMRC's case rests mainly on that classification statement. It is therefore appropriate to examine that classification statement and its legal background more closely.

## 5 The Classification Statement

### *Introduction*

21. The statement in question is the following "Statement on the classification of "Assemblies for GPS systems" adopted by the CCC at its meeting on 24 to 26 September 2008 (as recorded in the minutes of that meeting issued on 21 October 2008) ("the Statement"):

"The Committee concluded that:

For the purposes of TARIC code 8526 91 20 20 ("Assembly for GPS system having a position determination function"), the expression "assembly" covers products consisting of various components. The "assembly" has the essential character of a complete or finished product and is intended to be incorporated into another product such as a motor vehicle.

Radio navigational receivers in their own housing are not considered to be "assemblies" (TARIC code 8526 91 20 10 or 8526 91 20 90)."

22. Before considering the application of the Statement to the facts of the present case, it is important first to establish its legal status.

### *The legal status of the Statement*

23. As mentioned above, both parties accepted that the Statement is not legally binding. The classic jurisprudence on its status is that contained in the ECJ decision in *Firma Rolf H. Dittmeyer v Hauptzollamt Hamburg-Waltershof* [1977] Cases 69 and 70/76 at [4]:

"The opinions of the Committee on Common Customs Tariff Nomenclature constitute an important means of ensuring the uniform application of the Common Customs Tariff by the customs authorities of the Member States and as such they may be considered as a valid aid to the interpretation of the tariff. Nevertheless such opinions do not have legally binding force so that, where appropriate, it is necessary to consider whether their content is in accordance with the actual provisions of the Common Customs Tariff and whether they alter the meaning of such provisions. The questions which have been asked by the national court were evidently prompted by grave doubts as to whether the opinion was in accordance with the said tariff headings."

24. Both parties are agreed that these comments apply equally to the updated structures of the CN and the CCC which have replaced those of the 1970's. Naturally, the parties seek to emphasise different parts of this statement. The Appellant

emphasises the "no legal binding force" element and HMRC emphasise the "valid aid to interpretation" element.

*Legal underpinning of the Statement*

5 25. Ms Sloane gave a brief description of the legislative authority underpinning the Statement, with which Mr Thomas did not seriously disagree.

26. As was stated in the agenda for the CCC meeting at which the Statement was adopted, the draft Statement was submitted for consideration at that meeting "under Article 8 of Regulation (EEC) No 2658/87". Under that Article, the CCC is empowered to:

10 "... examine any matter referred to it by its chairman, either on his own initiative or at the request of a representative of a Member State:

(a) concerning the combined nomenclature;

15 (b) concerning the Taric nomenclature and any other nomenclature which is wholly or partly based on the combined nomenclature or which adds any subdivisions to it, and which is established by specific Community provisions with a view to the application of tariff or other measures relating to trade in goods."

27. The CCC's own rules of procedure clearly differentiate, for the purposes of its deliberations, between "examinations" under Article 8 and other business of the CCC. 20 No particular status is conferred, either by Article 8 or by the CCC's own rules of procedure, upon the results of Article 8 examinations. The only status they have, therefore, is as a valid aid to interpretation (as held by the ECJ in *Dittmeyer*).

*Relevance of the background to the adoption of the Statement*

28. Mr Thomas argued that the background to the adoption of the Statement was 25 irrelevant. It was clear on its face, and speculation as to how and why it reached its final form was pointless. The only relevant context was the text of the subheading itself which requires interpretation. The first part of the Statement (by referring to an assembly as having only "the essential character of a complete or finished product") made it clear that it was referring to something less than a complete or finished 30 product, and the final sentence of the Statement was clarifying that the presence or absence of a housing would make the difference.

29. Ms Sloane on the other hand argued that the Statement, read as a whole but in isolation, was "opaque". If it was to be understood properly, it should not be construed like a piece of legislation or in isolation, rather it should be considered in 35 the round and set in its proper context. This required an appreciation of the history behind its adoption as well as an understanding of the wider context within which it was adopted.

30. We agree with Ms Sloane. We consider that if we are properly to discharge our duty to treat the Statement as a "valid aid to interpretation", it is important for us

to understand its context. It is clear that the legislative context can provide an invaluable aid to the interpretation of legislation, and we consider this applies no less (indeed, probably more) to non-legislative material such as the Statement.

*The quota system*

5 31. The clear purpose in separating out the relevant CN heading into subheadings in the TARIC in this case is to enable a quota to be established for items fitting the description of "Assembly for GPS system having a position determination function". In place of the usual 3.7% duty, such items are to be subject to nil duty, up to the annual quota amount. The general policy behind tariff quotas is set out in the  
10 European Commission's "Communication from the Commission concerning autonomous tariff suspensions and quotas" (2011/C 363/02, OJ 13.12.2011). This communication includes the following:

15 "2.5.1 The aim of tariff suspensions [*NB, paragraph 2.6 states that this section applies also to tariff quotas*] is to enable Union enterprises to use raw materials, semi-finished goods or components not available or produced within the Union, with the exception of 'finished' products.

2.5.2 Notwithstanding paragraphs 2.5.3 and 2.5.4, for the purposes of this communication, 'finished goods' are commodities that exhibit one or more of the following characteristics:

- 20 – are ready for sale to the end-user, to be packed or not within the Union for retail sale,
- are disassembled finished goods,
- will not undergo any substantial processing or transformation, or
- 25 – have already the essential character of the complete or finished product.

2.5.3 As Union producers are converting increasingly to assembling products requiring parts that are already highly technical [*sic*] sophisticated, some of the parts required are used without major  
30 modification and could therefore be considered as 'finished' products. Nevertheless tariff suspensions could, in certain cases, be granted for 'finished' products used as components in the final product, provided the added value of such an assembly operation is sufficiently high.

....

35 3.3 In principle, unless the Union interest dictates otherwise, and in deference to international obligations, no tariff suspension or quota measure will be proposed in the following situations:

....

- where the goods in question are finished products intended for sale to end-consumers without further substantial processing or without forming an integral part of a bigger final product for whose functioning they are necessary."

5 32. The same communication also contains, at paragraph 2.3.3, the following text:

"Moreover, since tariff suspensions constitute an exception to the general rule represented by the Common Customs Tariff, they must, like all derogations, be applied in a coherent manner."

10 33. Whilst this passage purports to apply specifically to "suspensions" rather than quotas, the context in which it appears suggests that it should be read as applying equally to quotas. In any event, we regard it as axiomatic that legislation generally should be interpreted where possible with a view to achieving overall coherence.

*Application for quota prompting the current TARIC code*

15 34. Included in the documents before us was a "Request for Tariff Suspension or Quota" from France which was dated 11 March 2002 and bore the title "Working Document". Ms Sloane asserted this was a copy of part of the application which had led to the introduction of the quota with which we are here concerned. It identified the product in question, which was described as "Electronic assembly with positioning function for GPS systems", with the more detailed description ""the  
20 assembly is intended for incorporation in a radio-navigation/car radio computer system. the device is presented as a module containing arithmetic and interface circuits". The drawing of the item in question, which was supposedly attached to the application, was in exploded diagrammatic format. In that drawing, the item was shown as basically consisting of a printed circuit board (presumably with various  
25 electronic components mounted on it) with a casing in two parts, described as "top shield" and "base shield" on the drawing. Ms Sloane invited us to accept that this demonstrated that the original product which gave rise to the quota in the first place was itself contained in a housing.

30 35. We are unable to do so, mainly because no proper evidence was put before us to support her assertion. The documents in question were clearly selectively extracted parts of one or more longer documents, and there was nothing on the face of them, or in any other evidence before us, to link the drawings to the "request" or to link the request to the eventual quota and associated TARIC code.

*Consideration of the interpretation of TARIC code 8526 91 20 20 by the CCC*

35 36. Of more assistance to us was a copy of a working document dated 9 June 2008 produced for the CCC which contained a "Form for Submissions for Classification Issues to the Customs Code Committee" dated 4 June 2008 from the UK. This document highlighted, for consideration by the CCC, a "divergence of opinion amongst member states over the definition of TARIC code 8526 91 20 20 'Assembly for  
40 for GPS systems having a position determination function'". This form recorded that the Dutch authorities had initially contacted the UK to query the UK classification

practice. This was because "the UK had classified most GPS systems under code 8526 91 20 20, whether or not they were 'complete', i.e. including a housing which may incorporate a screen." The form went on to say that "the UK now agrees with the Dutch administration that the term 'assembly' covers products which, while having the capability of functioning as a GPS system, do not include a housing/cover which may incorporate a touch screen." The form also referred to a number of BTIs issued by the UK, France and the Netherlands, all confirming the TARIC code 8526 91 20 20. It stated that the product which was the subject of the UK BTI in question was:

"a portable motor vehicle navigation system. It includes detailed maps of the whole of Western Europe which are stored on an in-built SD card, provides updated traffic and weather reports. Includes 36 language options, and can be connected to a mobile phone, headset, car speakers or headphones via Bluetooth technology."

37. It is clear from this and the physical description given that the product in question was an advanced version of what might be called a "standalone" GPS sat nav unit, including a touch-sensitive display screen. In short, it was a normal portable sat nav that could be used in any vehicle and easily moved from one vehicle to another.

38. It was also stated in the form that the UK authorities did not feel able to withdraw their BTI, as the French had not responded to contacts from the UK which queried the French classification of similar 'complete' products with the same 8526 91 20 20 code. In an effort to resolve this apparent impasse, the UK authorities requested a statement from the CCC.

39. We were provided with a copy of the minutes of the subsequent 455th meeting of the CCC held on 30 June to 1 July 2008. The relevant part of those minutes reads as follows:

*"Questions:*

Which products are to be classified as "Assemblies for GPS systems" (TARIC code 8526 91 20 20)?

Some MS [*Member States*] classified even complete GPS systems with a housing as an "assembly" under this code.

*Conclusions:*

Chair explained that this code (for quota) was introduced for assemblies that are to be incorporated into cars following a request from one MS.

"Assemblies" of this subheading are products which are more than parts but not complete products yet. Therefore, complete products with a housing are not to be classified under this TARIC code as "assemblies" intended to be incorporated into another product or to be fitted into a housing/casing.

MS that issued BTI under TARC code 8526 91 20 20 agreed to withdraw their BTI. However they would prefer to have a statement adopted.

**Action points:**

5 Statement to be prepared for next meeting."

40. We were also provided with copies of the minutes of the 458th meeting of the CCC on 24 to 26 September 2008. Those minutes briefly recorded that after some textual amendments, the Statement was adopted in the form set out at [21] above.

41. To the extent that it is relevant, therefore, it is clear to us that the issuing of the Statement was originally prompted by concerns about the perceived abuse of TARIC  
10 code 8526 91 20 20 for conventional standalone car sat nav systems. Against that background, it is possible to make sense of the Statement as identifying the key disqualifying feature of such systems to be their independent standalone character, which when looking at the goods which had prompted the CCC's discussions in the  
15 first place, is inextricably bound up with their physical construction as a finished product in a single housing.

**The point at issue**

42. The phrase "an assembly for GPS system having a position determination function" which we are required to interpret clearly has three elements: there must be  
20 an assembly; that assembly must be for a GPS system; and it must have a position determination function. HMRC accept that the second and third elements are satisfied in this case. What they dispute is the Appellant's assertion that the MMM unit is "an assembly".

43. It was common ground that there is no definition or express guidance on the meaning of the word "assembly" in the headings or subheadings of the CN, in the  
25 GIRs or in any of the relevant section or chapter notes of the CN.

*Appellant's arguments*

44. Ms Sloane invited us to fill the gap as follows. First, she referred to the ECJ case of *Skatteministeriet v Imexpo Trading A/S* [2004] C-379/02, in which the Court  
30 made it clear (at [17]) that where the CN and the relevant section or chapter notes did not provide definitions of words in the CN, they were to be interpreted in accordance with their "customary meaning". She suggested a number of slightly different formulations for a definition of assembly, all of which contained the concept of various different components being put together to perform a particular function or to  
35 make up a discrete item. Her key point however was that there was nothing in customary usage that would preclude such an item from being called an "assembly" simply because it had a protective cover or housing. She also submitted that an arbitrary distinction based on the presence or absence of a housing paid no regard to the "objective characteristics and properties" of the MMM and any attempt to  
40 differentiate it on that basis would therefore be incoherent – a result which would be

inconsistent with the general requirement for coherence expressed in the European Commission's own publications and also, on general principle, repugnant

45. Ms Sloane also referred us to the ECJ case of *Neckermann Versand v Hauptzollamt Frankfurt am Main-Ost* [1994] C-395/93, in which the Court held that  
5 in the absence of a specific definition, the "objective characteristic" of the items in question (in that case, pyjamas) could be sought only in the use for which they were intended (in that case, to be worn in bed as nightwear). She was effectively inviting us to find that the uses for which an "assembly" was intended were potentially many and various, but none of them required, as an "objective characteristic", that the item  
10 in question should have no protective housing. In her submission, therefore, the "objective characteristics and properties" of the MMM were to be found by reference to its intended use (effectively, its function) rather than the fact that it happened to be physically contained in a housing.

46. Ms Sloane also drew our attention to the CNEN relating to heading 8473 in the CN, entitled "Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472", which provides, in part, as follows:

"In addition to the parts, assemblies and accessories mentioned in the HS Explanatory Note to heading 8473, this heading includes:

20 ...

2. data-storage assemblies (so called Head/Disk/Assemblies (HDAs)) designed for permanent installation in disk storage units and consisting of several magnetic disks rigidly mounted on a support spindle, of data-head arms with read/write heads, of control, access and  
25 positioning mechanisms, incorporated in a single hermetically sealed housing;" [*emphasis added*].

47. Ms Sloane said that while the detail of this CNEN was not directly relevant to the MMM, it was significant because it was quite clearly drafted on the basis that a  
30 "data-storage assembly" (which must be a sub-set of the set "assembly") was quite clearly envisaged as being contained in a housing. This, she submitted, showed that the CN Explanatory Notes (which were not legally binding but persuasive – see, for example, the ECJ decision in *Intermodal Transports BV v Staatssecretaris van Financiën* [2005] C-495/03 at [48]) quite clearly contemplated a situation in which goods could fall within the concept of an "assembly" in spite of having their own  
35 housing.

48. In the light of all the above, Ms Sloane invited us to disregard or override the Statement as being inconsistent with the terms of the CN, properly interpreted.

#### *Respondents' arguments*

49. Mr Thomas's argument on the other hand could be summarised as follows.

50. It was important to remember that the "product" we were considering here is a radio navigational receiver and not a complete GPS system. That distinction had to be kept clearly in mind when considering how "complete" or "finished" the product was.

5 51. The question of what amounts to an "assembly" is subject to some uncertainty (the word is not defined in the CN) and by adopting the Statement the CCC have made it as clear as possible that one crucial deciding factor in differentiating an "assembly" is that it must not have its own housing.

10 52. There is a sound basis for this proposition, which does not conflict with the CN itself and has been articulated within the structures set out by the Customs Code and therefore this Tribunal ought not to disregard it. If the Statement is indeed (as the ECJ has held) a valid aid to interpretation then its wording is so clear that the Tribunal has effectively no choice but to accept it at face value and dismiss the appeal.

15 53. The Statement reflects the underlying policy of the quota exemption by recognising that an item must be something less than a complete or finished product to qualify as an assembly (the Statement talks in terms of an assembly only having "the essential character of a complete or finished product" rather than in terms of it being a complete or finished product). It then goes on to make it clear that the addition of a housing (and here the purpose of the housing, whether protective or  
20 otherwise, was irrelevant) is what nudges the item over the line from being an "assembly" to being a "complete or finished product".

54. The requirement for coherence which Ms Sloane had mentioned related to the application of the tariff and not its interpretation, but in any event there was nothing incoherent about treating the existence of a housing as being determinative – if  
25 anything, it provided a welcome degree of simplicity and clarity.

55. The Statement is perfectly coherent within the framework of the CN and attempts by Ms Sloane to put a gloss on it or re-interpret it in by reference to the supposed context in which it was adopted amounted to an attempt to read into it things which were diametrically opposed to its clear wording.

### 30 **Discussion and decision**

56. We find ourselves largely in agreement with Ms Sloane.

57. By reference to the normal meaning of the word "assembly" (or its "customary usage"), we consider the MMM, by reference to its objective characteristics and properties, does qualify as an assembly. It is made up of a number of individual parts  
35 or components which have been assembled together with a view to performing a particular function within a larger product or system. In itself, it is not a completed product – on its own, it does nothing, even though it is in one sense complete because it provides a complete and working position determination function for the GPS system into which it is intended to be installed (a function which it could no doubt  
40 perform even if it did not have a housing). It does however need to be installed and connected to various other components and systems before it can perform that

function. In the present case, this will generally involve being permanently fitted into a car, but it is not necessary to focus on that particular fact as being determinative.

58. We see nothing in the CN to preclude an item from being an "assembly" simply because it includes a housing, nor do we consider this to be a matter of uncertainty which requires clarification by reference to the Statement.

59. The CNENs (in relation to heading 8473) contemplate an assembly that has a housing. This reinforces the view that the presence of a housing should not in general disqualify an item from being an "assembly".

60. The Statement was adopted in response to a question which was specifically put to the CCC in relation to the practice of some Member States classifying "even complete GPS systems with a housing as an assembly". When considered in the context of the question being discussed, we can understand why the Statement was phrased as it was; but insofar as HMRC seek to apply the Statement to the MMM, we consider that it is inconsistent with the terms of the CN.

61. For these reasons, we find that the MMM falls within the definition "assembly for GPS system having a position determination function" and accordingly the appeals should be allowed.

62. 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 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.

**KEVIN POOLE  
TRIBUNAL JUDGE**

**RELEASE DATE: 6 September 2012**