



TC05635

Appeal number: TC/2016/02520

Customs duty – tariff classification – Showerhead Regulation – whether venturi device gave showerhead characteristics of a mechanical appliance – found, no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ECOCAMEL LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE ABIGAIL MCGREGOR
 JOHN ADRAIN**

Sitting in public at Fox Court, London on 24 October 2016

**Daryl Mitchell of Duty and Logistics Management, and Ofir Neuman, Director,
for the Appellant**

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

DECISION

The appeal

- 5 1. The Appellant, Ecocamel Limited, (“Ecocamel”) appeals against a decision of the Respondents (“HMRC”), upheld on review, to classify imported showerheads containing a patented venturi device under commodity code 3924900090, and therefore to refuse a request for repayment of customs duty.

Background facts

- 10 2. The following background facts are not in dispute:
- (1) Ecocamel is a supplier of showerheads for both domestic and commercial installation;
 - (2) Ecocamel imported, during 2014 and 2015, two types of shower head (the “Ecocamel Showerheads”) under customs classification code 3922900000 (as
15 ‘other sanitary ware of plastics’), which attracted a duty rate of 6.5%;
 - (3) An application was made, on 19 May 2015, by Ecocamel, through their representatives, Duty and Logistics Management limited, for repayment of a proportion of the duty on these imports, on the basis that code 3922900000 was the incorrect code and that the correct code should have been 8424890000 (as
20 ‘other mechanical appliances for projecting, dispersing or spraying liquids or powders’), which would have attracted a duty rate of 1.7%;
 - (4) After a further exchange of correspondence, HMRC refused the application for repayment on 18 December 2015, concluding that:
 - (a) the Ecocamel Showerheads should not be classified under code
25 8424900000;
 - (b) the Ecocamel Showerheads should have been classified under code 3924900000 (as ‘other hygienic or toilet articles of plastic’); and
 - (c) the duty rate for that classification was also 6.5% and therefore no duty repayment was due;
 - (5) Ecocamel requested an independent review on 14 January 2016;
 - (6) the review officer confirmed the original decision on 25 April 2016.

Evidence

3. The Tribunal was presented with a bundle including all the correspondence between Ecocamel and HMRC on this issue.
- 35 4. Examples of the device inserted into the Ecocamel Showerheads to produce a water saving effect (the “venturi device”) were provided to the Tribunal.

5. Mr Neuman also gave evidence orally at the hearing to describe the showerheads and, in particular, the venturi device.

Law

6. Classification of goods for the purposes of customs duty is governed by the Combined nomenclature of the European Union (“CN”).

7. In a passage confirmed by the Supreme Court, Lady Justice Arden (in the Court of Appeal decision in *Amoena (UK) Ltd v Commissioners for her Majesty's Revenue and Customs* [2015] EWCA 25) explained the structure of customs classification:

10 “[The CN] is based on the customs classification scheme agreed and used internationally by a large number of countries, called the Convention on the Harmonised Commodity Description and Coding System ('HS'). The EU is a party to this Convention. The HS consists of some 5,000 groups of goods with 6-digit codes. The CN integrates the HS but in addition contains further subdivisions with 8-digit codes, specifically adapted for the EU. Both the HS and the CN have explanatory notes ('HSEN' and 'CNEN' respectively), which are prepared by experts. Courts generally give weight to these notes even though they are not legally binding.”

8. The current version of the CN takes effect under EEC Regulation 2658/87, as updated annually.

9. The CN is sub-divided into sections, chapters and then headings and sub-headings. Those that are relevant to this case are:

(1) Section VII: Plastics and articles thereof: Rubber and articles thereof

(a) Chapter 39: Plastics and articles thereof; Rubber and articles thereof

25 (b) Heading 3922: Baths, shower-baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics, which is sub-divided into:

(a) 3922 10 00 – Baths, shower-baths, sinks and washbasins

30 (b) 3922 20 00– Lavatory seats and covers

(c) 3922 90 00– Other

(c) Heading 3924: Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics

35 (a) 3924 10 00 – Tableware and kitchenware

(b) 3924 90 00– Other

(2) Section XVI: 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

(a) Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

5 (b) Heading 8424: Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sandblasting machines and similar jet projecting machines, which is sub-divided into (among other things):

(a) 8424 89 00 – other

10 10. In addition to these classifications, Commission Regulation 1067/2010 concerns the classification of showerheads under the CN and sets out certain categories of showerhead, how they should be classified and the reasons for that classification. The whole of this Regulation is set out in the appendix to this decision and relevant parts are referred to in the discussion below, but, in summary, it provides the classification or three types of showerhead, two of which are classified under 39249000 (as a
15 hygienic or toilet article of plastics) and one of which is classified under 84248900 (as a mechanical appliance for projecting, dispersing or spraying liquids).

11. Section 16(5) of Finance Act 1994 gives this Tribunal the power to quash or vary HMRC's decision and substitute our own decision.

20 12. Section 16(6) of Finance Act 1994 provides that the burden of proof on an appeal of a customs classification decision such as this one is on the appellant.

Facts

13. From the evidence, we find the following facts:

25 14. The venturi device is a small white plastic item of cylindrical shape, which has two small holes running through the length of the cylinder (the "vertical holes") and two addition small holes in the side of the cylinder that join up with the holes running through the length (the "horizontal holes").

30 15. The venturi device is inserted into the neck of the showerhead. Once installed, the flow of water is reduced, and thereby the pressure of water flow increased, by forcing the water through the vertical holes. As the water flows through the device, air is drawn into the flow through the horizontal holes.

16. Neither the venturi device nor the showerhead contain any switches or other means by which the user of the showerhead could adjust the type of water flow coming through the showerhead (eg switching from a 'rain' water flow to a 'massage' water flow).

35 17. If the user of the showerhead wished to adjust the flow of water, he or she would have to adjust it using the tap to which the showerhead was attached.

Parties arguments

Appellant's arguments

18. The appellant submitted that the showerheads should be classified under heading 8424, rather than 3924, because:

- 5 (1) Heading 3924 is dealing with items for domestic use, whereas the Ecocamel Showerheads can be used in a commercial setting and outside;
- (2) Heading 8424 is more relevant because it is dealing with the spraying of liquids;
- 10 (3) The Ecocamel Showerheads are mechanical appliances because they incorporate a mechanism to perform their function, being to reduce and aerate the flow of water. The Ecocamel Showerheads control the flow and pressure of the water due to a sophisticated mechanism (ie the venturi device), albeit without any moving parts;
- 15 (4) The shower heads do not need to have moving parts in order to be classified as a mechanical appliance because the dictionary meaning of mechanism does not include moving parts.

HMRC's arguments

19. HMRC submitted that the classification of goods should be undertaken:

- 20 (1) by applying the general rules for interpretation of the Combined Nomenclature (GIRs), which are contained in section 1 of the Annex to the Tariff Regulation, in particular:
- 25 (a) Rule 1: "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"
- (b) Rule 2 – relates to incomplete or unfinished articles and mixtures of substances, which are not relevant to this appeal
- 30 (c) Rule 3 – deals with the circumstance where goods prima facie fall to be classified under two headings, which HMRC submit does not apply here because the goods can only be classified under chapter 3924
- (d) Rule 4: "goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin"; and
- 35 (2) Considering the "objective characteristics" of the goods, as set out by the CJEU in *Metherma* C-403/07 and applied by the UK courts in *Amoena* and *Barrus Ltd* [2013] UKUT 449 (TCC).
20. HMRC submitted that the Ecocamel Showerheads should be classified under chapter 3924, rather than 8424, because:

(1) The Ecocamel Showerheads are, according to their objective characteristics, articles of plastic;

5 (2) Although the Showerhead Regulation does not apply directly to the Ecocamel Showerheads, following the principle laid out by the CJEU in *Krings GmbH v Oberfinanzdirektion Nurnberg* C -130/02, regulations such as these can be applied by analogy to products similar to those covered by the regulation because it “facilitates a coherent interpretation of the CN and the equal treatment of traders” (para 35).

10 (3) The Showerhead Regulation supports the argument that there must be a mechanism to change the type of water jet in order to confirm a classification under heading 8424 because:

15 (a) The reasons given for classifying one showerhead under 8424 include: “the presence of a mechanism to change the type of water jet gives the product the character of a mechanical appliance for projecting, dispersing or spraying liquids”; and

20 (b) The reasons given for classifying the other two showerheads under 3924 include: “Classification under heading 8424 as a mechanical appliance for projecting, dispersing or spraying liquids is excluded, as the product does not contain any mechanism for projecting, dispersing or spraying the liquid. The flow of water from the nozzle is regulated only by the tap to which the product is intended to be connected.”

(4) The Ecocamel Showerheads are similar to items 1 and 3 in the Showerhead Regulation, which are classified under 3924.

25 (5) Showerheads that fall within 8424 must have moving parts and the Ecocamel Showerheads are excluded from 8424 because they do not open or close apertures to change the flow of water; instead they have a static design through which the flow of the tap directs itself.

30 21. Finally, HMRC made some submissions relating to certain Binding Tariff Information notices (BTIs) that had been raised in correspondence with HMRC by Duty and Logistics Management on behalf of Ecocamel. HMRC submitted that BTIs are only binding on the trader to whom they were issued and none of the BTIs in question had been issued to Ecocamel.

Discussion

35 22. The matter in dispute in this appeal is a narrow one. The question is whether the Ecocamel Showerheads can be classified as “mechanical appliances” under heading 8424.

23. We agree with HMRC’s submissions that the process for us to follow is to consider the GIRs and classify the Ecocamel Showerheads according to their objective characteristics.

40 24. We have found the relevant facts about the Ecocamel Showerheads and set them out in paragraphs 14-17 above.

25. We agree with HMRC that the Showerhead Regulation should be considered in classifying these showerheads and that the distinguishing feature between the showerhead classified pursuant to that Regulation under heading 8424, as against those classified under heading 3924, is the presence of a “button” that “changes the type of water jet (‘rain’ or ‘massage’)”. It is clear from the notes in the Showerhead Regulation that give the reasons for classification that it is the presence of this mechanism to change the type of water jet that gives the product the character of a mechanical appliance.

26. Based on the objective characteristics of the Ecocamel showerheads established at paragraphs 14-17 above, they do not contain any facility for changing the type of water jet and therefore cannot be classified under 8424 in accordance with product 2 in the Showerhead Regulation.

27. Therefore we must establish whether the Ecocamel showerheads should be classified as a mechanical appliance despite the absence of a mechanism to change the type of water jet.

28. We considered the classification of the two other showerheads in the Showerhead Regulation. It is clear from the reasons for classification of products one and three that the absence of the mechanism for projecting, dispersing or spraying the liquid is the determinative element in classifying those showerheads under heading 3924.

29. However, products one and three in the Showerhead Regulation do not exactly match the descriptions of the Ecocamel Showerheads. The first product in the Regulation contains a “non-return valve”, which the Ecocamel Showerheads do not. The Ecocamel Showerheads could fall within the description of the third product (which has no non-return valve), but the description of the third product makes no mention of a venturi device such as those present in the Ecocamel Showerheads.

30. There are only three examples of showerheads in the Showerhead Regulation and it is conceivable that showerheads could be classified as a mechanical appliance due to the presence of something other than a mechanism to change the type of water jet.

31. Therefore, given the Ecocamel Showerheads do not fall exactly within the descriptions applied in the Showerhead Regulation, we must decide whether the venturi device is sufficient to make it appropriate to classify the Ecocamel Showerheads as mechanical appliances.

32. There was some confusion in submissions about whether the showerheads had to contain a “mechanism”. The title of heading 8424 refers to mechanical appliance. The Showerhead Regulation refers to a mechanism. However it uses that terms as a way of describing the “thing” that gives the product the character of a mechanical appliance. The Ecocamel Showerheads do not have to contain a “mechanism” (however that term might be defined) in order to be classified under heading 8424, but they do have to be mechanical appliances.

33. The Showerhead Regulation is instructive because it gives an example of the type of mechanism that can give the showerheads the character of a mechanical appliance, namely a button that changes the type of water jet.

5 34. The appellant argued that a mechanism does not have to have moving parts, whereas HMRC submitted that in order to be a mechanical appliance a showerhead (or the mechanism that forms part of it) must have moving parts.

10 35. The Oxford English Dictionary provides a great many, varied definitions of mechanical, including: “Of, relating to, or dealing with machinery or mechanisms.” It also defines “appliance” as: “Something applied as a means to an end; a piece of apparatus. Now often: spec. a utensil or other piece of (electrical) equipment designed to perform a specific (usually domestic) task”. Neither of these definitions provides any assistance as to whether moving parts are necessary. In any event, neither word is used in isolation; the CN combines these two words together to make the phrase “mechanical appliance”.

15 36. We were not directed to any other cases where the meaning of “mechanical appliance” has been considered and therefore we must come to our own conclusion. We conclude that the statements of reasons for the classification of the three products in the Showerhead Regulation support the conclusion that in order for a showerhead to be treated as a mechanical appliance it must contain something (be it a mechanism, 20 device or thing of another description) that turns an ordinary showerhead, which is not a mechanical appliance, into a mechanical appliance. Products one and three in the Showerhead Regulation could meet the description of an ordinary showerhead being “a product used for distributing water by means of a nozzle”. We agree with HMRC that the mechanism or device that gives the showerhead the characteristic of a 25 mechanical appliance must give the showerhead a moving part that enables some variation in the use of the showerhead.

30 37. We do not find that the appellant has submitted any evidence or made any arguments to show that the venturi device alters the Ecocamel Showerheads in a way to make them into mechanical appliances. The function of the venturi device is to reduce the water flow through the showerhead and it does not provide any additional, mechanical features to the Ecocamel Showerheads that are different from a normal showerhead, or indeed from the same showerhead without the venturi devices installed. The Ecocamel Showerheads continue to have only one mode of use.

35 38. The reasoning also supports the conclusion that where the showerheads do not have the characteristics of a mechanical appliance, they are to be classified “according to its constituent material in Chapter 39”. Ecocamel submitted that the Ecocamel Showerheads could not be classified under heading 3924 because they could be used in non-domestic settings (eg outdoors or in commercial property) and heading 3924 was limited to domestic items. We do not accept this argument. Heading 3924 covers 40 a broad range of plastic items. The phrase “hygienic or toilet articles” would include showerheads wherever they are used and is not limited by the previous reference in heading 3924 to ‘household articles’.

39. We briefly mention the BTIs. Ecocamel did not, in the hearing, seek to rely on the BTIs issued to other importers and therefore we do not need to come to a conclusion on them. In any event, we would agree with HMRC that, even assuming there were admissible, the descriptions in the BTIs in question was not sufficiently detailed to have supported either party's arguments because the products to which they related could not be compared with the Ecocamel Showerheads.

Decision

40. For the reasons set out above, the appeal is dismissed and HMRC's decision stands.

41. 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.

ABIGAIL MCGREGOR
TRIBUNAL JUDGE

RELEASE DATE: 27 JANUARY 2017

COMMISSION REGULATION (EU) No 1067/2010

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of 19 November 2010

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

10 Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN codes indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

- 5 Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

- 10 This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 November 2010.

For the Commission, On behalf of the President,

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Algirdas ŠEMETA

Member of the Commission

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
<p>1.A product (so-called 'shower head') made of plastics with a nickel coating, used for distributing water by means of a nozzle.</p> <p>It is equipped with a non-return valve which prevents water from flowing back. However, the valve does not regulate the water flow.</p> <p>The flow of water from the nozzle is regulated by the tap to which the product is intended to be connected via a flexible hose.</p>	<p>3924 90 00</p>	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 3924 and 3924 90 00.</p> <p>Classification under heading 8481 as a valve or similar appliance is excluded, as the product is more than a valve incorporating accessory features, it is a complete shower head (see also the Harmonised System Explanatory Notes to heading 8481).</p> <p>Classification under heading 8424 as a mechanical appliance for projecting, dispersing or spraying liquids is excluded, as the product does not contain any mechanism for projecting, dispersing or</p>

		<p>spraying the liquid. The flow of the water from the nozzle is regulated only by the tap to which the product is intended to be connected.</p> <p>The product is therefore to be classified according to its constituent material in Chapter 39.</p> <p>Classification under heading 3922 as a sanitary ware of plastics is excluded, as this heading covers baths, shower-baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics to be permanently fixed in a place (see also the Harmonised System Explanatory Notes to heading 3922).</p> <p>The product is therefore to be classified under heading 3924 as a hygienic or toilet article, of plastics.</p>
<p>2.A product (so-called 'shower head') made of plastics with a nickel coating, used for distributing water by means of a nozzle.</p> <p>It is equipped with a button connected to a valve which prevents water from flowing back and also changes the type of water jet ('rain' or 'massage'). However, the valve does not regulate the water flow.</p> <p>The flow of water from the nozzle is regulated by the tap to which the product is intended to be connected via a flexible hose.</p>	8424 89 00	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8424 and 8424 89 00.</p> <p>Classification under heading 8481 as a valve or similar appliance is excluded, as the product is more than a valve incorporating accessory features, it is a complete shower head (see also the Harmonised System Explanatory Notes to heading 8481).</p> <p>The presence of a mechanism to change the type of water jet gives the product the character of a mechanical appliance for projecting, dispersing or spraying liquids.</p> <p>The product is therefore to be classified under heading 8424.</p>
<p>3.A product (so-called 'shower head') made of plastics with a nickel coating, used for distributing water by means of a nozzle without a non-return valve or a mechanism to change the type of water jet.</p>	3924 90 00	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 3924 and 3924 90 00.</p> <p>Classification under heading 8424 as a mechanical appliance for projecting, dispersing or spraying liquids is excluded, as the product does not contain any</p>

<p>The flow of water from the nozzle is regulated by the tap to which the product is intended to be connected via a flexible hose.</p>		<p>mechanism for projecting, dispersing or spraying the liquid. The flow of the water from the nozzle is regulated only by the tap to which the product is intended to be connected.</p> <p>The product is therefore to be classified according to its constituent material in Chapter 39.</p> <p>Classification under heading 3922 as a sanitary ware of plastics is excluded, as this heading covers baths, shower-baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics to be permanently fixed in a place (see also the Harmonised System Explanatory Notes to heading 3922).</p> <p>The product is therefore to be classified under heading 3924 as a hygienic or toilet article, of plastics.</p>
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