

Case C-107/22**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

16 February 2022

Referring court:

Gerechtshof Amsterdam (Netherlands)

Date of the decision to refer:

8 February 2022

Applicant:

X BV

Inspecteur van de Belastingdienst Douane, district Rotterdam

Defendant:

Subject matter of the main proceedings

The main proceedings concern the question whether X BV put satellite receivers or components of satellite receivers into free circulation.

Subject matter and legal basis of the request

In this request for a preliminary ruling under Article 267 TFEU, the referring court asks the Court of Justice, in essence, whether general interpretative rule 2(a) of Regulation No 2658/87 applies also to the separate components of an article which are imported together with it and, if so, whether that is the case even where some of those components are placed under the external Community transit procedure before assembly.

Questions referred

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?

Provisions of EU law relied on

Council Regulation (EEC) of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, Part I, Section I, division A; Part II, headings 8528, 8529, 8504, 7318.

Council Decision 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonized Commodity Description and Coding System and of the Protocol of Amendment thereto.

Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, Article 198.

Commission Guidelines on the classification in the Combined Nomenclature of goods put up in sets for retail sale, Part C.

Provisions of national law relied on

Nil

Succinct presentation of the facts and procedure in the main proceedings

- 1 In 2006 and 2007, X BV made, in its own name and on its own behalf, 39 declarations for the release for free circulation in the Netherlands of components for satellite receivers.

- 2 It always made two declarations on a given day: one for goods of C GmbH and one for goods of D GmbH. C GmbH and D GmbH are German legal persons belonging to the same group of companies.
- 3 The two declarations always cover all the components of the same model of satellite receiver in corresponding quantities. All of the goods originate from the same supplier in China.
- 4 On 23 July 2007, X BV filed a declaration for goods of C GmbH transported in a container from China to the Netherlands. For the remaining goods in the same container, it made a declaration placing them under the external Community transit procedure (T1) for the transport of those goods of D GmbH from the Netherlands to Germany.
- 5 Each of the declarations contained for the most part the following goods descriptions:
 - Electronic assemblies under CN heading 8529 9060
 - Furniture under CN heading 8529 9059
 - Modulators under CN heading 8504 4090
 - Mainboard and tuner under CN heading 8529 9060
 - Parts and accessories under CN heading 8529 9059
 - Cast iron items under CN heading 7318 1290
 - Front panels under CN heading 8529 9059.
- 6 In each case, after being put into free circulation, the components were assembled by D GmbH in Germany into satellite receivers under CN heading 8528 1295.
- 7 In 2009, the belastingdienst (Tax and Customs Administration, Netherlands) checked the declarations. According to those authorities, X BV had not put components for satellite receivers into free circulation but rather – in application of general interpretative rule 2(a) – satellite receivers in a disassembled state. The belastingdienst therefore notified X BV that it would have to pay an additional EUR 389 973.70 in customs duties.
- 8 X BV lodged an objection against that decision, which was rejected. It then lodged an appeal with the rechtbank Noord-Holland (District Court, North Holland), which upheld that appeal and partially annulled the payment notification.
- 9 X BV and the belastingdienst have both lodged an appeal against that decision with the Gerechtshof Amsterdam (Court of Appeal, Amsterdam).

Essential arguments of the parties to the main proceedings

- 10 According to X BV, the imported goods must be classified, by application of general interpretative rule 1, under the CN headings under which it has declared them.
- 11 The belastingdienst take the view that those goods must be classified, by application of general interpretative rule 2(a), as satellite receivers under CN heading 8528 7119.

Succinct presentation of the reasoning in the request for a preliminary ruling

Question 1

- 12 The referring court questions how general interpretative rule 2(a) must be interpreted and, in particular, whether the components of satellite receivers declared for release for free circulation in two separate declarations must be classified as satellite receivers in a disassembled state. In particular, it seeks to establish how the criterion ‘put forward simultaneously for customs clearance’, formulated by the Court of Justice in its judgment in Case 183/73 *Osram GmbH*, is to be interpreted.
- 13 The text of general interpretative rule 2(a) does not provide a definitive answer as to how an article in a disassembled state should be put forward. The question is whether it suffices for the criterion of being ‘put forward simultaneously’ that (1) the goods belong to different legal persons within one group, (2) are intended, once in free circulation, to be assembled into a single finished product, (3) are transported in a single container and (4) are declared for release for free circulation by the same declarant in its own name and on its own behalf, on the same day, at the same customs post in two separate declarations, or is it rather the case that there can be a question of being ‘put forward simultaneously’ only if the goods are declared for release for free circulation in a single declaration.

Question 2

- 14 If general interpretative rule 2(a) is to be interpreted as meaning that the goods released for free circulation in the declarations are to be regarded as satellite receivers in a disassembled state, the question then arises as to whether that is also the case where the declared components are intended to be assembled into satellite receivers together with the components which were transported in the same container from China to the Netherlands and were declared on the same day, by the same declarant, at the same customs post, for the purpose of placing them under the external Community transit procedure.