Request for a preliminary ruling – Case C-725/21

Reference for a preliminary ruling

Date lodged:

30 November 2021

Referring court:

Vrhovno sodišče Republike Slovenije (Slovenia)

Date of the decision to refer:

10 November 2021

Appellant:

SOMEO S.A., formerly PEARL STREAM S.A.

Respondent:

Republic of Slovenia

[…]

REQUEST

FOR A PRELIMINARY RULING

An appeal on a point of law is pending before the Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) in the administrative-law proceedings brought by the appellant, **SOMEO S.A.** (formerly PEARL STREAM S.A.), […] Strzelce Opolskie, Poland, […] against the respondent, the **REPUBLIC OF SLOVENIA**, represented by the Ministrstvo za finance (Ministry of Finance) […], concerning customs duties.

By order […] of 10 November 2021, the Vrhovno sodišče Republike Slovenije […] ordered that the proceedings in the appeal on a point of law be stayed, having decided, in the light of the issues concerning the interpretation of EU law raised before it, to request the Court of Justice of the European Union to give a preliminary ruling pursuant to Article 267 TFEU.

Succinct presentation of the facts and procedure in the main proceedings

1 In the period between August 2015 and June 2017, following a procedure relating to release for free circulation and simultaneous release for home use in relation to goods exempt from VAT as part of a supply to another Member State, the appellant declared, through an indirect representative (declarant), goods which were described in the customs declarations as '*parts for car seats (net for making pockets in the rear part of seats and net supports)'* and '*parts for car seats (net for making pockets in the rear part of seats, protection for the inside of seats)'*. The goods were declared under tariff code 9401 90 80 of the Combined Nomenclature of the European Union ('the CN') and under TARIC code 90, which includes parts of seats classifiable as other, which are subject to a customs duty rate of 2.7%.

Procedure before the tax authorities

2 The Finančna uprava Republike Slovenije (Financial Administration of the Republic of Slovenia) ('the tax authority of first instance'), having carried out a customs control, found that the product '*net for making pockets in the rear part of seats – Bend and net'* ('the net for making pockets') should have been classified under tariff code 6307 90 10 of the CN and TARIC code 00, relating to other made-up crocheted textile articles and to which a customs duty rate of 12% applies, and that the product '*seat protector – Skirt assy*» ('the seat protector') should have been classified under tariff code 3926 90 97 of the CN and TARIC code 90, which refers to other articles of plastics and to which a custom duty rate of 6.5% applies. Consequently, that administration ordered the appellant, by decision of 13 July 2018, to pay EUR 298 810.52 by way of customs duties on industrial products, together with the corresponding default interest.

3 The Ministrstvo za finance, as the tax authority of second instance, dismissed as unfounded the administrative appeal brought by the appellant against the decision of the tax authority of first instance. It clarified that heading 9401 of the CN, which (also) includes parts of seats, does not apply to accessories. According to the assessment of the authority of second instance, both the products concerned are precisely accessories. In the view of that authority, the (plastic) seat protector does not have a structural function without which the seat could not carry out its essential and principal function, and the net for making pockets, which is attached to the (plastic) seat protector attached to the rear part of the vehicle seat, has only the additional function of holding small objects, so that, if it is removed, the seat retains all its essential functions.

Administrative proceedings

4 The appellant brought an action against the decision of the tax authority of first instance, which was dismissed by the Upravno sodišče (Administrative Court) by judgment of 23 June 2020. In that judgment, that court agreed with the two tax authorities' classification of the products. It rejected the appellant's arguments

that attaching the products at issue to car seats was essential and that those products would otherwise be unusable, arguing that the fact that a product is intended exclusively for a particular model of car (or object) is not, according to the case-law of the Court of Justice of the European Union (‘the [Court of Justice]’), relevant for the purpose of classifying such a product as a ‘part’ or ‘accessory’. Consequently, the Upravno sodišče dismissed as unnecessary the appellant’s request to appoint an expert to give an opinion on the utility of the products in relation to car seats or on the possibility of using those products independently.

5 The appellant submitted an application for leave to appeal on a point of law against the judgment of the Upravno sodišče, which was granted in part by the Vrhovno sodišče, which accepted the appeal by order […] of 18 November 2020, in particular with a view to resolving the following important legal issues:

– Whether the product ‘seat protector – Skirt assy’ falls to be classified under tariff code 3926 90 97 of the CN (other articles of plastics) and TARIC code 90, or under tariff code 9401 90 80 of the CN and TARIC code 90, under which other parts of seats are classified.

– Whether the product ‘net for making pockets in the rear part of seats – Bend and net’ falls to be classified under tariff code 6307 90 10 of the CN (other made-up crocheted textile articles) and TARIC code 00, or under tariff code 9401 90 80 of the CN and TARIC code 90, under which other parts of seats are classified.

6 On that basis, the appellant lodged an appeal on a point of law. It stresses that the two products at issue should be classified under tariff code 9401 90 80 of the CN since the seat protector is not a product for general use or a similar plastic product falling under [Chapter] 39 of the CN, and the net for making pockets is not a made-up textile product falling under [Chapter] 63 of the CN; rather both are used exclusively for car seats and, if they are not attached to those seats, have no independent practical function. It further stresses that failure to attach the seat protector would prevent effective use of the seat itself because it is not an aesthetic or fungible addition, but an additional functionality of the seat (consolidation and protection of the seat structure itself, which is crucial from a safety point of view). Also as regards the net for making pockets, the appellant sets out, in essence, identical considerations, asserting that it is not an aesthetic or fungible addition, but an additional functionality of the seat since that product has not only a support function, but also a protective one.

7 Since, in the view of the Vrhovno sodišče, the decision as to the tariff (sub)heading of the CN under which the two products at issue should be classified turns on a correct interpretation of the concept of ‘parts’ referred to in [heading] 9401 of the CN, and thus the interpretation of EU law, the Vrhovno sodišče, as the highest court of the Republic of Slovenia, is required to refer the matter to the [Court of Justice].

Findings of fact concerning the goods at issue

8 The seat protector is a product made of plastic and covered with felt, which is placed on the back of and underneath the car seat to protect the car's interior.

9 The net for making pockets takes the form of a crocheted elastic net, measuring 30 x 20 cm, made of synthetic filaments, black in colour and with an integrated elastic thread. The net has a plastic band sewn along its entire length, on one side, with which it is to be attached to the rear part of the car seat.

Applicable law

EU law

10 The versions of the CN applicable to the facts of the main proceedings are those arising from Commission Implementing Regulations (EU) No 1101/2014 of 16 October 2014, 2015/1754 of 6 October 2015, and 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. There are no differences in wording between those versions as regards the general rules for the interpretation of the CN and the tariff headings to which the questions referred relate.

11 Part One of the CN, laying down the preliminary provisions, has a Section I, which contains the general rules, and subsection A thereof, entitled *'General rules for the interpretation of the [CN]'*, provides as follows:

'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.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or

partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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:

(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;

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;

(c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

…'

12 Part Two of the CN, entitled '*Schedule of customs duties*', has, inter alia, a Section VII, entitled '*Plastics and articles thereof; rubber and articles thereof*'.

13 That section contains, inter alia, **Chapter 39 of the CN**, entitled '*Plastics and articles thereof*'.

14 Note 2(x) to that chapter states that that chapter does not cover articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings).

15 **Heading 3926 of the CN**, which falls under Chapter 39 thereof, is structured as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
…	
3926 90	– Other:
…	
3926 90 97	– – – Other

16 Part Two of the CN also has a Section XI entitled '*Textiles and textile articles*'.

17 According to Note 1(s) to that section, it does not cover articles of Chapter 94 (for example, furniture, bedding, lamps and lighting fittings).

18 That section includes, inter alia, **Chapter 63 of the CN**, entitled '*Other made-up textile articles; sets; worn clothing and worn textile articles; rags*'.

19 **Heading 6307 of the CN** is structured as follows:

6307	Other made-up articles, including dress patterns
…	
6307 90	– Other:
6307 90 10	– – Knitted or crocheted
…	

20 Part Two of the CN also has a Section XX entitled '*Miscellaneous manufactured articles*'.

21 That section contains **Chapter 94 of the CN**, entitled '*Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings*'.

22 According to Note 1(d), that chapter does not cover [']parts of general use …, or similar goods of plastics (Chapter 39), or … ['].

23 **Heading 9401 of the CN** is structured as follows:

9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
…	
9401 20 00	Seats of a kind used for motor vehicles
…	
9401 90	– Parts
…	

9401 90 80 – – – Other

Issues relating to EU law

24 The general rules for the interpretation of the CN provide, on the one hand, that the classification of goods is to be determined according to the terms of the headings and any section or chapter notes and, on the other hand, that the way in which the titles of sections, chapters or subchapters are worded is for ease of reference only. Furthermore, according to the settled case-law of the [Court of Justice], [1] in the interests of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the section or chapter notes. It is also clear from the case-law of the [Court of Justice] that, where the classification cannot be made on the sole basis of the objective characteristics and properties of the product concerned, the intended use of that product may constitute an objective criterion for customs classification if it is inherent in the product, on the understanding that (i) it is sufficient to take account of the main use for which the product is intended and (ii) that inherent character must be capable of being assessed on the basis of the objective characteristics and properties of that product. [2]

25 In that regard, the Vrhovno sodišče observes, first of all, that the seat protector is not expressly included in the wording of heading 3926, or in the wording of the notes to Section VII or Chapter 39 of the CN, and that the net for making pockets is not expressly included either in the wording of heading 6307 or in the wording of the notes to Section XI or Chapter 63 of the CN. Although the physical description of the two products could imply that they are to be classified under Chapter 39 and Chapter 63 respectively, neither Chapter 39 (Note 2(x)), nor Section XI (Note 1(s)), under which Chapter 63 also falls, contain products of Chapter 94 of the CN. In addition, (only) other made-up articles, including dress patterns, are classified under [heading] 6307.

26 In the light of the foregoing, the Vrhovno sodišče questions, first of all, whether the two products at issue can be classified under Chapter 94, and more precisely under subheading 9401 90 80 of the CN, under which they are classifiable only if they can be considered to be ‘parts’ of seats (for motor vehicles).

1 See, inter alia, judgments of 3 March 2016, *Customs Support Holland*, C-144/15, EU:C:2016:133, paragraphs 26 and 27; of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraphs 50 and 51; and of 5 September 2019, *TDK-Lambda Germany*, C-559/18, EU:C:2019:667, paragraph 26.

2 See, to that effect, judgments of 17 July 2014, *Sysmex Europe*, C-480/13, EU:C:2014:2097, paragraphs 31 and 32; of 13 May 2016, *Toorank Productions*, C-532/14 and C-533/14, EU:C:2016:337, paragraph 35; and of 5 September 2019, *TDK-Lambda Germany*, C-559/18, EU:C:2019:667, paragraph 27.

27 The Vrhovno sodišče observes that the implementing regulations, in the versions applicable to the present dispute, do not define the term ‘parts’ for the purposes of Chapter 94 of the CN, but merely provide, in Note 3(A), that in headings 9401 to 9403 references to parts of goods do not include references to sheets or slabs (whether or not cut to shape but not combined with other parts) of glass (including mirrors), marble or other stone or of any other material referred to in Chapter 68 or 69. Furthermore, Note 3(B) provides that goods described in heading 9404, presented separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods.

28 The [Court of Justice] has already made clear, in relation to the interpretation of that concept (with regard to other chapters and headings of the CN), that the concept of ‘parts’ implies the existence of a whole for the operation of which those parts are *essential* (see, inter alia, judgments of 15 February 2007, *RUMA*, C-183/06, EU:C:2007:110, paragraph 31; of 16 June 2011, *Unomedical*, C-152/10, EU:C:2011:402, paragraph 29; and of 19 July 2012, *Rohm & Haas Electronic Materials CMP Europe and Others*, C-336/11, EU:C:2012:500, paragraph 34). It follows from that case-law that, in order to classify articles as ‘parts’ for the purposes of those chapters (that is to say 84, 85 and 90), it is not sufficient to show that, without those articles, the machine or apparatus is not able to carry out its intended functions. It is necessary to demonstrate that the mechanical and electronic functioning of the machine or apparatus in question is dependent on those articles (see, to that effect, judgment of 7 February 2002, *Turbon International*, C-276/00, EU:C:2002:88, paragraph 30, as well as paragraph 35 of the judgment in *Rohm & Haas Electronic Materials CMP Europe and Others* cited above).

29 Although it follows from the case-law of the [Court of Justice] that, in the interests of a consistent and uniform application of the Common Customs Tariff, the concept of ‘parts’ must in principle be given an identical definition by reference to the various chapters contained in the CN (see judgment of 12 December 2013, *HARK GmbH & Co. KG Kamin- und Kachelofenbau*, C-450/12, EU:C:2013:824, paragraph 37), the Vrhovno sodišče questions whether that concept can have an absolutely identical meaning also in the context of Chapter 94 of the CN, and specifically in connection with heading 9401 or subheading 9401 90 80 of the CN. In the view of the Vrhovno sodišče, this would mean that only goods without which a seat is incapable of carrying out its essential and principal function (in the sense of its being a functional unit) could be regarded as ‘parts’ of that seat. [3]

30 The Vrhovno sodišče considers that, in the light of the Explanatory Notes to the Harmonised Commodity Description and Coding System (‘the HS Explanatory Notes’), issued by the World Customs Organisation, the interpretation of the

[3] The concept of a ‘functional unit’, as defined by the case-law of the [Court of Justice], applies where a machine consists of individual parts designed to perform a single specific function (see judgment of 15 February 2007, *RUMA GmbH*, C-183/06, EU:C:2007:110, paragraph 32).

concept of ‘parts’ for the purposes of Chapter 94 may be broader than that arising from the case-law of the [Court of Justice] concerning other chapters of the CN. According to the case-law of the [Court of Justice], although [the HS Explanatory Notes] 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. [4] The version of the Explanatory Notes to heading 9401 available to the Vrhovno sodišče states:

‘The heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung), and spiral springs assembled for seat upholstery.

Separately presented cushions and mattresses, sprung, stuffed or internally fitted with any material or of cellular rubber or plastics whether or not covered, are excluded (heading 94.04) even if they are clearly specialised as parts of upholstered seats (e.g., settees, couches, sofas). When these articles are combined with other parts of seats, however, they remain classified in this heading. They also remain in this heading when presented with the seats of which they form part’.

31 Taking into account the fact that, for example, arm-rests do not necessarily affect the function of the seat but that, nevertheless, the HS Explanatory Notes consider them, by way of example, to be part of a seat, the Vrhovno sodišče questions whether, in order to define the concept of ‘part’ for the purposes of Chapter 94 of the CN, it is actually necessary for the seat to be incapable of carrying out its essential and principal function without it, or whether it is sufficient for the individual part to be identifiable as part of the seat. If the latter aspect is decisive, it also questions, (in particular) in the light of Note 1(d) to Chapter 94, whether (or not) the possibility of general (non-)autonomous use of the two products in question has an impact on whether they are classified (or not classified) under heading 9401 90 80.

32 The Vrhovno sodišče considers that the criteria set out do not allow it to classify, with certainty, the product ‘seat protector – Skirt assy’ – which is made of plastic and covered with felt and placed on the back of and underneath the car seat to protect the car’s interior – under tariff code 3926 90 97 of the CN (other articles of plastics) and TARIC code 90 or under tariff code 9401 90 80 of the CN and TARIC code 90, under which other parts of cars are classified. Nor do they allow the product ‘net for making pockets in the rear parts of seats – Bend and net’ – which takes the form of a crocheted elastic net, measuring 30 x 20 cm, made of synthetic filaments, black in colour and with an integrated elastic thread, which has a plastic band sewn along its entire length, on one side, with which it is to be attached to the rear part of the car seat – to be classified with certainty under tariff

[4] See, to that effect, judgments of 18 June 2009, *Kloosterboer Services*, C-173/08, EU:C:2009:382, paragraph 25, and of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraph 28.

code 6307 90 10 of the CN (other crocheted made-up textile articles) and TARIC code 00 or under tariff code 9401 90 80 of the CN and TARIC code 90, under which other parts of seats are classified.

33 The Vrhovno sodišče is certainly aware of the fact that when the Court of Justice of the European Union is requested to give a preliminary ruling on a matter of tariff classification, its role is to provide the national court with guidance on the criteria the implementation of which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself, *a fortiori* since the Court does not necessarily have available to it all the information which is essential in that regard, the national court being in a better position to do so, as held, for example, in the judgment of 4 March 2015, *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 44.

34 However, the Vrhovno sodišče considers that the doubts expressed in the present case concern the very criteria for classification in the CN and it is therefore required, in order to ensure the uniform application of EU law, to refer the following questions to the Court of Justice of the European Union for a preliminary ruling, pursuant to the third paragraph of Article 267 of the Treaty on the Functioning of the European Union:

1. In order to classify an individual product as a 'part' of a seat for motor vehicles for the purposes of Chapter 94 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, in the versions applicable to the main proceedings, is it necessary for the seat to be incapable of carrying out its essential and principal function (in the sense of its being a functional unit) without that product, or is it sufficient for the individual part, which is intended solely to be attached to car seats, to be identifiable as part of a seat?

2. Does the possibility of a general (non-)autonomous use of the two products at issue have an impact on whether they are classified (or not classified) under subheading 9401 90 80?

[…]