

JUDGMENT OF THE COURT (SECOND CHAMBER)
27 OCTOBER 1977 ¹

**Westfälischer Kunstverein
v Hauptzollamt Münster**
(preliminary ruling requested
by the Finanzgericht Münster)

Case 23/77

1. *Common Customs Tariff — Artistic printed matter — Classification — Subheading 49.11 B — Residual nature*
2. *Common Customs Tariff — Works of art, collector's pieces, and antiques — Printed products — Classification — Tariff heading 99.02 — Condition*
3. *Common Customs Tariff — Printed products — Artistic screen prints — Classification — Subheading 49.11 B*

1. Both the wording and the general scheme of Chapter 49 of the Common Customs Tariff show that subheading 49.11 B is a residual heading which covers all artistic printed matter not listed or referred to elsewhere.
2. In order to be classified under tariff heading 99.02, printed products must be original works and the method of their production must not involve any mechanical or photomechanical process.
3. Artistic screen prints fall within subheading 49.11 B of the Common Customs Tariff, even if they are signed by hand by the artist and if only a limited edition is produced.

In Case 23/77

Reference to the Court under Article 177 of the EEC Treaty by the IVth Senate of the Finanzgericht Münster, for a preliminary ruling in the action pending before that court between

WESTFÄLISCHER KUNSTVEREIN, Münster,

and

HAUPTZOLLAMT MÜNSTER

on the interpretation of tariff subheading 49.11 B and of heading 99.02 of the Common Customs Tariff,

¹ — Language of the Case: German.

THE COURT (Second Chamber)

composed of: P. Pescatore, Acting President of the Second Chamber, Lord Mackenzie Stuart and A. Touffait, Judges,

Advocate General: G. Reischl

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the action, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. At the request of the Westfälischer Kunstverein (The Westphalian Association for the Promotion of the Arts), the plaintiff in the main action, the customs office, Münster, being one of the customs offices coming under the Hauptzollamt (Principal Customs Office) Münster, the defendant in the main action, cleared into free circulation on 14 March 1973 150 colour screen prints (colour serigraphs) imported from the United States and numbered and signed by the American artist, John Salt.

2. After the customs office, Münster, had classified the screen prints under tariff subheading 49.11 B ('Other printed matter, including printed pictures and photographs') of the Common Customs Tariff, it levied, by means of notice of assessment, customs duty at the rate of 9% and import turnover tax at the rate of 11%.

3. The plaintiff considered that the articles in dispute fell within tariff heading 99.02 ('Original engravings, prints and lithographs') of the Common Customs Tariff and could therefore be imported without payment of customs duties and at a rate of import turnover tax of 5.5%.

4. Having unsuccessfully entered an objection to the classification decision, the applicant lodged an application with the Finanzgericht (Finance Court) Münster with a view to obtaining the classification of the screen prints under tariff heading 99.02.

5. The Finanzgericht Münster considered that the settlement of the action depended on the interpretation of the provisions of the Common Customs Tariff and, by order of 19 January 1977, stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'On 14 March 1973 did a limited edition of not more than 150 artistic colour screen prints (colour serigraphs) numbered and signed by the artist fall within tariff subheading 49.11 B or

heading 99.02 of the Common Customs Tariff?

6. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without holding any preparatory inquiry.

7. Written observations were submitted by the Commission of the European Communities in accordance with Article 20 of the Protocol on the Statute of the Court of Justice.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

Observations of the Commission

A — Preliminary general observation

The *Commission* observes that the action concerns the distinction between two headings in the Common Customs Tariff, one of which, subheading 49.11 B, falls within the general category of 'pictures and other products of the printing industry' and the other, heading 99.02, is governed by the concept 'works of art'.

As regards the question which articles are to be considered as 'works of art' as opposed to ordinary commercial products, the Commission emphasizes a difficulty which arises from the fact that the concept of art is defined essentially by reference to subjective criteria, although the very aim of the Common Customs Tariff implies recourse to objective criteria. As regards the section dealing with 'Original engravings, prints and lithographs' the Common Customs Tariff achieves the objectification necessary for reasons of legal certainty and practicability (in heading 99.02) by adopting as an objective criterion of classification a definition established and

recognized by the competent art-dealing circles and by using it to form the substance of Rule 2 on Chapter 99. It is self-evident that an artistic concept fixed for legal purposes and 'valid' at a specific period lags inevitably behind the dynamic development of new trends and forms of artistic expression. That does not, however, alter the fact that the provisions of the Common Customs Tariff must be applied as they are found, without prejudice to the need to carry out amendments and adjustments as and when necessary.

The Council of the European Communities had drawn the consequences of the particular artistic value of colour screen prints in 1974 when it adopted Regulation (EEC) No 1616/74 (OJ L 174 of 25 June 1974, p. 5) by which the rate of customs duty in force at that period was reduced to nil.

In order to classify products such as those at issue in this instance, it is therefore necessary to take account of the letter, the objective and the general scheme of the provisions of the Common Customs Tariff.

Since it considers that the method of production of the products in dispute is important for the purposes of their customs classification, the Commission gives a description of the process by which a screen print is obtained.

Screen printing is a *printing process* which uses a printed matrix made of a special gauze of natural (silk) or synthetic (nylon, etc.) fibres or of wire thread (stainless steel etc.) stretched on a frame of wood or metal. There are two stages to the printing process: first, the preparation of the screen, that is, the 'transfer' on to the screen of the original design to be reproduced (preparation of the printing frame) and, secondly, its reproduction on to the printing surface (printing).

The preparation of the printing frame is the most important stage in the

production of a screen print. Various processes are employed, particularly in the case of artistic screen prints (for example, for the reproduction of full colour or of very detailed drawings).

The screen is prepared by hand (for example, by cutting out or by means of a photomechanical process), the mesh of the screen material being covered by a varnish which prevents the colour passing through the screen at the spots where the printing surface is not to be marked and remaining unvarnished in the areas corresponding to the 'design' to be reproduced. The chosen printing surface is placed under the screen 'block'. The colour poured on to the screen is pressed by means of a scraper through the unvarnished mesh on to the printing surface. That operation, carried out either mechanically or by hand, is repeated as many times as there are printing surfaces to be printed or colours of the 'original' to be reproduced.

Highly-developed and entirely automatic machines exist which enable several thousand screen prints to be obtained per hour.

Screen prints are used primarily in industry, in the graphic arts and in other artistic printed products. The so-called 'artistic' screen print normally forms the subject of limited editions of a few hundred copies at the most. The prints are all numbered and signed personally by the artist.

B — The distinction between tariff subheading 49.11 B and tariff heading 99.02

Tariff subheading 49.11 B is a general subheading covering all 'other printed matter'. To some extent it constitutes a residual subheading, intended to cover all the (special) artistic printed matter not listed or referred to elsewhere. That is confirmed by the General Explanatory Note to Chapter 49 in the Explanatory Notes to the Brussels Nomenclature.

Since artistic colour screen prints are obtained by a printing process it might, at least in principle, be accepted that they fall within tariff subheading 49.11 B.

However, in accordance with General Rule No 3 (a) for the interpretation of the nomenclature of the Common Customs Tariff, according to which 'the most specific description', shall be preferred to 'headings providing a more general description', it is first necessary to consider whether there are not particular rules which require screen prints to be classified under a specific tariff heading. On that point Note 1 (c) to Chapter 49 states that 'Original engravings, prints or lithographs (heading 99.02) ... or other articles falling within any heading in Chapter 99' are not covered by Chapter 49. The Commission therefore maintains that it is necessary to consider whether artistic screen prints are 'articles falling within any heading in Chapter 99'. An affirmative reply would alone allow classification under subheading 49.11 B to be ruled out.

The Commission emphasizes that there can also be no question of applying *General Rule No 4* for the interpretation of the nomenclature of the Common Customs Tariff to the artistic screen prints and of classifying them under 'the heading appropriate to the goods to which they are most akin'. This rule in fact covers the case of a product 'not falling within any heading of the Tariff'. Subheading 49.11 B covers *all* artistic printed matter, that is, including screen prints. The only problem to be solved is, therefore, whether a specific rule (heading 99.02) precludes the application of the general rule (subheading 49.11 B).

It therefore remains to be decided whether artistic colour screen prints fall within the products covered by tariff heading 99.02, that is, whether they may be regarded as 'Original engravings, prints and lithographs', which are defined by Note 2 to Chapter 99 as

'impressions produced directly, in black and white or in colour, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process'.

In the opinion of the Commission two typical criteria decisive for tariff classification may be derived from the wording of heading 99.02: that of *originality* and that based on the *precise limits* of any interpretation fixed by the wording of that tariff heading, in conjunction with Note 2 to Chapter 99.

As regards artistic colour screen prints numbered and signed by the artist himself, the criterion of originality raises extremely complicated questions of a technical nature. The Commission considers, however, that it is unnecessary to pursue the examination of that question, since classification of the screen prints under heading 99.02 is ruled out for other reasons.

As regards the second criterion, only printed products falling within one of the three categories listed therein may be classified under heading 99.02. Colour screen prints are not produced 'of one or of several plates wholly executed by hand by the artist'; the processes by which they are obtained are in part mechanical or photomechanical. They do not fall

within any of the three categories listed and cannot therefore be assigned to heading 99.02 even if, from the *artistic* point of view, they may be regarded as similar to the products falling within that heading.

The Commission considers, therefore, that it is the general rule, that is to say, subheading 49.11 B, which must apply to the articles in question.

C — Conclusion

The Commission proposes that the following reply be given to the question raised:

Artistic screen prints signed by the artist and produced in a limited edition of 150 copies fall within subheading 49.11 B of the Common Customs Tariff.

III — Oral procedure

The Commission of the European Communities, represented by its Agent, Jean Amphoux, and assisted by Manfred Beschel, a member of the Legal Department of the Commission, submitted oral observations at the hearing on 7 July 1977.

The Advocate General delivered his opinion at the hearing on 6 October 1977.

Decision

- 1 By order of 19 January 1977, received at the Court on 11 February 1977, the Finanzgericht Münster referred to the Court the following question for a preliminary ruling in accordance with Article 177 of the EEC Treaty:

'On 14 March 1973 did a limited edition of not more than 150 artistic colour screen prints (colour serigraphs) numbered and signed personally by the artist fall within tariff subheading 49.11 B or tariff heading 99.02 of the Common Customs Tariff?'

- 2 That question arose within the context of an action concerning the tariff classification of 150 artistic screen prints, numbered and signed by the artist, imported from the United States into the Federal Republic of Germany and cleared into free circulation on 14 March 1973.

The customs authorities classified those articles under subheading 49.11 B ('Other printed matter including printed pictures and photographs: ... B. Other') of the Common Custom Tariff.

The importer contests this classification and maintains that the articles in dispute fall within tariff heading 99.02 ('Original engravings, prints and lithographs').

- 3 The action therefore concerns the distinction between two headings in the Common Customs Tariff, one of which, subheading 49.11 B, falls within the general category 'Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans' (Chapter 49) while the other, heading 99.02, is covered by the concept of 'Works of art, collectors' pieces, and antiques' (Chapter 99).

That distinction cannot be based on the possible artistic merit of the aforementioned articles, something which is defined essentially by reference to subjective and indeterminate criteria, but must be founded on the objective criteria adopted by the Common Customs Tariff for the purposes both of its effective operation and of legal certainty.

- 4 The file shows that screen printing is a printing process which is at least partly mechanical or photomechanical in nature.

Although the process in question enables an unlimited number of reproductions to be obtained, the so-called 'artistic' screen print is normally produced in limited editions of a few hundred copies at the most.

- 5 Both the wording and the general scheme of Chapter 49 of the Common Customs Tariff show that subheading 49.11 B is a residual heading which covers all artistic printed matter not listed or referred to elsewhere.

That finding is confirmed by the Explanatory Notes to the Brussels Nomenclature in the General Explanatory Note to Chapter 49, which states that:

'For the purpose of this Chapter, the term 'printed' includes not only reproduction by the several methods of ordinary hand and mechanical printing (lithography, off-set printing, heliography, photogravure, etc.), but

also by engraving, reproduction by duplicating machines, embossing, photography, etc., irrespective of the form of the characters in which the printing is executed (e.g., letters of any alphabet, figures, shorthand signs, Morse or other code symbols, Braille characters, musical notations, pictures and diagrams)'.

As artistic screen prints are produced by a printing process it must be possible for them to fall within subheading 49.11 B.

For that reason it is not possible to apply General Rule No 4 for the interpretation of the nomenclature of the Common Customs Tariff, according to which goods not falling within any heading of the Tariff shall be classified under the heading appropriate to the goods to which they are most akin.

- 6 General Rule No 3 (a) provides, however, that 'the heading which provides the most specific description' shall be preferred to 'headings providing a more general description'.

It is therefore necessary to consider whether there are not any particular rules which require artistic screen prints to be classified under a special heading.

- 7 Under the terms of Note 1 (c) to Chapter 49 'Original engravings, prints or lithographs (heading 99.02) ... or other articles falling within any heading in Chapter 99' are not covered by Chapter 49.

As heading 99.02 constitutes a specific heading as compared to subheading 49.11 B, it is necessary to consider whether artistic screen prints are governed by heading 99.02, in other words, whether they may be regarded as 'Original engravings, prints and lithographs', which are defined by Note 2 to Chapter 99 as:

'impressions produced directly, in black and white or in colour, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process'.

- 8 It emerges from the wording of heading 99.02 together with Note 2 to Chapter 99 that in order to be classified under heading 99.02, printed products must fall within one of the three categories referred to therein, which means, in particular, that they must be original works and that the method of their production must be in accordance with the requirements of that note.

As the processes used in the production of artistic screen prints are, as has previously been stated, partly mechanical or photomechanical in nature, such prints are not produced 'of one or of several plates wholly executed by hand by the artist'.

Since that fact is in itself sufficient to rule out the classification of the articles in dispute under heading 99.02 and therefore requires them to be classified under subheading 49.11 B, it is unnecessary to consider whether they satisfy the criterion of originality.

- 9 For those reasons the answer to the question referred must be that artistic screen prints fall within subheading 49.11 B of the Common Customs Tariff, even if they are signed by hand by the artist and produced only in a limited edition.

Costs

- 10 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Finanzgericht Münster by order of 19 January 1977, hereby rules:

Artistic screen prints fall within subheading 49.11 B of the Common Customs Tariff, even if they are signed by hand by the artist and if only a limited edition is produced.

Pescatore

Mackenzie Stuart

Touffait

Delivered in open court in Luxembourg on 27 October 1977.

A. Van Houtte

Registrar

P. Pescatore

Acting President of the Second Chamber