

C00139

CUSTOMS DUTY – battery packs for mobile phones containing safety equipment – whether classified as electric accumulators (85.07) or parts of mobile phones (85.29) – electric accumulators

LONDON TRIBUNAL CENTRE

MATSUSHITA COMMUNICATION INDUSTRIAL UK LIMITED Appellant

-and-

THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: DR J F AVERY JONES CBE (Chairman)

SHAHWAR SADEQUE

Sitting in public in London on Monday 18 June 2001

Stephen Cock, director, The Custom House, for the Appellant

The Hon Hugo Keith of counsel instructed by the Solicitor for the Customs and Excise for the Respondents

© CROWN COPYRIGHT 2001

DECISION

1. Matsushita Communication Industrial UK Limited appeals against a decision of the Commissioners on review contained in a letter dated 3 November 2000 upholding two binding tariff information reference numbers UK 105559476 and UK 105572000. The Appellant was represented by Mr Stephen Cock and the Commissioners by the Hon Hugo Keith.
2. The issue in the appeal is the customs classification of battery packs for mobile phones. The Appellant classifies them under 85.29 as "parts suitable for use solely or principally with the apparatus of headings Nos 85.25 [which contains mobile phones]..." and the Commissioners under 85.07 as electrical accumulators.
3. The battery packs consist of (a) three or six nickel hydride accumulators (model GD30) or a single lithium ion accumulator (GD50), (b) electrical connectors to the hone, (c) a thermistor which monitors the temperature of the battery pack and cuts it off if it is outside the temperature range,

- (d) a positive temperature coefficient (PTC) current protection circuit protecting against short circuit by increasing the resistance if too high a current passes through the battery pack thus preventing more current from passing, (e) in the case of the lithium ion accumulator only, a protective circuit supplementing the device at (d) by protecting the battery against too rapid charging, discharging too far, and short-circuiting, (f) the rear outer casing so that the pack forms part of the phone, (g) the inner plastic cover.
4. We had an expert's report and heard evidence from Mr Bevan Clues, consultant electric engineer with experience of mobile phones since they started. His conclusion was that the battery packs "do not add anything to the functionality of a handset as a mobile telephone." He continues "I accept that the battery packs are more than just a container with battery cells fitted. There is the thermistor, the PTC, and in the case of the GD50, additional components. However these components simply add functionality to the battery charging process and not to the functionality of the handset itself as a mobile telephone. Therefore, in my view, the battery packs are primarily batteries for the sole purpose of providing power to the handset. That is not to de-value the design intentions and performance of the battery packs in their rule. Clearly it is desirable that these units should be able to monitor temperature and to take actions in the event of an undesirable event. This capability does not change the basic functionality of the battery packs."
 5. In outline Mr Cock for the Appellant contends that the battery pack is more than just a battery and is designed and is suitable for use solely with a mobile phone. Mr Keith for the Commissioners, while not denying that the battery pack is part of a mobile phone, contends that it is still an electric accumulator, with additional features relating to its use as such.
 6. Note 2 to Section XVI of the combined nomenclature provides:

"2. [Subject to items that are not relevant here] parts of machines (not being parts of the articles of heading No [not relevant here]) are to be classified according to the following rules:

- a. Parts which are goods included in any of the headings of Chapters 85 (other than heading Nos 8529) are in all cases to be classified in their respective headings."
- b. Other parts, if suitable for use solely or principally with a particular kind of machine are to be classified with the machines of that kind or in heading No.8529 as appropriate."

Note 4 was not drawn to our attention but we think it may be relevant. It provides "Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter ...85, then the whole falls to be classified in the heading appropriate to that function."

Note 5 provides that for this purpose "'machine' means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter..85."

Under General Rule of Interpretation No.1 "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided that such headings or notes do not otherwise

require, according to the following provisions." Rule 6 is the same in respect of subheadings and subheading notes.

Heading 8527, for which the Commissioners contend, comprises "Electrical accumulators, including separators therefore, whether or not rectangular (including square)." There follows a list of various types of accumulator, such as lead-acid, none of which is applicable here ending with "other accumulators" (8507 80), and a further item which is not applicable, so that the full classification would be "other" resulting in 8507 80 99 if this is the applicable heading. The HSEN (which is not legally binding but is an aid to construction) provides that 8506, containing primary cells and primary batteries, does not include rechargeable cells and batteries which are classified in 8507. Heading 8507 defines electric accumulators: "Electric accumulators (storage batteries) are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator."

Heading 8529, for which the Appellant contends, comprises "Parts suitable for use solely or principally with the apparatus of heading Nos 8525 to 8528." It is common ground that mobile phones are within 8525. There follows various types of aeriels, followed by Other (8529 90), of which a further item is "Parts of apparatus falling within subheadings 8525 29 91 [mobile phones]" resulting in the full classification of 8529 90 40 if this heading is applicable.

1. It is clear that the battery packs are both electric accumulators (plus other components) and parts suitable for use solely or principally with mobile phones. Mr Cock emphasises that the battery packs contain much more than cells and are clearly part of a mobile phone. The phone cannot be used without it. The packs are specifically designed for a particular phone and cannot be inter-changed because of their dimensions and electrical properties, although the GD30 and GD50 are interchangeable. The battery packs cannot be categorised as electric accumulators because they contain other items, such as the thermistor, the PTC, the protective circuit and the outer casing which have their own classifications.
2. Mr Keith said that the approach of the European Court was to look for the objective characteristics of the battery packs, that is to say, "what is it?" rather than "how does it affect the phone?" He contends that, in accordance with General Rule of Interpretation No.1, Note 2(a) is decisive: "Parts which are goods included in any of the headings of Chapters 85 (other than heading Nos 8529) are in all cases to be classified in their respective headings." This means that if the battery pack is itself within Chapter 85, in this case an electric accumulator, it must be classified as such, and not as part of a mobile phone. The exclusion of 8529 by the words in brackets is logically necessary because that item itself deals with parts. He also drew our attention to four other BTIs that had categorised nickel-hydrate rechargeable batteries for use in mobile phones and containing safety switches in 85.07 but he accepted that we did not have any other information about the contents of the packs in those cases.
3. Accordingly the question is whether the battery pack is an electric accumulator, in which case Note 2(a) requires it to be classified as such, or, because of the additional components, so much more than an electric accumulator that it cannot be classified in that heading, in which case it is classified by Note 2(b) as part of a mobile phone.

4. We accept Mr Clues' undisputed expert evidence that the components other than the cells contained in the battery pack all contribute to the function of the battery packs in controlling and safeguarding the performance of the cells. They perform no function of the phone itself. Accordingly, we consider that it is right to classify the whole battery pack as an electric accumulator. It is an electric accumulator with additional safety equipment enabling it to function better as an electric accumulator. The components other than the cells do not detract from its function as an electrical accumulator; they add to it. The additional components do not contribute to any function of the phone. If one did not know it was for a mobile phone there would be no means of determining this, which is significant when the battery packs are imported separately. In fact the only aspect that is peculiar to its being for a mobile phone is that the shape of the case fits the phone. Looking at the battery pack as a whole and answering Mr Keith question "what is it?" we consider that the best description of it is still that of electrical accumulator. We consider that Note 4 assists us because the additional components are intended to contribute to the battery pack's clearly defined function as an electric accumulator and accordingly the whole is to be classified as such. The complete heading is therefore 8507 80 99.
5. Accordingly, we dismiss the appeal. The Commissioners did not ask for costs and we make no order for costs.

J F AVERY JONES

CHAIRMAN

Released 5th July 2001

LON/00/7086