TC03748

Appeal number: TC/2013/05142

CUSTOMS DUTIES; Classification of goods; Combined Nomenclature; Binding Tariff Information; "slip ring"

FIRST-TIER TRIBUNAL
TAX CHAMBER

MACARTNEY UK LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE J GORDON REID QC, FCIArb
MR S A RAE, LLB, WS

Sitting in public at Edinburgh on 15 and 16 May 2014

Timothy Brown, barrister for the Appellant, on the instructions of the Customs People, Stockport, Cheshire

Iain Artis, advocate, instructed by the Office of the Advocate General, for the Respondents

DECISION

Introduction

1. This is an appeal against the issue of a Binding Tariff Information (BTI) by the Respondents (HMRC) on 23 April 2013, and relates to a particular model of *slip ring*, used in the oil and gas industry and described below. A hearing took place at Edinburgh on 15 and 16 May 2014. Timothy Brown, barrister, appeared for the Appellant on the instructions of the Customs People, Stockport, Cheshire. He led the evidence of David Buchan, the Appellant's managing director. Iain Artis, advocate, appeared on behalf of HMRC on the instructions of the Office of the Advocate General. He led the evidence of Perry Young, an HMRC official, who carried out an internal review of the decision which led to the issue of the BTI.

2. A bundle of documents was produced, the authenticity of which was not in dispute. Mr Brown objected to the lodging of an Irish BTI produced by HMRC on the ground that it had expired, was not accompanied by any descriptive documents and so had no value. While we considered there to be merit in this objection, we allowed the document to be lodged for what it may be worth. We discuss this matter further in paragraphs 37 and 52 below.

General Factual Background

3. The Appellant supplies equipment and services to the marine market, including the oil and gas industry, renewable energy and ocean sciences. It manufactures and supplies winches, and supplies *inter alia*, slip rings, multiplexers, cameras, lights, cables for remotely operated vehicles (ROVs). Imported slip rings comprise about 25% of the Appellant's turnover. It is exclusive European distributor of marine products manufactured in Canada by Focal Technologies Inc and purchases slip rings exclusively from Focal. Focal are part of the Moog Components Group, Nova Scotia, Canada.

4. *Slip ring* is a generic term for a piece of equipment that converts rotary motion to a stationary output. They are used in equipment such as industrial robot arms, CCTV cameras, and steering wheels, as well as winches.

Winches and Slip Rings

5. A slip ring may be small and have a diameter less than a ten penny piece; or it may be large with a diameter of six feet or more, or anything in between. The Appellant imports slip rings solely for use in their own range of marine winches and those marine winches designed and manufactured by other companies. These include underwater winches, used in connection with remotely operated vehicles (ROVs). These include tethered management systems (TMS) where lightweight cabling is deployed from a winch housed sub-sea in what has been described as a garage.

6. Winches are typically manufactured with a particular slip ring manufacturer in mind ie the winch is designed to accept that manufacturer's slip ring. They are used to deploy cables containing and conveying a variety of media. We record at the outset, therefore, that we are *not* concerned with the type of winch that deploys wire rope to lift or move heavy equipment.

7. The slip ring protects any cabling and its content which a winch may be carrying, which is particularly important for sub-sea equipment. If a slip ring is not fitted, the cable carrying power, fluid, gas, breathing air or data will be damaged, and the media being conveyed interrupted or lost. In effect, if a slip ring is not fitted, the winch cannot be used. In the course of the proceedings, we watched two very short videos, provided by the Appellant, which clearly demonstrated that if a cable is paid out or wound in by a winch without the benefit of a slip ring, the cable will be damaged, and is liable to break. The winch cannot be used effectively without the slip ring. It will mal-function.

8. The slip ring with which this appeal is concerned is Model 180. It is manufactured in Canada by Focal and imported into the United Kingdom by the Appellant. A slip ring model 180 was exhibited at the hearing. It is at the smaller end of the scale of slip rings and comfortably sat on the small witness table. Neither party gave us its precise measurements, although a specification sheet discloses its diameter at 4 inches. It was about a foot in length. 85% of the slip ring 180 model are supplied with electrical *tails* although other connections are available to convey different media.

The BTI

9. Following a routine inspection in early 2013, HMRC raised the question of the proper classification of slip rings imported by the Appellant from Canada.

10. A BTI (GB122862482) was issued on 23 April 2013 in relation to slip rings imported by the Appellant, classifying them as **853690 85 99** and not **8431 10 0000** as declared by the Appellant. The BTI described the product as follows:-

> Electric, electro-optic, fluid and electro-fluid slipring: Equipment used principally to convert the rotary motion of a winch drum to a stationary output, allowing the transfer of electric power, electronic data, optical signals, and fluid or gas across a rotating interface. All winches with electronic, electro-optic or electro-fluid cables will require a slipring to allow continuous transfer of power data or optical signals while the winch drum is turning. Typical applications include: REM, OTE operated vehicles (ROV), winch and TMS applications, industrial machinery and seismic surveying.

11. The principal argument of the Appellant is that the slip ring model 180 should be classified as a *part* suitable for use solely or principally with machinery under heading **84 25** ie a winch. By contrast, the principal argument for HMRC is that the slip ring is electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits, such as switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors or junction boxes.

12. The issue of the BTI constitutes a change in the classification hitherto adopted by the Appellant. While no consequential assessments have yet been issued, it appears that there is likely to be in the order of £250,000 currently at stake.

Statutory and Regulatory Background

13. Goods imported into the EU must be classified according to the Combined Nomenclature. The Community Customs Code was established by Council Regulation 2913/92 (EC) (the "Establishment Regulation"). It has been amended from time to time and has recently been restated as the Union Customs Code by EU Regulation 952/2013. By Article 20 of the Establishment Regulation, the tariff classification of goods was to be based on the Customs Tariff of the European Communities which comprises *inter alia* the Combined Nomenclature according to the rules in force from time to time. The Combined Nomenclature (CN) is regulated by Council Regulation (EEC) 2658/87 (the Nomenclature Regulation).

14. The CN determines the rate of customs duty applicable and how the goods are treated for statistical purposes. The CN has various subdivisions. Each CN subdivision has an eight digit code number followed by a description. The Regulation is updated each year to take into account any changes in classification or other matters. The CN has its own general rules of interpretation in Annex 1, Part 1, Section 1A of the Combined Nomenclature Regulation known as the GIR. They bear the heading General Rules but the opening sentence *states* that *Classification of goods in the Combined Nomenclature shall be governed by the following principles.*

15. These principles provide *inter alia* as follows:-

> 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 …….
>
> 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. …
>
> (b) ……..
>
> 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
>
> 5 ……..
>
> 6 For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.

16. The European Commission has issued Explanatory Notes (HSEN) which may be used as an aid to interpretation. While not legally binding, HSENs are regarded as highly persuasive.

17. Customs authorities have to issue a BTI on request (The Establishment Regulation Article 12). These decisions are appealable (Art 234 of the Establishment Regulation).

18. Member states have to ensure that its customs tariff and statistical nomenclature conform with the International Convention on the Harmonised Commodity Description and Coding System (HS) (Article 3(1)(a)). They must apply the GIR.

19. The decisive criterion for the classification of goods is generally to be sought in their objective characteristics and properties as defined in the wording of the relevant CN and the notes to the various sections or chapters (*Bioforce GmbH v Oberfinanzdirektion Muenchen* [1977] EUCJ C-405/95 paragraph 12).

20. Both parties contend that the proper classification of the slip ring model 180 is to be found in Section XVI of the United Kingdom Tariff. Broadly, that section relates to *Machinery and mechanical appliances; electrical equipment; and parts thereof*. The section begins with a number of Notes including the following:-

> 2 Subject to Note 1 to this section (not relevant), note 1 to chapter 84 and note 1 to Chapter 85, parts of machines ….. are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings …8431….. 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, or with a number of machines of the same heading…… are to be classified with the machines of that kind…….

21. The title of Chapter 84 includes *machinery and mechanical appliances* and *parts thereof*. Chapter **84 31** provides *inter alia* as follows:-

> PARTS SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE MACHINERY OF HEADING NOS. 8425 TO 8430
>
> Of machinery of heading No 84.25 843110 00 00 free

22. The heading of chapter 84 25 provides *inter alia* as follows:-

> ……. WINCHES……..

23. Chapter 85 relates broadly to Electrical machinery and equipment and parts thereof. The Notes to that chapter provide *inter alia* as follows:-

6 For the purpose of heading 8536, "connectors for optical fibres, optical fibre-bundles or cables" means connectors that simply mechanically align optical fibres end to end in a digital line system. They perform no other function ……

24. The heading of Chapter 85.36 provides as follows:-

ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS (FOR EXAMPLE, SWITCHES, RELAYS, FUSES, SURGE SUPPRESSORS, PLUGS, SOCKETS. LAMP-HOLDERS AND OTHER CONNECTORS, JUNCTION BOXES), FOR A VOLTAGE NOT EXCEEDING 1000V; CONNECTORS FOR OPTICAL FIBRES OPTICAL FIBRE BUNDLES OR CABLES

Explanatory Notes to the Harmonised System (HSEN)

25. The heading to Section XVI of these Notes is the same as Section XVI of the United Kingdom Tariff quoted above. The relevant part of the Notes to this Section of the HSEN is in substantially if not identical terms to the Notes to Section XVI. Under the heading GENERAL (which still relates to Section XVI) is to be found the following:-

(I) GENERAL CONTENT OF THE SECTION

(A) Subject to certain **exclusions** provided for in the Notes to this Section and to Chapters 84 and 85 and apart from goods covered more specifically in other Sections, this Section covers all mechanical or electrical machinery……..

(II) PARTS

(Section Note 2)

In general, parts which are suitable for use solely or principally with particular machines or apparatus ….. , or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus…. Separate headings are, however, provided for:

……..

(B) Parts of the machinery of headings 84.25 to 84.30 (heading 84.31)

……

The above rules do **not** apply to parts which in themselves constitute an article covered by a heading of this Section……; these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to:

(3) Lifting and handling machinery (heading 84.25……..)

(13) Electrical apparatus for switching, protecting etc, electrical circuits (switches, fuses, junction boxes etc) (headings 85.35 and 85.36)

26. In relation to Chapter 84, the HSEN contain *inter alia* the following:-

GENERAL

(A) GENERAL CONTENT OF THE CHAPTER

Subject to the provisions of the General Explanatory Note to Section XVI, this Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by **Chapter 85**, ….

…..

In general, Chapter 84 covers machinery and mechanical apparatus and Chapter 85 electrical goods……..

It should be noted that machinery and apparatus of a kind covered by Chapter 84 remain in this Chapter even if electric (examples are given)

……..

GENERAL ARRANGEMENT OF THE CHAPTER

……

(3) Headings 84.25 to 84.78 cover machines and apparatus which, with certain exceptions, are classified there by reference to the field of industry in which they are used, regardless of their particular function in that field

(C) PARTS

As regards parts in general, see the General Explanatory note to Section XVI.

Separately presented electrical parts generally fall in one or other of the headings of **Chapter 85**, for example……..electrical switches, control panels, plugs, junction boxes etc (**headings 83.35 to 83.37)**

27. The HSEN for chapter 84.31 provides *inter alia* as follows:-

Parts suitable for use solely or principally with the machinery of headings 84.25 to 84.30

8431.10 of machinery of heading 84.25

……..

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI) this heading covers parts for use **solely or principally** with the machinery of headings 84.25 to 84.30.

It should also be noted that many parts **do not fall** in this heading since they are:

……..

(c) Parts suitable for use solely or principally with the machinery for lifting, handling, loading or unloading. …….. (**heading 84.86**)

This heading includes:

…..

(2) Drums for winches……

28. The HSEN for Chapter 85 provides *inter alia* as follows:-

85.36 [the same heading as quoted in paragraph 25 above**]**

……1 APPARATUS FOR SWITCHING ELECTRICAL CIRCUITS

These apparatus consist essentially of devices for making or breaking one or more circuits in which they are connected……..they may be known as single pole double pole… etc according to the number of switch circuits…

……..

(B) **Change over switches** are used to connect one or more lines to one or more other lines……...

(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS

The heading includes **fuses**

(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS

This apparatus is used to connect together the various parts of an electrical circuit. It includes:

(A) (1) **Plugs and sockets**

(2) **Sliding contacts** such as brushes for motors

The Decision and the Departmental Review

29. Officer Perry Young upheld the decision in his letter dated 3 July 2013. After reviewing the legislation and guidance, Mr Young notes that there appears to be no dispute *on the function of the product as in the review request, your (sc the Appellant's) representative has said that the product is basically an electric connector used to transmit power and signals to and from a rotating device.* On this basis, although he accepted that the slip ring is a specific part of the winch, he concluded that *its essential character remains an electrical connector for making connections to an electrical circuit and is classified under heading **853690 85 99** in accordance with GIR 1 and 6. The slip ring is excluded from heading **8431** by Note 2 to Section XVI of the CN.*

30. This decision may have proceeded in part on the basis of the view expressed to HMRC on behalf of the Appellant in a letter dated 20 May 2013 in which it was stated by the Customs People that their understanding was that a slip ring was *basically an electrical connector.* It will be seen from our findings of fact below that we do not agree that that is an accurate description of the slip ring model 180. The Customs People qualified that general statement in subsequent correspondence following the issue of the review letter dated 3 July 2013. Nevertheless, Mr Young,

in evidence maintained that the slip ring model 180 was principally an electrical connection.

Grounds of Appeal

31. The Appellant contends that Code **8536** (which it says assumes that the product is electrical machinery or equipment) is inapplicable. Rather, Code **8431** applies (parts suitable or use solely or principally with the machinery of heading nos. **8425 to 8431** (a winch is classified under chapter 84.25).

32. Alternatively, the Appellant contended that the correct code is **84.79** (parts of machines and mechanical appliances). The alternative ground was not, ultimately, pressed and we do not consider it.

Additional Facts

33. The evidence, particularly that of Mr Buchan, which we accept, makes it clear to us that (i) slip ring model 180 is designed and manufactured specifically for use in a winch; the particular winches to which it is attached are in turn designed to accommodate only a model 180 slip ring; the flange/bolt arrangement on the slip ring and the aperture on the winch match, (ii) when so used it is part of such a winch, (iii) the essential characteristic and properties of the slip ring model 180 are that it enables the winch to deploy media-carrying cable without damage to the cable or loss of the media which is being conveyed or carried within it; (iv) it does this by protecting the cable from chafing, twisting and from being severed, through its rotating function at one end of the slip ring (the detailed mechanics of the rotating function are not important for present purposes and were not discussed at all in evidence; but it does connect a rotating source of supply with a stationary source) (v) while the principal media conveyed by slip ring 180 is electricity, the slip ring can and frequently does accommodate the deployment of cables carrying other media such as gas/air, fluids or electronic or optical data, (vi) while, in one sense, the slip ring is an electrical connector in respect that it usually makes a connection between a source of electrical supply and the supply's point of delivery, that is not its essential characteristic; nor is it its principal function; an electrical connector whether a junction box or some type of fuse box would not normally have the rotary or protective element which characterises the slip ring and distinguishes it from such devices. Its purpose is to enable the continuous transmission of power or data while the drum of the winch is turning; (vii) the slip ring model 180 is a part which is suitable for use solely with a particular kind of machine, namely a winch designed to accommodate it and which only functions properly when the slip ring is fitted to it.

34. By the use of the word *deploy* in the previous paragraph, we mean paying out and winding in a cable by means of a winch of which the slip ring forms a vital part. It is vital because the continuous and continuing conveyance of the media through the cable is dependent on the presence of the slip ring and its rotary function. It is that rotary function which provides protection from damage and distinguishes it from electrical connectors such as a junction box. Nor is it an electrical switch or a fuse or

a plug or a form of socket. It does not of itself generate electricity, although it has certain safety fire proof qualities.

35. For the avoidance of doubt, the slip ring is *not* electrically powered. It cannot be plugged into an electrical socket. Its rotating function is powered mechanically by the winch drum. The media passing through the cable are mechanically driven. The slip ring is plainly not a switch, socket, fuse, junction box or plug. No one suggested it was a relay, or, for that matter, a lamp-holder. While it may have some characteristics of a junction box, its essential characteristic is its ability to rotate, and protect and to facilitate the continuous deployment by a winch of a cable carrying a variety of media including electrical power. A junction box is normally static. The slip ring model 180 has no other function or purpose. That is, in our view, quite distinct from a junction box or an article of electrical apparatus.

36. The commodity code used by Moog Components Group to export their rotary products including what they described in a letter from their managing director to Mr Buchan dated 27 March 2014 as *Electrical Slip Rings* and *Electro-optical slip ring assemblies* is 8431.10 namely *Parts suitable for use solely or principally with machinery of headings 84.25 (pulley tackle and hoists other than skip hoists: winches and capstans; jacks).*

37. In 2007 the relevant authority in Ireland issued a Binding Tariff Information in respect of a *Slip Ring* described as *an electrical connection designed to transmit power from a moving to a stationary device.* The BTI classified the slip ring in the customs nomenclature as 8536. There is no other description or detail or specification of the slip ring or any reasoning for the classification. Whether it was similar to the Appellant's slip ring model 180 is unknown.

Submissions

38. Mr Brown for the Appellant, submitted that the proper classification was 84 31. The decisive criterion was in general to be sought in the objective characteristics of the goods. He referred to *British Sky Broadcasting Group plc v HMRC* [2011] STC 1519, paragraphs 3-31, 59, 60, 63, 64 and 76. He referred to Note 2 of the UK notes to Section XVI of the UK Tariff and to the notes relating to Chapter 84 and 85 and to the Opinion of Advocate General Kokott in on *Uroplasty BV v Inspectuer van de Belanstingdientst* Case C-514/04 (ECR 2006 page 1-06721) paragraphs 41-44 on the general approach to classification. Little or no assistance was to be gained from the Notes to Chapter 85. The HSEN for section XVI did not really add anything helpful. Paragraph (c) of the HSEN notes to chapter 84.31 were specific and did not apply to winches. The reference in the notes to Chapter 85.36 were not relevant as they applied to connectors that simply mechanically aligned optical fibres end to end.

39. He referred to *Turbon International GmBH v Oberfinanzdirektion Koblenz* case C-276/00 (ECR 2002 page 1-01389) for the discussion of *parts* at paragraphs 21, 22, 24 and 30. *Turbon* was distinguishable because the slip ring was essential otherwise the cable would be damaged. In addition, *Turbon* was concerned with Chapter 84.73 which referred to *accessories* as well as *parts.*

40. Chapter 85 cannot apply as it cannot be construed so as to include machinery or devices which carry fluids, or gases.

41. He submitted that if the Tribunal considered the classification was equally balanced between chapters 84 and 85, then applying GRI 3(a), 84.31 is more specific as there is reference to the subheading of parts of machinery in heading 84.25, which refers to winches, and which should prevail.

42. Mr Artis submitted that the slip ring was electrical apparatus for making electrical connections. We have rejected this proposed finding essentially as a matter of fact, or at least on the basis that it is not an inference or conclusion we can draw or reach on the facts as we have found them to be. He relied on the HSEN notes relating to Parts at paragraph (13).

43. Mr Artis accepted that the slip rings should be classified as *parts.* He submitted that they were parts of electrical equipment and were electrical apparatus. He posed the question whether the device did mechanical work in which case it fell within chapter 84 or as he submitted, electrical work, in which case it fell within chapter 85. The reference in the HSEN notes for chapter 84.31 to drums for winches but not to slip ring implies that slip rings are excluded. This, it is said, is a pointer to chapter 85.

44. Mr Artis also referred to *Receveur principal des douanes de Roissy Sud v Rohm & Haas* case C-336/11 (ECR 2012 page 00000) on the test for a part or an accessory, *Develop Dr Esibein GmbH & Co v Hauptzollamt Stuttgart-West* Case C-35/93 (ECR 2011 page 00000) on precedence and *Delphi Deutschland GmbH v Hauptzollamt Dusseldorf* Case C-423/10 (ECR 2011 page 00000) paragraph 24 on the importance of the HSEN as an aid to the interpretation of the scope of the tariff headings.

Discussion

45. The basis on which Mr Young proceeded to confirm the BTI was that the slip ring's function and essential character was that of an electrical connector. We cannot accept that view. Our findings of fact show, on the more comprehensive evidence before us, that not to be correct a basis.

46. In spite of the apparent complexity of the statutory background, our findings of fact make the application of the relevant statutory and regulatory provisions to the facts more straightforward than it might otherwise have been. In essence, we have found and conclude on the facts that the principal function of a slip ring model 180 is to facilitate the rotation and protection of a cable (carrying media) as it is wound in or paid out by the drum of a winch preventing the cable from twisting and severing and thus protecting the cable from damage which would otherwise occur if the slip ring were removed. Certain winches, that continuously deploy media carrying cable, are designed to function only with slip ring model 180. Slip ring model 180 is intended for use with winches so designed. The flange/bolt arrangement on the slip ring and the aperture on the winch match. The slip ring so attached is plainly a part of the winch. The winch cannot operate as it is intended to operate without the slip ring. Its

rotating and protective functions are the essential characteristics and properties of slip ring model 180.

47. The foregoing coupled with our findings of fact seem to us to embrace the slip ring's objective characteristics and properties. We have endeavoured precisely to determine what we consider to be its intended use. It seems to us that a provisional classification as a part of a winch is obvious. Having regard to an examination of the wording and the headings and the explanatory notes set out above, we are led to a definitive classification under chapter **84.31** and its sub-heading cross-referring to winches in chapter 84.25. The slip ring's characteristics as we have found them to be, simply exclude it from chapter 85. The fact that it facilitates the carrying of gases and fluid as well as electrical power also seems to indicate that chapter 85 is not the appropriate chapter under which to classify this particular slip ring.

48. The slip ring model 180 is a part which is suitable for use solely with a particular kind of machine, namely a winch designed to accommodate it and which only functions properly when the slip ring is fitted to it. Such a winch falls within chapter 84.25 of the UK tariff. The slip ring is a part suitable for use solely or principally with machinery of heading 84.25. It therefore falls within the first sub-heading of chapter 84.31, namely parts of machinery of heading 84.25. It seems to us that there is no need to look elsewhere as guidance. We have, however, considered all the provisions mentioned above, but they either do not fit the facts as we have found them to be or point towards chapter 84.31. Thus, in the light of our findings of fact, all the arguments advanced by HMRC which proceed upon the basis that either the slip ring is electrical apparatus or an electrical connector falling within chapter 85.36, or that it is equally classifiable under that chapter fall away.

49. There was no dispute between the parties as to the proper approach to the tariff classification of goods. The statutory background and general principles can be found in (1) *British Sky Broadcasting Group* at paragraphs 3-5, 21-25-31 (international tariff classification, and Customs Code and rules), paragraphs 13, and 59 (general rules for interpretation), paragraphs 60, 76 and 77 (criterion for classification), paragraph 63-65 (complementary nature and non-binding force of explanatory notes), (*2*) *Uroplasty* at paragraphs 42-44, 59 and 61 (approach to classifying commodities in the Combined Nomenclature).

50. There was some discussion of *Turbon* which considered the classification of an ink cartridge used in an Epson ink jet printer. The Customs authorities classified the cartridge by reference to its ink. It was argued that it should be classified as a part or an accessory of the printer. After narrating various settled principles (paragraphs 21-26) the Court concluded that the element that gave the cartridge its essential character was the ink which it contained. It was not a *part* because *part* implied an operation as a whole, of which the *part* was essential to that whole. That was not the case here because the mechanical and electrical functioning of the printer was not dependent on the cartridge. The inability of the printer, in the absence of the cartridge, to transcribe on to paper the work produced with the aid of a computer was caused by a lack of ink rather than a malfunctioning of the printer (paragraphs 27-30). As the cartridge played no particular role in the actual mechanical functioning of the printer it could

not be regarded as part of the printer (paragraph 31). Nor was the cartridge an accessory (paragraph 32).

51. It is unnecessary to make such fine distinctions here. The evidence, which we have accepted, shows that, without the slip ring, the winch will malfunction and cause damage to the cable, eventually sever it, and will thus be prevented from carrying out its function of winding in and paying out cable containing media of some description on an uninterrupted basis.

52. Our decision is consistent with what appears to be the approach in Canada. The Appellant produced a letter dated 27 March 2014 from Moog's managing director to Mr Buchan. We have summarised its contents in paragraph 36 above. Plainly, it is written in the context of the present appeal. The only sensible reading of it is that Moog's longstanding and authorised practice is to classify slip rings as parts of winches. Although we do not need to rely on it, that is entirely consistent with what the Appellant proposes and what we decide. By contrast, the Irish BTI, which has expired, contains insufficient detail for it to be of any assistance. While admissible as a piece of evidence, we are unable to give it any significant weight.

Result

53. The appeal is allowed. The Parties accepted that we had full appellate jurisdiction and therefore power to substitute our own decision. We therefore substitute the tariff classification **8431** for the classification contained in the BTI dated 23 April 2013. We were not addressed on the remaining digits of the tariff classification and assume that there is no dispute about them.

54. 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.

J GORDON REID QC, FCIArb
TRIBUNAL JUDGE

RELEASE DATE: 23 June 2014