



[2022] UKFTT 00018 (TC)

TC 08371/V

Appeal number: TC/2020/3587

Customs Duty: Classification Locking Display Frames, Sanitiser stands.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CLEAR DISPLAY LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE CHARLES HELLIER
SHAMEEM AKHTAR**

The hearing took place on 8 December 2021. With the consent of the parties, the form of the hearing was by video on the Tribunal video platform. A face to face hearing was not held because of the covid 19 pandemic

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Ben Bensley for the Appellant

Charlotte Brown instructed by the General Counsel and Solicitor to HMRC, for the Respondents

DECISION

Introduction

1. This appeal concerns the customs tariff classification of two types of item imported by Clear Display Ltd (“CDL”): Locking display Cases and Sanitiser stands.
2. CDL had made customs declarations in relation to each of these items. HMRC enquired into the classifications adopted by CDL and concluded that a different ones were applicable. They issued a Post Clearance Demand Notice requiring the payment of extra duty on the basis of their classifications. The company appeals against that demand. There was no suggestion by HMRC that CDL had acted in bad faith in relation to its classification in what is a difficult task.
3. HMRC’s demand encompassed the classification of more than these two types of item, and initially the dispute between CDL and HMRC encompassed more items, but Mr Bensley told us that agreement had been reached in relation to all the items other than the Locking Case and the Sanitiser Stands.

The Legislation and associated materials.

4. There was no dispute as to the legal provisions which were potentially relevant. Customs duty on imported goods is determined by the classification of the goods under the Combined Nomenclature (the “CN”). This comprises Section, Chapters, headings and various levels of sub headings. Each level is given two digits so that taking all the levels together an 8 to 10 digit classification of the item is given to which a set rate of duty is attached. In applying the CN the objective characteristics and properties of the item are decisive.
5. There are Explanatory Notes for the CN published by the Customs Cooperation Council, known as HSEs, and also by the EC, known as CNENs. These are important aids to the interpretation of the CN but do not have binding force or prevail over the provisions of the CN.
6. Member states may issue Binding Tariff Information (“BTI”) usually on request from a trader. Such BTIs were binding on other member states in relation to the goods of the trader there described.
7. There are general Rules for the Interpretation (“GIRs”) of the CN. These have binding force. They are, so far as potentially relevant to this appeal, the following.

8. GIR 1 provides that classification shall be determined according to the terms of the headings of the CN and any related section or chapter notes and, provided those headings and notes do not otherwise provide, according to the following GIRs.

9. GIR 2 deals with incomplete articles or mixtures. GIR 2(a) requires that an unfinished article be classified as the finished article provided that it has "the essential character" of the complete article. GIR2 (b) provides: "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."

10. GIR 3 applies where "goods are prima facie classifiable under two or more headings". So far as relevant it provides:

(a) the heading which provides the most specific description shall be preferred to the heading 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 ...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 sequence among those which equally merit attention.

11. GIR 4 provides a sweep up rule: 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.

12. GIR 5 deals with containers and packing.

13. GIR 6 provides for a hierarchy of comparative classification under the subheadings so that only subheadings at the same level are to be compared.

14. We deal with the two types of article separately. We take our description of each article from the oral evidence of Mr Bensley and the documents and pictures in the bundle before us.

The Locking Cases

Description.

15. These are large display cabinets typically used for displaying graphics, notices or adverts at retail parks, shopping centres or in industrial areas. They comprise a rectangular frame a couple of inches deep enclosing a rectangle of either A0 size – about 33” x 47” (841 x 1189mm) - or 40” x 60” (1016 x1524mm). At the front of the case, held by the frame is a rectangle of transparent PET or PVC; at the back there may be a galvanised steel panel: some have a pinboard felt or correx backing or a printed or vinyl backing. There may be clips within the frame which could hold posters in place. The frame is hinged at one side permitting it to be opened to put posters or other material within. On the side opposite the hinge close to the corners are two key operated locks. About 20% of the cases acquired by CDL also have small compressor struts on the hinge side of the case which hold it open when dealing with its contents. The frame is made of aluminium, normally with and anodised silver finish.

The Rival Arguments

16. CDL’s initial classification was 9403 10 58 60, but before us Mr Bensley argued for 9403 20 80 00. Miss Brown argued for 8306 30 00 00. We set out below the CN words applicable to those classifications.

Appellant: either 9403 10 58 00 Or 9403 20 80 00	HMRC: 8306300000
Section XX: Miscellaneous manufactured articles	Section XV: Base metals and articles thereof
Chapter 94: Furniture: bedding, 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	Chapter 83: Miscellaneous articles of base metals
9403: Other furniture and parts thereof.	8306: Bells, gongs and the like, non- electric, of base metal: statuettes and other ornaments, of base metal: photograph, picture or similar frames, of base metal: mirrors of base metal
<u>Either:</u> 9403 10: Metal furniture of a kind used in an office.	83063000 00: Photograph, picture or similar frames; mirrors.

9403 10 58 00: Other	
<u>Or</u> 9403 20 – Other metal furniture: 9403 20 20 – – Beds 9403 20 80 – – Other	<i>As above</i>
<p>The Notes to Chapter 94 provide:</p> <p>...2. The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.</p> <p>The following are, however, to be classified in the headings mentioned above, even if they are designed to be hung, to be fixed to the wall or to stand one on the other:</p> <p>(a) cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;</p> <p>(b) seats and beds.</p>	<p>The section notes provides that this section does not cover:</p> <p>1. This section does not cover: ... (k) articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings).</p> <p>3. Throughout the classification, the expression ‘base metals’ means: iron and steel, ...aluminium, ...zinc, tin, ...</p> <p>7. Classification of composite articles: Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the Interpretative rules) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals...</p>

17. Mr Bensley relied on a BTI issued by the Italian authorities which classified the items described therein under 9403 20 80 00, his favoured classification. The BTI was in Italian and, none of us having the advantage of speaking that language, the parties agreed that we could use Google translate to obtain the description of the goods being classified. The result of the Google translation was:

“IT922104 customs and monopoly agency - customs management via mario carucci, 71 00143 Rome IT
Aluminium facial display structure with automatic mechanism for rewinding the canvas, not included in this BTI. The structure is intended for the exposure of images and large posters

Description of goods

Dimensions and it is used in the graphic furniture of offices, commercial exercises, "show room", shops, Exhibitions. The article has a weight of 6 kg, sizes 80x200 cm and is presented together with a nylon bag Padded."

18. Mr Bensley argues that this is a close description of the Locking Cases. He also draws our attention to Note 1(k) to Chapter 83 (HMRC's favoured Chapter) which provides that if Chapter 94 (CDL's favoured Chapter) applies, there is no need to consider any heading in Chapter 83 even if more apposite.

19. Miss Brown says that in order to fall within Chapter 94 the item must be "furniture", which she says is something for use in a garden or dwelling: it is not a word which encompasses street signs or information boards. She refers us to the CNEN for Chapter 94¹:

"General

For the purposes of this Chapter the term 'furniture' implies that these products are generally designed to remain in private dwellings or gardens etc. See also the definition of the term 'furniture' in the HS Explanatory Note to Chapter 94, General, second paragraph, (A).

...9403 Other furniture and parts thereof

...

This heading does not include 'information displays' such as 'street boards' and 'roll-ups'.

They are to be classified in other headings of the Nomenclature under which they are more specifically included (for example, street boards with writing or drawing surfaces corresponding to products of heading 9610) or according to their constituent material:

(a) under a heading specifically covering these articles (for example, plates of base metal corresponding to products of heading 8310 are classified under this heading), or

(b) under a heading covering various articles of this material (for example, heading 3926 or heading 7616). "

The CNEN also contains examples of 'information displays' or street boards which the last part of this note says are to be classified according to their constituent material. One example is of the kind of pair of boards hinged at the top one might find standing outside a shop or pub. Another is a base of plastic surmounted by an aluminium frame with plastic sheet in the middle covered by transparent PVC foils on either side.

20. Mr Bensley says that the words in the CNEN "information displays such as on street boards and roll ups" refer to floor standing units - the examples shown in the

¹ Miss Brown's skeleton at [14] also referred us to the HSEN for Chapter 94, but this appeared to be the same as Note 2 to the Chapter. We made no further investigation.

CNEN are all of such street boards which he describes as “A - Boards”, because of their standing form. He argues that “furniture” Chapter 94 includes street furniture.

Discussion – Lockable Frames

21. It seems to us that whilst things such as street lamps may be said to furnish a street or be street furniture, they are not, in the ordinary use of the word, “furniture”. In the heading of Chapter 94 a colon follows the word “furniture” –

“Furniture: bedding, mattress supports, cushion and similar stuffed furnishings”,

and there follows a semicolon before the list recommences with “lamps and lighting fittings...”. That indicates to us that the word “furniture” is not to be read broadly but is intended to have a meaning consistent with the items which follow it and so confined to items which furnish a domestic room, an office or possibly a garden. On this construction of the Chapter heading, the Locking Frames do not fall within any heading of the Chapter.

22. We are supported in this conclusion by the terms of the CNEN which expresses a similar view – that the products of the Chapter are generally those designed to remain in a private dwellings or gardens etc.

23. Note 2 to Chapter 94 provides for classification under 9403 only if the articles are “designed for placing on the floor or ground”. It was clear to us that the Locking Frames were not so designed: placed vertically on the ground they would be unstable and fall down readily; placed horizontally they would be stepped on, run over and broken and would not fulfil their obvious function of providing a case for a display. We conclude that even if we were wrong in our construction of the word “furniture”, the effect of Note 2 is to proscribe their classification under any heading of 9403.

24. We note the terms of the CNEN for 9403 suggests that information displays do not fall within this heading. We accept Mr Bensley’s comment that the examples given in that CNEN are all of floor standing items such as A frames, and that the Lockable Cases s are not floor standing. We therefore find that that part of the Note does not point to the conclusion that the Lockable cases do not fall within the Chapter, but considerations of the meaning of “furnishing” and of Note 2 to the Chapter are in our view conclusive that the Lockable cases are not classifiable under that Chapter.

25. We agree with Mr Bensley that the Italian BTI described a product which was at least similar to the Locking Cases. The product described, like the cases was made o aluminium with a facial display covered by plastic. It appeared to be intended for wall mounting since there was no mention of a base or feet. But the description in the BTI of its use in offices, show rooms, or shops, and its smaller size indicated to us that it was something which could reasonably be called furniture, whereas the Locking Cases in our view could not be so described.

26. We conclude that the Lockable Cases cannot fall within 9403 and thus are not to be classified under 9403 20 80 00 or 9403 40 58 00.

27. HMRC's classification under Chapter 83 is dependent upon the frames being properly described for these purposes as being of base metal. Aluminium, steel and zinc (for the galvanising) are all base metals for this purpose, but the frames also contained a PET or PVC transparent front panel and so were not made wholly of base metals.

28. The opening words of GIR 3 provide that where goods are "prima facie classifiable under two or more headings the rules which then follow are to be applied. If we are right in our conclusion that 9403 cannot apply then we had before us no two competing headings. But GIR 2 provides that "The classification of goods consisting of more than one material or substance shall be according to the *principles* of rule 3." We thus apply the principles of Rule 3 in assessing HMRC's favoured classification.

29. GIR3(a)

30. But by GIR 3(b) if Rule 3(a) cannot be applied the goods are to be classified as if they consisted of the material which gives them their essential character. To our minds the essential character of the frames and their most important feature lies in their name – they are cases or frames - the locking case is their essential character.

31. As a result, it seems to us that the frames may properly be described as being articles of base metal within the meaning of Chapter 83.

32. That leaves the question of whether the description "photograph, picture or similar frame" in heading 8306 or subheading 8306 30 00 00 embraces the Locking Frames. Mr Bensley says that the size of the Frames disqualifies them as photograph or picture frames. They are he says too large for that description. To our minds however, a picture frame can be as large as one of the Locking Cases or even larger – one has only to think of some of the paintings or pictures in museums and galleries whose frames are vast.

33. We conclude that 8306 and 8306 30 00 00 are capable of embracing the frames. Since no other classification was offered we conclude that such is the proper classification.

The Sanitiser Stands

Description

34. These are products created for the age of Covid. They enable the mounting of a bottle of hand sanitiser at about waist level so that people passing by may use the disinfecting gel or spray to disinfect their hands. The dimensions which follow are generally estimates taken from the pictures which were in our bundle.

35. They consist of a 4mm (~1/5") powder coated square steel plate about 18" x 18" from the middle of which an anodised aluminium pole of length 1.3m (~4") rises and on which is mounted a moveable platform on which is a sanitiser dispensing bottle. In cross section the pole appears as two small parallel squares joined by a single line from the mid point of one side of one square to the mid point of the facing side of the other

square, giving the appearance of a broadly rectangular pole with channels on either side. The moveable platform as made of sheet metal with an L shaped cross section and of overall width about 3” (~75mm); the long side, which is mounted so as to be parallel to the pole, is about 10” (~250mm) high and the shorter side which acts as a platform is about 3” long; at the back of the long side are two sets of two lugs which fit into the channel in the pole and the long side is pierced with slots through which velcro strips pass to go round the dispensing bottle and the back of the pole. The item comes with a sanitiser dispensing bottle to fit on the moveable platform, but without sanitiser.

36. The steel base provides stability and the height of the appliance permits the use of the hand sanitiser by a person standing, or if the platform is lowered down to pole to people at other levels.

The Rival Arguments

37. Mr Bensley argued before us for classification under 8424 20 00, and in earlier correspondence with HMRC had argued for 9403 20 80 00 or 8306 30 00 00. HMRC argue for 7616 16 99 90. We set out in the following Table the relevant terms of the CN in relation to the classifications argued before us

Appellant:8424 20 00	HMRC: 7616 99 90
Section XVI Machinery and mechanical appliances; electrical equipment; parts thereof, sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	Section XV: Base metals and articles of base metal
Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof 8424: Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sandblasting machines and similar jet projecting machines	Chapter 76: Aluminium and articles thereof 7616: Other articles of aluminium
8424 20: Spray guns and similar appliances	7616 99 90 99: Other

38. Note 1 to Chapter 76 provides that the chapter does not cover items of Chapter 94.
39. Note 1 (d) to Chapter 84 provides that the Chapter does not cover “articles of heading 7321 or 7322 or similar articles of other base metals (Chapters 74 to 76 or 78 to 81)”
40. Miss Brown says that 8424 20 relates to large items such as blasting machines. The heading lacks the specificity required by GIR1. She says that CDL accepted that aluminium was the majority material in the article and therefore 7616 is applicable.
41. She says that the effect of Note 1(d) is that if the article falls within Chapter 76 (as HMRC maintain) it cannot fall within Chapter 84.
42. Were it not for Note 1(d) we would conclude that the items fell within Chapter 84. The descriptions in Chapter 84 do not to our minds imply that only goods which are large fall within it. Nuclear reactors are large, but spray guns and hand operated appliances may often be small. The Dispenser is a mechanical appliance for dispersing a liquid.
43. Looking at the Chapter 76 classification, the Sanitiser stands also appear to fall within HMRC’s favoured classification if they are ‘articles of aluminium’. The sanitiser stands are not made solely of aluminium: they have a steel base, a steel platform and a plastic dispenser. On 28 July 2020 Mr Bensley wrote to HMRC saying that this (and other) products had aluminium in it “as the majority material”. We take this as evidence that such is the case, but the nature and extent of the other materials is such that in ordinary language the sanitiser stand could be said to be “of aluminium”.
44. But GIR2(b) provides that “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 substance or material”. Applying that rule, the Sanitiser Stand is capable falling within Chapter 76.
45. Leaving aside Note 1(d) again, the Sanitiser Stand could be prima facie classifiable under at least two headings: one in Chapter 76 and one in Chapter 84 . That would bring into action the provisions of GIR3. By GIR 3(a) the heading which provides the more specific description is to be preferred unless “two or more headings each refer to part only of the materials in ... composite goods”. That caveat is not applicable in the case of competition between Chapter 76 and Chapter 84, since Chapter 84 does not refer to the material of which the item is made. Chapter 84 and its headings are plainly more specific than Chapter 76 and its headings. Thus classification would be under Chapter 84.
46. That brings us to Note 1(d) to Chapter 84. The Chapter does not cover “articles of heading 7321 or 7322 or similar articles of other base metals (Chapters 74 to 76 or 78 to 81)”
47. By GIR 1 classification is to be determined by the terms of the headings and any related chapter notes “and provided that those... notes do not otherwise provide”, by the

other GIRs. It seems to us that this rule is the primary rule of interpretation. Thus when considering the competition between the Chapters 76 and 84, the notes to Chapter 84 must be considered and applied before the other GIRs. That has the effect that classification under Chapter 84 is not possible because the Sanitiser Stands are classifiable under Chapter 76.

48. We turn to the two other classifications suggested by CDL in correspondence with HMRC, namely 9403 20 80 00 and 8306 30 00 00.

49. *9403 20 80 00*. To fall within this heading the Stands would have to be “Other furniture and parts thereof.” We do not consider that the Stands can be described as furniture. Thus this heading does not apply.

50. *8306 30 00 00*. To fall within this heading the Stands would have to be “Bells, gongs and the like, non-electric, of base metal: statuettes and other ornaments, of base metal: photograph, picture or similar frames, of base metal: mirrors of base metal”. We do not consider that these words encompass the Sanitiser Stands.

Conclusion

51. We dismiss the appeal.

52. We must however pay tribute to Mr Bensley’s attempts to find the correct classification for these items. We have not found the exercise easy, and Mr Bensley’s researches were made without the aid of the help with which we were provided by him and Miss Brown.

Rights of appeal

53. 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.

CHARLES HELLIER

TRIBUNAL JUDGE

RELEASE DATE: 07 JANUARY 2022