

COONEEN WATTS & STONE LTD v REVENUE & CUSTOMS COMMISSIONERS (2015) [2015] EWCA Civ 1261

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CA (Civ Div) (Laws LJ, Elias LJ, Russell J) 16/12/2015

CUSTOMS - ARMED FORCES - EUROPEAN UNION

CERTIFICATES : CLASSIFICATION : COMBINED NOMENCLATURE : CUSTOMS DUTY : EU LAW : MILITARY EQUIPMENT : PROTECTIVE CLOTHING : REGULATION 150/2003 SUSPENDING IMPORT DUTIES ON CERTAIN WEAPONS AND MILITARY EQUIPMENT 2003 Annex I, Annex III : REGULATION 2913/92 ON THE COMMUNITY CUSTOMS CODE 1992 art.236, art.220(2)(b)

Items of specialised military clothing containing infra-red reflectance properties had been properly classified as "jackets", "trousers" and "shorts" under the Combined Nomenclature code 6203, rather than "other garments" under code 6211. The items did not therefore qualify for suspension of import duties under Regulation 150/2003

(<http://www.lawtel.com/MyLawtel/Documents/EA1500519>).

The appellant importer of specialised military clothing (C) appealed against a decision ([2014] UKUT 31 (TCC) (<http://www.lawtel.com/MyLawtel/Documents/AC0140371>)) that items of military clothing with infra-red reflectance (IRR) properties did not qualify for suspension of import duties under Regulation 150/2003 (<http://www.lawtel.com/MyLawtel/Documents/EA1500519>) (the MEU Regulation).

C supplied the highly specialised and technologically advanced clothing to the Ministry of Defence. Annex I (<http://www.lawtel.com/MyLawtel/Documents/EA1500519>) of the MEU Regulation provided for suspension of import duties on certain weapons and military equipment imported by or on behalf of Member States. The weapons and equipment had to be for military end use to qualify for relief and had to fall within the Combined Nomenclature (CN) codes listed in Annex I. The MoD had issued a certificate in the form required by Annex III (<http://www.lawtel.com/MyLawtel/Documents/EA1500519>) of the MEU Regulation confirming that the IRR items fell under CN code 6211 - "other garments" - which qualified for the suspension. HMRC granted C's application for import duty relief under the MEU Regulation. However, when C submitted its claim for repayment/remission of duty paid for previous shipments of military clothing, HMRC stated that the IRR items should have been classified as "jackets", "trousers" and "shorts" under CN code 6203, which did not qualify for suspension. The Upper Tribunal held that the CN code 6203 classification was correct and that while the MoD certificate was conclusive as to the military end use of the goods being imported, it was not conclusive as to the goods' proper classification.

The issues were (i) whether the end use certificate issued by the MoD pursuant to the Regulation conclusively determined the proper customs classification of the goods; (ii) if not, what the proper customs classification of the goods was; (iii) whether the duty paid should have been remitted under Regulation 2913/92 art.236 (<http://www.lawtel.com/MyLawtel/Documents/EA9205717>) (the Customs Code), read with art.220(2)(b) (<http://www.lawtel.com/MyLawtel/Documents/EA9205717>).

HELD: (1) The general legal regime in the EU relating to customs duty applied. The MEU Regulation did no more than provide a special case of end use relief, tailored to recognise particular features associated with the importation of military equipment, notably the confidentiality of information relating to such equipment. There was nothing in the MEU Regulation that could be construed as requiring the competent authority's certificate given under art.3 to be treated as the conclusive determinant of the CN classification of the goods. The reasoning of the First-tier Tribunal and Upper Tribunal was plainly correct. The certificate was a declaration by or on behalf of the importer, and was subject to post-clearance verification by the customs authorities. The insertion of a CN code on the form specified at Annex III of the MEU Regulation amounted to no more than a claim or assertion by the trader (see paras 18, 21 of judgment).

(2) Unless the items in question fell to be distinguished as "other garments" by reference to their special protective function, there could be no other answer to the contention that "other garments" simply meant garments other than those referred to elsewhere in Chapter 62. The only basis on which the jacket-type items could be classified as other than jackets had to be by reference to their special protective function. "Jacket", "trousers" and "other garments" were ordinary English words. Neither the CN nor the MEU Regulation contained any special definition of the terms. Their natural and ordinary meaning did not fall to be disapplied by reference to the special protective function. It was plain from ECJ jurisprudence that the wording of the CN heading contained an express or implied reference to a function or use of goods, *Wiener SI GmbH v Hauptzollamt Emmerich* (C338/95) [1997] E.C.R. I-6495, *Sony Computer Entertainment Europe Ltd v Commission of the European Communities* (T-243/01) [2005] E.C.R. II-1121 and *Neckermann Versand AG v Hauptzollamt Frankfurt am Main Ost* (C395/93) [1994] E.C.R. I-4027 considered, *Holz Geenen GmbH v Oberfinanzdirektion Munchen* (C-309/98) [2000] E.C.R. I-1975 applied. In the instant case, the debate about the goods' function had an air of unreality. A jacket did not cease to be a jacket because it had a special function. It was just a special jacket (paras 28-33).

(3) There was nothing in the case to undermine the tribunals' conclusions that the import duties should not be remitted under art.236 of the Customs Code (paras 45-55).

Appeal dismissed

Counsel:

For the appellant: Kieron Beal QC

For the respondent: Owain Thomas

Solicitors:

For the appellant: Carson McDowell LLP

For the respondent: In-house solicitor

LTL 16/12/2015

Judgment: Approved - 20 pages

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