



HARMONIZED SYSTEM
COMMITTEE

-
28th Session

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NC0476E1

(+ Annex)

O. Fr.

H11-3

Brussels, 4 October 2001.

CLASSIFICATION OF A RADIO EQUIPMENT (TRANSMITTER/RECEIVER) ASSEMBLY

(Item VII.15 on Agenda)

Reference documents :

NC0401E1 (HSC/27)
NC0430E2, Annex IJ/3 (HSC/27 - Report)

I. BACKGROUND

1. At its 27th Session, in May 2001, the Committee examined a classification question concerning certain radio transmission/reception equipment (see Doc. NC0401E1 for a full description). This question relates to a dispute between the European Community and the Senegalese Administration, and was submitted to the Committee under Article 10 of the HS Convention.
2. The equipment to be classified consists of the following three modules which were presented for clearance separately :
 - (i) - a central unit (reference SRT 1/6 EM/REC 128 TCM) comprising four radio signal transmitters and four receivers,
 - (ii) - a switching system module (reference SPS 155 SDH/DPH) which compensates for any deficiencies in any one of the receivers,
 - (iii) - a transmitter/receiver network management module.
3. Several delegates felt that additional information was required in order to enable the Committee to take a reasoned decision. Therefore, after a preliminary discussion, the Committee decided that this question would be examined from two perspectives, namely (1) separate classification of the three constituent modules, and (2) classification of the assembly as a functional unit.
4. It should also be noted that new comments from the Senegalese Administration reached the Committee during the 27th Session. These comments, which the Committee was not able to examine at that session, are appended hereto.

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II. SECRETARIAT COMMENTS

5. The Secretariat wishes to begin by drawing the Committee's attention to the particular circumstances surrounding this question.
6. According to the note which the Senegalese Administration transmitted to the Committee during the last session, the origin of this dispute appears to be a contested classification within the framework of an all-inclusive contract for the establishment of a radio-relay/optical-fibre synchronous digital transmission network. Apparently the case has already been the subject of a judicial ruling.
7. Leaving aside the commercial aspects of the problem, what has been established is that this telecommunication network employs two systems, i.e., (1) an optical-fibre transmission system for the terrestrial network, and (2) radio-relay transmission system for the section which passes over the Senegal river. The equipment at issue performs the necessary switching between the two systems.
8. However this equipment in fact consists of three physically separate parts, although they are intended to be arranged in a common housing to form a compact assembly.
9. In keeping with the conclusions reached at the Committee's 27th Session in May 2001, this question can be examined from two perspectives :

Classification of the assembly

10. (i) As a composite machine

Note 3 to Section XVI states that :

"Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."

However, the corresponding Explanatory Note (page 1227, sixth paragraph) stipulates that :

"Assemblies of machines should not be taken to be fitted together to form a whole unless the machines are designed to be permanently attached either to each other or to a common base (...)."

Given that the various elements are not permanently attached, either to each other or to their common housing, the Secretariat would rule out the application of Note 3 to Section XVI.

11. (ii) As a functional unit

Note 4 to Section XVI provides that :

"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 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

The corresponding Explanatory Note (page 1227, second paragraph) stipulates that :

“For the purposes of this Note, the expression “intended to contribute together to a clearly defined function” covers only machines and combinations of machines essential to the performance of the function specific to the functional unit (...).”

In the light of the operating principles described in Doc. NC0401E1 - HSC/27, it appears that the three parts in question each fulfil a separate function, namely :

- (a) receiving and transmitting electromagnetic waves;
- (b) switching;
- (c) automated network management.

12. Under these circumstances the Secretariat would find it somewhat difficult to maintain that the three parts of the system are contributing together to a single function. Therefore it would rule out the possibility of applying Note 4 to Section XVI.

Separate classification of the three modules

13. If the Committee agrees that the three modules perform the functions listed above, then the Secretariat would propose that they be classified as follows :

- | | |
|--------------------------------------|--|
| (1) SRT 1/6 EM/REC 128 TCM equipment | Subheading 8525.10 as transmission apparatus for radio-telephony, incorporating reception apparatus. |
| (2) SPS 155 SDH/DPH equipment | Subheading 8517.30 as switching apparatus for digital telecommunication. |
| (3) Network management system | Subheading 8543.89 as electrical apparatus, having individual functions, not specified or included elsewhere in Chapter 85 (pending the receipt of any additional technical information which might cause this system to be classified in a more specific heading). |

III. CONCLUSION

14. The Committee is invited to rule on the classification of the three modules which constitute this radio equipment, in the light of the Secretariat comments reproduced above and the comments by the Senegalese Administration, which are appended hereto.

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COMMENTS BY THE SENEGALESE CUSTOMS ADMINISTRATION

"HS tariff classification of «SAGEM» transmitter/receiver equipment consisting of an «SRT» central unit, an «SDH/DPH» switching module, and an RRS network management module

It has come to my attention that following a court case between the Senegalese Customs Administration and a European private company, the European Union (EU) and France have requested that the tariff classification of the above-mentioned equipment be placed on the Agenda of the HSC's 27th Session.

The Senegalese Customs Administration wishes to provide the Committee with some clarifications about the nature of the dispute, the circumstances and terms of the contract, and the reasoning underlying the tariff classification adopted for this equipment.

I. NATURE OF THE DISPUTE

In truth, the Senegalese Customs Administration is not in dispute with the French Customs Administration, or indeed with the European Union, about this question. What happened in fact was that controls were carried out on a consignment of equipment imported by the French company SAGEM on behalf of the Senegalese telecommunications company SONATEL. The equipment was declared under subheading 8525.20 (transmission apparatus incorporating reception apparatus). The Senegalese Customs Administration considers this to be digital telecommunications equipment of subheading 8517.50, imported as part of the ZKT2 project to establish a telecommunications system to link the entire national network, also spanning the Gambia.

The Customs office concerned therefore recorded this as an offence, which was recognized by the declarant and his principals who requested and were granted administrative settlement. The terms of the settlement were endorsed by the competent authority and were complied with in full by the offenders. The Customs Administration therefore closed the file on this case.

II. CIRCUMSTANCES OF THE CASE

The French private company SAGEM imported, on behalf of Senegal's national telecommunications company (SONATEL), a consignment of equipment comprising :

- 14 transmitters with 14 modulators;
- 14 main receivers with 14 demodulators;
- 10 "space diversity" receivers;
- 1 set of accessories.

This consignment – one of a series – was imported in the framework of a contract with the State of Senegal for the “ZKT2/South loop” project, i.e., a radio-relay and – more importantly - optical-fibre synchronous digital transmission network between the Senegalese towns of TAMBACOUNDA, KOLDA, ZIGUINCHOR and KAOLACK.

The system is subdivided into three sub-systems, arranged in order of priority as follows :

Sub-system 1 : KOLDA – TAMBACOUNDA, comprising :

Lot 1 : Optical-fibre transmission

Lot 2 : Synchronous multiplexers

Sub-system 2 : ZIGUINCHOR RRS – ZIGUINCHOR MUX - KOLDA, comprising :

Lot 1 : Optical-fibre and radio-relay (for KEUR AYIB-DIGANTE) transmission

Lot 2 : Synchronous multiplexers

Sub-system 3 : KAOLACK – ZIGUINCHOR RRS – OUSSOUYE, comprising :

Lot 1 : Optical-fibre and radio-relay (for ZIGUINCHOR – OUSSOUYE) transmission.

Lot 2 : Synchronous multiplexers.

In all, only the KEUR AYIB – DIGANTE and ZIGUINCHOR-OUSSOUYE links involve radio-relay transmission. The remainder of the network uses optical-fibre technology (see diagram).

This contract was considered to be a single entity, i.e., an investment deal negotiated and concluded as a whole. The contract relates to a synchronous digital transmission network and was treated as such for tax and duty purposes (in the manner of “turn-key factories” which are not catered for by the Nomenclature). Consequently, this is a whole which must not be split up. However the Committee is being asked to look at certain elements of it in isolation.

Any change in the classification would result in a loss of revenue for the State of Senegal, given that the duties and taxes were calculated with reference to heading 85.17 (subject to a Customs duty rate of 10 %), whereas the opposing party advocates classification in heading 85.25 (5 % Customs duty).

Against this background, and bearing in mind the nature and circumstances of the contract, the Senegalese Administration would like there to be a preliminary discussion on whether it is appropriate for the Committee to rule on this question, and whether the Committee is legally competent to do so.

However, for the enlightenment of the Committee the Senegalese Administration felt that it might be useful to describe the process by which this equipment was classified.

III. CLASSIFICATION

1. Description of the goods

1.1 – Constituent elements

The technical specifications and the file on this case reveal that the equipment comprises :

- **a central unit (reference SRT 1/6L EM/REC 128 TCM)** comprising four radio signal transmitters and four receivers with parabolic antennas;
- **an SPS 155 SDH/PDH module.** This is a switching system which supports the central unit by compensating for deficiencies in any of the receivers. This system makes it possible to switch the signal to another receiver in the central unit which is functioning properly;
- **an RRS transmitter/receiver network management module.** This module detects any anomalies in the operation of the central unit. Thus, it performs equipment control functions.

1.2 – Use

This equipment may be presented disassembled. The catalogue provides the assembly and installation instructions, as well as listing the various parts and their dimensions.

An examination of the documents in the “STR/6GHZ” synchronous radio-relay systems file, together with various consultations and experiments, has confirmed that the equipment at issue is a transmitter/receiver to be installed in an optical-fibre telecommunication network for data, images and sound.

It has emerged that the equipment is installed by connecting it directly to the optical fibres, with no interface required, whereas the opposing party has claimed that the equipment is connected to the optical fibres via special apparatus known as an MXA. Expert examination, and information taken from the manufacturer’s web site (SIEMENS) using the equipment reference details as shown on the invoice and the packing list, have proved this claim to be incorrect.

When all this information was collated and cross-checked, it became apparent that the principal function of the equipment concerned is to convert a digital signal from one carrier mode (optical-fibre) to another (radio-relay). Thus the communications function, i.e., transmitting and receiving, is ancillary as it is performed point to point. Consequently, this could prove to be line equipment for optical-fibre cables used for digital telecommunication.

2. Analysis

The various items could be classified separately as follows :

- transmitters : heading 85.25
- receivers : heading 85.27
- modems : heading 85.17
- set of accessories : heading 85.17.

However the separate classification of these goods would not seem to be in accordance with the provisions of General Interpretative Rule 2 (a), given that the documents accompanying the Customs declaration (invoice, packing list, consignment note) and the physical inspection confirmed that the equipment, comprising 14 transmitters, 24 receivers, 28 modems and a set of accessories, was ordered, imported, presented and declared as an entity and not separately, to be taken into home use **in the form of a system**.

Therefore, this equipment can be classified neither in subheading 8525.20 as a heterogeneous collection of transmission apparatus incorporating reception apparatus, nor in subheading 8527.39 as a heterogeneous collection of radio-broadcast receiving apparatus, including apparatus capable of receiving also radio-telephony or radio-telegraphy. Instead it should be classified with reference to Note 3 to Section XVI, as a composite machine consisting of a number of different machines (modems, multiplexers, transmitter/receivers and accessories) fitted together to form a whole which functions as a **digital transmission system**.

Under the terms of the HS Explanatory Notes (see page 1475, Part III – Apparatus for carrier-current line systems or for digital line systems), digital transmission systems fall in heading 85.17. The relevant Explanatory Note refers specifically to all categories of multiplexers and related line equipment. The Note specifies that “line equipment” includes transmitters and receivers, as well as modems. It follows from this that heading 85.17 essentially covers combinations of machines - which may include machines of completely different kinds - which operate through frequency modulation and are characterized by the presence of modulators and demodulators. The equipment at issue is an SDH (synchronous digital hierarchy) digital transmission system, involving transmitters with modulators at one end, and receivers with demodulators at the other.

It is also important to bear in mind that Note 4 to Section XVI specifically states that : “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 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.” Under the terms of this Note, it is clear that the apparatus at issue, which together performs the single function of providing a telecommunications link between two or more distant points, must be classified in heading 85.17 even if imported disassembled.

Moreover, it should be noted that in the course of the various amendments to the HS Nomenclature, heading 85.17 has undergone several changes linked essentially to technological developments. Thus the four-digit heading was supplemented by the insertion of a reference to digital line systems, as digital technology is tending to replace carrier-

current telecommunications technology. Thus, these two types of telecommunication apparatus are now classified together in subheading 8517.50 (see WCO brochure on Amendments to the Harmonized System Nomenclature applicable with effect from 1 January 1996 : Recommendation of 6 July 1993).

Finally, it should be recalled that under the terms of Note 5 to Section XVI, the expression "machine" does cover equipment of this kind.

In the light of the foregoing, by application of Notes 3, 4 and 5 to Section XVI - and bearing in mind that the various components are presented together - the equipment concerned should be classified as a whole in subheading 8517.50 : Other apparatus, for carrier-current line systems or for digital line systems.
