TC04870

Appeal number: TC/2015/02093

CUSTOMS DUTY – nomenclature – whether switches classified as electro-mechanical snap-action switches under code 8536-50-07 – whether classified as push button switches under code 8536-50-11 – application for adjournment refused – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

RJS ELECTRONICS LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE REDSTON
MR MICHAEL ATKINSON

Sitting in public at the Tribunal Centre, Howard Street, Bedford on 27 November 2015

Mr Robert Brown and Mr Richard Sucher, directors of the Appellant, for the Appellant

Ms Jennifer Newstead-Taylor, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This was the appeal of RJS Electronics Limited ("RJS") against HMRC's decision to classify four switches sold by the company under commodity code 8536 50 11 99, being "push button switches – other." That code attracts a duty rate of 2.3%.

2. RJS contended that the switches should instead be classified under commodity code 8536 50 07 00, as "electromechanical snap-action switches for a current not exceeding 11A." That code attracts a duty rate of 0%.

3. The amount at issue is relatively small, being less than £1,000, but the decision has some impact on RJS's future business.

4. On the basis of the facts and reasons set out in the main body of this decision, the Tribunal agreed with RJS and allowed the appeal.

The adjournment application

5. HMRC asked for this appeal to be adjourned. In order to understand that Application and our decision to refuse the adjournment, it is necessary to set out some of the background to the appeal.

6. HMRC's review decision, against which RJS appealed, was issued on 23 May 2014. The Review Officer based his decision largely on the definition of "electromechanical" taken from Wikipedia and said:

> "there is little guidance on the type of product and the Wikipedia information is not altogether clear but all things considered I must…uphold the decision."

7. RJS's appeal to the Tribunal, resubmitted on 4 March 2015, challenges the Review Officer's reading of the Wikipedia definition, saying:

> "the HMRC representative used Wikipedia to come to their decision, however they are taking the terms out of context…they have ignored [part of the definition] even though they have quoted it…they have stated that their sources are not clear and have just chosen to read the outcome that suits HMRC best. It is very important that someone classifying electronic goods is not just reading some page on the internet but they have at least a minimal understanding of the electronic terms."

8. On 11 May 2015, HMRC filed and served its Statement of Case, again relying on the Wikipedia definition.

9. The hearing was listed for 27 November 2015. A week before that hearing, HMRC applied to the Tribunal, asking that (a) the hearing be adjourned and (b) the parties be directed to appoint a single joint expert who would provide "an opinion on the technical data submitted and provide an authoritative view in respect of the switches."

10. On 24 November 2015, another judge refused HMRC's Application on the papers, saying that "the issues in relation to this appeal have been well defined since the service by the Respondents of the Statement of Case." However, HMRC were given permission to renew the Application at the hearing.

11. When the parties entered the hearing room, Mr Brown and Mr Sucher produced samples of the four switches.

12. The Tribunal asked the parties for their submissions on the Application.

The parties' submissions

13. Ms Newstead-Taylor reiterated the submissions made in HMRC's written Application. She said that the meaning of "electromechanical" should be provided by an expert.

14. She was unable to estimate the costs of appointing a single joint expert but accepted that it would be several thousand pounds. Although it would exceed the amounts at stake, she said that the decision would affect future importations as well as those directly in issue. She also submitted that HMRC had not seen the sample before today and needed time to consider them.

15. Mr Sucher asked that the hearing go ahead. He and Mr Brown had taken time out of their business to attend. and everyone was here. He said that the definition had been in issue since the beginning of the dispute, which had been running for over two years.

16. In relation to the samples, RJS had been unaware that these could be sent to HMRC in advance for their consideration, as the company had not previously challenged a classification decision.

17. The Tribunal took a short adjournment to consider the Application and the parties' submissions.

Discussion and decision

18. Rule 2 is relevant here: it says that the Tribunal's overriding objective is to "deal with cases fairly and justly" and this includes:

> "(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
>
> (d) using any special expertise of the Tribunal effectively; and
>
> (e) avoiding delay, so far as compatible with proper consideration of the issues."

19. We agreed with RJS that the definitional question which was central to the dispute had been clearly in issue at least since the Notice of Appeal had been filed, over six months previously.

20. An adjournment would mean a further delay, which was to be avoided as long as this was "compatible with proper consideration of the issues." The classification of the switches was a mixed question of fact and law which we anticipated being able to decide in the light of the evidence before the Tribunal.

21. The dispute concerns an amount of less than £1,000. Even taking into account future importations, it would take a long time for RJS to recover the costs of appointing a single joint expert. In our judgment it was a disproportionate expense, given the nature of the issue in dispute and the amounts at stake, again even taking into account future importations.

22. An adjournment would mean that both Mr Brown and Mr Sucher would lose a further day of work, and that too had costs.

23. The Court of Appeal has also recently reminded courts and tribunals (albeit in a different context) that the interests of justice extend beyond the parties themselves. In *Chartwell Estate Agents v Fergies Properties* [2014] EWCA Civ 506, Davis LJ (with whom Sullivan LJ and Laws LJ agreed) said at [28] that the interests of justice include:

> "the interests of other court users: who themselves stand to be affected in the progress of their own cases by satellite litigation, delays and adjournments occurring in other cases..."

24. RJS had no previous experience of classification or of Tribunal proceedings, as would have been obvious from the correspondence. Although HMRC had not been sent the samples, it had also not suggested to RJS that it would be helpful to see them before making a decision, or before the hearing.

25. The Tribunal had to seek flexibility in the proceedings. The samples were few in number and not particularly complicated. They could be explained by Mr Brown as part of his evidence in chief. The Tribunal would allow time over lunch for the samples to be examined by the HMRC team, which included the Review Officer who had made the disputed decision. Cross-examination would take place after lunch.

26. For the reasons set out above, we decided that it was in the interests of justice to refuse the adjournment.

The late appeal

27. The HMRC review letter was issued on 23 May 2014. Mr Brown's evidence was that he had filed an appeal form within the time limit, and then contacted the Tribunals Service in November 2014 but been told to wait for a hearing date. On 3 February 2015 he emailed the Tribunal, saying:

> "It has been some time now and we haven't had any reply with regards to our appeal…please can you provide me with an update as to what is

> happening as I do not want our appeal to simply be ignored as this has been ongoing for a long time now."

28. The Tribunals Service responded the following day, saying it was unable to trace the Notice of Appeal and apologising. The appeal was filed on 4 March 2015. It was therefore late.

29. We considered the principles set out by Morgan J in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) and in particular the questions posed at [34] of that decision. The reasons for the delay had been explained by RJS; HMRC did not object to the late appeal and the prejudice to RJS in not being able to appeal the decision significantly outweighed the prejudice to HMRC if the appeal was allowed to proceed. We decided that it was in the interests of justice to give permission for the late appeal.

The law

30. The legal background to classification issues was helpfully summarised by Henderson J in *HMRC v Flir Systems AB* [2009] EWHC 82 (Ch) as follows:

> "[7] The EU is a contracting party to the International Convention on the Harmonised Commodity Description and Coding System, generally known as 'the Harmonised System'. The Convention requires that the tariffs and nomenclatures of contracting states conform to the Harmonised System, and all contracting states therefore use the headings and sub-headings of the Harmonised System. The system is administered by the World Customs Organisation in Brussels, which publishes explanatory notes to the Harmonised System known as 'HSENs'.
>
> [8] At Community level, the amount of customs duties on goods imported from outside the EU is determined on the basis of the Combined Nomenclature ('CN') established by art 1 of Council reg 2658/87 and art 20.3 of reg 2913/92. The CN is re-issued annually. It comprises three elements:
>
> (a) the nomenclature of the Harmonised System;
>
> (b) Community sub-divisions to that nomenclature; and
>
> (c) the preliminary provisions, additional section or chapter notes and footnotes relating to CN sub-headings.
>
> [9] The CN uses an eight-digit numerical system to identify a product, the first six digits of which are those of the Harmonised System, while the two following digits identify the CN sub-headings, of which there are about ten thousand. Where there is no Community sub-heading, these two digits are '00'. There may also be ninth and tenth digits which identify further Community (TARIC) sub-headings, of which there about eighteen thousand.
>
> [10] Apart from the HSENs to which I have already referred, the European Commission also issues Explanatory Notes of its own to the CN which are known as 'CNENs'.

[11] The Court of Justice of the European Communities ['the CJEU]' has repeatedly stated that the decisive criterion for the tariff classification of goods must be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the notes to the sections or chapters of the CN. The two categories of Explanatory Notes, that is to say the HSENs and the CNENs, are an important aid to the interpretation of the scope of the various tariff headings, but do not themselves have legally binding force. The content of the Explanatory Notes must therefore be compatible with the provisions of the CN, and cannot alter the meaning of those provisions. See, for example, Case C-495/03 *Intermodal Transports BV v Staatssecretaris van Financien* [2005] ECR I-8151 ['*Intermodal*'], at paras 47 and 48.

[12] Part 1 of the CN contains at s 1A the General Rules for the Interpretation of the CN. These General Rules are known as 'GIRs'. Unlike the Explanatory Notes, they have the force of law (see *Vtech Electronics (UK) plc v C&E Commissioners* [2003] EWHC 59 (Ch) at para 16).

31. So far as relevant to the issues before the Tribunal, the GIRs provide as follows:

"Classification of goods in the Combined Nomenclature shall be governed by the following principles:

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 related 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. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, 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 order among those which equally merit consideration.

> 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 sub-headings 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."

32. Finance Act ("FA") 1994, s 16(5) states that:

> "…the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal."

33. FA 1994 s 16(6) provides that the burden of proof lies on the appellant.

The issue in dispute

34. Both parties agreed that the switches were classified under heading 8536, being:

> "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 1,000 V; connectors for optical fibres, optical fibre bundles or cables."

35. That heading includes the following subheadings:

> 8536 - 10 Fuses
>
> 8536 - 20 Automatic circuit breakers
>
> 8536 - 30 Other apparatus for protecting electrical circuits
>
> 8536 - 41 Relays for a voltage not exceeding 60V
>
> 8536 - 49 Other relays
>
> 8536 - 50 Other switches

36. Both parties accepted that the switches came under 8536-50 as "other switches." That subheading contains the following further sub-subheadings:

> 8536 - 50 - 03 Electronic AC switches consisting of optically coupled input and output circuits (insulated thyristor AC switches)
>
> 8536 - 50 - 05 Electronic switches, including temperature protected electronic switches, consisting of a transistor and a logic chip (chip-on-chip technology)
>
> 8536 - 50 - 07 Electromechanical snap-action switches for a current not exceeding 11 A

Other

For a voltage not exceeding 60V

8536 - 50 - 11 Push button switches

8536 - 50 - 15 Rotary switches

8536 - 50 - 19 Other

37. HMRC classified the switches under code 8536 - 50 - 11 as "push button switches." The UK Tariff has two further digits, some of which are allocated to specific types of "push button switches." HMRC decided that none of these further classifications applied, and so the final two digits in the code allocated by HMRC to the switches are "99" being "other."

38. RJS contended that the switches were "electromechanical snap-action switches for a current not exceeding 11A" and so fell to be classified under code 8536 50 07 00.

39. HMRC agreed that the switches were "for a current not exceeding 11A" but did not agree that any of the switches were "electromechanical." The review decision accepted that one of the switches ("VHM") was "snap-action" but that the other three were not. Ms Newstead-Taylor took the same position in her skeleton argument. However, as we explain below, HMRC changed their mind on this point at the end of the hearing and submitted that none of the switches was snap-action.

40. We therefore had to decide whether any, or all, of the switches were: (1) electromechanical; (2) snap-action; and/or (3) push button.

Section notes, chapter notes, HSENs and BTIs

41. GIR 1 requires that classification be determined "according to the terms of the headings and any relative section or chapter notes." Heading 8536 comes within Chapter 85, which sits within Section XVI. We therefore considered the Notes to Section XVI and the Notes to Chapter 85, but found that neither provided any assistance.

42. We also considered the HSEN for the Chapter. That gave no guidance directly relevant to 8536, although it did expand on the meaning of "relays," and we return to this below.

43. Although the HMRC Review Officer had identified some Binding Tariff Information ("BTI") decisions, none was provided to the Tribunal. We were told that they gave insufficient information for HMRC to know whether they were comparable to the switches in issue.

The evidence

44. HMRC provided the Tribunal with a helpful Bundle of correspondence and other material. As already discussed, RJS provided sample switches which were examined by HMRC and by the Tribunal, and also supplied printouts from competitor websites.

45. Mr Brown provided a witness statement, and both he and Mr Sucher explained the samples and answered questions put by HMRC in cross-examination about those samples and about the other evidence provided. They also answered questions from the Tribunal. We found both to be transparently honest and straightforward witnesses.

46. From that evidence, we find the facts set out below.

The facts

Background to the appeal

47. On 20 June RJS applied for a repayment of customs duty of £2,532.82 for a range of products. After further correspondence, HMRC issued "non live-liability rulings" ("NLLRs") for the products, on the basis of which it repaid £682.23, refused to repay £904.52 as being "potential duty" which had not in fact been paid, and refused to repay a further £946.09, which related to the switches.

48. RJS asked for the decision to be reconsidered so far as it related to the switches, and HMRC agreed. The decision was confirmed on 4 February 2014. RJS asked for a statutory review, and, as already noted, on 23 May 2014 the Review Officer upheld the decision.

The switches generally

49. This appeal concerns switches used to turn electrical currents on and off. At its simplest, they turn the current on by making a connection between two contacts, allowing electricity to flow around a circuit; they turn the current off by breaking that contact.

50. RJS is a specialist supplier of equipment to the engineering industry. It imports the switches from overseas. The manufacturers include datasheets with the switches when despatched. The wording on these datasheets is not changed by RJS because that would risk invalidating the product warranties.

51. All the switches are made to order. They are used in a wide variety of electronic equipment including audio apparatus, office and communications equipment and TV sets.

52. Four types of switch are in issue; the names are abbreviated as follows:

(1) GQ19

(2) PB613

(3) TM1-01

(4) VHM

53. We consider each switch in the next following sections of this decision.

The GQ19

54. The GQ19 h is 19mm in diameter, which allows it to fit into a hole of that size in a piece of equipment, which may be a TV set or a computer. The switch has a circular "button" in the centre, surrounded by a frame. There are several versions of the button: a "ball head" which is slightly dome-shaped in appearance; a "flat head" where the button is in the same plane as the frame, and a "high head" where the button is raised above the surface of the frame.

55. Mr Brown and Mr Sucher dismantled part of the switch to show us that there is a small spring inside the button. RJS's case was that, when pushed, the button activates the spring; this in turn serves to either connect or disconnect the conductors through which the electricity flows.

56. Ms Newstead-Taylor suggested to the witnesses that the spring could simply have the effect of returning the button to the same position. Mr Brown and Mr Sucher rejected that suggestion, saying that the contacts were switched on and off through pressing the button, and it was the spring that triggered that action.

57. Having examined the switch, we accepted that Mr Brown and Mr Sucher were correct. We find as a fact that the spring is the mechanism through which the conductors are either connected or disconnected.

58. When we handled the GQ10 and pushed the button, it made a sharp, rapid clicking sound, which was the same whether we pushed the button quickly or slowly. The click was the sound of the spring moving, and did not depend on the speed of pushing the button.

59. The datasheet for the GQ10 describes the switch's "operation type" as "momentary." It also states that the switch has a "mechanical life" of 1m cycles and an "electrical life" of 200,000 cycles. The "max switch rating" is 2 amps/36VDC (volts direct current), the "contact resistance" is $\leq$50MΩ, the "insulation resistance" is $\leq$1,000MΩ and the "dielectric intensity" is 2,000VAC (volts alternating current). The datasheets also include wiring diagrams.

The PB613

60. The PB613 is described on its datasheet as an "illuminated push switch." Inside the button is an LED light, which operates independently of the switch, so that it is possible to have the light permanently on, even though the electric current controlled by the switch is off. The PB613 can also be bought without an LED light. A purchaser is also able to select the button type (large, round, square etc); the colour of the button and its frame, and the colour and brightness of the LED.

61. The datasheet provides wiring diagrams and specifications similar to those set out in relation to the GQ19.

62. Mr Brown and Mr Sucher tried to dismantle this switch to show us the spring, but did not have the right sized screwdriver. They told us that, had they been able to dismantle it, we would see that the spring was the same as in the GQ19. Ms

Newstead-Taylor challenged whether this was true, as the spring had not been shown to the Tribunal.

63. We found that the PB613 had the same quick, springy action as the GQ17. We accepted Mr Brown and Mr Sucher's evidence that had they been able to dismantle this switch we would have seen the same sort of spring inside.

64. We find as facts that when the button is pushed, it activates the spring; that the spring causes the electrical connection to be made (or broken); that the speed of the activation is independent of the speed with which the button is pressed and that the switch makes a fast clicking sound when the spring is triggered by the button.

The TM1-01

65. The TM1-01 is described on the datasheet as a "super miniature illuminated push button switch." It is specially designed for use on printed circuit boards, so is much smaller than the previous two switches. All the electrical specifications reflect this smaller size, so that for instance the initial contact resistance is only 100MΩ compared to the 1,000MΩ of the GQ19, and the maximum current is much less powerful.

66. Mr Brown and Mr Sucher showed the Tribunal and HMRC the spring inside the switch. Ms Newstead-Taylor accepted that the spring activated the contacts. When pressed it had the same quick clicking sound and movement as the other switches.

The VHM

67. The VHM is described on its datasheet as a "super miniature lighted pushbutton switch." Under "features" the datasheet says: "incorporated leaf spring snap-action switch" which "assures high reliability and light operating touch."

68. The Tribunal was shown the spring in this switch and it was similar to that in the GQ17. The clicking and movement of the contacts were the same. It had an LED with a choice of colours, and two choices of buttons. The datasheet set out the specifications as to contact resistance, dialectic strength and mechanical and electrical life etc, and also attached wiring diagrams.

Overall finding

69. As is clear from the above, we find, in relation to each switch, that the button operates the spring, and the spring triggers the opening or closing of the electrical contacts, and that it does so with a quick, clicking motion which is independent of the speed with which the button is pressed.

Whether the switches are "snap-action"

Submissions

70. Mr Brown and Mr Sucher said that the term "snap-action" referred to the quick sharp movement of the contacts, caused by the spring inside the button. Not all push button switches are "snap-action." All four switches have this spring-assisted contact movement and so are all snap-action.

71. Ms Newstead-Taylor challenged this, initially by saying that only the VHM switch was snap-action, because if the other switches were snap-action, that information would be on their respective data sheets. Mr Brown said that the VHM switch is supplied by a different company from the other switches in issue. Although the datasheets for those other switches do not refer to them as being snap-action, that isn't necessary: the engineers to whom RJS sells the products would almost invariably have had previous experience of the switches before purchasing them.

72. At the end of the hearing HMRC changed its position. It accepted that the VHM switch operated in the same way as the others, but Ms Newstead-Taylor asked the Tribunal to find that none of them is snap-action.

Discussion

73. In *Holz Geenen GmbH v Oberfinanzdirektion München* [2000] C-309/98 ("*Holz Geenen*") at [14], the CJEU said that "the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN." We must therefore decide whether being "snap-action" is an objective characteristic and property of the switches.

74. All have the same quick, responsive click; we have found as facts that they are all essentially the same in that they operate by using a spring to change the contacts. Although there is no dictionary definition of "snap-action" we find that the "snap" of the switch moving at speed creates the "action" and that the term "snap-action" describes how they operate.

75. Moreover, the datasheet for the VHM switch expressly states that it is "leaf spring snap-action" switch. The VHM switch contains the same sort of spring as the other switches. It feels the same to the touch. The "snap" is the same. We find that the VHM switch is "snap-action" and so too are the others, so that all four switches are "snap-action."

76. We cannot conclude this part of our decision without mentioning HMRC's *volte face*. They had consistently accepted that the VHM switch was snap-action on the basis of its datasheet, but when it became clear that this switch used the same mechanism as the other three switches, they decided they could no longer rely on the datasheet description. No explanation was given for this very unattractive change of position. We saw no reason not to rely on the datasheet, which was consistent with RJS's submissions and our own observations.

Whether the switches are "electromechanical"

77. The starting point is the Wikipedia extract already referred to in the first part of this decision. Under the heading "Electromechanics" it says:

> "In engineering, electromechanics combines electrical and mechanical processes and procedures drawn from electrical engineering and mechanical engineering. Electrical engineering in this context also encompasses electronics engineering.

> Devices which carry out electrical operations by using moving parts are known as electromechanical. Strictly speaking, a manually operated switch is an electromechanical component, but the term is usually understood to refer to devices such as relays, which allow a voltage or current to control other, usually isolated circuit voltage or current by mechanically switching sets of contacts, solenoids, by which a voltage can actuate a moving linkage, vibrators, which convert DC to AC with vibrating sorts of contacts etc."

78. HMRC's review letter, and Ms Newstead-Taylor's submissions, emphasised the phrase "the term is usually understood to refer to devices…which allow a voltage or current to control other, usually isolated circuit voltage or current by mechanically switching sets of contacts…" HMRC's case was that to be "electromechanical" the switch mechanism had to be moved by the electric current, not vice versa, or as Ms Newstead-Taylor put it, a switch is only "electromechanical" if "electrical means are used to operate the switch without human intervention."

79. RJS accused HMRC of relying on Wikipedia as if it were an authority, whereas by its own definition Wikipedia is "the free encyclopaedia that anyone can edit." Moreover, HMRC had relied only on certain parts of the definition. RJS pointed out that the extract cited above also includes the following phrases:

> "electromechanics combines electrical and mechanical processes and procedures drawn from electrical engineering and mechanical engineering";
>
> "devices which carry out electrical operations by using moving parts are known as electromechanical" and
>
> "a manually operated switch is an electromechanical component."

80. Mr Sucher and Mr Brown accepted these three statements as accurately reflecting their own experience as engineers. In their submission, the term "electromechanical" means a process or procedure which operates by combining the electrical and mechanical processes, as the term itself indicates.

81. They said that Wikipedia was right to say that in a relay, the electric current causes the movement, so that a relay is a type of electromechanical switch. There are, however, other types of electromechanical switch. Specifically, a push button manually operated switch which changes electrical contacts is also "electromechanical."

82. Mr Sucher and Mr Brown said that this was how the term was understood by engineers, and as Wikipedia itself says, "electromechanical" is an engineering term. They relied for support on the webpages of Mouser Electronics ("Mouser"), a much bigger competitor company which operates in the same field. The Mouser webpages divides its products by category, one of which is "electromechanical." Switches sit within that electromechanical category, with pushbutton switches being a further subcategory within "switches."

83. Mr Sucher and Mr Brown also referred to the webpages of another large competitor, Farnell, which states that its illuminated push button switches are classified under code 8536 50 07. That classification could only apply if the switches were "electromechanical" and they said this showed that Farnell's understanding was identical to their own, and submitted that it was correct.

84. The Tribunal drew the parties' attention to the definition of "electromechanical" given by the Oxford English Dictionary ("OED") which is:

> "Relating to or involving both electrical and mechanical action; spec[ifically] designating a mechanical device which is electrically operated or controlled."

85. Ms Newstead-Taylor emphasised the final part of this definition, namely that the term electromechanical "specifically" designates a mechanical device controlled by electricity and not the other way about. Mr Sucher said that there was no basis for ignoring the first part of the OED definition, which is wider and includes "both electrical and mechanical action."

86. The Tribunal also pointed out that "relays" have their own subheadings in the same part of the CN, and asked the parties if they had any submissions on that point. Mr Sucher said that the structure of the heading indicated that "electromechanical" switches in code 8536 50 07 00 did not include relays; Ms Newstead-Taylor said that the separation of relays from other switches within the structure of the heading did not change HMRC's position.

Discussion

87. We have already found that the switches are "snap-action." We must next establish whether being "electromechanical" is an objective characteristic and property of the switches, so as to to bring them within subheading 8536 50 07 00.

88. The term "electromechanical" is not defined within the CN, and in particular, nothing in the heading or chapter notes narrows its meaning, and there is no relevant guidance in the HSEN. For example, there is nothing comparable to Note 5A to Chapter 84 of the CN, which sets out four tests which must be satisfied before a machine can be classified as an "automatic data processing machine."

89. From the definitions set out in the previous paragraphs of this decision, we find that electromechanical means "relating to or involving both electrical and mechanical action." This is the first part of the OED definition; it is also essentially the same as the meaning given by the Wikipedia extract: "electromechanics combines electrical and mechanical processes and procedures drawn from electrical engineering and mechanical engineering" and "devices which carry out electrical operations by using moving parts are known as electromechanical."

90. We accept that both the OED and Wikipedia say that the word "electromechanical" is more specifically used in the restricted sense for which HMRC contend, but that narrower meaning cannot require us to jettison the wider meaning which both sources recognise as being correct.

91. We therefore see no basis on which to find that "electromechanical" relates only to "a mechanical device which is electrically operated or controlled." There is nothing in the heading, section or chapter notes, or in the HSEN, which would justify such a restriction.

92. The switches are clearly electrical: the specifications given in the datasheets set out their electrical life, maximum switch rating, contact resistance, insulation resistance and dielectric intensity. The purpose of the switches is to make and break contacts in electrical circuits. They are also mechanical: the push causes the movement which triggers the spring and the datasheets set out their "mechanical life."

93. We therefore find that the switches are electromechanical as well as being snap-action. They are therefore *prima facie* classifiable under heading 8536 50 07 00. We go on to consider if this is the correct classification at §107.

94. We add that our understanding of the word "electromechanical" is also supported by industry usage, as is clear from the various competitor websites, and from Mr Brown and Mr Sucher's own evidence which we found to be honest and reliable.

95. Furthermore, we find HMRC's reading to be less consistent with the overall structure of heading 8536 than that put forward by RJS. According to HMRC's preferred definition, the switch mechanism has to be moved by the electric current in order to be "electromechanical." That essentially describes a relay, as can be seen from Note 1C of the HSEN to heading 8536:

> "Relays are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit…"

96. We accept, of course, that a relay is an electromechanical switch. Yet within heading 8536, relays are separated out under their own subheadings, being classified under 8536-41 through to 8536-49, depending on voltage and current. The HSEN indicates that those subheadings are comprehensive. It says:

> "The various types can be distinguished by, for example :
>
> (1) **The electrical means of control used** : electromagnetic relays, permanent magnet relays, thermo-electric relays, induction relays, electro-static relays, photoelectric relays, electronic relays, etc.
>
> (2) **The predetermined conditions on which they operate** : maximum current relays, maximum or minimum voltage relays, differential relays, fast acting cut-out relays, time delay relays, etc.
>
> Contactors, which are also considered as relays, are devices for making and breaking electrical circuits, which automatically reset without a mechanical locking device or hand operation. They are generally operated and maintained in an active state by an electric current."

97. Having dealt with relays, the heading then sets out the further subheading of "other switches," under which we find "electromechanical snap-action switches." If that subheading were limited to switches where the movement was created by the

electric current, one might expect this type of switch to have been classified with relays, rather than being placed in a distinct subgroup of their own.

98. We make those comments by way of observation, having already established, in line with *Holz Geenen*, that an objective characteristic and property of the switches is that they are electromechanical.

99. Before leaving the HSEN, we also observe that Note 1A ends by saying "other examples classified here include…electro-mechanical snap-action switches for a current not exceeding 11 amps (toggle switch)." We had no submissions on the meaning of "toggle switch" and our attention was not drawn to these words during the hearing.

100. We have, however, subsequently identified a number of definitions. That given by the OED is:

> "toggle switch n. an electric switch operated by means of a projecting lever that is moved with a snap action, usu. up and down."

101. The Merriam Webster Dictionary provides a "simple definition" being "a switch that turns the flow of electricity to a machine on and off" and a "full definition" being "an electric switch operated by pushing a projecting lever through a small arc."

102. Wikipedia defines "toggle-switch" as "a class of electrical switches that are manually actuated by a mechanical lever, handle, or rocking mechanism." Another internet encyclopaedia, the Webopedia, defines it as:

> "a switch that has just two positions. For example, light switches that turn a light on or off are toggle switches. On computer keyboards, the Caps Lock key is a toggle switch because pressing it can have two meanings depending on what the current setting is."

103. These definitions are not entirely consistent and we do not rely on them: we have made our decision for the reasons already set out. But we observe that they all indicate that a "toggle switch" is activated mechanically and none supports HMRC's contention that "electromechanical" has a narrow meaning, limited to switches which operate without human intervention.

104. By placing the words "toggle switch" in parenthesis after the words "electro-mechanical snap-action switches" the HSEN has therefore provided further support for the conclusion we have reached.

Whether the switches are "push button," and their final classification

105. The parties agreed that all the switches were "push button" switches because they all incorporate a button which is pushed, and that it is the button which causes the spring to trigger the movement in the contacts.

106. The switches are therefore *prima facie* classifiable under code 8536 50 11 99, being "other switches – other – push button switches – other" as well as under code 8536 50 07 00, as "other switches - electromechanical snap-action switches."

GIR3

107. GIR3 must be used when, as here, goods are *prima facie* classifiable under two or more headings. GIR 3(a) provides that the heading which provides the most specific description shall be preferred to headings providing a more general description.

108. The subheading "electromechanical snap-action switches for a current not exceeding 11A" requires that the switches be "electromechanical," which as we have seen, itself incorporates the dual requirement that they be both electrical and mechanical; they must be "snap-action" which is a distinctive type of switch; and the current must not exceed 11A.

109. The subheading "other switches – other – push button switches – other" is self-evidently less specific than "electromechanical snap-action switches for a current not exceeding 11A."

110. We therefore find that the switches are categorised under 8536 50 07 00, being "electromechanical snap-action switches for a current not exceeding 11A."

111. That decision has been made in reliance on GIR 1, which requires that classification be determined "according to the terms of the headings and any related section or chapter notes"; GIR 3(a) as explained above, and GIR 6, which says that "the classification of goods in the sub-headings of a heading shall be determined according to the terms of those subheadings."

Decision and appeal rights

112. We therefore allow RJS's appeal in relation to the classification of all four switches.

113. 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.

ANNE REDSTON
TRIBUNAL JUDGE

RELEASE DATE: 10 FEBRUARY 2016