



Neutral Citation: [2023] UKFTT 717 (TC)

Case Number: TC 08907

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Centre City Tower, 5 Hill Street, Birmingham

Appeal reference: TC/2018/05706

Customs Duty - Tariff classification – bespoke parts for incorporation in excavating and similar machines – whether “plain shaft bearings” – held no, accordingly goods proper to CN codes 8431 4920 & 8431 4980 – appeal allowed

Heard on: 22 March 2023

Judgment date: 11 August 2023

Before

**TRIBUNAL JUDGE KEVIN POOLE
MOHAMMED FAROOQ**

Between

KRF UK LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: David Bedenham, Counsel, instructed by Nigel Gibbon & Co

For the Respondents: Paul Marks, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This consolidated appeal concerns the correct classification, under the EU customs tariff (all the goods in question were imported before the UK's departure from the EU), of certain specialised parts designed for incorporation, mainly into JCB vehicles, in the course of their manufacture. Approximately 98% of the goods in question were imported for use in JCB machinery.
2. The parts in question fall into two broad categories: plain bearings incorporated into various articulated joints (typically those forming part of the moving "arm" of the machine) to ensure the joints in question were able to operate smoothly and reliably in use; and fixed "liners", similar in appearance to the plain bearings (though without integral channels for lubricant) whose function was to provide hardened (but non-moving) joints between various other components.

THE FACTS

Introduction

3. We received a bundle of documents of 296 pages and an authorities bundle of 238 pages. Incorporated into the documents bundle were written witness statements from HMRC officers Robin Balsdon (the assessing officer) and Ben Key (policy adviser, who issued the liability ruling which led to the decision under appeal), from Mark Smith (managing director of the Appellant company, which we shall refer to as "KRF") and from Thomas Polack (a Chartered Mechanical Engineer, and an engineering consultant with Neale Consulting Engineers Limited, who gave expert evidence on certain aspects of the appeal).
4. We also heard oral testimony from Mr Smith and Mr Polack. Mr Key also gave oral testimony, essentially limited to confirmation that he had no engineering qualification, experience or background.
5. We find the following facts.

Background

6. KRF has for many years had as its main business that of designing, procuring and supplying specialised parts to UK OEMs (original equipment manufacturers), especially JCB (the manufacturers of the well known excavator machines).
7. KRF has a very close relationship with JCB, and its engineers work collaboratively with the JCB research and development engineers to agree the specific requirements for each new product and work up a detailed design which is then manufactured as a prototype and extensively tested before final adoption and incorporation into a complete JCB machine. KRF themselves work very closely with a trusted manufacturer in China who actually make the parts which are then imported into the UK by KRF and supplied to JCB for it to incorporate into the completed machines.
8. Whilst JCB is by far KRF's largest customer, it has similar relationships with other OEMs in the UK.
9. KRF's previous supplier had been a company in Italy. That supplier had included commodity code 84833080 on their invoices to KRF (the code contended for by HMRC in these proceedings). In those dealings, the code used resulted in no customs duty as the dealings were all intra-EU. When KRF started importing goods from its new Chinese supplier in 2007 and they asked it what commodity code should be used, KRF simply gave them the code which had been included on the Italian supplier's invoices, without further investigation. This resulted in duty at 3.4% (with associated VAT), which KRF simply paid.

10. It was only in 2014, when KRF received an order from JCB for an entirely new product, that the question of commodity codes came up again. JCB informed them that code 843149200 was the correct one (with nil duty applicable). This caused KRF to reconsider the code which was applied to all the other imports from its Chinese supplier. Being confident that all the goods could only be used in the excavator machines they were specifically designed for, they decided that commodity code 8431492000 or 8431498000 (depending on the constituent material) was the correct code. It is the use of these codes in relation to imports from March 2015 onwards which gives rise to the present proceedings.

The goods in question

11. The parts which are the subject of this appeal fall into two categories.

Plain bearings or bushes

12. It is necessary first to describe briefly the machines in which they are incorporated. The yellow JCB machines of various sizes will be a familiar sight to most people. Their key feature (for present purposes) is an articulated arm (called a “backhoe arm”) which can have various accessories attached to the end, the classic one being a large shovel or bucket.

13. The backhoe arm can be manoeuvred in various ways by hydraulic pistons which act on its various articulations. At each articulation there is what a layman might describe as a “hinge”. The central element of that hinge is a cylindrical “pivot pin” which is inserted through pairs of holes which are engineered into mountings on both sides of the hinge. Typically, the two mounting points of the arm will fit between the two mounting points on the main body of the machine, then when the holes in the two sets of mounting points all line up, the pivot pin is inserted and fixed into place by bolting it securely to the outer of the two mounting points. The pivot pin does not then move while the other elements turn around it.

14. If there were nothing to alleviate the friction and wear between the pivot pin and the parts turning around it, the hinge assembly would soon wear out and fail altogether or seize up, due to the enormous loads that are transmitted through it when in operation. To prevent this, “plain bearings” are inserted between the two moving surfaces which allow for the smooth operation of this hinge assembly. These plain bearings (sometimes also referred to as “bushes”) are pressed into the machined holes in the articulated arm before the pivot pin is inserted. They are engineered to precise tolerances in order to be an exact fit, and to ensure that the slight compression which they undergo when pressed into place reduces their internal diameter to exactly the correct size to fit snugly (but not tightly) onto the pivot pin, with just the right amount of clearance to allow the joint to operate smoothly and without any noticeable “play”.

15. These plain bearings are highly specialised items; depending on the load being transmitted through the articulation in question, their engineering tolerance, material composition, hardening and detailed design (especially in relation to the grooves in them through which grease lubricant is transmitted around the bearing surface after injection through an aperture in the pivot pin) are all individually designed and specified to meet the engineering needs of that particular articulation. They look like fairly substantial metal sleeves or rings into which the pivot pins slide very precisely. Bearing in mind the limits on the movement of each relevant articulation, the bearings never rotate entirely around the pivot pin, and the typical range of movement does not exceed 90 degrees (though in some cases it is up to 180 degrees). This means that different parts of the bearing are subject to very different engineering stresses when in actual use, and the entire bearing is therefore engineered to cope with the maximum possible stress, whatever its actual orientation when installed.

Liners

16. Some of the goods in issue have a slightly different function. The process of design, testing and production remains the same, but instead of serving to directly facilitate the process of articulation, those other products – referred to by Mr Smith as “liners” – perform a different function. Where a pivot pin is inserted through a cast or forged housing, the engineering stresses resulting around the holes might be more than the metal in question would be able to bear without the holes being reinforced in some way. In such cases, the holes are reinforced by pressing into them specially engineered “liners”, which again would be made to very precise tolerances and would be suitably hardened so as to be able to resist and dissipate the stresses which would cause failure in the ordinary metal if the hole were not reinforced in this way. The pivot pin is then inserted and fixed into place. Because these liners are not inserted between surfaces which move relative to each other, they perform no “friction reduction” function, and therefore do not need to have any lubrication grooves machined into them. Otherwise, their ring-like appearance is not dissimilar to that of the plain bearings or bushes referred to above.

HMRC’s compliance check and the post-clearance demands

17. On 24 October 2017, officer Balsdon wrote to KRF enclosing a schedule of seven import entries made by KRF over the period 2 March 2015 to 2 May 2017 in respect of goods the subject of these appeals, seeking detailed information about the business of KRF and the goods in question. It was made clear that HMRC were checking the correctness of the import declarations made, specifically the tariff classification that had been declared (commodity code 84314920 00 in each case).

18. On 16 November 2017, Mr Smith, managing director of KRF, replied in detail.

19. Following further correspondence, HMRC reached the provisional view that KRF had applied the wrong commodity code in its declarations over the period 14 February 2015 to 17 January 2018, and that as a result customs duty of £343,101.22 and additional import VAT of £68,620.24 (duty total therefore £411,721.46) was due. On 19 January 2018, officer Balsdon sent a “right to be heard” letter to KRF informing it of this provisional conclusion and seeking its representations.

20. On 14 February 2018 KRF’s agents The Customs People responded but HMRC were not persuaded by their arguments and on 20 February 2018 officer Balsdon wrote to confirm that a post-clearance demand for £340,755.33 customs duty and £68,151.06 import VAT (total duty £408,906.39) was being issued – the slightly reduced amount from the “right to be heard” letter being attributable to the fact that one import entry had now become time-barred. In that letter, he stated that he had consulted HMRC’s Tariff Classification Service on the matter.

21. The C18 post-clearance demand was issued on 21 or 22 February 2018 in the above amount (there was no completed final copy of the C18 in our bundle, and whilst officer Balsdon in his witness statement said that the C18 was “completed” on 21 February 2018, the subsequent review letter referred to it as having been dated 22 February 2018). This discrepancy was not addressed in the hearing and it does not affect our decision.

22. In the meantime, officer Balsdon indicated that he was considering the question of penalties and he invited representations on the matter from the Customs People. Extensive representations were submitted, but ultimately officer Balsdon rejected them and on 29 August 2018 a penalty notice in the sum of £1,500 was issued to KRF in respect of the supposed inaccuracies on the original import declarations.

23. There followed a further C18 post-clearance demand for £131,355.38 customs duty and £26,271.08 import VAT (total £157,626.46) and an associated penalty of £2,500 in respect of later import entries of similar goods.

24. Both C18 post-clearance demands and associated penalties were appealed to the Tribunal.

EXPERT EVIDENCE

25. Mr Polack’s evidence was that plain bearings (as distinct from roller bearings or ball bearings) are often specifically designed and optimised for a specific application. This would involve choice of materials, dimensions and operating clearances. So a bearing required for low speed oscillation through a small angle (such as the bearings in this case) may be designed with a very tight operating clearance, while a visually similar bearing designed to accommodate continuous high speed rotation would be designed with a relatively loose clearance. Materials, loading pressures and design of lubrication and cooling arrangements would be very different as between the two designs. In his view, the use of the word “shaft” in an engineering context referred to a rotating shaft, generally with continuous rotation. He referred to a definition of “shaft” in the Collins dictionary: “In a machine, a shaft is a rod that turns around continually in order to transfer movement in the machine.” Similarly, a definition of “axle” in the same dictionary: “An axle is a rod connecting a pair of wheels on a car or other vehicle.”

26. In his view, the pivot pins around which the bearings in this case revolve could not fairly be described as either “shafts” or “axles” from an engineering perspective. This was essentially for two reasons. First, the necessary element of continuous rotation was absent, and second (by reference to the wording of HSEN) because even if the first point was disregarded, it could not be said that the pivot pin turned inside the bearing – what actually happened was that whilst the bearing and pivot pin undoubtedly rotated by reference to each other, on any view it was the bearing that turned around the pivot pin rather than the pivot pin that rotated within the bearing.

27. Both parties agreed that Mr Polack’s evidence was not determinative of the question of interpretation before us, but disagreed about the extent to which it ought to be persuasive.

THE LAW

28. There was complete agreement between the parties as to the law to be applied. In the circumstances, we do not consider it necessary to set out the law in full. Numerous previous decisions of the Tribunal and the higher courts and tribunals have done so, and reference may, if wished, be made to the summaries in paragraphs [2] to [17] of *MSA Britain Limited v HMRC* [2019] UKFTT 0693 (TC), paragraphs [6] to [10] of *Orlight Limited v HMRC* [2013] UKFTT 732 (TC) and/or paragraphs [6] to [12] of *HMRC v Flir Systems AB* [2009] EWHC 82 (Ch).

29. For present purposes, the parties are agreed that the goods are to be classified in Section XVI of the Tariff (headed “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”), and under Chapter 84 in that section (headed “Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof”). The dispute between the parties is whether the goods should (as KRF contends) be classified under heading 8431 (with a nil duty rate):

“Parts suitable for use solely or principally with the machinery of headings 8425 to 8430¹”

¹ It is agreed that the machinery for which the goods are solely or principally suitable for use fall within headings 8429 or 8430.

or (as HMRC contend) under heading 8483 (with a 3.4% duty rate):

“Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)”

30. The relevant sub-heading under heading 8483 which HMRC contend for is 8483 308090:

“Bearing housings, not incorporating ball or roller bearings; plain shaft bearings/Other.”

31. Note 2 to Section XVI of the Tariff provides, so far as relevant, as follows:

... 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 heading... 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 or in heading... 8431... as appropriate...

32. The Explanatory Notes issued by the World Customs Organisation to heading 84.83 (which, as the parties agree, are an important aid to the interpretation of the scope of the heading, but do not have legally binding force) (the “HSEs”) include the following:

The goods covered by this heading are mainly:

(i) Certain mechanical parts which are used in the transmission of power from an external power unit to one or more machines.

(ii) Certain internal parts of a machine, used to transmit power to the various parts of the same machine.

...

(A) TRANSMISSION SHAFTS (INCLUDING CAM SHAFTS AND CRANK SHAFTS) AND CRANKS

...

(B) BEARING HOUSINGS AND PLAIN SHAFT BEARINGS

Bearing housings consist of a frame or block designed to house the plain, ball, roller, etc., bearing in which (or, in the case of a thrust bearing, against which) the ends of a shaft or axle turn....

On the other hand, **plain shaft bearings** are classified in this heading even if they are presented without housings. They consist of rings of anti-friction metal or other material (e.g. sintered metal or plastics). They may be in one piece or in several pieces clamped together and form a smooth bearing *in which a shaft or axle turns*. [*Emphasis added.*]

THE ARGUMENTS

33. First, it is fair to record that neither party had really focused before the hearing on the differences between the bearings and the liners which are both the subject of this appeal. All the substantive argument had been addressed to the bearings. Although the liners are intended not to move at all relative to either the pivot pin or any other part of the machine, neither side addressed argument specifically to them.

34. The parties are agreed that:

- (1) the goods would all fall under heading 8431 if they do not fall under heading 8483; and
- (2) if the goods potentially fall under both heading 8431 and 8483, then heading 8483 takes precedence.

35. The disagreement between the parties is as to whether the goods are “plain shaft bearings” for the purposes of heading 8483 and its sub-heading 8483 308090. They agree that if the goods are “plain shaft bearings”, then Note 2(a) to Section XVI of the Tariff applies (see [31] above, HMRC’s view is correct and the appeal should be dismissed; if they are not, then Note 2(b) applies, KRF’s view is correct and the appeal should be allowed.

36. In support of their respective arguments, both parties referred to the HSEN set out above, and in particular to the phrase “in which a shaft or axle turns”.

37. In Mr Bedenham’s submission, since it was quite clear that no “shaft” or “axle” turned within the bearings (rather, the bearings themselves rotated around the “pivot pins”), Note 2 made it clear that the goods in this appeal were not “plain shaft bearings”. Whilst he accepted Mr Marks’ submission that Mr Polack’s expert professional opinion was not determinative of the matter (as it was a matter for the Tribunal to decide on the meaning of the words used), it was certainly persuasive. The phrase to be interpreted was “plain shaft bearings”, and the inclusion of the word “shaft” clearly differentiated the goods from “plain bearings” – which these goods certainly were.

38. It is also fair to say that Mr Bedenham relied generally on the opinions expressed by Mr Polack in his evidence, including his opinion that since the goods were not designed to accommodate “continuous rotation” between the bearing and the pivot pin (only limited rotation through a restricted angle), it could not be appropriate to refer to them as “plain shaft bearings”.

39. Mr Marks accepted that the pivot pins around which these bearings turned were not “shafts” or “axles”, but argued that was not determinative. Any shaft or axle of an appropriate diameter could be inserted into these bearings and, if that were done, they would perform the function of a plain shaft bearing. The fact that they could also be (and indeed were) used as bearings in the articulations of JCB vehicles and the like did not affect this fundamental underlying attribute.

40. In response, Mr Bedenham relied on Mr Polack’s undisputed evidence that the design of these goods was quite specific to their function as plain bearings for use around pivot pins in particular machines, and would have been different if they had been intended to act as bearings on shafts or axles. In particular, the design of the greasing grooves and the tolerances would have been entirely different. The fact that they might have been able to perform less than optimally as plain shaft bearings was not relevant – the “objective characteristics and properties” of the goods showed that they were not intended to be used as such (see *Intermodal Transports BV v StaatsSecretaris van Financien* [2005] EUECJ C-495/03 at [47], *DFDS BV v Inspecteur der Belastingdienst – Douanedistrict Rotterdam* [2004] EUECJ C-396/02 at [27]-[29]).

DISCUSSION

41. First, we consider the liners. Since they are designed to be fixed in place, and to have the pivot pins fixed statically to them, with no movement at all, we consider they cannot possibly be regarded as “plain shaft bearings” as there is no “turning” of any component (whether shaft, axle, pivot pin or anything else) in which they act as a bearing at all.

42. As to the main argument between the parties (on the bearings), we agree entirely with Mr Bedenham. It is agreed that these goods are plain bearings. The issue is whether they are plain shaft bearings. The addition of the word “shaft” does not of itself give clear guidance as to the significance which is to be attached to its addition. The HSEN to heading 8483 provides some helpful additional guidance.

43. Mr Marks accepts, as he must in our view, that the pivot pins in this case are not “shafts” or “axles” as referred to in that note. He goes on to argue that this does not matter, as these goods could function as plain shaft bearings if they were slid onto appropriately sized shafts or axles. This does not in our view take proper account of the fact that the objective characteristics and properties of the goods, according to the uncontested expert evidence of Mr Polack, make them specifically suited for their intended use with pivot pins (with a limited and comparatively slow range of rotation but under high load) rather than shafts or axles, and demonstrate that they were clearly intended to be used in that way.

44. As Mr Bedenham pointed out with one or two colourful examples, there are numerous items whose inherent design (or “objective characteristics and properties”) makes it clear that they are intended for a particular use but which could also be used for other purposes. But that cannot affect their appropriate Tariff classification based on their objective characteristics and properties. The fact that the specific characteristics and properties may not obviously mark out the intended use to the lay observer is neither here nor there; where goods are specifically designed and manufactured for a highly specialised engineering purpose with carefully considered features that make them quite specific to that purpose, it cannot be right to classify them as something else for Tariff purposes simply because they might also be able to perform some other function.

45. It follows that since we consider neither the liners nor the bearings the subject of this appeal to be “plain shaft bearings” for the reasons given above, the appeal in relation to both the post-clearance demands and the associated penalties is ALLOWED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

46. 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.

**KEVIN POOLE
TRIBUNAL JUDGE**

Release date: 11 August 2023