



58TACD2022

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a Binding Tariff Classification (BTI) issued by the Revenue Commissioners (“the Respondent”) in relation to a product used for drilling water wells & monitoring (testing) boreholes.
2. Tariff classification decisions are in the form of BTI. A BTI is a document which provides a written account of the holder of the classification decision, the tariff code applicable to the product, a detailed description of the product and the legal justification for the decision to classify the product in the particular code.
3. The Appeal concerns the interpretation of 8430 and 8705 of the Combined Nomenclature (“CN”) set out in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([1987] OJ L 256/1) (“the 1987 Regulation”) and Commission Implementing Regulation (EU 2018/ 1602 of 31 October 2018 amending Annex I to Council

Regulation (EEC) No 2568/87 ([2018] OJ L 273/1) (“the 2018 Regulation”) which represent EU legislation which is directly applicable in all Member States.

4. In its application, the Appellant requested classification for its product under subheading 8430 41 00 of the CN. On 21 November 2019, the Respondent issued BTI IE BTI 19NT-14-8400 to the Appellant under subheading 8705 20 00 of the CN. The classification issued carries a customs duty of 3.7%, as opposed to the classification sought by the Appellant, which carries a customs duty of 0%.
5. The Appellant issued a first stage formal appeal to the Customs Appeal Unit of the Respondent by email on 19 December 2019 and subsequently, by letter dated 23 December 2019. On 31 January 2020, the Respondent’s Designated Appeals Officer (“DAO”) issued a determination upholding the BTI classification under subheading 8705 20 00 of the CN. On 28 February 2020, the Appellant duly appealed to the Commission.

Background

6. By cover letter dated 1 August 2019, the Appellant through its agent, lodged an application dated 31 July 2019, with the Respondent, for a BTI for its product. The Application was received by the Respondent on 1 August 2019.
7. In its application, the Appellant requested a classification for its product under subheading 8430 41 00 of the CN, as the product (“machine”) is solely used for drilling wells and monitoring boreholes.
8. The product was described in the Appellant’s BTI application as follows:-

“1. The machine is solely used for drilling water wells & monitoring (testing) boreholes.

2. The machine drills through the ground to extract water, during this process a certain amount of soil is removed but this can be classed as boring of a well also (same process) and can be called boring of a well, when the company is hired to drill a monitoring borehole this means they are drilling/boring through the ground and water levels are then monitored. So technically they come under both headings as both mean the same process and would be carried out in the same way.

3. Machine specifications: engine type caterpillar C15 diesel engine, 580 HP, weight 35 tonne, width 8ft 3”, length 38ft 6”, travel height 13ft 6”, working height 40ft 6”, each drill pipe is 20ft (6m).”

9. In addition, the Appellant provided 2 pictures of the product and reference was made to a Polish BTI, namely BTI PLBTIWIT-20180001222.
10. Heading 8430 of the CN relates to “*Other moving, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores: piledrivers and pile extractors: snowploughs and snow blowers:*” Subheading 8430 41 00 of the CN relates to “*Other boring or sinking machinery, self-propelled*”.
11. By letter dated 21 November 2019, the Respondent issued BTI IE BTI 19NT-14-8400 to the Appellant, at subheading 8705 20 00 of the CN, as a special purpose motor vehicle specifically a mobile drilling derrick. The Respondent stated that “*this is based on the fact that the machine is a motor vehicle that has been specially equipped with a drilling device that enables it to perform a drilling/boring function and can be driven independently on public roads from location to location*”.
12. Heading 8705 of the CN relates to “*Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)*”. Subheading 8705 20 00 of the CN relates to “*Mobile drilling derricks*”.
13. By email dated 19 December 2019 and subsequently by letter dated 23 December 2019, the Appellant lodged a first stage appeal. On 31 January 2020, the DAO, issued a determination to the Appellant informing it that based on the examination of all the facts of the case the CN code 8705 20 00 as quoted on BTI IE BTI 19NT-14-8400, as issued to the Appellant, was correct and that its appeal was, therefore, not being upheld. As stated above, on 28 February 2020, the Appellant duly appealed to the Commission. The Appellant’s grounds of appeal are set out below:
14. Firstly, the Appellant appeals on the basis of its view that classification under subheading 8430 41 00 of the CN, as *self-propelled boring or sinking machinery*, ought to apply as subheading 8430 41 00 of the CN is more specific than subheading 8705 20 00 of the CN.
15. Secondly, the Appellant contends that it has an entitlement to a classification under subheading 8430 41 00 of the CN on the basis of the Doctrine of legitimate expectation. This is in circumstances, where the Appellant contends that it contacted the offices of the Respondent about the appropriate classification for its product, prior to applying for a BTI, and was advised the classification code was under subheading 8430 41 00 of the CN.

16. Thirdly, the Appellant alleges that the relevant legal provisions are ambiguous and consequently, the Appellant is entitled to classification under subheading 8430 41 00 of the CN. The Appellant relies on the following authorities to support this ground of appeal namely; *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64, *Scott v Russell (Inspector of Taxes)* 30 TC 394, *R v Inland Revenue Commissioners, ex parte matrix Securities Ltd.* [1994] BTC 85. The Appellant contends that the principle of *Generalia Specialibus Non Derogant* is applicable.
17. The Appellant accepts that the product is a special purpose motor vehicle but maintains that the more appropriate classification code is under subheading 8430 41 00 of the CN. The Respondent maintains that the product is a special purpose motor vehicle as “*it is clearly designed to be driven on public roads and is clearly not principally designed for the transport of persons or goods....the unit the subject matter of this appeal is in the form of a motor vehicle chassis with a closed drivers cab with steering column, accelerator, brakes etc. The control panel for the drilling rig is located at the back of the drilling rig*” and is more appropriately classified under subheading 8705 20 00 of the CN.

Legislation and legal context

18. The relevant legislation is set out in the below and includes the following:- EU Regulations, the General Rules and the Harmonised System, the Nomenclature, the Harmonised System Explanatory Notes (HSEs) and BTIs and the Customs Code.

The EU Regulations

19. The Customs Cooperation Council, now the World Customs Organisation (“WCO”), was established by the convention creating that Council, concluded in Brussels on 15 December 1950. The Harmonised Commodity Description and Coding System (“the HS”) was drawn up by the WCO and established by the International Convention on the Harmonised Commodity Description and Coding System (“the HS Convention”) concluded in Brussels on 14 June 1983 and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987.
20. Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures are in conformity with the HS, to use all of the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the

General Rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope.

21. Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([1987] OJ L 256/1) (“the 1987 Regulation”) and Commission Implementing Regulation (EU 2018/ 1602 of 31 October 2018 amending Annex I to Council Regulation (EEC) No 2568/87 ([2018] OJ L 273/1) (“the 2018 Regulation”) represent EU legislation which is directly applicable in all Member States (together, “the Regulations”).
22. The purpose of those Regulations is to facilitate international trade by the establishment, *inter alia*, of tariff and statistical nomenclatures in conformity with an international harmonised system and is designed to show the various rules applying to specific products when imported into the EU. In this connection, the Combined Nomenclature of the Common Customs Tariff (“CN”) is set out and established in Annex I to the 1987 Regulation as amended.

General Rules and the Harmonised System

23. The General Rules for Interpretation of the CN are extracted from the *International Convention on the Harmonised Commodity Description and Coding System* (also known as the “Harmonised System” or “HS”). The objective of the HS is to facilitate international trade by the establishment, *inter alia*, of tariff and statistical nomenclatures in conformity with an international harmonised system.
24. The General Rules for the interpretation of the CN (General Interpretive Rules (“GIR”)), which are set out in Part One, Section 1, of the CN, state that Classification of Goods in the Combined Nomenclature shall be governed by six principles.
25. The six principles are set below and provide:-

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 relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.*
2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a*

reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) 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.

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 rule shall be classified under the heading appropriate to the goods to which they are most akin;*
5. *In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:*

(a) camera cases, musical instrument cases, gun cases, drawing-instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) subject to the provisions of rule 5(a), packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

6. *For legal purposes, the classification of goods in the subheadings 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.*

The Nomenclature

26. The Nomenclature is governed by the HS Convention, which was elaborated under the auspices of the World Customs Organisation ('WCO'). In the EU, the HS Nomenclature was given the force of law in the 1987 Regulation.

27. The HS Nomenclature comprises about 5,000 commodity groups, which are identified by a six-digit code and arranged according to a legal and logical structure based on fixed rules. EU Member States are contracting parties to the aforementioned Convention. Ireland became a contracting party to the HS on 22 December 1987 and the Convention entered into force, in respect of Ireland, on 1 January 1988.

28. In the EU, the HS Nomenclature was given the force of law in the 1987 Regulation. In particular, the 1987 Regulation integrated the HS Nomenclature and comprised additional eight-digit subdivisions and legal notes specifically created to address the need of the Community which is the CN. Thus, the CN is based on the HS Nomenclature drawn up by WCO.

The Harmonised System Explanatory Notes (HSENs)

29. Under Article 3(1) of the HS Convention, each contracting party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS. As an aid to the correct classification of goods, the WCO has produced explanatory notes ('HSENs').

30. The HSENs and CNs under consideration in this appeal are as follows;

31. The HSEN relating to heading 8430 of the CN provides: *"This heading covers machinery, **other than** the self-propelled machines of heading **84.29** and agricultural, horticultural or forestry machinery (**heading 84.32**), for "attacking" the earth's crust (e.g. for cutting and breaking down rock, earth, coal, etc; earth excavation, digging, drilling, etc.)[...]*

Self-Propelled and other "Mobile" Machines"

*In general, the heading covers not only fixed or stationary machines, but (with certain **exceptions** referred to below concerning machines mounted on transport equipment of the type falling in Section XVII) also mobile machines, whether or not self-propelled.*

The exceptions are

(a)....

(b) Machines mounted on tractors or motor vehicles proper to Chapter 87.

(1) Machines mounted on tractor type bases.

(2) Machines mounted on automobile chassis or lorries.

*"Certain machines of this heading (e.g., pile-drivers, oil well drilling machines) are often mounted on what is in fact an essentially complete automobile chassis or lorry in that it comprises at least the following mechanical features: propelling engine, gear-box and controls for gear-changing, and steering and braking facilities. Such assemblies are classified in **heading 87.05** as special purpose motor vehicles.*

On the other hand this heading includes self-propelled machines in which one or more of the propelling or control elements referred to above are located in the cab of a machine mounted on a wheeled chassis, whether or not the whole can be driven on the road under its own power.

The heading further includes self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit. In this case the machine is not simply mounted on an automobile chassis like the machines described in the first paragraph above, but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above.

32. Heading 8430 of the CN relates to “*Other moving, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores: piledrivers and pile extractors: snowploughs and snow blowers:*” Subheading 8430 41 00 of the CN relates to “*Other boring or sinking machinery, self-propelled*”.

33. The HSEN relating to heading 8705 of the CN provides “*This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them **to perform certain non-transport functions**, i.e. the primary purpose of the vehicle is not the transport of persons or goods.*

This heading includes:

(1)[...]

(8) Mobile drilling derricks (i.e. lorries (trucks) fitted with a derrick assembly, winches and other appliances for drilling, etc).

Motor Vehicle Chassis or Lorries (trucks) combined with working machines

*It should be noted that to be classified in this heading, a vehicle comprising lifting or handling machinery, earth levelling, excavating or boring machinery, etc., **must** form what is in fact an essentially complete motor vehicle chassis or lorry (truck) in that it comprises at least the following mechanical features: propelling engine, gear box and controls for gear-changing, and steering and braking facilities.*

On the other hand, self-propelled machines (e.g., cranes, excavators) in which one or more of the propelling or control elements referred to above are located in the cab of a machine mounted on a wheeled chassis or track-laying chassis,

*whether or not the whole can be driven on the road under its own power, remain classified in, for example, heading **84.26, 84.29** or **84.30**.*

*Similarly, this heading **excludes** self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit (e.g. self-propelled motor graders). In this case the machine is not simply mounted on a **motor vehicle chassis** but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above.*

34. Heading 8705 of the CN relates to “*Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)*”. Subheading 8705 20 00 of the CN relates to “*Mobile drilling derricks*”.
35. As a Contracting Party to the HS Convention, Ireland and the EU are obliged, under Article 3, paragraph 1(a)(II): “*not to modify the scope of the Sections, chapters, headings or subheadings of the Harmonised System*”. This means that classification decisions cannot be taken which involve the expansion of a heading or code beyond that provided.

BTIs and the Customs Code

36. Tariff classification decisions are in the form of BTI. A BTI is a document which provides a written account of the holder of the classification decision, the tariff code applicable to the product, a detailed description of the product and the legal justification for the decision to classify the product in the particular code.

Appellant

Evidence

37. Oral evidence was given by [REDACTED] on behalf of the Appellant that the Appellant Company operates a well drilling business. The business relates solely to well drilling and monitoring with a customer base across a number of counties and industries from Agriculture to the Building trade. She stated that it is a small family run business, which has been in operation for over 60 years.
38. She stated that a decision was made to purchase the machine in 2019, from a US Company, as the machine is not available for purchase in Ireland unless a contractor

has a second hand one. She stated that previously, in 2007, the Appellant had purchased a similar machine which was assigned a 0% customs tariff. She stated that she contacted the offices of the Respondent in Tipperary, prior to purchase, to ascertain the applicable customs tariff, as she knew nothing about tariffs, and it was required by the shipping company. She stated she was told a 0% tariff would apply, based on the information provided as to the description of the machine. It was on that basis, she stated the machine was purchased in the US for a cost of approximately €500,000. However, at the point of importation in Dublin Port, she was told that the tariff of 3.7% would apply and if this was not paid, the machine would not be released. In addition, costs would be incurred for storage of the machine. She stated that the company had to secure a further bank loan for the payment of approximately €20,000.

39. She stated the machine is very specialist, is fully integrated and both purchased and sold to the Appellant, as one product. There is no choice for the purchaser as to the two components are welded together. She stated the machine is capable of travelling on roads to different destinations and runs on green diesel.

40. In cross-examination, it was accepted that the machine is a special purpose motor vehicle and it is not a road vehicle that you would see every day. It was accepted that the machine is capable of being taken apart if either the chassis (the Mack vehicle) or the drilling equipment malfunctions, nevertheless it would be quite difficult given the weight of each. It was also accepted that the machine has a gearbox and brake within the vehicle and the controls for drilling/boring are separate.

41. The Appellant's representative made the following legal arguments:

- i. The machine is specialised integrated machinery that cannot be decoupled. Decoupling a 35 tonne machine is not realistic.
- ii. The focus should be on the machine and not the truck as the machine makes up 80% of the cost of the unit.
- iii. The more compelling code is 8430, due to the function of the machine. 8705 is not relevant to the machine, as there are no references to sinking or boring. The machine does boring and does not do an awful lot more.
- iv. The words sinking is very relevant also due to the language of sinking a well.

- v. The machine is not a derrick, which relates to a crane structure. The machine has a mast.
- vi. The Respondent cannot depart from previous advice which was given to the Appellant. The doctrine of legitimate expectation is also a European law doctrine, that a Commissioner should take cognisance of it in terms of applying European law. Fair procedures, while not expressly within the jurisdiction of the Commission, should be a matter to bear in mind in terms of the interpretation of the Statute and Directives.
- vii. Section 4 of the Finance Act 1999 should be considered as factors to be taken into consideration in determining the applicable code.

Respondent

42. Counsel for the Respondent stated that it was relying on the entirety of the legal submissions made prior to the hearing and made the following legal arguments at the hearing:

- i. There is no record of the Appellant having contacted the office of the Respondent in 2019. Legal obligations are not something that is convenient and the Respondent applied the law relating to customs classification and tariffs.
- ii. The legislative architecture leads inextricably or inevitably to the conclusion that this is a special purpose vehicle and is captured by the 8705 tariff or classification. It has been conceded that this is a special purpose vehicle.
- iii. On that basis alone, the appeal can be disposed of; however, considering the machine, where operation of the machine is in the cab and drilling equipment separate, the explanatory notes make it clear where this machine should be classified.
- iv. Reference was made to 33TACD2021. This is a correct reflection of the law relating to the applicable customs tariffs to be applied in this jurisdiction.
- v. The Polish BTI is distinguished on the technical specifications of the Polish machine, which is fully integrated.

- vi. The Commissioner is not entitled to consider equitable reliefs and the law is well settled in the respect of the jurisdiction of a Commissioner in the decisions of *Menolly Homes* and *Lee*. The Commission is a creature of statute and it does not have original inherent jurisdiction like the High Court.
- vii. No detailed submissions were made or authorities cited either previously or at hearing, as to the applicable principles of law of the European Court. It is not something that has been pleaded by the Appellant nor is it the case the Respondent is here to meet.
- viii. Section 97 of the Finance Act 1999 does not relate to this appeal.

43. A book of core documents was submitted by the Respondent and comprised of, notice of Appeal dated 26 February 2019, Statement of Case of both parties dated 30 June 2020 and 14 July 2020, Outline of Arguments of both parties, correspondence between the parties, legislation and case law.

Material Facts

44. The Commissioner finds the following material facts:

- i. The machine consists of a motor vehicle with a drilling rig/mast mounted and welded to the back of the chassis of the vehicle.
- ii. The machine is used for drilling holes in the earth, for sinking wells and or monitoring boreholes.
- iii. The machine is designed to travel on public roads.
- iv. The control panel is located at the back of the rig which operates the drilling rig and front jack to stabilise the rig in operation.
- v. There is a closed drivers cab with steering column, accelerator, brakes, etc.
- vi. Having regard to the technical specifications of the machine, the machine is a special purpose motor vehicle. This is not disputed by the parties.

Analysis

45. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must

prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

46. The Appellant’s appeal relates to 3 grounds. The Appellant argues that the classification of the machine and the CN listed in the BTI is not correct, that the Appellant is entitled to rely upon the Doctrine of legitimate expectation to secure the preferred classification and that the tax code is ambiguous, therefore entitling the Appellant to the preferred classification. The Commissioner will deal with each of the appeal grounds in turn, separately below.

Classification under the CN

47. The Appellant helpfully provided detailed evidence as to the machines purpose and specifications. The Commissioner notes that the machine is made up of two distinct parts, but was purchased as a fully integrated machine. Further, it is noted that it is accepted, that should the situation arise where one of the two parts malfunctioned, it may be possible to separate the parts. However, it was argued that, in reality, this was unlikely to ever happen due to the weight of the respective parts.
48. The Appellant argues that the machine should be classified under subheading 8430 41 00 of the CN, thus, the BTI that issued on 21 December 2019, is not correct having regard to the specificity of this machine. The Appellant maintains that classification under subheading 8430 41 00 of the CN, as *“self-propelled boring or sinking machinery”*, is more specific than subheading 8705 20 00 of the CN, which provides for *“Mobile drilling derricks”*. Heading 8430 of the CN provides for *“Other moving, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores: piledrivers and pile extractors: snowploughs and snow blowers”*. On the other hand, heading 8705 of the CN provides for *“Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)”*.

49. The Appellant agrees that the machine is a special purpose motor vehicle and this was confirmed by the parties at the hearing of the appeal. As such, there is no need for the Commissioner to consider this definition, as no controversy arises in respect of this definition and the Commissioner finds, as a material fact, that the machine is a special purpose motor vehicle.
50. Heading 8705 of the CN provides for “*special purpose motor vehicles*”. Nevertheless, the Appellant maintains that heading 8430 of the CN is more appropriate in terms of classification. The General Rules for the interpretation of the CN are set out in Part One, Section 1, of the CN and state that Classification of Goods in the Combined Nomenclature shall be governed by six principles. The Commissioner has considered both heading 8430 and heading 8705 of the CN in light of these principles.
51. The machine at issue is classified by the Respondent at heading 8705 of the CN on the basis of the GIRs 1. GIR 1 states “*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 relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions*”.
65. The HSEN to CN 8430 specifically provides for a number of exceptions which must be considered. Of particular relevance, are the following paragraphs:

*In general, the heading covers not only fixed or stationary machines, but (with certain **exceptions** referred to below concerning machines mounted on transport equipment of the type falling in Section XVII) also mobile machines, whether or not self-propelled.*

The exceptions are

(a)...

(b) Machines mounted on tractors or motor vehicles proper to Chapter 87.

(1) ...

(2) Machines mounted on automobile chassis or lorries.

“Certain machines of this heading (e.g., pile-drivers, oil well drilling machines) are often mounted on what is in fact an essentially complete automobile chassis or lorry in that it comprises at least the following mechanical features: propelling engine, gear-box and controls for gear-

*changing, and steering and braking facilities. Such assemblies are classified in **heading 87.05** as special purpose motor vehicles.*

On the other hand this heading includes self-propelled machines in which one or more of the propelling or control elements referred to above are located in the cab of a machine mounted on a wheeled chassis, whether or not the whole can be driven on the road under its own power.

The heading further includes self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit. In this case the machine is not simply mounted on an automobile chassis like the machines described in the first paragraph above, but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above.

52. It follows therefrom, that the description of the machine provided by the Appellant, falls squarely within the exceptions provided, in particular, the exception provided for in paragraph 1 of note b(2) of heading 8430 of the CN. In light of the forgoing explanatory note, CN 8705 must be considered.

53. The HSEN to CN 8705 provides “*This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to **perform certain non-transport functions**, i.e. the primary purpose of the vehicle is not the transport of persons or goods.*”

This heading includes:

(1)[...]

(8) Mobile drilling derricks (i.e. lorries (trucks) fitted with a derrick assembly, winches and other appliances for drilling, etc).

Motor Vehicle Chassis or Lorries (trucks) combined with working machines

*It should be noted that to be classified in this heading, a vehicle comprising lifting or handling machinery, earth levelling, excavating or boring machinery, etc., **must** form what is in fact an essentially complete motor vehicle chassis or lorry (truck) in that it comprises at least the following mechanical features: propelling engine, gear box and controls for gear-changing, and steering and braking facilities.*

*On the other hand, self-propelled machines (e.g., cranes, excavators) in which one or more of the propelling or control elements referred to above are located in the cab of a machine mounted on a wheeled chassis or track-laying chassis, whether or not the whole can be driven on the road under its own power, remain classified in, for example, heading **84.26, 84.29** or **84.30**.*

*Similarly, this heading **excludes** self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit (e.g. self-propelled motor graders). In this case the machine is not simply mounted on a **motor vehicle chassis** but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above.*

54. In all the circumstances, the Commissioner cannot accept the Appellant's argument that heading 8430 of the CN is more specific. The HSEN to 8430 of the CN specifically excludes the type of machine imported by the Appellant, due to it being a *special purpose motor vehicle*. In fact, the Appellant does not dispute that the machine is a special purpose motor vehicle. The machine can be classified under heading 8705 of the CN on the basis of the Appellant's own description of the machine, both in the initial BTI application and the subsequent correspondence between the Appellant and the Respondent, clarifying questions raised.
55. Previous Determinations of the Commission have set out the law to be applied when considering the classification of products imported into the EU, in particular TAC332021. The same legislative provisions are applied to this Appeal. Therefore, applying the GIRs and having regard to the technical evidence given as to the specification of the machine, the Commissioner is satisfied that the machine, whilst purchased in one part is not an integrated mechanical unit, but is two separate parts welded together to form one machine. The machine is designed to travel on public roads, with a control panel located at the back of the rig to operate the drilling rig, a closed drivers cab with steering column, accelerator, brakes, etc., and the machine is a special purpose motor vehicle. Accordingly, having regard to the characteristics and objective properties of the machine, the classification is more appropriate under heading 8705 of the CN.
56. The Commissioner notes the Appellant's reliance on Polish BTI PLBTIWIT-2018-001222, submitted in support of a classification under subheading 8430 41 00 of the CN. However, the Commissioner is satisfied that this BTI can be distinguished, on

the basis that the chassis and the working machine are specifically designed for each other and they form an integrated mechanical unit.

57. In addition, the Commissioner heard no detailed arguments from the Appellant as to the relevance of the purchase of the previous machine in 2007, but no documentation has been furnished to the Commission in the course of the Appellant's appeal in relation to the type of machine, tariff imposed and/or BTI in respect of the 2007 machine. As stated above, the burden of proof rests on the Appellant in any appeal before the Commission.

Doctrine of Legitimate Expectation

58. The Commissioner notes the Appellant's arguments in relation the Doctrine of legitimate expectation and that the preferred classification should be afforded to the Appellant, on the basis of the reliance placed on the information that the Appellant states she received from the Respondent, during 2019. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 ("the Lee decision"), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

59. The Appellant's agent made reference to the Doctrine of legitimate expectation being also a doctrine of EU law and that the Commission can consider this as a principle of EU law. This submission, that a doctrine exists in EU law, was not expanded upon nor were any decisions of the Court of Justice of the Europe Union opened or relied upon to support such an argument or test. As mentioned above, the burden of proof is on the Appellant in this appeal. Accordingly, in the absence of any substantive argument or authority presented to support the submission, the legal principles enunciated in the *Lee* decision, apply to this appeal.


Ambiguity

60. The Commissioner notes the Appellant's argument that any ambiguity in the tax code should be read in favour of the tax payer and that the Appellant relies on the following authorities namely, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64, *Scott v Russell (Inspector of Taxes)* 30 TC 394, *R v Inland Revenue Commissioners, ex parte matrix Securities Ltd.* [1994] BTC 85. The Appellant contends that the principle of *Generalia Specialibus Non Derogant* is applicable.
61. The Commissioner is satisfied that there is no ambiguity in the CN and HSENs to heading 8430 and 8705 and the interpretative provisions as set in the above referenced legislation, are not ambiguous. HSEN to 8430 of the CN is specific, in that it expressly excludes the type of the machine at issue in this appeal, and states that such assemblies are classified in heading 8705 of the CN. Both 8430 and 8705 of the CN are clear, precise and unambiguous. There is nothing general about headings and subheadings and the interpretive provisions of the applicable legislation are not general.
62. For the sake of completeness, the Commissioner notes the Appellant's arguments in relation to the application of section 97 of the Finance Act 1999. The Commissioner is satisfied that section 97 of the Finance Act 1999, has no bearing on the matter of tariff classification decisions under the CN.
63. Accordingly, in all the circumstances, the Commissioner determines that the Appellant has not on balance shown that the Respondent was incorrect to classify the machine in subheading 8705 20 20 of the CN and as such, the BTI issued on 21 November 2019 is correct. The Commissioner determines that the Appellant has failed in its appeal.

Determination

64. The Commissioner appreciates this decision will be disappointing for the Appellant. The system of tariff classification to be applied to the importation of products into this jurisdiction is complex, consisting of EU legislative provisions which are based on International rules and regulations. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. As such and for the reasons set out above, the appropriate tariff classification for the Appellant's machine is classification within Combined Nomenclature 8705 20 00.
65. This appeal is hereby determined in accordance with the statutory provisions of the TCA 1997. This determination contains full findings of fact and reason for the

determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
25 March 2022