

Ottawa, Monday, October 18, 1993

**Appeal Nos. 2700 and 2701**

IN THE MATTER OF two appeals heard on June 14, 1993,  
under section 47 of the *Customs Act*, R.S.C. 1970, c. C-40;

AND IN THE MATTER OF a decision of the Deputy Minister  
of National Revenue for Customs and Excise with respect to a  
request for re-determination under section 46 of the *Customs  
Act*.

**BETWEEN**

**IBM CANADA LIMITED (formerly ROLM CANADA INC.)**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeals are allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal Nos. 2700 and 2701**

**IBM CANADA LIMITED (formerly ROLM CANADA INC.)**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

*The issue in these appeals is whether the following goods imported by the appellant, namely, Rolm Phonemail, Cedar Personal Computer and Cypress Terminal, are more properly classified under tariff item 41417-1 as electronic data processing apparatus under the Customs Tariff.*

**HELD:** *The appeals are allowed. On the basis of the reasoning of the Federal Court of Appeal in its decision in IBM Canada Limited v. The Deputy Minister of National Revenue for Customs and Excise<sup>1</sup> and in light of the joint request of the parties, set out in the agreed statement of facts, that the Tribunal render a decision classifying the goods in issue under tariff item 41417-1, the Tribunal concludes that the goods in issue are more properly classified under tariff item 41417-1.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: June 14, 1993*  
*Date of Decision: October 18, 1993*

*Tribunal Members: Charles A. Gracey, Presiding Member*  
*Kathleen E. Macmillan, Member*  
*Desmond Hallissey, Member*

*Counsel for the Tribunal: Hugh J. Cheetham*

*Clerk of the Tribunal: Janet Rumball*

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1. [1992] 1 F.C. 663.

Appeal Nos. 2700 and 2701

IBM CANADA LIMITED (formerly ROLM CANADA INC.)

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
DESMOND HALLISSEY, Member

REASONS FOR DECISION

These appeals originally commenced under section 47 of the *Customs Act*<sup>2</sup> (the former Act) and are taken up and continued by the Tribunal in accordance with section 60 of the *Canadian International Trade Tribunal Act*.<sup>3</sup> The appeals proceeded on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>4</sup> In this regard, the parties submitted an agreed statement of facts. In brief, those facts provide that these appeals represent the continuation of Appeal Nos. 2700 and 2701, which were adjourned *sine die* by the Tribunal's predecessor, the Tariff Board, on September 30, 1987.

The issue in these appeals is whether the following goods imported by the appellant, namely, Rolm Phonemail, Cedar Personal Computer and Cypress Terminal, are more properly classified under tariff item 41417-1 as electronic data processing apparatus under the *Customs Tariff*.

On the basis of the reasoning of the Federal Court of Appeal in its decision in *IBM Canada Limited v. The Deputy Minister of National Revenue for Customs and Excise*<sup>5</sup> and in light of the joint request of the parties, set out in the agreed statement of facts, that the Tribunal render a decision classifying the goods in issue under tariff item 41417-1, the Tribunal concludes that the goods in issue are more properly classified under tariff item 41417-1.

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2. R.S.C. 1970, c. C-40.

3. R.S.C. 1985, c. 47 (4th Supp.).

4. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

5. [1992] 1 F.C. 663.

Accordingly, the appeals are allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Desmond Hallissey  
Desmond Hallissey  
Member