



Ottawa, Thursday November 2, 1989

Appeal No. 2764

IN THE MATTER OF an application heard May 9, 1989,
pursuant to section 47 of the *Customs Act*, R.S.C. 1970,
c. C-40, as amended;

AND IN THE MATTER OF a Notice of Decision of the
Deputy Minister of National Revenue for Customs and
Excise dated February 26, 1987, with respect to a request
for redetermination filed pursuant to section 44 of the
Customs Act.

BETWEEN

STAUB ELECTRONICS LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the 1171K Toyota Install Kit UNI/Din/EQ, the 1027K GM Install Kit Extended, the 1190K S.E. Din Kit, the 1240K GM UNI/DIN/EQ Install Kit and the 1235K Ford/Chrysler UNI/DIN/EQ Install Kit should be classified under tariff item 93907-1 as "Articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p.: Other than the following," and declares that the LOC-A Line Out Converter-Adjustable, the AC-MF-6 Audio Cable Male to Female 6', the AL-DM-5 Alpine Din 5 Pin Male Plug, the AL-DF-5 Alpine Din 5 Pin Female Plug as well as the LOC-Line out Converter Fixed should be classified under tariff item 44533-1 as "Radio and television apparatus and parts thereof, n.o.p.: Other than the following" therefore confirming the respondent's decision of February 26, 1987.

W. Roy Hines

W. Roy Hines
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Kathleen Macmillan

Kathleen Macmillan
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2764

STAUB ELECTRONICS LTD.

Appellant

and

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

Respondent

Customs Act - Tariff classification - Whether radio installation kits and line out converters, a cable and plugs, imported from California in October 1985 and classified respectively by the respondent under tariff items 93907-1 and 44533-1, should be classified under tariff item 44533-2 as " ... parts of domestic radio receiving sets."

DECISION: *The appeal is dismissed. The subject goods, radio installation kits and converters, cable and plugs, were correctly classified by the respondent under tariff items 93907-1 and 44533-1, respectively. The subject goods, not being parts of domestic radio receiving sets, cannot be classified under tariff item 44533-2. Furthermore, four out of the ten goods at issue, namely two installation kits and two converters, were classified by the Tariff Board in January 1987, in Staub Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise, 12 T.B.R. 14, under tariff items 93907-1 and 44533-1, respectively, and no evidence was submitted to differentiate them from the goods in that earlier decision.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: May 9, 1989

Date of Decision: November 2, 1989

Panel Members: W. Roy Hines, Presiding Member
Sidney A. Fraleigh, Member
Kathleen Macmillan, Member

Counsel for the Tribunal: Lyne Letarte

Clerk of the Tribunal: Janet Rumball

Appearances: Mervyn L. Mason, for the appellant
Jean Fitzgerald, for the respondent

Cases Cited: *Staub Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, 12 T.B.R. 14; *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, 10 T.B.R. 110; *The Deputy Minister of National Revenue for Customs and Excise v. Androck Inc.*, 13 C.E.R. 239 (F.C.A.).

Statutes Cited: *Customs Act*, R.S.C. 1970, c. C-40, ss. 44 and 47; *Canadian International Trade Tribunal Act*, S.C., 1988, c. 56, s. 60.

Appeal No. 2764

STAUB ELECTRONICS LTD.

Appellant

and

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

Respondent

TRIBUNAL:

W. ROY HINES, Presiding Member
SIDNEY A. FRALEIGH, Member
KATHLEEN MACMILLAN, Member

REASONS FOR DECISION

SUMMARY

The appellant, Staub Electronics Ltd., imported a number of radio installation kits and line out converters, a cable and plugs from California and sought to have them classified under tariff item 44533-2 as " ... parts of domestic radio receiving sets." The respondent had previously classified the subject goods under tariff items 93907-1 and 44533-1. Further, four out of the ten goods at issue were classified by the Tariff Board in January 1987 under tariff items 93907-1 and 44533-1.

The appellant argued that the installation kits were necessary to install after-market radio sets and, as such, were more properly classified under tariff item 44533-2. The appellant also claimed that the previous decision of the Tariff Board in Appeal No. 2532 was wrongly decided.

Counsel for the respondent called one witness. He indicated to the Tribunal that no parts of the radio installation kits at issue were necessary to the functioning of a radio. In his opinion, a radio is created to receive the audio frequency out of the atmosphere and to reproduce it audibly for human ears. The goods at issue have no bearing on the functioning of a car radio.

The appeal is not allowed. The Tribunal finds, in view of the Tariff Board decision in Appeal No. 2532 between the same parties, in which two installation kits and two converters were classified under tariff items 93907-1 and 44533-1 respectively, and in view of the fact that no evidence was submitted to differentiate the two installation kits and the two converters at issue from the ones which were the subject of that Tariff Board decision, that it has no reason to decide differently in respect of these goods.

As to the remaining installation kits, although they bear different part numbers, they are simply for use in other car makes and serve the same purpose as those ruled on by the Tariff Board. The plugs and the cable are not a necessary and integral part of domestic radio receiving sets and should therefore remain classified under tariff items 93907-1 and 44533-1.

THE LEGISLATION

For the purpose of this appeal the relevant tariff items are as follows:

Radio and television apparatus and parts thereof, n.o.p.:

44533-1 Other than the following

...

44533-2 Domestic radio receiving sets, including radio receiving sets for motor vehicles, other than receiver-tuner-amplifier combinations; parts of domestic radio receiving sets

Articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p.:

93907-1 Other than the following

THE FACTS

This is an appeal pursuant to section 47 of the *Customs Act*¹ from a decision of the Deputy Minister of National Revenue for Customs and Excise, dated February 26, 1987, in which he classified car radio installation kits under tariff item 93907-1 as "Articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p.: Other than the following," and line out converters, audio cable and adapter plugs under tariff item 44533-1 as "Radio and television apparatus and parts thereof, n.o.p.: Other than the following."

The appellant sought to have the car radio installation kits, the line out converters, the audio cable and the adapter plugs (the subject goods) classified under tariff item 44533-2 as "Domestic radio receiving sets, including radio receiving sets for motor vehicles ... ; parts of domestic radio receiving sets."

The subject goods were imported by the appellant from Scosche Industries Inc., California, into Canada on October 2, 1985, under tariff item 44533-2. They consist of five different car radio installation kits, two converters, a cable and two plugs. Customs official redetermined the classification of the installation kits under tariff item 93907-1 and of the line out converters, the cable and the plugs under tariff item 44533-1. On February 26, 1987, following the appellant's request for redetermination, the respondent confirmed the classification of the subject goods under tariff items 44533-1 and 93907-1. The appellant appealed the respondent's decision to the Tariff Board on March 3, 1987.

The appeal, being a continuation of proceedings commenced before the *Canadian International Trade Tribunal Act*² came into force, is taken up by the Canadian International Trade Tribunal by virtue of section 60 of that Act.

1. R.S.C. 1970, c. C-40 now R.S.C. 1985, c. C-54.

2. S.C. 1988, c. 56.

At the hearing, the evidence and the testimony offered to the Tribunal by the appellant indicated that 90 to 95 percent of after-market radio installations in the automobile industry require some sort of kit. The kit, which include a radio backstrap, a noise filter, a trim plate and knobs, is used when the car is ordered with an AM/FM radio and the owner wants to upgrade the system with a cassette or a CD player. The kit can also be used when the car is ordered with no radio and the customer wants to have one installed. Nevertheless, the subject goods are imported separately from the radios.

In the witness's opinion, an installation kit is necessary to install a radio. Under cross-examination, he admitted that a person could build a support to act as an installation kit. As to the meaning of the term car radio, the witness regards it as a broad term which encompasses the AM/FM radio, cassette or CD player and a combination of the above. The witness recognized that a customer could require only a cassette or CD player and no radio.

The appellant's witness admitted that the backstrap had nothing to do with the actual functioning of the radio. As to the noise filter, it is necessary to safely install the radio since some new cars manufactured without a radio require wiring for the filter. Therefore, it is an indispensable element of the installation kit which, in turn, is essential to the secure placing and proper functioning of the radio.

With respect to the remaining goods, a person could test a radio before its installation but he or she must use the cable and the converter. Further, in the witness's opinion, the converters at issue can be used only with a car radio.

The witness completed his testimony by stating that, except for the copper cables, the goods at issue are all manufactured of plastic. The installation kits, the converters, the cable and the plugs are all parts of a domestic radio receiving set.

Counsel for the respondent called one witness. He indicated to the Tribunal that no parts of the radio installation kits at issue are necessary for the functioning of a radio. In his opinion, a radio is created to receive the audio frequency out of the atmosphere and to reproduce it audibly for human ears. The goods at issue have no bearing on the functioning of a car radio.

As to the noise filter included in the installation kits, it is not essential for the functioning of the radio, but it is a simple way to get rid of the unwanted noise. The kits are a convenient way of securing a radio or a cassette to the dash of a car. None of the goods at issue are necessary for the proper functioning of a car radio. Furthermore, they can be used in the installation of a cassette or CD player or a combination of them, in a car, a boat or an airplane. The subject goods are not parts of domestic radio sets and are not found under the description of parts listed in the manual entitled Auto Radio Service Data, filed as Exhibit B-1. The witness concluded by indicating that, to the best of his knowledge of the car radio industry, any after-market part added on a radio, after the radio had been manufactured, was not part of that radio.

THE ISSUE

The question at issue is whether the subject goods are better described as "Domestic radio receiving sets ... for motor vehicles ... ; parts of domestic radio receiving sets" (44533-2) or as "Articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p.: Other than the following" (93907-1), and as "Radio and television apparatus and parts thereof, n.o.p.: Other than the following" (44533-1).

The appellant argued that the subject goods were all parts of car radio receiving sets under tariff item 44533-2 because the goods were used for after-market installation of radio sets. Furthermore, the decision of the Tariff Board in Appeal No. 2532, *Staub Electronics Ltd. v. the Deputy Minister of National Revenue for Customs and Excise*,³ in which the present appellant was a party, was wrongly decided.

The appellant admitted that it had not appealed the Tariff Board decision mentioned above and recognized that the 1027K GM Install Kit Extended, the 1190K S.E. Din Kit, the LOC-A Line Out Converter-Adjustable and the LOC-Line out Converter Fixed, at issue in the present appeal, were the same goods as the goods which were classified by the Tariff Board in Appeal No. 2532.⁴

Counsel for the respondent argued that four out of the ten items imported by the appellant were identical to the goods which were the subject of the Tariff Board decision of January 6, 1987, in Appeal No. 2532⁵ between the present appellant and the respondent. Since the matter has already been decided between the same parties and with regard to the same goods, the Tribunal is bound by the Tariff Board decision which classified the above-mentioned four goods under tariff items 93907-1 and 44533-1. Furthermore, the three other installation kits at issue before the Tribunal have different model numbers, but are used in the same manner and for the same purpose as the kits with which the Tariff Board dealt.

As to the remaining goods, the audio cable and the adapter plugs, the issue is whether they are accessories for a motor vehicle radio or parts thereof.

Referring to the *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*⁶ (Robert Bosch) and to *The Deputy Minister of National Revenue for Customs and Excise v. Androck Inc.*⁷ (Androck) cases, counsel for the respondent identified the following test for the goods at issue to be considered parts of radio receiving sets. The goods must be solely committed for use with, must be necessary to the functioning of, and must be integral parts of the car radio not simply an optional accessory. Counsel submitted that the goods had not been designed nor employed only for use with car radios and are not necessary for the functioning of a car radio. Therefore, the goods at issue are not committed for use with the car radios and should not be considered as parts thereof.

Counsel concluded that the above-mentioned goods were apparatus-accessories used to upgrade a car radio system and should remain as classified by the respondent.

3. 12 T.B.R. 14.

4. Ibid. note 3.

5. Ibid.

6. 10 T.B.R. 110.

7. 13 C.E.R. 239.

DECISION

The question that the Tribunal has been asked to address is whether the subject goods would be more properly classified as parts of radio receiving sets.

For the appellant to succeed in its contention that tariff item 44533-2 is the item under which the four installation kits, the two converters, the two plugs and the cable ought to be classified, they must be found to be parts of domestic radio receiving sets.

The test as to whether an article is a part of goods is referred to in both decisions cited by the respondent. In the Robert Bosch case, the Tariff Board concluded, at page 116 of the decision, after having analysed the jurisprudence applicable, that:

The true test of whether an article can properly be considered to be a part of goods when parts thereof are mentioned in the tariff item depends on whether it is committed for use with such goods. Whether it is so committed for use with the goods will depend in each case upon the scope of the description of the goods. An article that can be used with goods other than those described is regarded as not so committed and one that has no use other than with such goods and is necessary for their function is committed for use with them....

Furthermore, in the Androck decision, the Federal Court of Appeal identified a basic test in determining what can be considered a part.

At page 242 of the decision, the Court writes:

... Moreover, while we think it both unnecessary and undesirable to define the word "parts" in such a way that it might apply in any factual context, we are of the opinion that the goods in issue, to be classified as parts, must be related to the entity with which they will be used to form a necessary and integral part thereof and not simply as an optional accessory, as here....

The parameters of classification having been established, the Tribunal finds, in view of the fact that no evidence was submitted to differentiate the 1027 K GM Install Kits Extended, the 1190K S.E. Din Kit, the LOC-A Line Out Converter-Adjustable and the LOC-LINE Out Converter Fixed at issue from the goods which were the subject of a Tariff Board decision in Appeal No. 2532 between the same parties, that it has no reason to decide differently in respect of these goods.

The remaining goods in this appeal are three installation kits, two plugs and a cable. The Tribunal finds, on the basis of the evidence, that while the installation kits bear different model numbers from the 1027K EM Install Kit Extended and the 1190 S.E. Din Kit, they, like the latter kits, are not necessary for the functioning of the radio and were not designed to be parts committed to radio receiving sets. The installation kits are used to facilitate the installation of radios in cars, as well as in boats and in airplanes, and they could be helpful in the installation of a cassette or a CD player or even a combination of both.

The Tribunal finds, on the basis of the evidence, that the plugs and cables were not solely committed to radios in a way that they would become an integral part of the radios, were not specifically designed for radios and were not indispensable for the functioning of the radio.

CONCLUSION

The Tribunal finds that the subject goods, not being parts of domestic radio receiving sets, cannot be classified under tariff item 44533-2.

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Kathleen Macmillan
Kathleen Macmillan
Member