



Ottawa, Tuesday, January 30, 1990

Appeal No. 2509

IN THE MATTER OF an application heard September 12, 1989, pursuant to section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated January 24, 1986, with respect to an application filed pursuant to section 63 of the *Customs Act*.

BETWEEN

K-MART CANADA LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares that plastic levels imported under entry no. L136488, which were the subject of a duty paid on September 10, 1985, should be classified under tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p., rather than under tariff item 93907-1 as articles of plastic.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2509

K-MART CANADA LIMITED

Appellant

and

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

Respondent

Customs Act - Whether plastic levels imported from Kishin Sanki Co. Ltd. of Seoul, Korea, should be classified under tariff item 93907-1 as articles of plastic, or, as claimed by the appellant, under tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p.

DECISION: *The appeal is allowed. The issue before this Tribunal is the same as that considered by the Tariff Board in the case Beaver Lumber Company Limited v. The Deputy Minister of National Revenue for Customs and Excise. The Tariff Board concluded that the goods should be classified under tariff item 46200-1. Both parties now ask the Tribunal to classify the plastic levels before the Tribunal under tariff item 46200-1. As the issue before this Tribunal and the Tariff Board is the same, the Tribunal, concurring with both parties, accepts the reasoning adopted by the Tariff Board and concludes that the plastic levels come within tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 12, 1989
Date of Decision: January 30, 1990

Panel Members: Robert J. Bertrand, Q.C., Presiding Member
Sidney A. Fraleigh, Member
W. Roy Hines, Member

Counsel for the Tribunal: Danielle Bouvet
Clerk of the Tribunal: Janet Rumball

Case Cited: *Beaver Lumber Company Limited v. The Deputy Minister of National Revenue for Customs and Excise (1988), 13 T.B.R. 203.*

Statutes Cited: *Customs Act, R.S.C. 1985, c. 1 (2nd Supp.); Customs Tariff, R.S.C. 1985, c. C-54; Canadian International Trade Tribunal Act, S.C. 1988, c. 56.*

Appeal No. 2509

K-MART CANADA LIMITED

Appellant

and

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

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
SIDNEY A. FRALEIGH, MEMBER
W. ROY HINES, MEMBER

REASONS FOR DECISION

THE LEGISLATION

The relevant items of the *Customs Tariff* are as follows:

46200-1 *Instruments for observation, measurement, experimentation or demonstration in respect of natural phenomena, n.o.p.; photographic, mathematical and optical instruments, n.o.p.; speedometers, cyclometers and pedometers, n.o.p.; parts of all the foregoing*

93907 - *Articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p.:*

(manufactures of plastic, n.o.p.)

93907-1 *Other than the following*

Although the appeal was originally commenced before the Tariff Board, it is taken up and continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.¹

1. S.C. 1988, c. 56.

THE FACTS

This is an appeal, pursuant to section 67 of the *Customs Act* (the Act), from a decision of the respondent dated January 24, 1986, classifying plastic levels imported under entry no. L136488 on September 10, 1985, under tariff item 93907-1 as articles of plastic. The appellant contends that those goods should be classified under tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p., and filed an appeal with the Tariff Board on February 13, 1986.

The goods in issue are plastic levels imported from Kishin Sanki Co. Ltd. of Seoul, Korea.

The facts in this appeal are relatively straightforward and are drawn substantially from the Agreed Statement of Fact and Law signed by both parties on May 15, 1989, and are reported as follows:

The appellant is a body corporate duly incorporated under the laws of Canada, with its head office in the city of Brampton, in the province of Ontario, and carries on business as an importer and seller of various retail merchandise.

On September 10, 1985, the appellant imported into Canada a shipment of plastic levels from Seoul, Korea, bearing entry no. L136488.

On October 29, 1985, a re-determination was issued on Form B32 No. 803358 by the Pacific Regions Customs Office, classifying the plastic levels under tariff item 93907-1.

On December 20, 1985, the appellant's broker filed Form K14D No. KV2517, requesting that the respondent re-determine the tariff classification of the plastic levels.

On January 24, 1986, the respondent issued a decision under subsection 46(4) of the former *Customs Act*, classifying the plastic levels under tariff item 93907-1.

On April 7, 1986, the appellant appealed this decision to the Tariff Board.

For the purposes of the present appeal, the appellant and the respondent agree that as a matter of fact and law, the goods in issue are most specifically described in tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p., and that the appeal be dealt with on the basis of the Agreed Statement of Fact and Law without the necessity of a formal hearing.

THE ISSUE

The issue in this appeal is whether plastic levels imported from Kishin Sanki Co. Ltd. of Seoul, Korea, should be classified under tariff item 93907-1 as articles of plastic, or, as claimed by the appellant, under tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p.

Through an Agreed Statement of Fact and Law signed by both parties on May 15, 1989, the respondent indicated that, for the purposes of this appeal, he accepts the facts contained in the document to the effect that the plastic levels fall within tariff item 46200-1.

DECISION

The issue before this Tribunal is the same as that considered by the Tariff Board in the case *Beaver Lumber Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*.² Mr. Yeomans, speaking for the majority, stated (pages 215-16) that the levels in issue should be classified under tariff item 46200-1 for the following reasons:

For levels to be classified under the first branch of t. i. 46200-1, they must meet the three following conditions:

- 1. they have to be instruments;*
- 2. they must be used, in this case, for observation or measurement; and*
- 3. the observation or measurement has to be in respect of natural phenomena.*

In my opinion the levels in issue meet these three conditions.

...

As t. i. 46200-1 defines the levels in issue more specifically than would tariff items classifying goods according to material, t. i. 46200-1 is to be preferred over respondent's classifications.

As the issue and the goods before this Tribunal and the Tariff Board are the same, the Tribunal, concurring with both parties, accepts the reasoning adopted by the Tariff Board and concludes that the plastic levels come within tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p.

2. (1988), 13 T.B.R. 203.

CONCLUSION

In view of the foregoing, the Tribunal considers that plastic levels imported under entry no. L136488 come within tariff item 46200-1 as instruments for observation in respect of natural phenomena, n.o.p.

Accordingly, the appeal is allowed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member