



Ottawa, Wednesday, April 18, 1990

Appeal Nos. 2787 and 2789

IN THE MATTER OF appeals heard on February 14, 1990,
pursuant to section 47 of the *Customs Act*, R.S.C. 1970,
c. C-40, as amended;

AND IN THE MATTER OF decisions of the Deputy
Minister of National Revenue for Customs and Excise dated
March 16, 1987, and March 31, 1987, with respect to
requests for a re-determination filed pursuant to
subsection 46(3) of the *Customs Act*.

BETWEEN

DENISON - POTACAN POTASH COMPANY

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appellant agreed, at the hearing of the appeals, that the goods at issue were properly classified by the respondent. Accordingly, the appeals are dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member

W. Roy Hines

W. Roy Hines
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. 2787 and 2789

DENISON - POTACAN POTASH COMPANY

Appellant

and

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

Respondent

Customs Act - Tariff classification - Whether components of a mobile transfer station are properly classified under tariff item 42700-1 as parts of machinery, n.o.p. or, as claimed by the appellant, under tariff item 41012-1 as "Trucks, tractors, or shuttle cars, self-propelled, for use exclusively underground" - Whether the conveyor system remote control equipment or transmitter and receiver are properly classified under tariff item 42700-1 as control equipment for use with machines or, as claimed by the appellant, under tariff item 41012-1 as parts of "... shuttle cars, self-propelled, for use exclusively underground."

DECISION: *The appellant agreed, at the hearing of the appeals, that the goods at issue were properly classified by the respondent. Accordingly, the appeals are dismissed.*

Place of Hearing: Halifax, Nova Scotia

Date of Hearing: February 14, 1990

Date of Decision: April 18, 1990

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

Clerk of the Tribunal: Nicole Pelletier

*Appearances: David A. Cooper, for the appellant
John B. Edmond, for the respondent*

THE LEGISLATION

For the purpose of these appeals, the relevant statutory provisions are as follows:

Customs Tariff¹

Machinery and apparatus for use in mining, quarrying, the development of mineral deposits, or the processing of ores, metals or minerals, namely:

...

41012-1 *Mine roof and wall supports and support systems, of metal, including yielding props, chocks, roof-bars, and chock release apparatus, but not including roof bolts or washers or nuts therefor;*

Mining machines for extracting and loading minerals directly from the working face of a mine;

Trucks, tractors, or shuttle cars, self-propelled, for use exclusively underground;

Tubes or shells to be inserted in the face for breaking down coal or other minerals by the release of carbon dioxide or compressed air; pipes, tubes and fittings for use therewith;

Parts of all the foregoing

Machines, n.o.p., and accessories, attachments, control equipment and tools for use therewith; parts of the foregoing:

42700-1 *Other than the following*

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

44533-1 *Other than the following*

DECISION

Although the appeals were originally commenced before the Tariff Board, they are taken up and continued by the Tribunal in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.²

1. R.S.C. 1970, c. C-41, as amended.

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

These are appeals pursuant to section 47 of the *Customs Act*³ from two decisions of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated March 16, 1987, and March 31, 1987. The first decision concerns the tariff classification of components for a mobile transfer station imported from Long-Airdox Company of Oak Hill, West Virginia, USA, between the dates of July 8, 1985, and February 26, 1986, under the following entry numbers:

<u>Entry Number</u>	<u>Date</u>
209214	26/08/85
205841	08/07/85
010075	30/10/85
206795	22/07/85
013950	26/02/86

The second decision concerns the tariff classification of a transmitter and receiver, imported from Dowty RFL International Inc. of Boonton, New Jersey, USA, on Saint John entry number 012325 on January 8, 1986.

At the time of placing the purchase order, and prior to the Federal Budget of May 23, 1985, the mobile self-propelled crawler transfer stations and their component parts (conveyers) were entitled to duty-free entry under tariff item 41012-1 as "Conveyors, of a class or kind not made in Canada; ... Parts, of a class or kind not made in Canada, for conveyors."

As a result of changes to the *Customs Tariff* brought about by the budget, this portion of tariff item 41012-1 was removed. The conveyors were subsequently ruled by the Department of National Revenue for Customs and Excise to be dutiable under tariff item 42700-1 as parts of machines, n.o.p.

The appellant appealed the decisions of the Deputy Minister on the following bases: first, that the components for the mobile transfer station were better described under tariff item 41012-1 as "Trucks, tractors, or shuttle cars, self-propelled, for use exclusively underground" than under tariff item 42700-1 as parts of machinery, n.o.p., as classified by the respondent; and second, that the conveyor system remote control equipment or transmitter and receiver were better described under tariff item 41012-1 as parts of "... shuttle cars, self-propelled, for use exclusively underground" than under tariff item 42700-1 as control equipment for use with machines, as classified by the respondent.

3. R.S.C. 1970, c. C-40, as amended.

In light of the repeal of that portion of tariff item 41012-1, which included conveyors of a class or kind not made in Canada, the appellant agreed, at the hearing of the appeals, that the goods at issue were properly classified by the respondent.

Accordingly, the appeals are not allowed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

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

W. Roy Hines
W. Roy Hines
Member