



Ottawa, Tuesday, August 6, 1991

**Appeal No. 2615**

IN THE MATTER OF an appeal heard on April 17, 1991,  
under section 47 of the *Customs Act*, R.S.C., 1970, c. C-40, as  
amended;

AND IN THE MATTER OF a decision of the Deputy Minister  
of National Revenue for Customs and Excise dated June  
10, 1986, with respect to a request for a re-determination  
pursuant to section 46 of the *Customs Act*.

**BETWEEN**

**LAHAVE EQUIPMENT LIMITED**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed and the Tribunal declares that the goods in issue, namely, a Pettibone Model 300 Car Mover imported from Pettibone Corporation, Chicago, Illinois, United States, under Sarnia Entry No. A-220502 dated July 15, 1985, should be classified under tariff item 40938-1 as a tractor.

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

W. Roy Hines  
W. Roy Hines  
Member

Michèle Blouin  
Michèle Blouin  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

Appeal No. 2615

LAHAVE EQUIPMENT LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member  
W. ROY HINES, Member  
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

ISSUE

This is an appeal pursuant to section 47 of the *Customs Act*<sup>1</sup> from a decision of the Deputy Minister of National Revenue for Customs and Excise dated June 10, 1986, that a Pettibone Car Mover should be classified under tariff item 43410-1 as a locomotive and not under tariff item 40938-1 as a tractor, as claimed by the appellant. The issue in this appeal is which tariff classification is most appropriate to the imported goods.

REASONS

This appeal, originally commenced before the Tariff Board, is taken up and continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with section 60 of the *Canadian International Trade Tribunal Act*.<sup>2</sup>

On August 24, 1990, the Tribunal was notified by counsel for the respondent that the appeal was no longer contested and should be disposed on the basis of the material filed by the appellant. The appeal was scheduled to be heard on April 17, 1991, and no one intervened nor appeared. Counsel for the appellant filed a brief on February 14, 1991, annexing a copy of the correspondence between the parties and a copy of publicity material and the specifications of the goods in issue.

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1. R.S.C., 1970, c. C-40, as amended.  
2. R.S.C., 1985, c. 47 (4th Supp.).

CONCLUSION

The Deputy Minister of National Revenue for Customs and Excise having accepted the appellant's position, the Tribunal allows the appeal and declares that the goods in issue, namely, a Pettibone Model 300 Car Mover, imported from Pettibone Corporation, Chicago, Illinois, United States, under Sarnia Entry No. A-220502 dated July 15, 1985, should be classified under tariff item 40938-1 as a tractor.

Robert J. Bertrand, Q.C.  
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Presiding Member

W. Roy Hines  
W. Roy Hines  
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Michèle Blouin  
Michèle Blouin  
Member