

Ottawa, Friday, June 23, 1989

**Appeal No. 2809**

IN THE MATTER OF an application heard May 18, 1989, pursuant to section 47 of the *Customs Act*, R.S.C. 1970, c. C-40 (the Act) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated May 6, 1987, pursuant to section 46 of the Act.

**BETWEEN**

**LIGHT TOUCH STENOGRAPHIC SERVICES 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 Stenograph Indelible Ink imported by the appellant through the port of Coutts, Alberta, under Entry No. A067389 on February 25, 1986, falls within the category "other inks" under tariff item 93213-1.

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Presiding Member

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

Kathleen Macmillan  
Kathleen Macmillan  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2809**

**LIGHT TOUCH STENOGRAPHIC SERVICES LTD.**

**Appellant**

**and**

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

**Respondent**

*Customs Tariff - Tariff Classification - Whether Shorthand machine indelible ink should be classified as a part of a typewriter under tariff item 41405-1 or as ink under tariff item 93213-1.*

**DECISION:** *The ink is a consumable and therefore is not a part of a typewriter. Even if the ink could be considered a part of a typewriter, the ink is more specifically classified under tariff item 93213-1.*

*Place of Hearing:* Calgary, Alberta  
*Date of Hearing:* May 18, 1989  
*Date of decision:* June 23, 1989  
*Panel Members:* Sidney A. Fraleigh, Presiding Member  
Robert J. Bertrand, Q.C., Member  
Kathleen Macmillan, Member  
*Counsel for the Tribunal:* Clifford Sosnow  
*Clerk of the Tribunal:* Lillian Pharand  
*Appearances:* Garry Bratland, for the Appellant  
Jean Fitzgerald, for the Respondent

**Cases Cited:** *Canadian Totalisator Company, a Division of General Instruments of Canada v. The Deputy Minister of National Revenue for Customs and Excise, 11 T.B.R. 120 (T.B.); Accessories Machinery Limited v. The Deputy Minister of National Revenue for Customs and Excise [1957] S.C.R. 358 (S.C.C.).*

**Statutes Cited:** *Customs Act, R.S.C. 1970, c. C-40, s. 47; Customs Tariff, R.S.C. 1970, c. C-41, t.i. 41405-1, 93213-1; Canadian International Trade Tribunal Act, S.C. 1988, c. 56, subs. 54(2), s. 60.*

**Appeal No. 2809**

**LIGHT TOUCH STENOGRAPHIC SERVICES LTD.**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
ROBERT J. BERTRAND, Q.C., Member  
KATHLEEN MACMILLAN, Member

**REASONS FOR DECISION**

**SUMMARY**

The appellant is a small company operating in Canada for the exclusive purpose of servicing court reporting shorthand machines and supplying items for those machines (e.g. ink spools, stenograph ribbons, etc.).

One of the items it supplies is a product called Stenograph Indelible Ink (Item #S107). The appellant imported this item into Canada at the port of Coutts, Alberta, under Entry No. A067389 on February 25, 1986. The product was imported from Stenograph Corporation of Skokie, Illinois, U.S.A.

The stenographic ink was cleared through Canada customs under tariff item 93213-1 of the former Customs Tariff,<sup>1</sup> as *Writing ink, printing ink and other inks*. The appellant tried to get the Department of National Revenue for Customs and Excise to reclassify the ink under tariff item 41405-1 as *Parts of typewriters*, but the original classification was reconfirmed by the Department on May 15, 1986, and by the Deputy Minister of National Revenue for Customs and Excise on May 6, 1987. Hence, the appellant filed an appeal with the Tariff Board on July 29, 1987, in accordance with section 47 of the former *Customs Act*.<sup>2</sup>

The issue is whether the Stenograph Indelible Ink should be classified as part of a typewriter under tariff item 41405-1 or as ink under tariff item 93213-1.

The appeal is not allowed. Because the ink is a consumable, it is not a part of a typewriter. Even if it could be considered a part of a typewriter, the ink is more specifically classified under tariff item 93213-1.

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1. R.S.C. 1970, c. C-41; now R.S.C. 1985, c. C-54.

2. R.S.C. 1970, c. C-40; now R.S.C. 1985, c. 1 (2nd Supp.), s. 67.

## THE LEGISLATION

At the time of the entry of the goods, the following tariff items were relevant:

*41405-1 Parts of typewriters*

*93213-1 Writing ink, printing ink and other inks*

Although the appeal was originally commenced before the Tariff Board, the appeal 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*.<sup>3</sup>

## THE FACTS

Garry Bratland, President of the appellant company, testified on the appellant's behalf.

The shorthand machine indelible ink is imported in small plastic bottles. It is formulated to work with three different models of shorthand machines which are manufactured by the company that makes the ink (Stenograph Corporation).

Two or three drops of the ink are placed in the reservoir of the shorthand machine ink spool. From the reservoir, ink is transferred to the shorthand machine ribbon. Ink is added as needed.

## THE ISSUES

The issue can be stated simply: Under which tariff item should the shorthand machine indelible ink be classified?

The appellant argues that the ink is an integral part of the shorthand machines. The machines will not operate without the indelible ink. The appellant also argues that the ink is not used with or for any other device.

The respondent argued that just because an article is essential to the operation of a machine does not necessarily mean that it should be classified as part of that machine. Consumables (the ink) used in a machine are not considered to be parts of a machine. As authority for these propositions, the respondent cited the Tariff Board case of *Canadian Totalisator Company, a Division of General Instruments of Canada v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>4</sup>

That case examined whether rolls of paper, printed on both sides and ready to be used in a dot matrix printer to record bets made at race tracks, could be considered a part for use with electronic data processing equipment under tariff item 41417-1. Although the rolls were essential to the operation of the betting system, the Tariff Board said (at page 124):

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3. S.C. 1988, c. 56.

4. (1986) 11 T.B.R. 120.

*The mere fact that the system does not operate and the printer will not function without the tape, however, does not make the roll of tape a part of the printer. As the witness, Dr. David Coll testified, the roll of tape is a consumable and has a different function than a part of a machine which is incorporated in or attached to a machine. The passage of the tape through a machine does not make it a part of that machine. Parts of a machine are used for extended periods of time until they wear out or break and need to be replaced. Something that passes through a machine and produces a record of a transaction cannot by this action be considered a part of a machine. The rolls of tape are material used in the machine to provide a record of a betting transaction. They are, therefore, not accessories or parts of the machine and do not qualify for entry under tariff item 41417-1.*

The respondent presented a second argument. Even if the ink could be considered to be a part of a typewriter, it should be classified under the tariff item which specifically names the product rather than under a general "parts" tariff item. As authority for this second proposition, the respondent cited the Supreme Court of Canada decision of *Accessories Machinery Limited v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>5</sup>

In that case, the court dealt with the issue of whether an electric motor should be classified under a tariff item which specifically mentioned electric motors (445g) or under a tariff item which encompassed parts of machinery (427a). In deciding to classify the motor under tariff item 445g, the Court said (at pages 360-61):

*... The Tariff Board stated in its decision that "since the legislators have provided for electric motors eo nomine in tariff item 445g, we must conclude that this classification is intended to override any 'basket' provision such as 'parts' in tariff item 427a; otherwise tariff item 445g is virtually ineffective." Respondents argued that such a result, i.e., that item 445g would be virtually ineffective, is not one that could have been intended by Parliament.*

*I believe this argument to well founded ...*

*In my opinion the specific classification provided in 445g was intended to override and does override the general provision "complete parts of the foregoing" contained in item 427a.*

## DECISION

The evidence indicates to the Tribunal that the indelible ink imported by the appellant is a consumable. The Canadian Totalisator case (*supra*) has laid down the principle that consumables are not parts. Thus, the Tribunal does not consider the ink to be a part, and therefore not a part of a typewriter under tariff item 41405-1.

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5. [1957] S.C.R. 358.

Even if it can be said that the indelible ink is a part of a typewriter under tariff item 41405-1, the ink is more precisely mentioned in tariff item 93213-1. The shorthand machine indelible ink is a particular type of ink and falls within the category "other inks" under tariff item 93213-1.

Accordingly, the principle laid down in the Accessories Machinery case (*supra*) i.e., that a specific classification overrides a general classification, governs this appeal.

### CONCLUSION

In view of the foregoing, the Tribunal considers that the indelible ink is properly classified under tariff item 93213-1.

The appeal is dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh  
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.  
Member

Kathleen Macmillan

Kathleen Macmillan  
Member