CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

DD-90-008

Ottawa, Thursday, May 31, 1990

Appeal No. 2909

IN THE MATTER OF an appeal heard March 5, 1990, 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 November 13, 1987, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

R.F. HAUSER SHOWS 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 goods known under the trade name "Turbolite TL47" and "Turbolite TL67," and replacement light bulbs for these goods, all entered into Canada on December 22, 1986, through the port of Vancouver, British Columbia, under entry number H161991 should be classified under tariff items 44500-1 as electric light fixtures and appliances, and 44504-3 as incandescent lamps, respectively.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Robert J. Martin
Robert J. Martin
Secretary

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UNOFFICIAL SUMMARY

Appeal No. 2909

R.F. HAUSER SHOWS LTD. **Appellant**

and

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

Customs Act - Tariff classification - Whether goods, sold under the trade name "Turbolite TL47" and "Turbolite TL67" and consisting of incandescent light bulbs encased in a housing of tough, high-impact plastic and replacement light bulbs should be classified under tariff item 42712-1 as parts of amusement riding devices or ancillary equipment imported with amusement riding devices or whether the goods were correctly classified by the Deputy Minister of National Revenue for Customs and Excise under tariff items 44500-1 as electric light fixtures and appliances and 44504-3 as incandescent lamps, respectively - Whether a tariff item that more specifically describes goods takes precedence over a general tariff item.

***DECISION**: The appeal is dismissed. Even if the imported goods could be classified as parts of amusement rides, they are also classifiable under tariff items that more specifically describe the goods, i.e., those tariff items chosen by the Deputy Minister of National Revenue for Customs and Excise. In this situation, the more specific tariff items take precedence in the classification of the imported goods. Also, the evidence establishes that the goods were not imported with amusement riding devices.*

Place of Hearing:	*Vancouver, British Columbia*
Date of Hearing:	*March 5, 1990*
Date of Decision:	*May 31, 1990*
Tribunal Members:	*Sidney A. Fraleigh, Presiding Member* *Robert J. Bertrand, Q.C., Member* *Kathleen E. Macmillan, Member*
Clerk of the Tribunal:	*Molly Hay*
Appearances:	*Robert Hauser, for the appellant* *Bruce S. Russell, for the respondent*
Cases Cited:	*Accessories Machinery Limited v. The Deputy Minister of National Revenue for Customs and Excise, 1 T.B.R. 229 (S.C.C.); The Deputy Minister of National Revenue for Customs and Excise v. Ferguson Industries Limited, [1973] 1 S.C.R. 21; Diatech Imaging Inc. v. The Deputy Minister of National Revenue for Customs and Excise, 12 T.B.R. 347.*
Statutes Cited:	*Customs Act, R.S.C. 1985, c. 1 (2nd Supp.), subs. 67(1); Canadian International Trade Tribunal Act, S.C. 1988, c. 56, subs. 54(2) and s. 60; Customs Tariff, R.S.C. 1970, c. C-41, t.i. 42712-1, 44500-1 and 44504-3.*
Dictionary Cited:	*The Oxford English Dictionary, Second Edition (1989).*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. 2909

R.F. HAUSER SHOWS 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 E. MACMILLAN, Member

REASONS FOR DECISION

SUMMARY

The appellant entered into Canada on December 22, 1986, lighting goods known under the trade name "Turbolite TL47" and "Turbolite TL67", and replacement light bulbs for these goods. The goods are used to light amusement park rides, midway games, trailers and food concessions and can be used to light up signs at restaurants.

The appellant sought to classify the goods under tariff item 42712-1 as parts of amusement riding devices or ancillary equipment imported with such devices. The respondent classified the Turbolites under tariff item 44500-1 as electric light fixtures and appliances, and the replacement light bulbs, under tariff item 44504-3 as incandescent lamps.

The issue in this appeal is whether the respondent correctly classified the goods in issue.

The appeal is not allowed. First, the Tribunal does not consider that the goods in issue can be classified under the phrase "ancillary equipment imported therewith" in tariff item 42712-1. For the goods in issue to be imported under this branch of tariff item 42712-1, they must be ancillary equipment imported therewith amusement riding devices of the kinds used at exhibitions or fairs. The word "therewith" has been defined in dictionaries to mean "together or in company with that." Thus, in order to be considered "ancillary equipment imported therewith," the goods in question must be imported "together or in company with" amusement riding devices. The evidence indicates that this is not the case.

Second, the Tribunal does not consider that the goods in issue can be classified under the phrase "parts of the foregoing" in tariff item 42712-1. Assuming that the goods in issue can be considered parts, either of amusement rides or ancillary equipment imported with the rides, the evidence establishes that the Turbolites in issue can be classified under tariff items 44500-1 as electric light fixtures and appliances, and that the replacement light bulbs can be classified under tariff item 44504-3 as incandescent lamps.

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In this situation, the Supreme Court of Canada has held that a tariff item that more specifically describes goods takes precedence over a "basket provision," such as "parts of the foregoing." In the Tribunal's view, it is clear that the phrases "electric light fixtures" in tariff item 44500-1 and "incandescent lamps" in tariff item 44504-3 more specifically describe the goods in issue than the general phrase "parts of the foregoing."

THE LEGISLATION

The relevant statutory provisions of the *Customs Tariff*, as they read when the goods in issue were entered, are as follows:

42712-1	*Amusement riding devices of the kinds used at exhibitions or fairs, ancillary equipment imported therewith; parts of the foregoing*
44500-1	*Electric light fixtures and appliances, n.o.p, and complete parts thereof*
Incandescent lamps over 31 volts:	
44504-3	*Other than the following*

THE FACTS

The facts of this case are based on correspondence, documents submitted in evidence and the testimony of Robert Hauser, President of R.F. Hauser Shows Ltd. (Hauser).

On December 22, 1986, Hauser entered into Canada lighting goods known under the trade name "Turbolite TL47" and "Turbolite TL67" and replacement light bulbs for these goods. The appellant imported these goods from Exsaco Corporation of Dallas, Texas, USA, through the port of Vancouver, British Columbia, under entry number H161991.

The appellant tried to clear these goods under tariff item 42712-1 as parts of amusement riding devices of the kinds used at exhibitions or fairs. Goods imported under this tariff item from MFN (Most Favoured Nation) countries, such as the United States, are allowed customs duty-free entry into Canada. However, customs officials, and subsequently on November 13, 1987, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), classified the Turbolites under tariff item 44500-1 as electric light fixtures and appliances, and the replacement light bulbs, under tariff item 44504-3 as incandescent lamps.

The appellant then appealed the Deputy Minister's determination to the Tariff Board pursuant to section 67 of the *Customs Act*.[1]

Although the appeal was originally commenced before the Tariff Board, the appeal is 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. 1985, c. 1 (2nd Supp.), as amended.
2. S.C. 1988, c. 56.

As Mr. Hauser testified, Turbolites, which are manufactured in Italy, consist of an incandescent light bulb encased in a housing of tough, high-impact plastic, usually of any one of several bright colors. The plastic housing is so designed that a colored swirl effect is produced when the light bulb is illuminated.

The "Turbolite TL47" and the "Turbolite TL67" can be used either with a 130 volt/10 watt light bulb or a 60 volt/8 watt light bulb.

The witness stated that the goods in issue are used primarily to illuminate the appellant's amusement park rides, but they can be and are used to illuminate food concessions, games, trailers and souvenir shops located at the appellant's midway. The Turbolites can also be used to create a "marquis" effect on restaurant signs.

The witness stated that both the Turbolites and the amusement park rides used at the appellant's midway are not manufactured in Canada and must be imported from the United States.

Mr. Hauser testified that the appellant began to use the goods in issue because commencing three years ago, the amusement rides that the appellant imported contained Turbolite lighting. He further stated that the Turbolites are safer than ceramic lighting - indeed, the Safety, Engineering and Elevating Devices Branch of the British Columbia Ministry of Labor prohibits the use of ceramic lighting for amusement park rides.

To this end, the appellant has modified older amusement park rides. In fact, the goods imported on December 22, 1986, were used to replace lighting on an amusement ride that did not already contain Turbolites.

THE ISSUE

The issue can be stated simply: was the Deputy Minister correct in classifying the Turbolites and replacement light bulbs under tariff item 44500-1 and 44504-3, respectively, or was the appellant correct in contending that these goods should be classified under tariff item 42712-1?

As indicated, the appellant argued that the imported goods are parts of amusement riding devices or ancillary equipment imported with such devices and therefore should be classified under tariff item 42712-1. The appellant stated that the Safety, Engineering and Elevating Devices Branch of the British Columbia Ministry of Labor prohibits the use of ceramic lighting for amusement park rides. Lighting is necessary for the operation of the rides at night. Thus, the appellant cannot operate these rides at night without the use of the goods in question. Turbolites, and the amusement rides for which they are used, are not manufactured in Canada. They must be imported. Under these circumstances, the goods in issue should be given duty-free entry into Canada.

In contrast, the respondent contends that the Turbolites fall within the plain and ordinary meaning of the phrase "electric light fixtures and appliances" under tariff item 44500-1 and that the replacement light bulbs, not being infra-red or quartz-halogen in design or function, are incandescent lamps under tariff item 44504-3.

The respondent argues that the Turbolites and replacement light bulbs are not parts of the appellant's "amusement riding devices" because they are not committed by design solely for use with amusement riding devices. The goods are simply decorative lighting fixtures that can be used wherever such lighting is needed: roadside signs, amusement park concessions, games, trailer signs, etc.

However, even if the Turbolites and replacement light bulbs could be considered parts of "amusement riding devices," the *eo nomine* or naming tariff items 44500-1 and 44504-3 take precedence over the general provision for "parts" provided in tariff item 42712-1. The respondent relies on the Supreme Court of Canada decision in *Accessories Machinery Limited v. The Deputy Minister of National Revenue for Customs and Excise*[3] and the majority opinion in the Tariff Board decision of *Diatech Imaging Inc. v. The Deputy Minister of National Revenue for Customs and Excise*.[4]

Finally, the respondent submits that as the Turbolites and replacement light bulbs in issue were not imported with "amusement riding devices," they do not fall within the tariff item 42712-1 phrase "ancillary equipment imported therewith." Counsel for the respondent added that, although the Turbolites imported with the amusement rides may have been entered into Canada customs duty free, items that are entered when they are attached to goods may be classified differently and, therefore, assessed at a different rate of duty, when they are entered on their own into Canada.

DECISION

The Tribunal is of the view that the goods in issue were correctly classified by the Deputy Minister under tariff items 44500-1 and 44504-3. The Tribunal appreciates the appellant's position, but it must render its decision on the basis of the wording of the tariff items, the evidence before it and the applicable case law.

First, the Tribunal does not consider that the goods in issue can be classified under the phrase "ancillary equipment imported therewith" in tariff item 42712-1. That phrase is preceded by the phrase "amusement riding devices of the kinds used at exhibitions or fairs." Thus, in order for the goods in issue to be imported under this branch of tariff item 42712-1, they must be ancillary equipment imported therewith amusement riding devices of the kinds used at exhibitions or fairs. (emphasis added)

The word "therewith" has been defined in *The Oxford English Dictionary*[5] as follows:

> ***therewith*** *... adv. Now formal or arch.*
> ...
>
> *With that (or those) as accompaniment, adjunct, etc.; together or in company with that (and in allied senses of with).*

3. 1 T.B.R. 229 (S.C.C.).
4. 12 T.B.R. 347.
5. Second edition (1989).

As the foregoing dictionary definition indicates, in order to be considered "ancillary equipment imported therewith," the goods in question must be imported "together or in company with" amusement riding devices.

The evidence indicates that this is not the case. The goods entered into Canada in December 1986 were not imported into this country with amusement riding devices. Rather, they were imported on their own, as replacement light bulbs for an amusement ride that did not already contain Turbolites.

Second, the Tribunal does not consider that the goods in issue can be classified under the phrase "parts of the foregoing" in tariff item 42712-1. Assuming that the goods in issue can be considered parts, either of amusement rides or ancillary equipment imported with the rides, the evidence establishes that the Turbolites in issue can be classified under tariff item 44500-1 as electric light fixtures and appliances, and that the replacement light bulbs can be classified under tariff item 44504-3 as incandescent lamps.

In this situation, the Supreme Court of Canada decision in the case of Accessories Machinery (*supra*) provides guidance on the principles to be applied in choosing the proper tariff classification.

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.*

In short, a tariff item that more specifically describes goods takes precedence over a "basket provision" such as "parts of the foregoing." In the Tribunal's view, it is clear that the phrases "electric light fixtures and appliances" in tariff item 44500-1 and "incandescent lamps" in tariff item 44504-3 more specifically describe the goods in issue than the general phrase "parts of the foregoing."

Finally, the Tribunal wishes to clarify some misconceptions that the appellant may have regarding the manner in which customs duty is assessed on goods like the ones in issue. First, it may be that the appellant has not paid customs duty on Turbolites when they have been imported attached to amusement rides. This does not necessarily mean that the Turbolites will receive the same customs duty treatment when imported alone. This is because goods are to be classified, and assessed customs duty, according to their nature at the time of their entry into Canada.

This principle was stated by the Supreme Court of Canada in the decision of *The Deputy Minister of National Revenue for Customs and Excise v. Ferguson Industries Limited*.[6] In that case, a shipbuilding company ordered winches from Belgium for its fishing trawlers, and electric motors and controls to operate the winches. The winches, motors and controls, which were intended to operate as a single unit, were imported into Canada separately. The Tariff Board ruled that the three pieces of equipment should be classified under the tariff item that best described the finished product for the following reasons:[7]

> *... since all were parts of an original installation ordered from one company, designed as a unit to perform one function which required the operation of all parts when in use and controlled by one operator, they should be regarded as parts of a single entity or entirety and should not be so segregated for customs classification.*

The Supreme Court of Canada said that the Tariff Board was wrong in holding this view. According to Mr. Justice Pigeon:

> *When the goods with which we are concerned were entered ... [w]hat was important was their nature at that time. Can it be said, as the Board did, that because each motor was designed as a unit to form a single entity with the winch and controls, each imported motor was to be considered as a single entity with the winch to be driven by it? This would mean that parts are to be regarded as falling within the classification of the whole thing rather than as such. In my view, the Board erred in law in so holding.*[8] (emphasis added)

Thus, when Turbolites and replacement light bulbs are imported on their own into Canada, they must be assessed value for duty according to the tariff item that best describes these goods.

Second, the argument put forward by the appellant appears to assume that goods not manufactured in Canada should be given duty-free access when imported into the country. While this conviction is held by many other Canadian taxpayers, the Tribunal wishes to point out that unless a tariff item states otherwise, the fact that goods are not manufactured in Canada does not necessarily mean that such goods will be allowed entry into Canada free of customs duty.

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6. [1973] 1 S.C.R. 21.
7. Ibid. at p. 24.
8. Ibid. at p. 26.

CONCLUSION

In view of the foregoing, the appeal is not allowed. The Tribunal concludes that the goods known under the trade name "Turbolite TL47" and "Turbolite TL67," and replacement light bulbs for these goods, all entered into Canada on December 22, 1986, through the port of Vancouver, British Columbia, under entry number H161991 should be classified under tariff items 44500-1 and 44504-3, respectively.

Sidney A. Fraleigh
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