

Ottawa, Friday, February 28, 1992

**Appeal No. 3058**

IN THE MATTER OF an appeal heard on November 12, 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 May 12, 1988, with respect to a request for a re-determination pursuant to section 46 of the *Customs Act*.

**BETWEEN**

**M & S X-RAY SERVICES LIMITED**  
**AND**

**Appellant**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal declares that the chiropractic tables in issue should be classified under tariff item 47600-1 of the former *Customs Tariff* as "... diagnostic articles: instruments.... "

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
Member

Michel P. Granger  
Michel P. Granger  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 3058**

**M & S X-RAY SERVICES LIMITED**

**Appellant**

**and**

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

**Respondent**

*This is an appeal under subsection 47(1) of the Customs Act from a re-determination made by the Deputy Minister of National Revenue for Customs and Excise, classifying the chiropractic tables in issue under tariff item 51901-5 of the former Customs Tariff as "House, office, cabinet or store furniture ... In chief part by value of metal, n.o.p."*

**HELD:** *The appeal is allowed. The Tribunal declares that the chiropractic tables in issue should be classified under tariff item 47600-1 as " ... diagnostic articles: instruments ... " rather than under tariff item 51901-5 as "House, office, cabinet or store furniture ... In chief part by value of metal, n.o.p.," as determined by the respondent.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: November 12, 1991  
Date of Decision: February 28, 1992*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member  
Sidney A. Fraleigh, Member  
W. Roy Hines, Member*

*Counsel for the Tribunal: Brenda C. Swick-Martin*

*Clerk of the Tribunal: Nicole Pelletier*

**Case Cited:** *M & S X-Ray Services Limited v. The Deputy Minister of National Revenue et al., Canadian International Trade Tribunal, Appeal No. 3018, September 15, 1989.*

**Appeal No. 3058**

**M & S X-RAY SERVICES LIMITED**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
SIDNEY A. FRALEIGH, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

This appeal concerns the tariff classification of chiropractic tables imported by the appellant on September 26, 1986.<sup>1</sup> This is an appeal from a re-determination made by the Deputy Minister of National Revenue for Customs and Excise under subsection 47(1) of the former *Customs Act*<sup>2</sup> (the Act), classifying the goods in issue under tariff item 51901-5 of the former *Customs Tariff*<sup>3</sup> as "House, office, cabinet or store furniture ... In chief part by value of metal, n.o.p."

In *M & S X-Ray Services Limited v. The Deputy Minister of National Revenue et al.*, this Tribunal, dealing with the same issue, concluded that the model 440 Zenith Thompson Pneumatic Terminal Point (chiropractic) table should be classified under tariff item 47600-1 as "... diagnostic articles: instruments..."<sup>4</sup> Both parties now ask the Tribunal pursuant to subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*<sup>5</sup> to classify the chiropractic tables in issue in this appeal under tariff item 47600-1 of the former *Customs Tariff*.

In responding to the request, the Tribunal published a notice in Part I of the Canada Gazette providing that any person wishing to be heard on this appeal had to file a notice of appearance by October 28, 1991, and that if no appearances were filed by that date, the appeal would be determined without an oral hearing.

The Tribunal has not received any notices of appearance from interested parties and, therefore, hears this appeal on the basis of the material on record.

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1. Guelph entry number 12160.
  2. R.S.C., 1970, c. 40, as amended.
  3. R.S.C., 1970, c. C-54, as amended.
  4. Canadian International Trade Tribunal, Appeal No. 3018, September 15, 1989.
  5. S.C. 1988, c. 56.

The issue before the Tribunal is the same as that in *M & S X-Ray Services Limited* (Appeal No. 3018). In that case, this Tribunal held that the chiropractic tables in issue were properly classified under tariff item 47600-1 of the former *Customs Tariff*. The Tribunal held that while the chiropractic table was " ... chiefly a treatment table, ... [it was] also a valuable diagnostic aid."<sup>6</sup>

There is no evidence on the record of this appeal to suggest that the chiropractic tables in issue are not the same as those under consideration in the former case *M & S X-Ray Services Limited* (Appeal No. 3018).

The Tribunal therefore concurs with both parties and declares that the chiropractic tables in issue in this appeal should be classified under tariff item 47600-1 of the former *Customs Tariff* as " ... diagnostic articles: instruments.... "

The appeal is allowed.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
Member

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6. *Supra*, note 4 at p. 6.