



Ottawa, Monday, February 18, 1991

Appeal No. 3104

IN THE MATTER OF an appeal filed on December 8, 1988,
pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1
(2nd Supp.) as amended;

AND IN THE MATTER OF a notice of decision by the
Deputy Minister of National Revenue for Customs and Excise
dated October 21, 1988, made pursuant to subsection 63(3) of
the *Customs Act* with respect to a request for re-determination
filed pursuant to subsection 63(2) of the *Customs Act*.

BETWEEN

PULSAR ENGINEERING LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

John C. Coleman
John C. Coleman
Presiding Member

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michel Granger
Michel Granger
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. 3104

PULSAR ENGINEERING LTD.

Appellant

and

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

Respondent

Customs Act - Whether the cost of export packaging should be excluded from the value for duty of wool sweaters imported from Artesanias Kuyacc S.C.R.L., Huancayo, Peru.

This is an appeal, pursuant to section 67 of the Customs Act (the Act), of a notice of decision by the Deputy Minister of National Revenue for Customs and Excise, dated October 21, 1988, and made pursuant to subsection 63(3) of the Act, with respect to a request for re-determination filed pursuant to subsection 63(2) of the Act.

The appellant requested the Tribunal to dispose of the appeal in its absence on the basis of the evidence submitted with its appeal.

The hearing of this appeal was scheduled for March 8, 1990, in Vancouver, British Columbia.

Counsel for the respondent informed the Tribunal that the respondent had decided not to contest the appeal.

No notice of appearance was filed with the Tribunal on or before the day of the hearing and no other person showed up in Vancouver to be heard on this appeal.

The appellant is requesting that the cost of export packaging be deducted from the value for duty of goods imported from Peru.

HELD: *The appeal is allowed. Considering the evidence and the respondent's decision not to contest the appeal, the Tribunal finds that a total of US\$747, representing the cost of export packaging, should have been deducted from the total amount shown on the invoices in establishing the value for duty of the goods. Consequently, the appellant is entitled to a refund of \$128.50 plus interest.*

Date of Decision: February 18, 1991

Tribunal Members: John C. Coleman, Presiding Member
Robert J. Bertrand, Q.C., Member
Kathleen E. Macmillan, Member

Statute Cited: Customs Act, R.S.C., 1985, c. 1 (2nd Supp.) as amended.

Appeal No. 3104

PULSAR ENGINEERING LTD.

Appellant

and

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

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
ROBERT J. BERTRAND, Q.C., Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

This is an appeal, under section 67 of the *Customs Act* (the Act), of a notice of decision by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), dated October 21, 1988, and made under subsection 63(3) of the Act, with respect to a request for re-determination filed under subsection 63(2) of the Act.

THE FACTS

The appellant imported goods from Peru in August 1986, which were entered into Canada under Canada Customs Entry Nos. A 146371 and A 147779. According to the appellant, invoices for the goods included the cost of export packaging and that cost should be deducted from the value for duty of the goods, but Canada Customs chose the total amount shown on the invoices as the value for duty for the goods.

On November 26, 1986 (15 days after the entry into force of the Act), the appellant filed a request for re-determination and re-appraisal by designated officer. The appellant was informed that, "based on the documentation presented, the value of export packing has been adjusted in accordance with [Memorandum] D13-11-5" and that its request was allowed in part (\$2.93).

On March 24, 1987, the appellant filed with the Deputy Minister a request for re-determination and re-appraisal to which was attached, according to the appellant, letters from the Peruvian exporters. On October 21, 1988, the appellant was informed of the Deputy Minister's decision that, "based on the documentation submitted and in accordance with departmental memorandum D13-11-5, the value of packing is limited to 1% of the price paid or payable" and that its request was allowed in part (an additional \$10.82).

On December 8, 1988, the appellant filed an appeal of the Deputy Minister's decision with the Tariff Board requesting that its claim, amounting to \$128.50, be reviewed. With the appeal, the appellant filed letters from the Peruvian exporters indicating that a total of US\$747 out of the total amount shown on the invoices was included by them as the cost of export packaging.

The appeal was taken up and continued by the Canadian International Trade Tribunal (the Tribunal) pursuant to section 60 of the *Canadian International Trade Tribunal Act*.¹

By letter dated January 28, 1989, the appellant requested the Tribunal to dispose of the appeal in its absence on the basis of the evidence submitted with its appeal.

On February 12, 1990, the parties were informed that a hearing of the appeal had, in accordance with the Act, been scheduled to take place on March 8, 1990, in Vancouver, British Columbia.

On February 20, 1990, the respondent informed the Tribunal and the appellant, by letter, of the respondent's decision not to contest the appeal.

No notices of appearance were filed with the Tribunal on or before the day of the hearing and no other person showed up in Vancouver to be heard on this appeal.

As there had been no hearing, the Tribunal was under the impression that the Deputy Minister would, as authorized by the Act, re-appraise the value for duty of the goods on the basis of the appellant's claim.

Counsel for the respondent advised the Tribunal, by letter dated September 7, 1990, that the respondent was of the view that the Deputy Minister could not re-appraise the value for duty of the goods; as the matter arose under the former Act, the Deputy Minister was not authorized under the former Act to re-appraise the value for duty of the goods once a decision had been made. Accordingly, counsel asked the Tribunal to allow the appeal.

In the interest of the appellant, the Tribunal has decided to do so.

THE ISSUE

The issue in this appeal is whether the cost of export packaging should be deducted from the value for duty of the goods.

1. S.C., 1988, c. 56.

FINDING OF THE TRIBUNAL

Considering the evidence and the respondent's decision not to contest the appeal, the Tribunal finds that a total of US\$747, representing the cost of export packaging, should have been deducted from the total amount shown on the invoices in establishing the value for duty of the goods. The Tribunal further finds that the appellant is entitled to a refund of \$128.50 plus interest.

CONCLUSION

The appeal should be allowed.

John C. Coleman
John C. Coleman
Presiding Member

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member