



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

Ottawa, Tuesday, August 5, 2003

Appeal Nos. AP-2001-073, AP-2001-074 and AP-2001-084

IN THE MATTER OF appeals heard on September 24, 2002,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of
the Canada Customs and Revenue Agency dated September 17,
October 4 and November 7, 2001, with respect to requests for
redetermination under section 63 of the *Customs Act*.

BETWEEN

**NOKIA PRODUCTS LIMITED AND PRIMECELL
COMMUNICATIONS INC.**

Appellants

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

Appeal Nos. AP-2001-074 and AP-2001-084 are dismissed, and Appeal No. AP-2001-073 is
allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
Tel.: (613) 990-2452
Fax.: (613) 990-2439
www.citt-tcce.gc.ca

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
Tél. : (613) 990-2452
Fax. : (613) 990-2439
www.tcce-citt.gc.ca



UNOFFICIAL SUMMARY

Appeal Nos. AP-2001-073, AP-2001-074 and AP-2001-084

**NOKIA PRODUCTS LIMITED AND PRIMECELL
COMMUNICATIONS INC.**

Appellants

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

These are three appeals regarding the tariff classification of the following products: soft leather carrying cases for cellular phones in Appeal Nos. AP-2001-074 and AP-2001-084; and car kits for cellular phones in Appeal No. AP-2001-073. Appeal Nos. AP-2001-074 and AP-2001-084 raise the issue of whether soft leather carrying cases for cellular phones are properly classified under tariff item No. 4202.91.90 as other trunks, suitcases, camera cases and similar containers of leather, as determined by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), or should be classified under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by Nokia Products Limited (Nokia) and Primecell Communications Inc. Appeal No. AP-2001-073 raises the issue of whether the car kits for cellular phones are properly classified under tariff item No. 8518.30.99 as other combined microphone/speaker sets, as determined by the Commissioner, or should be classified under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28 or, in the alternative, under tariff item No. 8504.40.90 as other static converters, as claimed by Nokia.

HELD: Appeal Nos. AP-2001-074 and AP-2001-084 are dismissed, and Appeal No. AP-2001-073 is allowed. With respect to the soft leather carrying cases for cellular phones, the Tribunal is of the view, based on Rule 1 of the *General Rules for the Interpretation of the Harmonized System* (the *General Rules*), that the goods are properly classified under tariff item No. 4202.91.90. The Tribunal is of the view that there are strong similarities between the cases in issue and the cases enumerated in heading No. 42.02, in that they are fitted to the article that they are intended to contain and are used to protect and carry the article. In the Tribunal's view, carrying cases for cellular phones, though not explicitly named in the list, are very similar in design and function to a number of the cases listed in heading No. 42.02.

Regarding the car kits for cellular phones, the Tribunal first discarded the parts classification as inappropriate. Unable to classify the goods according to Rule 1 of the *General Rules*, the Tribunal moves to Rule 3 (b), as the kits consist of more than one component. The Tribunal has, thus, to determine the essential character of the goods, as the basis for classifying them as either static converters in heading No. 85.04 or microphone/speaker sets in heading No. 85.18. In the Tribunal's view, the essential character of the goods in issue is provided by its static conversion capacity, and the goods should therefore be classified under tariff item No. 8504.40.90 as other static converters.

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 24, 2002
Date of Decision: August 5, 2003

Tribunal Members: Richard Lafontaine, Presiding Member
Patricia M. Close Member
James A. Ogilvy, Member

Counsel for the Tribunal: Lynne Soublière
Marie-France Dagenais

Clerk of the Tribunal: Anne Turcotte

Appearances: Michael Sherbo, for the appellants
Lynn Marchildon, for the respondent



Appeal Nos. AP-2001-073, AP-2001-074 and AP-2001-084

**NOKIA PRODUCTS LIMITED AND PRIMECELL
COMMUNICATIONS INC.**

Appellants

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PATRICIA M. CLOSE, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

These are three appeals under section 67 of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) with respect to the classification of the following products: soft leather carrying cases for cellular phones imported between March 3, 1999, and October 25, 2000, in Appeal Nos. AP-2001-074 and AP-2001-084; and car kits for cellular phones imported on January 8, 1998, in Appeal No. AP-2001-073. The car kits for cellular phones are multi-piece sets intended to allow hands-free use in vehicles. They are composed of several components. The carrying cases are leather and plastic cases designed for use with specified models of cellular phones.

Appeal Nos. AP-2001-074 and AP-2001-084 raise the issue of whether soft leather carrying cases for cellular phones are properly classified under tariff item No. 4202.91.90 of the schedule to the *Customs Tariff*² as other trunks, suitcases, camera cases, and similar containers of leather, as determined by the Commissioner, or should be classified under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by Nokia Products Limited (Nokia) and Primecell Communications Inc. (Primecell). Appeal No. AP-2001-073 raises the issue of whether the car kits for cellular phones are properly classified under tariff item No. 8518.30.99 as other combined microphone/speaker sets, as determined by the Commissioner, or should be classified under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28 or, in the alternative, under tariff item No. 8504.40.90 as other static converters, as claimed by Nokia.

EVIDENCE

Mr. Tom Kost, Product Manager, Nokia Inc., was the only witness who appeared before the Tribunal at the hearing. He testified that the soft leather carrying cases in issue are uniquely designed to fit each particular phone. He explained that the case is built to fit tightly to the phone in order to protect it and is

1. R.S.C. 1985 (2d Supp.), c.1.
2. S.C. 1997, c. 36.

almost a part of the phone itself. He further explained that, once the phone is put in the case, the phone remains in that case for most of the life of the product and is used in that fashion.

In cross-examination, Mr. Kost agreed that a leather carrying case was not a necessary component in order to make the cellular phone function properly.

In answer to the Tribunal's questions, Mr. Kost acknowledged that the carrying cases in issue are advertised as accessories and not sold with the cellular phones. He also acknowledged that there are a number of devices, such as binoculars, that have fitted leather cases as accessories. He submitted that, in his view, the carrying cases in issue are analogous to gun holsters.

The Tribunal also heard the testimony of Mr. Kost with respect to car kits for cellular phones. Nokia wanted Mr. Kost qualified as an expert witness in the operation of car kits for cellular phones in connection with the car electrical system. However, after hearing submissions from both parties, the Tribunal was not convinced that an expert witness was required in this instance. However, the Tribunal recognized Mr. Kost's familiarity with the goods in issue.

Mr. Kost described the car kits in issue as a system of components, both mechanical and electrical, that is used to integrate a cellular phone with a vehicle to provide hands-free functionality. He testified that the integration of the cellular phone with the vehicle is so important that the cellular phone actually forms part of the vehicle and interfaces with the electrical and other components of the vehicle. Mr. Kost further described in detail the main components of the car kits in issue, which are: the junction box, which contains all the key electronics of the car kit, including the static converter; the mobile holder that receives the phone, holds it in place and provides the electrical connections from the phone to the junction box; the wiring harness, a large collection of wires connected to the junction box and used to interface with the vehicle electrical system in order to draw power from the vehicle; and the speaker module and microphone module, both of which are mounted on the vehicle and connected to the junction box.

Mr. Kost testified that the primary function of the junction box is to adapt, by using a static converter, the voltage of the vehicle system to the voltage required to power the cellular phone. He further testified that the car kit could not operate without the static converter.

In cross-examination, Mr. Kost agreed that the reason that motivates people to purchase car kits is essentially for the ability to talk on the phone while driving safely at the same time. He also agreed that the feature of the car kits that provides for charging the phone while it is inserted in the holder is not necessarily the reason that the car kits are bought, since a charger is always sold with a cellular phone.

In answer to the Tribunal's questions, Mr. Kost testified that battery charging is the primary function of the junction box and that the other functions, which are mainly simple interconnections, could easily be done without a component as sophisticated as the junction box.

ARGUMENT

In argument, Nokia and Primecell dealt with the different goods in issue in sequence. With respect to the leather cases in issue, they submitted that, since cellular phones are classifiable in heading No. 85.25, the cases, which are specifically designed to hold a particular model of cellular phone, should be classified in heading No. 85.29.

Nokia and Primecell argued that, pursuant to section 11 of the *Customs Tariff*, regard should be given to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ that are provided for each heading. Nokia and Primecell argued that the *Explanatory Notes* to heading No. 85.29 specifically provide that cases specialised to receive apparatus of heading Nos. 85.25 to 85.28 should be classified in heading No. 85.29.

Nokia and Primecell further argued that the term “case”, found in the *Explanatory Notes* to both heading Nos. 85.29 and 42.02, must be given the same meaning in both instances. Thus, the cases that are exclusively designed to receive cellular phones should be classified in heading No. 85.29, and all other cases should be classified in heading No. 42.02.

Nokia and Primecell submitted that the term “case” is defined in the dictionary to mean a common container, receptacle, or decorative or protective covering, and that, in accordance with the principles of statutory interpretation, this ordinary meaning must be attributed to the term “case” found in heading No. 85.29.

With respect to the issue of whether a carrying case could be considered a “part”, Nokia and Primecell argued that, while a carrying case could be considered a part, as in the case of a remote-controlled converter being classified as a part of a television by the Tribunal in *Phillips Electronics Ltd. v. Deputy M.N.R.C.E.*,⁴ regard should principally be given to the *Explanatory Notes*, which specifically provide for the classification of cases in heading No. 85.29.

In comparing other explanatory notes, such as the *Explanatory Notes* to heading No. 93.05, with the *Explanatory Notes* relevant here, Nokia and Primecell submitted that, in that heading, protective coverings and protective cases for gun butts, scopes and barrels are included in heading No. 93.05, whereas gun cases are specifically excluded from that heading and classified in heading No. 42.02. Nokia and Primecell argued that this example supports their contention that, since the carrying cases in issue are not specifically excluded by the *Explanatory Notes* from heading No. 85.29 and are not specifically classified elsewhere, they should be classified in heading No. 85.29.

With respect to the car kits in issue, Nokia submitted that, since cellular phones are classifiable in heading No. 85.25, a car kit that is essential to the functioning of a cellular phone should be classified as a part in heading No. 85.29.

Nokia referred to the evidence that, without the car kit, the cellular phone could not operate using the electrical system of the car and argued that a car kit is therefore essential to the functioning of a cellular phone. Nokia submitted that, by virtue of it being an essential component of the cellular phone, the car kit should be classified as a part of a cellular phone.

In the alternative, Nokia argued that the car kits in issue could be classified in accordance with the classification of each of their components. It submitted that the static converter would be classifiable, based on the Tribunal’s precedent in *Nokia Products Limited v. Deputy M.N.R.*,⁵ in heading No. 85.04, that the cables would be classifiable in heading No. 85.44 and that other components would be classifiable in heading No. 85.18. Therefore, Nokia submitted, since car kits would be *prima facie* classifiable in two or

3. Customs Co-operation Council, 2d ed., Brussels, 1996 [*Explanatory Notes*].

4. (15 June 1992), AP-90-211 (CITT).

5. (26 July 2000), AP-99-082 (CITT).

more headings, the goods should be classified in accordance with Rule 3 (b) of the *General Rules for the Interpretation of the Harmonized System*,⁶ which provides that the classification must be made as if the goods consisted of the component or material that gives them their essential character. It argued that, since the component that gives the car kits their essential character is the static converter, the most valuable component of the product, then the goods in issue should be classified in heading No. 85.04.

Regarding the leather carrying cases for cellular phones, the Commissioner argued that a carrying case is not a part, but an accessory to the cellular phone. According to the Commissioner, these carrying cases are decorative and protective and are used to transport and protect the cellular phone. They are therefore an accessory to the cellular phone. The Commissioner submitted that the evidence indicates that the only parts that are needed in order for a cellular phone to work properly are a battery and a charger. In support of his position, the Commissioner made reference to the Federal Court of Appeal's decision in *Deputy M.N.R.C.E. v. Androck Inc.*,⁷ in which it was held that, to be considered a part, goods had to be related to the entity with which they would be used as a necessary and integral part thereof and not simply be an optional accessory.

The Commissioner also noted that the definition of the term "part" is found in Memorandum D10-0-1.⁸ As stated by the Commissioner, the *Memorandum* advises that a distinction must be made between a part and an accessory and that a part is defined as a specific product that is integral to the design and essential to the function of the product with which it is used. The Commissioner submitted that, according to the evidence, the carrying case is an optional feature that does not make the cellular phone work and, as such, is not a part, as contemplated by the harmonized tariff classification system.

The Commissioner submitted that the carrying cases in issue should be classified in accordance with Rule 1 of the *General Rules*, which requires that classification be based on the terms of the heading. He submitted that heading No. 42.02 clearly provides a more accurate description of the goods in issue. The Commissioner also submitted that, since the term "case" is not defined in the tariff schedule, the term should be interpreted in the context of the headings and chapters themselves. According to the Commissioner, the wording of heading No. 42.02 clearly contemplates and anticipates an item such as a leather carrying case for a cellular phone.

With respect to the car kits, the Commissioner reiterated his argument that, to be considered a part, a component must be essential to the functioning of a product. He submitted that, in the present instance, a car kit is a feature that expands the time or the ability of a person to use the cellular phone, but is not, in any way, integral to the design and essential to the function of the cellular phone. The evidence, according to the Commissioner, shows that a car kit is an optional device that must be described as an accessory and not a part and, thus, cannot be classified under tariff item No. 8529.90.90.

The Commissioner submitted that the car kits should be classified in accordance with Rule 1 of the *General Rules* and that the heading that provides a more accurate description of the car kits in issue is heading No. 85.18, which encompasses combined speaker and microphone sets. The Commissioner also submitted that the outcome would be the same if Rule 3 (b) of the *General Rules* were applied and that, since the component which gives the product its essential character is the combined speaker and microphone

6. *Supra* note 2, schedule [*General Rules*].

7. (28 January 1987), A—1491—84 (C.A.).

8. Department of National Revenue, D Memorandum, "Classification of Parts and Accessories in the *Customs Tariff*" (24 January 1994) [*Memorandum*].

set that allows for hands-free phone communication, the car kits in issue would still be properly classified in heading No. 85.18.

DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules* and the *Canadian Rules*.⁹ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹⁰ and the *Explanatory Notes*.

In dealing with the *General Rules*, the Tribunal must seek to apply Rule 1 first, only moving on to the following rule if the preceding rule does not apply. Rule 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Rule 2 applies with respect to incomplete, unfinished, unassembled or disassembled articles, as well as to mixtures, and, in the case of the latter, it refers to Rule 3 when goods consist of more than one material or substance. In that case, Rule 3 (a) provides for the goods to be classified in the heading that provides the most specific description, although it states that, if the headings at issue refer to part only of the goods in issue or part only of a set put up for retail sale, then the two headings are to be considered equally specific; hence, the application of the next rule, Rule 3 (b), which provides that the classification must be made as if the goods consisted of the component or material that gives them their essential character. Finally, Rule 3 (c) provides that, when goods cannot be classified according to Rule 3 (a) or (b), they shall be classified in the heading which occurs last in numerical order among those which equally merit consideration.

The Tribunal will deal with the goods in issue in sequence. With respect to the soft leather carrying cases for cellular phones, the competing headings in Appeal Nos. AP-2001-074 and AP-2001-084 read, in part, as follows:

- 42.02 Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper.
- 85.25 Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus.
- 85.29 Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.

The parties agree that cellular phones are classifiable in heading No. 85.25.

9. *Supra* note 2, schedule.

10. Customs Co-operation Council, 1st ed., Brussels, 1987.

Rule 1 of the *General Rules* provides that classification shall be determined according to the terms of the headings. The starting point in classifying the goods in issue is to consider the terms of heading Nos. 85.29 and 42.02 and any relative section or chapter notes, which may provide some guidance as to the appropriate interpretation of the terms of those headings.

Heading No. 85.29 covers parts suitable for use with cellular phones, while heading No. 42.02 deals specifically with leather containers. For the carrying cases to be classified in heading No 85.29, the Tribunal must be convinced that they are parts for classification purposes.

As has been previously stated by the Tribunal, there is no universal test for determining whether a product is a part, and each fact situation must be determined on its own merits. In the past, the Tribunal has considered the following factors to be relevant: (1) whether the product is essential to the operation of another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice.¹¹

The Tribunal is of the view that, in order for an article to be considered attached to another article, it must be physically connected and functionally joined. While the evidence in these appeals indicates that the leather cases in issue are fitted to the shapes of the cellular phones and are physically connected in this manner, the cellular phones are complete without the cases. The Tribunal believes that the leather cases are not essential to the operation of the cellular phones that they encase and, therefore, are not functionally joined. Furthermore, the evidence shows that the carrying cases in issue are advertised and sold by Nokia and Primecell as accessories rather than as parts. Thus, the Tribunal finds that the leather cases in issue are not parts.

Furthermore, the Tribunal notes that the range of parts classified in heading No. 85.29 includes “[c]ases and cabinets specialised to receive the apparatus of headings 85.25 to 85.28” and that the *Explanatory Notes* to heading No. 85.29 seem to refer to cases that are in the nature of hardware or furniture. This interpretation is confirmed by reference to the French version of the *Explanatory Notes*, which refers only to “*meubles*” (furniture).

The goods were classified by the Commissioner under tariff item No. 4202.91.90. The Tribunal notes that heading No. 42.02 more closely describes the goods in issue, as it refers specifically to portable and relatively small containers of leather. It further notes that the list of articles in heading No. 42.02 is not exhaustive and includes “spectacle cases, binocular cases, camera cases, . . . gun cases, holsters *and similar containers*; . . . wallets, purses, . . . bottle-cases . . . and *similar containers*, of leather or of composition leather” [emphasis added]. The Tribunal is of the view that there are strong similarities between the carrying cases in issue and the cases enumerated in heading No. 42.02, in that they are fitted to the article that they are intended to contain and they are used to protect and carry the article. In the Tribunal’s view, carrying cases for cellular phones, though not explicitly named in the list, are very similar in design and function to a number of the cases listed in heading No. 42.02.

Finally, the Tribunal is not persuaded by Nokia’s and Primecell’s argument that there is a major difference between the cases in issue and the listed articles on the basis that a cellular phone remains and is used in the case, whereas the other articles are removed from their cases for use.

11. *SnyderGeneral Canada Inc. v. Deputy M.N.R.* (19 September 1994), AP-92-091 (CITT).

For the above reasons, the Tribunal determines that the soft leather carrying cases for cellular phones are properly classified under tariff item No. 4202.91.90 as other trunks, suitcases, camera cases and similar containers of leather.

With respect to the car kits, the competing headings in Appeal No. AP-2001-073 read, in part, as follows:

- 85.04 Electrical transformers, static converters (for example, rectifiers) and inductors.
- 85.18 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets.
- 85.25 Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus.
- 85.29 Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.

The Tribunal first finds that the goods in issue, not being essential to the operation of cellular phones, cannot be considered as parts and, thus, cannot be classified in a heading for parts, such as heading No. 85.29. It notes that the goods are marketed as accessories.

Further, the Tribunal finds that the goods in issue are not classifiable pursuant to Rule 1 of the *General Rules* as other “headphones, earphones and combined microphone/speaker sets” in heading No. 85.18. While it acknowledges that this heading covers combined microphone/speaker sets, the Tribunal is of the view that the goods in issue include additional components, such as the wiring harness and the static converter. The Tribunal notes that static converters are classifiable in heading No. 85.04.

The Tribunal is of the view that the goods in issue should be classified according to Rule 3 (b) of the *General Rules*, which provides that, where goods are *prima facie* classifiable in two or more headings and those headings each refer to part only of the materials contained in composite goods, the goods shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. The *Explanatory Notes* to Rule 3 (b) provide that the factors, which determine essential character, will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In the Tribunal’s view, in the present appeal, the factor that determines the essential character of the goods in issue is the role of one particular component in relation to the use of the goods. In the Tribunal’s view, the essential character of the goods in issue is provided by its static conversion capacity.

The evidence shows that the junction box, which contains the static converter, is the main component of the car kit. The evidence also shows that the primary function of the junction box is to adapt the voltage of the vehicle’s electrical system to the correct voltage that is required to power the cellular phone. The Tribunal is of view that the additional functionality provided by the static converter through the junction box component of the car kits is a feature that differentiates the car kits from simple microphone/speaker sets. It also notes that, in terms of value, the evidence indicates that the most costly component in the car kit is the junction box.

For the above reasons, the Tribunal finds that car kits should be classified under tariff item No. 8504.40.90 as other static converters.

Consequently, Appeal Nos. AP-2001-074 and AP-2001-084 are dismissed, and Appeal No. AP-2001-073 is allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
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Member