



Ottawa, Tuesday, February 19, 2002

**Appeal No. AP-2000-056**

IN THE MATTER OF an appeal heard on September 5, 2001,  
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF three decisions of the Commissioner  
of the Canada Customs and Revenue Agency dated  
December 6, 2000, with respect to a request for redetermination  
under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**CANADIAN TIRE CORPORATION LIMITED**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-056

CANADIAN TIRE CORPORATION LIMITED

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY

Respondent

This is an appeal under section 67 of the *Customs Act* from three decisions of the Commissioner of the Canada Customs and Revenue Agency dated December 6, 2000, made pursuant to subsection 60(4) of the *Customs Act*. The goods in issue are multi-driver and bit sets and screwdriver sets. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8205.40.00 as screwdrivers, as determined by the respondent, or should be classified under tariff item No. 8207.90.90 as other interchangeable tools or under tariff item No. 8466.10.00 as tool holders, as claimed by the appellant.

**HELD:** The appeal is allowed. The Tribunal finds that the goods in issue are not classifiable pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System* as screwdrivers in heading No. 82.05. While the Tribunal acknowledges that this heading covers screwdrivers and that, once assembled, the goods in issue become screwdrivers, it is of the view that the goods in issue consist of two articles that are each classifiable in different headings.

The Tribunal is of the view that Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System* does not guide classification of the goods in issue. The Tribunal is convinced that the goods in issue constitute sets put up for retail sale. Given that two headings, heading Nos. 82.07 and 84.66, each refer to part only of the items in the sets, those headings are, therefore, to be regarded as equally specific in relation to the goods in issue. Accordingly, the Tribunal gives regard to Rule 3 (b). The Tribunal is of the view that, in the present case, the essential character of the sets is given by the screwdriver bits. The Tribunal finds that the multi-driver and bit set comprises 17 bits and that the screwdriver set comprises 28 bits, which account for the majority of the components of the sets. Also, the Tribunal is of the opinion that the screwdriver bits are the components that confer to the sets their broad functionality and adaptability and that give the consumer the ability to work with a wide range of screws. The Tribunal finds that the goods in issue should be classified under tariff item No. 8207.90.90.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 5, 2001
Date of Decision:	February 19, 2002
Tribunal Member:	James A. Ogilvy, Presiding Member
Counsel for the Tribunal:	Dominique Laporte
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Peter E. Kirby, for the appellant John I. Unrau, for the respondent



Appeal No. AP-2000-056

CANADIAN TIRE CORPORATION LIMITED

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY

Respondent

TRIBUNAL: JAMES A. OGILVY, Presiding Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from three decisions of the Commissioner of the Canada Customs and Revenue Agency dated December 6, 2000, made pursuant to subsection 60(4) of the Act. The goods in issue are multi-driver and bit sets and screwdriver sets, which were imported on November 10 and December 29, 1998, and January 12, 1999. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8205.40.00 of the schedule to the *Customs Tariff*<sup>2</sup> as screwdrivers, as determined by the respondent, or should be classified under tariff item No. 8207.90.90 as other interchangeable tools or under tariff item No. 8466.10.00 as tool holders, as claimed by the appellant.

The relevant tariff nomenclature is as follows:

82.05	Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.
8205.40.00	-Screwdrivers
82.07	Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
8207.90	-Other interchangeable tools
8207.90.90	---Other
84.66	Parts and accessories suitable for use solely or principally with the machines of headings 84.56 to 84.65, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine-tools; tool holders for any type of tool for working in the hand.
84.66.10.00	-Tool holders and self-opening dieheads

**EVIDENCE**

Neither party called witnesses at the hearing.

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1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].  
2. R.S.C. 1985 (3d Supp.), c. 41.

Physical exhibits consisting of an 18-piece multi-driver and bit set (Canadian Tire Model No. 57-3553-2) and a 30-piece screwdriver set (Canadian Tire Model No. 57-3531-4) were filed by the appellant. Both sets consist of a handle/driver with a shaft at one end designed to hold a bit and a selection of bits.

## ARGUMENT

It is the appellant's position that, in accordance with Rule 3 (b) of the *General Rules for the Interpretation of the Harmonized System*,<sup>3</sup> the goods in issue are classifiable in either heading No. 82.07 or heading No. 84.66, as they constitute "goods put up in sets for retail sale" and their essential character is given by the tool holder or the tools forming part of the sets.

The appellant submitted that the goods in issue were sold and marketed as screwdriver bit sets. It submitted that the issue is whether the goods in issue represent goods put up in sets for retail sale or whether they can be classified as screwdrivers. It is the appellant's contention that the goods in issue consist of two separate goods, i.e. tool holders of heading No. 84.66 and tools, specifically screwdriver bits, of heading No. 82.07. The appellant further submitted that, when those two goods are put up in a set for retail sale, they are classified according to Rule 3 of the General Rules as if they consisted of the component that gives the set its essential character.

The appellant argued that, throughout the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> and the *Customs Tariff*, the bits are referred to as tools, while tool holders refer to goods designed as handles into which a tool is inserted. It is the appellant's position that the goods in issue cannot be classified in accordance with Rule 1 of the General Rules, as they are potentially classifiable under two different tariff items.

It is the appellant's submission that the screwdriver bits are specifically provided for in heading No. 82.07, which covers interchangeable tools for hand tools. It further submitted that the screwdriver bits are specifically excluded from heading No. 82.05 by the Explanatory Notes to this heading. In order to demonstrate that tool holders are covered by heading No. 84.66, the appellant referred to Note (C) of the Explanatory Notes to this heading, which states, in part, that the heading also includes tool holders for any type of tool designed for operation in the hand. The appellant also referred to a customs notice<sup>5</sup> issued by the respondent that deals with the classification of tool holders and that provides that tool holders, imported separately and not part of tool sets, are to be classified under tariff item No. 8466.10.00.

The appellant further submitted that, in accordance with Rule 3 (a) of the General Rules, when two headings refer to part only of the items put up in a set for retail sale, those headings are to be regarded as equally specific, even if one of them gives a more complete or precise description. Consequently, the appellant argued that it is necessary to look at Rule 3 (b) and to classify the sets as if they consisted of the component that gives them their essential character. If this is impossible, then Rule 3 (c) will apply, and the sets will be classified in the heading that occurs last in numerical order.

The appellant made reference to Note (X) of the Explanatory Notes to Rule 3, as well as to previous Tribunal decisions, in order to demonstrate that the goods in issue are "goods put up in sets for retail". Reference was also made to U.S. Customs Service rulings dealing with various types of hand tools and bits

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3. *Ibid.*, schedule [hereinafter General Rules].

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

5. Customs Notice N-325, 15 May 2000, Appellant's Brief, Tab 5.

put in a box for retail sale, where it was determined that the essential character was given by the tool holder and that the goods were consequently classifiable in heading No. 84.66.

Regarding the respondent's argument that the essential character of the set is given by the screwdriver itself, the appellant emphasized that, although the product eventually becomes a screwdriver, classification should be effected not in respect of what the product is destined to become in the hands of the consumer, but in respect of its nature at the time of importation.

It is the respondent's position that, in accordance with Rule 1 of the General Rules, the goods in issue are properly classified under tariff item No. 8205.40.00 as screwdrivers. The respondent submitted that the goods in issue amount to screwdrivers, which can be adapted to and are capable of being used in a variety of situations. The respondent noted that, while Note (D) of the Explanatory Notes to heading No. 82.05 specifically provides for screwdrivers, heading No. 82.07 is applicable only when screwdriver bits are imported separately, with no handle/driver included in the package.

It was further submitted by the respondent that, like hand drills, screwdrivers can also require interchangeable bits and, therefore, should be classified in heading No. 82.05 pursuant to Rule 1 of the General Rules.

The respondent argued that the fact that the Explanatory Notes to heading No. 82.07 state that "the preceding headings of this Chapter apply in the main to hand tools ready for use as they stand or after affixing handles" is a clear indication that heading No. 82.05 covers the goods in issue, which are ready for use after affixing the handles.

The respondent also argued that the goods in issue cannot be classified in heading No. 84.66, since Note 1(k) of Section XVI, which includes Chapter 84, expressly provides that this section does not cover articles of Chapter 82. In addition, the respondent submitted that the Explanatory Notes to heading No. 84.66 exclude tools of Chapter 82.

When questioned about Rule 3 of the General Rules, the respondent submitted that it was inapplicable, as the goods in issue could be classified under Rule 1 and that, in the alternative, it would not apply, as the prerequisite condition of Rule 3 (a) was not met, since the goods in issue were not *prima facie* classifiable in different headings.

## 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. Section 11 provides, in part, that, in interpreting the headings and the subheadings in the schedule, regard shall be had to the Explanatory Notes.

The General Rules are structured in cascading form. If the classification of goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the [subsequent rules].

The competing headings in this case are as follows:

- 82.05 Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.
- 82.07 Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
- 84.66 Parts and accessories suitable for use solely or principally with the machines of headings 84.56 to 84.65, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine-tools; tool holders for any type of tool for working in the hand.

The Tribunal must first determine if the goods in issue can be classified in accordance with Rule 1 of the General Rules. It is the respondent's position that, pursuant to this rule, the goods in issue are properly classified under tariff item No. 8205.40.00 as screwdrivers. The respondent submitted that the goods in issue amount to screwdrivers, which can be adapted to and are capable of being used in a variety of situations.

On the other hand, the appellant submitted that the goods in issue cannot be classified pursuant to Rule 1 of the General Rules as screwdrivers, as the classification of the goods must be made at the time of importation in terms of what they are and not what they become at a later stage. Accordingly, it was the appellant's position that the goods in issue consist of a handle of heading No. 84.66 and screwdriver bits of heading No. 82.07.

The Tribunal finds that the goods in issue are not classifiable pursuant to Rule 1 of the General Rules as screwdrivers in heading No. 82.05. While the Tribunal acknowledges that this heading covers screwdrivers and that, once assembled, the goods in issue become screwdrivers, it is of the view that the goods in issue consist of two articles that are each classifiable in different headings. In addition, although heading No. 82.05 encompasses screwdrivers, the Explanatory Notes to this heading specifically exclude screwdriver bits of heading No. 82.07 and tool holders for hand tools of heading No. 84.66. Furthermore, the Tribunal finds that Note 2 to Chapter 82 contradicts the respondent's position. It reads, in part, as follows:

2. Parts of base metal of the articles of this Chapter are to be classified with the articles of which they are parts, **except parts separately specified as such and tool-holders for hand tools (heading No. 84.66).**

[Emphasis added]

Since this exception applies to tool holders for hand tools, and as the screwdriver bits are parts that are separately specified as such in heading No. 82.07, it is clear from a reading of Note 2 to Chapter 82 that the screwdriver bits cannot be classified together with a tool holder for hand tools. In addition, contrary to heading No. 82.04, which specifically contemplates "[h]and-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); **interchangeable spanner sockets, with or without handles**" [emphasis added], heading No. 82.07 and the Explanatory Notes to that heading do not provide a similar indication.

There is no doubt that, if they were imported separately, the screwdriver bits and the handles would be classified in heading No. 82.07 and heading No. 84.66 respectively. This was not in dispute at the hearing.

The Tribunal must now look at Rule 2 of the General Rules, which reads, in part, as follows, to see if it can be of assistance:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

The Tribunal is of the view that Rule 2 (a) of the General Rules is not applicable to the present case. While the Tribunal recognizes that the handle needs to be assembled with a bit to be used as a screwdriver, it is not of the view that the scheme of Rule 2 (a) contemplates the classification of goods such as the ones in issue. This conclusion comes from a reading of Note (VII) of the Explanatory Notes to Rule 2, which states, *in fine*, that “[u]nassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.” In addition, Note (V) also provides, in part, that, when goods are presented unassembled, it is usually for reasons such as requirements or convenience of packing, handling or transport.

The Tribunal agrees with the appellant’s contention that the classification of the goods in issue pursuant to Rule 2 (a) of the General Rules would result in the failure to classify the unassembled screwdriver bits. In addition, the Tribunal is of the view that the goods in issue are not presented unassembled for reasons such as the ones contemplated under Note (V) of the Explanatory Notes to Rule 2. Thus, the Tribunal now gives regard to Rule 3 (a), which reads as follows:

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
  - (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

The Tribunal is of the view that Rule 3 (a) of the General Rules does not guide classification of the goods in issue. The Tribunal is convinced that the goods in issue constitute sets put up for retail sale because they meet the definition of a set found in the Explanatory Notes to Rule 3 (b). Indeed, the goods in issue consist of at least two different articles, which are, *prima facie*, classifiable in different headings; they consist of articles put up together to carry out a specific task, that of driving a screw; and they are put up in a manner suitable for sale directly to users without repacking. Given that two headings, heading Nos. 82.07 and 84.66, each refer to part only of the items in the sets, those headings are, therefore, to be regarded as equally specific in relation to the goods in issue. Accordingly, the Tribunal cannot classify the goods in issue according to Rule 3 (a) and must now give regard to Rule 3 (b), which reads as follows:

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Note (VIII) of the Explanatory Notes to Rule 3 provides the following guidance with respect to the essential character:

The factor which determines 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.

While the Tribunal acknowledges that the determination as to which component gives the set its essential character is somewhat subjective, the Tribunal is of the view that, in the present case, the essential character of the sets is given by the screwdriver bits. Indeed, the Tribunal finds that the multi-driver and bit set comprises 17 bits and that the screwdriver set comprises 28 bits, which account for the majority of the components of the sets. Also, the Tribunal is of the opinion that the screwdriver bits are the components that confer to the sets their broad functionality and adaptability and that give the consumer the ability to work with a wide range of screws.

For the above reasons, the goods in issue should be classified under tariff item No. 8207.90.90 and, consequently, the appeal is allowed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member