



Ottawa, Wednesday, April 18, 1990

Appeal No. AP-89-175

IN THE MATTER OF an appeal scheduled to be heard on February 12, 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 June 19, 1989, with respect to requests for a re-determination filed pursuant to section 63 of the *Customs Act*.

BETWEEN

EVAN A. SWIM LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appellant did not appear at the hearing of the appeal and the Tribunal finds that there is no *prima facie* reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

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

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-175

EVAN A. SWIM LIMITED

Appellant

and

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

Respondent

Customs Act - Tariff classification - Whether certain oil paintings should be classified under tariff item 18000-1 as "... paintings ... and similar works of art, n.o.p." or, as claimed by the appellant, under tariff item 69520-1 as "Original paintings ... by artists" - Non-appearance of appellant at hearing of appeal.

DECISION: *The appellant did not appear at the hearing of the appeal and the Tribunal finds that there is no prima facie reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is dismissed.*

Place of Hearing: Halifax, Nova Scotia

Date of Hearing: February 12, 1990

Date of Decision: April 18, 1990

*Tribunal Members: W. Roy Hines, Presiding Member
Robert J. Bertrand, Q.C., Member
Sidney A. Fraleigh, Member*

Clerk of the Tribunal: Nicole Pelletier

Appearance: John B. Edmond, for the respondent

THE LEGISLATION

For the purpose of this appeal, the relevant legislative provisions are as follows:

Customs Tariff¹

- 18000-1 *Photographs, chromos, chromotypes, artotypes, oleographs, paintings, drawings, pictures, engravings or prints or proofs therefrom, and similar works of art, n.o.p.*
- 51200-1 *Picture frames and photograph frames, of any material*
- 69520-1 *Original paintings, drawings, collages and pastels by artists;
Engravings, etchings, lithographs, woodcuts, maps and charts, printed prior to 1st January 1900;
Original engravings, etchings, lithographs, woodcuts, unbound, printed from plates or blocks wholly executed by hand, and signed by the artist or, under regulations by the Minister, authenticated by or on behalf of the artist;
Serigraphs and photographic or photomechanical representations, numbered and signed by the artist or, under regulations by the Minister, authenticated by or on behalf of the artist;
Any combination of the foregoing media, numbered and signed by the artist or, under regulations by the Minister, authenticated by or on behalf of the artist*
- 71001-1 *Usual coverings, containing free goods only; usual coverings, except receptacles capable of holding liquids, containing goods subject to a specific duty only, n.o.p.*
- 71002-1 *Usual coverings containing goods subject to any ad valorem rate of duty*

DECISION

This is an appeal pursuant to section 67 of the *Customs Act*,² from a decision of the Deputy Minister of National Revenue for Customs and Excise dated June 19, 1989, that oil paintings and painted wood plaques, frames and packing should be classified under tariff items 18000-1, 51200-1 and 71002-1 as "... paintings ... and similar works of art," "Picture frames ... of any material" and "Usual

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1. R.S.C. 1970, c. C-41, as amended.
 2. R.S.C. 1985, c. 1 (2nd Supp.), as amended.

coverings containing goods subject to any ad valorem rate of duty." The goods in issue were imported at Halifax on November 5, 1987, under entry number A016688 from Chian Hwo Enterprises of Tapei, Taiwan. The appellant claims that the goods should be classified under tariff items 69520-1 and 71001-1 as "Original paintings ... by artists" and "Usual coverings, containing free goods only"

This appeal was scheduled for hearing in Halifax on February 12, 1990, and was duly advertised in the Canada Gazette dated January 13, 1990. The appellant was notified of the hearing on the following occasions: by mail, on December 12, 1989, and January 24, 1990; by facsimile machine, on January 18 and 23, 1990; and by telephone, on December 12, 1989, January 18 and 25, and February 9, 1990. However, the appellant did not appear at the hearing.

The Tribunal finds that there is no *prima facie* reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is not allowed.

W. Roy Hines

W. Roy Hines
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member