



DD-90-011

Ottawa, Monday, June 11, 1990

Appeal No. AP-89-228

IN THE MATTER OF an application heard 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 July 5, 1989, with respect to an application filed pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**REGINALD BRADLEY**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. The Tribunal finds that the imported automobile parts comprising the 29SSK Mercedes replica assembly kit are not eligible for duty-free status under Tariff Code 2441, as they were not imported for use on a vehicle manufactured more than 25 years before the time of importation. The Tribunal concludes that the Deputy Minister properly classified the goods under tariff item Nos. 8707.10.90, 8708.70.90, 8708.92.90, 8708.94.90 and 8708.99.99.

Sidney A. Fraleigh

Sidney A. Fraleigh  
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.  
Member

W. Roy Hines

W. Roy Hines  
Member

Robert J. Martin

Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-89-228**

**REGINALD BRADLEY**

**Appellant**

**and**

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

**Respondent**

*Customs Act - Whether automobile parts comprising the 29SSK Mercedes replica assembly kit should be classified under heading Nos. 87.07 and 87.08 of Schedule I of the Customs Tariff, or under Tariff Code 2441 of Schedule II.*

**DECISION:** *The appeal is dismissed. The Tribunal finds that the imported automobile parts comprising the 29SSK Mercedes replica assembly kit are not eligible for duty-free status under Tariff Code 2441, as they were not imported for use on a vehicle manufactured more than 25 years before the time of importation. The Tribunal concludes that the Deputy Minister properly classified the goods under tariff item Nos. 8707.10.90, 8708.70.90, 8708.92.90, 8708.94.90 and 8708.99.99.*

*Place of Hearing: Halifax, Nova Scotia*

*Date of Hearing: February 12, 1990*

*Date of Decision: June 11, 1990*

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

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Reginald Bradley, for the appellant  
J. B. Edmond, for the respondent*

*Statutes Cited: Customs Act, R.S.C., 1985, c. 1 (2nd Supp.), Customs  
Tariff, R.S.C., 1985, c. C-41 (3rd Supp.).*

*Other Reference Cited: General Rules for the Interpretation of the Harmonized System, Rules 1 and  
2(a).*

**Appeal No. AP-89-228**

**REGINALD BRADLEY**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
ROBERT J. BERTRAND, Q.C., Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

**SUMMARY**

This is an appeal pursuant to section 67 of the *Customs Act* (the Act), from a decision of the respondent classifying automobile parts, represented in customs documentation as a "Deluxe Ford 29SSK Mercedes replica assembly kit." The assembly kit consists of motor vehicle parts manufactured in 1988 by Classic Motor Carriages of Miami, Florida, to produce a replica of a 1929 Mercedes-Benz SSK. The body and parts were manufactured for mounting on the power train of a 1974-80 Ford Pinto, a 1974-78 Mustang II or a Mercury Bobcat.

The appellant claims that the imported goods qualify for the duty free provisions of Tariff Code 2441 which provides for "Articles for use solely or principally with the vehicles of Code 2440." Tariff Code 2440 provides duty-free entry for motor vehicles manufactured more than 25 years prior to the date of accounting. The respondent has classified the goods under tariff item No. 8707.10.90 as a complete body of a vehicle in an unassembled state, and the rest of the parts under heading No. 87.08 which provides for parts and accessories for motor vehicles.

The Tribunal recognizes that the assembled kit closely resembles a 1929 SSK Mercedes. However, it is identified as a replica, rather than an antique and this point is not disputed by the appellant. As the parts at issue were not imported for use on a vehicle more than 25 years old, the goods are not eligible for duty-free status under Tariff Code 2441. The Tribunal thus concludes that the Deputy Minister properly classified the goods under tariff item Nos. 8707.10.90, 8708.70.90, 8708.92.90, 8708.94.90 and 8708.99.99. The appeal is dismissed.

**THE LEGISLATION**

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

*Customs Tariff*<sup>d</sup>

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1. R.S.C., 1985, c. C-41 (3rd Supp.), as amended.

10. *The classification of imported goods under a tariff item in Schedule I shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in that Schedule.*

*SCHEDULE I*

*GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM*

*Classification of goods in the Nomenclature shall be governed by the following principles:*

1. *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 following provisions:*
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.*

...

87.03 *Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars.*

8703.90.00 *-Other*

87.07 *Bodies (including cabs), for the motor vehicles of heading Nos. 87.01 to 87.05.*

8707.10.90 *---Other*

87.08 *Parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05.*

8708.70 *-Road wheels and parts and accessories thereof*

8708.70.90 *---Other*

8708.92 *--Silencers (mufflers) and exhaust pipes*

8708.92.90 *---Other*

8708.94           ...  
                  --Steering wheels, steering columns and steering boxes  
8708.94.90       ...  
                  ---Other  
8708.99           ...  
                  --Other [parts and accessories]  
8708.99.99       ...  
                  ----Other [gas tank]

## SCHEDULE II

*The following under such regulations as the Minister may make with respect to proof of age:*

*Code 2440     Motor vehicles manufactured more than 25 years prior to the date of accounting, of heading No. 87.02, 87.03, 87.04 or 87.11 (other than those of subheading No. 8703.10 or 8704.10) or of subheading No. 8701.20 or 8705.30*

*Code 2441     Articles for use solely or principally with the vehicles of Code 2440.*

## THE FACTS

This is an appeal pursuant to section 67 of the Act, from a decision of the respondent dated July 5, 1989, classifying automobile parts, represented in customs documentation as a "Deluxe Ford 29SSK Mercedes replica assembly kit." The automobile parts were imported from Miami, Florida, United States, on June 27 and September 1, 1988, under entry no. 000626.

The appellant claims that the imported goods qualify for the duty free provisions of Tariff Code 2441 which provides for "Articles for use solely or principally with the vehicles of Code 2440." Tariff Code 2440 provides duty-free entry of motor vehicles manufactured more than 25 years prior to the date of accounting. The respondent has classified the goods under tariff item No. 8707.10.90 as a complete body of a vehicle in an unassembled state, and the rest of the parts, under heading No. 87.08 which provides for parts and accessories for motor vehicles.

The assembly kit consists of motor vehicle parts manufactured in 1988 by Classic Motor Carriages, a division of Fiberfab International Inc. of Miami, Florida, and Minneapolis, Minnesota, to produce a replica of a 1929 Mercedes-Benz SSK. The body and parts were manufactured for mounting on the power train of a 1974-80 Ford Pinto, a 1974-78 Mustang II or a Mercury Bobcat. The mechanical components are not included in the assembly kit and the purchaser is required to obtain a compatible power train, suspension and engine. The parts included in the kit are a fibreglass main body, fenders, hood, doors, windshield, headlights, taillights, bumpers, frames, running board, interior parts and accessories, wire wheel set, gas tank and parts thereof, exhaust stack, steering wheel and shaft, and assembly hardware for all the above parts and accessories.

## THE ISSUE

The issue in this appeal is whether the automobile parts comprising the 29SSK Mercedes replica assembly kit are properly classified by the respondent under heading Nos. 87.07 and 87.08 of Schedule I, or whether they are better classified under Tariff Code 2441 of Schedule II, as claimed by the appellant.

The appellant argues that there is no Tariff Code in the *Customs Tariff* which accurately describes the goods imported. However, as newly made parts for maintaining antique vehicles are allowed to be imported duty-free under Tariff Code 2440, the appellant argues that duty free status under this code should also be accorded to the parts required to build a replica antique vehicle.

The respondent argues that the goods at issue should be classified in Schedule I in accordance with their characteristics and the "General Rules for the Interpretation of the Harmonized System" (GIR's). While rule 1 of the GIR's provides that goods are to be classified according to the relevant Harmonized System headings, Section or Chapter notes, the respondent states that there are no relevant section and chapter notes in this case. The headings which most accurately describe the goods are heading No. 87.07, which provides for bodies for vehicles for the transport of persons, and heading No. 87.08, which includes parts and accessories for vehicles for the transport of persons.

As the majority of the parts in the replica assembly kit combine to make a body of a passenger vehicle, the respondent argues that rule 2(a) of the GIR's is invoked. This rule, as cited above, provides that goods that are presented unassembled are to be classified as the assembled complete or finished article, providing the incomplete or unfinished article has the essential character of the complete one. As the subject goods were presented unassembled and had the essential character of the body of a motor vehicle, the respondent claims that they were properly classified under heading No. 87.07. As certain of the subject goods were not parts of the body, the respondent claims that they were properly classified, pursuant to rule 1 of the GIR's, under heading No. 87.08. This heading includes both named and residual provisions for parts and accessories of, *inter alia*, passenger vehicles.

The respondent states that it is only after goods have been classified in the Schedule I nomenclature that they may be examined in the context of applicable Tariff Codes in the other schedules of the *Customs Tariff*. Tariff Code 2440 vehicles are those which have been classified in, *inter alia*, heading No. 87.03 (passenger vehicles) and were manufactured 25 years prior to the date of accounting. In this case, a vehicle manufactured 25 years prior to June 27, 1988, would have been built in June 1963.

The respondent asserts that the legislative intent in enacting Tariff Codes 2440 and 2441 was to provide duty-free entry to *bona fide* antique vehicles and to enable collectors to obtain hard-to-get repair and replacement parts and accessories without penalty of duty. The respondent argues that the imported articles at issue were not intended to be used on a vehicle manufactured 25 years prior to 1988, but were designed to be mounted on Ford products manufactured between 1974 and 1980. Thus, they fail to meet the criteria of Tariff Code 2441.

## DECISION

All goods which are entered into Canada are classified at the time of accounting according to the nomenclature in Schedule I of the *Customs Tariff*, which is the Harmonized Commodity Description and Coding System (Harmonized System). Under the Harmonized System, most goods are classified in Schedule I according to their characteristics or nature rather than their end use. The headings and subheadings are intended to be mutually exclusive and exhaustive so that a given good can

be correctly classified in only one tariff item. Schedule II of the *Customs Tariff* contains Tariff Codes which provide duty relief for certain classes of goods defined therein. Many of those Tariff Codes do relate to end use.

The Tribunal finds that the imported automobile parts have been properly classified by the respondent in Schedule I under heading No. 87.07, which provides for bodies for vehicles for the transport of persons, and heading No. 87.08, which includes parts and accessories for vehicles for the transport of persons. There remains to determine whether Tariff Code 2441, in Schedule II, affords the appellant relief from the duty imposed under those headings.

In order to meet the criteria of Tariff Code 2441, the automobile parts must be imported for use on a vehicle as described in Tariff Code 2440. Tariff Code 2440 relates to certain vehicles classified in Schedule I which were manufactured more than 25 years prior to the time of importation. While the legislation does not insist that the automobile parts meet this same age requirement, it is specific that they must be for use on an automobile over 25 years old.

The Tribunal recognizes that the assembled kit closely resembles a 1929 SSK Mercedes. However, according to the manufacturer's publicity and assembly instructions, and as admitted by the appellant, the kit and parts in question are intended to be mounted on a power train, suspension and engine which were less than 15 years old at the time of entry or accounting. As the parts at issue were not imported for use on a vehicle more than 25 years old, the goods are not eligible for duty-free status under Tariff Code 2441.

#### CONCLUSION

The Tribunal finds that the imported automobile parts comprising the 29SSK Mercedes replica assembly kit are not eligible for duty-free status under Tariff Code 2441, as they were not imported for use on a vehicle manufactured more than 25 years before the time of importation. The Tribunal thus concludes that the Deputy Minister properly classified the goods under tariff item Nos. 8707.10.90, 8708.70.90, 8708.92.90, 8708.94.90 and 8708.99.99. The appeal is dismissed.

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