



Ottawa, Friday, April 5, 1991

**Appeal No. AP-90-027**

IN THE MATTER OF an appeal heard on February 21, 1991, under 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 March 29, 1990, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**ROYAL TELECOM INC.**

**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 goods at issue are properly classified under tariff item No. 8517.10.00 as telephone sets.

Sidney A. Fraleigh

Sidney A. Fraleigh  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Robert J. Martin

Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-027**

**ROYAL TELECOM INC.**

**Appellant**

**and**

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

**Respondent**

*This is an appeal under subsection 63(3) of the Customs Act (the Act) from a re-determination made by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), classifying the goods in issue under tariff item No. 8517.10.00 as telephone sets. The appellant seeks a declaration that the goods be classified under tariff subheading No. 8525.20 as transmission apparatus for radio-telephony. The Deputy Minister considers the cordless telephone a composite machine whose primary function is line-telephony as it must be connected into the existing line telephone network to be fully operational. The appellant claims that the goods are transmission apparatus for radio-telephony because both the handset and base unit incorporate a transceiver and are connected through the employment of low-energy FM radio waves.*

**HELD:** *The appeal is dismissed. The Tribunal finds that the goods at issue are properly classified under tariff item No. 8517.10.00 as telephone sets.*

*Place of Hearing:*

*Ottawa, Ontario*

*Date of Hearing:*

*February 21, 1991*

*Date of Decision:*

*April 5, 1991*

*Panel Members:*

*Sidney A. Fraleigh, Presiding Member*

*Kathleen E. Macmillan, Member*

*Arthur B. Trudeau, Member*

*Counsel of the Tribunal:*

*David M. Attwater*

*Clerk of Tribunal:*

*Nicole Pelletier*

*Appearances:*

*D.T. Mulholland, for the appellant*

*Ian M. Donahoe, for the respondent*

***Cases Cited:***

*IMS International Mailing Systems Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1988), 18 C.E.R. 57 (Tariff Board); The Trimont Corporation Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1961), 2 T.B.R. 244 (Tariff Board).*

**Appeal No. AP-90-027**

**ROYAL TELECOM INC.**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
ARTHUR B. TRUDEAU, Member

**REASONS FOR DECISION**

**ISSUE AND APPLICABLE LEGISLATION**

This is an appeal under subsection 63(3) of the *Customs Act*<sup>1</sup> (the Act) by Royal Telecom Inc. from a re-determination made by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), classifying the goods in issue under tariff item No. 8517.10.00 as telephone sets for line-telephony. The issue is whether the EXCXX-Excursion and Royal Telecom cordless telephones, both of which incorporate a transceiver in the handset and base unit and are connected through the employment of low-energy FM radio signals, are properly classified under tariff item No. 8517.10.00 as telephone sets for line-telephony or, as the appellant contends, under tariff subheading No. 8525.20 as transmission apparatus for radio-telephony.

More particularly, it must be determined whether the telephones are classified as radio telephones because they incorporate the use of radio signals to connect the handset to the base unit or whether the telephones are defined as line telephones because they must be connected to the public switched telephone system to effect communication as telephones.

For the purposes of this appeal, the relevant provisions of the *Customs Tariff*<sup>2</sup> are:

*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.*

*11. In interpreting the headings and subheadings in Schedule I, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, as amended from time to time, published by the Customs Co-operation Council, established by the Convention establishing a Customs Co-operation Council, done at Brussels on December 15, 1950 and to which Canada is a party.*

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1. R.S.C., 1985, c. 1 (2nd Supp.), as amended.
  2. R.S.C., 1985, c. 41 (3rd Supp.), as amended.

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*GENERAL RULES FOR THE INTERPRETATION  
OF THE HARMONIZED SYSTEM*

...

*RULE 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.*

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*SCHEDULE I*

*Section XVI*

...

*Notes.*

...

3. *Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*

...

5. *For the purpose of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.*

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**85.17**            *Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems.*

**8517.10.00**    *- Telephone 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; television cameras.*

8525.20        - *Transmission apparatus incorporating reception apparatus*

For the purposes of the appeal, the relevant provisions of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* are:

*Section XVI*

...

*Section Notes.*

...

*(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES*

...

*In general, multi-function machines are classified according to the principal function of the machine.*

...

*Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.*

...

EVIDENCE

Between approximately the first of June and mid-November 1988, the appellant imported five shipments of cordless telephones from Hong Kong and the United States into Canada through the port of Toronto. The imported cordless telephones consisted of two models, namely, the EXCXX-Excursion and Royal Telecom 32025. Upon importation, the goods in each shipment were classified under tariff item No. 8517.10.00 as telephone sets for line-telephony and customs duties assessed accordingly.

Pursuant to paragraph 60(1)(a) of the Act, the appellant sought a re-determination of the tariff classifications on August 24, 1989, for four of the five shipments, with the fifth being made on August 28, 1989. Beginning in late September and concluding in early November 1989, the re-determinations were returned to the appellant, each indicating that the cordless telephones were properly classified under tariff item No. 8517.10.00.

On December 14, 1989, the appellant made a request for a further re-determination of the tariff classification pursuant to paragraph 63(1)(a) of the Act. On March 29, 1990, the Deputy Minister made the re-determination confirming the tariff classification.

On June 7, 1990, the appellant appealed to this Tribunal.

The appellant first introduced evidence through Mr. Ron Wain who graduated as an electronics engineering technologist from the Conestoga College of Applied Arts and Technology. Mr. Wain is presently a Director of Operations for Royal Telecom Inc. of Calgary, Alberta. The witness introduced evidence that there was no radio frequency (RF) signalling involved with a corded telephone that has a hard-wired handset. This is in contrast to both the cellular and cordless telephones. With the latter two, acoustical energy is converted into radio waves that are transmitted between a portable unit and a base unit. In the base unit, the radio waves are demodulated back into electrical energy and fed into the public switched telephone system. Evidence was led to the effect that under all circumstances the cellular telephone must employ the public network to effect telephone communication, just as the cordless telephone is dependent upon the system.

Mr. Wain led further evidence that the majority of electronic circuitry in the portable handset is RF circuitry and circuitry not unique to either the corded or cordless telephone. In the base unit of the Excursion 1 telephone (Exhibit A-1), the majority of circuitry is also RF circuitry.

On questioning from the Tribunal, the appellant's witness stated that the portable handset is completely a radio transmitter while the base unit is a combined unit composed of a telephone and a radio transmitter.

The appellant's second witness was Mr. Blaine C. Gray who is a graduate of the University of Western Ontario with a Bachelor of Engineering Science. Mr. Gray is presently the Manager of Quality Assurance for SGS Standards Approval and Compliance Inc. of Mississauga, Ontario. The witness presented evidence that the Department of Communications and the Canadian Standards Association (CSA) differentiate between the cordless telephone that employs both radio and audio frequency signals and corded telephones that employ audio frequency signals only. The main standard used for the classification of cordless telephones is CSA standard C22.2, No. 1, entitled "power-operated radio, television and electrical apparatus." In contrast, the standard corded telephone is classified under CSA standard C22.2, No. 225-M, entitled "telecommunication equipment."

The respondent's first witness was Dr. Tho Le-Ngoc who has earned a Ph.D. specializing in digital communications from the University of Ottawa. Dr. Le-Ngoc is presently an Associate Professor of the Department of Electrical and Computer Engineering of Concordia University. To counter the appellant's argument based on the analogy between the cellular and cordless telephone, the witness led evidence of the distinction between the two systems. The most obvious distinction is that the cordless handset is compatible with only a single base unit as opposed to the base unit serving cellular phones that can accommodate many portable units. More technically speaking, with the cordless telephone, the RF link between the handset and base unit is referred to as point-to-point communication, meaning two-way. With the cellular telephone, the RF link between the portable unit and base is referred to as point-to-multi-point, meaning that the base unit can talk to any portable unit of the cellular system.

A further distinction is that the base unit of the cellular system is providing a multiple access technique referred to as switching. Accordingly, the RF link provides both a communication and switching function. In contrast, the cordless base is not providing this switching function and the RF feature serves merely to replace the cord.

In contradiction to the appellant's witness, Dr. Le-Ngoc introduced evidence that a cellular telephone system need not rely on the public switched telephone system to effect communication between two cellular telephones being served by the same base unit. This is in contrast to cordless telephones that must always rely on the public system.

The respondent's second witness was Mr. William A. Claypole. Mr. Claypole is presently a manager of International Nomenclature Development, Customs Programs, Department of National Revenue for Customs and Excise. He is also the Customs delegate to the Harmonized System Committee's Meetings in Brussels. He introduced evidence of the classification of cordless telephones in the European Economic Community and other countries. He also provided evidence of recent recommendations by the Review Sub-Committee to the Harmonized System Committee to amend the nomenclature of the *Customs Tariff* to mention cordless telephones under tariff heading No. 85.17.

### ARGUMENTS

At the hearing, the appellant presented two main arguments to support the contention that cordless telephones should be classified under heading No. 85.25. The main argument was that cordless telephones, like cellular telephones, operate by means of RF and cellular telephones are classified under heading No. 85.25. In further support to this argument, the appellant indicated that a majority of the electronic components in a cordless telephone relate to the RF function. Also, the CSA classifies cordless telephones in the radio equipment category. In addition, the appellant argued that in the United States cordless telephones have been classified under heading No. 85.25 since 1989 and that tariff classifications in other countries should be taken into account.

The appellant placed great emphasis on the similarities between both the cellular and cordless telephones. Both convert acoustical energy into radio waves that are transmitted between a portable unit and a base unit where the radio waves are demodulated back into electrical energy and fed into the public switched telephone system. As such, the appellant argued that the two telephones can be viewed as similar in respect to their interfacing with the public system. And because the cellular telephone was classified under tariff heading No. 85.25, so should the cordless telephone.

The appellant also argued that the CSA classification of cordless telephones in the radio equipment category is a significant consideration for tariff classification purposes. Because the cordless telephone must meet radio service standards while the corded telephone need not, they are more properly classified for tariff purposes as apparatus for radio-telephony.

It was further argued by the appellant that because the majority of the electronic circuitry in the cordless telephone is RF circuitry and circuitry not unique to either the corded or cordless telephone, proper tariff classification must reflect this with the goods being classified as transmission apparatus for radio-telephony.

To bolster its argument, the appellant offered dictionary definitions of several terms including "transceiver," "telephony," "radio-telephony," "radio telephone," and "radio frequency." It drew particular attention to two terms, first, "radio frequency," which is defined by Webster's Third New International Dictionary as "an electro magnetic wave frequency intermediate between audio frequency and infrared frequencies used in radio and television transmission." Second, "radio-telephony," which is defined by the same dictionary as "telephony carried on by the aid of radio waves without connecting wires." The appellant did not elaborate upon this argument at the hearing. However, in its brief, after providing the definitions and informing the Tribunal that the goods employ radio frequencies between 30 and 300 MHz, the appellant concluded that the goods should properly be classified under tariff heading No. 85.25.

The respondent argued that the goods operate as part of the public switched telephone system over which communications are primarily effected by wire. While conceding that the base unit and handset are connected by FM radio signals, the respondent pointed out that such signals are converted to electrical impulses and introduced into the telephone network. It was submitted by the respondent that it is the connection between the base unit and the telephone system that makes the device useful and defines the key function of the goods. It was argued that the appellant ignores this fact while emphasizing that the base unit and handset exchange radio signals.

The respondent submitted that the cordless telephone is a composite machine consisting of two or more machines or appliances of different kinds, fitted together to form a whole, each performing separate and complementary functions as defined in Note 3 to Section XVI of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*. Referring to the same note, the respondent argued that such composite machines are classified according to the principal function of the composite machine and that the goods principally function as part of the public system, the principle feature of which is it being wired.

In contradiction to the appellant's assertion that the United States classification of cordless telephones must be considered for purposes of Canadian classification, the respondent argued that the classification given by the European Economic Community and other countries must also be considered. It was argued that the vast majority of countries appear to classify the goods under tariff heading No. 85.17 and that future amendments to the Harmonized System would clearly reflect this. As such, the respondent argued that the goods are properly classified under the heading for line telephones.

The respondent also emphasized that the base of the cordless telephone is part of the goods subject to tariff classification and owned by the subscriber to the public network whereas classification of a cellular telephone does not include consideration of the base station, which is owned by a second party and quite removed from the portable unit.

The respondent further submitted that the Tribunal must consider all aspects of the goods to determine what the goods are fundamentally while not being dazzled by "electronic wizardry."

He also submitted that the goods are described as telephones in common parlance and in the dictionary definitions supplied by the appellant and that the goods are bought and sold as telephones and not as radio devices.

The respondent concluded that, in light of the above, the appeal should be dismissed.



## REASONS

To facilitate uniform classification of internationally traded goods, the *Customs Tariff* contains general rules for the interpretation of the Harmonized System. Section 10 of the Act provides that classification of goods shall be determined in accordance with the General Rules unless otherwise provided. By employing the term "shall" in section 10, the legislature has indicated that reference is not a matter of discretion and must be made.

Rule 1 of the General Rules states that, *inter alia*, for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. At issue in this appeal is whether the goods should be classified under tariff heading No. 85.17 as "Electronic apparatus for line telephony ... " or, as claimed by the appellant, under tariff heading No. 85.25 as "Transmission apparatus for radio-telephony.... " When reference is made to the terms of the headings, it is apparent that both refer to "apparatus" to facilitate "telephony," or simply telephone apparatus. The basic distinction is the qualification of radio versus line-telephony.

*The Trimont Corporation Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*<sup>3</sup> decision, referred to by the respondent in his brief contains the proposition that in considering the various provisions of tariff classification one must use the every day, ordinary meaning that is generally given to words. If one adopts this approach, one is left with the proposition of whether the goods in issue are more properly classified, using every day, ordinary language, as radio telephones or line telephones. This exercise is assisted by the reasoning adopted in *IMS International Mailing Systems Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>4</sup> also employed by the respondent in his brief, which contains the proposition that one must define a tariff item by looking to the primary function of the goods.

Unlike portable telephones, to be functional both the cordless and corded telephones must be physically connected to the public switched telephone system. Though the cordless telephone employs a radio component, it is merely an ancillary and peripheral component to the unit that must be connected to the line system to effect communication. While the radio component has increased the utility and convenience of the goods, nevertheless the goods are sold, essentially, to interface with and to effect line-telephony.

Both radio and line telephones have their own tariff heading and, accordingly, a telephone cannot be classified as both. At issue is whether the radio component or line component defines the primary function. If one were to order the relative significance of the two features and classify the goods according to the most significant, the cordless telephone would be classified as a line telephone because the radio component in a cordless telephone simply replaces the cord from a corded telephone and nothing more. This classification is also most consistent with ordinary, every day parlance.

In classifying the goods, one can also look to the definitions submitted by the appellant. According to Webster's Third New International Dictionary, "radio-telephony" is defined as "telephony carried on by the aid of radio waves without connecting wires." The term "telephony,"

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3. (1961), 2 T.B.R. 244 (Tariff Board).

4. (1988), 18 C.E.R. 57 (Tariff Board).

according to the Random House Dictionary is defined as "a system of telecommunication in which telephonic equipment is employed in the transmission of speech or other sound between points, with or without the use of wires." By combining the two definitions, it can be argued that radio-telephony is a system of telecommunication in which sound or speech is transmitted by means of radio waves without connecting wires. Clearly, by employing the cordless telephones in question, no telecommunication is possible without the use of connecting wires to the public switched telephone system. Accordingly, it can be argued that the cordless telephone is not a radio telephone classified as "Transmission apparatus for radio-telephony ..." and is more properly considered a line telephone classified under heading No. 85.17 as "Electrical apparatus for line telephony.... "

The Tribunal did not find the appellant's argument employing the analogy between the cellular and cordless telephone to be persuasive. Many differences between the two systems were highlighted. Most significant is the fact that the base unit of the cordless telephone forms part of the goods subject to tariff classification whereas the base station employed by the cellular telephone does not. The cordless telephone, as the subject of tariff classification, must connect to the outside system via wire whereas the cellular telephone, as the subject of tariff classification, connects via radio signals.

The Tribunal notes that it is not bound by the tariff classification of any other country. Whatever recommendations have been made for future amendments to the headings of the *Customs Tariff* are also considered irrelevant.

The Tribunal also finds the argument employing CSA standards unpersuasive. The Tribunal recognizes that the goods incorporate radio components and that the classification of corded and cordless telephones under different CSA standards would involve considerations distinct from those employed in tariff classification.

#### CONCLUSION

The appeal is dismissed. The Tribunal finds that the cordless telephones are properly classified under tariff item No. 8517.10.00 as telephone sets.

Sidney A. Fraleigh

Sidney A. Fraleigh  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Arthur B. Trudeau

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