

Ottawa, Thursday, October 8, 1992

Appeal No. AP-90-184

IN THE MATTER OF an appeal heard on August 28, 1992,
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 October 29, 1990, under subsection 63(3) of
the *Customs Act*.

BETWEEN

ABDULAZIZ BADRUDIN HARJI

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-184

ABDULAZIZ BADRUDIN HARJI

Appellant

and

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

Respondent

The appellant, a landed immigrant from Kenya, declared, upon arrival in Canada as goods to follow, six handmade mulberry silken carpets to be classified under tariff item No. 9807.00.00, a duty-free tariff item which covers settlers' household or personal effects. The carpets were purchased and imported directly from India to Canada after the appellant's arrival in Canada. Consequently, officials of the Department of National Revenue for Customs and Excise classified the carpets under tariff item No. 5701.90.90, and duties were assessed accordingly. The issue is whether the carpets imported from India should be classified under tariff item No. 9807.00.00 as contended by the appellant or whether they are more properly classified under tariff item No. 5701.90.90 as determined by the respondent.

HELD: *The appeal is dismissed. The goods were imported into Canada directly from India while the appellant emigrated from Kenya. Therefore, the appellant did not have possession and use of the goods prior to their shipment to Canada, which is a requirement to benefit from tariff item No. 9807.00.00.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: August 28, 1992
Date of Decision: October 8, 1992*

*Tribunal Members: W. Roy Hines, Presiding Member
Arthur B. Trudeau, Member
Robert C. Coates, Q.C., Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearance: Howard Baker, for the respondent

Appeal No. AP-90-184

ABDULAZIZ BADRUDIN HARJI

Appellant

and

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

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*.¹ The appellant, a landed immigrant from Kenya, declared, upon arrival in Canada on April 2, 1989, as goods to follow, six handmade mulberry silken carpets under tariff item No. 9807.00.00 of the *Customs Tariff*.² No duties or taxes were levied on these goods at the time since goods that are classified under tariff item No. 9807.00.00 benefit from duty-free treatment.

However, because the carpets were imported directly from the vendor in India to Canada and the documentation regarding the carpets was dated after the appellant's arrival in Canada, officials of the Department of National Revenue for Customs and Excise classified the carpets under tariff item No. 5701.90.90, and duties were assessed accordingly.

The issue is whether the carpets imported from India should be classified under tariff item No. 9807.00.00 as contended by the appellant or whether they are more properly classified under tariff item No. 5701.90.90 as determined by the respondent.

The relevant nomenclature of the *Customs Tariff* reads as follows:

57.01	<i>Carpets and other textile floor coverings, knotted, whether or not made up.</i>
5701.90	<i>-Of other textile materials</i>
5701.90.90	<i>---Other</i>
9807.00.00	<i>Goods, as defined by regulations made by the Minister, imported by a settler for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the</i>

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

settler's arrival in Canada, under such regulations as the Minister may make.

Rule 1 of the General Rules for the Interpretation of the Harmonized System³ (the General Rules) states that:

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.

Section 3 of the *Settlers' Effects Acquired with Blocked Currencies Remission Order*⁴ (the Remission Order), as it read then, provides that:

Remission is hereby granted of the customs duty and excise taxes payable on goods imported into Canada by a settler within three years after his arrival in Canada where

(a) the settler emigrated to Canada from a country designated by the Minister of National Revenue as a country that is applying restrictions on the transfer of capita of emigrants therefrom to Canada; and

(b) the goods are imported by the settler from the country from which he emigrated to Canada where they were purchased by him or on his behalf with funds that were on deposit to his credit in that country at the time of his emigration.

The appellant did not appear at the hearing. However, in his brief, he argued that the carpets were acquired prior to his arrival in Canada on April 2, 1989. The goods in issue were acquired in 1988 in Kashmir, India, but were not shipped to the appellant in Kenya due to exchange control restrictions in Kenya and because of the delay which would have resulted had the goods been shipped to Canada via Kenya. Furthermore, the appellant argued that the carpets were his personal effects as they were replacements for ones which he had in Kenya.

The respondent argued that the appellant had the onus to prove that the respondent's assessment was wrong, but failed to do so. In order to qualify under tariff item No. 9807.00.00, the goods must satisfy three conditions: they must be (1) owned by, (2) in the possession and (3) in the use of the settler prior to the settler's arrival in Canada. Counsel for the respondent contended that the appellant's carpets do not meet the conditions required for duty-free entry under tariff item No. 9807.00.00. Moreover, in order to qualify under section 3 of the Remission Order, the goods must be imported from the country from which the settler emigrated. As the goods were imported from India and the appellant emigrated from Kenya, the goods do not qualify for remission of duty.

3. S.C., 1987, c. 49 (vol. II), Schedule I.

4. C.R.C., 1978, c. 790.

There is clear evidence that the goods were exported from India while the appellant emigrated from Kenya and that the appellant neither had possession nor use of the goods prior to their shipment in Canada. The appellant, indeed, stated in his brief that "The said 'carpets' were replacement of carpets we were using in Kenya" and that the carpets were shipped directly from Kashmir, India, to Canada. As the evidence indicates that all the conditions for classification under tariff item No. 9807.00.00 as settlers' effects have not been met, the respondent's decision is confirmed and the appeal is dismissed.

W. Roy Hines

W. Roy Hines
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member