

**CORRIGENDUM**

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-166**

**DIAMANT BOART TRUCO LTD.**

**Appellant**

**and**

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

**Respondent**

*At issue is the proper tariff classification of the subject goods. The appellant claims that the goods are circular saw blades of agglomerated synthetic or natural diamond for use in stone-cutting machines pursuant to tariff item No. 6804.21.10.00. The respondent, the Deputy Minister of National Revenue for Customs and Excise, considers that the goods are more properly classified under tariff item No. 6804.21.90.00 as other millstones, grindstones, grinding wheels and the like of agglomerated synthetic or natural diamond.*

**HELD:** *The appeal is allowed. The evidence is clear and uncontested that the subject blanks have the essential characteristic of circular saw blades and can only be used for completion into circular saw blades. The evidence is equally clear that the goods are destined for use only in stone-cutting machines. It is the Tribunal's view that tariff item No. 6804.21.10.00 refers to those who work in the stone-cutting industry, and it is to those professionals that the Tribunal must turn in evaluating the meaning of the phrase "stone-cutting machines." The uncontroverted evidence from such people is that this phrase is understood to mean machines that cut both natural and manufactured stone. In view of this and because the subject goods are destined only for use in "stone-cutting machines," the Tribunal concludes that the blanks in issue are more properly classified under tariff item No. 6804.21.10.00.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 25, 1992  
Date of Decision: July 27, 1992*

*Tribunal Members: Charles A. Gracey, Presiding Member  
W. Roy Hines, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: Clifford Sosnow*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Michael A. Kelen, for the appellant  
Alain Préfontaine, for the respondent  
Michael A. Kelen and Richard R. Ducharme, for the intervenors Bomba Diamond Tools Co. Ltd., Graff Diamond Products Ltd., Lamage Division of J.K.S. Industries Inc. and Diamond Systems Inc., in support of the appellant*

Ottawa, Monday, July 27, 1992

**Appeal No. AP-90-166**

IN THE MATTER OF an appeal heard on June 25, 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  
November 22, 1990, with respect to a request for a  
re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**DIAMANT BOART TRUCO LTD.**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The circular steel saw blade blanks imported by the appellant are properly classified under tariff item No. 6804.21.10.00 as circular saw blades and parts thereof for use in stone-cutting machines.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

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Alain Préfontaine, for the respondent*

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**DIAMANT BOART TRUCO LTD.**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
W. ROY HINES, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

The appellant, Wheel Trueing Tool Company of Canada Ltd. (now named Diamant Boart Truco Ltd.), is a Canadian manufacturer of diamond saw blades for stone-cutting machines. Its manufacturing facilities are located in Mississauga, Ontario, where it employs 20 to 40 people. Between the period January 6, 1989, to March 10, 1989, the appellant imported circular steel saw blade blanks or cores (the subject goods) of varying diameters and widths for the manufacture of diamond saw blades.

At issue is the proper tariff classification of the subject goods. The appellant claims that the goods are circular saw blades of agglomerated synthetic or natural diamond for use in stone-cutting machines pursuant to tariff item No. 6804.21.10.00. The respondent, the Deputy Minister of National Revenue for Customs and Excise, considers that the goods are more properly classified under tariff item No. 6804.21.90.00 as other millstones, grindstones, grinding wheels and the like of agglomerated synthetic or natural diamond.

According to the evidence gathered at the hearing, the circular steel saw blade blanks have a central arbour hole. In some instances, the blanks have slots and pin holes. The blank saw blades are manufactured into finished saw blades by laser welding or by brazing diamond impregnated segments to the periphery of the blanks. The diamond segments are manufactured by a process called the "sintering process" whereby different sizes and concentrations of manufactured or natural diamond particles are held in a metallurgical powder matrix, such as tungsten, to the required shape. After welding, the diamonds are exposed by grinding. The blades are then labelled and sometimes painted prior to sale.

Uncontroverted evidence was provided at the hearing that the blanks are only used for the manufacture of circular saw steel blades. These blades are destined only for use with machines that cut a variety of natural stone, such as granite or limestone, and manufactured stone such as concrete, tile, interlocking paving stone and brick. The witnesses testified that the manufactured stone is composed of natural stone and other materials which act like a glue to hold the natural stone together. The witnesses also said that the machines, for which the blades are destined, are referred to as "stone-cutting machines" irrespective of whether the stone being cut is natural or manufactured.

The tariff items as presented in Schedule I of the *Customs Tariff*,<sup>1</sup> together with the applicable General Rules for the Interpretation of the Harmonized System (the General Rules) and the corresponding explanatory notes, read as follows:

68.04 Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials.

6804.10.00.00 -Millstones and grindstones for milling, grinding or pulping

-Other millstones, grindstones, grinding wheels and the like:

6804.21 --Of agglomerated synthetic or natural diamond

6804.21.10.00 ---Circular saw blades and parts thereof for use in stone cutting machines

6804.21.90.00 ---Other

According to Rule 2(a) of the General Rules:

*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.*

The Explanatory Notes to this Rule state:

*The provisions of this Rule also apply to **blanks** unless these are specified in a particular heading. The term "**blank**" means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part.*

The appellant presented several arguments to support its chosen tariff classification. The appellant said that circular saw blades with diamond segments were the subject of a Tariff Board decision in *Imperial Granite Inc. and Heritage Memorials Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>2</sup> In that case, the Board held that the saw blades, which were used to cut natural and artificial stone, were part of a stone-working machine and thus qualified for duty-free status pursuant to tariff item 42700-6 of the *Customs Tariff* prior to the

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1. R.S.C., 1970, c. C-41, as amended.

2. (1986) 11 T.B.R. 164.

Harmonized Commodity Description and Coding System<sup>3</sup> (the Harmonized System). Following the introduction of the Harmonized System, the goods in issue no longer qualified for duty-free entry. The appellant requested restoration of the pre-Harmonized System duty rate. On May 18, 1990, the then Minister of State (Privatization and Regulatory Affairs), the Honourable John McDermid, advised the appellant that it was amending the new *Customs Tariff* retroactive to January 1, 1988, to provide for duty-free entry of "steel blanks used in the manufacture of saw blades for stone-cutting machines." The appellant says that this led to the creation of tariff item No. 6804.21.10.00 on June 28, 1990. Thus, according to the appellant, the tariff item under which the appellant seeks to have the subject goods classified was enacted by Parliament at the request of the appellant and intended for the subject goods.

The appellant also said that the subject goods fit the provisions of Rule 2(a) of the General Rules and the accompanying Explanatory Notes in that the goods are blanks that have the approximate shape or outline of the finished saw blades and that they are imported for completion only into diamond saw blades for use in stone-cutting machines.

In addition, the appellant argued that tariff item No. 6804.21.10.00 includes circular saw blades for use in stone-cutting machines that cut both natural and manufactured stone. The appellant said that the phrase "stone-cutting machines" must be interpreted according to the modern meaning of the term as interpreted by those in the trade. The witnesses, knowledgeable in the stone-cutting trade, all testified that stone-cutting machines include machines that cut both natural and manufactured stone products. Indeed, the appellant's advertising literature for the subject goods indicates that the appellant's goods can be used for a variety of stone-cutting machines to dry cut natural stone, brick, tile, wall tile, sand stone and concrete pipe, reinforced concrete, etc.

The appellant finally argued that Parliament did not use the words "natural stone-cutting machines," which it could have done, if it intended to limit the tariff item to blades restricted to cutting natural stone without any manufacturing or value added. As an example of such a distinction, the appellant cites tariff item No. 6801.00.00 where Parliament has clearly limited the products in issue to "natural" stone.

The respondent argued that the tariff item in issue only encompasses machines that cut natural stone. Citing French and English dictionary definitions of the word "*pierre*" and "stone," the respondent argued that the plain and ordinary meaning of the word "stone" or "*pierre*" does not encompass artificial stone. As the evidence clearly indicates that the goods are destined for use with machines that cut both natural and artificial stone, the goods were properly classified by the respondent under tariff item No. 6804.21.90.00.

The evidence is clear and uncontested that the subject blanks have the essential characteristic of circular saw blades and that the blanks can only be used for completion into circular saw blades. The evidence is equally clear that the goods are destined for use only in machines that cut stone. The question at issue then is whether the phrase "stone-cutting machines" in tariff item No. 6804.21.10.00 is restricted to machines that cut only natural stone. In the

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3. Customs Co-operation Council, Brussels, First Edition, 1986.

Tribunal's view, the phrase cannot be so restricted and encompasses machines that cut manufactured stone as well.

The Tribunal agrees with the appellant that the phrase "stone-cutting machines" must be interpreted as that phrase is understood by those working in the stone-cutting trade. In the Federal Court of Appeal decision in *Olympia Floor and Wall Tile Company v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>4</sup> Mr. Justice Ryan, speaking for the court, stated:

*It seems reasonably clear that, if a term used in the Customs Tariff has a particular meaning in a trade, it should be interpreted in that sense, But there are, of course, many words used in the Customs Tariff which are quite ordinary words, words used in ordinary conversation in an everyday way; such words are to be read in their ordinary sense.*

In that case, the Court examined whether the Tariff Board was correct in interpreting the meaning of the phrase "earthenware tiles" according to its common and ordinary meaning. In holding that the Tariff Board should have interpreted the phrase according to its trade usage, the Court, citing a previous Exchequer Court ruling which stated that the phrase "lard compound" had to be analyzed pursuant to its trade meaning, said:

*The term "earthenware tiles" is no more an expression used in common speech than is the term "lard compound". It is the sort of term that seems almost to invite evidence on whether it has a trade meaning.*<sup>5</sup>

In the Exchequer Court decision referred to by Mr. Justice Ryan, the Court, through Mr. Justice Kerr, made the following comments on the Tariff Board's assessment of "lard compound" according to its trade usage:

*We must, therefore, first look to the meaning of "lard compound" as used in item 1305-1. This expression is not defined in the Customs Tariff, or in any statute in pari materia so far as I am aware. It describes an article of commerce and is not, I think, an expression in common speech, except by persons who manufacture, sell or deal in the article. I think it was open to the Tariff Board to determine the sense in which the expression is used in the mouths of those persons and to construe it, as used in item 1305-1, in that sense.*<sup>6</sup>

The Tribunal considers these comments to be applicable to the case at bar. It is the Tribunal's view that tariff item No. 6804.21.10.00 refers to those who work in the stone-cutting industry, and it is to those professionals that the Tribunal must turn in evaluating the meaning of the phrase "stone-cutting machines." The uncontroverted evidence from such people is that this phrase is understood to mean machines that cut both natural and manufactured stone. In view of this and because the subject goods are destined only for use in "stone-cutting machines," the Tribunal

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4. 5 C.E.R. 562, at 565.

5. *Ibid.*, at 566.

6. *Hunt Foods Export Corp. of Canada Ltd. et al. v. The Deputy Minister of National Revenue for Customs and Excise*, [1970] Ex.C.R. 828, at 838.

concludes that the blanks in issue are more properly classified under tariff item No. 6804.21.10.00.

Accordingly, the appeal is allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Desmond Hallissey  
Desmond Hallissey  
Member