



Ottawa, Wednesday, December 16, 1992

Appeal No. AP-90-192

IN THE MATTER OF an appeal heard on October 22, 1992, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated November 23, 1990, with respect to a request for re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

BLACK & DECKER CANADA INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-192

BLACK & DECKER CANADA INC.

Appellant

and

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

Respondent

The appellant imports lightweight, hand-held vacuum cleaners called "CarVacs" which are designed for use in vehicles and boats, and powered by the vehicle or boat battery. The issue in this appeal is whether the goods are more properly classified as "Electro-mechanical tools for working in the hand, with self-contained electric motor" under tariff item No. 8508.80.00, as claimed by the appellant, or as "Electro-mechanical domestic appliances, with self-contained electric motor" under tariff item No. 8509.10.00, as determined by the respondent.

HELD: *The appeal is dismissed. In the Tribunal's view, the goods in issue are appliances used for performing domestic chores or activities and, therefore, are properly classified under tariff item No. 8509.10.00. The word "domestic" in the tariff heading does not restrict the location of the performance of such activities to within the four walls of a house.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: October 22, 1992
Date of Decision: December 16, 1992*

*Tribunal Members: Michèle Blouin, Presiding Member
Kathleen E. Macmillan, Member
Robert C. Coates, Q.C., Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

*Appearances: Dennis A. Wyslobicky, for the appellant
Dogan Akman, for the respondent*

Appeal No. AP-90-192

BLACK & DECKER CANADA INC.

Appellant

and

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

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
KATHLEEN E. MACMILLAN, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated November 23, 1990, made pursuant to subsection 63(3) of the Act.

Black & Decker Canada Inc. is a manufacturer and importer of consumer products which it distributes to retailers throughout Canada. The goods in issue are "CarVacs" (Model 9509) which the appellant purchases from its parent corporation in the United States. The "CarVac" is a lightweight, hand-held vacuum cleaner with a 12-volt electric motor and attached cord with a 12-volt plug at the end. It is designed for use in vehicles and boats, where it is plugged into the cigarette lighter and powered by the vehicle or boat battery.

The goods in issue were imported on April 25, 1989. At that time, they were classified under tariff item No. 8509.10.00 of the *Customs Tariff*² as "Electro-mechanical domestic appliances, with self-contained electric motor." On July 18, 1989, the appellant requested, pursuant to subsection 60(1) of the Act, a re-determination of the tariff classification of the goods. The appellant submitted that the goods were more properly classified under tariff item No. 8508.80.00 as "Electro-mechanical tools for working in the hand, with self-contained electric motor." On November 3, 1989, a designated officer classified the goods under statistical subdivision No. 8509.10.00.90 as "Other [v]acuum cleaners." On November 23, 1990, as a result of a request for further re-determination, the Deputy Minister classified the goods under tariff item No. 8509.10.00. Black & Decker Canada Inc. appealed this decision to the Tribunal.

The issue in this appeal is whether the goods are more properly classified as "Electro-mechanical tools for working in the hand, with self-contained electric motor" under tariff item No. 8508.80.00, as claimed by the appellant, or as "Electro-mechanical domestic appliances, with self-contained electric motor" under tariff item No. 8509.10.00, as claimed by the respondent.

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

The appellant called one witness, Mr. Craig Berry, Product Manager, Consumer Power Tools Division, Black & Decker Canada Inc. Mr. Berry's responsibilities include the marketing of the "CarVac," which is done through the appellant's Consumer Power Tools Division. Mr. Berry explained how the "CarVac" worked and why it was not readily adaptable to use in the home, and reviewed corporate material supplied with the product that contained various references that described the product as a "tool." He also contrasted the "CarVac" and the appellant's "Dustbuster," which is designed to be charged by being plugged into ordinary electrical sockets. He noted how the Dustbuster was marketed through the Housewares Division as opposed to the Consumer Power Tools Division.

In argument, counsel for the appellant submitted that classification under the *Customs Tariff* must begin at the heading level and thus, in the instant case, one could only classify the goods as "vacuum cleaners," which appears only at the subheading level under heading No. 85.09, if one has already determined that the goods come within the wording of that heading. It was the appellant's contention that the goods did not come within the wording of heading No. 85.09 because they were not "domestic appliances" and that the goods were more properly described as "tools for working in the hand" under heading No. 85.08. The Tribunal notes that the other key words/phrases in the two headings, "electro-mechanical" and "self-contained motor," are found in both headings and were not in dispute.

To give meaning to the word "tool," counsel for the appellant offered various dictionary definitions. He summarized these as meaning instruments of manual operation or instruments used or worked by hand, and submitted that such a meaning would clearly encompass the "CarVac." He reinforced this definition by examples from the Explanatory Notes³ to heading No. 85.08. He also acknowledged the respondent's suggestion that products under heading No. 85.08 only refer to products used in industrial settings by indicating that the Explanatory Notes to the heading include such products as "Electric hand scissors ... for use in ... households," "Hedge trimmers" and "Lawn edge cutters."

Counsel then discussed why the goods should not be considered "domestic appliances." Counsel first stated that the Explanatory Notes to heading No. 85.09 indicate that this phrase means "appliances normally used in the household." To define "household," counsel referred to various dictionary definitions which emphasize a physical structure, a spatial restriction, a domestic establishment. He contended that the "CarVac" is not for use in the house and that the places where it can be used, for example, a boat, camper or motor home, do not have any relationship to a house or family. Counsel also referenced various definitions of the word "domestic" and submitted that these definitions also emphasized a structure and a place of residence, and are restrictive in nature. Finally, counsel reviewed the various goods set out in the Explanatory Notes to the two headings. He submitted that every item found under heading No. 85.09 is commonly used inside a home, whereas certain items under heading No. 85.08 can be used both inside and outside a home (e.g. a circular saw) or just outside a home (e.g. a hedge trimmer).

3. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, First Edition, Brussels, 1986.

Counsel for the respondent submitted that, rather than looking to dictionary definitions and the Explanatory Notes to give meaning to the phrase "domestic appliances" in heading No. 85.09, the Tribunal should first look to the Chapter Notes to Chapter 85 and in particular to Note 3 to Chapter 85. This note states, in part, that heading No. 85.09 covers "only the following ... machines of the kind commonly used for domestic purposes: (a) Vacuum cleaners." Counsel invited the Tribunal to interpret the word "domestic" in light of the words surrounding it in this Note and, in particular, in light of the words "kind," "commonly" and "purposes." He submitted that all of these words, to varying degrees, are non-restrictive words, which allows one to view the word "domestic" in a non-restrictive manner, in contrast to the appellant's submissions that the word should be read restrictively.

Counsel also referred to the Explanatory Notes to heading No. 85.09 and indicated that, after the wording in this Note relied on by the appellant, it goes on to state that the way to judge whether a particular appliance has the characteristics of a "domestic appliance" is that it is not required to operate at a level in excess of "household requirements." This phrase, he submitted, takes one outside of a requirement of use in a house proper and encompasses requirements of a household nature wherever they may be encountered. This echoes his earlier question in relation to the appellant's distinction between a home and motor home, when he stated "What distinguishes living in a motor home from living in a house? Is one less domestic by living in a motor home than [by] living in a house?"

With respect to the appellant's arguments in support of classifying the goods under heading No. 85.09, counsel for the respondent submitted that to do so would violate the *ejusdem generis* rule, i.e. that general words at the end of an enumeration of persons or things must be limited in relation to the words that precede it. He argued that the goods in issue are not "tools" of the kind of saws, drills, wrenches and routers that are enumerated before the tariff item that the appellant proposes. Counsel also argued that if the Tribunal considered that the goods in issue could be placed under both headings, then under Rule 3 (a) of the General Rules for the Interpretation of the Harmonized System⁴ (the General Rules), the goods should be classified under heading No. 85.09, as the expression "tools for working in the hand" would not be a very specific description, and thus implicitly heading No. 85.08 would be a more specific description.

The Tribunal considers that the "CarVacs" in issue are properly classified under tariff item No. 8509.10.00. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the General Rules and corresponding Canadian Rules, that must govern the interpretation of the goods in issue. The Tribunal is particularly cognizant of Rule 1 of the General Rules, which, as noted in its decision in *York Barbell Co. Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,⁵ is of the utmost importance when classifying goods under the Harmonized Commodity Description and Coding System.⁶ Rule 1 states that classification is first determined by the wording of the tariff headings and any relative Section or Chapter Notes.

4. R.S.C. 1985, c. 41 (3rd Supp.), Schedule I.

5. (1992) 5 TCT 1150.

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

The Tribunal considers that the phrase "domestic appliances" should not be read in the manner proposed by the appellant. In light of the words "commonly" in Note 3 to Chapter 85 and "normally" in the Explanatory Notes to heading No. 85.09, which both modify the phrase "domestic appliances," the Tribunal believes that this phrase should not be read restrictively and that its use relates to the performance of domestic chores, whether that performance occurs in a house or outside the four walls of a house. In this respect, it is difficult to understand how domestic activities performed in a motor home are substantively different from the performance of the same activities in a house. Finding that the goods in issue are properly classified under heading No. 85.09, the Tribunal also agrees with their classification at a subheading level as vacuum cleaners. Finally, to the extent that the goods in issue may be said to be described under heading No. 85.08, we find, based on Rule 3 (a) of the General Rules, that they are more specifically described under heading No. 85.09.

Michèle Blouin

Michèle Blouin
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member