

Ottawa, Thursday, January 30, 1992

Appeal No. AP-90-174

IN THE MATTER OF an appeal heard on October 15, 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 January 16, 1991, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

RESEARCH PRODUCTS/BLANKENSHIP OF CANADA LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The Tribunal finds that "incinolets", being electric incinerating toilet systems, should be classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

John C. Coleman

John C. Coleman
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Charles A. Gracey

Charles A. Gracey
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-174

RESEARCH PRODUCTS/BLANKENSHIP OF CANADA LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE Respondent
FOR CUSTOMS AND EXCISE

The issue in this appeal is the proper tariff classification of certain stainless steel devices that serve as toilets. The goods are referred to as "incinolets," being electric incinerating toilet systems used to break down human waste. They are comprised of a toilet seat mounted on a stainless steel container. The unit is used to evaporate urine and to dehydrate and incinerate solid waste and toilet paper. Only inorganic ash remains. The units are typically found in industrial, commercial and recreational locations where domestic plumbing or sewage systems are not available.

HELD: *The Tribunal finds that the incinolets should be classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 15, 1991
Date of Decision: January 30, 1992

Tribunal Members: John C. Coleman, Presiding Member
W. Roy Hines, Member
Charles A. Gracey, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appearances: D.J. Bowering, for the appellant
J.C. de Pencier, for the respondent

Appeal No. AP-90-174

RESEARCH PRODUCTS/BLANKENSHIP OF CANADA LTD. Appellant

and

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

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

The issue in this appeal is the proper tariff classification of certain stainless steel devices that serve as toilets and operate by incinerating human waste. The respondent contends that the goods should be classified under tariff item No. 8516.79.00 as "other electro-thermic appliances of a kind used for domestic purposes." The appellant contends that the goods should be classified under tariff item No. 8419.89.40 as other mechanically operated "machinery, plant or laboratory equipment ... for the treatment of materials by a process involving a change of temperature such as heating ... other than machinery or plant of a kind used for domestic purposes.... " It is always open to the Tribunal to choose a classification, based on the evidence, not proposed or argued by the parties.

The goods in issue are referred to as "incinolets," being electric incinerating toilet systems used to break down human waste. They are comprised of a toilet seat mounted on a stainless steel container. The container incorporates a heating system that can attain temperatures of 1,400°F. The unit is used to evaporate urine and to dehydrate and incinerate solid waste and toilet paper. The unit is activated by the user stepping on a foot pedal that turns on a heating element and blower. Only inorganic ash remains. Incinolets are typically found in industrial, commercial and recreational locations where domestic plumbing or sewage systems are not available. The "Model TR" toilet systems, designed for industrial use, are the goods in issue.

The goods were imported into Canada on June 2, 1989, under tariff item No. 7324.90.90. This classification was later verified by the Deputy Minister of National Revenue for Customs and Excise on re-determination. At the hearing, counsel for the respondent argued that the goods are more properly classified under tariff item No. 8516.79.00 as "other electro-thermic appliances of a kind used for domestic purposes."

The relevant tariff items are:

84.19 Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or

cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric.

-Other machinery, plant and equipment:

8419.89 --Other

8419.89.40 ---Mechanically operated

85.16 Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading No. 85.45.

-Other electro-thermic appliances:

8516.79.00 --Other

85.43 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter.

8543.80 -Other machines and apparatus

8543.80.90 ---Other

Section 10 of the *Customs Tariff*¹ provides that reference shall be made to the General Rules for the Interpretation of the Harmonized System (the General Rules). Rule 1 of the General Rules provides that the classification of goods shall be determined "according to the terms of the headings and any relative Section or Chapter Notes.... " Similarly, the first Canadian Rule states that "the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes.... "

In order for the goods to be classified under tariff item No. 8419.89.40, as requested by the appellant, the Tribunal must find that they are most appropriately described as other mechanically operated "machinery, plant or laboratory equipment ... ," having regard to the Explanatory Notes to the Harmonized Commodity Description and Coding System (the Explanatory Notes)² and any relevant Section or Chapter Notes.

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

2. Customs Co-Operation Council, Brussels, First Edition, 1986; as provided for in section 11 of

The Supplementary Note to Section XVI, which applies to both Chapters 84 and 85, states:

In this Section the term "mechanically operated" refers to those goods which are comprised of a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion.

The mechanical component of the incinolet is associated with the bowl area, which is connected through a series of bars to a foot pedal. When the pedal is depressed, the rear half of the bowl swings back, allowing its contents to drop into the incineration chamber. As this action represents the only mechanical aspect of the goods, the Tribunal believes that they do not qualify as "mechanically operated." In fact, the Tribunal does not believe that the goods qualify as machinery and mechanical appliances, but are more properly considered electrical equipment. As such, the classification proposed by the appellant is inappropriate.

Counsel for the respondent argued that the goods should be classified under tariff item No. 8516.79.00 as "other electro-thermic appliances of a kind used for domestic purposes." The Explanatory Notes to heading 85.16, at (E), state:

*This group includes all electro-thermic machines and appliances **provided** they are **normally used in the household**.*

It is on the basis of this statement that the Tribunal has concluded that the goods should not be classified under this heading.

Exhibit A-5, entitled "Research Products/Blankenship of Canada Ltd., Sales Distribution by Market," lists the total sales of incinolets in Canada from 1966 to October 2, 1991. During this period, 2,121 industrial models have been sold in Canada, including the "Model TR," which is the subject of the importation in question. During the same period, 539 residential models have been sold in Canada. Assuming that the residential models are used for residential purposes and the industrial models are used for industrial purposes, only 539 incinolets are in residential use in Canada, representing 20.3 percent of total sales in Canada. As such, the Tribunal believes that the toilet systems in question are not "normally used in the household" and do not qualify under tariff item No. 8516.79.00. The "Model TR" is the top-of-the-line model and is typically sold to firms rather than to individuals. It is the lower-priced models that are used by individuals in domestic settings, such as cottages and farm houses.

Several other tariff items, which should be addressed, were suggested at the hearing. At the commencement of the hearing, both parties agreed that the goods do not qualify under heading No. 73.24 as "sanitary ware and parts thereof, articles of Section XVI of iron or steel." The appellant brought Note 1(f) of Section XV to the Tribunal's attention, which states that articles of Section XVI (machinery, mechanical appliances and electrical goods) are not covered in Section XV (which includes heading No. 73.24). Counsel for the respondent argued that the goods are not

properly classified under heading No. 84.79 as "machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter." As stated above, the Tribunal does not believe that the goods are properly classified as a machine or mechanical appliance. Both counsel argued that the goods are not properly classified under heading No. 85.14 as "industrial or laboratory electric ... furnaces and ovens.... " The Tribunal is in agreement with this, as it does not believe that incinolets can be described as "industrial or laboratory;" nor does it believe that they are properly considered a furnace or oven.

After a review of the possible tariff classifications, the Tribunal concludes that the goods should be classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. The goods perform the individual function of incinerating human waste.

In making this decision, the Tribunal notes that the classification it has chosen avoids certain anomalies that may have occurred if either of the party's preferred tariff classification prevailed. To find that the goods are "used for domestic purposes" and "normally used in the household," the Tribunal would have to disregard that the goods in question were a model designed for industrial use. Similarly, to find that the goods were "machinery, plant or laboratory equipment," which "heading covers only non-domestic equipment" could lead to a situation where the incinolet models designed for domestic use might be classified differently, although being essentially similar.

Accordingly, the Tribunal finds that incinolets, being electric incinerating toilet systems, should be classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

John C. Coleman
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Presiding Member

W. Roy Hines
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