



Ottawa, Thursday, January 13, 1994

Appeal Nos. AP-90-213 and AP-90-214

IN THE MATTER OF appeals heard on April 20, 1993, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF 10 decisions of the Deputy Minister of National Revenue for Customs and Excise dated December 17, 1990, January 8, 9 and 22, and February 6, 1991, relating to requests for re-determinations under section 63 of the *Customs Act*.

**BETWEEN**

**UNIVERSAL GRINDING WHEEL DIVISION OF  
UNICORN ABRASIVE OF CANADA LTD.  
(NOW DIAMANT BOART CRAELIUS INC.) AND  
DIAMANT BOART CRAELIUS INC.**

**Appellants**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The Tribunal finds that the DIABORIT impregnated diamond drill bits should be classified in heading No. 82.07 as rock drilling or earth boring tools and, more specifically, under tariff item No. 8207.12.90 as other diamond type core drill bits.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal Nos. AP-90-213 and AP-90-214**

**UNIVERSAL GRINDING WHEEL DIVISION OF  
UNICORN ABRASIVE OF CANADA LTD.  
(NOW DIAMANT BOART CRAELIUS INC.) AND  
DIAMANT BOART CRAELIUS INC.**

**Appellants**

**and**

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

**Respondent**

*These are appeals under section 67 of the Customs Act from 10 decisions of the Deputy Minister of National Revenue for Customs and Excise dated December 17, 1990, January 8, 9 and 22, and February 6, 1991, under section 63 of the Customs Act. The issue in these appeals is whether goods called DIABORIT impregnated diamond drill bits or core drill bits are properly classified under tariff item No. 6804.21.90 as other millstones, grindstones, grinding wheels and the like made of agglomerated synthetic or natural diamond, as determined by the respondent, or should be classified under tariff item No. 6804.21.10 as circular saw blades and parts thereof for use in stone cutting machines made of agglomerated synthetic or natural diamond, as claimed by the appellants.*

**HELD:** *The Tribunal finds that the DIABORIT impregnated diamond drill bits should be classified in heading No. 82.07 as rock drilling or earth boring tools and, more specifically, under tariff item No. 8207.12.90 as other diamond type core drill bits.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 20, 1993  
Date of Decision: January 13, 1994*

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

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Patrick J. Lafrange, for the appellants  
Ian M. Donahoe, for the respondent*

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**Appellants**

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**THE DEPUTY MINISTER OF NATIONAL REVENUE  
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**Respondent**

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

**REASONS FOR DECISION**

These are appeals under section 67 of the *Customs Act*<sup>1</sup> (the Act) from 10 decisions of the Deputy Minister of National Revenue for Customs and Excise dated December 17, 1990, January 8, 9 and 22, and February 6, 1991, under section 63 of the Act. The issue in these appeals is whether goods called DIABORIT impregnated diamond drill bits or core drill bits for use with a rock coring drill are properly classified under tariff item No. 6804.21.90 of Schedule I to the *Customs Tariff*<sup>2</sup> as other millstones, grindstones, grinding wheels and the like made of agglomerated synthetic or natural diamond, as determined by the respondent, or should be classified under tariff item No. 6804.21.10 as circular saw blades and parts thereof for use in stone cutting machines made of agglomerated synthetic or natural diamond, as claimed by the appellants.

For the purposes of these appeals, the following are the relevant provisions from Schedule I to the *Customs Tariff*:

- 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.*
- Other millstones, grindstones, grinding wheels and the like:*
- 6804.21 *--Of agglomerated synthetic or natural diamond*
- 6804.21.10 *---Circular saw blades and parts thereof for use in stone cutting machines*
- 6804.21.90 *---Other*

As explained by Mr. Ian McNeil, an individual with extensive experience in the rock drilling tool manufacturing industry and a director of Diamant Boart Craelius Inc., the goods in

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

issue are composed of a crown-shaped segment made up of a powdered metal, also referred to as a matrix, which has synthetic or manufactured diamonds mixed into it, and which segment is brazed to the end of a steel tube or case to produce the drill bit. The goods in issue are attached to a core barrel assembly, which is a circular mechanical device mounted at the bottom of a drill string and which is rotated in a circular motion by the drill string into the ground to obtain core samples. As the goods in issue come into contact with a surface, the powdered metal wears away, thus exposing the diamonds. According to Mr. McNeil, the goods in issue are commonly referred to as "diamond-tipped drill bits" and "diamond thin wall coring bits" and were previously referred to as "diamond hole saws." He stated that he would not characterize the goods in issue as blades and that no one in the industry would characterize them as blades. There was discussion as to whether the diamond particles "grind" or "cut" the rock and, in Mr. McNeil's view, the goods in issue perform a cutting action.

Counsel for the respondent called two expert witnesses, Mr. Irvin Joseph Laporte and Mr. Patrick Vandervorst, who testified concerning the design, function and utilization of the goods in issue. The first expert witness, Mr. Laporte, who was previously Sales and Product Manager of in-hole tools for the appellants and who is currently employed by another manufacturer of diamond core bits, JKS Boyles International Inc., testified that impregnated mining core bits are different from saw blades or hole saws. He stated that the word "grinding" was not a proper description of the drilling process. He also stated that the goods in issue should be called "coring bits" and not "drill bits" because of the critical difference between drilling a hole and coring. He agreed, however, with the term "coring drill bits." He did not accept the term "circular saw blades" nor the suggestion that a diamond core drill is a stone cutting machine, millstone or grinding wheel.

The second expert witness, Mr. Vandervorst, a metallurgist engineer and Manufacturing & Research and Development Manager with respect to diamond saw blades and mining bits for JKS Lamage, referred to the goods in issue as "impregnated mining bits" or "impregnated mining core bits." He referred to the action performed by the goods in issue as "grinding" as opposed to cutting, but admitted that he was not sure of the exact meaning of the two terms. He distinguished the goods in issue from circular saw blades by pointing out that only the goods in issue utilized the impregnated technology and was adamant that the goods in issue could not be described as saws or saw blades, nor could they be used with stone cutting machines.

Counsel for the appellants referred to two previous cases concerning the tariff classification of circular saw blades: *Imperial Granite Inc. and Heritage Memorials Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*<sup>3</sup> and *Diamant Boart Truco Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>4</sup> The issue in the *Imperial* case, as stated by the appellants, was whether circular saw blades are parts of a stone working machine or part of a grinding wheel. The Tariff Board held that circular saw blades with diamond segments are parts of a stone working machine and that the blades are not grinding wheels.

Counsel for the appellants relied on the Tribunal's decision in the *Diamant* case, that circular saw blades are destined for use with stone cutting machines, to support the position that segmented saw blades for cutting stone are not other millstones, grindstones, grinding wheels and the like.

Counsel for the respondent disagreed with the counsel for the appellants' characterization of the goods in issue as circular saw blades for use in stone cutting machines. In counsel's view, the goods in issue are not circular, but are cylindrical and are for use with hydraulic core drills,

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3. (1986), 11 T.B.R. 164.

4. Canadian International Trade Tribunal, Appeal No. AP-90-166, July 27, 1992.

not stone cutting machines. On that basis, counsel submitted that the Tribunal's decision in the *Diamant* case was irrelevant since it dealt specifically with circular saw blade blanks for use in stone cutting machines.

Finally, counsel for the respondent argued alternatively that, if the goods in issue are to be classified as parts, they should be classified as parts of the drilling machine. The drilling machine should be classified in subheading No. 8430.49 as other boring or sinking machinery, and the core barrel assembly in subheading No. 8431.43 as parts of such machinery. However, Note 1(a) to Chapter 84 of Schedule I to the *Customs Tariff* and Note 1(k) to Section XVI of the Explanatory Notes<sup>5</sup> specifically exclude goods in Chapter 68 or 82 from being classified in Chapter 84:

1. *This Chapter does not cover:*

(a) *Millstones, grindstones or other articles of Chapter 68.*

1. *This Section does not cover:*

...  
k) *Articles of Chapter 82 or 83.*

Counsel for the appellants made an alternate submission that the goods in issue should be classified as part of the core barrel assembly. Counsel submitted that the drill bit is an important component of the core barrel assembly and is specifically designed for use with it. Counsel submitted that the core barrel assembly should be classified in heading No. 90.15 as a geophysical instrument, and the goods in issue should be classified as parts of the geophysical instrument. In support of this position, counsel referred to the decision of the Tariff Board in *Government of Prince Edward Island v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>6</sup> wherein it was found that a flowmeter tool used for sensing fluid flow in a borehole is a geophysical instrument. Counsel also referred to the comments of the Tariff Board, in its report entitled Certain Precision Instruments and Apparatus,<sup>7</sup> that it interprets the word "geophysical" broadly.

The Tribunal raised the question as to why the goods in issue could not be classified in heading No. 82.07 and, more specifically, under tariff item No. 8207.12.90, which read as follows:

82.07            *Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.*

*-Rock drilling or earth boring tools:*

8207.12        *--With working part of other material*

8207.12.90    *---Other*

8207.12.90.20 *----Diamond type core drill bits*

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5. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, 1st ed., Brussels, 1986.

6. (1986), 11 T.B.R. 335.

7. Report by the Tariff Board, Reference No. 138.

Counsel for the appellants responded that the goods in issue had been classified in heading No. 82.07, but that the Department of National Revenue (Revenue Canada) considered that heading No. 68.04 was more appropriate. In view of an earlier decision of the Tribunal, officials at Revenue Canada took the position that all saw blades of Chapter 82 must have a sharp edge.<sup>8</sup>

Counsel for the respondent submitted that Note 1 to Chapter 82 of Schedule I to the *Customs Tariff* precludes the inclusion of the goods in issue in heading No. 82.07:

*1. Apart from blow lamps, portable forges, grinding wheels with frameworks, manicure or pedicure sets, and goods of heading No. 82.09, this Chapter covers only articles with a blade, working edge, working surface or other working part of:*

*(a) Base metal;*

*(b) Metal carbides or cermets;*

*(c) Precious or semi-precious stones (natural, synthetic or reconstructed) on a support of base metal, metal carbide or cermet; or*

*(d) Abrasive materials on a support of base metal, provided that the articles have cutting teeth, flutes, grooves, or the like, of base metal, which retain their identity and function after the application of the abrasive.*

Counsel for the respondent further submitted that the Explanatory Notes to heading No. 68.04 preclude the classification of the goods in issue in heading No. 82.07:

*It should, however, be noted that certain abrasive tools are excluded and fall in Chapter 82. The latter Chapter, however, covers only those tools with cutting teeth, flutes, grooves, etc., which retain their identity and function even after application of the abrasive material (i.e., tools which, unlike those of this heading, could be put to use even if the abrasive had not been applied). Saws with cutting teeth covered with abrasive therefore remain in heading 82.02. Similarly crown drills as used for cutting discs from sheets of glass, quartz, etc., are classified in this heading if the working edge is smooth apart from the abrasive coating, but in heading 82.07 if toothed (whether or not coated with abrasive).*

The Tribunal is of the view that the goods in issue are not properly classified in any of the headings suggested by either the appellants or the respondent. As stated by all of the witnesses and admitted by counsel for the appellants, the goods in issue are not blades. Having examined the goods in issue, the Tribunal also finds that the goods in issue cannot be classified as circular saw blades nor can they be described as other millstones, grindstones, grinding wheels and the like, as was stated by both expert witnesses.

Rather, the Tribunal finds that the goods in issue should be classified in heading No. 82.07 as rock drilling or earth boring tools and, more specifically, under tariff item No. 8207.12.90 as other diamond type core drill bits. Note 1(c) to Chapter 82 of Schedule I to the *Customs Tariff* explicitly refers to articles with a working surface of precious or semi-precious stones, whether natural, synthetic or reconstructed, on a support of base metal. Counsel for the respondent submitted that this description refers only to "diamond-set tools" as opposed to

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8. Transcript at 154.

"impregnated diamond tools." However, the Tribunal finds that there is no such requirement that the precious or semi-precious stones be inset as opposed to impregnated.

In the Tribunal's view, the goods in issue fit the general description under Note 1(c) to Chapter 82 of Schedule I to the *Customs Tariff*. The goods in issue consist of a working surface of powdered metal, also referred to as a matrix, which has synthetic or manufactured diamonds in it, and which working surface is brazed to the end of a steel tube or case to produce the drill bit.

The Tribunal also finds that the goods in issue meet the following general description of goods included in the Explanatory Notes to heading No. 82.07:

*Composite tools ... of one or more working parts of base metal, of metal carbides or of cermets, of diamond or of other precious or semi-precious stones, attached to a base metal support either permanently, by welding or inseting.*

The Tribunal does not agree with counsel for the respondent's contention that the Explanatory Notes to heading No. 68.04 preclude the goods in issue from being classified in heading No. 82.07. The Explanatory Notes to heading No. 82.07 have exactly the same provision as the one cited by counsel for the respondent from the Explanatory Notes to heading No. 68.04:

*The heading further includes tools with a base metal working part fitted or covered with abrasive materials, provided these tools have cutting teeth, flutes, grooves, etc., which retain their identity and function even after the application of the abrasive, i.e., tools which could be put to use even if the abrasive had not been applied; most abrasive tools are, however, excluded (see the Explanatory Note to heading 68.04).*

The words "further includes" indicate that this provision is meant to describe whatever other types of goods may be included in heading No. 82.07. Thus, whether or not the goods in issue meet this general description is not determinative of whether they may be classified in heading No. 82.07. This is particularly true if the goods in issue meet other general descriptions of goods that are to be included in heading No. 82.07.

Accordingly, the goods in issue should be classified in heading No. 82.07 as rock drilling or earth boring tools and, more specifically, under tariff item No. 8207.12.90 as other diamond type core drill bits.

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