

Ottawa, Thursday, July 9, 1992

Appeal No. AP-91-110

IN THE MATTER OF an appeal heard on March 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
April 16, 1991, relating to a request for re-determination,
made pursuant to section 63 of the *Customs Act*.

BETWEEN

**SANDVIK ROCK TOOLS,
A DIVISION OF SANDVIK CANADA INC.**

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part. The shank adapters should be considered as parts of rock-drilling machinery and are more properly classified under tariff item No. 8431.43.20. However, the extension rods and the coupling sleeves are more properly classified under tariff item No. 7228.80.90 of the *Customs Tariff*.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Desmond Hallissey
Desmond Hallissey
Member

Robert J. Martin
Robert J. Martin
Secretary

Ottawa, Thursday, July 9, 1992

Appeal No. AP-91-138

IN THE MATTER OF an appeal heard on March 25, 1992,
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1
(2nd Supp.), as amended;

AND IN THE MATTER OF decisions of the Deputy
Minister of National Revenue for Customs and Excise dated
May 28, 1991, and June 18, 1991, relating to a request for
re-determination, made pursuant to section 63 of the
Customs Act.

BETWEEN

KENROC TOOLS CORPORATION

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The extension rods are properly classified as other hollow drill bars and rods under tariff item No. 7228.80.90 of the *Customs Tariff*.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Desmond Hallissey

Desmond Hallissey
Member

Robert J. Martin

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Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-91-110 and AP-91-138

**SANDVIK ROCK TOOLS,
A DIVISION OF SANDVIK CANADA INC.**

and

KENROC TOOLS CORPORATION

Appellants

and

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

Respondent

The appellants, Sandvik Rock Tools and Kenroc Tools Corporation, contend that extension rods, shank adapters and coupling sleeves are more properly classified as parts of rock-drilling machinery under tariff item No. 8431.43.20 of the Customs Tariff. In the alternative, Sandvik Rock Tools contends that the goods are more properly classified under tariff item No. 8207.11.90 as rock-drilling tools. The respondent asserts that the extension rods are more properly classified as other hollow drill bars and rods under tariff item No. 7228.80.90 and that the shank adapters and coupling sleeves are both more properly classified in heading No. 73.07 as tube or pipe fittings of iron or steel, that is, the coupling sleeves under tariff item No. 7307.92.20 and the shank adapters under tariff item No. 7307.99.92.

HELD: *The Tribunal determines that shank adapters should be considered as parts of rock-drilling machinery and are more properly classified, as the appellants claimed, under tariff item No. 8431.43.20. These goods are so classified because they are manufactured to specifications for particular machines. However, the Tribunal finds that the extension rods are more properly classified, as determined by the respondent, under tariff item No. 7228.80.90 and that the coupling sleeves are more properly classified as composite goods, under the same tariff item.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 25, 1992

Date of Decision: July 9, 1992

*Tribunal Members: Charles A. Gracey, Presiding Member
Kathleen E. Macmillan, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

*Appearances: Brian J. Barr, for the appellant, Sandvik Rock Tools
Douglas J. Bowering, for the appellant, Kenroc Tools Corporation
Gilles Villeneuve, for the respondent*

Appeal Nos. AP-91-110 and AP-91-138

**SANDVIK ROCK TOOLS,
A DIVISION OF SANDVIK CANADA INC.**

and

KENROC TOOLS CORPORATION

Appellants

and

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

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue re-determining the classifications of certain rock-drilling equipment. The goods in issue may be described as extension rods, shank adapters and coupling sleeves.

The appellants, Sandvik Rock Tools, A Division of Sandvik Canada Inc. (Sandvik) and Kenroc Tools Corporation (Kenroc), sought leave of the Tribunal to join their appeals for a single hearing and, noting that the respondent raised no objection and that some of the goods as well as the classification at issue were alike, the Tribunal agreed and heard both appeals together. It is noted, however, that while Sandvik imports all three products, Kenroc imports only extension rods.

In the respondent's decisions, the goods were classified as follows:

- 1 - the extension rods as hollow drill rods under tariff item No. 7228.80.90 of the *Customs Tariff*;²
- 2 - the coupling sleeves as tube or pipe fittings under tariff item No. 7307.92.20, namely, threaded elbows, bends and sleeves;
- 3 - as for the shank adapters, it appears that some were classified like the extension rods under tariff item No. 7228.80.90 and that others were classified under tariff item No. 7307.99.92 as tube or pipe fittings.

The appellants contend that all the imported goods in issue are more properly classified as parts of rock-drilling machinery under tariff item No. 8431.43.20. In the alternative, Sandvik

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

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

contends that the goods are more properly classified under tariff item No. 8207.11.90 as rock-drilling tools.

The respondent asserts that the extension rods are more properly classified as other hollow drill bars and rods under tariff item No. 7228.80.90 and that the shank adapters and coupling sleeves are both more properly classified in heading No. 73.07 as tube or pipe fittings of iron or steel, that is, the coupling sleeves under tariff item No. 7307.92.20 and the shank adapters under tariff item No. 7307.99.92.

A shank adapter is, as the name implies, the tool or piece of equipment that connects or adapts the drilling machine to the first extension rod. It is designed to fit into a particular type of drilling machine and to adapt to the more generic extension rods. An extension rod is a long hollow bar or rod that is connected to the shank adapter. Extension rods may be of various lengths of up to five or six metres, and several may be fastened end to end to form what is known as a drill string. Finally, the coupling sleeves join the drill rods together so as to provide the energy transmission.

There are two basic designs of extension rods. One type is threaded on the outside at both ends, and these are connected, first to the shank adapter then to each other, with coupling sleeves made of the same material and threaded internally. The second type of extension rod has exterior threading at only one end, and the other end is forged or "upset" to form, in effect, a built-in coupling which is threaded internally to accept the "male" end of an identical rod. Thus, separate couplings are not needed on extension rods of this latter configuration.

The appellants each presented a witness. Mr. S. Robinson, the witness for Kenroc, explained the process of producing finished goods from the raw material. Ms. S. Attallah-Ducasse was called as a witness for Sandvik. She explained the manufacturing process and identified which goods were imported in the finished state.

In the case of Kenroc, all of the raw material for the extension rods is purchased from a domestic steel mill in the form of a hollow rod already worked to the proper cross-sectional dimensions. Kenroc cuts the rod into the desired lengths and further works it by threading one or both ends or by forging one end to fashion a "female" coupling. The material is heat treated, tempered, straightened and subjected to a shot-peening operation. A part of this treatment is termed "carburization," and Kenroc is unable to perform this process on rods of greater length than 14 of 16 ft. In consequence, such material is exported to a plant in Detroit for carburization and reimported as finished goods. It is the classification of this reimported material that is, for Kenroc, the sole issue in its appeal.

Sandvik operates somewhat differently. In its operation, Sandvik imports its raw material from its parent company in Sweden and, from that material, fashions extension rods that are threaded on both ends. Sandvik also handles the extension rods that have a male/female configuration, but imports these as finished goods from its parent company in Sweden. Sandvik does not contest the tariff classification of the imported raw material, but contests the classification of the imported finished goods. In addition, Sandvik manufactures neither shank adapters nor couplings, but imports both in their finished state from Sweden. The classification of these goods is also at issue in this case.

The respondent called Mr. Jack J. Burke as an expert witness in the field of rock-drilling machines and accessories. Mr. Burke explained that the goods in issue are called drill steel, a terminology that is used worldwide in the drilling industry. Drill steel transmits the energy from the drilling machine to the bit to fracture the rock. The hollow drill steel also permits the

transmission of a flushing agent such as air or water and, finally, acts to ensure a better alignment in the hole. The testimony of Mr. Burke further revealed that extension rods are consumables and are supplies for the rock-drilling machine.

In argument, Kenroc's representative stated that, according to Note 1 (f) to Section XV of the *Customs Tariff*, the goods in issue are excluded from Section XV (which includes Chapter 72), because they are parts of machinery in Section XVI (which includes Chapter 84). He also argued that Note 1 (p) to Chapter 72, which provides a definition of hollow drill bars and rods, does not apply in this instance since it provides for dimensional requirements that are not met by the rods in issue. In his view, heading No. 73.04, to which Note 1 (p) refers, does not apply either because of exclusionary Note (F) to that heading in the Explanatory Notes.³ That note excludes hollow profiles that are made up into specific identifiable articles, as is the case of the rods in issue. Kenroc's representative also submitted that, according to the Explanatory Notes to Section XV, Chapter 72, sub-Chapter IV, the goods may be worked provided that they do not thereby assume the character of articles falling in other headings. He stated that this is the case of the extension rods in issue. Accordingly, he asserted, the goods in issue are more properly classified as components of the host machine which is classified under tariff item No. 8430.41.20 or 8430.49.20 as a pneumatic mounted percussion type rock drill for underground use. Therefore, he argued, the rods in issue are more properly classified under tariff item No. 8431.43.20 as parts of rock-drilling machinery.

Counsel for Sandvik argued that the extension rods are not hollow drill rods as determined by the respondent. He submitted that heading No. 72.28 does not apply because Explanatory Note (B) to that heading refers to Note 1 (p) to Chapter 73. He asserted that Note 1 (p) is irrelevant, first because it provides for dimensional requirements that are not met by the rods in issue and second because the Note pertains to semi-finished goods while the rods in issue are finished products. He argued that Note 1 (p) does not apply to heading No. 73.04 either since Explanatory Note (F) excludes hollow profiles that are made up into specific identifiable articles as are the goods in issue. Alternatively, counsel urged the Tribunal to classify the extension rods under tariff item No. 8207.11.90 as rock-drilling or earth-boring tools.

As for the coupling sleeves, counsel for Sandvik argued that they are not tubes or pipes and that heading No. 73.07 deals with tubes and pipes. In this regard, he submitted that, according to General Notes 1 and 2 to Chapter 72 of the Explanatory Notes, tubes and pipes are different from hollow profiles and, therefore, that couplings designed for hollows are not covered in heading No. 73.07. He added that Note 2 (a) to Section XV, which provides that items in heading No. 73.07 are by definition parts of general use, does not specify the characteristics by which items are more properly classified in heading No. 73.07 and that the Note cannot therefore serve as a basis to conclude that the couplings are more properly classified in heading No. 73.07.

Finally, counsel for Sandvik argued that shank adapters are not designed to connect a tube or a pipe and, therefore, are not covered in heading No. 73.07. Shank adapters, he stated, are designed to match the chuck of a particular brand of rock-drilling machine and, therefore, are not of general use.

Counsel for the respondent contended that the extension rods are specifically described in Explanatory Note (B) to heading No. 72.28, a description that corresponds to the definition

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

of that product in the industry. Indeed, according to Mr. Burke's testimony, extension rods, also known as sectional drill steel, transmit the energy of the drilling machine to the drill bit and circulate either fluid or air to the bit.

Counsel also stated that heading No. 72.28 does not apply solely to unfinished goods as contended by the appellants. Both the English and French versions of Explanatory Note (B) to heading No. 72.28, he said, negate this narrow interpretation, while the meaning of drill steel in Explanatory Note (B) confirms the respondent's position. The reference to "Other ... [than] not further worked than hot-rolled ... hollow drill ... rods" in tariff item No. 7228.80.90 also confirms this interpretation. Moreover, according to Rule 2 (a) of the General Rules for the Interpretation of the Harmonized System⁴ (the General Rules), any reference in a heading to an article shall be taken to include a reference to incomplete or unfinished articles. With respect to the dimensional requirement, counsel added that the rod part must be measured by excluding the expanded ends and, therefore, that the extension rods in issue meet the dimensional requirements of Note 1 (p) to Chapter 72. However, he further argued, if they do not meet the dimensional requirements, they are more properly classified as drill pipe under tariff item No. 7304.20.10.

In his brief, counsel for the respondent substantially departed from the respondent's determination in contending that couplings are specifically described in tariff item No. 7307.99.92. He also contended that they are accessories to the drill steel, drill rods or drill pipes and not parts of machinery of subheading No. 8430.41. Counsel further submitted that they are not interchangeable tools of heading No. 82.07 because Note 1 to Chapter 82 provides that the Chapter only cover articles with a working part, which expression is limited to the kind mentioned in that note. Furthermore, couplings may not be classified as composite tools as described in that note because their only function is to connect the shank adapter to the first rod as well as to join the extension rods together and, thus, to maintain alignment of the shank and rods. That being said, counsel admitted in argument that the respondent's classification raised some questions with respect to couplings for hexagonal rods because heading No. 73.07 relates to tube or pipe fittings and, according to the Explanatory Notes, tube or pipe is round. Counsel therefore urged the Tribunal to rely upon Rule 4 of the General Rules and to classify these couplings with the goods to which they are most akin, that is, ordinary couplings as classified by the respondent.

Finally, with respect to the shank adapters, counsel argued that they are drill steel accessories connected to the chuck of the drilling machine and to the rod or drill pipe under tariff item No. 7307.99.92. He also argued that heading No. 73.07 is not limited to fittings that join pipes or tubes to one another because, for instance, subheading No. 7307.91 refers to flanges which can attach parts other than tubes or pipes. Lastly, he stated that couplings are not part of machinery of subheading No. 8430.41 since they are accessories of extension rods which are not parts of the machinery of that heading.

After considering all the evidence, the testimony of witnesses and the arguments, the Tribunal determines that the shank adapters should be considered as parts of rock-drilling machinery and are more properly classified, as the appellants claimed, under tariff item No. 8431.43.20. These goods are so classified because they are manufactured to specifications for particular machines. However, the Tribunal finds that the extension rods are more properly classified, as determined by the respondent, under tariff item No. 7228.80.90 and that the coupling sleeves are more properly classified as composite goods, under the same tariff item.

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

In reaching its decision that the shank adapters are more properly classified as parts of rock-drilling machines, the Tribunal simply notes the evidence that there are several designs for shank adapters, that each design is unique to a particular machine and that these adapters are not interchangeable between machines of different design. It follows that shank adapters are for use exclusively with a machine of a particular design.

As to the extension rods, the Tribunal recognizes that the rods appear to fall under tariff item No. 7228.80.90 except for the arguments raised by the appellants contending that Explanatory Note (B) to heading No. 72.28 and Note 1 (p) to Chapter 72 both preclude the inclusion of the extension rods under this classification. Explanatory Note (B) clarifies that hollow drill bars and rods are also known as drill steel and otherwise appears to describe the exact goods that are in issue. However, the Explanatory Note is cited by the appellants because it states, as well, that hollow drill bars and rods are defined in Note 1 (p) to Chapter 72. It is the appellants' position that the dimensional requirements in Note 1 (p) are not met by the subject goods.

The Tribunal accepts the argument that the dimensional specifications in Note 1 (p) refer to the cross-sectional dimensions of the drill rod itself and not to the "female" or "dumped-up" end. This interpretation is supported by the fact that a single cross-sectional dimension is provided in Exhibit A-2 which illustrates both types of extension rods. Also, a document submitted as an exhibit clearly shows that the "rod" in an integrated drill steel refers to the length of material between the "collar" and the "bit." Finally, the expert witness explained that cross-sectional dimensions always refer to the "rod" portion of the drill steel. The Tribunal therefore has no difficulty accepting the interpretation that the dimensional requirements in Note 1 (p) refer to the cross-section of the rod itself and, as such, Note 1 (p) is not an impediment to the classification sought by the respondent. The Tribunal notes, further, that to accept the appellants' assertions in this matter would result in one type of drill steel, the male/male type, falling in one classification and the other type of drill steel, the male/female type, falling elsewhere. This, in the Tribunal's view, would be an illogical result. Finally, though not adduced in evidence, it is the Tribunal's view that the dimensional requirements, consisting as they do of a ratio of outside to inside dimensions, help to distinguish drill steel or rod from pipe.

The Tribunal also considered the alleged conflict between the English and French versions thereof of Note 1 (p). Dealing first with the English phrase "suitable for drills" and the French version of that phrase, "*propres à la fabrication des fleurets*," it is alleged that the French words mean that the goods are intended for that specific purpose and may not, therefore, be considered as extension rods. The Tribunal does not intend to dwell upon this point at length because two reasons are sufficient to dispel this argument. First, the Tribunal finds it wholly illogical that Note 1 (p) would set out to define lengths of hollow drill bars and rods as merely the raw material out of which drill bits are made. It is apparent that these goods are used to make finished drill bars and rods and may also be used to fashion bits. Even more conclusive is Explanatory Note (B) to heading No. 72.28 which addresses the exact point in contention and provides that hollow drill bars and rods "... are also known as drill steel" and "... are also used in lengths of up to five or six metres ... when drilling at a distance." Finally, on this point, the Tribunal would note that tariff item No. 7228.80.10 refers to hollow drill bars and rods that are not further worked than hot-rolled. The appellant, in this case Sandvik, informed the Tribunal that raw hollows were imported from Sweden under tariff item No. 7228.80.10 as hollow drill bars and rods not further worked than hot-rolled. Tariff item No. 7228.80.90 refers to "Other," and that very clearly means other than not further worked than hot-rolled or, to simplify, further worked than hot-rolled, which describes exactly the extension rods in issue. Thus, it is apparent that any such goods that were further worked fall into the classification determined by the respondent.

Furthermore, the Tribunal cannot accept the argument that the extension rods and coupling sleeves are also parts of rock-drilling machinery. On the contrary, the very presence of an article like a specially designed shank adapter confirms that the extension rods and coupling sleeves have a broad use, not in any way restricted to any particular machine. They may, therefore, not reasonably be considered as parts of any machine.

As to the appellants' contention that the goods, if not found to be parts of rock-drilling machinery, should be accepted as rock-drilling or earth-boring tools in heading No. 82.07, the Tribunal again demurs. A careful reading of this section makes it quickly apparent that the entire scheme of heading No. 82.07 relates to such things as drill bits or punches, dies or stamps, and not to extension rods. Subheading No. 8207.11 refers to goods with working parts of sintered metal carbide or cermets. Since the extension rods that are the subject of this appeal are not so equipped, they cannot be further considered anywhere in this heading.

Finally, the appellants propose that the goods be classified in heading No. 84.83 which covers transmission shafts and parts thereof. The Tribunal concedes only that the extension rods and coupling sleeves do perform the function of transmitting both rotary and percussion energy along their length to the rock face. However, the goods in issue are not fully described as transmission shafts, for they are also designed to carry the flushing agent to the rock face.

As to the proper classification of the couplings, the Tribunal cannot accept the many alternatives proposed by Sandvik for substantially the same reasons given for rejecting these proposed classifications for the extension rods. However, the Tribunal had equal difficulty with the respondent's assertion that the couplings are more properly classified as tube or pipe fittings in heading No. 73.07. The extension rods are neither tubes nor pipes, and it must follow, therefore, that the couplings cannot be classified as the respondent claims. The Tribunal notes, however, that there is no subheading for these goods in heading No. 72.28. In these circumstances, the Tribunal finds that the most appropriate classification for these couplings is found by invoking Rule 3 (b) of the General Rules and classifying the goods as composite goods with the extension rods with which they are so intimately associated.

Accordingly, the Tribunal finds that the shank adapters are more properly classified under tariff item No. 8431.43.20 and the extension rods and the coupling sleeves, under tariff item No. 7228.80.90.

Charles A. Gracey
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