



Ottawa, Wednesday, October 28, 1992

Appeal No. AP-91-269

IN THE MATTER OF an appeal heard on September 3, 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 March 17, 1992, pursuant to subsection 63(3) of the *Customs Act*.

BETWEEN

UDISCO LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-269

UDISCO LTD.

Appellant

and

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

Respondent

The appellant imported various miniature buildings in kit form. The issue in this appeal is whether the goods in issue are more properly classified under tariff item No. 9503.10.10 as "Reduced-size ('scale') model assembly kits and parts thereof" for "Electric trains, including tracks, signals and other accessories therefor," as contended by the appellant, or whether they are properly classified under tariff item No. 9503.20.90 as "Other" "Reduced-size (scale) model assembly kits, whether or not working models, excluding those of subheading No. 9503.10," as determined by the respondent.

HELD: *The appeal is allowed. In the Tribunal's view, the evidence gathered at the hearing clearly shows that the goods in issue are accessories for use with reduced-size model electric trains.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 3, 1992
Date of Decision: October 28, 1992

Tribunal Members: Michèle Blouin, Presiding Member
Sidney A. Fraleigh, Member
W. Roy Hines, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Appearances: Lyon H. Kunin, for the appellant
Wayne D. Garnons-Williams, for the respondent

Appeal No. AP-91-269

UDISCO LTD.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
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Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
SIDNEY A. FRALEIGH, Member
W. ROY HINES, 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 dated March 17, 1992, pursuant to subsection 63(3) of the Act.

The appellant, Udisco Ltd., purchased various miniature buildings in kit form from a company called Heljan and imported them into Canada on May 16, 1990. The goods in issue were originally classified as "Reduced-size ('scale') model assembly kits and parts thereof" for "Electric trains, including tracks, signals and other accessories therefor" under tariff item No. 9503.10.10 of the *Customs Tariff*.²

Subsequently, the goods were reclassified under tariff item No. 9503.90.00 which is the tariff item exhausting heading No. 95.03. On March 17, 1992, the respondent reclassified the goods under tariff item No. 9503.20.90 as "Other" "Reduced-size (scale) model assembly kits, whether or not working models, excluding those of subheading No. 9503.10." On March 23, 1992, the appellant appealed that decision to the Tribunal claiming that the goods are more properly classified under tariff item No. 9503.10.10 under which the shipment was originally entered.

The issue in this appeal is whether the goods in issue are more properly classified under tariff item No. 9503.10.10 as "Reduced-size ('scale') model assembly kits and parts thereof" for "Electric trains, including tracks, signals and other accessories therefor," as contended by the appellant, or whether they are properly classified under tariff item No. 9503.20.90 as "Other" "Reduced-size (scale) model assembly kits, whether or not working models, excluding those of subheading No. 9503.10," as determined by the respondent.

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

At the hearing, the appellant called one witness, Mr. Harold Celtorius, who, as Eastern Merchandise Manager for the T. Eaton Company, was responsible for the toy department of all Quebec and Maritime stores. Mr. Celtorius explained that the train assembly and accessories were found in separate groupings in the store. He explained that the goods in issue were not related to boats or cars, as they had no connection with them. The witness affirmed that they would not be purchased *per se* on their own merits, but in relation to trains. In cross-examination, he admitted that the goods in issue could be purchased for purposes other than to serve as accessories to a train diorama. However, in answering the Tribunal's question, he maintained that the goods in issue would almost exclusively be used with trains.

Mr. John Rodney, who is the owner and operator of the Kanata Hobby Centre with 25 years experience in the hobby business, was called as a witness for the respondent. Mr. Rodney explained that a train assembly kit is distinguished from a ready-to-run train, as the former requires assembly before it can be put on the train track. However, in cross-examination, the witness specified that ready-to-run train sets do not really exist, as the tracks still need to be assembled. The witness also admitted that the building of a diorama created the actual play value of a display. He recognized that there was a common scale for different types of model kits such as automobiles, airplanes and boats. The witness identified catalogues of model kits of these items and admitted that manufacturers' catalogues of airplane model kits contained buildings that would match the scale of an airplane. Finally, in examining train manufacturers' catalogues that contained buildings, Mr. Rodney admitted that buildings were accessories to the train sets, that train sets had a different scale and that buildings were specific to model railroading. With respect to the goods in issue, the witness explained that he had never sold them for any reason other than to accompany a model railroad.

Briefly summarized, the appellant contended that the buildings and other parts are accessories for the electric train, in the same manner as the track, signals and rolling stock that form the train are part of the final product or diorama. The goods in issue, he continued, are built to a certain scale and are meant to be used with the particular scale of train. The appellant argued in this regard that subheading No. 9503.20 specifically excludes reduced-size model assembly kits of subheading No. 9503.10.

Counsel for the respondent argued that according to Note 3 of the legal notes to Chapter 95 (Note 3), only accessories that are for use solely or principally with articles of the Chapter can be classified with those articles. The use of the goods in issue, counsel contended, is not limited to assembly kits of tariff item No. 9503.10.10 since they can also be used with electric or ready-to-run trains classified under tariff item No. 9503.10.90. Therefore, and in keeping with Rule 1 of the General Rules for the Interpretation of the Harmonized System,³ the goods in issue must be classified in their own right as assembly kits under the heading that most specifically provides for them, namely under tariff item No. 9503.20.90 which precisely excludes the goods of subheading No. 9503.10.

The Tribunal allows the appeal. Tariff item No. 9503.10.10 includes reduced-size (scale) model assembly kits and parts of "Electric trains, including tracks, signals and other accessories" as mentioned in subheading No. 9503.10. In the Tribunal's view, the evidence gathered at the hearing clearly shows that the goods in issue are to the same scale as the railroad and accessories for use with reduced-size model electric trains. Given that Note 3 provides that parts

3. *Ibid.*, Schedule I that refers to S.C. 1987, c. 49 (vol. II), Schedule I.

and accessories that are for use solely or principally with articles of Chapter 95 are to be classified with those articles, the Tribunal finds that the goods in issue are more properly classified under tariff item No. 9503.10.10.

Michèle Blouin
Michèle Blouin
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member