



Ottawa, Monday, September 19, 1994

Appeal No. AP-92-091

IN THE MATTER OF an appeal heard on March 31, 1994,
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister
of National Revenue dated June 19, 1992, with respect to
requests for re-determination under section 63 of the *Customs
Act*.

BETWEEN

SNYDERGENERAL CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-091

SNYDERGENERAL CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the Customs Act from decisions of the Deputy Minister of National Revenue dated June 19, 1992, made under section 63 of the Customs Act. The issue in this appeal is whether the DriPak filters imported from the United States by the appellant are properly classified under tariff item No. 7019.90.90 as other thin sheets of glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics), as determined by the respondent, or should be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases or, alternatively, under tariff item No. 8421.99.30 as parts of other filtering or purifying machinery and apparatus for gases, as claimed by the appellant.

HELD: *The appeal is allowed. The Tribunal is persuaded that the evidence establishes that air filtration and purification systems are generally designed to use filters, that air filtration and purification systems are not effective without filters and that the filters are designed to industry standards to ensure that they fit properly into the air filtration or purification systems. The Tribunal is, therefore, of the view that the DriPak filters are integral and necessary to the functioning of air filtration and purification systems and are parts of filtering or purifying machinery and apparatus. Accordingly, the DriPak filters should be classified under tariff item No. 8421.99.30 as parts of other filtering or purifying machinery and apparatus for gases.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 31, 1994
Date of Decision: September 19, 1994

Tribunal Members: Charles A. Gracey, Presiding Member
Arthur B. Trudeau, Member
Lise Bergeron, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Janet Rumball

Appearances: Michael A. Kelen, for the appellant
Stéphane Lilkoff, for the respondent

Appeal No. AP-92-091

SNYDERGENERAL CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ARTHUR B. TRUDEAU, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from re-determinations of the Deputy Minister of National Revenue dated June 19, 1992, made under section 63 of the Act. The issue in this appeal is whether the DriPak filters imported from the United States by the appellant are properly classified under tariff item No. 7019.90.90 of Schedule I to the *Customs Tariff*² as other thin sheets of glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics), as determined by the respondent, or should be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases or, alternatively, under tariff item No. 8421.99.30 as parts of other filtering or purifying machinery and apparatus for gases, as claimed by the appellant.

The following is the relevant tariff nomenclature from Schedule I to the *Customs Tariff*:

70.19 *Glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics).*

 -*Thin sheets (voiles), webs, mats, mattresses, boards and similar nonwoven products:*

7019.90.90 ---*Other*

84.21 *Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.*

 -*Filtering or purifying machinery and apparatus for gases:*

8421.39.90 ---*Other*

 -*Parts:*

8421.99.30 ---*Of the goods of tariff item No. 8421.21.00, 8421.22.00, 8421.29.90, 8421.31.10, 8421.39.20 or 8421.39.90*

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

Mr. Michael Montague, Manager, Air Filter Products, for SnyderGeneral Canada Inc., a manufacturer and distributor of filtration products and a distributor of equipment, including DriPak filters, for heating, ventilating and air conditioning (HVAC) systems, appeared as a witness for the appellant. He explained that filters and filtration systems are designed to prevent or reduce the flow-through of submicron particles and pollutants in the air.

Mr. Montague described the DriPak filters as being comprised of six pockets of a fibreglass medium onto which a nonwoven polyester or nylon scrim³ backing is sewn. The stitching on the pockets is coated with a thermoplastic sealant, which prevents air from escaping through the stitching holes. The individual pockets are mounted on a metal L-bar pocket support frame. The individual pocket frames are then permanently fastened to the double U-channel header, which is the frame that supports the filter pockets and retains the filter in the filtering system.

With respect to their use, Mr. Montague stated that the DriPak filters could be used in various types of HVAC systems. To illustrate the filter's use in an HVAC system, Mr. Montague referred to the Trane Air Conditioning Manual⁴ that is used to train people on the proper use of HVAC equipment. In particular, he referred to an example of an HVAC system with a central fan and central conditioning equipment and explained how the air from both outside and inside the building is drawn into the system, passed through the filter and discharged into the building.

In response to questions concerning the functions of, and necessity for, air filters, Mr. Montague stated that he was not aware of any HVAC systems being designed for use without air filters and that there was always a need for air filters to protect the equipment itself, particularly the coils, from a buildup of particulates that might reduce the efficiency of the HVAC system.

Mr. Montague explained that the filters are generally designed to industry standards and that the HVAC systems are designed to use specific filters or combinations thereof, depending upon the application. He stated that the filters and the HVAC systems have to be designed so that the filters fit properly into the systems in order to ensure that the systems are effective in capturing particulates.

Counsel for the respondent called Mr. Richard L. Erdeg, Senior Chemist with the Inorganic Products Laboratory of the Laboratory and Scientific Services Directorate of the Department of National Revenue, as an expert witness in chemical analysis of inorganic products. Although the respondent had not provided a copy of Mr. Erdeg's report from his analysis of the DriPak filters within the 10-day time limit set out in subrule 21(2) of the *Canadian International Trade Tribunal Rules*⁵ (the Tribunal Rules), counsel for the appellant did not object to Mr. Erdeg's qualification as an expert witness, and the Tribunal accepted Mr. Erdeg as an expert witness.

As indicated in his report dated February 16, 1994, Mr. Erdeg found, on the basis of his analysis, that a DriPak filter consisted of a metal frame and six filter bags and that a bag was composed of 83 to 85 percent nonwoven fibreglass, 13 to 15 percent nonwoven polyester and 2 to 3 percent thread.

3. A scrim was described as a thin layer of material.

4. (Wisconsin: The Trane Company).

5. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

Counsel for the respondent also called as a witness Mr. John R. Bekolay, Engineer and Partner in A&E Building Design Group Ltd. Mr. Bekolay testified that A&E Building Design Group Ltd. is involved in the design of commercial buildings, which includes the design of ventilation systems. Mr. Bekolay referred to a diagram entitled "Typical Commercial Building Air Handling Unit" that he had prepared, and he indicated on the diagram where the DriPak filters would be incorporated into the unit. He described how each unit may differ with respect to length, specifications and filters used.

During cross-examination, Mr. Bekolay agreed that a typical commercial building air-handling unit would not operate without filters and that one of the purposes of a ventilation system is to purify the air.

In argument, counsel for the appellant referred to Rule 1 of the General Rules for the Interpretation of the Harmonized System⁶ (the General Rules), which provides that the classification of goods shall be determined "according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions." He submitted that the DriPak filters are parts of air-purifying machinery and are specifically provided for in heading No. 84.21.

Counsel for the appellant referred to Part (II) of the Explanatory Notes to the Harmonized Commodity Description and Coding System⁷ (the Explanatory Notes) to heading No. 84.21 entitled "Filtering or Purifying Machinery and Apparatus, for Liquids or Gases." He pointed out that the Explanatory Notes to heading No. 84.21 state that the heading includes "bag filters" acting solely by mechanical or physical means and consisting of a porous surface or mass (felt, cloth, metallic sponge, glass wool, etc.). Bag filters are described in the Explanatory Notes to heading No. 84.21 as "a series of bag shaped cloth filtering elements, and often incorporate a shaker mechanism to cause the trapped particles to fall through the bottom of the bags."

Counsel for the appellant submitted that, pursuant to the Explanatory Notes to Chapter 84, the DriPak filters are taken to have lost their character of glass since they have been incorporated into or permanently mounted on frames of other materials. On that basis, he argued that the DriPak filters are not properly classified under tariff item No. 7019.90.90 as other thin sheets of glass fibres and articles thereof.

Counsel for the appellant referred to Part (II) of the Explanatory Notes to Section XVI, entitled "Parts," which provides that parts which constitute an article covered by a heading of Section XVI should be classified in that heading even if they are specially designed to work as part of a specific machine. Filtering machinery and apparatus of heading No. 84.21 are listed as examples of such parts. He submitted that, since the filters are integral and necessary to air-purifying machinery and the air-purifying machinery could not perform its intended function without them, the filters are parts of air-purifying machinery.

Finally, counsel for the appellant submitted that, in deciding this appeal, the Tribunal should apply the same logic that it applied in two recent decisions, *Procedair Industries Inc. v. The Deputy Minister of National Revenue for Customs and Excise*⁸ and *Bionaire Inc. v. The Deputy*

6. *Supra*, note 3, Schedule I.

7. Customs Co-operation Council, 1st ed., Brussels, 1986.

8. Appeal No. AP-92-152, July 22, 1993.

*Minister of National Revenue for Customs and Excise.*⁹ In *Procedair*, the Tribunal found that the textile filters were crucial to the proper operation of a system for filtering gases and fumes given off during the production of aluminum and, therefore, could be classified as air separators as opposed to textile products.¹⁰ In *Bionaire*, the Tribunal determined that, since the graphite or carbon filters were made to certain specifications and constituted an integral part of air purifiers, they should be classified as parts of other filtering or purifying machinery and apparatus for gases as opposed to other non-electrical articles of graphite or other carbon.¹¹

Counsel for the respondent submitted that the DriPak filters should be classified according to their character and nature and not according to their function or use. He referred to Note 1(c) of the Explanatory Notes to Chapter 84, which provides that the Chapter does not cover "Laboratory glassware (heading No. 70.17); machinery, appliances or other articles for technical uses or parts thereof, of glass (heading No. 70.19 or 70.20)." He also referred to the General Explanatory Notes to Chapter 84 which provide that "even if a machine or mechanical appliance is covered, because of its description or nature, by a heading of [Chapter 84] it is not to be classified therein if it has the character of an article of ceramic materials or of glass."

Counsel for the respondent submitted that the DriPak filters are articles of glass and are, therefore, excluded from being classified in Chapter 84 for the following reasons: (1) the DriPak filters give to air-filtering machinery their filtering capability; (2) the purpose of the pocket support frame and the double U-channel header is simply to support the fibreglass filters; and (3) the character of the DriPak filters is of glass since the fibreglass component gives the filters their style, distinction and filtering capability.

In the view of counsel for the respondent, the Explanatory Notes to heading No. 70.19 confirm that the DriPak filters are properly classified in that heading. The Explanatory Notes to heading No. 70.19 provide that the heading "includes glass fibres themselves and glass fibres (including glass wool as defined in Note 4 to this Chapter) made up in various forms, including those glass fibre articles excluded from other headings by reason of their nature." The Explanatory Notes also provide the manufacture of products such as filtration products as an example of a use of glass fibres.

Counsel for the respondent submitted that, under section 11 of the *Customs Tariff*, the Tribunal is to have regard to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System¹² (the Classification Opinions) in interpreting the headings and subheadings in Schedule I to the *Customs Tariff*. The Classification Opinions provide that subheading No. 7019.90 includes "[a]ir purifying filters ... consisting of a layer of glass fibre sandwiched between two perforated thin metal sheets and mounted in a square paperboard frame (dimensions: 50 x 50 x 5 cm)." He submitted that the DriPak filters meet this general description since they are made up of fibreglass and different components and also have a frame.

In the view of counsel for the respondent, the facts in *Procedair* and *Bionaire* can be distinguished from the facts in this appeal since the filters in those two cases were for a specific

9. Appeal No. AP-92-110, June 29, 1993.

10. *Supra*, note 8 at 2.

11. *Supra*, note 9 at 3.

12. Customs Co-operation Council, Brussels, 1st ed., 1987.

type of machinery, whereas the DriPak filters are of a general nature and can be used in many types of machinery.

After having reviewed the terms of the relevant headings of Schedule I to the *Customs Tariff*, any relative Explanatory Notes and Classification Opinions, and considered the evidence and arguments of the parties, the Tribunal is of the view that the DriPak filters should be classified under tariff item No. 8421.99.30 as parts of other filtering or purifying machinery and apparatus for gases.

The Tribunal cannot agree with counsel for the respondent that the DriPak filters are properly classified under tariff item No. 7019.90.90 as other thin sheets of glass fibres and articles thereof. Although the Explanatory Notes to heading No. 84.21 provide that "filtering elements (ceramics, textiles, felts, etc.) are classified according to their constituent material," the Explanatory Notes to Chapter 84 also provide that articles of glass that have been permanently mounted on a frame are taken to have lost their character of glass. Mr. Montague testified that the DriPak filters are produced by mounting individual pockets composed of fibreglass on a metal L-bar pocket support frame, which is mechanically fastened to the adjacent frame. The individual pocket frames are then permanently fastened to the double U-channel header. Based on Mr. Montague's testimony and its own examination of the DriPak filters, the Tribunal is of the view that the DriPak filters have been permanently mounted on a frame and have, therefore, lost their character of glass.

In the Tribunal's view, the DriPak filters should be classified in heading No. 84.21, which covers filtering or purifying machinery and apparatus, for liquids or gases. Having said that, the Tribunal must further determine whether, within that heading, the DriPak filters should be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases or under tariff item No. 8421.99.30 as parts of goods of tariff item No. 8421.39.90.

Part (II) of the Explanatory Notes to Section XVI entitled "Parts," which applies to goods in Chapter 84, provides as follows:

parts which in themselves constitute an article covered by a heading of this Section ...; these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to:

...

(2) Filtering machinery and apparatus of heading 84.21.

Thus, if the Tribunal determines that the DriPak filters constitute filtering machinery and apparatus, they are to be classified as such and not as parts.

Pursuant to Part (II)(B) of the Explanatory Notes to heading No. 84.21 entitled "Filtering or purifying machinery, etc., for gases," "[f]ilters and purifiers acting solely by mechanical or physical means" and, more specifically, "bag filters" are considered to be filtering or purifying machinery for gases. As counsel for the appellant pointed out, the DriPak filters generally meet the description of bag filters in the Explanatory Notes. However, the DriPak filters do not contain a shaker mechanism or have any other attribute that would enable the Tribunal to find that they act by mechanical or physical means. As a result, the Tribunal is of the view that the DriPak filters should not be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases.

However, the Tribunal is of the view that the DriPak filters should be classified as parts of filtering or purifying machinery. As has been previously stated by the Tribunal, there is no universal test for determining whether a product is a part, and each case must be determined on its own merits.¹³ In the past, the Tribunal has considered the following factors to be relevant: (1) whether the product is essential to the operation of another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice.¹⁴ In *Bionaire*, the Tribunal found that certain black porous filters were parts of other filtering or purifying machinery and apparatus for gases since those filters were made to certain specifications, were an integral part of the air-purifying equipment and were principally for use with the air-purifying equipment.

The Tribunal is persuaded that the evidence establishes that air filtration and purification systems are generally designed to use filters, that air filtration and purification systems are not effective without filters and that the filters are designed to industry standards to ensure that they fit properly into the air filtration or purification systems. The Tribunal is, therefore, of the view that the DriPak filters are integral and necessary to the functioning of air filtration and purification systems and, as such, are parts of filtering or purifying machinery and apparatus. Accordingly, the DriPak filters should be classified under tariff item No. 8421.99.30 as parts of other filtering or purifying machinery and apparatus for gases.

For the foregoing reasons, the appeal is allowed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Lise Bergeron

Lise Bergeron
Member

13. See, for example, *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-161, August 19, 1991.

14. *Ibid.* at 6.