



Ottawa, Monday, April 5, 1993

Appeal No. AP-92-139

IN THE MATTER OF an appeal heard on February 25, 1993, 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 for Customs and Excise dated September 2, 1992, under subsection 63(3) of the *Customs Act*.

BETWEEN

TAKARA COMPANY CANADA LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

W. Roy Hines
W. Roy Hines
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-139

TAKARA COMPANY CANADA LIMITED

Appellant

and

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

Respondent

The issue in this appeal is whether manually operated hydraulic bases for barbers' chairs should be classified under tariff item No. 8428.90.90 of the Customs Tariff as other lifting machinery or, alternatively, under tariff item No. 8425.42.00 as other hydraulic jacks and hoists, as claimed by the appellant, or whether the goods are properly classified under tariff item No. 9402.10.90 as parts of barbers' or similar chairs, as determined by the respondent.

HELD: *The appeal is dismissed. As provided in heading No. 94.02, the elevating movements of barbers' chairs are an intrinsic quality of such chairs. Since the function of the goods in issue is precisely to give that quality to the chairs manufactured by the appellant, there cannot be any doubt that those goods fall squarely within the terms of tariff item No. 9402.10.90.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 25, 1993
Date of Decision: April 5, 1993

Tribunal Members: Charles A. Gracey, Presiding Member
Kathleen E. Macmillan, Member
W. Roy Hines, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearances: Rick da Silva, for the appellant
Ian McCowan, for the respondent

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TAKARA COMPANY CANADA LIMITED

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and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
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TRIBUNAL: CHARLES A. GRACEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
W. ROY HINES, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) of decisions of the Deputy Minister of National Revenue for Customs and Excise made under subsection 63(3) of the Act.

The appellant is a manufacturer of barbers' and beauty chairs. Between April 1991 and January 1992, the appellant imported into Canada manually operated hydraulic bases for barbers' and beauty chairs. The goods in issue are used in the production of those chairs.

The issue in this appeal is whether the goods should be classified under tariff item No. 8428.90.90 of the *Customs Tariff*² as other lifting machinery or, alternatively, under tariff item No. 8425.42.00 as other hydraulic jacks and hoists, as claimed by the appellant, or whether the goods are properly classified under tariff item No. 9402.10.90 as parts of barbers' or similar chairs, as determined by the respondent.

With respect to its argument that the goods should be classified under tariff item No. 8425.42.00 as other hydraulic jacks and hoists, the representative for the appellant relied upon the Explanatory Notes³ to heading No. 84.25 which state that "[i]n hydraulic or pneumatic jacks, the lifting piston is forced along a cylinder by pressure generated in a pump or compressor which may be separate or built-in." As to his alternative argument that the goods could be classified under tariff item No. 8428.90.90 as other lifting machinery, the representative relied upon the Explanatory Notes to heading No. 84.28 which provide that "[t]he heading covers lifting or handling machines usually based on pulley, winch or jacking systems." He also contended that the *Webster's Ninth New Collegiate Dictionary*⁴ defines the word "lift" as "to raise from a lower to a higher position : ELEVATE." The representative concluded his argument by referring to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁵

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).
3. *Explanatory Notes to the Harmonized Commodity Description and Coding System*, Customs Co-operation Council, 1st ed., Brussels, 1986.
4. Merriam-Webster, 1987 at 690.
5. *Supra*, note 2, Schedule I.

and urged the Tribunal to find that the goods in issue are specifically provided for in either heading No. 84.25 or 84.28 and are more properly classified in either one of those headings in accordance with that Rule.

Counsel for the respondent argued that the lifting function of the goods in issue is only a secondary function to that of a base for the chair. Moreover, the kinds of goods covered by heading No. 84.28 are designed to handle materials, goods or a large number of people. Counsel also submitted that heading No. 84.28 confers goods that have a definite industrial application and that are generally large pieces of equipment, such as drilling derricks, passenger cage elevators and skip hoists. Counsel finally argued that the goods in issue could not be classified as parts, since the lifting mechanism is entirely contained within the chair base. With respect to heading No. 84.25, counsel argued that the goods in issue were not jacks within the meaning of that heading. Counsel lastly submitted that the goods in issue are parts of barbers' or similar chairs which conclusion, he said, is supported by the Explanatory Notes to heading No. 94.02 as they refer to "barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements."

The Tribunal notes that, in a first brief submitted on November 27, 1992, counsel for the appellant argued that hydraulic bases were functional units with a specific purpose of lifting chairs and that, in a second brief dated February 24, 1993, as well as during the hearing, counsel referred to the goods as pump sets with a base. Some of the manufacturer's literature in Exhibit A-1 also described the goods in issue as pumps.

While there was some concern at the hearing as to whether the goods in issue were imported separately or together with bases and as to the degree of assembly, such considerations were irrelevant to the Tribunal's decision. The Tribunal, indeed, is satisfied that the goods in issue are parts of barbers' and similar chairs falling within heading No. 94.02 and, more precisely, under tariff item No. 9402.10.90, which nomenclature reads as follows:

- 94.02 *Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles.*
- 9402.10 *- Dentists', barbers' or similar chairs and parts thereof*
- 9402.10.10 *--- Dentists' or chiropodists' chairs and parts thereof*
- ...
- 9402.10.90 *--- Other*

As provided in heading No. 94.02, the elevating movements of barbers' chairs are an intrinsic quality of such chairs. Since the function of the goods in issue is precisely to give that quality to those chairs, there cannot be any doubt that those goods fall squarely within the terms of tariff item No. 9402.10.90 and, as such, that they are properly classified by the respondent.

Consequently, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

W. Roy Hines

W. Roy Hines
Member