



Ottawa, Tuesday, June 29, 1993

Appeal No. AP-92-110

IN THE MATTER OF an appeal heard on February 10, 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 with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

BIONAIRE INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

W. Roy Hines
W. Roy Hines
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-110

BIONAIRE INC.

Appellant

and

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

Respondent

The appellant, a manufacturer of air-purifying equipment, imported air filters into Canada. These goods are black porous filters made up of a fine powder of activated charcoal or carbon, supported on a non-woven polyester material by means of an adhesive. The issue is whether these filters are more properly classified under tariff item No. 8421.99.30 as "Parts ... Of the goods of tariff item No. ... 8421.39.90" or under tariff item No. 8421.39.90 as "Other ... Filtering or purifying machinery and apparatus for gases," as claimed by the appellant, or under tariff item No. 5911.40.00 as "Straining cloth of a kind used in oil presses or the like, including that of human hair," as asserted by the respondent.

HELD: *The appeal is allowed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 10, 1993
Date of Decision: June 29, 1993

Tribunal Members: W. Roy Hines, Presiding Member
Michèle Blouin, Member
Lise Bergeron, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

Appearances: Michael Sherbo, for the appellant
Stéphane Lilkoff, for the respondent

Appeal No. AP-92-110

BIONAIRE INC.

Appellant

and

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

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
MICHÈLE BLOUIN, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) rendered in June and August 1992 under section 63 of the Act.

Bionaire Inc., a manufacturer of air-purifying equipment, imported air filters into Canada from January to August 1990. These goods are black porous filters made up of a fine powder of activated charcoal or carbon, supported on a non-woven polyester material by means of an adhesive. At the time of importation, these goods were classified under tariff item No. 6815.10.90 of the *Customs Tariff*² as "Other ... Non-electrical articles of graphite or other carbon." This was confirmed in re-determinations by the Deputy Minister.

The issue in this appeal is whether the appellant's imported filters are more properly classified under tariff item No. 8421.99.30 as "Parts ... Of the goods of tariff item No. ... 8421.39.90" or under tariff item No. 8421.39.90 as "Other ... Filtering or purifying machinery and apparatus for gases," as claimed by the appellant, or under tariff item No. 5911.40.00 as "Straining cloth of a kind used in oil presses or the like, including that of human hair," as asserted by the respondent.

The appellant's witness was Mr. Barry Huehn. A professional engineer, Mr. Huehn works for Bionaire Inc. where he is principally responsible for the development of air purifiers. The witness first explained that the filters were made in accordance with the dimensions and percentage of carbon specified by the appellant. Carbon has the inherent property of allowing organic compounds to attach to its surface. As to the manufacturing process of the filters, the witness explained that a substrate (or carrier) - like non-woven polyester - is dipped into a slurry mix containing the carbon and is subsequently dried and cut to specified shapes. Mr. Huehn also indicated that materials other than polyester can be used to serve as a carrier. Asked by the representative of the appellant whether the carbon filter is an essential and integral part of air-purifying machines, the witness responded that the appellant's products, as well as

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

those of other manufacturers, have a carbon filter. This is standard in the industry. He also explained the manner in which the filters fit into the air purifiers.

During cross-examination, Mr. Huehn also mentioned the existence of the electret, the purpose of which is to trap dust particles in the air. The particular electret found in Exhibits A-1 to A-4 is made of polypropylene. Further to a question by the Tribunal, Mr. Huehn explained that the electret could not be considered as "a kind of backing" put on the filter.

The representative of the appellant first sought to rebut the arguments raised in the respondent's brief. More particularly, he stressed that the goods ought to be classified pursuant to Rule 1 of the General Rules for the Interpretation of the Harmonized System³ (the General Rules) and that they are more properly classified under tariff item No. 8421.99.30 as parts of air-purifying apparatus found in heading No. 84.21 which covers the machines themselves. In his view, Note 7(a)(iii) to Chapter 59 of Schedule I to the *Customs Tariff* does not cover the goods in issue.⁴ In this connection, after noting that the dictionary definition of cloth is that of woven material or fabric, he said that the goods in issue are not of a woven type. Note 1 to Chapter 59 includes only goods that are woven.

Counsel for the respondent contended that the imported filters act as gas cleaning components. In his view, these goods "are the like of a straining cloth. They might not be a cloth but they are of the like [as they serve] to trap large particles which are in the air and [the] charcoal is used to purify that air [passing] through the machine." Note 1(e) to Section XVI of Schedule I to the *Customs Tariff* provides that this section does not cover "other articles of textile material for technical uses (heading No. 59.11)." Since Note 2 of Section XVI is subject to Note 1, the imported goods cannot be classified as machinery parts of air-filtering machines. In his opinion, the imported goods should not be regarded as "parts." Finally, counsel contended that a reference to Rule 3 (b) of the General Rules was necessary. In this respect, he concluded that the textile material was the essential character of the imported goods.

At this juncture, it must be noted that there is no dispute between the parties that the goods in issue constitute air filters.

It has been stated by the Tribunal in a number of cases that, in classifying parts within the tariff nomenclature, the application of Rule 1 of the General Rules is of the utmost importance. This rule provides that "classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes." Therefore, the immediate consideration of the Tribunal is whether the goods in issue are named or generically described in a particular heading of the tariff schedule. If the goods in issue are named in the heading, they are then classified there, subject to any relevant note. If not, the Tribunal would give consideration to the heading of the product for which the goods are claimed to be a part.

After due consideration as to the nature of these goods, the Tribunal is of the view that no separate heading, either in Section XI or Section XVI of Schedule I to the *Customs Tariff*, covers specifically these goods. In particular, the Tribunal considers that heading No. 59.11 finds no application in the present case. The air filters are not "Straining cloth of a kind used in oil

3. *Ibid.*, Schedule I.

4. This note provides that heading No. 59.11 applies to "Straining cloth of a kind used in oil presses or the like, of textile material or of human hair."

presses or the like." In this connection, the Tribunal finds somewhat far-fetched the respondent's position concerning its proposed tariff item.

Note 2 (b) to Section XVI, which includes Chapters 84 and 85, provides that, in general, parts that are suitable for use solely or principally with a particular kind of machine or with a number of machines of the same heading, are classified in the heading with the machines of that kind, subject to any exclusions. Note 2(b) is subject to Rule 1 of the General Rules, which indicates that parts named or generally described by a heading are to be classified in that heading. As mentioned above, there is no such heading.

The evidence has shown that the various air filters are made to the appellant's specifications and that they constitute an integral part of the products developed and manufactured by the appellant. These air filters are principally for use in Bionaire's air purifiers which, in the Tribunal's opinion, can be classified under tariff item No. 8421.39.90. This being the case, the Tribunal comes to the conclusion that the goods in issue are more properly classified, as rightly argued by the appellant, under tariff item No. 8421.99.30.

The appeal is allowed.

W. Roy Hines
W. Roy Hines
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member