

Ottawa, Friday, September 17, 1993

**Appeal No. AP-92-151**

IN THE MATTER OF an appeal heard on March 8, 1993,  
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF a decision of the  
Deputy Minister of National Revenue for Customs and  
Excise dated July 7, 1992, with respect to requests for  
re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**OUTILS ROYAL TOOLS CORPORATION**

**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-92-151**

**OUTILS ROYAL TOOLS CORPORATION**

**Appellant**

**and**

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

**Respondent**

*The appellant is an importer of security infra-red motion sensor and outdoor light controls (the goods in issue). The goods in issue are described in the accompanying instruction manual as security lights with an infra-red motion detector, which operates continuously and turns on the lights after sensing moving heat sources. The issue in this appeal is whether the goods in issue are more properly classified under tariff item No. 9027.50.10 as "Other instruments and apparatus using optical radiations (UV, visible, IR)" or under tariff item No. 9031.80.91 as "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter ... other instruments, appliances and machines, electrical", as claimed by the appellant, or whether they should be classified under tariff item No. 9405.10.00 as "Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares" or under tariff item No. 8536.50.99 as "Other ... electrical circuits ... for a voltage not exceeding 1,000 volts", as claimed by the respondent.*

**HELD:** *The appeal is dismissed. The Tribunal considers that the goods in issue are properly classified under tariff item No. 9405.10.00 as "Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares." The Tribunal notes that two of the three uses for the goods in issue identified in the accompanying instruction manual are non-security related and provide for use as a "light" in the ordinary sense of this word. Also, the Tribunal is of the view that the goods in issue do not "measure" or "check" heat within the meaning of the dictionary definitions of these words submitted to the Tribunal.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: March 8, 1993  
Date of Decision: September 17, 1993*

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

*Counsel for the Tribunal: Hugh J. Cheetham*

*Clerk of the Tribunal: Dyna Côté*

Appeal No. AP-92-151

**OUTILS ROYAL TOOLS CORPORATION**

**Appellant**

**and**

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

**Respondent**

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*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated July 7, 1992. The appeal proceeded on the basis of written submissions pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup> In this regard, the parties submitted an agreed statement of facts.

The appellant is an importer of security infra-red motion sensor and outdoor light controls (the goods in issue). The goods in issue are described in the accompanying instruction manual as security lights with an infra-red motion detector, which operates continuously and turns on the lights after sensing moving heat sources. The goods in issue are also described as being equipped with a photo sensor which prevents the lights from operating during the daytime, unless required.

The goods in issue were imported into Canada in 11 different transactions, between May 1991 and February 1992, and classified under tariff item No. 9031.80.91 of the *Customs Tariff*<sup>3</sup> as "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter ... other instruments, appliances and machines, electrical." The Deputy Minister reclassified the goods in issue under tariff item No. 9405.10.00 as "Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares." The appellant filed requests for re-determination for each of the transactions, and these requests were disallowed. The appellant subsequently filed requests for further re-determination for each original request and, by a decision dated July 7, 1992, the Deputy Minister maintained the classification of the goods in issue under tariff item No. 9405.10.00.

The issue in this appeal is the proper classification of the goods in issue. The appellant claims that the goods in issue are more properly classified under tariff item No. 9027.50.10 as "Other instruments and apparatus using optical radiations (UV, visible, IR)," or under tariff

- 
1. R.S.C. 1985, c. 1 (2nd Supp.).
  2. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.
  3. R.S.C. 1985, c. 41 (3rd Supp.).

item No. 9031.80.91 as "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter ... other instruments, appliances and machines, electrical." The respondent proposes that the goods in issue be classified under tariff item No. 9405.10.00 as "Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares," or under tariff item No. 8536.50.99 as "Other ... electrical circuits ... for a voltage not exceeding 1,000 volts."

The goods in issue are composed of a wall gasket, a back plate, a lamp-holder (which includes light bulb sockets), a ceiling mount extension and a control module. The control module functions as an infra-red detector which, when the goods in issue are activated, operates continuously and turns on the lights upon sensing a moving heat source. The goods in issue are meant to deter unwanted persons, animals or other heat-emitting objects from approaching buildings or other structures undetected. The instruction manual also suggests that the goods in issue can be used as sensing devices to turn on lights for non-security purposes, such as when people are approaching a home and when one's car enters the driveway. The materials submitted by the parties include a component cost breakdown for a unit of the goods in issue. This information reveals that approximately 69 percent of the total value of a unit is attributed to the control module and 18 percent to the lamp-holder.

According to the appellant, the initial step in establishing proper classification is to first determine the essential character of the goods in issue. While the goods in issue may appear to be lighting fixtures or lamps, their principal function is motion detection by the motion sensor detector, i.e. the control module. The appellant noted that the very name of the product, the manner in which it is advertised and a comparison of the amount of the total value of a unit attributable to the control module as compared to the lamp-holders all support this conclusion. Emphasis was placed on the fact that the lights only come on after a moving heat source is detected.

As implied in the above statement concerning the issue in this case, the appellant suggested that tariff item No. 9027.50.10, and not tariff item No. 9031.80.91, is the most appropriate classification for the goods in issue. Unlike heading No. 90.31, heading No. 90.27 specifically covers instruments for measuring or checking quantities of heat, which is exactly the function of the control module. Subheading No. 9027.50 is appropriate because it mentions instruments using optical radiations, namely, infra-red (IR). Finally, it was suggested that tariff item No. 9027.50.10 is correct, as it refers to electrical instruments and apparatus, and the goods in issue operate by electricity. The appellant submitted that this analysis is consistent with Rule 1 of the General Rules for the Interpretation of the Harmonized System<sup>4</sup> (the General Rules), that the legal notes to Chapter 90 do not exclude the goods in issue and that paragraph 10 of the Explanatory Notes<sup>5</sup> to heading No. 90.27 expressly includes the words "and other detectors." In the alternative, it was suggested that the Tribunal consider tariff item No. 9031.80.91.

The respondent submitted that classification under the *Customs Tariff* based on the Harmonized Commodity Description and Coding System<sup>6</sup> (the Harmonized System) must begin at the heading level with reference to relative Section and Chapter Notes. In support of

---

4. *Ibid.*, Schedule I.

5. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, 1st ed., Brussels, 1986.

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

classifying the goods in issue in heading No. 94.05, it was submitted that the facts show that the goods in issue are lamp-holders equipped with an infra-red motion sensor control module which operates as an on/off switch. The Concise Oxford Dictionary<sup>7</sup> defines the word "switch" in part to mean "[to] turn (electric light, current, radio or television set, or abs.) off or on by switch," and the McGraw-Hill Dictionary of Scientific and Technical Terms<sup>8</sup> defines the same word as "[ELEC] [a] manual or mechanically actuated device for making, breaking, or changing the connections in an electric circuit." In addition, it was observed that the Explanatory Notes to heading No. 94.05, which refers to lamps and lighting fittings, state that the heading includes lighting fittings "equipped with lamp-holders, switches." According to the respondent, the goods in issue should be understood to be objects designed to fit on a wall, to hold light bulbs and to switch these lights "on" under certain circumstances. The goods in issue are described in the operating manual as being used not only for security purposes but also for the non-security purposes indicated above. Finally, in this regard, it was contended that tariff item No. 9405.10.00 is the most appropriate tariff item for the goods in issue.

The respondent submitted that, if the Tribunal cannot classify the goods in issue pursuant to Rule 1 of the General Rules, then, pursuant to Rule 3 (b), they should still be classified in heading No. 94.05 because the lamp-holders give the goods in issue their essential character. Counsel stated that, while the motion detector does attract certain customers and facilitates certain uses, it simply acts as a switch and adds a specific characteristic to the goods in issue, but it does not determine its essential character.

In the alternative, the respondent submitted that the Tribunal should consider tariff item No. 8536.50.99, as the control module performs a switching function by converting radiant energy to electrical energy and, thereby, turns the lights "on." It was contended that the Explanatory Notes to heading No. 85.36 include all types of switches and that, under Rule 3 (b) of the General Rules, this function should be considered to give the goods in issue their essential character.

With respect to the appellant's submissions, the respondent noted that the wording of heading No. 90.27 requires that instruments under this heading perform either analytical, measuring or checking functions and that the goods in issue perform none of these functions. According to the respondent, while the goods in issue may detect the movement of heat, the control module does not have the capacity to analyze, measure or check the intensity of the heat source. In this regard, The Concise Oxford Dictionary defines the word "measure" in part to mean "ascertain[ing the] extent or quantity of (thing) by comparison with [a] fixed unit or with [an] object of known size" and "take measurements; be of specified size ... qualifications (for)."<sup>9</sup> The IEEE Standard Dictionary of Electrical and Electronics Terms<sup>10</sup> defines "check" as, to "[a]scertain the error of its indication, recorded value, or registration." Further, it was submitted that, under the *ejusdem generis* rule, the goods in issue should be excluded from heading No. 90.27 because they are not goods of the same kind as the goods described in the Explanatory Notes to this heading. It was submitted that the same arguments made with respect to heading No. 90.27 apply to the possible classification of the goods in issue under heading No. 90.31. Finally, it was contended that, if the Tribunal decided that the goods

---

7. Seventh Edition (Oxford: Clarendon Press, 1982) at 1081.

8. (New York: McGraw-Hill Inc., 1974) at 1459.

9. *Supra*, note 7 at 628.

10. Third Edition (New York: The Institute of Electrical and Electronics Engineers, Inc., 1984) at 138.

in issue could not be classified pursuant to Rule 1, 2, 3 (a) or 3 (b) of the General Rules, then, pursuant to Rule 3 (c), they should be classified under tariff item No. 9405.10.00 since it occurs last in numerical order among those which equally merit consideration.

In his reply brief, the appellant submitted that it is illogical to argue both that the goods in issue are both "lamp-holders," when this part of a unit represents only 18 percent of the total value of the unit, and that the goods in issue are lamp-holders "equipped with an infra-red motion sensor control module," when the control module represents 69 percent of the total value and the lamp-holder, as stated, only 18 percent. The appellant reiterated its argument that the switching of the light "on and off" is only a secondary feature that occurs when heat is detected and, thus, that the control module is a motion detector and not a switch. With respect to Rule 3 (b) of the General Rules, it was submitted that the essential character of the goods in issue is their ability to measure or check heat as a security device and that detectors, by their nature, must measure or check something, or they would not work. The appellant noted that the list of items set out in paragraph 18 of the Explanatory Notes to heading No. 90.31 includes "apparatus for measuring or detecting." Finally, it was contended that, if the Tribunal turned to Rule 3 (c) of the General Rules, then it should not consider tariff item No. 9405.10.00 to "equally merit consideration" and, thus, should classify the goods in issue under tariff item No. 9027.50.10.

The Tribunal considers that the goods in issue are properly classified under tariff item No. 9045.10.00 as "Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares." The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the General Rules, that must govern the classification of the goods in issue. The Tribunal is particularly cognizant of Rule 1 of the General Rules. As noted by the Tribunal in *York Barbell Co. Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>11</sup> Rule 1 of the General Rules is of the utmost importance when classifying goods under the Harmonized System. Rule 1 of the General Rules states that classification is first determined by the wording of the tariff headings and any relative Section or Chapter Notes. In this case, the Tribunal must, therefore, first consider the wording of heading Nos. 90.27, 90.31, 94.05 and 85.36.

The relevant words in heading No. 90.27 are "instruments and apparatus for measuring or checking quantities of heat." The Tribunal agrees with the respondent that, while it may be said that the goods in issue "detect" heat, they do not "measure" or "check" heat, at least as those words are defined in the dictionary definitions submitted to the Tribunal. The definitions of the word "measure" include connotations of both quantification and comparison which are absent from the factual explanation of how the goods in issue work. In the same manner, definitions of the word "check" speak to determining a value or amount, a function which the goods in issue do not perform. Although the goods in issue may be said, in a sense, to "check for the presence of heat," the facts do not show that they specifically measure or register such heat in a manner that is analogous to the measuring or checking done by the types of instruments that are identified in heading No. 90.27, which have, for the most part, a scientific nature. The Tribunal rejects the use of heading No. 90.31, the wording of which is less specific than heading No. 90.27, for the same reasons.

---

11. [1992] 5 T.C.T. 1150.

With respect to heading No. 94.05, the Tribunal notes that the goods in issue are composed, in part, of lighting fittings and that they function, in part, as lights. The Tribunal also notes that two of the three uses for the goods in issue identified in the instruction manual are non-security related and clearly provide for the use of the goods in issue as "lights" in the ordinary sense of the word. Therefore, the Tribunal finds that, as heading No. 94.05 is the only heading under consideration whose wording identifies the goods in issue themselves and the particular uses to which they are directed, it is the most appropriate heading under which the goods in issue should be classified.

Accordingly, 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