

Ottawa, Monday, December 20, 1993

**Appeal No. AP-92-206**

IN THE MATTER OF an appeal heard on April 15, 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 September 1, 1992, with respect to a request for  
re-determination made under section 63 of the  
*Customs Act*.

**BETWEEN**

**FRONTIER DISTRIBUTING  
O/B 531442 ONTARIO INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-206**

**FRONTIER DISTRIBUTING  
O/B 531442 ONTARIO INC.**

**Appellant**

**and**

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

**Respondent**

*The goods in issue in this appeal are two types of envelopes. They were part of a single shipment, which was comprised of four different components, including: (a) an outer envelope with a "Canada Post Bulk" label and plastic window for the addressee information; (b) a return envelope with a "Postage Paid" marking for the reply; (c) a return order card with advertising information and spaces for the purchaser's name, credit card number, etc.; and (d) a six-page advertising letter. The issue in this appeal is whether the envelopes are properly classified under tariff item No. 4907.00.90 as stamped envelopes, as contended by the respondent, or more properly classified under tariff item No. 4911.10.91 as advertising material, as claimed by the appellant.*

**HELD:** *The appeal is allowed. It is apparent to the Tribunal that the four components, which comprised the imported goods, were designed to be used together as a single package. For instance, printed on the outer envelope are some of the eye-catching captions contained in the advertising letter. In addition, the components are sized and designed to be assembled as a single postage item serving as advertising material. It is apparent that each item is essential to the package and that no single item has any apparent usefulness unless combined with the other items. Having examined the goods in issue, the Tribunal has no hesitancy in agreeing that they represent part of an advertising package that was presented, upon importation, in an unassembled state.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 15, 1993  
Date of Decision: December 20, 1993*

*Tribunal Members: Arthur B. Trudeau, Presiding Member  
Charles A. Gracey, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Janet Rumball*

Appeal No. AP-92-206

**FRONTIER DISTRIBUTING  
O/B 531442 ONTARIO INC.**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL:           ARTHUR B. TRUDEAU, Presiding Member  
                          CHARLES A. GRACEY, Member  
                          DESMOND HALLISSEY, 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 made under section 63 of the Act. The Tribunal disposed of the matter on the basis of written submissions in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup>

The goods in issue in this appeal are two types of envelopes. They were part of a single shipment imported by the appellant on April 16, 1990. The shipment was comprised of four different components, including:

- (a) an outer envelope with a "Canada Post Bulk" label and plastic window for the addressee information;
- (b) a return envelope with a "Postage Paid" marking for the reply;
- (c) a return order card with advertising information and spaces for the purchaser's name, credit card number, etc.; and
- (d) a six-page advertising letter.

In the appellant's revised brief, it is noted that the above products were purchased by Boardroom Reports, Inc. (Boardroom) of New York, from separate suppliers for export to Canada. The four components were consolidated in Tonawanda, New York, where they were picked up by the appellant. In Canada, the appellant affixed address labels to the order cards for display through the outer envelope windows. The components were then assembled and inserted into the outer envelopes. The mail was sorted by postal code designation, bagged according to regulations of Canada Post Corporation (Canada Post) and posted. The appellant then accounted to Canada Post for what was mailed. The smaller return envelopes are pre-addressed to the appellant. All order cards returned to the appellant are forwarded to Boardroom.

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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.

At the time of entry into Canada, the four components were classified under tariff item No. 4911.10.91 of Schedule I to the *Customs Tariff*<sup>3</sup> as advertising material not containing publicity material relating to Canadian products or services. On the basis of a request by the appellant for a re-appraisal of the value of the goods pursuant to paragraph 60(1)(b) of the Act, the envelopes in issue were re-classified under tariff item No. 4817.10.00 as envelopes. This was because "different quantities of each advertising part were produced and the values were calculated separately." On the basis of a further request for re-determination of the tariff classification of the envelopes, the respondent classified the goods in issue under tariff item No. 4907.00.90 as stamped envelopes.

The issue in this appeal is whether the envelopes are properly classified under tariff item No. 4907.00.90 as stamped envelopes, as contended by the respondent, or more properly classified under tariff item No. 4911.10.91 as advertising material, as claimed by the appellant. For purposes of this appeal, the relevant tariff nomenclature reads as follows:

- 4907.00      *Unused postage, revenue or similar stamps of current or new issue in the country to which they are destined; stamp-impressed paper; cheque forms; banknotes, stock, share or bond certificates and similar documents of title.*
  
- 4907.00.90    *---Other*
  
- 49.11        *Other printed matter, including printed pictures and photographs.*
  
- 4911.10      *-Trade advertising material, commercial catalogues and the like*  
*---Other*
  
- 4911.10.91    *---Not containing publicity material relating to Canadian products or services*

The appellant's representative argued that the envelopes were not stamped. Printed thereon were "postal indicia," which is a permit or account number designating an authorization by Canada Post for "postage-paid-in-cash-system." The indicia has no value until it is presented to Canada Post.

The appellant's representative explained that the appellant used the assemblage of components to provide a service to Boardroom. Individually, the components are of no value. They were designed to be used as a system to attract public notice to a product. In the appellant's brief, advertising was defined as "any system or method of attracting public notice to an event or product."

Reference was made to Rule 2 (a) of the General Rules for the Interpretation of the Harmonized System<sup>4</sup> (the General Rules), which states, in part, that any reference in a heading to an article shall be taken to include a reference to that article complete or finished, presented in an unassembled or disassembled state. It was argued that the four components represent an

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

4. *Ibid.*, Schedule I.

advertising system in an unassembled state, classifiable as advertising material to the extent of the lesser quantity of any one item of the four components.

Referring to Rule 1 of the General Rules, counsel for the respondent argued that the first consideration in determining the appropriate classification of goods are the terms of the headings and any relative Section or Chapter Notes. Only when these sources do not provide sufficient guidance to classify goods can reference be made to the other General Rules. It was submitted that, since the envelopes in issue are specifically provided for by the terms of heading No. 49.07 and in the related Explanatory Notes,<sup>5</sup> there is no need to have reference to Rule 2 (a) of the General Rules in determining their appropriate classification. Counsel made several references to the Explanatory Notes in support of his assertion that the envelopes fall within heading No. 49.07. He also referred to Note 2 to Chapter 49 of the Explanatory Notes, which provided meaning to the word "printed."

Counsel for the respondent submitted that the appellant's focus on an advertising "system" is an end-use analysis which is dependent upon the applicability of Rule 2 (a) of the General Rules and totally ignores that the goods crossed the border as four distinct entities which are classifiable under their individual headings in accordance with Rule 1 of the General Rules. Making reference to the Explanatory Notes to Rule 2 (a), counsel argued that the goods in issue were not "unassembled," as that word is defined.

The issue in this appeal is the proper tariff classification of the two types of envelopes. The appellant contends that the envelopes form an integral part of unassembled sets and should, therefore, be classified together with the balance of the goods under tariff item No. 4911.10.91. The respondent maintains that the proper classification is tariff item No. 4907.00.90.

It is apparent to the Tribunal that the four components, which comprised the imported goods, were designed to be used together as a single package. For instance, printed on the outer envelope are some of the eye-catching captions contained in the advertising letter. Also, the components are sized and designed to be assembled as a single postage item serving as advertising material. It is apparent that each item is essential to the package and that no single item has any apparent usefulness unless combined with the other items. Having examined the goods in issue, the Tribunal has no hesitancy in agreeing that they represent part of an advertising package that was presented upon importation in an unassembled state.

When imported, the four components were packaged separately, though presented together. As explained by the appellant, the four components were acquired from different sources and transported separately to a freight consolidator for consolidation and further transport to Canada. As the labour of assembling the advertising material was to occur in Canada, the original packaging was not altered.

In the detailed adjustment statement, the reason given for classifying the envelopes separately was that "different quantities of each advertising part were produced and the values were calculated separately." Though not explicitly stated by the respondent, the Tribunal may infer that the goods might have been considered as a single tariff item if the separate parts had been produced in equal quantities. However, the appellant explained that, since the separate components were sourced from different suppliers, it was not surprising that there would be

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

some minor variation in the numbers of each item. In the appellant's brief, it is indicated that 974,322 pieces of mail were posted and, aside from a few samples retained for purposes of this case, the remaining supplies were destroyed.

The Tribunal is not aware of the degree of variation in the number of the separate items. However, the Tribunal accepts the explanation for this variation and, therefore, sees no basis for rejecting the original classification. That decision obviates the need to address the other issues concerning the classification of envelopes as a separate entity.

Accordingly, the appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member