



Ottawa, Tuesday, December 19, 1995

Appeal Nos. AP-92-291 and AP-93-041

IN THE MATTER OF appeals heard on March 20, 1995, 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 December 23, 1992, and March 5, 1993, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

PRINCESS AUTO LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

SNAP-ON TOOLS OF CANADA LTD.

Intervener

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-92-291 and AP-93-041

PRINCESS AUTO LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

and

SNAP-ON TOOLS OF CANADA LTD.

Intervener

The issue in these appeals is whether impact sockets and impact socket sets imported into Canada by the appellant between July 10, 1991, and March 4, 1992, are properly classified under tariff item No. 8204.20.20 as interchangeable spanner sockets, with or without handles, as determined by the respondent, or should be classified under tariff item No. 8467.92.10 as tools for working in the hand, pneumatic or with self-contained non-electric motor, as claimed by the appellant, or under tariff item No. 8207.90.90 as interchangeable tools for hand tools, whether or not power-operated, as contended by the intervener.

***HELD:** The appeals are dismissed. The Tribunal finds that the goods in issue are properly classified under tariff item No. 8204.20.20 as interchangeable spanner sockets, with or without handles.*

*Place of Hearing: Winnipeg, Manitoba
Date of Hearing: March 20, 1995
Date of Decision: December 19, 1995*

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Robert C. Coates, Q.C., Member
Lyle M. Russell, Member*

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

*Appearances: William G. Ryall, for the appellant
Anne M. Turley and Jennifer Oulton, for the respondent
Gregory A. McCashin and Joseph Brick, for the intervener*

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PRINCESS AUTO LTD.

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Intervener

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue made under section 63 of the Act.

The issue in these appeals is whether impact sockets and impact socket sets imported into Canada by the appellant between July 10, 1991, and March 4, 1992, are properly classified under tariff item No. 8204.20.20 of Schedule I to the *Customs Tariff*² as interchangeable spanner sockets, with or without handles, as determined by the respondent, or should be classified under tariff item No. 8467.92.10 as tools for working in the hand, pneumatic or with self-contained non-electric motor, as claimed by the appellant, or under tariff item No. 8207.90.90 as interchangeable tools for hand tools, whether or not power-operated, as contended by the intervener. For the purposes of these appeals, the relevant tariff nomenclature reads as follows:

- 82.04 *Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); interchangeable spanner sockets, with or without handles.*
- 82.04.10 *-Hand-operated spanners and wrenches:*
- 8204.20 *-Interchangeable spanner sockets, with or without handles*
- 8204.20.10.00 *---With handles*
- 8204.20.20.00 *---Without handles*
- 82.07 *Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.*

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

- 8207.10 -*Rock drilling or earth boring tools:*
- 8207.90 -*Other interchangeable tools*
- 8207.90.90 ---*Other*
- 84.67 *Tools for working in the hand, pneumatic or with self-contained non-electric motor.*
- 8467.10 -*Pneumatic:*
- 8467.92 --*Of pneumatic tools*
- 8467.92.10 ---*Of the goods of tariff item No. 8467.11.90 or 8467.19.90*
- 8467.92.10.10 ----*Of pneumatic hand-held force feed lubricating equipment*
- 8467.92.10.90 ----*Other*

Mr. David R. Beaudry, a buyer for Princess Auto Ltd., testified on behalf of the appellant. His responsibilities with the company include purchasing the goods in issue. Mr. Beaudry explained the differences between impact sockets and hand sockets. Impact sockets always have a black coating for ease of identification so that users are not confused with hand sockets which normally have a chrome coating. The wall on an impact socket is thicker and heavier than that on a hand socket. An impact socket also features a hole that goes through the drive side which, at one time, was used to insert a pin that secured it to the impact tool, because of the vibration that occurs during operation. A hand socket is lighter than an impact socket. This makes it easier to operate with a hand tool. It has a thinner wall because it does not have to absorb the same amount of impact as an impact socket. A hand socket has a small groove on the drive side that allows a floating type of a ball bearing to secure it to a ratchet or a breaker bar during use. Both impact sockets and hand sockets are purchased individually and in sets. The hand socket sets usually include a ratchet and/or breaker bar and other types of related tools. He also explained that both impact sockets and hand sockets come in a variety of sizes.

Mr. Beaudry described the drive air impact or pneumatic impact tool and how it functions. The tool is connected to an air source or compressor. The air comes in through an inlet and goes through a drive mechanism that turns the tool and creates an impact that turns the anvil. The drive mechanism fits inside the impact socket. It features a retainer or spring on the anvil that goes inside the impact socket, expands and secures it to the tool. Mr. Beaudry explained that the impact tool has no function without the impact socket. Impact sockets are more commonly used to remove lug nuts on the wheels of a car. An impact socket will fit on a ratchet or breaker bar; however, it will tend to be a little loose. A hand socket can be used on an impact tool; however, it is not recommended because the hand socket is not built to absorb the pressure of the impact tool. The wall of the hand socket is likely to split or shatter if it is used on an impact tool. As such, according to Mr. Beaudry, impact sockets and hand sockets are not interchangeable. Finally, Mr. Beaudry testified that he has only heard the term “spanner” when listening to British mechanics describe certain kinds of wrenches.

Dr. Wayne W. Tennesey, a metallurgist with Test Labs International Ltd., also testified on behalf of the appellant as an expert in mechanical engineering. He described the differences in the hardness, the coating, the wall thickness, the composition and the design of hand sockets and impact sockets. He explained that impact sockets have to be stronger and tougher than hand sockets to absorb the impact and that, consequently, there are different industry and government specifications for each type of socket. Dr. Tennesey reiterated that it is hazardous to use a hand socket on an impact tool. He also testified that he

has never heard anybody use the term “spanner” in any industry in which he has been involved. According to Dr. Tennesey, interchangeability would mean that a socket could be used on several different tools, for example, a breaker bar or an extension that might be included in a socket set. It would not mean that a hand socket could be used on a hand tool, an impact tool or a power device.

Finally, Mr. Bill Dewar, Heavy Duty Mechanics Instructor at the South Winnipeg Technical Centre, testified on behalf of the appellant. He testified that he teaches his students the differences between hand sockets and impact sockets. More particularly, he stresses that, if a hand socket is used on an impact tool, it can break and shatter and possibly cause injury to the user. He noted that user manuals indicate that impact sockets only are to be used on impact tools. He also indicated that he has only heard of the term “spanner” when dealing with British mechanics. Mr. Dewar agreed with Dr. Tennesey that interchangeability would mean that a socket could be used on several different tools, for example, a breaker bar or an extension that might be included in a socket set.

Mr. Daniel R. Neal, an employee of Snap-on Tools of Canada Ltd., testified on behalf of the intervener. He introduced a catalogue from Snap-on Incorporated into evidence and identified a product called “spanner sockets” listed in the catalogue. Mr. Neal described these sockets as special application sockets designed to be used with a power-driven fastener. He also referred to them as “impact sockets.” Mr. Neal agreed with witnesses for the appellant that it is hazardous to use a hand socket on an impact tool. During cross-examination, Mr. Neal spoke of another kind of socket, i.e. power sockets or industrial-finished sockets which are used with a large electric or air-powered driver.

Mr. Roy Sobchuk, Chairperson, Trades Division at Assiniboine Community College, testified on behalf of the respondent. The Tribunal qualified him as an expert in the field of mechanics. According to Mr. Sobchuk, an impact socket is normally used on an electric or pneumatic device. However, it can also be used on a manual driver, such as a ratchet. He explained that the hole that goes through the drive side of the impact socket allows the ratchet or the hand tool to be fastened to the impact socket. As such, the impact socket becomes a safe socket to be used manually as well. He also testified that a hand socket can be used on an impact tool, but that he would rather use an impact socket because it is stronger. Mr. Sobchuk testified that impact sockets and hand sockets are typically referred to in the industry as “spanner sockets.” In his opinion, “interchangeable” means that different adapters, for example, extensions, universal joints, air guns and ratchets, can all be used on the same sockets. The purpose of both impact sockets and hand sockets is to remove and install nuts or bolts. During cross-examination, Mr. Sobchuk admitted that the last time that he heard someone mention the term “spanner socket” was in 1965 and that the person was British. He also testified that he teaches his students not to use a hand socket with an impact tool.

Counsel for the appellant argued that the goods in issue cannot be classified in heading No. 82.04 because the evidence shows that they are not “spanner sockets” and that they are not “interchangeable” with hand sockets. Counsel argued that impact sockets and hand sockets are not interchangeable because of the safety feature. He referred to the evidence which showed that it is dangerous to use a hand socket on an impact tool for fear that the hand socket will split or shatter and, as a result, possibly cause injury to the user. Counsel argued that the goods in issue are designed for use on a pneumatic or impact tool. They should, therefore, be classified under tariff item No. 8467.92.10 as parts of a pneumatic tool. Finally, counsel noted that there is no clear definition of the term “spanner socket.”

According to counsel for the intervener, the goods in issue should be classified under tariff item No. 8207.90.90 as other interchangeable tools. They argued that the goods in issue are impact sockets, i.e. sockets for use with pneumatic tools, and that “interchangeable” simply means that one can use different

types of impact sockets on the end of the same impact tool or different types of hand sockets on the same hand tool. Counsel submitted that “spanner sockets” in heading No. 82.04 refer only to the goods described in the Snap-on Incorporated catalogue. The goods in issue are, therefore, not “spanner sockets” and, as such, cannot be classified in heading No. 82.04. Counsel referred to sections 10 and 11 of the *Customs Tariff* and argued that, in interpreting the headings, the Tribunal must consider the General Rules for the Interpretation of the Harmonized System³ (the General Rules), the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes) and the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System⁵ (the Classification Opinions). Although the Tribunal may refer to other sources, such as trade usage, counsel argued that the Tribunal should not attribute great weight to the proposals of the Nomenclature Committee for the revision of Chapter 82 of the Harmonized Commodity Description and Coding System⁶ (the Proposals of the Nomenclature Committee), as they are clearly outdated.

Referring to Note (C) of the Explanatory Notes to heading No. 82.07, counsel for the intervener argued that the goods in issue should be classified as other interchangeable tools for power-operated hand tools. Counsel argued that heading No. 82.04 is specifically restricted to hand sockets. Counsel argued that, in the event that the Tribunal cannot decide whether to classify the goods in issue in heading No. 82.04 or 82.07, it may refer to Rule 3 (c) of the General Rules and classify them in the heading which occurs last in numerical order, i.e. heading No. 82.07. In the alternative, counsel for the intervener agreed with counsel for the appellant’s argument that the goods in issue should be classified in heading No. 84.67 rather than in heading No. 82.04, as determined by the respondent.

Counsel for the respondent argued that the goods in issue are specifically described in heading No. 82.04 as “interchangeable spanner sockets” and, as such, properly classified in that heading. Referring to Rule 1 of the General Rules, counsel argued that there is no need to go any further. Furthermore, the goods in issue do not fit specifically in either heading No. 82.07 or heading No. 84.67. Counsel referred to Note (b) of the Explanatory Notes to heading No. 84.67 and argued that impact sockets are excluded from that heading as they are “[t]ools of Chapter 82.” Counsel referred to extracts from the Proposals of the Nomenclature Committee and argued that heading No. 82.04 covers both impact sockets and hand sockets. They argued that the goods in issue are interchangeable, as they can be used on different tools, such as impact guns, ratchets, extensions, adapters and universal joints. Referring to the French version of heading No. 82.04, counsel argued that “spanner” simply means “*de serrage*” or “for tightening.” All of the conditions of heading No. 82.04 having been met, counsel argued that the goods in issue are properly classified. Furthermore, to accept counsel for the intervener’s argument that “spanner sockets” in heading No. 82.04 refer only to the goods described in the Snap-on Incorporated catalogue would render that heading which was drafted by Parliament meaningless.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules is of the utmost importance. Rule 1 states that classification is first determined according to the terms of the headings and any relative Section or Chapter Notes. Therefore, the Tribunal must first determine whether the goods in issue are named or generically described in a particular heading of Schedule I to the *Customs Tariff*. If the goods are named in a heading, they are to be classified therein, subject to any relative

3. *Supra*, note 2, Schedule I.

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

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

6. Customs Co-operation Council, Nomenclature Committee, 38th Session, Brussels, February 18, 1977.

Chapter Note. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes and the Classification Opinions.

Heading No. 82.04 provides for the classification of “[h]and-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); interchangeable spanner sockets, with or without handles.” The Tribunal is concerned with the second part of this heading. It must determine whether the goods in issue are “interchangeable spanner sockets, with or without handles.” The evidence shows that the goods in issue are clearly sockets and that they are without handles. The issue surrounds the meaning of two of the terms found in heading No. 82.04, i.e. “spanner” and “interchangeable.”

Neither of the above terms is defined in the *Customs Tariff* or in the Explanatory Notes. None of the witnesses was able to give a precise definition of the term “spanner.” However, they did seem to agree on the fact that little or no meaning is attributed to this term in today’s industry. Counsel for the respondent referred to the French version of heading No. 82.04 and argued that “spanner” simply means “for tightening.” In the Tribunal’s view, the term “spanner,” as it is used in the second part of heading No. 82.04, qualifies the term “sockets.” The Oxford English Dictionary⁷ does not define the term “spanner” as an adjective. It does, however, define the term “spanned.” It means “[t]hat is or has been spanned or drawn tight.”⁸ In light of this definition and the French version of heading No. 82.04, the Tribunal concludes that “spanner sockets” are simply sockets which are used for tightening. The evidence shows that the goods in issue are used for tightening. As such, in the Tribunal’s view, they are “spanner sockets.”

The witnesses testified and counsel argued that “interchangeable” would mean that impact sockets could be used on both an impact tool and a hand tool. The evidence shows that impact sockets may sometimes be used on a hand tool, such as a ratchet, although such a use was probably not intended by its manufacturer. The evidence also shows that it is dangerous to use a hand socket on an impact tool and, therefore, unlikely that it would be put to such a use. In the Tribunal’s view, to interpret the term “interchangeable” in such a way would render it meaningless. In other words, if the Tribunal accepts this interpretation, it is probable that neither impact sockets nor hand sockets could be classified in heading No. 82.04, as neither of them would be “interchangeable.” The term “interchangeable” is defined in The Oxford English Dictionary as “[c]apable of being put or used in the place of each other.”⁹ In the Tribunal’s view, “interchangeable” simply means that sockets can be put or used in the place of each other on the same tool, i.e. different sizes of impact sockets can be used on the same impact tool and different sizes of hand sockets can be used on the same hand tool. The evidence clearly shows that the goods in issue come in a variety of sizes and that they can be put on or used with the same impact tool. The Tribunal, therefore, is of the view that the goods in issue are “interchangeable” within the meaning of heading No. 82.04.

In light of the above, the Tribunal does not accept both counsel for the appellant and counsel for the intervener’s argument that heading No. 82.04 is restricted to hand sockets or the latter’s argument that the term “spanner sockets” in that heading refers only to the goods described in the Snap-on Incorporated catalogue. The Tribunal, therefore, finds that the goods in issue are specifically named in heading No. 82.04.

The Tribunal also considered whether the goods in issue could be classified in heading No. 84.67, which provides for the classification of “[t]ools for working in the hand, pneumatic or with self-contained non-electric motor.” Note (b) of the Explanatory Notes to heading No. 84.67 provides that the heading

7. Second ed. (Oxford: Clarendon Press, 1989).

8. *Ibid.*, Vol. XVI at 110.

9. *Supra*, note 7, Vol. VII at 1090.

excludes “[t]ools of Chapter 82.” Having found that the goods in issue are included in Chapter 82, the Tribunal finds that they are excluded from heading No. 84.67.

Heading No. 82.07 provides for the classification of “[i]nterchangeable tools for hand tools, whether or not power-operated, or for machine-tools.” Note (C) of the Explanatory Notes to heading No. 82.07 provides that “this heading covers an important group of tools which are unsuitable for use independently, but are designed to be fitted, as the case may be, into ... tools of [heading No.] 84.67.” The evidence shows that the goods in issue cannot be used independently. There is also some evidence that they were designed to be fitted into a tool of heading No. 84.67, for example, a pneumatic tool. In the Tribunal’s view, the goods in issue may, therefore, be included in heading No. 82.07. Rule 3 (a) of the General Rules provides that, when goods are classifiable in two or more headings, “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” Having found that the goods in issue are specifically named in heading No. 82.04, the Tribunal finds that they are properly classified in that heading and, more particularly, under tariff item No. 8204.20.20.

For all of these reasons, the appeals are dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

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Member