



Ottawa, Friday, March 18, 1994

Appeal No. AP-92-300

IN THE MATTER OF an appeal heard on November 4, 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 December
19, 1992, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

SAN FRANCISCO GIFTS LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-300

SAN FRANCISCO GIFTS LTD.

Appellant

and

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

Respondent

The goods in issue are in-line roller skates, typically referred to as roller blades. The boot of the in-line skate is attached to a nylon frame that is the length of the sole. The frame contains four polyurethane wheels mounted in a line on ball bearings. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9506.70.10 as roller skates attached to boots, as determined by the respondent, or should be classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, as claimed by the appellant.

HELD: *The appeal is dismissed. In the Tribunal's opinion, in-line skates are a type of roller skates. The skates meet the composite dictionary definition of "roller skate" advanced by counsel for the respondent, which supports the Tribunal's common and grammatical understanding of the term. In addition, the roller skate industry refers to in-line skates as roller skates. As roller skates are named in subheading No. 9506.70, they are classified therein. Further, as the goods in issue can be described as roller skates attached to boots, they are properly classified under tariff item No. 9506.70.10.*

*Place of Hearing: Calgary, Alberta
Date of Hearing: November 4, 1993
Date of Decision: March 18, 1994*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Anthony T. Eyton, Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

*Appearances: Peter Kowalchuk, for the appellant
Brian Tittlemore, for the respondent*

Appeal No. AP-92-300

SAN FRANCISCO GIFTS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANTHONY T. EYTON, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister). The goods in issue were imported into Calgary on April 4, 1991. At the time of entry, they were classified under tariff item No. 9506.70.10 of Schedule I to the *Customs Tariff*² as roller skates attached to boots. Responding to a request by the appellant for a re-determination of the tariff classification of the goods under section 60 of the Act, this classification was confirmed. The classification was again upheld by the Deputy Minister pursuant to a decision made under section 63 of the Act. San Francisco Gifts Ltd. then appealed from that decision to the Tribunal.

The goods in issue are in-line roller skates, typically referred to as roller blades. Neither of the parties brought a sample of the in-line skates to the hearing. However, in the respondent's brief, it was noted that the boot of the in-line skate is attached to a nylon frame that is the length of the sole. The frame contains four polyurethane wheels mounted in a line on ball bearings.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9506.70.10 as roller skates attached to boots, as determined by the respondent, or should be classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, as claimed by the appellant.

For purposes of this appeal, the relevant tariff nomenclature of Schedule I to the *Customs Tariff* reads as follows:

- 95.06 *Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this Chapter; swimming pools and padding pools.*
- 9506.70 *-Ice skates and roller skates, including skating boots with skates attached*

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

9506.70.10 ---Ice or roller skates attached to boots

-Other:

9506.91 --Articles and equipment for general physical exercise, gymnastics or athletics

9506.91.90 ---Other

Mr. Doug Jakes, a retail consultant for the appellant, served as its witness. Through Mr. Jakes, the appellant's representative introduced dictionary definitions of the expression "roller skate" and "roller skating." In addition, Mr. Jakes introduced several promotional articles and other articles dealing with topics such as training with the skates and injuries associated with their use. Mr. Jakes made note of one article in particular which referred to a city by-law that prohibited traditional roller skating, but not roller blading. The literature distinguished traditional roller skating from roller blading.

The respondent's first witness was Mr. Andrew Barron, who is presently the Development and School Coordinator and Coach of the Canadian National Short Track Speed Skating Team in Calgary. Mr. Barron spoke about the history of in-line roller skates, informing the Tribunal that they have been in use since, at least, the 1950s. He explained how and why the skates have been used in training for such sports as speed skating and skiing.

The respondent's second witness was Mr. Blaine Hoshizaki, who is presently Vice-President of Research and Development with Canstar Sports Group Inc., a manufacturer of roller skates in Canada. Mr. Hoshizaki explained to the Tribunal the design differences between the traditional roller skates and roller blades. He noted that, except for the wheels, they are built very similarly. Mr. Hoshizaki spoke in detail about the various components of the roller blades. In response to questions from the Tribunal, he noted that, in the industry, both the traditional skates and the roller blades are referred to as roller skates.

The appellant's representative noted that the tariff nomenclature of Schedule I to the *Customs Tariff* did not anticipate every new product that may be imported. In particular, it did not envisage roller blades. Referring to various dictionary definitions, he argued that roller blades are not properly defined as roller skates. As to the tariff item advocated by the respondent, it was argued that the expression "roller skate" refers to the traditional roller skate and not to roller blades. In contrast, the newly marketed wheeled toy, which is akin to cross-country skiing, is aptly described as a roller blade. He argued that the two activities are separate and require unique discipline. As roller blades are not roller skates, they are not properly classified as such. Rather, they should be classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise.

Referring to Rule 1 of the General Rules for the Interpretation of the Harmonized System³ (the General Rules), counsel for the respondent argued that goods are to be classified according to the terms of the tariff nomenclature. After referring to dictionary definitions of the expression "roller skate," counsel summarized by submitting that a roller skate is a boot or shoe, with rollers attached, that is used to glide over smooth surfaces. He noted that this describes the goods in issue. In addition, counsel noted the similarities between the traditional roller

3. *Ibid.*, Schedule I.

skates and roller blades and reminded the Tribunal that, within the industry, roller blades are referred to as roller skates.

In the event that the Tribunal determined that roller blades are not roller skates and that they could not be classified as such, counsel for the respondent asked the Tribunal to consider Rule 4 of the General Rules. This rule indicates that, if goods cannot be classified according to the first three rules, they are to be classified in the heading appropriate to the goods to which they are most akin. Counsel argued that the roller blades are most akin to roller skates.

The Tribunal notes that there is no dispute between the parties as to the proper heading in which the in-line skates are to be classified and that disagreement occurs at the subheading level. In determining the proper subheading in which the goods should be classified, reference is made to Rule 6 of the General Rules which states that "[f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings." The respondent has classified the goods in subheading No. 9506.70 as roller skates, while the appellant claimed that the goods should be classified in subheading No. 9506.91 as other articles and equipment for general physical exercise.

In the Tribunal's opinion, in-line skates are a type of roller skates. The skates meet the composite dictionary definition of "roller skate" advanced by counsel for the respondent, which supports the Tribunal's common and grammatical understanding of the term. In addition, the Tribunal notes the testimony of Mr. Hoshizaki that, in the industry, in-line skates are referred to as roller skates. As roller skates are named in subheading No. 9506.70, they are classified therein. Further, as the goods in issue can be described as roller skates attached to boots, they are properly classified under tariff item No. 9506.70.10.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton

Anthony T. Eyton
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
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