



Ottawa, Tuesday, February 22, 1994

**Appeal No. AP-92-362**

IN THE MATTER OF an appeal heard on September 30, 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**

**DAVID F. HOWAT**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Michèle Blouin

Michèle Blouin  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-362**

**DAVID F. HOWAT**

**Appellant**

**and**

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

**Respondent**

*This is an appeal under section 67 of the Customs Act from a decision of the Deputy Minister of National Revenue for Customs and Excise under section 63 of the Customs Act. The issue in this appeal is whether an inboard-outboard engine installed on a boat is properly classified under tariff item No. 8903.92.00 as "Motorboats, other than outboard motorboats," as determined by the respondent, or should be classified separately from the boat under tariff item No. 8407.29.10 as "Inboard-outboard engines," as claimed by the appellant.*

**HELD:** *The appeal is dismissed. The Explanatory Notes to the Harmonized Commodity Description and Coding System to Chapter 89 provide that the Chapter "excludes all separately presented parts." Since the engine was installed on the boat, it was not, in the Tribunal's view, "separately presented" from the boat, and the Tribunal is, therefore, not prevented from classifying the boat and engine as one unit under Chapter 89 and, more specifically, in heading No. 89.03. In the Tribunal's view, the fact that the engine was installed on the boat prior to importation makes it impossible to separate the two goods for tariff classification purposes. Together, the boat and the engine comprise what the Tribunal considers to be a "motorboat," a boat propelled by an engine. In the Tribunal's view, both the boat and the engine are properly classified under tariff item No. 8903.92.00.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 30, 1993  
Date of Decision: February 22, 1994*

*Tribunal Members: Anthony T. Eyton, Presiding Member  
Kathleen E. Macmillan, Member  
Michèle Blouin, Member*

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Janet Rumball*

*Appearance: Barbara Legay, for the respondent*

Appeal No. AP-92-362

DAVID F. HOWAT

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: ANTHONY T. EYTON, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
MICHÈLE BLOUIN, 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 under section 63 of the Act. The issue in this appeal is whether an inboard-outboard engine (the engine) installed on a boat is properly classified under tariff item No. 8903.92.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as "Motorboats, other than outboard motorboats," as determined by the respondent, or should be classified separately from the boat under tariff item No. 8407.29.10 as "Inboard-outboard engines," as claimed by the appellant.

The relevant tariff nomenclature of Schedule I to the *Customs Tariff* reads as follows:

84.07 *Spark-ignition reciprocating or rotary internal combustion piston engines.*

*-Marine propulsion engines:*

8407.29 *--Other*

8407.29.10 *---Inboard-outboard engines*

89.03 *Yachts and other vessels for pleasure or sports; rowing boats and canoes.*

*-Other:*

8903.92.00 *--Motorboats, other than outboard motorboats*

The appellant did not appear at the hearing, but filed a brief with the Tribunal. The Tribunal, therefore, proceeded to consider the submissions of the appellant and to give them whatever weight that it thought was appropriate in accordance with rule 22 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup>

The appellant stated in his brief that he had consulted a representative of the Department of National Revenue prior to importing the motorboat to determine the applicable duty and was

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

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

3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

advised that duty would be imposed on the motorboat and trailer, but that the engine was duty-free.

The appellant argued that the classification of his engine, boat and trailer should be treated similarly to the classification of his friend's engine, boat and trailer. His friend purchased an identical engine, boat and trailer and was, at first, required to pay duty on the engine and boat, but, as a result of a re-determination, the engine was then classified under tariff item No. 8407.29.10 as "Inboard-outboard engines," and the duty paid on the engine was refunded, plus interest and the Goods and Services Tax.

Counsel for the respondent argued that, at the time of importation, the boat and engine were a single unit and constituted an assembled, complete and operable motorboat and were, thus, classifiable under tariff item No. 8903.92.00. Counsel submitted that it is well established in customs legislation that goods must be classified according to their nature at the time of importation, as was stated in *The Deputy Minister of National Revenue for Customs and Excise v. MacMillan & Bloedel (Alberni) Limited*.<sup>4</sup>

Counsel for the respondent referred to the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>5</sup> (the Explanatory Notes) to Chapter 89, which provide as follows:

*this Chapter excludes all separately presented parts (other than hulls) and accessories of vessels or floating structures. ... Such parts and accessories are classified in the appropriate headings elsewhere in the Nomenclature, for example:*

(1) *The parts and accessories specified in Note 2 to Section XVII.*

Paragraph (e) of Note 2 to Section XVII of the Explanatory Notes, which apply to goods described under Chapter 89, provides as follows:

2. *The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:*

...

*(e) Machines or apparatus of heading Nos. 84.01 to 84.79, or parts thereof.*

According to counsel for the respondent, since the engine, which is described under tariff item No. 8407.29.10, was not presented separately from the motorboat, it should be classified with the motorboat.

Counsel for the respondent referred to the General Rules for the Interpretation of the Harmonized System<sup>6</sup> (the General Rules). She submitted that Rule 1 of the General Rules provides that goods are to be classified according to the relevant chapter headings. In her view, the relevant chapter heading is heading No. 89.03 which relates specifically to motorboats.

Counsel for the respondent argued that the boat and engine are parts of a single unit. She referred to Rule 2 (a) of the General Rules which applies to disassembled goods. She submitted that, even if the engine had been separate from the boat, it would still have been considered as a motorboat, since it is the boat that gives the motorboat its essential character.

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4. [1965] S.C.R. 366.

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

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

Finally, counsel for the respondent submitted that, according to Rule 3 (b) of the General Rules, composite goods consisting of different components which are, *prima facie*, classifiable under two or more headings and which cannot be classified according to specificity of description under Rule 3 (a) of the General Rules, are to be classified as if they consisted of the component which gives them their "essential character." In counsel's view, the boat gives the boat and engine combination its essential character, and the two components should, therefore, be classified as a motorboat.

The basic question facing the Tribunal in this appeal is whether tariff item No. 8903.92.00 encompasses both the boat and the engine, as determined by the respondent, or simply the boat, as claimed by the appellant, with the engine being classified under tariff item No. 8407.29.10.

Prior to making its decision, the Tribunal examined the relevant Explanatory Notes as required by section 11 of the *Customs Tariff*. The Explanatory Notes to Chapter 89 provide that the Chapter "excludes all separately presented parts ... and accessories of vessels or floating structures" and "[s]uch parts and accessories are classified in the appropriate headings elsewhere in the Nomenclature." The Explanatory Notes list the parts and accessories specified in Note 2 to Section XVII as examples of goods classified elsewhere in the Nomenclature. Paragraph (e) to Note 2 to Section XVII of the Explanatory Notes refers specifically to machines and apparatus of heading Nos. 84.01 to 84.79, which includes inboard-outboard engines in heading No. 84.07. Since the engine was installed on the boat, it was not, in the Tribunal's view, "separately presented" from the boat, and the Tribunal is, therefore, not prevented from classifying the boat and engine as a single unit under tariff item No. 8903.92.00.

In the Tribunal's view, the fact that the engine was installed on the boat prior to importation makes it impossible to separate the two goods for tariff classification purposes. Together, the boat and the engine comprise what the Tribunal considers to be a "motorboat," a boat propelled by an engine. Consequently, the Tribunal is of the view that both the boat and the engine are properly classified under tariff item No. 8903.92.00.

The Tribunal sympathizes with the appellant's frustration with the different treatment apparently accorded to his friend who imported a similar boat and engine. Unfortunately for the appellant, the Tribunal is required to interpret the tariff nomenclature as it is written and does not have the authority to disregard this responsibility, even in circumstances such as these.

Accordingly, the appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Michèle Blouin

Michèle Blouin  
Member