

Ottawa, Thursday, December 9, 1993

Appeal No. AP-92-384

IN THE MATTER OF an appeal heard on August 16, 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 23, 1992, with respect to a request
for re-determination made under section 63 of the
Customs Act.

BETWEEN

WET VEST INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member

Nicole Pelletier
Nicole Pelletier
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-384

WET VEST INC.

Appellant

and

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

Respondent

The issue in this appeal is the proper tariff classification of the Wet Vest, which is a specialized flotation device used for rehabilitation therapy in deep water. It includes an inflatable neck support collar and flotation panel. Since there is a decrease in gravitational pull, stress on the joints and tendons is reduced, virtually eliminating neuromuscular trauma. Tight constricted muscles can relax, stretch, become stronger and regain their proper balance. The respondent classified the Wet Vest under tariff item No. 6307.20.00 as "Life-jackets and life-belts." The appellant's representative submitted that the goods are more properly classified under tariff item No. 9021.19.30 as "Other orthopaedic or fracture appliances."

HELD: *The appeal is allowed. The Tribunal agrees with counsel for the respondent that the Wet Vest in issue is a unique item that is not specifically referred to in any of the tariff headings and that it is not prima facie classifiable under two or more headings. However, the Tribunal cannot agree with the proposition that the goods are most akin to life jackets or life belts. In its opinion, the Wet Vest in issue is more akin to the orthopaedic appliances classifiable under heading No. 90.21.*

In the appellant's brief, it is indicated that the Wet Vest is used for patients with such disorders as muscular dystrophy, spina bifida, cerebral palsy, paraplegia and quadriplegia. Through the use of the Wet Vest, neurological trauma can be eliminated and certain patients can strengthen muscles and regain their balance. Appliances classifiable under heading No. 90.21 include those for correcting bodily deformities. The Tribunal believes that the goods in issue are most akin to this type of appliances.

*Place of Hearing: Ottawa, Ontario
Date of Hearing: August 16, 1993
Date of Decision: December 9, 1993*

*Tribunal Members: Michèle Blouin, Presiding Member
W. Roy Hines, Member
Lise Bergeron, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-384

WET VEST INC.

Appellant

and

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

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
W. ROY HINES, Member
LISE BERGERON, 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) made under section 63 of the Act. The appeal proceeded by way of written submissions, pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*,² on the basis of the Tribunal's record as supplemented by an agreed statement of facts and briefs submitted by the parties.

The issue in this appeal is the proper tariff classification of the Wet Vest. A Wet Vest is a specialized flotation device used for rehabilitation therapy in deep water. It is composed of man-made fibres and rubber threads, and includes an inflatable neck support collar and flotation panel, and additional attachments that fasten between the legs. The Wet Vest is used to maintain effective body alignment in deep water. As it suspends the user at neck level, the feet never touch the bottom of the pool. Since there is a decrease in gravitational pull, stress on the joints and tendons is reduced, virtually eliminating neuromuscular trauma. Tight constricted muscles can relax, stretch, become stronger and regain their proper balance.

The Deputy Minister classified the Wet Vest under tariff item No. 6307.20.00 of Schedule I to the *Customs Tariff*³ as "Life-jackets and life-belts." The appellant's representative submitted that the goods are more properly classified under tariff item No. 9021.19.30 as "Other orthopaedic or fracture appliances."

For purposes of this appeal, the relevant tariff nomenclature reads as follows:

63.07 *Other made up articles, including dress patterns.*

6307.20.00 *-Life-jackets and life-belts*

...

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

90.21 *Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability.*

-Artificial joints and other orthopaedic or fracture appliances:

9021.19 *--Other*

9021.19.30 *---Other orthopaedic or fracture appliances*

The appellant's representative submitted that the Wet Vest is not a life jacket. Inside the vest is a warning, stating:

This jacket is not a Safety Vest or Life Preserver.... The design of this vest will not prevent drowning.

Rather, a Wet Vest is a therapeutic, rehabilitation aid. There is nothing similar made in Canada. The representative of the appellant sought a classification change or, in the alternative, a medical exemption from the duties paid on importation of the goods and a return of all duties collected since December 1992.

Counsel for the respondent submitted that the Wet Vest in issue is a unique item that is not specifically referred to in any of the tariff headings, and is not *prima facie* classifiable under two or more headings. Referring to Rule 4 of the General Rules for the Interpretation of the Harmonized System,⁴ it was submitted that the Wet Vest must be classified under the heading for goods to which it is most akin.

Counsel acknowledged that the vest contains a warning that it is not a life preserver. However, he submitted that, in many other respects, the vest is most akin to "Other made up articles," and specifically, to the life jackets and life belts referred to in tariff item No. 6307.20.00. As the vest is "assembled by sewing, gumming or otherwise," it is "made up," as that term is defined in Note 7(e) of Section XI of the *Customs Tariff*. In addition, the vest is composed of knitted man-made fibres and rubber threads and, as such, it falls within the context of the other items included under heading No. 63.07.

The Wet Vest is a flotation device used to buoy up a person in water, with an inflatable neck support collar and flotation panel. Referring to the definitions of "life jacket" and "life preserver" in The Random House College Dictionary,⁵ it was submitted that the Wet Vest is a buoyant vest used to keep a person afloat and, thus, is very similar to a life jacket.

With regard to the tariff classification proposed by the appellant, the Explanatory Notes to the Harmonized Commodity Description and Coding System,⁶ indicate that appliances of heading No. 90.21 are for: (a) preventing or correcting bodily deformities; or (b) supporting or holding organs following an illness or operation. An overview of the heading indicates that it

4. *Ibid.*, Schedule I.

5. Revised edition (New York: Random House, 1984) at 774.

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

is intended to include items that are used in relation to, and designed for, a specific part or organ of the body to prevent or correct deformities in that part or organ or to support or hold an organ following an illness or an operation. It was submitted that the vest is not used in relation to, or designed for, a specific part or organ of the body to prevent or correct deformities therein or to support or hold an organ after illness or surgery.

The Tribunal agrees with counsel for the respondent that the Wet Vest in issue is a unique item that is not specifically referred to in any of the tariff headings and that it is not *prima facie* classifiable under two or more headings. However, the Tribunal cannot agree with the proposition that the goods are most akin to life jackets or life belts. The Tribunal notes the warning attached to the Wet Vest. In the opinion of the Tribunal, the Wet Vest in issue is more akin to the orthopaedic appliances classifiable under heading No. 90.21.

In the appellant's brief, it is indicated that the Wet Vest is used for patients with such disorders as muscular dystrophy, spina bifida, cerebral palsy, paraplegia and quadriplegia. Through the use of the Wet Vest, neurological trauma can be eliminated and certain patients can strengthen muscles and regain their balance. Appliances classifiable under heading No. 90.21 include those for correcting bodily deformities. The Tribunal believes that the goods in issue are most akin to this type of appliances.

Accordingly, the appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member