



Ottawa, Tuesday, April 12, 1994

**Appeal No. AP-93-019**

IN THE MATTER OF an appeal heard on September 21, 1993, 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 for Customs and Excise dated March 18 and 28, 1993, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**TELEDYNE CANADA MINING PRODUCTS**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Michèle Blouin  
Michèle Blouin  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-019**

**TELEDYNE CANADA MINING PRODUCTS**

**Appellant**

**and**

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

**Respondent**

*The issue in this appeal is whether the Loadrite systems are properly classified under tariff item No. 8423.89.00 as other weighing machinery, as determined by the respondent, or should be classified under tariff item No. 9031.80.99 as other measuring or checking instruments, appliances and machines, as claimed by the appellant. The appellant submits that heading No. 84.23 contemplates weighing machinery which, without the addition of any other equipment, can weigh objects or material and that, as the Loadrite systems can only weigh material when they are incorporated into a hydraulic loading device, they do not fall in heading No. 84.23. The respondent contends that the Loadrite systems are machinery for the direct determination of weight and, therefore, fall in heading No. 84.23.*

**HELD:** *The appeal is allowed. The Tribunal finds that heading No. 84.23 contemplates weighing machinery and appliances which, without the addition of any other equipment, have the capacity to weigh objects or material. The Tribunal finds that the Loadrite systems can only operate when they are incorporated into hydraulic equipment. Therefore, the Tribunal finds that the Loadrite systems should be classified in heading No. 90.31, as they are appliances for measuring or checking weight.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 21, 1993  
Date of Decision: April 12, 1994*

*Tribunal Members: Lise Bergeron, Presiding Member  
Michèle Blouin, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: John L. Syme*

*Clerk of the Tribunal: Anne Jamieson*

*Parties: Douglas J. Bowering, for the appellant  
Anne M. Turley, for the respondent*

Appeal No. AP-93-019

TELEDYNE CANADA MINING PRODUCTS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member  
MICHÈLE BLOUIN, Member  
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from decisions of the Deputy Minister of National Revenue for Customs and Excise made under subsection 63(3) of the Act. The appeal proceeded on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup> In this regard, the parties submitted an agreed statement of facts, from which the facts herein are taken.

The goods in issue in this appeal are Loadrite systems, which are devices designed and used in conjunction with hydraulic loading machines, such as front-end loaders. The primary purpose of the Loadrite systems is to allow a machine operator to determine the weight of material in the machine's bucket. On various occasions between March 28, 1988, and July 10, 1989, the appellant imported the Loadrite systems into Canada. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8423.89.00 of Schedule I to the *Customs Tariff*<sup>3</sup> as other weighing machinery, as determined by the respondent, or should be classified under tariff item No. 9031.80.99 as other measuring or checking instruments, appliances and machines, as claimed by the appellant. At the times of entry, the tariff nomenclature read as follows:

- 84.23      *Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight operated counting or checking machines; weighing machine weights of all kinds.*
- Other weighing machinery:
- 8423.82.00    --Having a maximum weighing capacity exceeding 30 kg but not exceeding 5,000 kg
- 8423.89.00    --Other
- 90.31      *Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter; profile projectors.*

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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.).

9031.80        *-Other instruments, appliances and machines*

---*Other:*

9031.80.99----*Other*

-----*Equipment for testing the characteristics of internal combustion engines:*

11 -----*For testing electrical characteristics*

19 -----*Other*

90 -----*Other*

The appellant's representative advanced a number of arguments in support of the appellant's position.

The appellant's representative first argued that Rule 1 of the General Rules for the Interpretation of the Harmonized System<sup>4</sup> (the General Rules) applies to the present case. That rule, in essence, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and according to Rules 2 through 6, as applicable. The representative directed the Tribunal to the fact that heading No. 90.31 refers to, among other things, measuring or checking instruments, appliances and machines, whereas heading No. 84.23 refers to weighing machinery.

The appellant's representative submitted that the Loadrite systems are instruments which are used to determine weight, but do not, by themselves, weigh goods. The representative pointed out that the Loadrite systems cannot weigh anything unless they are incorporated into hydraulic machinery. In the appellant's submission, heading No. 84.23 contemplates machinery which has the capacity to weigh goods, without the addition of other equipment.

The appellant's representative also referred the Tribunal to the fact that Note (A) of the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>5</sup> (the Explanatory Notes) to heading No. 84.23 indicates that heading No. 84.23 covers machinery and appliances for the direct determination of the weight of objects. The representative argued that the Loadrite systems do not fall within that description, as they do not perform the weighing calculation directly, but in conjunction with hydraulic equipment.

Finally, the appellant's representative pointed out that the Explanatory Notes to heading No. 90.31 list load cells used for weighing as falling in heading No. 90.31. The representative argued that the Loadrite systems are instruments which use a load cell to determine weight.

Counsel for the respondent submitted that, as Note (A) of the Explanatory Notes to heading No. 84.23 indicates, heading No. 84.23 covers:

*Machinery and appliances for the direct determination of the weight of objects, whether electronically (by means of transducers) ... or by automatic recording on a scale or indicator in machines operating ... hydraulically, etc.*

Counsel for the respondent submitted that the Loadrite systems are machinery for the determination of weight electronically by means of a hydraulic load cell and are properly

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4. *Ibid.*, Schedule I.

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

classified in heading No. 84.23. Counsel also referred the Tribunal to Note 5 to Section XVI of Schedule I to the *Customs Tariff* which, he submitted, defines the word "machine" for the purposes of heading No. 84.23. Note 5 provides that:

*"machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.*

Counsel for the respondent submitted that, in light of the expanded definition of "machine" applicable to Chapter 84, the Loadrite systems are machines within the meaning of heading No. 84.23.

Finally, counsel for the respondent submitted that the Tribunal should reject the argument of the appellant's representative to the effect that, because the Loadrite systems do not themselves weigh goods, they do not fall in heading No. 84.23. He argued that the Loadrite systems use hydraulic pressure from the hoist of a loader to determine the weight of a payload. In determining the weight of the payload, counsel submitted, the Loadrite systems are performing the function of weighing.

The Tribunal agrees with the appellant's representative that Rule 1 of the General Rules applies to the goods in issue. The Tribunal is of the view that, in the present case, in order to determine the correct classification of the Loadrite systems, it must first decide whether the goods in issue are named or generically described in heading No. 84.23. If the Loadrite systems are named in that heading, they will be classified therein, subject to any relevant note.

Heading No. 84.23 refers to "[w]eighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight operated counting or checking machines; weighing machine weights of all kinds."

The Tribunal is of the view that, pursuant to Note (A) of the Explanatory Notes to heading No. 84.23, machinery in that heading means machinery and appliances for the direct determination of weight. Therefore, in order to establish whether the Loadrite systems are generically described in heading No. 84.23, the Tribunal must first decide whether the Loadrite systems are machines or appliances.

Counsel for the respondent submitted that a machine is an "apparatus for applying mechanical power, having several parts each with definite function."<sup>6</sup> The Tribunal finds that one of the defining characteristics of a machine is the application of mechanical power. In the Tribunal's view, the Loadrite systems are not machines because they do not involve the application of mechanical power. An "appliance" is defined, in part, as a "thing applied as means to an end; utensil, device, equipment."<sup>7</sup> The Tribunal is satisfied that the Loadrite systems are appliances.

However, the question remains as to whether the Loadrite systems are the type of weighing appliances contemplated by heading No. 84.23.

Note (C) of the Explanatory Notes to heading No. 84.23 lists 13 types of weighing machines which fall in that heading. The list refers to various types of balances, scales and weighing platforms. The list is not exhaustive. However, the Tribunal considers it significant

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6. The Concise Oxford Dictionary of Current English, 7th ed. (Oxford: Clarendon Press, 1988) at 606.

7. *Ibid.* at 41.

that every machine listed is a complete machine, in the sense that it holds the material to be weighed. No equipment needs to be added to allow a user to weigh something. The Tribunal concludes that the weighing machinery contemplated in heading No. 84.23 is machinery which, by itself, has the capacity to weigh material without being installed with some other machine or device. As the Loadrite systems must be incorporated into hydraulic machinery before they can be used to determine weight, the Tribunal finds that they are not properly classified in heading No. 84.23.

The Tribunal must decide whether the Loadrite systems should be classified in heading No. 90.31 as measuring or checking instruments, appliances and machines. The Tribunal has already found that the Loadrite systems are appliances. With respect to the measuring and checking requirement, The Concise Oxford Dictionary of Current English provides that "measure" means, in part, "size or quantity found by measuring ... that by which a thing is computed."<sup>8</sup> The Tribunal finds that the Loadrite systems do measure the weight of material in hydraulic loaders into which they are incorporated. The Tribunal is of the view that the Loadrite systems are appliances for measuring weight and, thus, should be classified in heading No. 90.31. The Tribunal finds support for its view in the fact that the Loadrite systems use a load cell to determine weight. The Explanatory Notes to heading No. 90.31 list load cells used for weighing as falling in heading No. 90.31.

The Tribunal must also determine where, in heading No. 90.31, the Loadrite systems should be classified. As the Loadrite systems do not fall in any of the naming subheadings in heading No. 90.31, by default, they fall in subheading No. 9031.80 as other instruments, appliances and machines. Similarly, in subheading No. 9031.80, the Loadrite systems do not fall under any of the naming tariff items and, therefore, fall under tariff item No. 9031.80.99 as other measuring or checking instruments, appliances and machines.

For the foregoing reasons, the appeal is allowed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Michèle Blouin  
Michèle Blouin  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

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8. *Supra*, note 6 at 628.