

Ottawa, Monday, July 25, 1994

Appeal No. AP-93-241

IN THE MATTER OF an appeal heard on February 18, 1994,
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 July 28, 1993, with respect to a
request for re-determination under section 63 of the *Customs
Act*.

BETWEEN

TAI TELECOMMUNICATIONS ACCESSORIES

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Lise Bergeron

Lise Bergeron
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-241

TAI TELECOMMUNICATIONS ACCESSORIES

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

Between May 21 and June 7, 1991, the appellant imported into Canada goods known as Call Identifiers. The goods in issue perform two basic functions: (1) they display the telephone number of the calling party, and (2) they store the telephone numbers of calling parties, as well as the time and date of the calls. The goods in issue do not operate like a telephone and have no keypad for dialling. They are plugged into a regular telephone jack and function only in conjunction with the Call Display service offered by the telephone company.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8517.81.00 as other electrical telephonic apparatus for line telephony, as determined by the respondent, or should be classified under tariff item No. 8531.80.90 as other electric sound or visual signalling apparatus, as claimed by the appellant.

HELD: *The appeal is allowed. The Tribunal considers that heading No. 85.31 more accurately describes the Call Identifiers than does heading No. 85.17. In reaching this conclusion, the Tribunal had regard to the Explanatory Notes to the Harmonized Commodity Description and Coding System applicable to the respective headings.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 18, 1994
Date of Decision: July 25, 1994

Tribunal Members: Charles A. Gracey, Presiding Member
W. Roy Hines, Member
Lise Bergeron, Member

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Anne Jamieson

Appearances: Michel Vallée, for the appellant
Stéphane Lilkoff, for the respondent

Appeal No. AP-93-241

TAI TELECOMMUNICATIONS ACCESSORIES

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, 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 decisions of the Deputy Minister of National Revenue² dated July 28, 1993.

Between May 21 and June 7, 1991, the appellant imported into Canada goods known as Call Identifiers. The goods in issue perform two basic functions: (1) they display the telephone number of the calling party, and (2) they store the telephone numbers of calling parties, as well as the time and date of the calls. The goods in issue do not operate like a telephone and have no keypad for dialling. They are plugged into a regular telephone jack and function only in conjunction with the Call Display service offered by the telephone company.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8517.81.00 of Schedule I to the *Customs Tariff*³ as other electrical telephonic apparatus for line telephony, as determined by the respondent, or should be classified under tariff item No. 8531.80.90 as other electric sound or visual signalling apparatus, as claimed by the appellant.

The tariff nomenclature relevant to this appeal is as follows:

85.17 *Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems.*

-Other apparatus:

8517.81.00 *--Telephonic*

85.31 *Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading No. 85.12 or 85.30.*

8531.80 *-Other apparatus*

8531.80.90 *---Other*

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

2. See *An Act to amend the Department of National Revenue Act and to amend certain other Acts in consequence thereof*, S.C. 1994, c. 13, s. 7.

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

The appellant's representative pointed to the fact that heading No. 85.31 refers to electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading No. 85.12 or 85.30. The representative also directed the Tribunal to the fact that Note (D) (2) of the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes) to heading No. 85.31 states that the heading includes:

[N]umber indicators. The signals appear as illuminated figures on the face of a small box; in some apparatus of this kind the calling mechanism is operated by the dial of a telephone.

The appellant's representative submitted that heading No. 85.31, when read together with the referenced Explanatory Notes, accurately describes the goods in issue and that they should, therefore, be classified in that heading.

The appellant's representative submitted that the goods in issue do not fall within the relevant definition set out in the Explanatory Notes to heading No. 85.17 which states that:

[t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric ... circuit connecting the transmitting station to the receiving station.

The appellant's representative submitted that, since the goods in issue merely receive and record telephone numbers, they do not have a transmission function.

Counsel for the respondent referred the Tribunal to the Explanatory Notes to heading No. 85.17. Counsel submitted that the goods in issue do "receive" the telephone number of the calling party via telephone lines and that, therefore, they are properly classified in heading No. 85.17. Counsel also submitted that the goods in issue are not designed for calling personnel, as contemplated by Note (D) (2) of the Explanatory Notes to heading No. 85.31 and that they are, therefore, not the kind of devices within the contemplation of that note.

While there are subheadings to consider in this appeal, under Rule 1 of the General Rules for the Interpretation of the Harmonized System,⁵ the Tribunal considers it appropriate to first consider the applicability of the two competing headings. In determining this matter, under section 11 of the *Customs Tariff*, the Tribunal has also had regard to the Explanatory Notes applicable to those headings.

After having compared the competing headings, the Tribunal concludes that the goods in issue should be classified in heading No. 85.31. In reaching this conclusion, the Tribunal considered Note (D) (2) of the Explanatory Notes to heading No. 85.31 which, in the Tribunal's view, accurately describes the goods in issue.

The Tribunal also considered the Explanatory Notes to heading No. 85.17 and the argument of counsel for the respondent that the goods in issue are aptly described in the

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

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

definition of electrical apparatus for line telephony or line telegraphy set out in the Explanatory Notes to heading No. 85.17. That definition refers to apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data). The Tribunal acknowledges that it is arguable that the goods in issue may fall, in general terms, within that broad definition. However, the Tribunal is of the view that Note (D) (2) of the Explanatory Notes to heading No. 85.31 more accurately describes the goods in issue.

In considering the appropriateness of heading No. 85.17, the Tribunal also considered Note (A) of the Explanatory Notes to that heading. It provides that telephonic apparatus includes other devices occasionally fitted to subscribers' telephones which include devices for memorising a telephone number. However, the Tribunal notes that the goods in issue are not fitted to telephone sets, but that they are different entities presented separately, and, therefore, the Tribunal does not believe that Note (A) of the Explanatory Notes to heading No. 85.17 applies to the goods in issue.

Given its decision that the goods in issue should be classified in heading No. 85.31, the Tribunal is left to consider the appellant's request for tariff classification in that heading. The Tribunal considered whether the goods in issue were properly described by tariff item No. 8531.20.00 as indicator panels incorporating liquid crystal devices (LCD). The Tribunal finds that the goods in issue do incorporate LCDs, but that they are not fully described simply as indicator panels. As none of the naming tariff items in heading No. 85.31 are applicable, the Tribunal concurs with the appellant that the goods in issue should be classified under tariff item No. 8531.80.90.

For the foregoing reasons, the appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member