

Ottawa, Tuesday, January 17, 1995

**Appeal No. AP-93-364**

IN THE MATTER OF an appeal heard on July 22, 1994, 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 dated November 24, 1993, with respect to a request for re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**TILECHEM LIMITED**

**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

Raynald Guay

Raynald Guay  
Member

Lise Bergeron

Lise Bergeron  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-364**

**TILECHEM LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant is an importer of goods to which it refers as "hollow tile building blocks". The goods in issue are imported in the form of hollow, double tile blocks which are notched for splitting into two segments before use. The outer surfaces of the blocks are glazed, while the inner surfaces are dovetailed. The outer surface of each segment is approximately 12.0 in. by 9.0 in., while the dovetailing extends approximately 1.5 in. from the outer surface.*

*The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6908.90.10 as other tiles with a surface area of 103 cm<sup>2</sup> or larger, as determined by the respondent, or should be classified under tariff item No. 6904.10.00 as building bricks, as claimed by the appellant.*

**HELD:** *The appeal is allowed. The Tribunal finds, at the outset, that the goods in issue are prima facie classifiable as tiles or bricks in either heading. Accordingly, the Tribunal must consider which heading more specifically describes the goods in issue and finds that they are more specifically described in heading No. 69.04 as bricks. The Tribunal recognizes that the goods in issue are used by the appellant to build walls and, ultimately, larger structures. The structural specifications of the goods in issue are such that they provide the goods with the qualities necessary for constructional work calling for great mechanical strength and resistance to acids. Their shape and size, while generally resembling those of tiles, are not as crucial as their other physical properties. Without these particular structural qualities, the goods in issue could not perform effectively in the environment in which they are used. Heading No. 69.04 takes into account these types of structural qualities, while heading No. 69.08 appears to place little importance on such qualities. Tiles classified in heading No. 69.08 are usually fixed to the surface of existing walls and used mainly for facing them. In these respects, tiles constitute a very superficial component of a wall. They do not possess the structural qualities of bricks or perform the same role in constructional work.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: July 22, 1994  
Date of Decision: January 17, 1995*

*Tribunal Members: Charles A. Gracey, Presiding Member  
Raynald Guay, Member  
Lise Bergeron, Member*

*Counsel for the Tribunal: Heather A. Grant*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Edward M. Marilley, for the appellant  
Stéphane Lilkoff, for the respondent*

**Appeal No. AP-93-364**

**TILECHEM LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
RAYNALD GUAY, Member  
LISE BERGERON, 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 dated November 24, 1993, made under section 63 of the Act.

The appellant is an importer of goods to which it refers as "hollow tile building blocks." The goods in issue are imported in the form of hollow, double tile blocks which are notched for splitting into two segments before use. The outer surfaces of the blocks are glazed, while the inner surfaces are dovetailed. The outer surface of each segment is approximately 12.0 in. by 9.0 in., while the dovetailing extends approximately 1.5 in. from the outer surface.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6908.90.10 of Schedule I to the *Customs Tariff*<sup>2</sup> as other tiles with a surface area of 103 cm<sup>2</sup> or larger, as determined by the respondent, or should be classified under tariff item No. 6904.10.00 as building blocks, as claimed by the appellant.

The relevant portions of the headings in issue are as follows:

*69.04 Ceramic building bricks, flooring blocks, support or filler tiles and the like.*

*69.08 Glazed ceramic flags and paving, hearth or wall tiles.*

Mr. Edward M. Marilley, President of Tilechem Limited, appeared on behalf of the appellant. He explained that the appellant is a specialized contractor in the design and installation of non-metallic, corrosion-resistant structural linings for tanks, chests, vats and pits, mainly for use in the treatment of pulp and paper products. In order to protect the structures from corrosion by acids, the appellant designed the goods in issue, which are chemical-resistant masonry units made of fired clay. According to the appellant's representative, the goods are imported in double units which are split into two segments prior to installation. The goods are also installed using chemical-resistant mortars.

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

The appellant's representative discussed the characteristics of the goods in issue in the context of documentation of the American Society for Testing and Materials (ASTM). The representative explained that the goods are classified under "Committee C15 on Manufactured Masonry Units"<sup>3</sup> and further classified under "C15.09 Chemical-Resistant Units."<sup>4</sup> According to standard terminology used by the ASTM pertaining to chemical-resistant, non-metallic materials, a "chemical-resistant construction unit" is a "modular nonmetallic material, either vitreous or nonvitreous, used in industrial processes primarily for applications where chemical, thermal, and mechanical resistance is required."<sup>5</sup> With reference to the ASTM's "Standard Specification for Chemical-Resistant Masonry Units," the representative testified that the goods are further classified under "1.2.2 Type II," which is described as "[f]or use where lower absorption and higher acid resistance are required."<sup>6</sup>

The appellant's representative testified that the goods in issue have low absorption, specifically, a maximum rate of 4 to 5 percent. As such, they are not fully vitrified. The representative further testified that the goods are designed so that, in the construction of the various structures, each tile is lined up, course by course, and concrete is poured into the interconnecting medium of the wall, with the tiles acting as a form. For some structures, the goods are only used on one face, while for others, they are used on both. According to the representative, through this construction method, the goods become an integral part of the wall. The representative explained that the dovetailing on the back of each tile is required for proper bonding to the concrete, which dovetailing is protected from damage by the goods being shipped in twin units.

The appellant's representative then presented certain photographs to illustrate the process of erecting the structures, as well as the installation of the goods in issue. He explained that the wall, in conjunction with the tile and its dovetail backing, acts as a bearing wall of significant compressive strength.

During cross-examination, the appellant's representative testified that, while the glaze on the smooth side of the goods in issue adds to their acid resistance, it is primarily the composition of the body of the goods which imparts their acid-resistant quality. According to the representative, the glaze serves primarily for erosion resistance and cleanliness. The representative agreed with counsel for the respondent that the purpose of using the appellant's particular method of construction is to achieve a strong link or bonding of the tile to the concrete. The representative admitted that the goods are referred to as tiles, but that both tiles and bricks are classified as chemical-resistant masonry units by the ASTM, both having the same specifications of design. He further emphasized that the goods are not embedded in the concrete, but rather built into the concrete when the wall is constructed, thereby becoming an integral part of the wall.

Further to questions from the Tribunal, the appellant's representative explained that the concrete and steel reinforcing rods are the basic support with respect to the wall design. He also explained that the thickness of the tile is taken into account when calculating the required bearing strength of the wall. Moreover, the vertical compressive strength of the goods in issue is actually stronger than the concrete itself, which is also taken into account by engineers when designing the wall.

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3. ASTM Directory (Philadelphia: ASTM, 1993) at 55.

4. *Ibid.*

5. Annual Book of ASTM Standards, Vol. O4.05 (Philadelphia: ASTM, 1994) at 555.

6. *Ibid.* at 137.

As per arguments in support of the appellant's position, the appellant's representative contended that the goods in issue should be classified in heading No. 69.04, as it covers bricks that are acid-resistant, and more or less vitrified, and which are intended for use in chemical plants. In its brief, the appellant argued that the goods are imported as double units which, upon splitting, retain the character of the building blocks for which they were designed. In addition, the appellant suggested that the items specified in heading No. 69.08 are thin tiles used for lining existing concrete and other surfaces, but which are not of the variety designed for an acid-resistant environment.

Counsel for the respondent argued that the goods in issue were classified in heading No. 69.08 because they are tiles, designed to be fixed to and face a reinforced concrete wall in order to protect it from corrosive materials. Furthermore, the size and shape of the goods resemble those of tiles and not of bricks or of other items specified in heading No. 69.04. In counsel's view, the method of installing the goods is intended to ensure that they will be firmly embedded in the wall, but this does not alter the fundamental character of the goods as tiles. Counsel further argued that the goods do not form the very framework of the reinforced concrete wall, as required for classification in heading No. 69.04.

Counsel for the respondent submitted that the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>7</sup> (the Explanatory Notes) to heading No. 69.08 (to which the Explanatory Notes to heading No. 69.07 apply where the goods are glazed) provide criteria for distinguishing tiles from bricks. Three characteristics of tiles that counsel raised were: (1) tiles are mainly used for facing walls; (2) they are intended for fixing to the surface of existing walls; and (3) they are thinner in relation to their surface area than are building bricks. With respect to the first point, counsel submitted that the goods in issue are, in fact, used for facing walls. On the second point, counsel submitted that, while the goods do not appear to meet this criterion, in his view, it does not prevent tiles which are not fixed to the surface of existing walls to be classified in this heading. Counsel argued that it is irrelevant whether the wall is built before the tiles are affixed, or afterwards. In counsel's view, what is important is the finished product, namely, the wall, and that the goods perform as tiles in relation to the wall. On the third point, counsel submitted that the dimensions of the goods suggest that they resemble tiles more than they do bricks and that this can be assessed simply by looking at the tiles, as they are thinner than other types of bricks that can be commonly found on the market. Counsel also contended that the goods are referred to in the Explanatory Notes to heading No. 69.08 as double tiles intended for splitting before use.

Counsel for the respondent further argued that, in order for a product to be classified in heading No. 69.04, it must form part of the framework of the building. Counsel referred to The Concise Oxford Dictionary of Current English definition of "frame"<sup>8</sup> to submit that the concrete in conjunction with the steel reinforcing rods constitute the framework or structure of the wall, and not the tiles. Counsel argued that the wall carries all the weight applied to it and that the tiles are installed simply to protect the concrete wall and preserve its integrity.

Counsel for the respondent further submitted that the goods in issue are referred to as tiles in the industry and by the appellant's representative. Moreover, the primary function of the tiles is to protect the

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

8. Seventh ed. (Oxford: Clarendon Press, 1988) at 390.

concrete and steel and allow for easy cleaning, and, in this respect, they are similar to bathroom tiles, which are classifiable in heading No. 69.08.

On the issue of whether the goods in issue retain the character of building bricks after splitting, counsel for the respondent argued that, upon importation, the goods are really two tiles which are back-to-back, and that, once split, the goods more closely resemble two tiles. Moreover, the reason for placing the tiles in this fashion is only meant to protect the dovetailing from damage during shipment, and they are not installed in that form, but are split prior to use. Counsel also argued that, for classification in heading No. 69.08, it is irrelevant whether the tiles are thick or thin. In fact, the goods in issue must be larger and stronger than regular bathroom tiles in order to be effective in the environment in which they are placed.

In reply, the appellant's representative submitted that the definition of "framework," specifically, "frame, structure, upon or into which casing or contents can be put,"<sup>9</sup> contained in The Concise Oxford Dictionary of Current English better describes the method of construction used by the appellant and ought to be taken into account by the Tribunal. The representative argued that, if the goods in issue did not act as a frame into which the concrete is poured, thereby becoming an integral part of the wall, the appellant would not be erecting the types of structures that it does. He suggested that, if the concrete were poured into a wooden frame and the goods subsequently applied to the concrete, this would not be adequate for the construction of such structures. Moreover, heading No. 69.08 does not contemplate material of a chemical-resistant nature and, in his view, there is no relationship between the actual thickness of the goods and whether they ought to be classified as bricks or as tiles.

For the purposes of classifying goods in Schedule I to the *Customs Tariff*, the Tribunal recognizes that Rule 1 of the General Rules for the Interpretation of the Harmonized System<sup>10</sup> (the General Rules) is of utmost importance. Rule 1 of the General Rules provides that classification is first determined by the wording of the tariff headings and any relative Chapter Notes. Therefore, the Tribunal must first consider whether the goods in issue are named or generically described in a particular tariff heading. If the goods are named in a heading, then they are classified in that heading, subject to any relevant Chapter Notes. In considering the terms of the headings, the Tribunal is required to have regard to the Explanatory Notes, pursuant to section 11 of the *Customs Tariff*.

In this case, the goods in issue are not specifically named in any heading, but because they have the characteristics of both bricks and tiles, they are generically described in both heading Nos. 69.04 and 69.08. Heading No. 69.04 refers to "[c]eramic building bricks, flooring blocks, support or filler tiles and the like," while heading No. 69.08 refers to "[g]lazed ceramic flags and paving, hearth or wall tiles; glazed ceramic mosaic cubes and the like, whether or not on a backing."

The Explanatory Notes to heading No. 69.07 (which apply to heading No. 69.08 where the product is glazed) suggest that "wall tiles are thinner in relation to their surface dimensions than are building bricks." Furthermore, "[w]hereas bricks play an essential part in constructional work, forming the very framework of the building, flags and tiles are more especially intended for fixing by cement, adhesive or by other means to the surface of existing walls, etc." In addition, the Explanatory Notes state that tiles are "mainly used for

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9. *Ibid.*

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

facing walls, mantelpieces, hearths, floors and paths ... [Flags and tiles] may be of common pottery or earthenware, but types which have to withstand heavy wear are often vitrified, for example, tiles of stoneware, or porcelain (china) or of fired steatite (e.g., tiles for lining grinding mills, etc.)." Furthermore, the classification of goods in heading No. 69.08 is determined by their "shape and size, rather than by their composition; thus bricks suitable for use both in building and for paving (e.g., vitrified bricks) are excluded (heading 69.04)."

The Explanatory Notes to heading No. 69.04 begin by stating that this heading covers "non-refractory ceramic bricks ... of the kinds commonly used for building walls, houses, industrial chimney-stacks, etc. Such bricks remain in the heading even if they can also be used for other purposes." Furthermore, "[b]ricks are usually relatively porous (common pottery), but some are more or less vitrified (stoneware or engineering bricks) and are then used in constructional work calling for great mechanical strength or resistance to acids (e.g., in chemical plant)." Moreover, "[s]o-called 'double' bricks specially perforated lengthwise, ready for splitting before use, remain in this heading provided that they retain the character of building bricks after separation." The Explanatory Notes to heading No. 69.04 also indicate that "[f]lags and paving, hearth or wall tiles" are specifically excluded from classification in this heading.

Upon consideration of the Explanatory Notes, the Tribunal is of the view that the focus of tiles classifiable in heading No. 69.08 is their shape and size, as well as the method by which they are fixed to an existing wall, and that they are mainly used for facing walls. Bricks classifiable in heading No. 69.04 are primarily characterized by the important structural role that they play in the construction of a building or other structure. In other words, the qualities that make them useful in a structural capacity (i.e. constructional work) appear to be given greater emphasis than characteristics such as their shape and size.

With regard to the goods in issue, the Tribunal notes that, with respect to their appearance, they resemble tiles. Specifically, they have a large surface area relative to their thickness. Furthermore, the Tribunal recognizes that the goods are even referred to as tiles, as evidenced by the testimony of the appellant's representative. Since the Tribunal recognizes that the goods possess some elements of tiles, it finds that the goods may be *prima facie* classifiable in heading No. 69.08.

However, the Tribunal equally recognizes that the structural qualities of the goods in issue resemble those of bricks. Specifically, they possess "great mechanical strength" and "resistance to acids," as outlined in the Explanatory Notes to heading No. 69.04. Furthermore, given the method of construction, the Tribunal is of the opinion that the goods constitute an integral part of the wall. In the Tribunal's opinion, the goods are a key element in the construction of the wall, forming part of the framework of the wall, which counsel for the respondent agreed is a necessary criterion for classification as bricks. The Tribunal is not persuaded by counsel's argument that the method of installation is only designed to ensure that the goods are properly embedded in the wall for the purposes of protecting the wall and that the goods do not form part of the framework of the wall. Therefore, the Tribunal also finds that the goods may be *prima facie* classifiable as bricks in heading No. 69.04.

Accordingly, the Tribunal finds that the goods in issue are *prima facie* classifiable in both headings. Therefore, it must now consider which heading is more specific for the purpose of classifying the goods in one of those headings, in accordance with Rule 3 (a) of the General Rules, which provides that the more specific description must be preferred to the more general one.

Upon review of the evidence and the Explanatory Notes to both headings, the Tribunal is of the view that heading No. 69.04 provides a more specific description of the goods in issue. The Explanatory Notes to heading No. 69.04 state that "bricks ... of the kinds commonly used for building walls, houses, industrial chimney-stacks, etc. ... remain in the heading even if they can also be used for other purposes."

The Tribunal recognizes that the goods in issue are used by the appellant to build walls and, ultimately, larger structures. The structural specifications of the goods are such that they provide the goods with the qualities necessary for constructional work calling for great mechanical strength and resistance to acids. Their shape and size, while generally resembling those of tiles, are not as crucial as their other physical properties. Without these particular structural qualities, the goods could not perform effectively in the environment in which they are used. Heading No. 69.04 takes into account these types of structural qualities, while heading No. 69.08 appears to place little importance on such qualities. Tiles classified in heading No. 69.08 are usually fixed to the surface of existing walls and used mainly for facing them. In these respects, tiles constitute a very superficial component of a wall. They do not possess the structural qualities of bricks or perform the same role in constructional work.

Therefore, in the Tribunal's view, the goods in issue should be classified in heading No. 69.04 as bricks, rather than in heading No. 69.08 as tiles.

Furthermore, the Tribunal finds that the goods in issue are a type of building brick and, therefore, should be classified under tariff item No. 6904.10.00, as they perform a structural role in the building of structures, such as vats and tanks. The Tribunal is of the view that, upon importation, the goods are properly described as double bricks, whose segments retain the properties of building bricks upon splitting.

Accordingly, the appeal is allowed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Lise Bergeron

Lise Bergeron  
Member