

Ottawa, Tuesday, January 24, 1995

Appeal No. AP-94-034

IN THE MATTER OF an appeal heard on October 5, 1994,
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF five decisions of the Deputy
Minister of National Revenue with respect to requests for
re-determination under section 63 of the *Customs Act*.

BETWEEN

CANPER INDUSTRIAL PRODUCTS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Raynald Guay

Raynald Guay
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-034

CANPER INDUSTRIAL PRODUCTS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the goods in issue, commercially known as ratchet tie-downs and imported from France, are properly classified under tariff item No. 6307.90.99 as other made up articles, including dress patterns, of other textile materials, as determined by the respondent, or should be classified under tariff item No. 8479.89.99 as other machines and mechanical appliances having individual functions, not specified or included elsewhere, in heading No. 84.22 as a type of packing or wrapping machinery or in heading No. 82.05 as hand tools not elsewhere specified or included, as claimed by the appellant.

HELD: *The appeal is dismissed. The Tribunal concludes that the goods in issue are properly classified under tariff item No. 6307.90.99.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: October 5, 1994
Date of Decision: January 24, 1995*

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Raynald Guay, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Anne Jamieson

*Appearances: Donald Petersen, for the appellant
Stéphane Lilkoff, for the respondent*

Appeal No. AP-94-034

CANPER INDUSTRIAL PRODUCTS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
RAYNALD GUAY, Member
DESMOND HALLISSEY, 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 Revenue made under section 63 of the Act. The issue in this appeal is whether the goods in issue, commercially known as ratchet tie-downs and imported from France, are properly classified under tariff item No. 6307.90.99 of Schedule I to the *Customs Tariff*² as other made up articles, including dress patterns, of other textile materials, as determined by the respondent, or should be classified under tariff item No. 8479.89.99 as other machines and mechanical appliances having individual functions, not specified or included elsewhere, in heading No. 84.22 as a type of packing or wrapping machinery or in heading No. 82.05 as hand tools not elsewhere specified or included, as claimed by the appellant.

Mr. Robin C. Lee, Purchasing Manager for Lee Valley Tools Ltd., appeared as a witness for the appellant. Describing the goods in issue as web clamps or band clamps, as they are known in the trade, Mr. Lee estimated the cost of the strap per yard and of the ratchet mechanism. In this respect, he indicated that, typically, the webbing is worth much less than the balance of the clamp. He stated that these goods are used in two major areas, either as tie-downs in the trucking industry or as clamps. In his view, the goods in issue are “device[s] essentially for applying a force to hold something down or something together.” The primary reason for having a ratchet mechanism, stated Mr. Lee, is to multiply the force that a user can exert on something.

Mr. Jacquelin Dumont, a retired engineer with the city of Montréal, also testified on behalf of the appellant. Counsel for the respondent did not object to Mr. Dumont’s qualification as an expert witness with respect to some basic engineering principles relevant to the present case. Asked by the appellant’s representative as to the nature of the ratchet tie-down, Mr. Dumont unequivocally stated that it is not a machine, but a mechanical appliance. In his view, the distinguishing factor is that a machine, unlike an appliance, transforms and generates energy. In the present case, according to

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

Mr. Dumont, the ratchet lever multiplies the force generated by the user's hand, whereas the ratchet itself prevents the loss of this force. Mr. Dumont also asserted that the ratchet does not transmit force. Once installed, a ratchet tie-down is not dynamic; it does not move or work, but serves, according to Mr. Dumont, to secure objects.

Mrs. Leslie E. Behnia, a chemist with the Department of National Revenue, appeared as an expert witness on behalf of the respondent. Mrs. Behnia conducted an analysis of the textile component of the ratchet tie-down. The appellant's representative agreed with the analysis contained in Mrs. Behnia's laboratory report, namely, that the textile strap of the goods in issue is made of polyethylene.

In argument, the appellant's representative first stated that the word "machine" had to be given its ordinary or common meaning. He also noted a long-standing jurisprudence pursuant to which goods are classified according to their principal component. He further added that it would be unreasonable to ignore the most important component of the ratchet tie-down in terms of value, that is, the ratchet portion complete with the lever, particularly when it is paramount to the operation of the product as a whole.

The appellant's representative referred to Rule 1 of the General Rules for the Interpretation of the Harmonized System³ (the General Rules), which provides that the classification of goods shall be determined "according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions." He submitted that the ratchet tie-downs are specifically provided for in either heading No. 84.22 as "other packing or wrapping machinery" or heading No. 84.79 as "mechanical appliances." He also submitted, almost in passing, at the very end of his reply to counsel for the respondent, that the goods in issue could be classified in heading No. 82.05, as "[h]and tools ... not elsewhere specified or included." However, should the Tribunal agree with the respondent that Rule 3 (b) of the General Rules is applicable in the present case, the representative argued that, as the mechanical portion of the goods in issue represents nearly 75 percent of the value of one unit and as the goods in issue cannot be used effectively without a ratchet, they should be classified either in heading No. 84.22 or in heading No. 84.79. The representative also disagreed with the respondent's position that the terms "machines" and "mechanical appliances" found in heading No. 84.79 are synonymous. In addition, the representative referred to the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes). The Explanatory Notes to heading No. 84.79 support, in his view, the classification of the ratchet tie-downs in that heading.

First, counsel for the respondent presented the respondent's position as to the true nature of the goods in issue. Referring to the product literature put out by the French manufacturer of the goods in issue, counsel underlined that the purpose of the ratchet tie-down is to hold down cargo. He noted Mr. Lee's testimony that the function of the device is to secure objects. The French expression used in the literature to describe the goods in issue is "*Sangles Bagagères*" (Cargo Tie-downs Bagagère). The English equivalent of the word "*sangle*" is "strap," which is defined as a "strip of leather or other

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

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

flexible material with buckle or other fastening for holding things together or other purpose.⁵” In light of the foregoing, counsel submitted that the ratchet tie-down is squarely a fastening device. In his view, it fits the description of a strap and not that of a machine.

Second, as to the classification of the goods in issue, counsel for the respondent submitted that the words “machines” and “mechanical appliances” are analogous. In his view, the features of a machine, e.g. motion and distribution of force, are also found in a mechanical appliance. He referred to the definition given by the courts to the word “machine,” namely, that a machine is comprised of a more or less complex combination of moving and stationary parts and does work through the production, modification or transmission of force and motion. The key question here is to determine whether the ratchet tie-down works through the production, modification or transformation of force and motion. “Motion,” argued counsel, is a key word. This question, in his view, has to be answered in the negative, since the evidence before the Tribunal shows that the goods in issue do not perform the type of work necessary to be called a machine, i.e. that there is no motion and that no work is performed when the ratchet tie-down is fulfilling its function of securing or retaining objects in place. Furthermore, he submitted that the goods in issue do not satisfy the element of complexity laid down by the jurisprudence in order to be regarded as a “machine.”

Arguing that Rule 3 (b) of the General Rules is applicable in the present instance, counsel for the respondent addressed the issue of the essential character of the goods in issue. In his view, a key criterion to determine this important point is the role of the components of these goods. He submitted that, as the polyethylene strap gives the ratchet tie-down its essential character, the latter is properly classified in heading No. 63.07. He added that this interpretation of heading No. 63.07 is not contradicted by the Explanatory Notes. In this connection, he pointed out that the ratchet tie-downs are akin to the goods listed in the Explanatory Notes to that heading.

Finally, having regard to the ordinary definitions of the words “wrapping” and “packaging” and to the very nature of the goods in issue, counsel for the respondent rejected the appellant’s contention that the goods in issue should be classified as “packing or wrapping machinery” in heading No. 84.22.

In considering the proper tariff classification of the goods in issue, the Tribunal must abide by the principles enunciated in Rule 1 of the General Rules. As stated above, this Rule provides that “classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes.” Contrary to the position taken by the respondent, the Tribunal is of the opinion that there is no need, in the present case, to go beyond this Rule. Furthermore, pursuant to section 11 of the *Customs Tariff*, the Tribunal is directed to the Explanatory Notes for purposes of interpreting the headings and subheadings in Schedule I to the *Customs Tariff*. The Tribunal is of the view that the goods in issue should not be classified in any of the headings put forth by the appellant.

With respect to heading No. 84.79, the Tribunal does not believe that the goods in issue should be classified as “[m]achines and mechanical appliances.” On this point, the Tribunal notes that the appellant’s own expert witness, Mr. Dumont, clearly stated that the ratchet tie-down is not a machine. The Tribunal also notes that the goods in issue and their very nature do not satisfy the elements of the

5. The Concise Oxford Dictionary of Current English, 7th ed. (Oxford: Clarendon Press, 1982) at 1052.

well-established definition of the word “machine” given by the jurisprudence, i.e. a machine is comprised of a more or less complex combination of moving and stationary parts and works through the production, modification or transmission of force and motion. Furthermore, the Tribunal is not convinced by the appellant’s contentions concerning the characterization of the goods in issue as “mechanical appliances.” The relevant word here is “mechanical.” The Tribunal would add that one of the main meanings ordinarily ascribed to the word “mechanical,” as found in dictionaries, is that of “having to do with machinery.”⁶ This supports the respondent’s position, with which the Tribunal is in agreement, that the words “machines” and “mechanical appliances” are closely related in terms of the nature of the goods falling within their ambit and, therefore, falling in heading No. 84.79. Bearing this in mind, and having regard to the nature of the goods in issue, the Tribunal concludes that the ratchet tie-down is not a mechanical appliance falling in that heading.

As to the classification of the goods in issue in heading No. 84.22 as “other packing or wrapping machinery,” the Tribunal agrees with counsel for the respondent, in light of the ordinary meaning ascribed to the word “packing” or “wrapping,” that the goods in issue should not be classified in that heading. Furthermore, the ratchet tie-down cannot be regarded as “machinery.” Finally, with regard to heading No. 82.05, the Tribunal does not consider that the goods in issue are tools. The Concise Oxford Dictionary of Current English defines the word “tool” as a “mechanical implement, usu. held in hand, for working upon something (carpenter’s, gardener’s, mason’s tools); simple machine.”⁷ This being the case, and given the evidence adduced during the hearing, the Tribunal is of the view that the ratchet tie-down is not a tool within the meaning of heading No. 82.05.

The French manufacturer’s product literature describes the goods in issue as “*Sangles Bagagères*.” Le Grand Robert de la Langue Française defines the word “*sangle*” as a “*bande large et plate (de cuir, de toile, de tissu élastique, etc.) qu’on tend pour maintenir ou serrer qqch.*”⁸ ([translation] large, flat band of leather, cloth, elastic material, etc. that is stretched to hold or tighten something). The English word for “*sangle*” is “strap.” As stated earlier, The Concise Oxford Dictionary of Current English defines the word “strap” as a “strip of leather or other flexible material with buckle or other fastening for holding things together or other purpose.”⁹ The evidence clearly shows that the goods in issue, “*Sangles Bagagères*,” are used precisely to hold down objects, goods or cargo. It is apparent to the Tribunal that the goods in issue constitute a fastening device, made up, *inter alia*, of a polyethylene strap and of a simple fastening system.

Interestingly, looking at the Alphabetical Index to the Harmonized Commodity Description and Coding System and its Explanatory Notes,¹⁰ the Tribunal finds that the words “*sangles*” and “straps” are cited in the Explanatory Notes to heading No. 63.07. Referring to the Explanatory Notes, the Tribunal finds that this specific heading “covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.” Among

6. The Random House Dictionary of the English Language, 2nd ed. (New York: Random House, 1987) at 1193.

7. *Supra*, note 5 at 1128.

8. Second ed. (Montréal: Les Dictionnaires ROBERT - CANADA S.C.C., 1987) at 571.

9. *Supra*, note 5.

10. Customs Co-operation Council, 1st ed., Brussels, 1987.

the example of goods listed, paragraph 16 mentions “[b]elts which, although worn around the waist, do not have the character of belts of heading 62.27, e.g., belts for occupational use ...; webbing carrier straps and similar articles.” During his testimony, in reply to the Tribunal asking about a possible comparison between a belt and the goods in issue, Mr. Dumont told the Tribunal that the same underlying principle is at play for both articles: “*En fait, c’est le même principe. C’est que vous serrez quelque chose pour empêcher que ça se déplace. C’est le même principe, effectivement.*” ([translation] In fact, it is the same principle. One is tightening something to prevent it from moving. It is actually the same principle.) Bearing this in mind, the Tribunal agrees with counsel for the respondent that the goods in issue are well akin to some of the goods listed in the Explanatory Notes to heading No. 63.07, more particularly to the goods cited in paragraph 16. This being the case, the Tribunal concludes, as argued by counsel for the respondent, that the goods in issue are properly classified under tariff item No. 6307.90.99.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Raynald Guay

Raynald Guay
Member

Desmond Hallissey

Desmond Hallissey
Member