

Ottawa, Tuesday, January 24, 1995

Appeal No. AP-94-005

IN THE MATTER OF an appeal heard on September 9, 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 March 14, 1994, with respect to requests
for re-determination under section 63 of the *Customs Act*.

BETWEEN

SCHRADER AUTOMOTIVE INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lise Bergeron
Lise Bergeron
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-005

SCHRADER AUTOMOTIVE INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the Customs Act from decisions of the Deputy Minister of National Revenue. The issue in this appeal is whether tire valves and air chucks are properly classified under tariff item No. 8481.80.91 as hand-operated or hand-activated appliances for pipes, boiler shells, tanks, vats or the like, as determined by the respondent, or should be classified under tariff item No. 8481.30.90 as other check valves, as claimed by the appellant.

HELD: *The appeal is allowed. The Tribunal finds that the goods in issue should be classified under tariff item No. 8481.30.90 as other check valves. The Tribunal is of the view that the goods in issue meet the general definition of a check valve as a valve that automatically limits the flow of a medium in one direction and prevents the flow in the other direction. The goods in issue permit the flow of air into a vessel and prevent the air from flowing out of the vessel, unless they are overridden by depressing the plunger pin head. In the Tribunal's opinion, in so doing, the goods in issue permit the flow of air in one direction and prevent the flow in the other direction.*

The tire valve functions in such a way that air may only pass through it when it is opened by depressing the plunger pin head. The Tribunal is of the view that, when the plunger pin head is released and the spring mechanism in the tire valve is keeping the tire valve closed to prevent air from escaping, the spring mechanism is functioning automatically and is not hand-operated or hand-activated. This view is supported by the Explanatory Notes to the Harmonized Commodity Description and Coding System to heading No. 84.81 which contemplate that goods in that heading may be operated by "an automatic device such as a spring." Furthermore, the Tribunal concludes that, since an instrument is normally required to depress the plunger pin head in the tire valve, the tire valve is actually activated by the application of an instrument against the plunger pin head.

The Tribunal is of the view that the air chucks are connective couplings since they join two things, more particularly, a tire valve and an air line attached to a container of pressurized air. As a result, the air chucks are specifically excluded from being classified as hand-operated or hand-activated check valves and should be classified as other check valves.

*Place of Hearing: Ottawa, Ontario
Date of Hearing: September 9, 1994
Date of Decision: January 24, 1995*

Tribunal Members: *Lise Bergeron, Presiding Member*
 Charles A. Gracey, Member
 Robert C. Coates, Q.C., Member

Counsel for the Tribunal: *Shelley Rowe*

Clerk of the Tribunal: *Anne Jamieson*

Appearances: *Douglas J. Bowering, for the appellant*
 Lyndsay Jeanes, for the respondent

Appeal No. AP-94-005

SCHRADER AUTOMOTIVE INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
CHARLES A. GRACEY, Member
ROBERT C. COATES, Q.C., 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. The issue in this appeal is whether tire valves and air chucks are properly classified under tariff item No. 8481.80.91 of Schedule I to the *Customs Tariff*² as hand-operated or hand-activated appliances for pipes, boiler shells, tanks, vats or the like, as determined by the respondent, or should be classified under tariff item No. 8481.30.90 as other check valves, as claimed by the appellant.

The following is the relevant tariff nomenclature from Schedule I to the *Customs Tariff*:

84.81	<i>Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.</i>
8481.30	<i>-Check valves</i>
8481.30.10	<i>---Hand operated or hand activated (excluding multiple gear, pulley or chain valves, connective couplings equipped with valves)</i>
8481.30.90	<i>---Other</i>
8481.80	<i>-Other appliances</i>
	<i>---Other:</i>
8481.80.91	<i>---Hand operated or hand activated (excluding multiple gear, pulley or chain valves, connective couplings equipped with valves)</i>
8481.80.99	<i>---Other</i>

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

Mr. Alain Vallet-Sandre, Canadian Sales Manager for Schrader Automotive Inc., appeared on behalf of the appellant. As described by Mr. Vallet-Sandre, the tire valves in issue are composed of an outer rubber stem, with a screw-on cap, inside which is found a core which consists of a spring-loaded plunger mechanism and a seating component. The tire valves permit air to enter the tire when the plunger pin head is depressed, and the air will only escape if the plunger pin head is again depressed to override the spring mechanism. According to Mr. Vallet-Sandre, the standard in the design, manufacture and assembly of tire valves is to make the plunger pin head flush with the valve mouth. As a result, a device is normally required to depress the plunger pin head. The tire valves are used in automotive and truck-type wheels, tanks and other vessels in which gases or fluids are injected under pressure. In his view, once attached to the rim of a tire, permitting air to flow into and remain inside the tire, the tire valves become a permanent part of the tires.

Referring to the air chucks, Mr. Vallet-Sandre stated that they physically clip onto the threads of the tire valve stems to “depress the core and seal against the valve mouth so as to allow compressed air to be introduced into the tire through the valve.”³ Although the air chucks are sold separately from the tire valves, they are of universal design to work with the tire valves. The air chucks in issue, more specifically, the clip-on air chucks, model Nos. 5265 and 6739, are used with inflating gauges or other pressurized devices, such as tire-mounting machines.

During cross-examination, Mr. Vallet-Sandre stated that, during normal operation, the tire valves in issue do not respond directly to the differential in air pressure and that the plunger pin head must be manually depressed. He also agreed that the tire valves and air chucks permit air to flow out if the plunger pin head is depressed. Finally, Mr. Vallet-Sandre stated that he understands a check valve to be a device that allows the flow of a medium, such as fluid or air, in one direction into an object and essentially holds that medium in that object.

The respondent’s witness, Mr. Andrzej Bogdanowicz, was accepted by the Tribunal as an expert in the design of mechanical systems and, more particularly, compressed air piping systems. Mr. Bogdanowicz stated that air piping systems incorporate air valves which are similar to tire valves in terms of their physical characteristics and mechanical workings. He described a tire valve as a “spring operated isolating valve.” The valve is opened or closed by the spring mechanism which is operated by manually depressing the plunger pin head. When the plunger pin head is depressed, air is permitted to flow in either direction depending on the pressure. If the pressure inside the tire is greater than outside, the air will flow out of the tire. If the pressure outside the tire is greater, as is the case with a compressed air hose, the air will flow into the tire. He agreed with the appellant’s representative that the tire valve is a fitting for the tire.

Specifically focusing on the air chucks, Mr. Bogdanowicz stated that they have similar characteristics to the tire valves in that they permit the flow of air depending on the pressure differential. If the pressure in the line is greater, the air chucks contain discs that block the air passage. However, if the pressure is greater on the outside of the line, the air chucks will not prevent the air from entering the line.

With respect to the issue of whether the air chucks are connective couplings, Mr. Bogdanowicz defined a coupling as a mechanical device or appliance serving to unite two or more parts. He stated that the clip with the thread on the one side and the actual clip connection on the other side are a connective coupling,

3. Transcript of Public Hearing at 18.

as it connects the air chuck to the stem of the tire valve. In his view, the air chuck itself is not a connective coupling, but is a connective coupling with a valve. During cross-examination, he did, however, acknowledge that the tire valve and the air chuck are meant to work together as a unit.

Mr. Bogdanowicz defined a check valve, generally, as a valve that permits the flow in one direction and prevents the flow in the other direction. He referred to two definitions of “check valve” and stated that, in his view, neither the tire valves nor the air chucks meet those definitions. The first definition from the Webster’s New Twentieth Century Dictionary of the English Language provides that a check valve is a “valve that permits water, etc. to flow only in one direction and prevents a return flow.”⁴ In Mr. Bogdanowicz’s view, water is normally the medium flowing through a check valve. Mr. Bogdanowicz stated that, although the tire valves and air chucks have the characteristics of a check valve, they permit the flow of air in more than one direction once the plunger pin head is depressed and cannot, therefore, be considered check valves.

The second definition from the McGraw-Hill Dictionary of Scientific and Technical Terms provides that a check valve is a “device for automatically limiting flow in a piping system to a single direction.”⁵ In Mr. Bogdanowicz’s view, the tire valves and air chucks do not automatically limit the flow of air. The flow of air through the tire valves and air chucks is limited by the action of the spring mechanism which is opened and closed in response to the manual pressing of the plunger pin head, unlike a check valve which is automatically opened and closed due to changes in pressure. In response to questions from the Tribunal, Mr. Bogdanowicz did agree that the spring mechanism closing the tire valves and air chucks is automatic, but that it is manually operated because one must physically apply pressure on the plunger pin head in order to deflate or inflate a tire.

During cross-examination, Mr. Bogdanowicz agreed that an article could be manually inserted into a check valve to break the seal and permit the flow of the medium in the other direction. However, he further stated that, by design, the check valve is not intended to operate in that manner and that, in his view, there is no such product as a hand-operated check valve.

In argument, the appellant’s representative submitted that both the tire valves and the air chucks should be classified as check valves and, more particularly, as other connective couplings under tariff item No. 8481.30.90. He described a check valve as an automatic valve designed to allow a medium to flow through it in one direction only. In his view, the tire valves meet this description since they permit air to enter a tire cavity and prevent the air from escaping. The air chucks, he submitted, also meet this description since they hold back pressurized air within the hose until the stem is physically depressed to allow air to pass through them.

In support of his submission that the tire valves and the air chucks are connective couplings, the appellant’s representative referred to the following definitions of “connective” and “coupling” taken from the Webster’s New School and Office Dictionary:

4. Second ed. (New York: Simon & Schuster, 1979) at 308.
5. Fourth ed. (McGraw-Hill Book Company, 1989) at 334.

*connective ... able to connect ... that which connects*⁶

*coupling ... a device for joining two things or parts.*⁷

He also referred to the description by Mr. Bogdanowicz of a tire valve as a fitting, which he defined as a “part used for linking or adapting other units.”⁸ He submitted that both the tire valves and the air chucks have the ability to connect with each other or with other objects. In particular, he submitted that the air chucks connect an air line and a tire.

The appellant’s representative submitted that the tire valves and air chucks are not “hand operated or hand activated.” To illustrate his position, he referred to the example of a car battery and stated that a car is not battery-operated, but that the battery operates the starter and the starter operates the engine of the car. By analogy, he submitted that, like the car battery, it is the spring mechanism that operates the valve.

Finally, the appellant’s representative submitted that the tire valves and air chucks should be classified according to their principal function. He referred to Note 7 to Chapter 84 of Schedule I to the *Customs Tariff* which reads as follows:

A machine which is used for more than one purpose is, for the purpose of classification, to be treated as if its principal purpose were its sole purpose.

He submitted, based on this provision, that the tire valves and air chucks should be classified in accordance with their principal purpose, that is, to put air into a tire.

Counsel for the respondent submitted that the tire valves are properly classified under tariff item No. 8481.80.91 as hand-operated or hand-activated appliances and that the air chucks, more specifically, model Nos. 5265 and 6739, are connective couplings and are, therefore, properly classified in subheading No. 8481.80 as other appliances.

Relying on the testimony of Mr. Bogdanowicz, counsel for the respondent submitted that, in order for a valve to be considered a check valve, it must be a valve that automatically limits the flow of fluid in one direction. She submitted that the tire valves and air chucks are not check valves since they do not open and close automatically. Rather, they respond to external forces and permit the flow of air in two directions. Counsel stated that, in order for the tire valve to open and close, manual pressure is applied to the plunger pin head which, in turn, activates the spring mechanism. During inflation of the tire, the tire valve is opened, and pressurized air enters the tire. During deflation, the tire valve is opened to allow pressurized air to escape. The air chuck permits air to flow in either direction unless it is manually closed.

In determining the proper classification of the tire valves and air chucks in issue, the Tribunal is guided by section 10 of the *Customs Tariff* which provides that the classification of goods shall be

6. (Greenwich: Fawcett Publications, 1960) at 169.

7. *Ibid.* at 180.

8. *Ibid.* at 277.

determined in accordance with the General Rules for the Interpretation of the Harmonized System⁹ (the General Rules) and the Canadian Rules.¹⁰ Rule 1 of the General Rules provides that the classification of goods shall be determined “according to the terms of the headings and any relative Section or Chapter Notes.” Rule 1 of the Canadian Rules provides that the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the General Rules. The issue in this appeal is not about the most appropriate heading, but rather the appropriate subheading and, in turn, tariff item within heading No. 84.81. In classifying the tire valves and air chucks in issue, the Tribunal, therefore, applied the General Rules to the terms of the subheadings and, in turn, to the tariff items in heading No. 84.81.

In accordance with Rule 1 of the General Rules, the Tribunal reviewed the terms of the subheadings and any relative Section or Chapter Notes. After having examined the tire valve and air chuck introduced as exhibits at the hearing and having considered the evidence and submissions of both parties, the Tribunal is persuaded that the tire valves and air chucks in issue should be classified in subheading No. 8481.30 as check valves.

The Tribunal accepts Mr. Bogdanowicz’s definition of a check valve as a valve that automatically limits the flow of a medium in one direction and prevents the flow in the other direction. However, the Tribunal does not agree with the conclusions drawn by Mr. Bogdanowicz and is of the view that the tire valves and air chucks meet this general definition. The tire valves and the air chucks are designed to permit the flow of air through them into a vessel, such as a tire. Once the air pressure within the vessel has reached the desired level, the tire valves and air chucks automatically close, and the air is held within the vessel. The tire valves and air chucks permit the flow of air into the vessel and the spring mechanism within them prevents the air from flowing out of the vessel unless it is overridden by depressing the plunger pin head. In the Tribunal’s opinion, in so doing, they permit the flow of air in one direction and prevent the flow in the other direction.

The tire valve functions in such a way that air may only pass through it when it is opened by depressing the plunger pin head. The Tribunal is of the view that, when the plunger pin head is released and the spring mechanism in the tire valve is keeping the tire valve closed to prevent air from escaping, the spring mechanism is functioning automatically and is not hand-operated or hand-activated. This view is supported by the Explanatory Notes to the Harmonized Commodity Description and Coding System¹¹ to heading No. 84.81 which contemplate that goods in that heading may be operated by “an automatic device such as a spring.” Furthermore, the Tribunal concludes that, since an instrument is normally required to depress the plunger pin head in the tire valve, the tire valve is actually activated by the application of an instrument against the plunger pin head.

The Tribunal need not determine whether the air chucks are hand-operated or hand-activated since, in the Tribunal’s view, they are connective couplings which are specifically excluded from being classified under tariff item No. 8481.30.10. The Tribunal accepts the plain and ordinary meaning of a connective coupling as a device for joining two things, as was suggested by the appellant’s representative. The Tribunal

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

10. *Ibid.*

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

is persuaded from the descriptions given by the witnesses as to the use of the air chucks and its own examination of the air chucks that they are used to join two things and, in particular, they are most often used to join a tire valve and an air line attached to a container of pressurized air.

Accordingly, the appeal is allowed.

Lise Bergeron

Lise Bergeron
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member