

Ottawa, Monday, May 13, 1996

Appeal No. AP-94-142

IN THE MATTER OF an appeal heard on February 5, 1996,
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 with respect to requests for re-determination
under section 63 of the *Customs Act*.

BETWEEN

WINNERS ONLY (CANADA) LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-142

WINNERS ONLY (CANADA) LTD.

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 dated from April 18 to May 20, 1994, concerning various models of wooden computer desks, bases, tops, hutches and carts, generically described as computer desks or stands, imported between August 27, 1990, and November 8, 1993. The issue in this appeal is whether the goods in issue are properly classified under tariff item Nos. 9403.30.10, 9403.30.90 and 9403.90.90 as wooden furniture of a kind used in offices and parts of wooden furniture, as determined by the respondent, or should be classified under tariff item No. 8473.30.20 as parts and accessories suitable for use solely or principally with automatic data processing machines and units thereof (computers), as claimed by the appellant.

HELD: *The appeal is dismissed. The goods in issue are properly classified under tariff item Nos. 9403.30.10, 9403.30.90 and 9403.90.90 as wooden furniture of a kind used in offices and parts thereof. The Explanatory Notes to the Harmonized Commodity Description and Coding System (the Explanatory Notes) to heading No. 84.73 provide that “accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.” In the Tribunal’s view, there is no evidence which persuades it that the goods in issue adapt computers for a particular operation or perform a particular service relative to the main function of computers. Rather, the goods in issue physically support the computers. The Tribunal is persuaded by the evidence, including the appellant’s product literature, that the goods in issue are desks and parts thereof and that, in accordance with the Explanatory Notes, they are, therefore, properly classified in heading No. 94.03 as other furniture and parts thereof.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: February 5, 1996

Date of Decision: May 13, 1996

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

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Anne Jamieson

Appearance: Josephine A.L. Palumbo, for the respondent

Appeal No. AP-94-142

WINNERS ONLY (CANADA) LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding Member
ARTHUR B. TRUDEAU, 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 dated from April 18 to May 20, 1994, concerning various models of wooden computer desks, bases, tops, hutches and carts,² generically described as computer desks or stands, imported between August 27, 1990, and November 8, 1993. The issue in this appeal is whether the goods in issue are properly classified under tariff item Nos. 9403.30.10, 9403.30.90 and 9403.90.90 of Schedule I to the *Customs Tariff*³ as wooden furniture of a kind used in offices and parts of wooden furniture, as determined by the respondent, or should be classified under tariff item No. 8473.30.20 as parts and accessories suitable for use solely or principally with automatic data processing machines and units thereof (computers), as claimed by the appellant.

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

- 84.71 *Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.*
- 84.73 *Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading Nos. 84.69 to 84.72.*
- 8473.30 *-Parts and accessories of the machines of heading No. 84.71*
- 8473.30.20 *---Of the goods of tariff item No. 8471.10.00, 8471.20.00, 8471.91.00, 8471.92.90, 8471.93.90 or 8471.99.90*
- 94.03 *Other furniture and parts thereof.*

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

2. See Appendix A of appellant's brief: model Nos. 248C, 700CW, 701/701CD-L/701CH-L, 702, 748C, 760CD, 762CF, 762CR, 776ED, 930LC, 943C, 948C, 949CS, 954C, 954CF, 960C, 960CN, 960CWR and 960WRPC, and preceding model numbers with the following suffixes for parts: LB (Light Base for 762CR), SB (Stained Base for 762CR), B (Base for 954C, 960CN, 948C, 762CR, 776ED, 949CS and 960WRPC) and T (Top for 948C, 960CN, 954C, 762CR, 949CS, 960WRPC and 762CR).

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

9403.30 -Wooden furniture of a kind used in offices
9403.30.10 ---Desks, record-keeping equipment and tables
9403.30.90 ---Other
9403.90 -Parts
9403.90.90 ---Other:

The appellant's representative did not appear at the hearing. However, the appellant had filed a brief with the Tribunal. The Tribunal, therefore, proceeded to consider the submissions in the brief and to give them the appropriate weight in accordance with rule 22 of the *Canadian International Trade Tribunal Rules*.⁴

Counsel for the respondent called one witness, Mr. Steven Hamilton, President of Arbutus Commercial Furniture, a manufacturer and wholesaler of computer furniture, desks, computer workstations, audio stands, etc., used to support computers, photocopiers and fax machines and to provide a writing surface. Mr. Hamilton indicated that he had reviewed the appellant's product literature and that he was of the view that the goods in issue were similar to the goods that his company marketed in terms of design and function. Mr. Hamilton was of the view that the goods in issue are items of furniture which may or may not contain drawers and which can be used for multiple purposes, such as for writing and for supporting a telephone, computer, photocopier, printer, fax machine, etc. He stated that, in his view, the goods in issue were not stands. He further stated that, in his view, the goods in issue do not enhance the function of the computers which they support and that their basic function is as a desk.

During questioning by Tribunal members, Mr. Hamilton was referred specifically to model No. 702, a computer workstation, of the goods in issue. This item is 26 in. wide, 20 in. deep and 30 in. high. It features a surface area on top, a pull-out keyboard tray, a pull-out printer drawer, lockable casters, shelves and a flip-up shelf which may be used as a writing surface. Mr. Hamilton was also referred to model No. 930 LC, an office utility cart. He stated that he considered this model to be an article of furniture often positioned in conjunction with a desk in an office to serve a large variety of purposes, including storage.

When asked about the adjustability of the goods in issue to accommodate computers, Mr. Hamilton indicated that, based on his review of the appellant's product literature, the adjustability is mainly in relation to the keyboard so that it can be adjusted vertically to accommodate a variety of users.

In its brief, the appellant submitted that, although the goods in issue have the appearance and form of furniture, they are, by design and function, computer stands and not desks in the conventional and commonly known form of that description. In the appellant's view, desks that are furniture have a different design and function from the goods in issue.

The appellant relied on the Tribunal's decision in *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*,⁵ in which it was stated that common trade usage and practice are relevant to a determination of whether goods are parts. The appellant submitted that, in common

4. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

5. 7 T.T.R. 163, Appeal No. AP-90-161, August 19, 1991.

usage, the goods in issue do not function as desks or furniture. Rather, the goods in issue are designed, sold and used as stands for computers. The appellant submitted that customers who do not want to use the goods in issue as computer stands, do not purchase them nor do retailers sell them.

Counsel for the respondent referred to the Explanatory Notes to the Harmonized Commodity Description and Coding System⁶ (the Explanatory Notes) to heading No. 84.73. The Explanatory Notes provide that “[t]he accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.” Counsel submitted that none of the goods in issue extend the power of the computers or adapt them in any way to perform an additional function or operation. In addition, counsel submitted that the Explanatory Notes specifically exclude the goods in issue from that heading, as they provide that the heading “excludes articles of furniture (e.g., cupboards and tables) whether or not specially designed for office use (heading 94.03).”

Counsel for the respondent further submitted that the appellant’s product literature describes certain models of the goods in issue as “desks” and that the Explanatory Notes to heading No. 94.03 specifically include desks in that heading.

In the alternative, counsel for the respondent submitted that, even if heading Nos. 84.73 and 94.03 both describe the goods in issue, heading No. 94.03 provides a more precise description of the goods in issue. Moreover, Rule 3 (c) of the General Rules for the Interpretation of the Harmonized System⁷ (the General Rules) requires that goods be classified in the heading which occurs last in numerical order. In this case, heading No. 94.03 is last in numerical order.

The Tribunal is directed, by section 10 of the *Customs Tariff*, to classify goods in accordance with the General Rules and the Canadian Rules.⁸ Rule 1 of the General Rules provides that classification is to 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 principles set out in Rules 2 through 6 of the General Rules and the Canadian Rules. The Tribunal is further directed by section 11 of the *Customs Tariff* to consider the Explanatory Notes as a guide to the interpretation of the headings and subheadings in Schedule I to the *Customs Tariff*. Thus, the starting point in classifying the goods in issue is to consider the terms of heading Nos. 84.73 and 94.03 and any relative Section or Chapter Notes and the Explanatory Notes, which may provide some guidance as to the appropriate interpretation of the terms of those headings.

Heading No. 84.73 covers parts and accessories suitable for use solely or principally with machines of headings Nos. 84.69 to 84.72. For the purposes of this appeal, it is argued by the appellant that the goods in issue are parts or accessories for use solely or principally with machines of heading No. 84.71, which covers automatic data processing machines and units thereof, in other words, computers. The Explanatory Notes to heading No. 84.73 provide that “accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.” In the Tribunal’s view, there is no evidence which persuades it that the goods in issue adapt computers for a particular operation or perform a

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

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

8. *Ibid.*

particular service relative to the main function of computers. Rather, the goods in issue physically support the computers.

The Tribunal notes that the purpose and function of the goods in the list of goods included in heading No. 84.73, such as form feed devices, auxiliary printing devices, metal plates and diskettes for cleaning disk drives, are related directly to the purpose and function of computers, such as printing. The Tribunal is of the view that this list of included goods signals an intention that only goods similarly related to the purpose and function of computers are to be classified in heading No. 84.73. The Tribunal is not persuaded by the evidence that the goods in issue are so related.

The Explanatory Notes to heading No. 84.73 also provide that “stands for machines of headings 84.69 to 84.72 not normally usable except with the machines in question, remain in [heading No. 84.73].” There was no evidence before the Tribunal to show that the goods in issue are not normally usable except with computers. The Tribunal acknowledges that certain features of the goods in issue may make them more suitable than other goods for the purpose of supporting computers. However, there was no evidence presented to indicate that the goods in issue are “not normally usable except with” computers. The only evidence before the Tribunal was that of Mr. Hamilton who indicated that the goods in issue are not committed for use only with computers.

The Tribunal also considered whether the goods in issue could be considered to be parts or accessories of computers. As has been previously stated by the Tribunal, there is no universal test for determining whether goods are parts, and each case must be determined on its own merits.⁹ In the past, the Tribunal has considered the following factors to be relevant: whether the goods are essential to the operation of other goods; whether the goods are necessary and integral components of other goods; whether the goods are installed in other goods; common trade usage and practice;¹⁰ and whether the goods are committed for use with other goods.¹¹ Considering these factors in light of the function and purpose of the goods in issue in relation to computers, the Tribunal is of the view that the goods in issue cannot be considered to be parts or accessories of computers, since they are not essential to the operation of computers, are not necessary and integral components of computers, are not installed on computers and, as indicated by Mr. Hamilton, are not committed for use with computers and are generally considered in the trade to be furniture, not parts and accessories of computers.

Heading No. 94.03 refers to other furniture and parts thereof. The Explanatory Notes to this heading provide that it includes “furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritaires, book-cases, and other shelved furniture, etc.), and also furniture for special uses.” The list of goods included in heading No. 94.03 includes furniture for offices, “such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.” Relying on the evidence of Mr. Hamilton and on its review of the product literature, the Tribunal is of the view that the goods in issue are desks and parts thereof and,

9. *Supra*, note 5; and *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*, Appeal No. AP-92-091, September 19, 1994.

10. *Ibid.*

11. *Hoover Canada, A Division of MH Canadian Holdings Limited v. The Deputy Minister of National Revenue*, Appeal No. AP-93-128, July 14, 1994.

in accordance with the Explanatory Notes, are properly classified in heading No. 94.03 as other furniture and parts thereof.

Applying the same factors as identified above for determining whether goods are parts or accessories, the Tribunal is of the view that the goods in issue, namely, the light base, stained base, base and top, are parts of certain of the goods in issue, as they are integral components of those goods, installed on those goods, and are committed for use with those goods.

Accordingly, the appeal is dismissed. The goods in issue are properly classified under tariff item Nos. 9403.30.10, 9403.30.90 and 9403.90.90 as wooden furniture of a kind used in offices and parts thereof.

Raynald Guay

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Presiding Member

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