

Ottawa, Thursday, October 12, 1995

**Appeal No. AP-94-157**

IN THE MATTER OF an appeal heard on November 23, 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 June 16, 1994, with respect to requests  
for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**CANADIAN TIRE CORPORATION LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Lise Bergeron

Lise Bergeron  
Member

Lyle M. Russell

Lyle M. Russell  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-94-157**

**CANADIAN TIRE CORPORATION 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 made under subsection 63(3) of the Customs Act on June 16, 1994. The issue in this appeal is whether “plastic hose reel carts consisting of a manually operated rotating hose reel which is mounted on a rigid plastic frame fitted with wheels so that the user may manually propel reels for the orderly storage and transportation of garden hoses” are properly classified under tariff item No. 8716.80.20 as other vehicles, not mechanically propelled, for the transport of goods, as determined by the respondent, or should be classified under tariff item No. 8479.89.90 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84, as claimed by the appellant.*

**HELD:** *The appeal is allowed. The Tribunal finds that the goods in issue are made up of a series of parts which, considered together, should be classified under tariff item No. 8479.89.90 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: November 23, 1994*  
*Date of Decision: October 12, 1995*

*Tribunal Members: Arthur B. Trudeau, Presiding Member*  
*Lise Bergeron, Member*  
*Lyle M. Russell, Member*

*Counsel for the Tribunal: Joël J. Robichaud*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Douglas J. Bowering, for the appellant*  
*Josephine A.L. Palumbo, for the respondent*

Appeal No. AP-94-157

CANADIAN TIRE CORPORATION LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
LISE BERGERON, Member  
LYLE M. RUSSELL, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from decisions of the Deputy Minister of National Revenue made under subsection 63(3) of the Act on June 16, 1994.

The goods in issue, described in the respondent's brief as "plastic hose reel carts consisting of a manually operated rotating hose reel which is mounted on a rigid plastic frame fitted with wheels so that the user may manually propel reels for the orderly storage and transportation of garden hoses," were imported into Canada on four separate occasions from the United States between June 30 and August 31, 1993. On importation, they were classified under tariff item No. 3926.90.90 of Schedule I to the *Customs Tariff*<sup>2</sup> as articles of plastics. Pursuant to subsection 60(1) of the Act, the appellant requested a re-determination of the classification of the goods in issue under tariff item No. 8716.80.20 as other vehicles, not mechanically propelled, for the transport of goods. The goods in issue were reclassified as such by a designated official of the Department of National Revenue. Pursuant to subsection 63(1) of the Act, the appellant requested a further re-determination of the classification of the goods in issue under tariff item No. 8479.89.90 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84. The respondent maintained the classification of the goods in issue on re-determination.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8716.80.20, as determined by the respondent, or should be classified under tariff item No. 8479.89.90, as claimed by the appellant. For the purposes of this appeal, the relevant tariff nomenclature reads, in part, as follows:

84.79	<i>Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.</i>
8479.89	<i>--Other</i>
8479.89.90	<i>---Other:</i>
87.16	<i>Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof.</i>

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

8716.80            -Other vehicles  
8716.80.20        ---For the transport of goods  
8716.80.20.10    ----Industrial hand trucks  
8716.80.20.90    ----Other

The appellant's representative called two witnesses: Edward A. Ashmore, a marketing representative at Midpoint Products Inc. (Midpoint), and Kevin R. Goheen, Associate Professor, Department of Mechanical and Aerospace Engineering at Carleton University.

Mr. Ashmore explained that Midpoint acts as a representative in Canada for Suncast Corp. (Suncast), a U.S. company in the business of distributing lawn and garden products. Midpoint is responsible for the marketing of Suncast products in Canada for companies such as the appellant. Mr. Ashmore testified that the goods in issue are bought by the consumer primarily to facilitate usage of a garden hose. Contrary to a plain hose reel mounted on a wall, which is a stationary unit, the wheels on a hose reel cart allow a hose to be transported from the front to the back of the house. A 6-ft. leader hose, which is attached to the hose reel cart, is simply disconnected from a faucet at the back of the house and connected to a faucet at the front of the house. The reel allows the consumer to store the garden hose in a neat fashion. The goods in issue are made of plastic and, according to Mr. Ashmore, are hand-operated mechanical devices.

The second witness, Mr. Goheen, testified as an expert in mechanical engineering. He testified that the reel on the hose reel cart allows the domestic gardener to unwind and retrieve the garden hose. The leader hose, the connection, the wheels and the handle are then used to transport the wound-up hose from one position to another in the garden. The crank handle allows the gardener to provide a linear force to the reel which, in turn, provides a mechanical force that allows the hose to be wound up relatively quickly. Mr. Goheen explained that articles such as spools or bobbins that are used to store thread, cones that can be used to store rope, cores that are often used in electrical work to store cable or wires and cops can be distinguished from the goods in issue by the fact that, although they are cylindrical devices, they are not equipped with a crank that allows material to be wound on the cylinder or unwound.

According to Mr. Goheen, a product does not need to be propelled or attached to a motor to be considered a machine or a mechanical appliance. He testified that there are machines which are manually powered by humans. For example, a fishing reel that is attached to a fishing rod would be considered a machine or a mechanical appliance. Mr. Goheen also testified that there are other mechanical components that form part of the goods in issue. For example, the connection mechanism attached to the end of the leader hose can also be considered a mechanical device. He explained that the goods in issue possess both stationary and moving parts and that they are made up of a more or less complex construction. According to Mr. Goheen, the goods in issue are clearly mechanical appliances.

During cross-examination, Mr. Goheen could not identify the essential character of the goods in issue. He testified that the reel and the cart are of equal importance. He did, however, acknowledge that, at paragraph 2 of a report setting out the substance of his testimony that was filed with the Tribunal, he stated that "the hose reel cart is a mechanical device of which the primary purpose is to recoil [a] garden hose onto a spool or reel by the application of a crank handle which is attached to the side of the spool." Mr. Goheen also testified that no particular skill other than the co-ordination of one human hand with the other is required in order to operate the goods in issue. There is no electrical power that goes through the device. According to

Mr. Goheen, simply gripping the hose reel cart, lifting it backwards and pulling it from one end of the garden to the other makes it a machine or a mechanical appliance. Furthermore, the terms “[m]achines and mechanical appliances,” as they are used in the relevant tariff items, are synonyms.

The appellant’s representative argued that the goods in issue are mechanical devices. As such, they should be classified in heading No. 84.79. The essential character of the goods in issue is that of a reel. The wheels are supplementary. They simply allow the mechanical appliance to be moved from one place to another. The representative argued that the exclusion in Note 1 (c) to Section XVI of Schedule I to the *Customs Tariff* only applies to reels which are imported separately. The goods in issue are an assemblage of parts which, together, constitute a mechanical device. According to the representative, the goods in issue are not vehicles and, as such, should not be classified in heading No. 87.16. Furthermore, the goods in issue are excluded from heading No. 87.16 by virtue of the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>3</sup> (the Explanatory Notes) in a general note to that heading entitled “Vehicles Fitted with Machinery, etc.” and, more specifically, in Note (II) (b), which excludes “[m]achines and appliances mounted on a simple wheeled chassis, designed to be towed, such as mobile pumps and compressors (heading 84.13 or 84.14) and mobile cranes and ladders (heading 84.26 or 84.28).” The representative also referred to Supplementary Note 1 to Section XVI in support of his argument.

Counsel for the respondent argued that the onus is on the appellant to show that the respondent has incorrectly classified the goods in issue. Goods are to be classified as they present themselves at the time of importation into Canada. As such, counsel maintained that the goods in issue are properly classified under tariff item No. 8716.80.20 as “other vehicles, not mechanically propelled.” Relying on Rule 3 (b) of the General Rules for the Interpretation of the Harmonized System<sup>4</sup> (the General Rules), counsel argued that goods made up of two or more components are to be classified as if they consisted of the components which give them their essential character. The goods in issue are “reels” designed to hold garden hoses. As such, they are excluded from Chapter 84 by virtue of Note 1 (c) to Section XVI, which provides that the Section does not cover “reels or similar supports, of any material.”

In addition, counsel for the respondent argued that the goods in issue are “carts.” As such, they are properly classified in heading No. 87.16, as they are equipped with one or more wheels and designed for the transportation of goods in accordance with a general explanatory note to that heading. The goods in issue are properly classified under tariff item No. 8716.80.20, as they are clearly “vehicles, not mechanically propelled,” equipped with one or more wheels for the transportation of goods which are to be towed by other vehicles or to be pushed or pulled by hand in accordance with the same general explanatory note to heading No. 87.16. According to counsel, the goods in issue are not sufficiently mechanical to be considered machines. In her view, a manual force is not mechanical. In the alternative, counsel submitted that the goods in issue are articles of plastic and, as such, should be classified under tariff item No. 3926.90.90.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules is of the utmost importance. This Rule states that classification is first determined according to the terms of the headings and any relative Chapter Notes. Therefore, the Tribunal must first determine whether the goods in issue are named or generically described in a particular heading. If the goods are named in a

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

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

heading, they must be classified therein, subject to any relative Chapter Note. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes.

The Tribunal first considered whether the goods in issue can be classified in heading No. 84.79 as “[m]achines and mechanical appliances.” The appellant’s expert witness testified that the terms “[m]achines and mechanical appliances,” as they are used in the relevant tariff items, are synonyms. The appellant’s representative, however, did not agree and argued that the two terms must be considered separately. In a recent decision, the Tribunal considered whether these two terms were analogous.<sup>5</sup> The Tribunal noted that “one of the main meanings ordinarily ascribed to the word ‘mechanical,’ as found in dictionaries, is that of ‘having to do with machinery’” and found 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.”<sup>6</sup> The Tribunal, in the present case, is of the same view.

To determine whether the goods in issue are “mechanical appliances,” the Tribunal referred to Supplementary Note 1 to Section XVI. It provides that, “[i]n this Section the term ‘mechanically operated’ refers to those goods which are comprised of a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion.” The Tribunal notes that this wording is similar to the definition of the word “machine,” which has been adopted by the Federal Court of Appeal.<sup>7</sup>

The appellant’s expert witness testified that the goods in issue have at least two mechanical components. First, the reel and crank on the hose reel cart which allow the gardener to unwind and retrieve the garden hose are mechanical components which form part of the goods in issue. According to the expert witness, the connection mechanism attached to the end of the leader hose can also be considered mechanical. In the Tribunal’s view, the goods in issue are, therefore, comprised of at least two moving parts that are mechanical. The Tribunal is also of the view that these parts, combined with the stationary parts which form part of the goods in issue, perform work through the transformation of force and motion. By cranking the handle, the gardener provides a force that allows the hose to be wound on the reel or unwound. The connection mechanism, which can be easily fastened or unfastened by the gardener, and the wheels allow the hose to be transported from one place to another. The Tribunal notes that there is no requirement in heading No. 84.79 that products be powered by an electrical force in order to be considered “mechanical appliances.” Therefore, the Tribunal is of the view that the goods in issue are named or generically described in heading No. 84.79.

Note 1 (c) to Section XVI provides that the Section does not cover “[b]obbins, spools, cops, cones, cores, reels or similar supports, of any material (for example, Chapter 39, 40, 44 or 48 or Section XV).” In the Tribunal’s view, the goods in issue are not covered by this exclusion. The Tribunal accepts the evidence

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5. *Canper Industrial Products Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-94-034, January 24, 1995.

6. *Ibid.* at 4.

7. See, for example, *Ingersoll-Rand Door Hardware Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise*, 15 C.E.R. 47 at 51, unreported, Federal Court of Appeal, File No. A-503-86, October 21, 1987.

of the appellant's expert witness that articles such as spools or bobbins that are used to store thread, cones that can be used to store rope, cores that are often used in electrical work to store cable or wires and cops can be distinguished from the goods in issue by the fact that they do not possess a crank, which allows a material to be wound around them or unwound. Furthermore, in the Tribunal's view, Note 1 (c) to Section XVI appears to provide for the exclusion of the articles listed therein when imported individually as distinct products.

The Tribunal also considered whether the goods in issue could be classified in heading No. 87.16 as "other vehicles, not mechanically propelled." The word "vehicle" is defined as "[a] means of conveyance provided with wheels or runners and used for the carriage of persons or goods; a carriage, cart, wagon, sledge, or similar contrivance."<sup>8</sup> It is also defined as "[a]ny means of carriage, conveyance, or transport; a receptacle in which anything is placed in order to be moved."<sup>9</sup> In the Tribunal's view, the goods in issue are not covered by this definition and, therefore, are not vehicles. The only component that forms part of the goods in issue that might be considered a vehicle is the cart. However, the Tribunal, having found that the goods in issue are specifically described in another heading, does not feel it necessary to have regard to either Rule 3 (a) or Rule 3 (b) of the General Rules. Furthermore, the Tribunal notes that "[m]achines and appliances mounted on a simple wheeled chassis, designed to be towed, such as mobile pumps and compressors (heading 84.13 or 84.14) and mobile cranes and ladders (heading 84.26 or 84.28)" are excluded from heading No. 87.16 pursuant to Note (II) (b) of a general explanatory note to that heading entitled "Vehicles Fitted with Machinery, etc." In the Tribunal's view, the goods in issue are covered by this exclusion.

For the above reasons, the Tribunal finds that the goods in issue are made up of a series of parts which, considered together, should be classified under tariff item No. 8479.89.90 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84.

Accordingly, the appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Lise Bergeron  
Lise Bergeron  
Member

Lyle M. Russell  
Lyle M. Russell  
Member

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8. The Oxford English Dictionary, Vol. XIX, 2nd ed. (Oxford: Clarendon Press, 1989) at 480.

9. *Ibid.*