

Ottawa, Tuesday, January 30, 1996

Appeal No. AP-94-353

IN THE MATTER OF an appeal heard on August 1, 1995, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF four decisions of the Deputy Minister of National Revenue dated January 31, 1995, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

SHOP-VAC CANADA LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Anita Szlajak
Anita Szlajak
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-353

SHOP-VAC CANADA LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether two models of a Shop-Vac head assembly are properly classified under tariff item No. 8479.89.40 or 8479.90.30 as industrial vacuum cleaners or parts thereof, as determined by the respondent, or should be classified under tariff item No. 8414.59.00 as other air or vacuum pumps and fans, as claimed by the appellant.

HELD: *The appeal is dismissed. Both models of head assembly are properly classified under tariff item No. 8479.90.30 as parts of industrial vacuum cleaners. Although both models incorporate devices which function as a vacuum fan or blower when the heads are mounted on drums and equipped with intake hoses to form vacuum cleaners, the head assemblies, when imported, are more than fans and less than complete industrial vacuum cleaners.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: August 1, 1995
Date of Decision: January 30, 1996*

*Tribunal Members: Lyle M. Russell, Presiding Member
Anthony T. Eyton, Member
Anita Szlczak, Member*

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Appearance: Lyndsay Jeanes, for the respondent

SHOP-VAC CANADA LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ANTHONY T. EYTON, Member
ANITA SZLAZAK, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from four decisions of the Deputy Minister of National Revenue (the Deputy Minister) dated January 31, 1995, in respect of four import transactions in the first half of 1993. The goods in issue are a “Head Assembly,” model No. 970-21, and a “Dual Vac Head,” model No. 634-02. According to descriptive literature contained in the appellant’s brief, both models are designed to function as vacuum cleaners when equipped with hoses, wands, etc., and mounted on 44-gallon FRH (fully removable head) steel drums or similar containers. The main difference between the two models appears to be that the “Dual Vac Head” is equipped with two electric motors, while the “Head Assembly” has only one motor.

Three of the Deputy Minister’s decisions related to model No. 970-21. In two cases, the goods were classified under tariff item No. 8479.89.40 of Schedule I to the *Customs Tariff*² as industrial vacuum cleaners. In the third case, the goods were classified under tariff item No. 8479.90.30 as parts of industrial vacuum cleaners. The fourth decision related to model No. 634-02, which was classified under tariff item No. 8479.90.30. The appellant, on the other hand, claims that, in all cases, the goods should be classified under tariff item No. 8414.59.00 as other fans.

In the appellant’s brief, it was argued that the goods in issue are identifiable entities in their own right at the time of importation, even though they are eventually used with other apparatus to create dust collectors or vacuum cleaners. Accordingly, in the appellant’s view, Rule 1 of the General Rules for the Interpretation of the Harmonized System³ (the General Rules) applies to determine the proper tariff classification of the goods. In the appellant’s opinion, the goods in issue had the essential character of a vacuum fan or blower at the time of importation, although they were not able to perform a useful function without the attachment of other apparatus.

It was further submitted in the appellant’s brief that, pursuant to Note 2(a) to Section XVI of Schedule I to the *Customs Tariff*, parts which are goods included in any of the headings of Chapter 84 or 85 are classified in their respective headings. Therefore, even if the Tribunal finds that the goods in issue are parts of vacuum cleaners, they are specifically included in heading No. 84.14 as “[a]ir or vacuum pumps, air or other gas compressors and fans.” It was also argued that the goods in issue do not, in themselves, fit the definition of “vacuum cleaner.”

The Tribunal was informed, by letter dated July 24, 1995, that the appellant would not be represented at the hearing, as the appellant was of the opinion that there was little more to put forth or contest

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

beyond what was contained in its brief. At the hearing, counsel for the respondent moved to have the matter dismissed for want of prosecution. The Tribunal, however, considered the case on its merits.⁴

In oral argument, counsel for the respondent pointed to evidence in the appellant's brief that the goods in issue consisted of a motor, a fan, a housing and a plate designed to fit on the top of a drum. There was no evidence as to what constituted a pump within the meaning of heading No. 84.14, but, in her view, the vacuum heads did not fit that description nor the description of fans in the Explanatory Notes to the Harmonized Commodity Description and Coding System⁵ (the Explanatory Notes) to Section XVI. She argued that, by themselves, the heads cannot function as pumps, or even as dust collectors, but that, when mounted on a Shop-Vac container or an industrial tin, they become vacuum cleaners. It was her contention that, if every vacuum cleaner containing a vacuum pump were classified as a pump, the *Customs Tariff* provisions for industrial vacuum cleaners and parts would be redundant.

In arguing for classification under tariff item No. 8479.89.40, counsel for the respondent pointed to Rule 2(a) of the General Rules which extends the scope of a heading that refers to particular goods to cover not only the complete goods but also those goods that are incomplete or unfinished, provided they have the essential character of the complete or finished goods. In reference to the Tribunal's decision in *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*,⁶ counsel submitted that the goods in issue have been manufactured to such a degree as to be committed for use as industrial vacuum cleaners. Furthermore, the goods in issue have the essential character of industrial vacuum cleaners. In the alternative, she argued that the goods in issue should be classified under tariff item No. 8479.90.30 as parts of industrial vacuum cleaners. She was unable to explain why the Deputy Minister had classified some of the goods in issue under tariff item No. 8479.89.40 and others under tariff item No. 8479.90.30.

In determining the classification of the goods in issue, the Tribunal is cognizant that Rule 1 of the General Rules provides that classification is first determined by the wording of the headings and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* further provides that "[i]n interpreting the headings and subheadings in Schedule I, regard shall be had to ... the *Explanatory Notes to the Harmonized Commodity Description and Coding System*."

In considering whether the goods in issue may be classified as "vacuum pumps" or "fans" in heading No. 84.14, the Tribunal took into account the Explanatory Notes to that heading. The Explanatory Notes provide the following description of "vacuum pumps": "vacuum pumps serve many purposes: for facilitating boiling, distilling or evaporating at reduced pressure; for evacuating electric lamps or tubes, vacuum flasks, etc." The description of "fans" in the Explanatory Notes refers to "machines, which may or may not be fitted with integral motors, ... designed either for delivering large volumes of air or other gases at relatively low pressure or merely for creating a movement of the surrounding air."

The Tribunal cannot agree that the goods in issue are either "vacuum pumps" or "fans," as described by the Explanatory Notes to heading No. 84.14, or that they are in the same class as the goods described in those notes. The vacuum cleaner heads are described in the appellant's brief as "drum lids with either one or two vacuum blowers affixed thereon, protruding through the lid." In the Tribunal's view, there is no persuasive evidence on the record that the goods in issue fit the above description of either "vacuum

4. In *Unicare Medical Products Inc. v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal Nos. 2437, 2438, 2485, 2591 and 2592, June 21, 1990, the Tribunal declared that it lacked the jurisdiction to dismiss an appeal for want of prosecution. The Tribunal noted that it was empowered to dispose of an appeal on the basis of the record if the appellant failed to appear at the scheduled hearing.

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

6. Appeal No. AP-92-091, September 19, 1994.

pumps” or “fans.” Therefore, in the Tribunal’s view, the goods in issue are not classifiable in heading No. 84.14.⁷

In considering classification in heading No. 84.79, the Tribunal notes that, while the goods in issue are committed by design to be combined with other apparatus (drums, hoses, wands, etc.) to form industrial vacuum cleaners, at the time of importation, they are not, in themselves, industrial vacuum cleaners. In the Tribunal’s view, since a vacuum cannot be created until the goods in issue are fitted onto a drum or other container, they do not have the essential character of vacuum cleaners. However, the goods in issue are necessary and integral components of industrial vacuum cleaners.

In classifying parts of an article, which is classifiable in Chapter 84, the Tribunal refers to Note 2(b) to Section XVI. Note 2(b) provides that parts, other than parts which are goods included in any of the headings of Chapter 84 or 85 pursuant to Note 2(a), “if suitable for use solely or principally with a particular kind of machine, ... are to be classified with the machines of that kind.” In the Tribunal’s view, the goods in issue are not specifically named or generically described in any of the headings of Chapter 84 or 85, as contemplated by Note 2(a).

In the Tribunal’s view, the goods in issue are suitable for use solely with industrial vacuum cleaners. Accordingly, they are classified with industrial vacuum cleaners. As industrial vacuum cleaners are included at the tariff item level of heading No. 84.79, the Tribunal believes that the goods in issue may be classified in that heading as parts of “[m]achines ... having individual functions, not specified or included elsewhere in ... Chapter [84].”

The Tribunal finds that the goods in issue are properly classified in subheading No. 8479.90 and, further, under tariff item No. 8479.90.30 as parts of industrial vacuum cleaners. Accordingly, the appeal is dismissed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Anthony T. Eyton
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Anita Szlajak
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Member

7. The Tribunal would also point out that the tariff item under which the appellant has requested that the goods in issue be classified is at the first level of the subheading entitled “Fans,” not “Vacuum pumps.”