

Ottawa, Friday, July 19, 1996

Appeal No. AP-95-089

IN THE MATTER OF an appeal heard on January 15, 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 dated May 15, 1993, with respect to requests
for re-determination under section 63 of the *Customs Act*.

BETWEEN

HECO MEDICAL GROUP INC.

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

Lyle M. Russell

Lyle M. Russell
Member

Anita Szlajak

Anita Szlajak
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-089

HECO MEDICAL GROUP 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 dated May 15, 1993, pursuant to subsection 63(3) of the Customs Act. The goods in issue are defined in the respondent's brief as lamps and lighting fittings and parts thereof imported separately. The issue in this appeal is whether the goods in issue are properly classified under tariff item Nos. 9405.10.99, 9405.40.90, 8539.10.90, 8539.22.00, 8537.10.90 and 9405.99.90, as determined by the respondent, or should be classified under tariff item No. 9018.90.00, as claimed by the appellant.

HELD: *The appeal is allowed. The Tribunal is of the opinion that surgical lamps are specifically mentioned in heading No. 90.18. They cannot, therefore, be classified in heading No. 94.05. Parts and accessories of surgical lamps are also classified in heading No. 90.18.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 15, 1996
Date of Decision: July 19, 1996

Tribunal Members: Arthur B. Trudeau, Presiding Member
Lyle M. Russell, Member
Anita Szlczak, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Guy Laroche, for the appellant
Richard Turgeon, for the respondent

Appeal No. AP-95-089

HECO MEDICAL GROUP INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
LYLE M. RUSSELL, Member
ANITA SZLAZAK, 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 May 15, 1993, pursuant to subsection 63(3) of the Act.

The goods in issue are defined in the respondent's brief as lamps and lighting fittings and parts thereof imported separately. The issue in this appeal is whether the goods in issue are properly classified under tariff item Nos. 9405.10.99, 9405.40.90, 8539.10.90, 8539.22.00, 8537.10.90 and 9405.99.90 of Schedule I to the *Customs Tariff*,² as determined by the respondent, or should be classified under tariff item No. 9018.90.00, as claimed by the appellant. For the purposes of this appeal, the relevant tariff nomenclature provides, in part, as follows:

- 85.37 *Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading No. 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, other than switching apparatus of heading No. 85.17.*
- 8537.10 *-For a voltage not exceeding 1,000 V*
- 8537.10.90 *---Other:*
- 85.39 *Electric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infra-red lamps; arc-lamps.*
- 8539.10 *-Sealed beam lamp units*
- 8539.10.90 *---Other*
- 8539.22.00 *--Other, of a power not exceeding 200 W and for a voltage exceeding 100 V*

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

- 90.18 *Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments.*
- 9018.90.00 *-Other instruments and appliances*
- 94.05 *Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.*
- 9405.10.00 *-Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares*
- 99 -----*Other*
- 9405.40 *-Other electric lamps and lighting fittings*
- 9405.40.90.00 *---Other*
- 9405.99 *--Other*
- 9405.99.90.00 *---Other*

The appellant's representative called Mr. Laurent Courcy as a witness. According to Mr. Courcy, the goods in issue are surgical lamps, which operate somewhat as an extension of the surgeon's hand and eyes. He explained that they are halogen lamps which allow light to penetrate the interior of the human body in order to look deeply into the cavities. Mr. Courcy mentioned that these lamps might include up to two or three spotlights which rotate around the central lamp and produce stronger lighting, which allows the surgeon to have a better view of the interior of the body. In addition, these lamps are equipped with filters, and this creates a tinting which brings out the natural colour of the body. Mr. Courcy also explained that the handles on the surgical lamps must be sterile in order for the surgeon to be able to manipulate the lamps and direct light towards the site of the surgical operation.

The appellant's representative submitted that the goods in issue are lamps and lighting fittings used for surgery and, as a result, should be classified in heading No. 90.18. He emphasized that the goods in issue are essential for the surgeon during surgery. To support his argument, he referred the Tribunal to the Explanatory Notes to the Harmonized Commodity Description and Coding System³ (the Explanatory Notes) to heading No. 90.18 which provide, in part, that "[t]his heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc." Given that a number of surgical appliances, including "passive" items such as "mirrors and reflectors" or "spittoon mouth rinsers," are classified in heading No. 90.18, the representative contended that the goods in issue should also be classified in that heading. Finally, he claimed that the goods in issue are excluded from heading No. 94.05 pursuant to Part I of the Explanatory Notes to heading No. 94.05.

Counsel for the respondent submitted that the goods in issue should be classified in Chapter 94 of Schedule I to the *Customs Tariff*. To support his argument, he referred the Tribunal to the wording of the

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

title of Chapter 94 and to General Note (3) of the Explanatory Notes to Chapter 94, which provides that this chapter covers “[l]amps and lighting fittings and parts thereof, not elsewhere specified or included.” Counsel claimed that the goods in issue are not “[m]edical diagnostic, probing, irradiation, etc., lamps” and, consequently, are not excluded from heading No. 94.05 and cannot be classified in heading No. 90.18. He contended that the main function of the goods in issue is to provide lighting during surgery or a medical examination and not to make a diagnosis or to prevent or treat an illness.

Counsel for the respondent referred the Tribunal to Note (3) of Part I of the Explanatory Notes to heading No. 94.05 which provides that this heading covers in particular “[s]pecialised lamps, e.g.: darkroom lamps; machine lamps ... photographic studio lamps.” He also referred the Tribunal to the wording of the paragraph following Note (6) of Part I of the Explanatory Notes to heading No. 94.05 which provides that “[t]his group also includes searchlights and spotlights. These throw a concentrated beam of light.” Finally, counsel argued that parts of surgical lamps should be classified under the tariff item that best corresponds to their description and that, as a consequence, they were properly classified by the respondent.

For the purposes of classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules for the Interpretation of the Harmonized System⁴ is of utmost importance. This rule provides that classification shall be determined, first, according to the terms of the headings and any relative Chapter Notes. As a result, the Tribunal must first decide whether the goods in issue are specified or described in general terms in a specific heading. If the goods are specified in a heading, they must be classified therein subject to any relative Chapter Notes. Section 11 of the *Customs Tariff* states that, in interpreting the headings and subheadings, the Tribunal must take into account the Explanatory Notes.

Heading No. 90.18 provides for the classification of “[i]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments.” The Explanatory Notes to heading No. 90.18 provide that “[t]his heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc.” In the Tribunal’s opinion, the evidence shows that the lamps in issue are, in the vast majority of cases, normally used by surgeons. They are used in the operating room by the surgeon during a surgical operation, but not necessarily to treat an illness or make a diagnosis. The evidence reveals that the lamps in issue fulfill certain functions which make them essential for surgery. In the Tribunal’s opinion, the lamps in issue are, therefore, appliances used in surgery.

The Tribunal agrees with the appellant’s representative that a number of surgical appliances described as “passive,” which are not necessarily used to treat an illness or make a diagnosis, such as “mirrors and reflectors” or “spittoon mouth rinsers,” are classified in heading No. 90.18 and that, as a consequence, surgical lamps may also be classified in that heading. The Explanatory Notes also indicate that parts and accessories of the appliances in heading No. 90.18 are classified in that heading.

The wording of the title of heading No. 94.05 and the Explanatory Notes to that heading provide for the classification of lamps and lighting fittings not elsewhere specified or included. The Tribunal is of the opinion that surgical lamps are specifically mentioned in heading No. 90.18. They cannot, therefore, be classified in heading No. 94.05.

4. *Supra* note 2, Schedule I.

Consequently, the appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Lyle M. Russell

Lyle M. Russell
Member

Anita Szlajak

Anita Szlajak
Member