

Ottawa, Wednesday, April 10, 1996

**Appeal No. AP-95-120**

IN THE MATTER OF an appeal heard on November 24, 1995,  
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of  
National Revenue dated July 31, 1995, with respect to a request  
for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**BAZAAR & NOVELTY CO., A DIVISION  
OF BINGO PRESS & SPECIALTY LIMITED**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

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Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-120**

**BAZAAR & NOVELTY CO., A DIVISION  
OF BINGO PRESS & SPECIALTY LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

*This is an appeal under section 67 of the Customs Act from a decision of the Deputy Minister of National Revenue dated July 31, 1995. The issue in this appeal is whether glass mirror balls are properly classified under tariff item No. 7009.91.00 as unframed glass mirrors, as determined by the respondent, or should be classified under tariff item No. 8479.89.90 as other machines 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 mechanical appliances having individual functions and should be classified under tariff item No. 8479.89.90.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: November 24, 1995*

*Date of Decision: April 10, 1996*

*Tribunal Members: Lise Bergeron, Presiding Member  
Arthur B. Trudeau, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: John L. Syme*

*Clerk of the Tribunal: Anne Jamieson*

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

**Appeal No. AP-95-120**

**BAZAAR & NOVELTY CO., A DIVISION  
OF BINGO PRESS & SPECIALTY LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: LISE BERGERON, Presiding Member  
ARTHUR B. TRUDEAU, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated July 31, 1995. The issue in this appeal is whether glass mirror balls are properly classified under tariff item No. 7009.91.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as unframed glass mirrors, as determined by the respondent, or should be classified under tariff item No. 8479.89.90 as other machines having individual functions, not specified or included elsewhere in Chapter 84, as claimed by the appellant.

Mirror balls are spheres covered with small glass mirrors, which rotate on the axis of an electrical motor. They are typically used in discotheques and dance halls, where they may be attached to the ceilings, walls or floors.

For purposes of this appeal, the relevant tariff nomenclature reads as follows:

70.09        *Glass mirrors, whether or not framed, including rear-view mirrors.*  
7009.10.00   *-Rear-view mirrors for vehicles*  
              *-Other:*  
7009.91.00   *--Unframed*  
84.79        *Machines and mechanical appliances having individual functions, not*  
              *specified or included elsewhere in this Chapter.*  
              *-Other machines and mechanical appliances:*  
8479.89       *--Other*  
8479.89.90   *---Other:*

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

The appellant's representative did not appear at the hearing, relying instead on the brief and supplementary brief which were filed in these proceedings. In those briefs, the representative submitted that the mirror balls are a "composite material," the two main components of the balls being the reflective ball and the gearmotor and shaft. In the representative's submission, if the appellant were importing only the reflective ball without the gearmotor and shaft, the respondent's classification of the goods in issue would be correct. However, the nature of the goods in issue is altered by the incorporation of the gearmotor and shaft. This second component qualifies the mirror balls as machines. As such, the representative submitted that they should be classified in Chapter 84 and, in particular, under tariff item No. 8479.89.90.

In the respondent's brief, it was submitted that the mirror balls are properly classified under tariff item No. 7009.91.00 as unframed glass mirrors. Counsel for the respondent's primary argument was based on the assertion that the mirror balls derive their essential character from the mirrors on the balls which reflect light, rather than from the electric motor which drives their rotation. Counsel took issue with the appellant's characterization of the mirror balls as machines. In counsel's submission, machines have been defined by the Tribunal as being a more or less complex combination of moving and stationary parts which do work through the production, modification or transmission of force and motion. As the mirror balls are only capable of rotation on the axis of their electric motors, they do not produce, modify or transmit force or motion and are, therefore, not machines.

In the respondent's supplementary brief, it was pointed out that heading No. 84.79 describes machines and mechanical appliances having individual functions. The primary argument advanced by counsel for the respondent in the supplementary brief is that, as the mirror balls are not, by themselves, capable of reflecting light without another apparatus (i.e. a light source), they are not capable of performing "individual functions" and, therefore, cannot be classified in heading No. 84.79.

In paragraph 7 of the supplementary brief, it is submitted that the mirror balls do not meet the definition of a "machine" set out above (i.e. a combination of parts which do work through the production, modification or transmission of force and motion). However, in paragraph 12, it is conceded that the mirror balls are machines.

At the hearing, counsel for the respondent advanced three arguments in favour of the respondent's tariff classification:

- Essential Character: Pursuant to Rule 3 (b) of the General Rules for the Interpretation of the Harmonized System<sup>3</sup> (the General Rules), composite goods consisting of different materials or made up of different components are to be classified as if they consisted of the material or component that gives them their essential character. Counsel submitted that, while the mirror balls are composed of two elements, the mirrored sphere and the gearmotor and shaft, they derive their "essential character" from the mirrors mounted on them. Counsel's argument was based on the fact that the primary function of the balls is to reflect light. The effect created by the rotation of the mirror ball is, in counsel's submission, secondary to this primary function.
- Independent Function: Counsel argued that the mirror balls could not be classified in heading No.84.79, as that heading specifies "[m]achines and mechanical appliances having individual

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

functions.” Counsel argued that, as the mirror balls serve no function without a light source, they do not perform individual functions and are, therefore, not classifiable in heading No. 84.79.

- Exclusion: In the alternative, counsel argued that the mirror balls are excluded from Chapter 84 pursuant to Note 1(c) of the Chapter Notes. That note excludes the following items from Chapter 84:

*Laboratory glassware (heading No. 70.17); machinery, appliances or other articles for technical uses or parts thereof, of glass (heading No. 70.19 or 70.20).*

In response to a question from the Tribunal, counsel for the respondent submitted that the mirror balls are appliances or articles for technical uses and, therefore, are excluded by Note 1(c). Counsel submitted that, if the Tribunal were prepared to accept her alternative argument, the mirror balls would have to be classified in heading No. 70.20 as “[o]ther articles of glass.”

Tariff classification is determined in accordance with the General Rules. Rule 1 of the General Rules provides that “classification shall 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 following [rules].” Contrary to the position taken by the respondent, the Tribunal is of the opinion that there is no need to go beyond Rule 1 in deciding this appeal. Pursuant to Rule 1, the Tribunal must first determine whether the goods in issue are named or generically described in a particular heading. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, the Tribunal is to have regard to the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>4</sup> (the Explanatory Notes).

The appellant’s representative submitted that the mirror balls should be classified in heading No. 84.79 as “[m]achines and mechanical appliances having individual functions.” In order for the goods in issue to fall in heading No. 84.79, the Tribunal must be satisfied that they are not specified or included elsewhere in Chapter 84 and that they are either machines or mechanical appliances and have individual functions.

The Tribunal is satisfied that the mirror balls are not specified elsewhere in Chapter 84. With respect to whether they are machines or mechanical appliances, the Tribunal notes that, in two recent decisions, it considered the terms “machine” and “mechanical appliance” to be 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 appeal, is of the same view.

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

5. See, for example, *Canper Industrial Products Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-94-034, January 24, 1995, and *Canadian Tire Corporation Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-94-157, October 12, 1995.

6. *Canper Industrial Products Ltd.*, *ibid.* at 4.

To determine whether the mirror balls are machines or mechanical appliances, the Tribunal referred to Supplementary Note 1 to Section XVI of Schedule I. 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>

In the Tribunal’s view, the mirror balls are mechanically operated and are mechanical appliances. The sphere covered with numerous mirrors affixed to its exterior surface rotates around an internal axis or shaft which is driven by an electric motor. In the Tribunal’s view, the motor and shaft serve to give the mirror balls their mechanical character.

With respect to the question of individual function, the Explanatory Notes to heading No. 84.79 describe in detail, with examples, the meaning of “individual function.” The Explanatory Notes describe, in part, “individual function” as follows:

*(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, provided that this function:*

- (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and*
- (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.*

**Example:** *... the function of a carburettor for an internal combustion engine is distinct from that of the engine but it is not an “ individual function” as defined above because the operation of the carburettor is inseparable from that of the engine.*

The Tribunal is satisfied that the mirror balls have individual functions. While the mirror balls cannot perform their function unless they are used in conjunction with a source of light, unlike the carburettor on an engine, their function is distinct from that of the light source and does not play an integral part in the function of the light source.

The Tribunal also considered whether the goods in issue were properly classified in heading No. 70.09, as determined by the respondent. Having regard to the wording of that heading and the relevant Explanatory Notes, the Tribunal is simply not persuaded that the mirror balls are unframed glass mirrors within the contemplation of that heading. With respect to counsel for the respondent’s alternative argument based on Note 1(c) of the Chapter Notes to Chapter 84, the Tribunal is of the view that the mirror balls are not “for technical uses,” as required by that note, and are, therefore, not excluded from Chapter 84.

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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, File No. A-503-86, October 21, 1987.

For the foregoing reasons, the goods in issue should be classified in heading No. 84.79. The Tribunal finds that the mirror balls, not being described within any of the goods-specific subheadings of heading No. 84.79, should be classified in subheading No. 8479.89, "Other." Within that subheading, the mirror balls should be classified under tariff item No. 8479.89.90.

Consequently, the appeal is allowed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member