

Ottawa, Tuesday, March 26, 1996

Appeal Nos. AP-95-013, AP-95-073 and AP-95-078

IN THE MATTER OF appeals heard on November 30, 1995,
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 a request for re-determination
under section 63 of the *Customs Act*.

BETWEEN

SPACESAVER CORPORATION

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed.

Anita Szlazak
Anita Szlazak
Presiding Member

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-95-013, AP-95-073 and AP-95-078

SPACESAVER CORPORATION

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The appellant is in the business of designing, engineering, manufacturing and marketing high-density mobile storage systems for a variety of industrial, research and office applications. The systems consist of a superstructure of various components which are mounted and move on a rail system. The goods in issue are custom-designed for the specific requirements of each application. The issue in these appeals is whether the goods in issue are properly classified under tariff item No. 9403.10.90 as other metal furniture of a kind used in offices, when imported as a complete system, under tariff item No. 9403.20.00 as shelving, when only housings are being imported, under tariff item No. 9403.90.10 as parts and under tariff item No. 8428.90.90 as "Other lifting, handling, loading or unloading machinery ... Other machinery ... Other," when a system is imported without housings, as determined by the respondent, or should be classified under tariff item No. 8428.90.90 as other lifting, handling, loading or unloading machinery and under tariff item No. 8431.39.20 as parts of the goods of tariff item No. 8428.90.90, as contended by the appellant.

HELD: *The appeals are allowed. The Tribunal considers that the goods in issue should be classified under tariff item No. 8428.90.90 as other lifting, handling, loading or unloading machinery. With respect to the separate importation of housings or any of the other components of a complete system on their own, the Tribunal finds that these goods should be considered to be parts of the goods of tariff item No. 8428.90.90 and, therefore, classified under tariff item No. 8431.39.20.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 30, 1995
Date of Decision: March 26, 1996

Tribunal Members: Anita Szlazak, Presiding Member
Lise Bergeron, Member
Lyle M. Russell, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

Appearances: Richard A. Wagner, for the appellant
Josephine A. L. Palumbo, for the respondent

Appeal Nos. AP-95-013, AP-95-073 and AP-95-078

SPACESAVER CORPORATION

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ANITA SZLAZAK, Presiding Member
LISE BERGERON, Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

These are appeals under subsection 67(1) of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue.

The appellant is in the business of designing, engineering, manufacturing and marketing high-density mobile storage systems for a variety of industrial, research and office applications. The appellant is located in Fort Atkinson, Wisconsin, and has a sales subsidiary located in Kitchener, Ontario. The goods in issue are comprised of a number of components which may be purchased separately or together as a complete system. The systems consist of a superstructure which is mounted on a rail system, and they are custom-designed for the specific requirements of each application. The systems also contain several mechanical components which allow articles to be handled and moved.

The goods in issue were imported in a number of transactions occurring in 1991 and 1992. The appellant filed requests for re-determination under tariff item No. 8428.90.90 of Schedule I to the *Customs Tariff*.² These requests were rejected. The appellant subsequently filed further requests for re-determination and, by a number of decisions, the respondent maintained the classification of the goods in issue.

The issue in these appeals is whether the high-density mobile storage systems imported by the appellant are properly classified under tariff item No. 9403.10.90 as other metal furniture of a kind used in offices, when imported as a complete system, under tariff item No. 9403.20.00 as shelving, when only housings are being imported, under tariff item No. 9403.90.10 as parts and under tariff item No. 8428.90.90 as "Other lifting, handling, loading or unloading machinery ... Other machinery ... Other," when a system is imported without housings, as determined by the respondent, or should be classified under tariff item No. 8428.90.90 as other lifting, handling, loading or unloading machinery and under tariff item No. 8431.39.20 as parts of the goods of tariff item No. 8428.90.90, as contended by the appellant.

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

The relevant tariff nomenclature in Schedule I to the *Customs Tariff* reads as follows:

84.28	<i>Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics).</i>
8428.90	<i>-Other machinery</i>
8428.90.90	<i>---Other</i>
84.31	<i>Parts suitable for use solely or principally with the machinery of heading Nos. 84.25 to 84.30.</i>
8431.39	<i>--Other</i>
8431.39.20	<i>---Of the goods of tariff item No. ... 8428.90.90</i>
94.03	<i>Other furniture and parts thereof.</i>
9403.10	<i>-Metal furniture of a kind used in offices</i>
9403.10.90	<i>---Other</i>
9403.20.00	<i>-Other metal furniture</i>
9403.90	<i>-Parts</i>
9403.90.10	<i>---Of metal</i>

Counsel for the appellant called one witness, Mr. Richard A. Austin. Mr. Austin is Controller of Spacesaver Corporation and has held this position for 5 years. He has been with the company for over 15 years. His responsibilities as Controller include customs matters. Mr. Austin described the various uses to which the goods in issue can be put by taking the Tribunal through a sales brochure which set out and explained a variety of applications in a number of institutional, office and industrial settings in Canada. Mr. Austin next showed a current marketing video which described how the goods in issue are made and distributed.

Mr. Austin explained that the goods in issue have six basic components: (1) the rail system; (2) the ramp and floor system; (3) the guidance system; (4) the carriage system; (5) the operational system; and (6) the housings. The rail system is placed either on or in the floor of the location where the system is being installed. The balance of the system sits on the rail track and moves back and forth on it. Thus, the rail system acts as the foundation or support of the complete product. The ramp and floor system is made up of the components which fill in the open areas between and around the rails, thus creating a new, level floor on top of the existing floor. This is done for safety reasons. The next component is the guidance system. It allows the rest of the unit to track in a straight line or perpendicular to a wall or to the rails. The carriage system is the frame in which sit the housings being used. In other words, it is the frame which supports the housings. In conjunction with the rail and guidance systems, the carriage system allows the housings to move back and forth.

The next component, the operational system, transmits the force which moves the carriages back and forth. Mr. Austin explained that there are three types of operational systems: (1) a manual system, operated by a handle located on the front of the unit which can be pulled; (2) a mechanical assist system, by which an operator turns or spins a hub-shafted crank located on the front panel, which activates a

chain-based drive shaft within the carriage system which moves the unit in the desired direction; and (3) an electrically operated system, which again is located on the front panel of the unit. The panel control allows the operator to activate an electric motor located beside a wheel housing in the carriage system. Mr. Austin stated that the main criteria used to choose between operating systems are the weight of the objects to be moved and the number of people who will be operating the system. The final components are the housings. These are the components which store the items. They usually sit on top of the carriage system. The various types of housings include racks, shelves, drawers, cabinets and specialty housings. When all of these components are put together, the result is a high-density mobile storage system, which avoids the need to set aside large amounts of floor space for aisles in a storage area. Articles are stored on or in the systems, which may sit side by side in the storage mode and can be moved to provide access to the stored goods.

Mr. Austin testified that the components that the appellant manufactures are made specifically for the appellant's systems and are configured for each customer's specific needs. He stated that the most important factors in selling the goods in issue are the amount of space that the customer needs to save and the weight of the objects to be stored. He also indicated that the systems are permanent installations in the sense that they are anchored to, or embedded in, the floor at a specific location. Furthermore, while the systems could be moved, this would be achieved only through considerable effort that would involve a major remodelling of the location, as the floor and rails and whatever covered them, e.g. carpet or tiles, would have to be pulled out.

Turning to the market for the goods in issue, Mr. Austin testified that there are two market sectors or segments: (1) office and institutional and (2) industrial. Examples of applications in the latter market segment include the storage of automobile parts, Air National Guard warehouses in the United States and the appellant's own raw material storage systems. He stated that applications in both market segments share the same components and that this was one reason why the appellant did not track sales by market segment. Rather, the appellant keeps sales records on the basis of sales of the different types of components.

Mr. Austin stated that, at the time of entry, the goods in issue are preassembled and come in sections which are easy to transport. Generally, the whole system is shipped together, although in situations where the rail system is to be embedded, it may be shipped before the rest of the system. He indicated that the goods in issue are usually installed by qualified installers associated with the appellant's distribution network. He stated that a typical installation takes three to four weeks.

Finally, Mr. Austin testified that the appellant does not consider itself a furniture company. Rather, it considers itself to be a metal fabricator. He named the appellant's top competitors and indicated that, as far as he was aware, none of these companies were furniture companies.

During cross-examination, Mr. Austin acknowledged that the carriage system and housings were the most visible part of the goods in issue and that the major proportion of the product which is visible is the housings. He later explained that what one normally sees of the product is the end or face of the system which contains the operating control, be it a handle, a mechanical assist three-spoke handle or an electrical control panel. Mr. Austin agreed that some customers, including some in Canada, can and do buy only shelving and that, in certain circumstances, the shelving is to be used with an existing system that may or may not already have housings. In response to questions as to how the goods in issue may be advertised in the Ottawa-Hull Yellow Pages Directory, Mr. Austin indicated that certain portions of the products advertised under "Shelving" may be similar to the goods in issue.

In response to questions from the Tribunal, Mr. Austin stated that the goods in issue are handling machinery, in that they move objects from one place to another and, in so doing, either free up space or remove unproductive space. He added that the movement of the objects may also provide access to a particular area. Mr. Austin agreed that, generally, the main difference between a high-density system and a low-density system is that the former has movable units and the latter does not. More specifically, a low-density system is something which is static or stationary and would have open aisles between each range of static housings.

In response to questions arising, Mr. Austin stated that the appellant manufactured steel shelving, not conventional filing cabinets. In re-examination, he stated that less than 20 percent of the appellant's sales were of static housings.

Counsel for the respondent called one witness, Mr. Pedro S. Ignacio. Mr. Ignacio is the owner of Ignacio & Associates Marketing Inc., which carries on business under the name Supreme Systems. The company is in the business of marketing high-density and low-density filing systems. With respect to high-density mobile systems, Mr. Ignacio markets manual and mechanical assist systems. Mr. Ignacio testified that the main or primary purposes of the goods in issue are filing and storage and that the carriage system is incidental to these purposes. He also stated that what one sees when one first looks at the goods in issue are the housings and the panel or face on which the operating system is located. Mr. Ignacio did not agree that the goods in issue are mechanical loaders. He did agree that the goods in issue are furniture, because their purpose was filing and storage, and filing cabinets are furniture. He also agreed that the goods in issue had the same features as those described for “[m]etal filing cabinets” in the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System³ (the Classification Opinions).

During cross-examination, Mr. Ignacio agreed with the statement in the respondent's brief that the goods in issue, while having mechanical features, are more than simple machines.⁴ He also agreed that filing cabinets sit on floors, not rails, have no wheels and cannot move, while the goods in issue do not directly sit on a floor because they sit on rails.

In argument, counsel for the appellant first reviewed the tariff items being suggested by the parties and submitted that the basic issue before the Tribunal was whether the goods in issue should be classified as other handling machinery or as furniture. Counsel submitted that tariff item No. 8428.90.90 covers a wide spectrum of machinery for the lifting, handling and loading of goods, as reflected by the inclusion of goods such as mechanical ladders and dollies for cinematographic cameras in the Explanatory Notes to the Harmonized Commodity Description and Coding System⁵ (the Explanatory Notes) to heading No. 84.28. In contrast, he argued, the goods covered by heading No. 94.03 are very limited in scope because the heading only encompasses metal furniture for use in offices and not for any other purposes. This, he suggested, means that anything which goes into a plant or institutional setting, which is not an office, could not be classified in this heading. Counsel also submitted that there is a further, and more important, restriction on the scope of heading No. 94.03, that is, that the goods are limited to furniture. In this regard,

3. Customs Co-operation Council, 1st ed., Brussels, 1987 at 44E.

4. Respondent's Brief, paragraph 24.

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

counsel argued that the definition of “furniture” in the Explanatory Notes to Chapter 94 has two essential requirements or features: (1) that furniture is put on a floor and (2) that it is movable. Counsel suggested that the evidence shows, first, that the goods in issue, i.e. complete systems, do not sit on floors, but rather sit on rails. The evidence also shows that each installation is meant to be permanent and is not something that is meant to be moved around easily. In addition, to move a system, after it has been installed, is a very involved process.

Counsel for the appellant submitted that the evidence shows that the goods in issue are usually shipped as a complete system in a disassembled state, and when this is not the case, that the parts being shipped are intended to go into the final installation of a complete system. Counsel noted that Rule 2 (a) of the General Rules for the Interpretation of the Harmonized System⁶ (the General Rules) provides that, when dealing with a unit whose components are disassembled at the time of entry, one classifies on the basis of the whole unit.

With respect to whether the goods in issue are machines, counsel for the appellant submitted that previous decisions of the Tribunal and its predecessors, and the Harmonized Commodity Description and Coding System⁷ (the Harmonized System) itself, tell us that “machines” are something with moving parts. The evidence shows that the goods in issue satisfy this definition, as they have parts which are moved either by hand power or electric power. Furthermore, it is acknowledged in the respondent’s brief that the goods in issue are machines when it states that they “are clearly more than simple machines.”⁸

Counsel for the appellant submitted that the goods in issue should be considered “handling machinery,” on the basis that they move goods stored in the system from place to place. In this regard, “handling machinery” should be considered to include goods whose function is to provide access, as reflected again in the inclusion of mechanical ladders in heading No. 84.28. Furthermore, counsel submitted the following definition of “materials handling equipment” to the Tribunal:

*Any machine, equipment or mechanical device used to transport, lift, move or position or to assist in transporting, lifting, moving or positioning any materials, goods, articles, persons or things, and includes any crane, derrick, loading tower, powered industrial truck, handtruck, conveyor, hoist, earth-moving equipment, rope, chain, sling, dock, ramp, storage rack, container, pallet and skid.*⁹

Counsel for the appellant submitted that the inclusion of storage racks in this list reflects that storage can be a function of materials handling equipment and machinery. He submitted that the Tariff Board’s decision in *J.H. Ryder Machinery Limited v. The Deputy Minister of National Revenue for Customs and Excise*¹⁰ also supported this position. Counsel noted that the respondent recognizes that the goods in issue are handling machinery by the fact that the tariff item suggested by the appellant for certain components of the goods in issue is used.

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

7. Customs Co-operation Council, 1st ed., Brussels, 1987.

8. *Supra*, note 4.

9. The Dictionary of Canadian Law, 2nd ed. (Scarborough: Thomson Professional Publishing, 1995) at 724.

10. (1975), 6 T.B.R. 278.

Counsel for the appellant referenced a ruling of the United States Customs Service, filed with the appellant's brief, relating to goods which, he suggested, are very similar to the goods in issue. The ruling classified the goods under the same tariff item being urged by the appellant. Finally, counsel submitted that the Tribunal should not accept the proposition put forward by counsel for the respondent that the goods in issue should be classified on the basis of their "primary purpose." This, he suggested, was not a tenet of the Harmonized System, and the Tribunal should reject it, as he submitted it did in its decisions in *Ford New Holland Canada Ltd. v. The Deputy Minister of National Revenue*¹¹ and *Marubeni Canada Ltd. v. The Deputy Minister of National Revenue*.¹²

Counsel for the respondent submitted that, if the goods in issue are being imported as a whole system, then they should be classified under tariff item No. 9403.90.10 as other metal furniture for use in offices. If, however, the goods in issue are being imported without housings, then they should be classified as suggested by the appellant. With respect to the whole system, counsel submitted that the evidence shows that the goods in issue are movable articles which have the character of furniture and referred the Tribunal to the complete definition of "furniture" in the Explanatory Notes. Counsel argued that the evidence also indicates that the majority of the marketing of the goods in issue takes place in the institutional and office sector of the market and that the appellant's witness agreed that the goods in issue could be considered to be office equipment. Counsel submitted that the goods in issue are constructed for placing on a fixed surface and, indeed, as the definition of "furniture" suggests, the rail system is bolted to a fixed surface, after which the storage parts of the system are placed on this part of the whole system. Furthermore, the goods in issue are used to equip premises for the purpose of storage and filing, and any space saving benefits derived from their use should be seen as secondary to this primary purpose.

Counsel for the respondent submitted that the definition of "[m]etal filing cabinets" in the Classification Opinions supported the respondent's position that the goods in issue should be classified in Chapter 94. This definition reads as follows:

*Metal filing cabinets, floor-standing, equipped with a set of push-buttons for control of a built-in electro-mechanical device which brings the selected "tray" containing the documents to be consulted to the desired level.*¹³

With respect to the United States Customs Service ruling, counsel for the respondent submitted that the Tribunal should find little persuasive value in it, since it was made by a foreign administration.

The Tribunal considers that the goods in issue should be classified under tariff item No. 8428.90.90 as other lifting, handling, loading or unloading machinery. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the General Rules, which must govern the classification of the goods in issue. The Tribunal is particularly cognizant of Rule 1 of the General Rules. As noted by the Tribunal in *York Barbell Co. Ltd. v. the Deputy Minister of National Revenue for Customs and Excise*,¹⁴ Rule 1 of the General Rules is of the utmost importance when classifying goods under the Harmonized System. Rule 1 of the General Rules

11. Appeal No. AP-93-388, February 3, 1995.

12. Appeal No. AP-93-311, December 14, 1994.

13. *Supra*, note 3.

14. 5 T.C.T. 1150, Appeal No. AP-91-131, March 16, 1992.

states that classification is first determined by the wording of the tariff headings and any relative Section or Chapter Notes.

The Tribunal agrees with counsel for the appellant that the central issue in these appeals is whether the goods in issue should be considered to be other handling machinery or furniture. The definition of “furniture” found in the Explanatory Notes has three requirements. The Tribunal is of the view that all three requirements must be satisfied for an article to be found to be furniture.

First, the goods in issue must be “movable.” The Tribunal is of the view that this means “movable” in the sense that a chair can be moved from one place to another in a room, as opposed to “movable” in the sense of how an article operates after it has been placed somewhere, i.e. in this case, how the superstructure operates after being placed on the rail system. Although the goods in issue may be said to be “movable” in terms of the operation of certain components of a system, the Tribunal notes that the evidence shows that, once installed, they are meant essentially to be permanent. There is no evidence before the Tribunal that the goods in issue are designed to be movable in the sense discussed above or that, once installed, the appellant’s customers in fact “move” the goods in issue. Therefore, the Tribunal finds that the goods in issue are not movable for purposes of the definition of “furniture.”

The second requirement in the definition of “furniture” is that articles have the essential characteristic of being constructed for placing on the floor or, based on subparagraph (B) of the definition, in some cases, hung or fixed to a wall. The evidence is clear that, taken as a whole, high-density mobile storage systems are not “placed” on a floor. Rather, the rail system is connected to or embedded in a floor, so as to allow the balance of the system to rest on it. Thus, to a certain degree, it may be said that the goods in issue are constructed for placing on floors.

The third requirement is that the goods in issue must be used for a utilitarian purpose. More specifically, at the subheading level suggested by the respondent, the purpose in this case is the equipping of offices. The Tribunal is of the view that the evidence shows that, while the goods in issue are used in offices, they are also used to such a degree in institutional and industrial settings that they cannot be said to be articles of a kind that are used in offices. Rather, they are articles of a kind used in offices and institutional and industrial settings. The goods in issue are clearly more than “[m]etal filing cabinets.”

As the goods in issue fail to meet two of the three requirements of the definition of “furniture,” the Tribunal finds that the goods in issue cannot be classified in heading No. 94.03.

Turning to heading No. 84.28, the Tribunal notes that the respondent acknowledges that the goods in issue, when imported without housings, should be classified in this heading and specifically under tariff item No. 8428.90.90. The Tribunal is of the view that importations of the complete system should also be classified under the same tariff item. The Tribunal has previously defined a machine as something comprised of a more or less complex combination of moving and stationary parts which works through the production, modification or transmission of force and motion.¹⁵ In a similar manner, The Concise Oxford Dictionary of Current English defines a “machine” as “[an] apparatus for applying mechanical power, having several parts,

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

each with [a] definite function.¹⁶” The Tribunal is of the view that the evidence shows that the goods in issue satisfy these definitions. The Tribunal also accepts that the goods in issue are “handling machinery,” as they are machines which are used to move or position the goods that are stored in or on them. Furthermore, the definition of “materials handling equipment” referenced above reinforces this conclusion in the context of the goods in issue, as it specifically includes storage in the list of functions that such goods perform. In addition, the Tribunal notes that Rule 2 (a) of the General Rules directs that goods, such as the goods in issue, i.e. a unit whose components are disassembled at the time of entry, should be classified on the basis of the whole unit.

With respect to the separate importation of housings or any of the other components of a complete system on their own, the Tribunal finds that these goods should be considered to be parts of the goods of tariff item No. 8428.90.90 and, therefore, classified under tariff item No. 8431.39.20.

Accordingly, the appeals are allowed.

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16. Seventh ed. (Oxford: Clarendon Press, 1982) at 606.