

Ottawa, Thursday, August 15, 1996

Appeal No. AP-95-096

IN THE MATTER OF an appeal heard on January 24, 1996,
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 7, 1995, with respect to a request for
re-determination under section 63 of the *Customs Act*.

BETWEEN

**LLOYDAIRE, DIVISION OF
ELJER MANUFACTURING CANADA INC.**

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Raynald Guay
Raynald Guay
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-096

LLOYDAIRE, DIVISION OF
ELJER MANUFACTURING CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether certain grilles, diffusers, dampers and registers are properly classified as identifiable parts of air heaters or hot air distributors under tariff item No. 7322.90.91, if made of steel, and as other articles of aluminum under tariff item No. 7616.90.90, if made of aluminum, as determined by the respondent, or should be classified as valves and similar appliances for pipes or the like under tariff item No. 8481.80.91, as claimed by the appellant.

HELD: The appeal is allowed. Before the goods in issue can be classified as “parts” under tariff item No. 7322.90.91, they must be parts of air heaters or hot air distributors in the grammatical and ordinary sense. In the Tribunal’s view, the goods in issue are not parts of these articles and, therefore, cannot be classified as “parts” thereof. Furthermore, the goods may be used with electrically heated appliances, which are specifically excluded by the terms of heading No. 73.22.

As the goods in issue “regulate the flow [of air] by opening or closing an aperture,” they meet the general description in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 84.81 of “appliances” classifiable in that heading. Furthermore, the ducts and fittings to which the goods are attached constitute “pipes, boiler shells, tanks, vats or the like.” This classification was preferred to the less specific alternative tariff items proposed by the parties.

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 24, 1996
Date of Decision: August 15, 1996

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Raynald Guay, Member
Desmond Hallissey, Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

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

Appeal No. AP-95-096

**LLOYDAIRE, DIVISION OF
ELJER MANUFACTURING CANADA INC.**

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue dated July 7, 1995, made under section 63 of the Act.

The issue in this appeal is whether certain grilles, diffusers, dampers and registers are properly classified as identifiable parts of air heaters or hot air distributors under tariff item No. 7322.90.91 of Schedule I to the *Customs Tariff*,² if made of steel, and as other articles of aluminum under tariff item No. 7616.90.90, if made of aluminum, as determined by the respondent, or should be classified as valves and similar appliances for pipes or the like under tariff item No. 8481.80.91, as claimed by the appellant. The appellant argued, in the alternative, that, should the Tribunal find that the goods in issue are not classifiable in heading No. 84.81, then they should be classified as mechanical appliances under tariff item No. 8479.89.99. The respondent also made an alternative argument, specifically, should the Tribunal find that the goods in issue that are made of steel are not classifiable in heading No. 73.22, then they should be classified as other articles of steel under tariff item No. 7326.90.90.

Four model series are in issue, specifically, series 163 registers, series 302A floor registers, and series 800D and 800DO ceiling diffuser dampers. The registers are rectangular and consist of a grille and a damper, which damper can be opened or closed by manually adjusting a knob attached to the damper or grille. The ceiling diffuser dampers are circular and do not contain a grille. The dampers may be adjusted with a screwdriver.

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

| | |
|------------|---|
| 73.22 | Radiators ... air heaters and hot air distributors ... not electrically heated ... and parts thereof, of iron or steel. |
| 7322.90 | -Other ---Other: |
| 7322.90.91 | ----Of a kind for heating buildings |

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

| | |
|------------|--|
| 76.16 | Other articles of aluminum. |
| 7616.90 | -Other |
| 7616.90.90 | ---Other |
| 84.81 | Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like |
| 8481.80 | -Other appliances |
| | ---Other: |
| 8481.80.91 | ----Hand operated or hand activated |

Ms. Carole Frenette, Regional Manager for the Province of Quebec for Selkirk Metalbestos, appeared as a witness for the appellant. Ms. Frenette testified that the goods in issue are manually operable either by using a lever attached to the grille or damper or by using a screwdriver. Ms. Frenette further testified that an air duct leads to the damper and that forced air is passed through the duct into a room via the grilles or diffusers. She stated that the goods in issue are used in both commercial and residential applications and can be located on a wall or ceiling depending on the type of air diffusion sought. Furthermore, they are used in the heating, ventilating and air conditioning business, with none of the goods in issue being restricted to any one of those applications. According to Ms. Frenette, the goods in issue can be used with any oil, gas or electric system.

Ms. Frenette testified that the goods in issue are sold independently of a furnace. She also stated that they operate similarly to a valve, in that they open and close depending on the desired air flow and, as such, they control the flow of air. Ms. Frenette further stated that she does not consider the goods in issue to be parts of an air conditioning unit, a fan, a ventilator or a furnace.

Mr. Michel Sornin, Secretary General of Industrial Supplies Ltd., which company manufactures ducts, pipes and fittings for air supply distribution, appeared as a witness for the respondent. Mr. Sornin testified that no permanent seal is created when a damper is closed and that the primary purpose of a damper is to regulate the flow of air into a room. He stated that the goods in issue are primarily used in central air systems and, furthermore, that he could not conceive of their presence in a home or building for a purpose other than for air distribution. In describing how a central air system works, Mr. Sornin stated that he considered the goods in issue to be elements of a heating system. He stated that, within the industry, he has not heard of the goods in issue referred to as “valves.”

Mr. Sornin testified that, in the industry, the primary difference between an air duct and a pipe is that a duct is a rectangular piece of steel, either galvanized or stainless, or of aluminum, while a pipe is round and made of either galvanized or stainless steel.

In response to definitions of “valve” and “damper” put to him by counsel for the respondent, Mr. Sornin indicated that, in his view, the goods in issue are not valves. Furthermore, the goods in issue are attached to a fitting as opposed to being attached to a duct directly. Mr. Sornin also stated, pursuant to questions from the appellant’s representative, that the goods in issue would never be contained in a unit heater.

In argument, the appellant’s representative submitted that the goods in issue should be classified in tariff item No. 8481.80.91. He emphasized that the terms of the heading refer to “valves and similar

appliances” for “pipes, boiler shells, tanks, vats or the like.” In view of the terms of the tariff item, the representative submitted that the goods in issue are hand operated or hand activated. With reference to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ (the Explanatory Notes), the representative also submitted that the purpose of the goods in issue is to regulate the flow of air, by the opening or closing of an aperture. He further submitted that there is nothing in the *Harmonized Commodity Description and Coding System*⁴ which dictates to what degree something should work, only that it perform the function for which it was designed.

The appellant’s representative submitted that the goods in issue could be used with electrically heated furnaces, in contrast to the description of goods classifiable in heading No. 73.22. The representative also submitted that, while the appellant would consider the goods in issue to be parts of a central heating system, they are not parts of a radiator, air heater or hot air distributor. In contrast to the description of goods classifiable in heading No. 73.22 pursuant to the Explanatory Notes, the goods in issue are not mounted on such units, rather they are remotely located from them. The representative further argued that if “pipes and fittings” connecting boilers with hot air distributors are specifically excluded from classification as parts of air heaters and hot air distributors in heading No. 73.22, then nothing beyond such units is classifiable within that heading either. The representative also emphasized that the goods in issue may be used strictly for air conditioning.

The appellant’s representative argued that, contrary to the respondent’s written submissions, there is pressure involved in the functioning of the goods in issue and, furthermore, that, in respect of the respondent’s submissions relating to the French version of the Explanatory Notes, air is a gaseous fluid. The representative also argued that the definitions of “valve” and “damper” put to Mr. Sornin by counsel for the respondent are very narrow. The representative submitted that the Explanatory Notes to heading No. 84.81 are very precise in defining a valve and describing its operation. There is nothing to indicate that a hand-operated, butterfly-type valve used for either air or fluid would not be included in heading No. 84.81.

Counsel for the respondent began her argument by referring to general principles of statutory interpretation as they apply to the *Customs Tariff*, as well as to the application of the *General Rules for the Interpretation of the Harmonized System*⁵ (the General Rules) and the *Canadian Rules*⁶ for customs classification. She argued that the goods in issue, where they are made of steel, are specifically named as parts of air heaters and hot air distributors in heading No. 73.22. She emphasized that the Explanatory Notes to heading No. 73.22 specifically include references to grilles and dampers. Counsel further submitted that, since there is no parallel heading in Chapter 76 for the goods in issue which are made of aluminum, they ought to be classified under tariff item No. 7616.90.90 as “[o]ther articles of aluminum.”

Counsel for the respondent submitted that the failure of a valve to make a permanent seal is crucial to the primary purpose of a valve. Therefore, the goods in issue cannot be considered to be valves since a permanent seal is not crucial to the purpose of air distribution.

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

4. *Ibid.* 1987.

5. *Supra* note 2, Schedule I.

6. *Ibid.*

Counsel for the respondent submitted that the Tribunal must initially ensure that the goods in issue meet the terms of the heading before moving on to consider the Explanatory Notes. She also submitted that the application of the *ejusdem generis* rule of statutory interpretation applies in this case, which rule provides that general terms in a list are to be interpreted in relation to specific related terms that precede them.⁷ She argued that what the terms of heading No. 84.81 have in common is that they contain a certain pressure, but that the goods in issue operate as a result of human intervention and not as a result of pressure from within the system. Counsel further argued that the words “or the like” in heading No. 84.81 only apply to systems which contain pressure similar to boiler shells, tanks and vats.

Counsel for the respondent argued that the terms of the French version of heading No. 84.81 are more precise and restrictive than the English version, in that they refer to articles of plumbing rather than to taps, cocks and valves and, as such, do not even refer to the word “valves.” In any event, counsel submitted that the classification of the goods in issue in heading No. 84.81 as valves is unsupported based on dictionary definitions of the term “valve.” Counsel argued that the goods in issue are primarily used with duct-type forced air heating systems and that, as the ducts and grilles are necessary to the proper functioning of such systems, they must be classified as parts of that system. Counsel further pointed out that identifiable parts of air heaters and hot air distributors are expressly excluded from heading No. 84.81 pursuant to Note 5 of the Explanatory Notes to heading No. 73.22. Counsel submitted that the remote location of the goods in issue from the heating system does not affect the classification of the goods as “parts.”⁸

Counsel for the respondent also submitted that the reference to self-contained units in Note 4 of the Explanatory Notes to heading No. 73.22 does not exhaust the terms of the heading. Furthermore, the goods in issue are not meant solely for the installation of an electrically heated central heating system.

Counsel for the respondent submitted that, should the Tribunal determine that the goods in issue made of steel cannot be classified in heading No. 73.22, in the alternative, they should be classified under tariff item No. 7326.90.90 as “[o]ther articles of ... steel.”

In determining the classification of the goods in issue, the Tribunal is cognizant that Rule 1 of the General Rules is of the utmost importance. Rule 1 provides that classification is first determined by the words of the heading and any relative Section or Chapter Notes. In this case, “parts” of air heaters and hot air distributors, if made of steel, are specifically named in heading No. 73.22. However, in order for the Tribunal to determine whether those goods are classifiable as “parts” in that heading, it must first consider whether they are parts of air heaters and hot air distributors in the grammatical and ordinary sense.

In order to make such a determination, the Tribunal adopted the approach previously taken in other appeals, namely, that there is no one universally applicable test to determine whether goods are parts of other goods and that each case must be determined on its own merits. In previous cases, the Tribunal has considered, among others, the following factors: (1) whether the product is essential to the operation of

7. In support of her argument in respect of this issue, counsel relied on the Tribunal’s decision in *Continental Industries O/B R. Solom Co. Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-93-331, March 20, 1995.

8. In support of this position, counsel relied on the Tribunal’s decision in *Philips Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-211, June 15, 1992.

another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice.⁹

In considering these factors, the Tribunal is of the view that the goods in issue are not parts of air heaters and hot air distributors and, therefore, cannot be classified as “parts thereof” in heading No. 73.22. In the Tribunal’s view, the goods in issue are not essential to the operation of air heaters and hot air distributors, and neither are they necessary or integral components of such goods. While the goods in issue may play a role in directing hot air to particular locations in a house or office building, the air heaters and hot air distributors do not require that the goods in issue be used in conjunction with them in order for the machines to perform their intended function.

The Tribunal also recognizes that the goods in issue may be used with electrically heated appliances and notes that the terms of heading No. 73.22 specifically exclude electrically heated air heaters and hot air distributors, including parts thereof, from classification in that heading. The Tribunal further notes that the goods in issue are sold independently of air heaters and hot air distributors.

On the issue of remoteness, the Tribunal is of the view that such a factor, while not definitive, when considered together with the other factors discussed above, constitutes persuasive evidence that the goods in issue are not parts of the other goods. While the Tribunal is cognizant that the Explanatory Notes to heading No. 73.22 specifically mention grilles and dampers as identifiable parts of air heaters and hot air distributors and, as such, are classifiable in heading No. 73.22, the Tribunal is not persuaded that the goods in issue, given the factors discussed above, are the types of grilles and dampers meant to be covered by that reference in the Explanatory Notes.

As to whether the goods in issue are classifiable as “valves and similar appliances for pipes, boiler shells, tanks, vats or the like,” the Tribunal is of the view that they are classifiable as such. In reaching this conclusion, the Tribunal took into account that the goods in issue “regulate the flow [of air] by opening or closing an aperture.” As such, they meet the general description in the Explanatory Notes to heading No. 84.81 of “appliances” classifiable in that heading.

The Tribunal was not persuaded that a permanent seal is a crucial characteristic of valves or similar appliances. Furthermore, in the Tribunal’s view, the French version of heading No. 84.81 in referring to “[a]rticles de robinetterie” in place of “[t]aps, cocks, valves” does not limit the goods covered by this heading to taps, cocks, valves and similar appliances associated with plumbing. “*Robinetterie*” is defined as the “[e]nsemble des robinets d’une chaudière, d’un dispositif¹⁰” ([translation] assembly of taps, cocks and valves on a boiler, a unit). In the Tribunal’s view, there is no basis upon which to restrict the terms of heading No. 84.81 to include only “[t]aps, cocks, valves and similar appliances” associated with plumbing.

The Tribunal further finds that the goods in issue are “for pipes, boiler shells, tanks, vats or the like.” In the Tribunal’s view, the goods, ducts and fittings, to which the goods in issue are attached constitute “pipes, boiler shells, tanks, vats or the like,” as per the terms of the heading. While the Tribunal agrees with counsel for the respondent that the common element among the specific items preceding “or the like” is that

9. See *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*, Appeal No. AP-92-091, September 19, 1994, at 6.

10. *Le Petit Robert 1* (Montréal: Les Dictionnaires ROBERT-CANADA S.C.C., 1989) at 1723.

they contain a certain element of pressure, the Tribunal is not persuaded that the appliances covered by this heading must necessarily operate as a result of that pressure. In the Tribunal's view, the ducts and fittings contain the requisite element of pressure to be considered as something like the pipes, boiler shells, tanks and vats specified in the heading.

While the Tribunal acknowledges that the goods in issue may be *prima facie* classifiable under tariff item No. 7616.90.90 as "[o]ther articles of aluminum," where they are made of aluminum, and under tariff item No. 7326.90.90 as "[o]ther articles of ... steel," where they are made of steel, Rule 3(a) of the General Rules dictates that the heading which provides the most specific description shall be preferred to a heading providing a more general one. Accordingly, the Tribunal concludes that the goods in issue should be classified in heading No. 84.81 as "valves and similar appliances for pipes, boiler shells, tanks, vats or the like."

Accordingly, the appeal is allowed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Desmond Hallissey

Desmond Hallissey

Member