

Ottawa, Tuesday, May 14, 1996

Appeal Nos. AP-95-099 and AP-95-129

IN THE MATTER OF appeals heard on January 25, 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 2 and June 2, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**CAROL CABLE COMPANY CANADA LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeals are dismissed.

Desmond Hallissey  
Desmond Hallissey  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

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

Michel P. Granger  
Michel P. Granger  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal Nos. AP-95-099 and AP-95-129**

**CAROL CABLE COMPANY CANADA LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in these appeals is whether certain booster cables qualify for the benefits of Code 9614, being an after-market automotive parts provision, of Schedule II to the Customs Tariff. The booster cables in issue consist of insulated 4-, 8- and 10-gauge copper wire with an angled clamp attached to each end. They are available in 8-, 12- or 16-foot lengths.*

***HELD:** The appeals are dismissed. For purposes of these appeals, the Tribunal accepts that Code 9614 is intended to allow for duty-free importation of certain goods for after-market use that would qualify for duty-free importation as parts used by original equipment manufacturers within the design envelope of a motor vehicle. Based on the evidence tendered at the hearing, the Tribunal accepts that motor vehicles, as designed and manufactured, do not come equipped with booster cables. As such, booster cables do not qualify for the benefits of Code 9614.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: January 25, 1996  
Date of Decision: May 14, 1996*

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

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Norman L. Deschenes, for the appellant  
Lubomyr Chabursky, for the respondent*

Appeal Nos. AP-95-099 and AP-95-129

CAROL CABLE COMPANY CANADA LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

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

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*<sup>1</sup> from decisions of the Deputy Minister of National Revenue made under section 63 of the Act. The issue in these appeals is whether certain booster cables qualify for the benefits of Code 9614, being an after-market automotive parts provision, of Schedule II to the *Customs Tariff*.<sup>2</sup> The booster cables in issue consist of insulated 4-, 8- and 10-gauge copper wire with an angled clamp attached to each end. They are available in 8-, 12- or 16-foot lengths. On importation, the cables were classified under tariff item No. 8544.41.00 of Schedule I to the *Customs Tariff*.

The provisions of Schedule II to the *Customs Tariff*, which are claimed by the appellant to include the booster cables in issue, read, in part, as follows:

*AFTER-MARKET AUTOMOTIVE PARTS*

*The following, except tires, tubes and machines or other articles mounted on or attached to these machines, other than for loading or unloading specified commercial vehicles, for after-market use on automobiles, buses or specified commercial vehicles of subheading Nos.: [20 subheading numbers]*

9614 Goods of tariff item No.: ... 8544.41.00

The appellant did not have a witness at the hearing. Counsel for the respondent called Mr. Albert Craig Kay who is the Product Manager in the Marketing Department of Noma Inc. Mr. Kay has managed a line of automotive products for Noma Inc., which includes booster cables. He told the Tribunal that booster cables are typically carried in the trunk of a vehicle as a safety item. They are used to connect the battery of a vehicle to a compatible source of electricity for emergency starts of the vehicle. However, they can be used to start any motor with an electrical starter, such as a saw, compressor, boat or snowmobile. Mr. Kay suggested that less than 50 percent of vehicles carry booster cables and that he is not aware of any new motor vehicle that is sold with a booster cable. He added that they are not essential to the operation of a vehicle and that the automotive industry does not consider them to be part of a motor vehicle. In cross-examination, Mr. Kay explained that Noma Inc. sells most of its booster cables to the automotive departments of large retailers. He also opined that most booster cables are sold for use with cars.

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

The respondent's second witness was Mr. Ronald Dods, the Manager of the Transportation Unit of the Department of National Revenue. Mr. Dods explained that Code 9614 has its origins in a general note, entitled "Aftermarket Automotive Parts," of Annex 401.2 of the *Canada-United States Free Trade Agreement*<sup>3</sup> (the FTA). The note states that "the base rate of duty shall be eliminated in five equal annual stages on parts ... when imported for after-market use on automobiles, buses or specified commercial vehicles, under subheading nos. [specifying numerous subheadings]." Mr. Dods explained that the term "parts" was used to distinguish between accessories that may also be used with vehicles. He told the Tribunal that, under the *Motor Vehicles Tariff Order, 1988*,<sup>4</sup> most vehicle parts used by original equipment manufacturers can be imported duty-free. The intention of Code 9614, which uses language similar to Annex 401.2 of the FTA, was to allow for duty-free importation of the same parts for use in the aftermarket. Furthermore, when Code 9614 was incorporated into the *Customs Tariff*, it was positioned under the heading "After-Market Automotive Parts." Mr. Dods told the Tribunal that Code 9614 was not intended to allow duty-free importation of automotive accessories.

In cross-examination, Mr. Dods clarified that, to be considered a part of a vehicle or an after-market part, an article must be contained within the original equipment "design envelope" of that vehicle. He added that he has never seen booster cables imported for original equipment manufacturing.

The appellant's representative noted that the booster cables did not qualify for the benefits of Code 9614 because they are not permanently attached to or mounted on those vehicles covered in the preamble to the code. He submitted, however, that there is no mention in the preamble that the goods must be "permanently" attached to or mounted on a vehicle to qualify for after-market use. He submitted that there are numerous after-market accessories that are not permanently attached to or mounted on vehicles that qualify within the terms of the preamble, such as mats for automotive use under Code 9619, fire extinguishers under Code 9613 and automotive testers under Code 9602.

The booster cables in issue also did not qualify for the benefits of Code 9614 because they may be used in non-automotive applications. However, the cables are principally used with motor vehicles. Furthermore, the cables are imported for after-market use. Referring to a dictionary definition of "accessory," he submitted that an accessory is considered a part. Regardless, Code 9614, being an after-market automotive parts provision, includes accessories.

The appellant's representative argued that all goods classifiable under tariff item No. 8544.41.00 do not qualify for the benefits of Code 9614. Rather, only after-market automotive parts qualify, which must be distinguished from after-market automotive accessories that do not qualify.

The appellant's representative argued that, to be considered a part of a host article, there must be a degree of permanence between the alleged part and the host article, which is lacking between booster cables and motor vehicles.<sup>5</sup> Furthermore, a part must be integral and necessary to the operation of the host article.<sup>6</sup>

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3. *Canada Treaty Series*, 1989, No. 3 (C.T.S.).

4. SOR/88-71, December 31, 1987, *Canada Gazette* Part II, Vol. 122, No. 2 at 615.

5. See *Farmer's Sealed Storage Inc. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal Nos. AP-94-116 and AP-94-186, July 25, 1995.

6. See *The Deputy Minister of National Revenue for Customs and Excise v. Androck Inc.* (1987), 13 C.E.R. 239, Federal Court of Appeal, Court File No. A-1491-84, January 28, 1987.

Booster cables are not integral or necessary to the operation of a motor vehicle; rather, they are a mere accessory.

With regard to the mats, fire extinguishers and automotive testers that do qualify for codes under the after-market automotive parts provisions of Schedule II to the *Customs Tariff*, the appellant's representative submitted that they must be parts of motor vehicles. Those mats, fire extinguishers and testers not permanently affixed to, or that are not parts of, motor vehicles would not qualify for the benefits of an after-market automotive parts code under Schedule II to the *Customs Tariff*.

In considering whether the benefits of Code 9614 are limited to parts of motor vehicles, as argued by counsel for the respondent, the Tribunal must have regard to the words of the provision and the context of the act within which the provision is found. The appellant's representative argued, in part, that, because the preamble to Code 9614 does not refer to parts and because it refers to goods, the benefits of Code 9614 are not limited to parts of motor vehicles, as strictly interpreted by counsel. Counsel advocated the strict interpretation of Code 9614 based on the terms of Annex 401.2 of the FTA and the heading under which Code 9614 is found.

The Tribunal is not persuaded that Code 9614 should be limited to parts based on the terms of Annex 401.2 of the FTA and counsel for the respondent's explanation of its implementation into domestic legislation. The Tribunal recognizes that it is open to Parliament to broaden the scope of duty-free treatment beyond the narrow obligations contained in the FTA. Very simply, if Parliament intended to limit the benefits of Code 9614 to parts of motor vehicles, it could have used language in the code similar to that used in the FTA; however, it did not.

Parliament did, however, place Code 9614 under the heading "After-Market Automotive Parts," which suggests that its benefits may be limited to automotive parts. In deciding on the use to which this heading can serve as an aid to statutory construction, the Tribunal notes that, though the federal *Interpretation Act*<sup>7</sup> refers to marginal notes and preambles, it is silent with respect to headings. The Tribunal believes, therefore, that headings are not precluded from use in discerning the scope and meaning of the provisions to which they relate.<sup>8</sup> Headings may serve as an aid to statutory construction like any other contextual feature of the legislation.

In deciding on the weight to give the heading in discerning the scope and meaning of Code 9614, the Tribunal had regard to what little it knows about the other codes found under the same heading. The Tribunal believes that little weight should be attached to the words of the heading if the codes found thereunder bear little relation, as written or as interpreted by the respondent, to the heading.

The appellant's representative argued, without providing any supporting evidence, that certain mats, fire extinguishers and automotive testers are accorded duty-free status under some of these codes. While counsel for the respondent did not deny these assertions, he qualified, without any supporting evidence, that only, for instance, those mats that are permanently affixed to, or those fire extinguishers that are part of the machinery of, motor vehicles can be considered parts and benefit from one of these codes. The Tribunal finds it troubling that neither of these goods would likely qualify under close scrutiny as parts of motor vehicles, as

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7. R.S.C. 1985, c. I-21.

8. See *Skoke-Graham v. R.* (1985), 16 D.L.R. (4th) 321 at 332 (S.C.C.).

defined by counsel. They could, however, qualify as parts of motor vehicles, as explained by Mr. Dods, if they were contained within the original equipment “design envelope” of the vehicles.

The Tribunal is not convinced that the benefits of Code 9614 are limited to parts of motor vehicles, as defined by counsel for the respondent. For purposes of these appeals, the Tribunal accepts that Code 9614 is intended to allow for duty-free importation of certain goods for after-market use that would qualify for duty-free importation as parts used by original equipment manufacturers within the design envelope of a motor vehicle.

Based on the evidence tendered at the hearing, the Tribunal accepts that motor vehicles, as designed and manufactured, do not come equipped with booster cables. As such, booster cables do not qualify for the benefits of Code 9614.

Accordingly, the appeals are dismissed.

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