

Ottawa, Thursday, October 31, 1996

Appeal No. AP-95-138

IN THE MATTER OF an appeal heard on February 8, 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 June 23 and August 3, 1995, with respect
to a request for re-determination under section 63 of the *Customs
Act*.

BETWEEN

ARPAC STORAGE SYSTEMS CORPORATION

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

Raynald Guay

Raynald Guay
Member

Desmond Hallissey

Desmond Hallissey
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-138

ARPAC STORAGE SYSTEMS CORPORATION

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal pursuant to section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue made under section 63 of the *Customs Act*. The issue in this appeal is whether pallet trucks are properly classified under tariff item No. 8709.11.00 as electrical works trucks, self-propelled, not fitted with lifting or handling equipment, as determined by the respondent, or should be classified under tariff item No. 8427.10.90 as other self-propelled trucks powered by an electric motor and fitted with lifting or handling equipment, as claimed by the appellant.

HELD: The appeal is allowed. In the Tribunal's opinion, the evidence clearly shows that the goods in issue are self-propelled pallet trucks powered by an electric motor and fitted with lifting or handling equipment. Accordingly, the Tribunal finds that they are named in heading No. 84.27 or, more particularly, under tariff item No. 8427.10.90. The Tribunal agrees with the appellant's representative that nothing in the tariff nomenclature or in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* requires that the height of the lift be considered in determining whether goods are fitted with lifting or handling equipment or that only fork-lift trucks are covered by heading No. 84.27.

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	February 8, 1996
Date of Decision:	October 31, 1996
Tribunal Members:	Arthur B. Trudeau, Presiding Member Raynald Guay, Member Desmond Hallissey, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Harry Curtis, for the appellant Josephine A.L. Palumbo, for the respondent

Appeal No. AP-95-138

ARPAC STORAGE SYSTEMS CORPORATION

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
RAYNALD GUAY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal pursuant to section 67 of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue dated June 23 and August 3, 1995, made under section 63 of the Act.

The goods in issue are described in the respondent's brief as self-propelled pallet trucks, electrically powered, capable of lifting pallets a maximum of 6 in., or 15 cm, from the ground and used to transport pallets over limited distances. They were imported into Canada between February 3 and December 9, 1994. At the time of importation, the goods in issue were classified under tariff item No. 8427.90.00 of Schedule I to the *Customs Tariff*² as other works trucks fitted with lifting or handling equipment. Subsequently, they were re-classified under tariff item No. 8709.11.00 as electrical works trucks, self-propelled, not fitted with lifting or handling equipment. Pursuant to paragraph 63(1)(b) of the Act, the appellant requested a further re-determination of the tariff classification of the goods in issue under tariff item No. 8427.10.90 as other self-propelled trucks powered by an electric motor and fitted with lifting or handling equipment. The respondent confirmed the classification of the goods in issue under tariff item No. 8709.11.00.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8709.11.00 as electrical works trucks, self-propelled, not fitted with lifting or handling equipment, as determined by the respondent, or should be classified under tariff item No. 8427.10.90 as other self-propelled trucks powered by an electric motor and fitted with lifting or handling equipment, as claimed by the appellant. For the purposes of this appeal, the relevant tariff nomenclature reads as follows:

84.27	Fork-lift trucks; other works trucks fitted with lifting or handling equipment.
8427.10	-Self-propelled trucks powered by an electric motor
8427.10.90	---Other
87.09	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.
	-Vehicles:
8709.11.00	--Electrical

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

At the hearing, two witnesses testified on behalf of the appellant: Mr. Gary McRae, Vice-President of the Lift Truck Division of Arpac Storage Systems Corporation, and Mr. Arthur Wuschke, Vice-President of Finance and Administration at Arpac Storage Systems Corporation. Mr. McRae described the goods in issue as “pallet trucks.” He said that one is a rider version, which means that one can ride on the back of it, while the other is a walking version, which means that one can walk behind it. Mr. McRae testified that the goods in issue are designed to perform three different functions. The first function is trailer loading and unloading in a warehouse-type environment. The goods in issue are fitted with forks that are used, for example, to pick up the pallet, elevate it, remove it from the trailer and place it on the ground. The second function is horizontal transportation. The goods in issue are used to pick up the pallet and move it to a desired location in the warehouse. Thirdly, goods can be picked off shelves, placed on pallets and then taken to another location with the use of the goods in issue.

Mr. McRae explained that both versions of the goods in issue are fitted with lifting devices. The goods in issue are capable of lifting or lowering different types of goods. They are used with some type of handling equipment, such as pallets. The goods are placed on the pallets and not on the goods in issue themselves. However, the actual lifting or lowering is done by the goods in issue. Mr. McRae explained that the goods in issue are self-propelled. They are powered by a battery similar to that which is found in an automobile. They have an electric traction motor which drives them forward and backward. They also have another electric motor which drives a hydraulic pump which activates a cylinder that lifts and lowers the fork. Mr. McRae testified that the goods in issue are designed to lift goods approximately 9 in. from the ground and to carry between 4,000 and 8,000 lbs. He explained that a pallet truck represents approximately one third of the cost of a conventional fork-lift truck. A pallet truck can do the work of a fork-lift truck; however, it is not designed for stacking. In cross-examination, Mr. Wuschke testified that the goods in issue are used for short distance transportation within the warehouse or factory.

One witness testified on behalf of the respondent, Mr. John E. Johnson, a professional engineer and Certified Safety Professional. Mr. Johnson gave expert testimony with respect to the differences between a pallet truck and a fork-lift truck. He explained that a pallet truck is a type of truck that basically lifts a pallet just enough for horizontal transportation. Both trucks are fitted with forks that can lift pallets; however, a fork-lift truck can lift a pallet much higher than a pallet truck. A fork-lift truck can be used to stack one load of merchandise or one pallet on top of another. It can also be used to pick up a load from the ground and lift it high enough to place it on a truck. He said that the primary purpose of the goods in issue is transportation. However, they also have a limited lifting capacity. He testified that another difference between a pallet truck and a fork-lift truck is that the latter is fitted with forks that can be taken off and put on and that can be placed at various widths across the carriage. A fork-lift truck can also be fitted with other types of equipment to handle paper rolls, barrels or carpets. Furthermore, a fork-lift truck has a greater capacity to climb ramps. In light of all of these differences, Mr. Johnson testified that, in his view, a pallet truck and a fork-lift truck are not the same.

The appellant’s representative argued that the goods in issue are self-propelled works trucks fitted with lifting or handling equipment. Accordingly, he submitted that they should be classified in heading No. 84.27 and not in heading No. 87.09, which excludes works trucks that are fitted with lifting or handling equipment. He argued that heading No. 84.27 covers fork-lift trucks and other works trucks. In his brief, the representative mentioned that he failed to find where the height of the lift is a factor that must be considered in determining whether goods are fitted with lifting or handling equipment.

Counsel for the respondent noted that Note 1(l) to Section XVI of the *Customs Tariff*, under which Chapter 84 falls, excludes goods of Section XVII, under which Chapters 86, 87, 88 and 89 fall. She noted that goods of those chapters are characterized as transportation vehicles for goods and persons. Counsel argued that, before consideration can be given to any heading of Chapter 84, it must be established that

goods are transportation machinery. Counsel referred to industry literature, which, she argued, showed that, in the material handling industry, pallet trucks, such as those in issue, are considered transportation vehicles for the short distance movement of goods typically used in warehouses and factories. She argued that the goods in issue cannot be classified in heading No. 84.27 because they are not designed for stacking. In support of her argument, she referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ (the Explanatory Notes) to heading No. 84.27. Counsel also referred to the Explanatory Notes to heading No. 87.09 which provide that this heading covers trucks fitted with, for example, a platform (sometimes designed for elevating) on which goods are loaded. She argued that this properly describes the goods in issue. In counsel's view, the lifting capacity of the goods in issue is a secondary function to their principal function, which is the transportation of goods. She argued that there are clear distinctions between fork-lift trucks and pallet trucks, the former being classifiable in heading No. 84.27 and the latter, in heading No. 87.09.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁴ is of the utmost importance. Rule 1 states that classification is first determined according to the terms of the headings and any relative Chapter Notes. Therefore, the Tribunal must determine whether the goods in issue are named or generically described in a particular heading. If they are, then they must be classified therein subject to any relative Chapter Notes. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes.

In the Tribunal's opinion, the evidence clearly shows that the goods in issue are self-propelled pallet trucks powered by an electric motor and fitted with lifting or handling equipment. Accordingly, the Tribunal finds that they are named in heading No. 84.27 or, more particularly, under tariff item No. 8427.10.90. The Tribunal agrees with the appellant's representative that nothing in the tariff nomenclature or in the Explanatory Notes requires that the height of the lift be considered in determining whether goods are fitted with lifting or handling equipment or that only fork-lift trucks are covered by heading No. 84.27.

Accordingly, the appeal is allowed.

Arthur B. Trudeau

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Presiding Member

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

4. *Supra* note 2, Schedule I.