

Ottawa, Friday, December 6, 1996

Appeal No. AP-95-265

IN THE MATTER OF an appeal heard on October 9, 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 November 7, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**INNOVATION SPECIALTIES INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-265**

**INNOVATION SPECIALTIES INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is whether the goods in issue, described as clock fit-up inserts, comprising a complete watch movement, dial, hands and battery, and inserted in a plastic case, are properly classified under tariff item No. 9103.10.00 as clocks with watch movements, as determined by the respondent, or should be classified under tariff item No. 9110.90.90 as other complete watch or clock movements, unassembled or partly assembled, as claimed by the appellant.

**HELD:** The appeal is dismissed. The Tribunal finds that it is clear from the evidence that the goods in issue are more than watch movements and less than finished clocks. They become a clock only when inserted into a base manufactured from acrylic or other materials. However, at the time of importation, the goods in issue are capable of being used to tell time. As such, the Tribunal is of the opinion that the essential character of the goods in issue is that of a clock. They are, therefore, properly classified under tariff item No. 9103.10.00 as clocks, in accordance with Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 9, 1996
Date of Decision:	December 6, 1996
Tribunal Member:	Lyle M. Russell, Presiding Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Arthur J. Ross, for the appellant Guy A. Blouin, for the respondent

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**INNOVATION SPECIALTIES INC.**

**Appellant**

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**Respondent**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*,<sup>1</sup> heard by one member of the Tribunal,<sup>2</sup> from a decision of the Deputy Minister of National Revenue dated November 7, 1995.

The goods in issue are described as clock fit-up inserts, comprising a complete watch movement, dial, hands and battery, and inserted in a plastic case. The issue in this appeal is whether the goods in issue are properly classified in tariff item No. 9103.10.00 of Schedule I to the *Customs Tariff*,<sup>3</sup> as determined by the respondent, or should be classified under tariff item No. 9110.90.90, as claimed by the appellant. For purposes of this appeal, the relevant tariff nomenclature reads as follows:

- 91.03 Clocks with watch movements, excluding clocks of heading No. 91.04.
- 9103.10.00 -Battery or accumulator powered<sup>4</sup>
- 91.10 Complete watch or clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock movements, assembled; rough watch or clock movements.
- [9110.10] -Of watches:
- 9110.90 -Other
- 9110.90.90 ---Other

At the hearing, four witnesses testified on behalf of the appellant: the principals of Innovation Specialties Inc., Mr. Roger Morin and Mrs. Dorothy Morin; Mr. Arthur Frank, President of S.H.A. Enterprises Inc.; and Mr. Kurt Reckziegel, Executive Director of Promotional Products Association of Canada Inc. The two latter witnesses testified by teleconference. Mr. Steven Schenker, owner of The Watch Clinic Jewellers, testified on behalf of the respondent. The evidence presented at the hearing also included a number of samples of the goods in issue, as well as watch movements and finished clocks, and a videotape

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette*, Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.
3. R.S.C. 1985, c. 41 (3rd Supp.).
4. Amended January 1, 1996, to read "Electrically operated."

presentation showing the manufacturing operations performed by the appellant, which were entered as physical exhibits.

In brief, the evidence presented at the hearing showed that the appellant is a supplier of imprinted promotional products, such as travel, desk and wall clocks, as well as a variety of acrylic awards and plaques. Its clocks typically have a clear acrylic base on which is printed a corporate logo or trademark. The bases are cut to size and shaped from a large sheet of acrylic, drilled with a hole of the right size to accommodate the goods in issue, polished and printed. The goods in issue are similar in appearance to a large wrist watch without a bracelet. They are simply inserted into the hole in the acrylic base to form a finished clock. The witnesses were in agreement that, when imported, the goods in issue are capable of indicating the time of day.

Counsel for the appellant argued that the goods in issue are not properly classified in heading No. 91.03, as this heading deals with finished products and not components used in such products. According to counsel, the goods in issue are used in the manufacture of clocks. They comprise clock or watch movements and do not have any independent status as such. The goods in issue cannot stand on their own. They must be inserted into another entity in order to be considered a clock. Furthermore, the goods in issue are not for sale in any jewellery store in Canada because they are not finished products ready for sale.

In support of his argument, counsel for the appellant referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>5</sup> (the Explanatory Notes) to Chapter 91, which provide that “[a] clock or watch is composed of two main parts: the movement and the container for the movement (case, cabinet, etc.)” He contended that a clock is complete when the movement is placed in the container. With respect to the goods in issue, the final operation is when they are incorporated into the container. For these reasons, counsel submitted that the goods in issue should be classified under tariff item No. 9110.90.90 as other complete watch or clock movements and, therefore, qualify for duty-free entry into Canada under Code 6505 of Schedule II to the *Customs Tariff*, which lists “[c]lock movements of heading No. 91.09 or 91.10 and parts thereof of heading No. 91.14, for use in the manufacture of clocks.”

Counsel for the respondent submitted that the goods in issue are clocks with watch movements on the basis that, at the time of importation, the goods comprised a watch movement, dial, hands, battery and watch or clock case as one entity. Although, the goods in issue did not include the stand, holder or container into which they would ultimately be inserted, they were, by definition, a clock because they could indicate time. Accordingly, and with reference to Rules 1 and 2 (a) of the *General Rules for the Interpretation of the Harmonized System*<sup>6</sup> (the General Rules), counsel argued that the goods in issue were properly classified in heading No. 91.03 or, more particularly, under tariff item No. 9103.10.00 as clocks with watch movements. In support of this argument, counsel referred to Note 3 to Chapter 91 and to the Explanatory Notes to that chapter.

According to counsel for the respondent, the goods in issue do not qualify for duty-free entry into Canada under Code 6505 because they may not be classified in heading No. 91.09, as they are not clock movements; they do not meet the size requirements of clock movements. Furthermore, they are excluded from heading No. 91.10 because they are complete and assembled at the time of importation, i.e. they have a

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

6. *Supra* note 3, Schedule I.

movement and a container for the movement. Counsel also submitted that the goods in issue cannot be considered to be for use in the manufacture of clocks because the assembly operation performed in Canada is not manufacture.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules 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 Note. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes.

From the evidence presented at the hearing, the Tribunal is satisfied that the goods in issue are more than simply watch movements. As such, they cannot be classified under tariff item No. 9110.90.90, as claimed by the appellant. They incorporate sufficient other components of a watch that they can be used to tell time. However, they are not well suited for use as a watch, as they have no wrist band and no fitting for a chain which might make them useful as a pocket watch, nor are they well suited for use as a desk or wall clock, requiring a base or plaque to make them complete. In the Tribunal's opinion, the goods in issue, nevertheless, have the essential character of a clock or watch, which is the ability to indicate the time of day. Rule 2 (a) of the General Rules provides, in part, that "[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article." In light of this, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9103.10.00.

Accordingly, the appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member