

Ottawa, Tuesday, December 3, 1996

Appeal No. AP-95-277

IN THE MATTER OF an appeal heard on August 7, 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 November 23 and 24, 1995, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

JASCOR HOME PRODUCTS INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-277

JASCOR HOME PRODUCTS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue made under subsection 63(3) of the *Customs Act*. The issue in this appeal is whether a device described as a “cream whipper” is properly classified under tariff item No. 8205.51.00 as a household hand tool, as determined by the respondent, or should be classified under tariff item No. 8210.00.00 as a hand-operated mechanical appliance used in the preparation of food, as claimed by the appellant.

HELD: The appeal is allowed. The Tribunal is of the view that the phrase “not elsewhere specified or included” in heading No. 82.05 indicates that, if the product in issue is specified or included in the description of another heading, it is to be classified in that heading and not in heading No. 82.05. The Tribunal finds that the cream whipper matches the description, found in heading No. 82.10, of a hand-operated mechanical appliance, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink. The opening and closing of the intake valve in response to the pressure exerted on its moving parts by the compressed nitrous oxide is, in the Tribunal’s view, a mechanical operation. Moreover, the mechanical features of the appliance are sufficiently complex to meet the definition of “mechanical appliance” found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading No. 82.10, that is, an appliance that “has such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.” When viewed in its entirety, the product in issue has at least as many mechanical features as several of the mechanical appliances mentioned as examples in the Explanatory Notes to heading No. 82.10. In addition, in the Tribunal’s view, one of those examples, the cream beaters, has the same function as the product in issue.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	August 7, 1996
Date of Decision:	December 3, 1996
Tribunal Member:	Lyle M. Russell, Presiding Member
Counsel for the Tribunal:	Shelley Rowe
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Michael Kaylor, for the appellant Guy A. Blouin, for the respondent

Appeal No. AP-95-277

JASCOR HOME PRODUCTS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member

REASONS FOR DECISION

This is an appeal, heard by one member of the Tribunal,¹ under section 67 of the *Customs Act*² (the Act) from decisions of the Deputy Minister of National Revenue made under subsection 63(3) of the Act. The issue in this appeal is whether a device described as a “cream whipper” is properly classified under tariff item No. 8205.51.00 of Schedule I to the *Customs Tariff*³ as a household hand tool, as determined by the respondent, or should be classified under tariff item No. 8210.00.00 as a hand-operated mechanical appliance used in the preparation of food, as claimed by the appellant. The following is the relevant tariff nomenclature:

82.05	Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.
8205.51.00	--Household tools
8205.51.00.10	----Can openers
8205.51.00.90	----Other
8210.00.00	Hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink.
8210.00.00.10	----Appliances which chop, cut, slice, mince or shred food
8210.00.00.20	----Can openers
8210.00.00.30	----Mixers
8210.00.00.90	----Other

Appearing as a witness for the appellant, Mr. Jerry Solomon, President of Jascor Home Products Inc., demonstrated the operation of the product in issue and described the functioning of its moving parts. He stated that the device is used to convert liquids, most commonly cream, into thick, frothy

1. 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*.

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

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

substances. It consists of two major components: a bottle and a head which screws onto the bottle after it has been filled with cream. The head has an intake valve which is used to introduce nitrous oxide (N₂O) into the bottle under pressure and an outlet valve for dispensing the “whipped” cream or other food product. To introduce the N₂O into the bottle, the user manually screws a small pressurized cylinder into the intake valve section, described by the witness as a “differential valve system.” As the cylinder is screwed in, a piercing pin breaks its seal, causing the N₂O to rush into the valve chamber. The N₂O forces open the valve seat and a non-return valve, allowing the N₂O to enter the bottle. When the pressure has been equalized between the charger and the bottle, the valve closes to keep the N₂O in the bottle. The device is then shaken briefly by hand, and the whipped cream (or any other food product under pressure from the N₂O in the bottle) is dispensed through another valve by activating a hand-operated, spring-loaded trigger or lever.

Counsel for the appellant argued that heading No. 82.10 specifically describes the product in issue, whereas heading No. 82.05 does not. The product in issue, counsel submitted, is clearly a hand-operated mechanical appliance, weighing less than 10 kg, used in the preparation, conditioning or serving of food. As counsel pointed out in his submission, the product in issue meets the description of a mechanical appliance found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ (the Explanatory Notes) to heading No. 82.10, since its mechanical features are more complex than those of a simple lever or plunger. Counsel argued that even the dispensing mechanism is more than a simple lever because it incorporates a spring which closes the head valve when the trigger or outlet portion is released. It was counsel’s position that when the entire operation of the product in issue, including the number of interrelated moving and stationary parts that are activated by the N₂O charger, is considered, the product in issue clearly meets the definition of “machine” set out by the Federal Court of Appeal in *Ingersoll-Rand Door Hardware Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise*.⁵ Finally, the product in issue is, in counsel’s view, more complex mechanically than several other products specifically mentioned in the Explanatory Notes to heading No. 82.10, such as can openers, egg beaters, cream beaters, etc. In answer to a question from the Tribunal, counsel confirmed that, in his submission, the terms “mechanical appliance” and “machine” are synonyms.

Counsel for the respondent argued that the only mechanical process involved in the operation of the product in issue is the simple lever action by which whipped cream is dispensed from the bottle. Since the Explanatory Notes to heading No. 82.10 specifically state that a simple lever action is not regarded as a mechanical feature, it follows that heading No. 82.05 and not heading No. 82.10 applies. He suggested that the process by which the N₂O is combined with the cream is a chemical or physical process rather than a mechanical one. Finally, on the point raised by the Tribunal, it was his view that the term “machine” is broader than “mechanical appliance.”

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the *General Rules for the Interpretation of the Harmonized System*⁶ (the General Rules) and the *Canadian Rules*.⁷ Rule 1 of the General Rules provides that classification is to be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not

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

5. 15 C.E.R. 47, File No. A-503-86, October 21, 1987.

6. *Supra* note 3, Schedule I.

7. *Ibid.*

otherwise require, according to the principles set out in Rules 2 through 6, as well as the Canadian Rules which follow. The Tribunal is further directed by section 11 of the *Customs Tariff* to consider the Explanatory Notes as a guide to the interpretation of the headings and subheadings in Schedule I to the *Customs Tariff*. Thus, the Tribunal must first consider whether the product in issue falls within either or both of the terms of heading Nos. 82.10 and 82.05 as interpreted with the aid of the relative Section and Chapter Notes and the Explanatory Notes.

Heading No. 82.05 covers “[h]and tools ... not elsewhere specified or included” and goes on to name several tools which have no relevance to the present case. The phrase “not elsewhere specified or included” indicates, in the Tribunal’s view, that, if goods fall within the specific description of another heading, they are to be classified in the heading in which they are specified and not in heading No. 82.05. Therefore, if the product in issue meets the description in heading No. 82.10, it is “elsewhere specified” and must be classified in heading No. 82.10 as opposed to heading No. 82.05.

Heading No. 82.10 covers “[h]and-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink.” Counsel for the respondent did not dispute that the product in issue is indeed hand-operated, weighs less than 10 kg and is used in the preparation, conditioning or serving of food. The Tribunal finds, based on the description of the product in issue by Mr. Solomon, as well as an examination of this appliance and the box in which it is distributed and sold, that the product in issue does have those qualities. On the question of whether the product in issue is a mechanical appliance, the Tribunal disagrees with counsel for the respondent’s view that the process by which the N₂O is introduced into the bottle is not mechanical. The opening and closing of the intake valve in response to the pressure exerted on its moving parts by the compressed N₂O, as described by Mr. Solomon, is, in the Tribunal’s opinion, a mechanical operation. Moreover, the mechanical features of the appliance are sufficiently complex to meet the definition of “mechanical appliance” found in the Explanatory Notes to heading No. 82.10, that is, an appliance that “has such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.” Although the spring-loaded discharge valve would appear to operate much as a simple lever, when viewed in its entirety, the product in issue has at least as many mechanical features as several of the mechanical appliances mentioned as examples in the Explanatory Notes to heading No. 82.10, i.e. bottle openers and corks, mechanical can openers, and egg, cream or mayonnaise beaters and mixers. In the Tribunal’s view, the fact that the product in issue has the same function as one of those examples, the cream beaters, also supports its classification in heading No. 82.10.

In view of the definition of “mechanical appliance” found in the Explanatory Notes to heading No. 82.10, it is not necessary, in the Tribunal’s view, to import the Federal Court of Appeal’s definition of “machine” mentioned in *Ingersoll-Rand*. The Tribunal notes, however, that the two definitions are very similar and that it found, in two recent appeals,⁸ the expressions “machine” and “mechanical appliance,” as they appear in heading No. 84.79, to be closely related in terms of the nature of the goods falling within their ambit.

8. *Canper Industrial Products Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-94-034, January 24, 1995, and *Canadian Tire Corporation Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-94-157, October 12, 1995.

Since the product in issue meets the description of heading No. 82.10, the Tribunal finds that it is not properly classified in heading No. 82.05 because it is “elsewhere specified or included.” Accordingly, the Tribunal finds that the product in issue should be classified under tariff item No. 8210.00.00 as a hand-operated mechanical appliance.

For the foregoing reasons, the appeal is allowed.

Lyle M. Russell
Lyle M. Russell
Presiding Member