

Ottawa, Tuesday, September 16, 1997

**Appeal No. AP-96-225**

IN THE MATTER OF an appeal heard on June 3, 1997, 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 January 29 and February 4, 1997, with respect to a request for re-determination under subsection 63(3) of the *Customs Act*.

**BETWEEN**

**RECORD TOOLS 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

Susanne Grimes  
Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-96-225**

**RECORD TOOLS 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 certain wood-turning tools are properly classified under tariff item No. 8205.30.00 as hand tools, being chisels, gouges and similar cutting tools for working wood, as determined by the respondent, or should be classified under tariff item No. 8207.80.00 as interchangeable tools for machine-tools, as claimed by the appellant.

**HELD:** The appeal is allowed. The Tribunal agrees with the parties that the goods in issue are “interchangeable tools,” as contemplated by the terms of heading No. 82.07. Furthermore, the Tribunal is convinced that the goods in issue are meant for use with a wood-turning lathe, which the Tribunal considers to be classifiable as a machine-tool in heading No. 84.65. The Tribunal recognizes that, for the most part, interchangeable tools for machine-tools classifiable in heading Nos. 84.57 through 84.65 would be “fitted into” the machine-tools, as described in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes). However, because of the nature of wood turning, tools used with wood-turning lathes are not physically attached to the lathe, rather they lean against the tool rest when in use. Nevertheless, the goods in issue are necessary in order for a wood-turning lathe to function as intended by the user. Neither the machine nor the tools are intended to perform independently of the other. Although section 11 of the *Customs Tariff* requires the Tribunal to have regard to the Explanatory Notes in considering the terms of the headings, given the variety of machine-tools covered by heading No. 82.07, the Tribunal does not believe that the words “fitted into” should be interpreted in such a way as to narrow unduly the word “for” used in the heading. The narrow interpretation urged by counsel for the respondent would appear to limit the coverage of heading No. 82.07, insofar as it applies to tools for use with lathes in general, to tools used with copying lathes. There is nothing in the Explanatory Notes to indicate that only copying lathes are contemplated by the reference to machine-tools for turning in heading No. 82.07. The Tribunal, therefore, believes that it is reasonable to conclude that ordinary wood-turning lathes are intended to be included in this reference and that the goods in issue are interchangeable tools “for” machine-tools, as specified by the terms of heading No. 82.07.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 3, 1997  
Date of Decision: September 16, 1997

Tribunal Member: Lyle M. Russell, Presiding Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Appearances: Douglas J. Bowering, for the appellant  
Jeff Anderson, for the respondent

**Appeal No. AP-96-225**

**RECORD TOOLS 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,<sup>1</sup> under section 67 of the *Customs Act*<sup>2</sup> (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 certain wood-turning tools are properly classified under tariff item No. 8205.30.00 of Schedule I to the *Customs Tariff*<sup>3</sup> as hand tools, being chisels, gouges and similar cutting tools for working wood, as determined by the respondent, or should be classified under tariff item No. 8207.80.00 as interchangeable tools for machine-tools, 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.
- 8205.30.00 -Planes, chisels, gouges and similar cutting tools for working wood
- 82.07 Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
- 8207.80 -Tools for turning

Mr. Jason T. Russell appeared as an expert witness in the area of wood turning on behalf of the appellant. Mr. Russell is a wood-turner who has taught courses in wood turning and has been involved with product development and retail sales of wood-turning tools. Mr. Russell described the goods in issue as "gouges" and "chisels" designed for wood turning. Each tool has a long wooden handle with a metal blade of some description attached. He explained that the goods in issue are used in conjunction with a wood-turning lathe. A piece of wood is held between two points on the lathe and is turned on its own axis. A tool, such as one of those in issue, is then set on or against the tool rest, which is part of the lathe, against which the tool is levered manually while it is brought into contact with the wood in order to shape the wood. Mr. Russell

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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.).

testified that only one tool is used at a time and that the length of the wooden handle on the tool is important, as it provides necessary leverage to the person using it to counteract the downward pressure often exerted on the tool while the wood is in rotation. Mr. Russell also testified that different types of tools and different shapes of tools are required depending on the type of job to be done; for example, in spindle work, a variety of different tools are required to create the beads, coves and other shapes found on a spindle.

Mr. Russell also testified regarding the difference between chisels and gouges used for woodcarving and those used for wood turning. Generally, woodcarving tools are shorter in order to give the carver good manual control. Woodcarving tools are, moreover, made from carbon steel as opposed to high-speed steel, from which wood-turning tools are made. The reason for the use of high-speed steel for wood-turning tools is that it allows the heat generated by the rubbing of the wood and the steel to dissipate without taking the temper out of the tool. Mr. Russell stated that, in his opinion, wood-turning tools could not be used for woodcarving. He also stated that wood-turning tools always come into contact with the tool rest on a lathe when they are in use.

In response to questions from the Tribunal, Mr. Russell testified that, in the trade, “turning” wood is always understood to refer to working with a lathe and a wood-turning tool. He explained that copying lathes are different from lathes used to turn wood, as are the types of tools used with each. With respect to the tools used with copying lathes, Mr. Russell explained that these are tiny cutters attached to the lathe, while the tools used with wood-turning lathes are 99 percent hand-held, but leaned up against a tool rest.

In argument, the appellant’s representative submitted that the evidence shows that the goods in issue are interchangeable tools for use with machine-tools, specifically, wood-turning lathes, as specified by the terms of heading No. 82.07. He submitted that lathes for turning wood are included among “machine-tools” in heading No. 84.65, based, in part, upon the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> (the Explanatory Notes ) to that heading, which indicate that heading No. 84.65 “covers machine-tools for the shaping or surface-working ... of wood.”<sup>5</sup> He submitted that, by definition, a woodworking lathe must be used with a tool in order for it to be given consideration as a machine-tool in heading No. 84.65 and that, without the use of wood-turning tools, a woodworking lathe cannot perform its function.

The appellant’s representative further argued that, if one considers paragraph (C) of the Explanatory Notes to heading No. 82.05, the goods in issue would not appear to be covered by the description of goods falling within that heading. This paragraph specifies “[p]lanes, chisels, gouges and similar cutting tools for working wood such as planes and routers of all kinds ..., spoke shaves and wood scrapers, gravers and draw-knives, of a kind used by carpenters, joiners, cabinet-makers, coopers, wood carvers, etc.” The representative also pointed out that the terms of heading No. 82.05 specify that the hand tools falling within this heading are not “elsewhere specified or included.” Accordingly, if the goods in issue are found to fall in heading No. 82.07, they cannot also be found to fall in heading No. 82.05.

With respect to the terms of heading No. 82.07, the appellant’s representative argued that the goods in issue are clearly interchangeable tools for a wood-turning lathe, which is a machine-tool classifiable in heading No. 84.65. He argued that the Explanatory Notes to heading No. 82.07 indicate that tools falling within preceding headings, such as heading No. 82.05, are hand tools that are used “as they stand” or after a

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

5. Heading No. 84.65 includes: “[m]achine-tools ... for working wood.”

handle is affixed, while tools falling in heading No. 82.07 are “unsuitable for use independently,” such as the goods in issue. With respect to the qualifier set out in the Explanatory Notes, that the tools of heading No. 82.07 must be “designed to be fitted, as the case may be, into ... (B) machine tools, of headings 84.57 to 84.65 ... for ... turning,” the representative argued that the word “fit,” as defined in a variety of dictionaries, applies to the relationship between the goods in issue and the lathes, in that the tools are “suitable” for use with the lathes. In addition, the inclusion of the words “as the case may be” provides broad latitude for interpreting the word “fitted.”

The appellant’s representative also submitted that the goods in issue are “interchangeable tools,” in that they are interchangeable with one another.

Counsel for the respondent argued that the key issue in this appeal is whether the goods in issue are “fitted,” as specified by the Explanatory Notes to heading No. 82.07. Counsel conceded that the goods in issue are unsuitable for use independently. However, he submitted that the tools do not meet the definition of the word “fitted,” contrary to the submissions of the appellant’s representative. Counsel submitted that the issue is whether the goods in issue are “fitted” and not whether they “fit,” as suggested by the representative. In this regard, counsel focused on a particular definition of the word “fit,” which he believed was the most appropriate definition for understanding the meaning of the word “fitted.” This definition defined “fit” as “[t]o fix, apply, adjust, or insert.”<sup>6</sup> Counsel submitted that the goods in issue are “fitted” into the hand of the user and then rested against a tool rest and not “fixed” into a machine, as specified by the Explanatory Notes. By contrast, counsel submitted that tools used with copying lathes are “fitted” into the machine tool and not into the hand of the user.

In determining the classification of goods, the Tribunal is cognizant that Rule 1 of the *General Rules for the Interpretation of the Harmonized System*<sup>7</sup> is of the utmost importance. Rule 1 provides that classification is first determined by the wording of the heading and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* further provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes.

Heading No. 82.05 covers “[h]and tools ... not elsewhere specified or included.” The phrase “not elsewhere specified or included” indicates, in the Tribunal’s view, that, if the 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 goods in issue meet the description in heading No. 82.07, they are “elsewhere specified” and must be classified in heading No. 82.07, as opposed to heading No. 82.05.

Heading No. 82.07 covers “[i]nterchangeable tools for ... machine-tools (for example, for ... turning).” The only disagreement between the parties as to whether the goods in issue are classifiable in this heading has to do with whether the tools can be considered “fitted” into the woodworking lathes, as specified by the Explanatory Notes to this heading. The specific reference in the Explanatory Notes to heading No. 82.07 is the following: “[w]hereas (apart from a few exceptions such as machine saw blades) the preceding headings of this Chapter apply in the main to hand tools ready for use as they stand or after affixing handles, this heading covers an important group of tools which are unsuitable for use independently,

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6. *The Shorter Oxford English Dictionary on Historical Principles*, 3rd. ed. (Oxford: Clarendon Press, 1964) at 706.

7. *Supra* note 3, Schedule I.

but are designed to be fitted, as the case may be, into: ... (B) machine-tools, of headings 84.57 to 84.65, ... for ... turning.”

The Tribunal agrees with the parties that the goods in issue are “interchangeable tools,” as contemplated by the terms of heading No. 82.07. Furthermore, the Tribunal is convinced that the goods in issue are meant for use with a wood-turning lathe, which the Tribunal considers to be classifiable as a machine-tool in heading No. 84.65. It also finds that the goods in issue are unsuitable for use independently of the lathe.

With respect to the classification of wood-turning lathes in heading No. 84.65, the Tribunal finds that they fall within the description of “[m]achine-tools ... for working wood.” Their classification in this heading is supported by the Explanatory Notes to the heading, which include, among the machine-tools classifiable therein, “[l]athes, which are used to fashion a workpiece by a motion about its own axis, the tool not turning. This group includes lathes of all kinds, including copying lathes.” The Tribunal also notes that counsel for the respondent did not take issue with the argument of the appellant’s representative that a wood-turning lathe is classifiable as a machine-tool in heading No. 84.65.

The Tribunal recognizes that, for the most part, interchangeable tools for machine-tools classifiable in heading Nos. 84.57 through 84.65 would be attached to, or fixed to, the machine-tool (such as in the case of a copying lathe). Accordingly, there appears to be no question that they are “fitted” or “fitted into” the machine-tools, as described in the Explanatory Notes. However, because of the nature of wood turning, tools used with wood-turning lathes are not physically attached to the lathe, rather they lean against the tool rest when in use. Nevertheless, the goods in issue are necessary in order for a wood-turning lathe to function as intended by the user. Neither the machine nor the tools are intended to perform independently of the other.

Although section 11 of the *Customs Tariff* requires the Tribunal to have regard to the Explanatory Notes in considering the terms of the headings, given the variety of machine-tools covered by heading No. 82.07, the Tribunal does not believe that the words “fitted into” should be interpreted in such a way as to narrow unduly the word “for” used in the heading. The narrow interpretation urged by counsel for the respondent would appear to limit the coverage of heading No. 82.07, insofar as it applies to tools for use with lathes in general, to tools used with copying lathes. There is nothing in the Explanatory Notes to indicate that only copying lathes are contemplated by the reference to machine-tools for turning in heading No. 82.07. The Tribunal, therefore, believes that it is reasonable to conclude that ordinary wood-turning lathes are intended to be included in this reference and that the goods in issue are interchangeable tools “for” machine-tools, as specified by the terms of heading No. 82.07.

Since the goods in issue meet the description of heading No. 82.07, the Tribunal finds that they cannot *prima facie* be classifiable in heading No. 82.05 because they are “elsewhere specified or included.” Accordingly, the Tribunal finds that the goods in issue should be classified under tariff item No. 8207.80.00 as interchangeable tools for machine-tools for turning.

For the foregoing reasons, the appeal is allowed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member