



Ottawa, Tuesday, February 26, 2002

Appeal Nos. AP-96-230 to AP-96-236

IN THE MATTER OF appeals heard on November 20, 2000,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of
National Revenue for Customs and Excise dated
January 17, 1997, with respect to a request for redetermination
under section 63 of the *Customs Act*.

BETWEEN

GREAT CANADIAN CASINO COMPANY LTD.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE FOR
CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed in part.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal Nos. AP-96-230 to AP-96-236

GREAT CANADIAN CASINO COMPANY LTD.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE FOR
CUSTOMS AND EXCISE**

Respondent

These are appeals under section 67 of the *Customs Act* regarding the classification of automatic card shuffling machines (card shufflers) and Chipper Champ® chip sorting machines. The first issue in these appeals is whether the card shufflers are classifiable under tariff item No. 9504.90.90 as independent “articles” or “accessories” to other articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment, as contended by the respondent, or should be classified under tariff item No. 8472.90.90 as other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) or under tariff item No. 9504.40.00 as accessories to playing cards, as claimed by the appellant. The second issue in these appeals is whether the chip sorting machines are classifiable under tariff item No. 9504.90.90 as independent “articles” or “accessories” to other articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment, as contended by the respondent, or should be classified under tariff item No. 8472.90.90 as other office machines, as claimed by the appellant.

The appellant argued that the card shufflers are “[o]ther office machines”. In the alternative, the appellant argued that, if the card shufflers are accessories used solely or principally with an article of Chapter 95, then they must be classified as “accessories” to “[p]laying cards”. With respect to the chip sorting machines, the appellant argued that they are machines used in an office environment and ought to be classified as “[o]ther office machines”. The chip sorting machines are “coin-counting” or “coin-sorting” machines that perform the accounting function of counting and sorting chips, just as coin-counting or coin-sorting machines in other businesses would do. The appellant disputed the classification of the chip sorting machines as “accessories”, in that an “accessory” must add excitement, interest or novelty to the actual playing of the game.

The respondent initially argued that the card shufflers are “accessories” to other “[a]rticles for funfair, table or parlour games”. He also argued that they are “accessories”, in that the card shufflers are “accessories” common to a number of games and are analogous to “dice boxes” or “counters” as types of goods found in Note (13) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading No. 95.04. Subsequently, the respondent argued that the card shufflers are independent “[a]rticles for funfair, table or parlour games”. The respondent argued that the chip sorting machines are independent “[a]rticles for funfair, table or parlour games”. In the alternative, he argued that the chip sorting machines are “accessories” common to a number of games found in heading No. 95.04 and may be considered accessories to “[g]ame tables”. The respondent disagreed that the goods in issue are “office machines” that perform “office work”.

HELD: The appeals are allowed in part. The Tribunal held that the card shufflers are analogous to the “dice boxes” mentioned in Note (13) of the Explanatory Notes to heading No. 95.04 and are, therefore, also accessories. The Tribunal is of the view that the card shufflers are suitable for use solely or principally with playing cards and should be classified under tariff item No. 9504.40.00. In light of Section Note 1 (p) to Section XVI, the Tribunal is of the view that the card shufflers are not classifiable in heading No. 84.72 as “office machines”. The Tribunal is also not persuaded that the act of shuffling cards is itself “office work”. With respect to the chip sorting machines, the Tribunal is of the view that they are classifiable in heading No. 95.04. It is of the view that chip sorting machines are to chips what card shufflers are to playing cards. Therefore, the Tribunal is of the view that they are accessories suitable for use solely or principally with chips and are properly classified under tariff item No. 9504.90.90. The Tribunal is also of the view that the chip sorting machines are not classifiable in heading No. 84.72 as “office machines”.

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 20, 2000
Date of Decision: February 26, 2002

Tribunal Members: Richard Lafontaine, Presiding Member
Peter F. Thalheimer, Member
James A. Ogilvy, Member

Counsel for the Tribunal: Michèle Hurteau

Clerk of the Tribunal: Anne Turcotte

Appearances: Jeffrey S. Thomas, for the appellant
M. Kathleen McManus and F.B. (Rick) Woyiwada, for the respondent



Appeal Nos. AP-96-230 to AP-96-236

GREAT CANADIAN CASINO COMPANY LTD.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE FOR
CUSTOMS AND EXCISE**

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

INTRODUCTION

These are appeals under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue for Customs and Excise (now the Commissioner of the Canada Customs and Revenue Agency) dated January 17, 1997, regarding goods imported into Canada during 1994 and 1995. The goods in issue in these appeals are automatic card shuffling machines (card shufflers) and Chipper Champ® chip sorting machines.

The first issue in these appeals is whether the card shufflers are classifiable under tariff item No. 9504.90.90 of Schedule I to the *Customs Tariff*² as independent “articles” or “accessories” to other articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment, as contended by the respondent, or should be classified under tariff item No. 8472.90.90 as other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) or under tariff item No. 9504.40.00 as accessories to playing cards, as claimed by the appellant. The second issue in these appeals is whether the chip sorting machines are classifiable under tariff item No. 9504.90.90 as independent “articles” or “accessories” to other articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment, as contended by the respondent, or should be classified under tariff item No. 8472.90.90 as other office machines, as claimed by the appellant.

The tariff nomenclature relevant to the issues in these appeals is as follows:

84.72	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines).
8472.90	-Other

1. R.C.S. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

95.04	Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment.
9504.40.00	-Playing cards
9504.90	-Other
9504.90.90	---Other
9504.90.90.23	-----Game Tables

The appellant and the respondent agreed to proceed by way of written submissions.

BACKGROUND

The appellant was founded in 1982 to serve the needs of the emerging charity casino industry in British Columbia. The appellant is the operator of seven “limited-stakes casinos” in British Columbia.³ The appellant provides the facilities, equipment and staff to charity casinos. Its activities are regulated by the province.

The card shufflers are small electrically powered automatic playing card shuffling machines. A card player or dealer places the deck of playing cards in one port of the machine, and the cards are automatically shuffled and returned to another port of the machine. The machine shuffles the cards at a much faster rate than can be done by hand and assures a better shuffle. They include three models, two of which shuffle single decks, while the third model called “multi-deck”, as its name implies, shuffles several decks at a time.

The chip sorting machines are electric machines that sort chips according to colour and eject them on an output tray. A staff member deposits a batch of unsorted chips into a small funnel located at the top of the machine. A colour sensor and a computer processor enable the machine to sort the chips according to colour. It can be affixed to the appropriate game tables or be free-standing.

ARGUMENT

The appellant argued that the card shufflers are “machines” and should be classified under tariff item No. 8472.90.90 as other office machines.

In the alternative, the appellant argued that, if Note 3 to Chapter 95 applies, in that the card shufflers are accessories for use solely or principally with articles of that chapter, then the card shufflers must be classified with that article of Chapter 95 to which its use solely or principally relates. In the appellant’s submission, the sole purpose of the card shufflers is to shuffle cards; without the cards, the machines serve no function and cannot be used as accessories to any card game. If Note 3 applies, then it must apply to an article of Chapter 95 to which the use of the “accessory” solely relates, which is “playing cards”.

As to whether “per pack” duty rates could prevent classification under tariff item No. 9504.40.00, the appellant argued that the actual rates of duty play no role in the interpretation of the *Harmonized Commodity Description and Coding System*⁴ and in the classification of the articles within it.

3. “Limited-stakes” refers to the fact that betting limits in the appellant’s casinos are strictly limited through provincial regulation, Appellant’s Brief of Argument, para. 2 at 1.

4. Customs Co-operation Council, 1st ed., Brussels, 1987.

Therefore, the card shufflers should be classified under tariff item No. 9504.40.00 as “accessories” to “[a]rticles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment.” - playing cards.

With respect to its argument concerning the chip sorting machines, the appellant submitted that Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁵ applied in that the Tribunal must, first, take into account the headings or subheadings, and that recourse is only to be had to the remaining General Rules in the event that the goods cannot be classified solely on the basis of Rule 1. The appellant contended that the chip sorting machines could be classified under Rule 1 and that recourse to the other General Rules was not necessary in this case. The appellant also submitted that the respondent’s classification was in direct contradiction to Rule 1. In its view, the chip sorting machines are clearly “coin-counting” or “coin-sorting” machines that ought to be classified in heading No. 84.72. The appellant disputed the classification of the chip sorting machines as “accessories” and argued that that term is improperly interpreted, as they are independent equipment. For the chip sorting machines to be “accessories”, they must add excitement, interest or novelty to the actual playing of a game. The chip sorting machines do not perform such functions; their sole purpose is to increase accounting efficiencies.

The appellant argued that Chapters 84 and 85 provide for “machinery and mechanical appliances; parts thereof” and “electrical machinery and equipment and parts thereof” respectively. The appellant submitted that regard should be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁶ to heading No. 84.72, which state, in part, that “[t]he term ‘office machines’ is to be taken in a wide general sense to include all machines used in offices” and which cover “coin-sorting” or “coin-counting” machines. In the appellant’s view, the chip sorting machines clearly fall within the category of “coin-counting” or “coin-sorting” machines. Further, the machines are used in an “office environment”, as that term is used in heading No. 84.72. The chip sorting machines perform “office work”, which is the accounting function of counting and sorting chips, just as coin-counting or coin-sorting machines in other businesses would do. In support of its argument that the machines sort “chips” rather than “coins”, the appellant contended that chips and coins are the official currency in a casino environment and are interchangeable. Therefore, the chips, which are sorted by the machines, are “coins”, as that term is used in heading No. 84.72.

The appellant requested that the chip sorting machines be classified as “[o]ther office machines” as “coin-sorting” or “coin-counting” machines under tariff item No. 8472.90.90.

Initially, the respondent submitted that the goods in issue were properly classified under tariff item No. 9504.90.90 as “accessories” to other “[a]rticles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment.” The respondent relied on Note 3 to Chapter 95, which provides that “parts and accessories which are suitable for use solely or principally with articles of this Chapter are to be classified with those articles.” He also relied on Note (13) of the Explanatory Notes to heading No. 95.04, which provides that “[c]ertain other accessories common to a number of games of this heading, for example, dice, dice boxes, counters, suit indicators, specially designed playing cloths (e.g., for roulette)” are included in the heading.

In the case of the card shufflers, the respondent subsequently argued that they are other “[a]rticles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling equipment” classified under tariff item No. 9504.90.90. Moreover, he argued that the

5. *Supra* note 2, Schedule I [hereinafter General Rules].

6. Customs Co-operation Council, 1st ed., Brussels, 1986 [hereinafter Explanatory Notes].

card shufflers are independent articles that, on their own, fall within heading No. 95.04 and that, in this respect, they are clearly analogous to the “automatic bowling alley equipment” that is explicitly classified in that heading. Alternatively, as it is the practice of casinos to use card shufflers with their various card games, as they are faster and give a better shuffle, the card shufflers are “accessories” to card games classified under tariff item No. 9504.90.90. If the card shufflers are “accessories” common to a number of games, they are analogous to “dice boxes” or “counters” as types of goods found in Note (13) of the Explanatory Notes to heading No. 95.04.

In the case of the chip sorting machines, the respondent subsequently argued that they are properly classified in heading No. 95.04 as “[a]rticles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment”, specifically under tariff item No. 9504.90.90. The respondent submitted that a chip sorting machine is an independent article that falls within heading No. 95.04 and is analogous to “automatic bowling alley equipment” classified in that heading.

In the alternative, the respondent argued that, if the chip sorting machines are not independent articles, they are accessories common to a number of games found in heading No. 95.04. He further argued that the chip sorting machines may be considered accessories to “[g]ame tables” classified under tariff item No. 9504.90.90 pursuant to Note (13) of the Explanatory Notes to heading No. 95.04. The respondent supported this contention by referring to the manufacturer’s brochure, which describes the Chipper Champ® as “a highly cost-effective way of improving the efficiency of the game of roulette.”⁷ Therefore, the chip sorting machines are accessories to roulette tables or other “[g]ame tables” as classified under classification No. 9504.90.90.23.

The respondent disagreed with the classification of the goods in issue as “office machines”, as that classification required the adoption of an unnatural and unrealistic interpretation of the concept of “office work”.

Finally, the respondent argued that Rule 3 (a) of the General Rules applied and that, as heading No. 95.04 more specifically describes the chip sorting machines than does heading No. 84.72, heading No. 95.04 should apply.

DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*.⁸ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁹ and the Explanatory Notes.

The General Rules are structured in a cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative

7. Respondent’s Brief, tab 8.

8. *Supra* note 6.

9. Customs Co-operation Council, 1st ed., Brussels, 1987.

Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

Moreover, Rule 1 of the *Canadian Rules* reiterates that the classification of goods under the tariff item of a subheading or of a heading shall be determined according to the General Rules.

The Tribunal has carefully considered the written submissions of both parties.

The Tribunal is of the view that the card shufflers are analogous to the dice boxes mentioned in Note (13) of the Explanatory Notes to heading No. 95.04 and are, therefore, also accessories. The Tribunal is not convinced that, as suggested by the respondent, there is no need to associate these machines with any other article. Rather, the Tribunal is of the view that, as suggested in the alternative by the appellant, the goods are suitable for use solely or principally with playing cards and that, therefore, pursuant to Note 3 to Chapter 95, they are classifiable under tariff item No. 9504.40.00. The Tribunal notes that the applicable duty under this tariff item is on a “per pack” basis. However, the Tribunal also notes that section 10 of the *Customs Tariff* stipulates that the classification of imported goods shall be determined in accordance with the General Rules. In turn, these rules stipulate, in part, that classification shall be determined according to the terms of any relative Chapter Notes. No mention is made of either duty rates or units of measure. The Tribunal is therefore of the view that the applicable duty rate and unit of measure under tariff item No. 9504.40.00 are irrelevant for the purposes of classification of the card shufflers.

In light of Section Note 1 (p) to Section XVI, which states that articles of Chapter 95 are not covered in that section, the Tribunal is of the view that the card shufflers are not classifiable in heading No. 84.72 as office machines. In any event, the Tribunal is not convinced that, as suggested by the appellant, the card shufflers are “office machines”. The Explanatory Notes to heading No. 84.72 state, in part, the following:

The term “office machines” is to be taken in a wide general sense to include all machines used in offices, shops, factories, workshops, schools, railway stations, hotels, etc., for doing “office work” (i.e., work concerning the writing, recording, sorting, filing, etc., of correspondence, documents, forms, records, accounts, etc.).

Although they are used in a place that, in its view, qualifies as an office environment, the Tribunal is not persuaded that the act of shuffling cards is itself “office work”. In the Tribunal’s view, the card-shuffling function is an activity proper to card games of all kinds and bears little resemblance, if any, to administrative or clerical work.

With respect to the chip sorting machines, the Tribunal is of the view that, as suggested by the respondent, they are classifiable in heading No. 95.04. However, once again, the Tribunal is not convinced that, as suggested by the respondent, there is no need to associate these machines with any other article. They are, in the Tribunal’s opinion, suitable for use solely or principally with chips. In this connection, *The Canadian Oxford Dictionary*¹⁰ defines “chip” as “a counter used in some gambling games to represent money.” Moreover, the Tribunal notes that Note (13) of the Explanatory Notes to heading No. 95.04 includes “counters” as certain other accessories common to a number of games of that heading. In the Tribunal’s view, the chip sorting machines are to chips what the card shufflers are to playing cards and are, therefore, also accessories. Consequently, pursuant to Note 3 to Chapter 95, the Tribunal is of the view that the chip sorting machines are accessories suitable for use solely or principally with chips and should be classified under tariff item No. 9504.90.90.

10. 1998, s.v. “chip”.

In light of Section Note 1 (p) to Section XVI, which states that articles of Chapter 95 are not covered in that section, the Tribunal is of the view that the chip sorting machines are not classifiable in heading No. 84.72 as office machines. Moreover, the Tribunal is of the view that the terms of heading No. 95.04 are, at a minimum, equally specific to those of heading No. 84.72. Therefore, pursuant to Rule 3 of the General Rules, the chip sorting machines would be classifiable in heading No. 95.04.

In conclusion, the Tribunal finds that the goods in issue are classifiable in heading No. 95.04 as articles for funfair, table or parlour games. In the case of the card shufflers, the Tribunal finds that they should be classified with playing cards under tariff item No. 9504.40.00. In the case of the chip sorting machines, the Tribunal finds that they are properly classified with chips under tariff item No. 9504.90.90.

Consequently, the appeals are allowed in part.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

James A. Ogilvy

James A. Ogilvy
Member