

Ottawa, Friday, September 25, 1998

Appeal Nos. AP-96-079, AP-96-087 and AP-96-095

IN THE MATTER OF appeals heard on March 19, 1998, 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 July 17, 22 and 31, 1996, with respect to a request for re-determination under subsection 63(3) of the *Customs Act*.

BETWEEN

ADVANCE ENGINEERED PRODUCTS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Raynald Guay
Raynald Guay
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-96-079, AP-96-087 and AP-96-095

ADVANCE ENGINEERED PRODUCTS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue made under section 63 of the *Customs Act* and dated July 17, 22 and 31, 1996. The goods in issue are described by the parties in an agreed statement of facts as “manhole assemblies incorporating a metal collar with hinge attached to a metal lid with various forms of operable clamping devices to secure the lid to the collar when in a closed position.” Some of the models include pressure or vacuum relief valves within the lids of the manhole assemblies.

The issue in these appeals is whether the goods in issue are properly classified under tariff item No. 8716.90.90 as other parts which are suitable for use solely or principally with tanker trailers and tanker semi-trailers, as determined by the respondent, or should be classified under tariff item No. 8481.80.91 as other hand-operated valves and similar appliances for tanks, as claimed by the appellant. In the alternative, the appellant submitted that the goods in issue should be classified under tariff item No. 8479.89.99 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84.

HELD: The appeals are dismissed. In the Tribunal’s view, the goods in issue are clearly not “valves” falling within the scope of heading No. 84.81. The Tribunal agrees with counsel for the respondent that the goods in issue do not “regulate the flow” of fluids or solids, as contemplated by the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to that heading, any more than a bottle cap regulates the flow of the contents of a bottle. As the parties agreed, “[t]he primary purpose of the solid lid manhole is to permit entry of equipment and personnel into the tank for inspection and cleaning,” while “the purpose of the manhole assemblies which incorporate a relief valve [is the same as those with a solid lid] with the additional function of allowing safe pressure to be maintained within the tank while the lid of the sealed tank is closed.” Providing access to the tanks to which they are attached does not, in the Tribunal’s opinion, qualify the manhole assemblies as “valves” or similar appliances.

In the Tribunal’s view, it is clear that, while the manhole assemblies are physically attached to the tanks of “tank truck bodies” and “tank truck trailer bodies,” for the purposes of classification, they fall within the scope of “[p]arts” of “[t]railers and semi-trailers; other vehicles, not mechanically propelled.”

The General *Explanatory Notes to the Harmonized Commodity Description and Coding System* to Section XVII provide that the headings of the chapters included in that section: “apply **only** to those parts or accessories which comply with **all three** of the following conditions: (a) [the parts and accessories] must not be excluded by the terms of Note 2 to this Section.... (b) [the parts and accessories] must be suitable for use solely or principally with the articles of Chapters 86 to 88.... and (c) [the parts and accessories] must not be more specifically included elsewhere in the Nomenclature.”

With respect to criterion (a), the Tribunal notes that the terms of Note 2 to Section XVII do not exclude the goods in issue. As to criterion (b), the Tribunal references the parties' agreed statement of facts in which it is stated that the manhole assemblies are "principally used on highway tank truck semi trailers." Finally, with respect to criterion (c), the Tribunal finds that the goods in issue are not more specifically included elsewhere in the nomenclature.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 19, 1998
Date of Decision:	September 25, 1998
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Charles A. Gracey, Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Douglas J. Bowering, for the appellant Josephine A.L. Palumbo, for the respondent

Appeal Nos. AP-96-079, AP-96-087 and AP-96-095

ADVANCE ENGINEERED PRODUCTS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue made under section 63 of the Act and dated July 17, 22 and 31, 1996. The goods in issue are described by the parties in an agreed statement of facts as “manhole assemblies incorporating a metal collar with hinge attached to a metal lid with various forms of operable clamping devices to secure the lid to the collar when in a closed position.” Some of the models include pressure or vacuum relief valves within the lids of the manhole assemblies.

The issue in these appeals is whether the goods in issue are properly classified under tariff item No. 8716.90.90 of Schedule I to the *Customs Tariff*² as other parts which are suitable for use solely or principally with tanker trailers and tanker semi-trailers, as determined by the respondent, or should be classified under tariff item No. 8481.80.91 as other hand-operated valves and similar appliances for tanks, as claimed by the appellant. In the alternative, the appellant submitted that the goods in issue should be classified under tariff item No. 8479.89.99 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84.

These appeals proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,³ on the basis of the Tribunal’s record, including an agreed statement of facts and briefs submitted by the parties.

The relevant tariff nomenclature reads as follows:

84.79	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.
8479.89	--Other
8479.89.99	----Other
84.81	Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.
8481.80	-Other appliances
8481.80.91	----Hand operated or hand activated (excluding multiple gear, pulley or chain valves, connective couplings equipped with valves)

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).
3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

87.16	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof.
8716.90	-Parts
8716.90.90	---Other

According to the agreed statement of facts, the importer is a manufacturer of tank trucks and tank truck trailers. The importer incorporates the manhole assemblies into the tanks on the tank truck bodies and tank truck trailer bodies. Usually, this is at the top of the tanks. The primary purpose of the models with solid lids is to permit the entry of equipment and personnel into the tanks to inspect and clean the tanks. The purpose of the models incorporating relief valves is the same as the others except that, additionally, they allow a safe pressure to be maintained within the tanks while the lids of the tanks are sealed. In order to operate the goods in issue, the lids of the manhole assemblies are unlatched from the collars and manually lifted. Those models incorporating relief valves also have self-acting devices to automatically permit pressure to be released from the tanks or into the tanks, as the case may be. The manhole assemblies are primarily used in highway tank truck semi-trailers.

In arguing that the goods in issue constitute valves or similar appliances for use with tanks, classifiable in heading No. 84.81, the appellant's representative referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ (the Explanatory Notes) to that heading. The Explanatory Notes indicate, in part, that goods classifiable in that heading must "regulate the flow (for supply, discharge, etc.) ... by opening or closing an aperture." Furthermore, the goods "may be operated by hand." According to the Explanatory Notes, such goods "remain in this heading even if specialized for use on a particular machine or apparatus, or on a vehicle or aircraft."⁵

The appellant's representative submitted that the goods in issue meet all of these requirements. The operation of the manhole is a manual action. The "flow" is, moreover, regulated in one of two ways: (1) in the loading, i.e. if the manhole is closed, loading cannot be accomplished, whereas when opened, entry can be achieved; and (2) in the unloading, i.e. with the unvented manhole closed, the flow is negatively restricted.

Specifically, with respect to the models incorporating relief valves, the appellant's representative submitted that, while pressure or vacuum relief valves are automatically spring operated and would be classified under tariff item No. 8481.40.99, when they are incorporated into the manhole assemblies, they constitute an integrated unit providing two distinct functions. In the representative's view, by virtue of Rule 3 (c) of the *General Rules for the Interpretation of the Harmonized System*⁶ (the General Rules), these goods are also classified under tariff item No. 8481.80.91.

The appellant's representative submitted that, if the Tribunal cannot find that the goods in issue are classifiable in heading No. 84.81, it should give consideration to heading No. 84.79 as an alternative.⁷ In the representative's view, the manhole assemblies constitute mechanical appliances with one defined function, that being to provide or deny entry to tanks. With reference to the Explanatory Notes to heading No. 84.79,

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

5. In a supplement to the appellant's brief, the appellant's representative referred to a definition of "manhole." According to the definition, a "manhole" is "a hole through which a man may go; *esp*: one to gain access (as for cleaning or repair) to an underground or enclosed structure (as a sewer, electric conduit, steam boiler) – see SEPTIC TANK illustration," Tribunal Exhibit No. AP-96-079-16. The representative submitted that the goods in issue are specifically "closure mechanisms" for such manholes.

6. *Supra* note 2, Schedule I.

7. In support of this view, the appellant's representative referred to the Tribunal's decisions in *Canadian Tire Corporation Ltd. v. The Deputy Minister of National Revenue*, Appeal No. AP-94-157, October 12, 1995, and *Lloydair, Division of Eljer Manufacturing Canada Inc. v. The Deputy Minister of National Revenue*, Appeal No. AP-95-096, August 15, 1996.

the appellant's representative submitted that the purpose of the goods in issue is clearly distinct from that of the tanks, which is to hold fluids. Furthermore, both the tank and the manhole assembly work independently from one another. While the manhole assembly gives an added feature to the tank, the tank will work to a varying degree without the manhole assembly.

If the Tribunal were to decide that the manhole assemblies without relief valves are classifiable under tariff item No. 8479.89.99, the appellant's representative submitted that, by virtue of Rule 3 (c) of the General Rules, the models incorporating relief valves would then be classifiable under tariff item No. 8481.40.99.

With respect to the respondent's classification of the goods in issue under tariff item No. 8716.90.90, the appellant's representative submitted that, by virtue of Note 1(e) to Section XVII, articles classified in Section XVI are excluded from classification in Section XVII. Furthermore, the manhole assemblies are attached to the tanks, which are mounted on truck or trailer chassis, but are not themselves attached to any vehicle. As such, the manhole assemblies are not properly classified as parts of "[t]railers and semi-trailers; other vehicles, not mechanically propelled."

Counsel for the respondent began her argument by referring to dictionary definitions of the words "manhole" and "valve." According to the *McGraw-Hill Dictionary of Scientific and Technical Terms*,⁸ a "manhole" is "[a]n opening to provide access to a tank or boiler, to underground passages, or in a deck or bulkhead of a ship; usually covered with a cast iron or steel plate. Also known as access hole."⁹ Based on this definition, counsel argued that, clearly, the principal function of the goods in issue is to provide access to the storage space inside the tanks for the purposes of loading and unloading their contents and, when closed, to prevent the contents of the tanks from spilling out. By contrast, a "valve" is defined in the same dictionary as "[a] device used to regulate the flow of fluids in piping systems and machinery."¹⁰ Counsel pointed out that this definition is similar to the one found in the Explanatory Notes to heading No. 84.81 and submitted that the goods in issue do not regulate the flow of product into or out of tanks any more than a bottle cap regulates the flow of the contents of a bottle.

With respect to the manhole assemblies incorporating relief valves, counsel for the respondent submitted that the Explanatory Notes to heading No. 84.81 specifically provide that such goods are not classified therein, but must be classified as parts of the tank trailers, as the assemblies' primary purpose is to permit entry into the tanks.

In response to the submission of the appellant's representative regarding the scope of heading No. 87.16, counsel for the respondent submitted that "trailers" and "semi-trailers" are described in the Explanatory Notes to heading No. 87.16 as vehicles "of a kind designed solely to be coupled to another vehicle by means of a special coupling device." Moreover, for the purposes of heading No. 87.16, the Explanatory Notes describe "semi-trailers" as being "fitted with rear wheels only, the forward end resting on the platform of the towing vehicle to which it is coupled by a special coupling device," while "[t]anker trailers (whether or not fitted with pumps)" are also captured by the Explanatory Notes. Counsel went on to submit that the goods in issue, moreover, meet the three requisite conditions for the classification of "parts and accessories" in Chapters 86 through 89 set out in the Notes to Section XVII.

8. Fifth ed. (McGraw-Hill Book Company, 1994).

9. *Ibid.* at 310.

10. *Ibid.* at 2116.

With regard to the appellant's alternative argument, counsel for the respondent submitted that the manhole assemblies do not have "individual functions" as defined in the Explanatory Notes to heading No. 84.79. In particular, the function of the manhole assemblies cannot be performed distinctly from and independently of the tanks themselves. Furthermore, that function is integral and inseparable from the tanks with which they are used.¹¹

In determining the classification of goods, the Tribunal is cognizant that Rule 1 of the General Rules is of the utmost importance. Rule 1 provides that classification is first determined by the wording of the headings and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* further provides that, "[i]n interpreting the headings and subheadings in Schedule I, regard shall be had to" the Explanatory Notes.

In the Tribunal's view, the goods in issue are clearly not "valves" falling within the scope of heading No. 84.81. The Tribunal agrees with counsel for the respondent that the goods in issue do not "regulate the flow" of fluids or solids, as contemplated by the Explanatory Notes to that heading, any more than a bottle cap regulates the flow of the contents of a bottle. As the parties agreed, "[t]he primary purpose of the solid lid manhole is to permit entry of equipment and personnel into the tank for inspection and cleaning," while "the purpose of the manhole assemblies which incorporate a relief valve [is the same as those with a solid lid] with the additional function of allowing safe pressure to be maintained within the tank while the lid of the sealed tank is closed." Providing access to the tanks to which they are attached does not, in the Tribunal's opinion, qualify the manhole assemblies as "valves" or similar appliances.

In terms of the models incorporating relief valves, the Tribunal finds that they also should not be classified in heading No. 84.81 for the reasons outlined above. However, the Tribunal further notes that the Explanatory Notes to that heading specifically indicate that "certain machinery parts which incorporate a complete valve,... although not forming a complete valve in themselves," are specifically excluded from that heading and are meant to be "classified as parts of the relative machines."

The Tribunal was also not persuaded by the appellant's alternative claim that the goods in issue are classifiable in heading No. 84.79. Setting aside the issue of whether the manhole assemblies constitute "machines" or "mechanical appliances" within the meaning of Chapter 84, in the Tribunal's view, the manhole assemblies clearly do not fall within the description of goods "having individual functions," as contemplated by the Explanatory Notes to that heading. As acknowledged above, the manhole assemblies provide access to the tanks forming part of trailers or semi-trailers. Their "function" is in no way "distinct" from that of the tanks and, ultimately, the trailers or semi-trailers to which they are attached. As submitted by counsel for the respondent, the goods in issue are "integral and inseparable" from the tanks themselves.

11. The relevant Explanatory Notes to heading No. 84.79 provide the following guidance with respect to the types of goods considered to have "individual functions":

- (A) Mechanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.
- (B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:
 - (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and
 - (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

In the Tribunal's view, it is clear that, while the manhole assemblies are physically attached to the tanks of "tank truck bodies" and "tank truck trailer bodies," for the purposes of classification, they fall within the scope of "[p]arts" of "[t]railers and semi-trailers; other vehicles, not mechanically propelled."

The General Explanatory Notes to Section XVII provide that the headings of the chapters included in that section:

apply **only** to those parts or accessories which comply with **all three** of the following conditions:

- (a) [the parts and accessories] must not be excluded by the terms of Note 2 to this Section....
- and (b) [the parts and accessories] must be suitable for use solely or principally with the articles of Chapters 86 to 88....
- and (c) [the parts and accessories] must not be more specifically included elsewhere in the Nomenclature.

With respect to criterion (a), the Tribunal notes that the terms of Note 2 to Section XVII do not exclude the goods in issue. As to criterion (b), the Tribunal references the parties' agreed statement of facts in which it is stated that the manhole assemblies are "principally used on highway tank truck semi trailers." Finally, with respect to criterion (c), the Tribunal finds that the goods in issue are not more specifically included elsewhere in the nomenclature.

In view of the foregoing, the Tribunal finds that goods in issue are properly classified as "[p]arts" of "[t]railers and semi-trailers; other vehicles, not mechanically propelled" in heading No. 87.16 and, more specifically, under tariff item No. 8716.90.90. Therefore, the appeals are dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Raynald Guay
Raynald Guay
Member

Charles A. Gracey
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Member