

Ottawa, Wednesday, July 29, 1998

Appeal No. AP-97-056

IN THE MATTER OF an appeal heard on January 5, 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 May 6 and July 9, 1997, with respect to a request for re-determination under subsection 63(3) of the *Customs Act*.

BETWEEN

P & S FILTRATION INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Patricia M. Close
Patricia M. Close
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-97-056

P & S FILTRATION INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under subsection 67(1) of the *Customs Act* from decisions of the Deputy Minister of National Revenue. The goods in issue are textile filtering belts manufactured through a process of linking monofilament yarns. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 5911.90.90 as other textile products and articles, for technical uses, specified in Note 7 to Chapter 59, as determined by the respondent, or should be classified under tariff item No. 8421.99.30 as parts of other filtering machinery for liquids or, in the alternative, under tariff item No. 5910.00.10 as conveyor belts, of textile material, cut to length, as claimed by the appellant.

HELD: The appeal is allowed. The Tribunal is of the view that the goods in issue should be classified in heading No. 59.10 as “conveyor belts” and, more specifically, under tariff item No. 5910.00.10 as conveyor belts cut to length. In reaching this conclusion, the Tribunal first notes that it considers the goods in issue to constitute “belts” and not “belting.” In support of this conclusion, the Tribunal refers to the product literature, to the numerous exhibits on the record and to the testimony of the witness. Moreover, the goods in issue meet the dictionary definition of “belts” referred to by the appellant’s representative, as well as the description of “belts” set out in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 59.10.

As to the Tribunal’s finding that the goods in issue are “conveyor belts,” classifiable in heading No. 59.10, the Tribunal notes that a “conveyor belt” is defined as “an endless moving belt (as of canvas, rubber, metal) on which items, packages, or material to be moved may be placed and which operates over terminal pulleys or rollers together with receiving and delivery appliances.” The physical evidence introduced into the record by the witness, as well as his testimony, establishes that the goods in issue meet this description. The goods in issue generally convey sludge or slurry through rollers in order to filter out the liquid. Although filtration may be the primary purpose of the goods in issue, the Tribunal is not persuaded that this fact places the goods in issue outside the scope of the definition. As Note 7 to Chapter 59 specifically excludes from classification in heading No. 59.11 goods classifiable in heading No. 59.10, accordingly, the Tribunal finds that the goods in issue cannot *prima facie* be classified in heading No. 59.11. The Tribunal further notes that Note 1(e) to Section XVI specifically excludes from classification in that section, which includes heading No. 84.21, “[t]ransmission or conveyor belts of textile material (heading No. 59.10).” Accordingly, the Tribunal similarly finds that the goods in issue cannot *prima facie* be classified in Section XVI and, more specifically, in heading No. 84.21.

Place of Hearing: Ottawa, Ontario

Date of Hearing: January 5, 1998

Date of Decision: July 29, 1998

Tribunal Members: Patricia M. Close, Presiding Member
Arthur B. Trudeau, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Margaret Fisher

Appearances: Michael Wagen, for the appellant
Edward (Ted) Livingstone, for the respondent

Appeal No. AP-97-056

P & S FILTRATION INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
ARTHUR B. TRUDEAU, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under subsection 67(1) of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue. The goods in issue are textile filtering belts manufactured through a process of linking monofilament yarns. Because of the “linking” process, once the goods in issue are attached to a machine, they are effectively seamless. The goods in issue are marketed under the “Filterlink” trademark.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 5911.90.90 of Schedule I to the *Customs Tariff*² as other textile products and articles, for technical uses, specified in Note 7 to Chapter 59, as determined by the respondent, or should be classified under tariff item No. 8421.99.30 as parts of other filtering machinery for liquids or, in the alternative, under tariff item No. 5910.00.10 as conveyor belts, of textile material, cut to length, as claimed by the appellant.

The relevant nomenclature reads as follows:

- 59.10.00 Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated, covered or laminated with plastics, or reinforced with metal or other material.
- 5910.00.10 ---Conveyor belts, cut to length
- 59.11 Textile products and articles, for technical uses, specified in Note 7 to this Chapter.
- 5911.90 -Other
- 5911.90.90 ---Other
- 84.21 Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.
-Parts:
- 8421.99 --Other
- 8421.99.30 ---Of the goods of tariff item No. 8421.21.00, 8421.22.00, 8421.29.90, 8421.31.10, 8421.39.20 or 8421.39.90

1. R.S.C. 1985, c.1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

Mr. Arthur Nussbaum, Business Manager at Scapa Filtration,³ appeared as the appellant's witness. With reference to the manufacturer's literature, Mr. Nussbaum stated that the Filterlink fabric is an upgraded, more expensive version of woven belt fabric. Woven belts are linked together onto a machine using a "clipper" seam, while the goods in issue are attached to a machine by "linking" the edges of the belt together, similarly to the way a zipper operates, with a wire being inserted through the links for stability. This process makes the goods in issue effectively seamless and tear-resistant.

Supported by a variety of industry documentation,⁴ Mr. Nussbaum indicated that the goods in issue are commonly referred to in the industry as "belts," "machinery belts," "Filterlink belts," "dewatering belts" or "belting." Mr. Nussbaum refuted the suggestion that the goods in issue are filter cloths. According to him, filter cloths are significantly less expensive than the goods in issue. Moreover, they are not designed to move once attached to equipment, while the goods in issue are so designed. Mr. Nussbaum explained that the goods in issue are primarily designed for use with filter belt presses for municipal industrial sewage treatment. While belt presses can be used to make paper, Mr. Nussbaum emphasized that the goods in issue are not sold specifically for papermaking.

Using a prototype machine, Mr. Nussbaum demonstrated how the goods in issue are attached and subsequently function. Essentially, sludge or waste is deposited onto the belt and is then conveyed through rollers which dewater the sludge. The sludge is then discharged into another appliance. The dimensions of the belts can vary in width from 3.28 to 10.50 feet and in length from 10 to 15 feet, depending upon the dimensions of the machine. With a belt press, at least two belts are used to press the sludge together.

According to Mr. Nussbaum, the goods in issue employ a filtration technique known as "cake filtration." With this technique, the particle size of fabric is larger than the actual size of the particles intended to be trapped. Through the filtration process, a "cake" of solids is formed from the sludge on top of the filter. The cake itself traps finer particles of solids.

Mr. Nussbaum emphasized that there are no ready rolls of material from which a belt is cut. While a purchaser decides on the size of the openings in the belt, the dimensions of the belt are determined by the machine. Upon importation, the customer usually installs the belt onto the machine, inserts the wire and glues the "seam" at the edges with epoxy.

In cross-examination, Mr. Nussbaum testified that the difference between standard conveyor belts and the goods in issue is that the latter, because of their perforations, allow water to drain, while a standard conveyor belt does not.

The appellant's representative submitted that the goods in issue, at the time of importation, are properly classified as parts of filtering machinery under tariff item No. 8421.99.30. However, in order to establish the appellant's claim, the representative explained that, because of the way the tariff nomenclature is written, his submissions necessarily focus on whether the goods in issue can be considered conveyor belts or belting in heading No. 59.10. In essence, this arises because Note 1(e) to Section XVI of the *Customs Tariff*, which applies to Chapter 84, excludes the following goods from classification in that section:

Transmission or conveyor belts of textile material (heading No. 59.10) or other articles of textile material for technical uses (heading No. 59.11).

3. According to the witness, in Canada, P & S Filtration Inc. operates under the name "Scapa Filtration," which is the same name as P & S Filtration Inc.'s US parent company.

4. See Appellant's Book of Exhibits, Tabs 2 and 3.

The appellant's representative argued that this exclusion does not include "belting," which is included in the terms of heading No. 59.10. Accordingly, if the goods in issue are considered to be belting, they may be classified in heading No. 84.21. With reference to a variety of definitions for the words "belt" and "belting," the representative appeared to suggest that the goods in issue may be considered as either belts or belting. Therefore, as belting, the goods in issue are not excluded from classification in heading No. 84.21.

The appellant's representative rejected counsel for the respondent's suggestion that the goods in issue constitute filter cloths and not filter belts or belting. In support of this view, the representative referred the Tribunal to Mr. Nussbaum's testimony and to exhibits on the record, which refer to the goods in issue as "belts." He also drew comparisons between the goods in issue and less expensive filter cloths from various customs rulings.

Continuing with his arguments that the goods in issue are "belts" and not goods of heading No. 59.11, the appellant's representative referred to a definition of the term in *Webster's Third New International Dictionary of the English Language*.⁵ This definition reads, in part, as follows: "a continuous band of tough flexible material (as leather, rubber, fabric, wire) for transmitting motion and power from one pulley to another or for conveying materials." With reference to a definition for spiral fabric,⁶ the representative further submitted that the goods in issue have undergone additional processes to give them the essential characteristics of belting.

In response to the respondent's classification of the goods in issue in heading No. 59.11, the appellant's representative submitted that Note 7(a) to Chapter 59 excludes goods "having the character of the products of heading Nos. 59.08 to 59.10" from classification in heading No. 59.11. The representative submitted that this phrase applies to the goods in issue. According to the representative, this note means that any belt or belting that retains as one of its characteristics the ability to transmit power or convey materials is also excluded from classification in heading No. 59.11. In the representative's view, Note 7(a), considered together with Note 7(b)⁷ to Chapter 59 and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁸ (the Explanatory Notes) to heading No. 59.11, removes any doubt that textile fabrics used for technical purposes, which could otherwise be classified in Section XI as woven or knitted fabrics, would not be classified in that section, but in Chapter 59. More importantly, however, the exclusion in the Explanatory Notes to heading No. 59.11 focuses again on goods having the character of those classifiable in heading Nos. 59.08 to 59.10.

The appellant's representative also referred the Tribunal to Note (2) under Part (B) of the Explanatory Notes to heading No. 59.11, which pertains to "Textile Articles of a Kind Used for Technical Purposes." In the representative's view, this note does not describe the goods in issue, since they have been shown to be used with machinery other than paper-making or similar machinery.

5. (Springfield: Merriam-Webster, 1986) at 202.

6. Appellant's Book of Authorities, Tab 3.

7. Note 7(b) reads as follows: "Textile articles (other than those of heading Nos. 59.08 to 59.10) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts)."

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

The appellant's representative then submitted that, in order for the appellant to be successful in persuading the Tribunal that the goods in issue should be classified in heading No. 84.21, it must be demonstrated that they have the characteristics of the goods described in heading No. 59.10. In the representative's view, in order for belts to be classifiable in heading No. 59.10, their purpose does not have to be "primarily" the transmission of power or the conveyance of goods, as argued by counsel for the respondent. Later in his submissions, the representative referred the Tribunal to definitions of the terms "conveyor" and conveyor belt."⁹ In this case, the goods in issue have a dual function insofar as they are belting used in the conveyance of sludge or slurry and also have specialized features rendering them most suitable for removing liquids. The representative argued that the fact that the goods in issue are not "run-of-the-mill" conveyor belts does not preclude their classification in heading No. 59.10.

The appellant's representative rejected counsel for the respondent's assertion that the term "belting" does not encompass a belt, but that it refers to the material from which the transmission or conveyor belts are made. The representative pointed to a variety of other headings in the nomenclature that refer to belts or belting which, by their nature, transmit power or convey materials, but which are also specialized belts or belting. Based on the inclusion of synchronous belts in heading No. 40.10, in spite of the virtually identical terms to heading No. 59.10, the representative submitted that belts or belting classifiable in heading No. 59.10 do not have to transmit power or convey goods as their sole purpose.

The appellant's representative further submitted that goods classifiable in heading No. 59.11 are textile fabrics or articles that generally remain stationary, while the machines or equipment on which they are installed perform all the work. By contrast, belts or belting of heading No. 59.10 and those that are excluded from classification in heading No. 59.11 are designed to be moving objects.

Given that the goods in issue may be considered belting in heading No. 59.10, the appellant's representative submitted that they are not excluded from classification in heading No. 84.21 by virtue of Note 1(e) to Section XVI. The representative then went on to consider the Tribunal's decisions in *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*,¹⁰ *Bionaire Inc. v. The Deputy Minister of National Revenue for Customs and Excise*¹¹ and *Procedair Industries Inc. v. The Deputy Minister of National Revenue for Customs and Excise*¹² to support his argument that the goods in issue are classifiable as "parts" within the tariff nomenclature.

In the alternative, the appellant's representative argued that the goods in issue are conveyor belts and, therefore, classifiable in heading No. 59.10.

Counsel for the respondent submitted that the goods in issue, which the respondent acknowledges resemble belts, fall squarely within the terms of Note 7(b) to Chapter 59. Accordingly, in the respondent's view, the goods in issue are classifiable in heading No. 59.11. The Explanatory Notes to heading No. 59.11 furthermore support this view. These notes include a list of the types of goods included in the headings as specified by Note 7(b) to Chapter 59. Specifically, the Explanatory Notes provide as follows: "The textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools." Further, under

9. *Supra* note 5 at 499.

10. Appeal No. AP-92-091, September 19, 1994.

11. Appeal No. AP-92-110, June 29, 1993.

12. Appeal No. AP-92-152, July 22, 1993.

Part (B) of the Explanatory Notes to heading No. 59.11, the Explanatory Notes provide that the following fall within the scope of heading No. 59.11:

- (3) Articles formed of linked monofilament yarn spirals and having similar uses to the textile fabrics and felts of a kind used in paper-making or similar machines referred to in (2) above.¹³

Counsel for the respondent submitted that Note (3) is a precise description of the goods in issue. Although the goods may not be used on a machine in the actual production of paper, they are used in the papermaking process. Even if, based on the testimony of the appellant's witness, the goods are primarily used in sewage treatment plants, in counsel's view, such plants use similar types of machines to those used in papermaking.

In addressing the various exclusions from heading No. 59.11, counsel for the respondent focused on goods classifiable in heading No. 59.10. Counsel submitted that this heading covers belts or belting primarily used for the transmission of power or the conveyance of goods, whereas the goods in issue are primarily used for filtration. In response to the argument of the appellant's representative that, by virtue of the word "belting," the goods in issue fall within the scope of heading No. 59.10, counsel argued that the term "belting" simply refers to the material from which the finished product, i.e. the "belt," is constructed, such as that which would be kept in rolls in a manufacturing plant in order to cut belts. In counsel's view, if the Tribunal were to make a distinction between the terms, the evidence clearly shows that the goods in issue are belts and not belting.¹⁴

With respect to the argument of the appellant's representative that, because heading No. 40.10 includes timing belts, heading No. 59.10 can also encompass specialized belts such as the goods in issue, counsel for the respondent submitted that the Explanatory Notes to heading No. 40.10 specifically include timing belts in that heading, whereas the Explanatory Notes to heading No. 59.10 do not refer to filtration belts.

Having established that the goods fall within the scope of heading No. 59.11, counsel for the respondent submitted that Note 1(e) to Section XVI specifically precludes their classification in that section. In conclusion, counsel went on to distinguish the Tribunal's decisions in *Bionaire*, *Procedair* and *Snydergeneral* from the case at hand.

In determining the classification of the goods in issue, the Tribunal is cognizant that Rule 1 of the *General Rules for the Interpretation of the Harmonized System*¹⁵ 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* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes.

13. Note (2) reads as follows: "Textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement) (**excluding** machinery belts of **heading 59.10**)."

14. In support of this view, counsel for the respondent similarly cited the Tariff Board's decision in *Leslie Taylor Manufacturing Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*, 8 T.B.R. 772.

15. *Supra* note 2, Schedule I.

Having considered the evidence and arguments presented in this case, as well as the relevant nomenclature, the Tribunal is of the view that the goods in issue should be classified in heading No. 59.10 as “conveyor belts” and, more specifically, under tariff item No. 5910.00.10 as conveyor belts cut to length. In reaching this conclusion, the Tribunal first notes that it considers the goods in issue to constitute “belts” and not “belting.” In support of this conclusion, the Tribunal refers to the product literature, to the numerous exhibits on the record and to Mr. Nussbaum’s testimony. In an overwhelming number of instances, if not in all cases, the goods in issue are referred to as “belts.” Moreover, the goods in issue meet the dictionary definition of “belts” referred to by the appellant’s representative, as well as the description of “belts” set out in the Explanatory Notes to heading No. 59.10. In those notes, “belts” are described in the following manner: “lengths of belting cut to size and either with the ends joined together or furnished with fastenings for joining them together.” In the Tribunal’s view, this description clearly applies to the goods in issue, with the word “belting” being used to refer to “material for belts.” The Tribunal notes that “belting,” as it is used in this instance, is identical to the definition to which the appellant’s representative referred.

As to the Tribunal’s finding that the goods in issue are “conveyor belts,” classifiable in heading No. 59.10, the Tribunal notes that a “conveyor belt” is defined as “an endless moving belt (as of canvas, rubber, metal) on which items, packages, or material to be moved may be placed and which operates over terminal pulleys or rollers together with receiving and delivery appliances.¹⁶” The physical evidence introduced into the record by the witness, as well as his testimony, establishes that the goods in issue meet this description. The goods in issue generally convey sludge or slurry through rollers in order to filter out the liquid. Although filtration may be the primary purpose of the goods in issue, the Tribunal is not persuaded that this fact places the goods in issue outside the scope of the definition. The definition referred to above does not specifically exclude perforated belts that allow the drainage of liquid.

With respect to classification of the goods in issue in heading No. 59.11 by the respondent, the Tribunal notes that heading No. 59.11 applies to “[t]extile products and articles, for technical uses, specified in Note 7 to this Chapter.” Note 7 to Chapter 59 provides, in part:

Heading No. 59.11 applies to the following goods, which do not fall in any other heading of Section XI:

- (b) Textile articles (other than those of heading Nos. 59.08 to 59.10) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

As this note specifically excludes from classification in heading No. 59.11 goods classifiable in heading No. 59.10, the Tribunal finds that the goods in issue cannot *prima facie* be classified in heading No. 59.11. While the terms of heading No. 59.11 are broad and, arguably, would encompass the goods in issue but for the exclusion, the Tribunal is persuaded that it generally excludes moving belts from classification in that heading. In support of this view, the Tribunal notes that none of the textile articles referred to in the Explanatory Notes to heading No. 59.10 suggests their use for a technical purpose involving movement of the goods.

16. *Supra* note 5 at 499.

The Tribunal further notes that Note 1(e) to Section XVI specifically excludes from classification in that section, which includes heading No. 84.21, “[t]ransmission or conveyor belts of textile material (heading No. 59.10).” Accordingly, the Tribunal similarly finds that the goods in issue cannot *prima facie* be classified in Section XVI and, more specifically, in heading No. 84.21.

For the foregoing reasons, the appeal is allowed.

Patricia M. Close

Patricia M. Close
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Charles A. Gracey

Charles A. Gracey
Member