

Ottawa, Monday, February 8, 1999

**Appeal No. AP-97-062**

IN THE MATTER OF an appeal heard on August 14, 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 28 and June 13 and 30, 1997, with  
respect to a request for re-determination under section 63 of the  
*Customs Act*.

**BETWEEN**

**ZELLERS LIMITED**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Anita Szlajak  
Anita Szlajak  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-97-062**

**ZELLERS LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

The goods in issue are various needlework kits which, at the time of entry, contained materials for stitchery and crafts to create decorative sacks or stockings or other decorations for Christmas. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6308.00.00 as sets consisting of woven fabric and yarn, as determined by the respondent, or should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities, as claimed by the appellant.

**HELD:** The appeal is allowed. In the Tribunal's view, it is clear from the Agreed Statement of Facts that the goods in issue are needlework kits that contain materials which, when assembled, result in Christmas decorations, be they for hanging or placing on a tree or elsewhere or for other uses. Thus, when imported, the goods in issue have the character of unassembled festive articles for Christmas. Furthermore, the goods in issue are similar to those listed in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading No. 95.05 and, in particular, to certain articles in paragraphs 1 and 2 of Note (A) of the Explanatory Notes to this heading, such as decorative articles for Christmas trees and Christmas stockings. Finally, the Tribunal is of the view that the means of assembly of the goods in issue satisfies Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: August 14, 1998  
Date of Decision: February 8, 1999

Tribunal Members: Richard Lafontaine, Presiding Member  
Raynald Guay, Member  
Anita Szlazak, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

Parties: Beverly M. Murray, for the appellant  
Jocelyn Sigouin, for the respondent

**Appeal No. AP-97-062**

**ZELLERS LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member  
RAYNALD GUAY, Member  
ANITA SZLAZAK, Member

**REASONS FOR DECISION**

This is an appeal made pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> (the Act) from decisions of the Deputy Minister of National Revenue, dated May 28 and June 13 and 30, 1997. At issue is the classification of the various needlework kits imported by the appellant. The appeal proceeded on the basis of written submissions, pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup> In this regard, the parties submitted an Agreed Statement of Facts, from which the facts described herein are taken.

The facts, briefly stated, are the following. The goods in issue consist of two Christmas cross stitch kits, namely, "Santa Sack Assortment" and "Jingle Toes Assortment," a number of plastic canvas decorations, namely, "Happy Holidays," "Santa's Face," "Mr. & Mrs. Claus (small set)," "Snowman's Face," "Jumbo Snowman," "Jumbo Santa" and "Jumbo Christmas Tree." At the time of entry, the goods in issue contained materials for stitchery and crafts. For example, the "Jingle Toes Assortment" kit contained 14 count fabric (rectangular shape), felt backing, a needle, embroidery floss, cotton batting, glitter cord, a jingle bell, a graph and instructions, while the "Santa Sack Assortment" contained 14 count Aida cloth, fabric backing, DMC floss, ribbon, eyelet, a needle, a graph and instructions. These materials, when assembled, create a decorative sack or stocking associated with Christmas. Similarly, the "Jumbo" plastic canvas decorations contained materials such as felt, yarn, eyes, tassels, buttons, needles and other garnishes to create decorations for Christmas.

The goods in issue were imported in various shipments during the summer of 1995. The appellant requested that the goods in issue be classified under tariff item No. 9505.10.00 of Schedule I to the *Customs Tariff*.<sup>3</sup> By notices of determination dated April 26 and August 2, 1996, the appellant's requests were denied. The appellant subsequently requested that the classification of the goods be re-determined. By decisions dated May 28 and June 13 and 30, 1997, the respondent confirmed the determinations.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6308.00.00 as sets consisting of woven fabric and yarn, as determined by the respondent, or should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities, as claimed by the appellant.

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

The relevant provisions of the *Customs Tariff* read as follows:

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|------------|--|
| 6308.00.00 | Sets consisting of woven fabric and yarn, whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale. |
| 95.05      | Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.   |
| 9505.10.00 | -Articles for Christmas festivities  |

The appellant's representative submitted that Section Note 1(t) to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> (the Explanatory Notes) to Section XI specifically excludes articles of Chapter 95. As the goods in issue are articles for Christmas festivities, they are not properly classified under tariff item No. 6308.00.00. The representative referred to the Tribunal's decision in *Nicholson Equipment Ltd. v. The Deputy Minister of National Revenue*,<sup>5</sup> in which the Tribunal determined that various cake decorations were provided for in heading No. 95.05. She submitted that the goods in issue meet the terms of heading No. 95.05, in that they are "festive" articles traditionally associated with or used during the celebration of Christmas. This is also reflected in the manner in which they are associated with the festival of Christmas or the "Holidays" in the product literature which accompanies them. The representative submitted that Christmas should be considered a festival that falls within the scope of heading No. 95.05, as articles for Christmas festivities are specifically provided for under tariff item No. 9505.10.00.

The appellant's representative also referred the Tribunal to Note (A) of the Explanatory Notes to heading No. 95.05, which provides, in part, as follows:

- (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc.
- (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs.

The appellant's representative submitted that the goods in issue are provided for in heading No. 95.05, as they are designed to be used as decorations associated with Christmas. For example, the literature accompanying the "Jingle Toes Assortment" refers to Christmas tree ornaments when it recommends to "hang them on the tree." The representative also submitted that the goods in issue are not likely to be used at any time of the year other than during the Christmas season. She noted that, in the respondent's decision, reliance was placed on the fact that, at the time of importation, the goods in issue are craft kits which can be worked on at any time during the year. While not disputing this fact, the representative submitted that the time at which the goods in issue are worked on or assembled is irrelevant. What is relevant is the intended function and/or use of these goods.

The appellant's representative also made submissions with respect to the application of Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*<sup>6</sup> (the General Rules) to this appeal.

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

5. Appeal No. AP-96-080, April 25, 1997.

6. *Supra* note 3, Schedule I.

She submitted that, as the nature of the goods in issue, as presented, is known, and that such nature is as decorative articles associated with Christmas, the goods in issue should be classified under tariff item No. 9505.10.00.

Counsel for the respondent submitted that the goods in issue could not be classified under tariff item No. 9505.10.00 because they do not meet the terms of heading No. 95.05. Counsel noted that the heading in question refers to “[f]estive” articles and that the tariff item in question refers to “[a]rticles for Christmas festivities.” She submitted that goods must be classified according to their nature at the time of importation.<sup>7</sup> The goods in issue — the needlework kits — cannot be considered festive articles at the time of importation, but rather packaged sets of craft materials. “Material” is defined in the *Gage Canadian Dictionary*<sup>8</sup> as “what a thing is made from; substance of anything manufactured or built: ... anything serving as crude or raw matter for working upon or developing.”<sup>9</sup> While acknowledging that the goods in issue may eventually become festive articles, counsel submitted that, at the time of importation, they are merely materials and, therefore, do not meet the terms of heading No. 95.05.

With respect to Rule 2 (a) of the General Rules, counsel for the respondent submitted that the goods in issue do not have the essential character of complete festive articles because they are not articles in unassembled form, but rather materials with instructions on how to transform them, with skill and time, to festive articles through embroidery and cutting into shape. Turning to heading No. 63.08, counsel submitted that the Explanatory Notes to this heading state that it includes sets used for needlework, which must comprise at least a piece of woven fabric and yarn, and may include accessories such as needles, and which must be presented in packings for retail sale. Finally, counsel submitted that these notes do not make any exclusions on the basis of the theme or pattern of the goods once they have been assembled. Therefore, all needlework sets are to be classified in this heading.

The Tribunal considers that the goods in issue should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the General Rules, that must govern the classification of the goods in issue. As noted by the Tribunal in *York Barbell Co. Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>10</sup> Rule 1 of the General Rules is of the utmost importance when classifying goods under the Harmonized System. Rule 1 states that classification is first determined by the wording of the headings and any relative Section or Chapter Notes. Rule 2 (a), in effect, broadens the application of any relevant heading to cover a particular article, in the context of the first sentence of the Rule, not only in its completed form but also when presented as an incomplete or unfinished article, as long as the article presented has the essential character of the finished article. In addition, the second sentence of the Rule provides that an article presented in an unassembled or disassembled state is to be classified in the same heading as the assembled article.

Heading No. 95.05 covers “[f]estive, carnival or other entertainment articles.” The specific inclusion of Christmas in tariff item No. 9505.10.00 indicates that articles for Christmas festivities should be classified

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7. Relying on *The Deputy Minister of National Revenue for Customs and Excise v. MacMillan and Bloedel (Alberni) Limited*, [1965] S.C.R. 366 at 371; and *Sealand of the Pacific Ltd. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 3042, July 11, 1989.

8. (Toronto: Gage Educational Publishing, 1997).

9. *Ibid.* at 925.

10. 5 T.C.T. 1150, Appeal No. AP-91-131, March 16, 1992.

under this tariff item. In the Tribunal's view, it is clear from the Agreed Statement of Facts that the goods in issue are needlework kits that contain materials which, when assembled, result in Christmas decorations, be they for hanging or placing on a tree or elsewhere or for other uses. Furthermore, the goods in issue are similar to those listed in the Explanatory Notes to heading No. 95.05 and, in particular, to certain articles in paragraphs 1 and 2 of Note (A) of the Explanatory Notes to this heading, such as decorative articles for Christmas trees and Christmas stockings. Thus, when imported, the goods in issue have the character of unassembled festive articles for Christmas.

In addition, Note (VII) of the Explanatory Notes to Rule 2 (a) of the General Rules states, in part:

For the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only simple assembly operations are involved.

The evidence shows that the goods in issue are assembled by using a needle to guide the yarn and other materials through the pre-cut graphs, i.e. stitching, in accordance with the easy-to-follow instructions provided in the kits.<sup>11</sup> In the Tribunal's view, stitching is a means of assembly that is not precluded from inclusion in Rule 2 (a) of the General Rules. Furthermore, the assembly operations described are, in the Tribunal's view, sufficiently straightforward to be considered "simple assembly operations." Therefore, by virtue of Rules 1 and 2 (a), the goods in issue should be classified under tariff item No. 9505.10.00.

Accordingly, the appeal is allowed.

Richard Lafontaine

Richard Lafontaine  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Anita Szlazak

Anita Szlazak  
Member

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11. See, for example, Exhibits 12.1 and 12.2.