

Ottawa, Friday, February 25, 2000

**Appeal No. AP-99-037**

IN THE MATTER OF an appeal heard on December 6, 1999,  
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 dated April 29, 1999, with respect to a request  
for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**COLORIDÉ INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Zdenek Kvarda

Zdenek Kvarda  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-99-037**

**COLORIDÉ INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is whether the goods in issue, called “*mèches*” in French, are properly classified under tariff item No. 5503.10.00 as synthetic staple fibres of nylon, not carded, combed or otherwise processed for spinning, as determined by the respondent, or should be classified under tariff item No. 6703.00.00 as textile materials, prepared for use in making wigs or the like, as claimed by the appellant.

**HELD:** The appeal is allowed. Pursuant to Rule 4 of the *General Rules for the Interpretation of the Harmonized System*, the goods in issue must be classified in the heading appropriate to the goods to which they are most akin. In examining factors, such as character and purpose, which must be used in determining kinship, the Tribunal notes that the *Explanatory Notes to the Harmonized Commodity Description and Coding System* state that heading No. 67.03 includes textile materials, prepared for use in making wigs and the like, or dolls’ hair. Clearly, such textile materials, whether they are used for making wigs or the like, or for making doll’s hair, are goods that ultimately represent human hair. Thus, to represent human hair is, in the Tribunal’s view, the true character and purpose of those materials. The same can be said of the textile materials in issue. The tufts are arranged so as to imitate locks of hair and then fixed into displays and books, which are sold to producers of hair colour dyes. These displays and books are then used by hairstylists to demonstrate to their clients the results that can be achieved by the dyeing process.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 6, 1999
Date of Decision:	February 25, 2000
Tribunal Members:	Arthur B. Trudeau, Presiding Member Raynald Guay, Member Zdenek Kvarda, Member
Counsel for the Tribunal:	Gilles B. Legault
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Raylene Van Vliet, for the appellant Claude Morissette, for the respondent

Appeal No. AP-99-037

COLORIDÉ INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
RAYNALD GUAY, Member  
ZDENEK KVARDA, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) dated April 29, 1999, regarding goods imported into Canada between May 7, 1996, and December 4, 1997.

The goods in issue, called “*mèches*” in French, were imported in two different styles, that is, “*mèches boucles de 9 cm*” and “*bandes de mèches franges de 25 cm*”. The issue in this appeal is whether these goods are properly classified under tariff item No. 5503.10.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as synthetic staple fibres of nylon, not carded, combed or otherwise processed for spinning, as determined by the respondent, or should be classified under tariff item No. 6703.00.00 as textile materials, prepared for use in making wigs or the like, as claimed by the appellant.

At the hearing, no witnesses were called and counsel for the respondent and the appellant’s representative agreed on the description of the goods. The goods in issue are small tufts of synthetic material, being nylon, which are arranged in such a manner as to imitate locks of hair, of different colours. They were imported in two different lengths. The “*mèches boucles*” are 9 cm long and are fused at each end, which keeps them together and prevents unravelling. The “*bandes de mèches franges*” are 25 cm long and are fused only at one end. The appellant arranges the tufts in bands into various types of displays and books, which are sold to companies that produce hair colour dyes. Hairstylists use those displays and books to demonstrate to their clients the results that can be achieved by the dyeing process.

The appellant’s representative argued that the goods in issue should be classified under tariff item No. 6703.00.00 based on Rule 4 of the *General Rules for the Interpretation of the Harmonized System*,<sup>3</sup> which provides that goods which cannot be classified in accordance with Rules 1, 2 and 3 shall be classified in the heading appropriate to the goods to which they are the most akin. She maintained that the goods in issue are unique, that they cannot be classified according to Rules 1, 2 and 3 and, therefore, that they belong in heading No. 67.03 with the textile materials prepared for use in making wigs or the like, to which they are the most akin. The representative contended that there are different ways by which kinship can be demonstrated, including through the description of the goods, their character or their purpose. In this regard, she referred to the Tribunal’s decision in *Wet Vest v. DMNRCE*<sup>4</sup> where the Tribunal decided, based on

1. R.S.C. 1985 (2d Supp.), c. 1.
2. R.S.C. 1985 (3d Supp.), c. 41.
3. *Ibid.*, Schedule I [hereinafter *General Rules*].
4. (9 December 1993), AP-92-384.

Rule 4, that a specialized flotation device for disabled persons with spinal chord injuries is classifiable in heading No. 90.21 as other orthopaedic or fracture appliances, rather than in heading No. 63.07 as life jackets, because the vest in question was unique and could not, on its face, be classified in two or more headings. The representative also stressed that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>5</sup> to heading No. 67.03 provide an example of wefts of hair that would be used in manufacturing a wig. The wefts are described as “consisting of man-made fibres dyed in the mass, folded in two to form tufts which are bound together, at the folded ends, by a machine-made plait of textile yarns approximately 2 mm wide”. The *Explanatory Notes* further state that “[t]hese ‘wefts’ have the appearance of a fringe in the length”. The representative claimed that the “*mèches*” in issue are very similar to the tufts mentioned in the *Explanatory Notes* to heading No. 67.03 and that, although they are not used to make wigs and the like, they ultimately represent hair. As an alternative argument, the representative argued that the goods issue could be classified in heading No. 90.23 as being more akin to instruments, apparatus and models, designed for demonstrational purposes and unsuitable for other uses.

Counsel for the respondent argued that Rule 1 of the *General Rules* applies in this case. Rule 1 provides, among other things, that, for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter notes. Counsel submitted that it is admitted that the goods in issue are “synthetic staple fibres”. As “synthetic staple fibres” are named in heading No. 55.03, the goods in issue should, therefore, be classified in that heading. Counsel added, in this regard, that Note 1 to Chapter 55 mentions that “[t]ow of a length not exceeding 2 m is to be classified in heading No. 55.03 or 55.04”, which clearly applies to the goods in issue. Counsel also referred to the *Explanatory Notes* to Chapter 55, under the heading “General”, for the definition of “man-made staple fibres”:

Man-made staple fibres are usually manufactured by extrusion through spinnerets (jets) having a large number of holes (sometimes several thousand); the filaments from a large number of spinnerets (jets) are then collected together in the form of a tow. This tow may be stretched and then cut into short lengths, either immediately or after having undergone various processes (washing, bleaching, dyeing, etc.) while in the tow form. The length into which the fibres are cut is usually between 25 mm and 180 mm and varies according to the particular man-made fibre concerned, the type of yarn to be manufactured and the nature of any other textile fibres with which they are to be mixed.

Counsel for the respondent argued that this definition is generally descriptive of the goods in issue, especially because it is not exclusionary, as it uses words such as “usually” and “sometimes”. Counsel stressed, in this regard, that the textile can be coloured or dyed.

Counsel for the respondent maintained that the goods in issue cannot be classified in heading No. 67.03 because textiles of that heading must be used in the making of wigs and similar products. Counsel also disputed the subsidiary argument raised by the appellant’s representative by arguing that tariff item No. 9023.00.00 contemplates goods for educational or scientific purposes, for the display of raw materials or for showing the different stages of a manufacturing process. Counsel offered, as his own subsidiary argument, that the goods could be classified under tariff item No. 6307.90.99 as other made up articles of other textile materials. Counsel pointed to the *Explanatory Notes* to heading No. 63.07, which refer to Note 7 to Section XI, which, in turn, provides a definition of the expression “made up” that includes those articles assembled by gumming, such as the goods in issue.

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5. Customs Co-operation Council, 1st ed., Brussels, 1986, and 2d ed., Brussels, 1996 [hereinafter *Explanatory Notes*].

The Tribunal is of the view that the goods in issue should be classified under tariff item No. 6703.00.00 as textile materials, prepared for use in making wigs or the like. As contended by the appellant, the goods in issue are unique. Thus, not surprisingly, these goods are not provided for in the nomenclature.

The Tribunal is of the view that, contrary to the respondent's position, the textile materials in issue are not of the type contemplated in heading No. 55.03. The Tribunal notes in this regard that the *Explanatory Notes* to Chapters 50 to 55 point out that these chapters "each deal with one or more textile materials, alone or mixed, at their various stages of manufacture, up to and including their conversion into woven fabrics" [emphasis added]. These notes leave little doubt that, for textile materials to be considered part of these chapters, they must be at a stage of manufacture up to and including their conversion into woven fabrics. The evidence in this case reveals that the goods in issue have no other use or purpose but to be used in displays and books. They have lost their usefulness as staple fibres for use in making fabrics.

Furthermore, the Tribunal does not accept the subsidiary argument put forth by counsel for the respondent that the goods should be classified under tariff item No. 6307.90.99 as other made up articles of other textile materials. The Tribunal is of the view that the expression "made up" (translated by the word "*confectionné*" in the French version) and the illustrative list of articles in heading No. 63.07 both imply a sense of finished goods, as well as some further work that goes beyond the mere assembly by gumming. While gummed, the imported "tufts" are not finished and still require to be assembled into the displays and books.

The Tribunal agrees with counsel for the appellant that Rule 4 of the *General Rules* applies in this case, as none of the previous rules applies. Pursuant to Rule 4, the goods in issue must be classified in the heading appropriate to the goods to which they are most akin. Kinship, according to the *Explanatory Notes* to Rule 4, can depend on many factors, such as description, character and purpose.

The Tribunal is of the view that the character and purpose of the goods in issue are most akin to those in heading No. 67.03. As counsel for the respondent stressed, this heading refers to, among other things, "textile materials, prepared for use in making wigs or the like" [emphasis added]. There is no doubt, as contended by counsel for the respondent, that the expression "or the like" in the above-noted expression must be associated with the wigs. However, for the purposes of Rule 4 of the *General Rules*, the test is not whether the textile materials in issue are to be used in making "wigs or the like", but whether they are to be used in making goods which are akin to "wigs or the like".

In examining factors, such as character and purpose, that must be used in determining kinship, the Tribunal notes that the *Explanatory Notes* to heading No. 67.03 state that the heading includes textile materials, prepared for use in making wigs and the like, or dolls' hair. Clearly, such textile materials, whether they are used for making wigs or the like, or for making doll's hair, are goods that ultimately represent human hair. Thus, to represent human hair is, in the Tribunal's view, the true character and purpose of those materials. The same can be said of the textile materials in issue, i.e. the tufts are arranged so as to imitate locks of hair and then fixed into displays and books that are sold to producers of hair colour dyes for use by hairstylists to demonstrate to their clients the results that can be achieved by the dyeing process.

The Tribunal is of the view, in accordance with Rule 4 of the *General Rules*, that the goods in issue are most akin to those in heading No. 67.03 and concludes that they should be classified under tariff item No. 6703.00.00, as claimed by the appellant.

For all these reasons, the appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Zdenek Kvarda  
Zdenek Kvarda  
Member