



Ottawa, Thursday, April 12, 2001

Appeal No. AP-99-067

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

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated July 14, 1999, with respect to a request for redetermination under section 63 of the *Customs Act*.

BETWEEN

TOYS "R" US (CANADA) LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

COSTCO CANADA INC.

Intervener

DECISION OF THE TRIBUNAL

The appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member

Susanne Grimes
Susanne Grimes
Acting Secretary



UNOFFICIAL SUMMARY

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TOYS "R" US (CANADA) LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

COSTCO CANADA INC.

Intervener

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) made under section 63 of the *Customs Act*. The issue in this appeal is whether the “Buzz Lightyear Dress Up Sets” imported by the appellant are properly classified under tariff item No. 9503.70.10 as other toys of plastics put up in outfits, as determined by the respondent, or should be classified under tariff item No. 9503.90.00 as other toys, as claimed by the appellant.

HELD: The appeal is allowed. For the purposes of classification in subheading No. 9503.70 as outfits, goods must be composed of two or more different articles as required by the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (Explanatory Notes) to that subheading. In the Tribunal’s view, the goods in issue do not satisfy this requirement. Rather, they constitute one article, one single toy, albeit composed of three different components. These three components are clearly interdependent. This is shown by the presence of clips that serve to connect the chest plate and the backpack and by the fact that the wings can only be worn with the backpack. The packaging of the goods in issue, although referring to them as a “dress up set”, clearly shows that the components are part of a single toy. To determine that the chest plate, the backpack and the wings are not components of a greater whole, but rather different articles in their own right to meet the requirement of the Explanatory Notes, would have required a degree of independence that is not present in this case.

Place of Hearing: Ottawa, Ontario

Date of Hearing: May 1, 2000

Date of Decision: April 12, 2001

Tribunal Members: Pierre Gosselin, Presiding Member
Zdenek Kvarda, Member
James A. Ogilvy, Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Margaret Fisher

Parties: Beverly Murray, for the appellant
Lysanne K. Lafond, for the respondent
Michael Sherbo, for the intervener



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TOYS "R" US (CANADA) LTD.

Appellant

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THE DEPUTY MINISTER OF NATIONAL REVENUE

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TRIBUNAL: PIERRE GOSSELIN, Presiding Member
ZDENEK KVARDA, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) made under section 63 of the Act on July 14, 1999. The issue in this appeal is whether the "Buzz Lightyear Dress Up Sets" imported by the appellant on August 28, 1997, are properly classified under tariff item No. 9503.70.10 of Schedule I to the *Customs Tariff*² as other toys of plastics put up in outfits, as determined by the respondent, or should be classified under tariff item No. 9503.90.00 as other toys, as claimed by the appellant. The relevant tariff nomenclature is as follows:

95.03	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.
9503.70	-Other toys, put up in sets or outfits
9503.70.10	---Of plastics
9503.90.00	-Other

As requested by the parties, this appeal proceeded by way of a file hearing.

EVIDENCE

The appellant and the respondent filed an agreed statement of facts. They agreed that the goods in issue are the "Buzz Lightyear Dress Up Sets". The goods in issue are described by the manufacturer as a "3-Pc electronic playset with original Buzz voice". The three pieces are identified as follows: (1) chest plate with neck strap and two connector clips; (2) backpack with shoulder and waist straps, and four connector clips; (3) inflatable wings. The chest plate contains the electronic voice player. Buttons located on the front of the chest plate can be depressed to produce the sound of Buzz Lightyear's voice. The neck strap is placed over the head of a child to suspend the chestplate which is attached to the backpack. The backpack comprises a hard hollow plastic component with a cover which, when assembled, houses the inflatable

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

wings. The shoulder straps are fastened to connector clips located on the bottom of the backpack cavity. The straps can then be placed over the shoulders of a child. The wings are inflatable and can be folded and stored in the backpack when deflated. In order to be used, the wings must be removed from the backpack, inflated and inserted into the slots of the backpack. The wings can only be worn using the backpack.

ARGUMENT

The appellant submitted that the goods in issue are essentially one toy designed for the amusement of children that consists of three components that must be assembled to render the toy useful. For example, the chest plate and wings could not be properly “worn” without the use of the backpack. According to the appellant, the terms of subheading No. 9503.70 do not provide for one toy, but rather for toys of a kind “put up in sets or outfits”. The appellant submitted that the goods in issue do not meet the definition of “outfits” found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ to subheading No. 9503.70, in that they do not constitute outfits specific to a particular type of recreation, work, person or profession. Furthermore, the appellant submitted that the goods in issue, although they are specific to the Buzz Lightyear character, do not conform to the definition of “outfits” as clarified in Customs Notice N-024.⁴ The appellant stated that, when the toy is assembled, there is one major article and not a number of articles with a central theme, as described in Customs Notice N-024. Accordingly, the appellant submitted that the goods in issue, being essentially one toy, should not be classified in subheading No. 9503.70 as outfits, but rather in residuary subheading No. 9503.90.

The respondent argued that the wings, the chest plate and the backpack, together, make the goods in issue an outfit. The respondent submitted that the three articles, worn together, represent the outfit that Buzz Lightyear, an astronaut or futuristic traveller, wears in the children’s movie *Toy Story*. The respondent submitted that this satisfies the requirements of the Explanatory Notes to subheading No. 9503.70. The respondent also submitted that, although the three articles are worn together, they are separate articles and, therefore, satisfy the dictionary definition of “outfit”. According to the respondent, the packaging of the goods in issue also confirms that they are an outfit. The respondent referred to the descriptions “Buzz Lightyear Dress Up Set” and “3-Pc electronic playset with original Buzz voice” found on the packaging of the goods in issue.

Based on an analysis of the Explanatory Notes to subheading No. 9503.70, the intervener submitted that outfits must be composed of two or more separate articles, that at least one of these separate articles must be classifiable in a heading other than heading No. 95.03, that accessories or objects of minor importance do not render goods outfits and that outfits are goods of which the different articles are for the same type of recreation, work, person or profession.

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 for the Interpretation of the Harmonized System*.⁵ In the present appeal, the parties agreed that the goods in issue are properly classified in heading No. 95.03 as toys. The disagreement lies at the subheading level. Rule 6 of the General Rules provides, in part, that the classification of goods in the subheadings of a heading shall be determined according to the

3. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

4. Department of National Revenue, “Tariff Classification of Other Toys, Put Up in Sets or Outfits Under Subheading 9503.70” (29 January 1996).

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

terms of those subheadings. Subheading No. 9503.70 comprises toys put up in outfits. If the Tribunal were to conclude that the goods in issue are not outfits, those goods would then be properly classified in the residuary subheading, No. 9503.90, as other toys. The Tribunal must, therefore, determine whether the goods in issue constitute outfits.

Section 11 of the *Customs Tariff* provides, in part, that, in interpreting the subheadings in Schedule I, regard shall be had to the Explanatory Notes. The Explanatory Notes to subheading No. 9503.70 provide, in part:

Subject to substantiated classification in heading 95.03 and for the purpose of this subheading:

- (ii) “Outfits” are two or more different articles put up in the same packing for retail sale without repacking, specific to a particular type of recreation, work, person or profession.

Therefore, for the purposes of classification in subheading No. 9503.70 as outfits, goods must be composed of two or more different articles. In the Tribunal’s view, the goods in issue do not satisfy this requirement. Rather, they constitute one article, one single toy, albeit composed of three different components. These three components are clearly interdependent. This is shown by the presence of clips that serve to connect the chest plate and the backpack and by the fact that the wings can be worn only with the backpack. The packaging of the goods in issue, although referring to them as a “dress up set”, clearly shows that the components are part of a single toy. To determine that the chest plate, the backpack and the wings are not components of a greater whole, but rather different articles in their own right and therefore meet the requirement of the above definition, would have required a degree of independence that is not present in this case.

For the foregoing reasons, the goods in issue should be classified under tariff item No. 9503.90.00 as other toys. Consequently, the appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member