



Ottawa, Wednesday, July 26, 2000

Appeal No. AP-99-082

IN THE MATTER OF an appeal heard on May 11, 2000, 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 August 3 and October 12, 1999, with respect to requests for redetermination under section 63 of the *Customs Act*.

BETWEEN

NOKIA PRODUCTS LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-99-082

NOKIA PRODUCTS LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions 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*. There are two issues in this appeal. The first is whether certain “rapid cigarette lighter chargers” imported by the appellant are properly classified under tariff item No. 8544.41.10 as other insulated electric conductors, for a voltage not exceeding 80 volts, fitted with connectors, of a kind used for telecommunications, as determined by the respondent, or should be classified under tariff item No. 8504.40.99 as other static converters, as claimed by the appellant. The second issue is whether certain “battery packs for cellular telephones” imported by the appellant are properly classified under tariff item No. 8507.30.90 as other nickel-cadmium electric accumulators, including separators therefor, whether or not rectangular (including square), as determined by the respondent, or should be classified under tariff item No. 8529.90.99 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by the appellant.

HELD: The appeal is allowed. On consent of the parties, the Tribunal finds that the “rapid cigarette lighter chargers” should be classified under tariff item No. 8504.40.99 as other static converters. The Tribunal finds that the “battery packs for cellular telephones” (the goods in issue) are parts of cellular telephones. The goods in issue form a complete unit with the cellular telephone, have no alternative function, are committed for use with one particular model of cellular telephone and are marketed and sold for use with cellular telephones. Cellular telephones cannot work without the goods in issue, it is not safe or prudent to power a cellular telephone by other means, and cellular telephones are marketed and sold with battery packs. The Tribunal finds that, as the goods in issue are an assembly of components, including electric accumulators, a printed circuit board and a plastic housing, they are not goods included in heading No. 85.07. The Tribunal finds that the goods in issue are for use solely or principally with cellular telephones. Therefore, pursuant to Note 2(b) to Section XVI of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*, the Tribunal finds that the goods in issue should be classified with cellular telephones. The Tribunal finds that the goods in issue should be classified under tariff item No. 8529.90.00 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 11, 2000
Date of Decision:	July 26, 2000
Tribunal Members:	Pierre Gosselin, Presiding Member Zdenek Kvarda, Member James A. Ogilvy, Member
Counsel for the Tribunal:	Tamra Alexander
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Michael A. Sherbo, for the appellant Patricia Johnston, for the respondent

Appeal No. AP-99-082

NOKIA PRODUCTS LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

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 decisions 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 August 3 and October 12, 1999. There are two issues in this appeal. The first is whether certain “rapid cigarette lighter chargers” imported by the appellant are properly classified under tariff item No. 8544.41.10 of Schedule I to the *Customs Tariff*² as other insulated electric conductors, for a voltage not exceeding 80 volts, fitted with connectors, of a kind used for telecommunications, as determined by the respondent, or should be classified under tariff item No. 8504.40.99 as other static converters, as claimed by the appellant. The second issue is whether certain “battery packs for cellular telephones” imported by the appellant are properly classified under tariff item No. 8507.30.90 as other nickel-cadmium electric accumulators, including separators therefor, whether or not rectangular (including square), as determined by the respondent, or should be classified under tariff item No. 8529.90.99 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by the appellant. The relevant tariff nomenclature is as follows:

85.04	Electrical transformers, static converters (for example, rectifiers) and inductors.
8504.40	-Static converters
8504.40.99	----Other
85.07	Electric accumulators, including separators therefor, whether or not rectangular (including square).
8507.30	-Nickel-cadmium
8507.30.90	---Other
85.25	Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders.
85.29	Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.
8529.90	-Other
8529.90.99	----Other

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

85.44	Insulated (including enamelled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors. -Other electric conductors, for a voltage not exceeding 80 V:
8544.41	--Fitted with connectors
8544.41.10	---Of a kind used for telecommunications

Prior to proceeding with the witnesses' testimony, the appellant and respondent indicated that they had reached an agreement on the classification of the "rapid cigarette lighter chargers". The parties consented to the classification of these goods under tariff item No. 8504.40.99 as other static converters. Therefore, in the remainder of these reasons, the term "goods in issue" will refer only to the "battery packs for cellular telephones".

EVIDENCE

Mr. Thomas W. Kost, Technical Marketing Manager, USA Product & Accessories Marketing, Nokia Mobile Telephones, Inc., testified on behalf of the appellant. Mr. Kost was qualified as an expert in the field of electronics or electrical engineering to give opinion evidence on cellular telephones and power packs. Mr. Kost defined an accumulator as a single unit for converting chemical energy into electrical energy. He defined a battery as a device for generating electrical current by chemical reaction. He testified that an accumulator and a battery cell are one and the same. Mr. Kost defined a power pack as an assembly of many different types of components, including battery cells, electronic components and circuit boards, wire and connectors, a plastic housing and other mechanical parts, used to convert power and regulate charging. Mr. Kost described the goods in issue as being power packs composed of three components, all of which are necessary and critical for the operation of the cellular telephone: (1) three nickel-cadmium accumulators or batteries; (2) a plastic housing; and (3) a printed circuit board. Mr. Kost also testified that the goods in issue contain conductive strips which run between the batteries. Mr. Kost testified that the batteries are manufactured by the Sanyo Corporation (Sanyo), in Japan, and that the other components are sourced from other suppliers and then assembled by Sanyo.

Mr. Kost testified that the plastic housing of the goods in issue is essential for the operation of the cellular telephone, as it forms the back of the telephone. It provides a receptacle for holding the printed circuit board and other components. It has been specifically designed so that the telephone fits comfortably in the hand. He testified that the plastic housing is not related to the casing of the battery. The plastic housing performs a completely different function.

Mr. Kost testified that the printed circuit board contains a resistor and a capacitor which are used for charging the battery. The resistor identifies, to the cellular telephone, the type of battery pack that is attached. This permits the proper charging of the battery. The printed circuit board is required for the safe operation of the cellular telephone.

Mr. Kost testified that the consumer cannot replace the batteries of the goods in issue. Mr. Kost testified that the goods in issue have been designed to be used only with a single model of Nokia cellular telephone. The telephone will, however, accept other models of battery packs. The telephone is always marketed and sold with a battery pack. The goods in issue are the "standard" battery packs and, generally, the relevant model of Nokia cellular telephone will be sold with the standard battery packs.

Mr. Kost testified that a battery pack is the only source of power for a cellular telephone. The battery pack is recharged while attached to the telephone or in a separate charging device that has electronic components configured to duplicate the functions of the telephone. Mr. Kost testified that the battery is guaranteed for one year and that it can easily be used for a period of two to three years. If a battery pack that was not designed for the particular model of cellular telephone was used with it, the appellant would not guarantee the telephone. In cross-examination, Mr. Kost acknowledged that the goods in issue are labelled with the name “Nickel Cadmium Rechargeable Battery”.

Mr. Tony Mungham, Chief, Electronics and Computer Systems, Research and Development Division, Laboratory and Scientific Services Directorate, Department of National Revenue (now the Canada Customs and Revenue Agency), testified on behalf of the respondent. Mr. Mungham was qualified as an expert to give opinion evidence on battery systems and battery packs in general. Mr. Mungham testified that the term “accumulator” is a British term for battery. He testified that *The Shorter Oxford English Dictionary on Historical Principles* defines an accumulator as anything that accumulates and, specifically, an apparatus for accumulating electricity. Mr. Mungham also took the Tribunal through a number of definitions of battery, cell and accumulator in technical dictionaries. He was of the opinion that the goods in issue, as a whole, are apparatus that accumulate electricity and that the “electrical accumulator” is the entire apparatus.

Mr. Mungham described the goods in issue as being a battery assembly, including: (1) three cells; (2) conductive strips that connect the cells; (3) a printed circuit board which acts as a connecting device for the cells to the telephone circuit and which identifies the batteries to the charging circuit in the telephone; and (4) an enclosure. Mr. Mungham testified that it is very important that the charging circuit recognize the type of battery that it is charging. He testified that the printed circuit board in the goods in issue is an extremely simple one. Mr. Mungham testified that the printed circuit board is part of a battery system, but not part of the battery. Mr. Mungham was of the opinion that the enclosure does not change the function of the battery; it simply allows the battery to be connected to the telephone in an ergonomic manner.

In cross-examination, Mr. Mungham acknowledged that there are apparatus, other than batteries, that accumulate electricity, in particular, a capacitor. Mr. Mungham also acknowledged that the three cells in the goods in issue perform the accumulation of electricity. He stated that the printed circuit board is important to the charging process in that it identifies the batteries to the charger. Mr. Mungham acknowledged that, while the function of the enclosure of the goods in issue is generic, its design is not.

ARGUMENT

The appellant submitted that, pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,³ the goods in issue should be classified under tariff item No. 8529.90.99 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28. The appellant submitted that there was agreement between the witnesses on the components that make up the goods in issue: (1) cells; (2) a casing; (3) a connective strip; and (4) a printed circuit board. The appellant submitted that the goods in issue are an assembly. The appellant submitted that there was no evidence that refuted the appellant’s position that the goods in issue form a complete unit with the cellular telephone, have no alternative use, are marketed and sold as being for use with cellular telephones, are necessary for the safe and prudent use of a cellular telephone and are committed for use with cellular telephones. The appellant submitted that the fact that the particular goods in issue, because they are replacement parts, are not marketed and shipped with the cellular telephones does not change their characterization as parts. Therefore, the appellant submitted that the goods in issue are parts of cellular telephones. The appellant submitted that

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

the description of the goods in issue as “batteries” in the detailed adjustment statement is of no relevance to the classification of the goods in issue.

The appellant submitted that Note 2(a) to Section XVI requires parts of machines, which are goods included in any of the headings of Chapters 84 and 85, to be classified in their respective headings. The appellant submitted that the goods in issue are not electric accumulators of heading No. 85.07. The appellant submitted that the technical definitions provided by Mr. Mungham do not play as important a role in determining whether the goods in issue are accumulators as the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ to heading No. 85.07, which provide a description of accumulators. The appellant submitted that the description of accumulators provided in the Explanatory Notes does not cover goods which are assemblies or which include more than the accumulators or batteries themselves. The appellant submitted that, as the goods in issue are more than accumulators, they are not goods included in heading No. 85.07.⁵

The appellant submitted that Note 2(b) to Section XVI, therefore, applies. The goods in issue are to be classified, if suitable for use solely or principally with a particular kind of machine, with that machine. The appellant submitted that cellular telephones are classified in heading No. 85.25⁶ and that the goods in issue are used solely with a particular model of Nokia cellular telephone. Therefore, the goods in issue are parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28 and should be classified in heading No. 85.29.

The respondent submitted that, pursuant to Rule 1 of the General Rules, the goods in issue are properly classified in heading No. 85.07 as electric accumulators. The respondent submitted that the four components of the goods in issue, together, constitute the electric accumulator. The respondent submitted that the appellant described the goods in issue in the detailed adjustment statement as a battery and that the label on the goods in issue refers to the goods as a battery. The respondent submitted that a battery is an electric accumulator.

The respondent submitted that the goods in issue are not parts of cellular telephones. The respondent submitted that the goods in issue are imported separately. The respondent submitted that the goods in issue are, therefore, not marketed nor shipped with the cellular telephone, nor are they parts of cellular telephones. The respondent submitted that, if the “rapid cigarette lighter chargers” are not parts of cellular telephones, neither are the goods in issue. In the alternative, if the goods in issue are parts of cellular telephones, they are specifically referred to in heading No. 85.07 and are, therefore, pursuant to Note 2(a) to Section XVI, classified in that heading.

DECISION

The first issue which the Tribunal shall address is the classification of the “rapid cigarette lighter chargers”. On consent of the parties, the Tribunal finds that the “rapid cigarette lighter chargers” should be classified under tariff item No. 8504.40.99 as other static converters. The Tribunal notes that this consent

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

5. Reliance was placed on the Explanatory Notes to Chapter 84, *Bionaire v. DMNR* (29 June 1993), AP-92-110 (CITT) and *Crosby Valve v. DMNR* (20 November 1991), AP-90-179 (CITT) for this proposition.

6. Reliance was placed on the Explanatory Notes to heading Nos. 85.17 and 85.25 for this proposition.

judgement is not a finding of fact by the Tribunal nor a considered application of the law to the facts by the Tribunal. It merely gives effect to a settlement agreed to by the parties.⁷

The second issue which the Tribunal shall address is the classification of the “battery packs for cellular telephones” or the “goods in issue”. 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 and the *Canadian Rules*.⁸ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁹ and the Explanatory Notes.

The General Rules are structured in cascading form. If the classification of goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the [subsequent rules].

The competing headings in this case are as follows:

85.07	Electric accumulators, including separators therefor, whether or not rectangular (including square).
85.29	Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.

Note 2(a) to Section XVI, which includes Chapter 85, provides that parts of machines which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. Note 2(b) provides that other parts, if suitable for use solely or principally with a particular kind of machine are to be classified with that machine. Therefore, the Tribunal must first determine whether the goods in issue are parts.

It is the Tribunal’s view that the evidence demonstrates that the goods in issue are parts of cellular telephones. The goods in issue are ergonomically designed to form a complete unit with a cellular telephone, as the plastic housing forms the back of the telephone. Cellular telephones cannot work without a battery pack attached, as the battery pack provides the telephone with its power. The goods in issue have no alternative function than that of supplying power to a cellular telephone. It is not safe or prudent for a user to power a cellular telephone by other means. By design, the goods in issue are committed for use with a particular model of Nokia cellular telephone. Cellular telephones are also marketed and sold with battery packs, and the goods in issue are marketed and sold for use with cellular telephones. Therefore, the goods in

7. In particular, the Tribunal notes the comments of Mahoney J. in *Uppal v. Canada (Minister of Employment and Immigration)*, [1987] 3 F.C. 565 (F.C.A.) at 575-576:

A consent judgement has no precedential value. Generally speaking, a court granting a consent judgment is concerned with only two things: the capacity of the parties to agree and its jurisdiction to make the order they have agreed to ask it to make. A consent judgement reflects neither findings of fact nor a considered application of the law to the facts by the court. It is an exercise in a different fashion of the court’s basic function to resolve disputes: by giving effect to a settlement agreed to by legally competent persons rather than by reaching a concluded opinion itself.

8. *Supra* note 2, Schedule I.

9. Customs Co-operation Council, 1st ed., Brussels, 1987.

issue are parts of cellular telephones. The Tribunal finds that the fact that the goods in issue are not imported with the cellular telephones or necessarily sold with the cellular telephones does not change their characterization as parts of cellular telephones.

As the goods in issue are parts of cellular telephones, the Tribunal must now determine whether, in accordance with Note 2(a) to Section XVI, the goods in issue are goods included in any of the headings of Chapters 84 and 85, specifically, in heading No. 85.07 as electric accumulators. The witnesses provided the Tribunal with a number of general and technical dictionary definitions of “accumulator” and related terms. However, the Tribunal notes that the Explanatory Notes to heading No. 85.07 contain a detailed description of electric accumulators. Therefore, the Tribunal finds that resort to the definitions provided by the witnesses is not necessary. The Explanatory Notes to heading No. 85.07 state, in part:

Electric accumulators (storage batteries) are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container.

In light of this description of an electric accumulator, it is the Tribunal’s view that heading No. 85.07 does not include goods which are an assembly of components, one of those being an electric accumulator. The heading includes what was described by the witnesses as batteries or cells and their casing, but does not include the printed circuit board, other components or the moulded plastic housing around the entire assembly. Therefore, it is the Tribunal’s view that the goods in issue, being an assembly of components, including batteries or cells, a printed circuit board and a plastic housing, are not goods included in heading No. 85.07.¹⁰

The Tribunal must now consider Note 2(b) to Section XVI and whether the goods in issue are for use solely or principally with cellular telephones. The evidence before the Tribunal is that the goods in issue are designed to be used solely with a single model of Nokia cellular telephone. Therefore, the Tribunal finds that the goods in issue are for use solely or principally with cellular telephones and, by application of Note 2(b) to Section XVI, that the goods in issue are to be classified with cellular telephones.

Finally, in order for the goods in issue to be classified in heading No. 85.29, the Tribunal must consider whether cellular telephones are apparatus of heading Nos. 85.25 to 85.28. The Tribunal must apply the *Customs Tariff* as it existed on the date of importation of the goods in issue. The goods in issue were imported in 1997. The Tribunal notes that the Explanatory Notes to heading No. 85.17 and to heading No. 85.25 were amended in June 1998 to specify that cellular telephones are classified in heading No. 85.25. This amendment was not as a result of a change in the terms of heading No. 85.25, as the terms of the heading did not change from 1997 to 1998. Therefore, it is the Tribunal’s view that, even though the change to the Explanatory Notes was made after the date of importation, the change reflects how the heading was to

10. This reasoning is consistent with the Tribunal’s reasoning in, for example, *Bionaire*, *supra* note 5. It is also consistent with the direction contained in the Explanatory Notes to Chapter 84 which apply Note 2(a) to Section XVI. The Explanatory Notes indicate that parts of a machine are to be classified in the heading of Chapter 85 in which they fall, unless they are incorporated with other parts of the machine.

be interpreted at the time of importation.¹¹ While the Tribunal is not bound by the terms of the Explanatory Notes,¹² given the clear direction in the Explanatory Notes, the Tribunal is of the view that cellular telephones are classified in heading No. 85.25.

In conclusion, the Tribunal is of the view that the goods in issue are parts and are for use solely or principally with cellular telephones and that cellular telephones are classified in heading No. 85.25. Therefore, it is the Tribunal's view that the goods in issue should be classified under tariff item No. 8529.90.00 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28. Accordingly, the appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member

11. *Reha Enterprises v. DMNR* (28 October 1999), AP-98-053 and AP-98-054 (CITT).

12. *Fastco Canada v. DMNR* (29 April 1997), AP-96-078 (CITT).



Ottawa, Friday, November 10, 2000

Appeal No. AP-99-082

IN THE MATTER OF an appeal heard on May 11, 2000, 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 August 3 and October 12, 1999, with respect to requests for redetermination under section 63 of the *Customs Act*.

BETWEEN

NOKIA PRODUCTS LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

CORRIGENDUM

The last sentence of the second paragraph of the Unofficial Summary should read: "The Tribunal finds that the goods in issue should be classified under tariff item No. 8529.90.99 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28."

The second sentence of the last paragraph of the Reasons for Decision should read: "Therefore, it is the Tribunal's view that the goods in issue should be classified under tariff item No. 8529.90.99 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28."

This corrigendum pertains only to the English version. The French version will reflect the changes when published.

By order of the Tribunal,

Michel P. Granger
Secretary