



Ottawa, Thursday, January 11, 2001

Appeal No. AP-99-117

IN THE MATTER OF an appeal heard on August 21, 2000,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of the
Canada Customs and Revenue Agency dated December 22, 1999,
and January 27, 2000, with respect to a request for redetermination
under section 63 of the *Customs Act*.

BETWEEN

LAXUS PRODUCTS LTD.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS
AND REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-99-117

LAXUS PRODUCTS LTD.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS
AND REVENUE AGENCY

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions of the Commissioner of the Canada Customs and Revenue Agency dated December 22, 1999, and January 27, 2000, regarding goods imported into Canada from November 1997 to November 1998. The goods in issue are slippers in the shape of animals and designed to be worn by children. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6405.20.90 as other footwear, with uppers of textile materials, as determined by the respondent, or should be classified under tariff item No. 9503.41.00 as stuffed toys representing animals or non-human creatures or, in the alternative, under tariff item No. 9503.49.00 as other toys, as claimed by the appellant.

HELD: The appeal is dismissed. The Tribunal finds that the goods are *prima facie* footwear of heading No. 64.05. The Tribunal also finds that the goods in issue are *prima facie* other toys of heading No. 95.03. The Tribunal is, therefore, directed by Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System* to classify the goods in issue in the heading that provides the most specific description. The Tribunal is of the view that, while the term “toy” covers a variety of goods, the term “footwear” is restricted to garments worn on the feet. The Tribunal is also of the view that heading No. 64.05 provides a more complete description of the goods in issue than does heading No. 95.03. Given the foregoing, the Tribunal finds that the goods in issue are properly classified under tariff item No. 6405.20.90 as other footwear, with uppers of textile materials.

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 21, 2000
Date of Decision: January 11, 2001

Tribunal Members: Zdenek Kvarda, Presiding Member
Peter F. Thalheimer, Member
Richard Lafontaine, Member

Counsel for the Tribunal: Marie-France Dagenais

Clerk of the Tribunal: Anne Turcotte

Appearances: Donald Petersen, for the appellant
Greg Moore, for the respondent



Appeal No. AP-99-117

LAXUS PRODUCTS LTD.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS
AND REVENUE AGENCY**

Respondent

TRIBUNAL: ZDENEK KVARDA, Presiding Member
PETER F. THALHEIMER, Member
RICHARD LAFONTAINE, Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency dated December 22, 1999, and January 27, 2000, made under section 63 of the Act, regarding goods imported into Canada from November 1997 to November 1998. The goods in issue are slippers in the shape of animals and designed to be worn by children. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6405.20.90 of the schedule to the *Customs Tariff*² as other footwear, with uppers of textile materials, as determined by the respondent, or should be classified under tariff item No. 9503.41.00 as stuffed toys representing animals or non-human creatures or, in the alternative, under tariff item No. 9503.49.00 as other toys, as claimed by the appellant.

The relevant tariff nomenclature is as follows:

64.05	Other footwear.
6405.20	-With uppers of textile materials
6405.20.90	--Other
95.03	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.
	-Toys representing animals or non-human creatures:
9503.41.00	--Stuffed
9503.49.0	--Other

EVIDENCE

The appellant filed samples of the goods in issue as physical exhibits. The parties agreed that the goods in issue are slippers, irregularly shaped in the form of the animals that they represent, such as frogs, dogs, turtles, hedgehogs and gorillas. The outer soles and uppers of the slippers are made of textile materials. The slippers have an opening in which to place the foot, and they come in different sizes.

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

Dr. Patrick John McGrath, a registered clinical psychologist, Psychology Department, Dalhousie University, gave evidence on the appellant's behalf. Dr. McGrath was qualified by the Tribunal as an expert in child psychology and child interaction with articles.

Dr. McGrath testified that children play with different articles, such as cardboard boxes, pots and pans, and that, by using their imagination, they transform articles into playthings.

According to Dr. McGrath, toys are used to interact with children in three different ways. The first way is just to spark their interest and to start conversation. The second way is to assess some of their feelings or understanding in different situations. Finally, toys are sometimes used to make a diagnosis.

Dr. McGrath stated that, since the slippers in issue come with an adoption certificate, children are likely to consider them toys and to play with them. He also stated that children make up stories about articles similar to the goods in issue, since they are in the shape of animals and named in accordance with the shape that they represent.

Dr. McGrath testified that, in his opinion, children consider these slippers to be playthings and find them appealing on that basis.

ARGUMENT

The appellant stated that the goods in issue are toys and, as such, are *prima facie* classifiable in heading No. 95.03. It argued that the evidence is clear that children play with the slippers and that they have an amusement value. The appellant made reference to a dictionary definition of the word "toy", which, it argued, is defined as an "object to play with, often a model or miniature replica of something"³ and a diminutive animal. However, the appellant also stated that the goods in issue, even if they are less functional than ordinary slippers, can be considered as footwear and, as such, are also *prima facie* classifiable in heading No. 64.05.

The appellant argued that, since the goods in issue are *prima facie* classifiable in both heading Nos. 64.05 and 95.03, reference must be made to Rule 3 of the *General Rules for the Interpretation of the Harmonized System*,⁴ which provides for the classification of goods which are *prima facie* classifiable in two or more headings. It further argued that, pursuant to Rule 3 (a) of the General Rules, neither heading provides a more specific description of the goods and that the goods could not be classified pursuant to Rule 3 (b) of the General Rules because they are not mixtures or composite goods. The appellant submitted that the goods in issue are not made up of two materials or components, each of which gives the goods a separate quality or separate usefulness. Therefore, they are not composite goods. In the alternative, if the Tribunal finds that the goods are composite goods, the appellant submitted that no single material gives the goods their "essential character". Thus, pursuant to Rule 3 (c) of the General Rules, the appellant submitted that the goods in issue should be classified in the heading which occurs last in numerical order, that being heading No. 95.03.

In support of its argument, the appellant made reference to the decisions in *Calego International v. DMNR*⁵ and *Zellers v. DMNR*,⁶ where certain plush articles, shaped in the form of animals, used as

3. *The New Shorter Oxford English Dictionary*, 1996, s.v. "toy".

4. *Supra* note 2, schedule [hereinafter General Rules].

5. (29 May 2000), AP-98-102 (CITT).

6. (29 July 1998), AP-97-057 (CITT) [hereinafter *Zellers*].

backpacks and pillows were classified by the Tribunal in heading No. 95.03 as other toys on the basis of Rule 3 (c) of the General Rules.

In the alternative, the appellant submitted that the goods in issue may not be classifiable in heading No. 64.05, since “[t]oy footwear” is not covered by Chapter 64, as specifically provided in Note 1(f) of Chapter 64. The appellant argued that “toy footwear” could mean an article that serves a dual purpose, such as the goods in issue. The slippers serve as footwear, as they can be worn on the feet, and they are toys, since a child can play with them. Accordingly, the appellant argued that the goods should be classified in heading No. 95.03.

The respondent argued that the goods in issue are properly classified in accordance with Rule 1 of the General Rules under tariff item No. 6405.20.90 as other footwear, with uppers of textile materials. He submitted that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁷ to Chapter 64 describe various types of footwear, regardless of their shape or size, the particular use for which they are designed, the method of manufacture or the materials used. He argued that Chapter 64 is very wide in its application and encompasses the goods in issue. The respondent also made reference to Note (A)(6) of the Explanatory Notes to Chapter 64 that specifically mentions that Chapter 64 includes house footwear, e.g. bedroom slippers.

The respondent submitted that it is clear from the evidence that the goods in issue come within the ambit of what is understood to be footwear. The slippers come in pairs, have holes in which a child can put his feet and have treads on the bottoms, which makes it easier to walk and grip the surface on which they are walking. There is also fabric around the slippers, both on the sides and the bottoms to insulate and cushion the feet. He argued that the slippers are functional, designed as footwear and intended to be used by children as household footwear. He further argued that the toy design of the slippers, which makes them more attractive to children, does not supplant the fact that they are footwear.

The respondent made reference to a ruling of the U.S. Customs Service, which, he argued, classified identical products to the goods in issue in heading No. 64.05. With respect to whether the slippers in issue are “toy footwear” and, as such, excluded from Chapter 64 pursuant to Note 1(f), the respondent submitted that toy footwear refers to replica footwear or diminutive footwear and that the slippers in issue are not “toy footwear”.

The respondent further submitted that the goods in issue are not classifiable in Chapter 95 as toys. The respondent argued that an amusement value can indicate whether an item should be considered a toy, but it is not a determinative factor. The respondent made reference to the Tribunal’s decision in *Regal Confection v. DMNR*,⁸ where the Tribunal held that amusement alone does not make an object a toy for purposes of tariff classification. Accordingly, the respondent submitted that, while the slippers in issue are in the shape of animals and may appear to have an amusement component, their amusement value is minimal.

Finally, the respondent submitted, in the alternative, that should the Tribunal find that the goods in issue are *prima facie* classifiable in two headings, they should be classified in accordance with Rule 3 (a) of the General Rules in heading No. 64.05. The respondent argued that the heading that provides the most specific description is that of footwear rather than that of toys. He further argued that the primary feature of the slippers is footwear and that the secondary feature is their shape as animals.

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

8. (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITT) [hereinafter *Regal*].

DECISION

The first issue that the Tribunal must determine is whether the goods in issue are *prima facie* classifiable in two headings. 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*.⁹ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹⁰ 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:

64.05 Other footwear.

95.03 Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds.

The Tribunal finds that the goods in issue are *prima facie* footwear of heading No. 64.05. As noted by the respondent and accepted by the appellant, the goods in issue have outer soles and uppers, both made of textile materials. They have an opening in which to place the foot and are intended to be worn on the feet and used indoors. While the Tribunal acknowledges that the slippers may have amusement value and that their design makes them more fun to wear, they come in pairs and are designed to serve as footwear. Therefore, the Tribunal is of the view that the goods in issue are *prima facie* classifiable as footwear in heading No. 64.05.

The Tribunal also finds that the goods in issue are *prima facie* toys of heading No. 95.03. The Explanatory Notes to Chapter 95 provide that this chapter covers “toys of all kinds whether designed for the amusement of children or adults”. The Explanatory Notes to heading No. 95.03 provide that the heading covers “toys intended essentially for the amusement of persons (children or adults)”. The Explanatory Notes to heading No. 95.03 also provide that goods remain “toys” even if they are capable of a limited “use”. A toy is generally distinguishable from the “real” item by its size and limited capacity. In both *Zellers* and *Regal*, the Tribunal stated that, in essence, a toy is something from which one derives pleasure or amusement. A toy is “an object which is intended to amuse and with which to play”.¹¹

The Tribunal finds that the goods in issue were designed to resemble plush toys and, therefore, were designed for the amusement of children. The Tribunal finds that, in light of the terms of the Explanatory Notes which acknowledge that a toy may have some limited “use”, the utilitarian function of the goods in issue of wearing them as slippers does not prevent the goods in issue from being classifiable as toys. Therefore, the Tribunal is of the view that the goods in issue are *prima facie* classifiable as other toys of heading No. 95.03.

9. *Supra* note 2, schedule.

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

11. *Zellers*, *supra* note 6 at 7.

Since the goods in issue are *prima facie* classifiable in two headings, Rule 3 (a) of the General Rules must be applied. The first sentence of Rule 3 (a) states that “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description”. As indicated above, the Tribunal believes that the goods in issue function both as slippers, since they can be placed on the feet, and as toys, since they have an amusement function. However, the Tribunal considers that both headings are not equally descriptive for the purposes of Rule 3 (a). The Tribunal is of the view that, while the term “toy” covers a wide variety of goods, the term “footwear” is limited to goods that are worn on the feet. The Tribunal is, therefore, of the view that heading No. 64.05 provides a more specific description of the goods in issue than does heading No. 95.03. Given the foregoing, the Tribunal finds that the goods in issue are properly classified as “other footwear” in heading No. 64.05.

In conclusion, the Tribunal is of the view that the goods in issue should be classified under tariff item No. 6405.20.90 as other footwear, with uppers of textile materials.

Consequently, the appeal is dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Richard Lafontaine
Richard Lafontaine
Member