

1955  
 {  
 Oct. 11  
 —  
 1956  
 {  
 Feb. 22  
 —

THE DEPUTY MINISTER OF NA-  
 TIONAL REVENUE FOR CUS-  
 TOMS AND EXCISE ..... }

APPELLANT;

AND

GENERAL SUPPLY COMPANY OF }  
 CANADA LIMITED ..... }

RESPONDENT.

*Revenue—Customs Duty—Appeal on question of law from Tariff Board's decision—Meaning of "accessory" when applied to angledozer used with internal combustion tractor—The Customs Tariff Act, R.S.C. 1952, c. 60, Schedule A, tariff items 427a, 409m(1).*

The respondent imported two angledozers, the one on June 10, 1952, the other on January 6, 1953. Each consisted of a steel blade and two connecting arms, the latter being used to attach the blade to the main

component, namely the tractor. The lifting and tilting mechanism which control the operations of the blade formed a permanent part of the tractor itself. The Customs appraiser classified the angledozers under Schedule A, tariff item 427a to the *Customs Tariff Act*, R.S.C. 1952, c. 60, as machinery of a class or kind not made in Canada and the classification on review by the appellant at the request of the respondent was confirmed. The respondent appealed to the Tariff Board and it held that the angledozers were "accessories" for internal combustion tractors and therefore classifiable under Tariff item 409(m)(1) of the Act, and allowed the appeal. The sole question for determination in the present appeal is whether the Tariff Board erred as a matter of law in its decision.

1956  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 & EXCISE  
 v.  
 GENERAL  
 SUPPLY CO.  
 OF CANADA  
 LTD.

*Held:* That there was material before the Board which indicated that in some parts of the trade angledozers were considered to be "accessories" and it was for it to determine whether that evidence should be accepted rather than that which would lead to a contrary conclusion. It was also for the Board to determine whether on the evidence the relationship of the angledozer to the tractor was that of a subsidiary adjunct and therefore an accessory to the tractor within the dictionary definition of "accessory" and since it was not established that the Board in reaching its conclusions acted unreasonably or erred as a matter of law its decision must be upheld.

APPEAL under the *Customs Act* from a decision of the Tariff Board.

The appeal was heard before the Honourable Mr. Justice Cameron at Ottawa.

*K. E. Eaton* and *R. W. McKimm* for the appellant.

*Gordon F. Henderson, Q.C.* for the respondent.

CAMERON J. now (February 22, 1956) delivered the following judgment:

This is an appeal from a declaration of the Tariff Board dated March 7, 1955, brought under the provisions of s. 45 of the *Customs Act*, R.S.C. 1952, c. 58. It relates to two separate importations by the respondent, one entered at Montreal, P.Q., on June 10, 1952, and the other at Thetford Mines, P.Q., on January 6, 1953. The Entry For Home Consumption forms are respectively Exhibits D-2 and D-3. Each entry included an internal combustion traction engine, and certain attachments (the attachments being particularized in Exhibits D-3 and D-4). No question arises as to these engines and attachments which were admitted "free" under Tariff Item 409m(1), which then read as follows:

409m(1). Internal combustion tractors (not to include highway truck-tractors) and accessories therefor; parts of all the foregoing . . .

1956  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 & EXCISE  
 v.  
 GENERAL  
 SUPPLY CO.  
 OF CANADA  
 LTD.  
 Cameron J.

Each entry, however, included also an "angledozer" and it is in connection with this part of the entries that the difficulty has arisen. The appraiser classified the angledozers under Tariff Item 427a, which was as follows:

427a. All machinery composed wholly or in part of iron or steel, n.o.p., of a class or kind not made in Canada, complete parts of the foregoing . . .

The appellant herein was requested by the respondent to review the appraiser's classification and on July 27, 1954, he made his finding that the angledozers had been properly classified as "machinery of a class or kind not made in Canada, under Tariff Item 427a at 7½ per cent *ad valorem*, Most-Favoured-Nation Tariff rate."

From that decision an appeal was taken to the Tariff Board. The appeal of the respondent herein was allowed, the majority of the Board (the chairman—Mr. H. B. McKinnon—and Mr. W. W. Buchanan) being of the opinion that the angledozer was properly described as an accessory to the tractor and therefore properly classifiable under Tariff Item 409m(1). The vice-chairman of the Board—Mr. F. J. Leduc—dissented and would have dismissed the appeal, being of the opinion that the angledozer was a machine in its own right and therefore classifiable under Tariff Item 427a.

Leave to appeal from the Board was granted by Fournier J. on June 27, 1955, on the following question of law:

Did the Tariff Board err as a matter of law in deciding that two Angledozer imported under Montreal Customs Entry No. E-28831 dated June 10, 1952, and Thetford Mines Customs Entry No. 2076 dated January 6, 1953, respectively, were accessories for internal combustion tractors and therefore classifiable under Tariff Item 409m(1) of the Customs Tariff?

The sole question for determination, therefore, is whether the Board erred in law in deciding that angledozers were "accessories" within the meaning to be attributed to that word in Tariff Item 409m(1). It is agreed that if they erred in law on that point, the goods imported were properly classifiable under Tariff Item 427a.

Each of the angledozers imported was manufactured by Letourneau Inc., of Texas, U.S.A. It consisted of a steel blade and connecting arms, the latter being used to attach the blade to the main component—namely, the tractor (or, as it is called by the manufacturer, a "Tornadozer"). The

evidence establishes that each of the angledozers in issue is equipment usable only as an attachment on the size and model of the tractor for which it was designed, namely, the Tournadozer which was imported at the same time. It is common ground that when the Tournadozer and angledozer are assembled, the entirety is used as an earth-moving machine. In the case of the goods imported, the lifting and tilting mechanisms which control the operations of the blade, form a permanent part of the Tournadozer itself. Mr. A. J. Fenwick, the secretary-treasurer of Northern Machine Works Ltd., of Bathurst, N.B.—a firm which manufactures angledozers (sometimes called bullgraders) for sale to International Harvester Company, said that the angledozers made by his company consisted of the blade, connecting arms, and the lifting mechanism as well.

1956  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 & EXCISE  
 v.  
 GENERAL  
 SUPPLY CO.  
 OF CANADA  
 LTD.  
 Cameron J.

In considering an appeal to this Court from a declaration of the Tariff Board, it is always necessary to keep in mind the distinction between the duties cast on the Board in deciding which item of the tariff is applicable to the goods imported, and those placed on this Court when hearing an appeal from such a declaration. The distinction was noted by the President of this Court in *Deputy Minister of National Revenue for Customs and Excise v. Parke Davis & Co. Ltd.* (1). The appeal to this Court being on a question of law only, the issue is not whether the angledozers imported were “accessories” for internal combustion tractors, but whether the Board erred as a matter of law in deciding that they were. As stated in the *Parke Davis* case, “If there was material before the Board from which it could reasonably decide as it did, this Court should not interfere with its decision even if it might have reached a different conclusion if the matter had been originally before it.”

The declaration of the majority of the Board is as follows:

The question at issue in this Appeal is the meaning to be given to the word “accessories” as that word is used in tariff item 409m.

It was made abundantly clear from oral evidence and from illustrative exhibits filed during the hearing that the word “accessories” is not commonly used, by persons familiar with the marketing of tractors, to describe such optional ancillary equipment as may be mounted on or attached to tractors. One witness, W. E. Jolley, Secretary of International Harvester

(1) [1954] Ex. C.R. 1 at 20.

1956  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 & EXCISE  
 v.  
 GENERAL  
 SUPPLY CO.  
 OF CANADA  
 LTD.  
 —  
 Cameron J.  
 —

Co., giving expert evidence for the Crown, when asked "Are there any tractor accessories?" replied "Not in our terminology". (Transcript, page 58).

It was suggested by counsel for the Crown that the word "accessories" when used in connection with tractors was more or less synonymous with the word "attachments"; Mr. Eaton: "Yes, for the purposes of 409m I think that, on the basis of the evidence, including the exhibits and what the witnesses have said, probably 'attachments' and 'accessories' in the tractor business amount to the same thing, 'attachment' being more commonly used."

In the illustrative exhibits filed at the hearing, such ancillary equipment as the angledozers under appeal is described as "accessories" or "attachments". (Vide Exhibits D.7, A.4 and A.6.)

Counsel for the Crown argued, and in this argument he was supported by his witnesses, that each of the angledozers at issue, being arms and a blade, is machinery in itself; this being the case, it was somewhat unrealistic, he argued, to regard an angledozer as merely an accessory to another machine. It is difficult to see much force in this contention. Whether or not one thing can be described as an accessory of another depends on the relationship of the two, rather than on what each is, in itself.

Clearly, each of the angledozers at issue is a piece of ancillary equipment usable only as an attachment on the size and model of tractor for which it was designed. Its relationship with the tractor is plainly that of a subsidiary adjunct, and as such each of the angledozers at issue would properly be described as an accessory to the tractor.

Accordingly, the Appeal is allowed.

Counsel for the Crown submits that the conclusions stated in paragraph 2 are findings of fact binding on this Court and that they amount to a finding that, in the trade, angledozers are not considered as "accessories" to tractors; that finding by the Board he submits does not warrant the Board's conclusion that the angledozers are within Tariff Item 409m(1). I am unable to agree that such is the case. It will be noted particularly that the statement that the word "accessories" is not *commonly* used is the use by persons familiar with the *marketing* of tractors. In that statement, the majority of the Board were clearly relying on the evidence of Mr. Jolley, secretary of the International Harvester Co., which firm does not manufacture angledozers but purchases them from Canadian and American manufacturers and sells them to its retailers. His opinion was that in his trade "accessories" to tractors were quite unknown.

That opinion was not shared by the other Crown witness, Mr. Fenwick. In his view "accessories to tractors" would be "things added to the machine, not needed to actually

operate the machine but provided for the ease and comfort of the operator, such as headlights on the tractor, or speedometer, or the canopy on the top." He did not consider the angledozer to be an accessory but rather a complete machine in itself, the same as a bullgrader or a snowplow, for fitment or attachment to a crawler or wheel tractor. He would have considered the angledozer as an "attachment" rather than an "accessory." Mr. Fenwick stated quite frankly that he was giving his opinion "on behalf of an allied tractor equipment manufacturer."

Mr. Fenwick's distinction between tractor attachments and tractor accessories corresponds with the definitions of lift truck attachments and lift truck accessories found on page 2 of Exhibit D-8, an illustrated booklet of the Hyster Co. in which it is stated:

Industrial truck attachments are those mechanical devices, tools or special work rigs which are attached to a standard truck to do special or specific jobs and which increase the uses, productivity and efficiency of the unit. (The Hyster Load-Crab, scoops, booms, rams, etc., are examples of lift truck attachments.)

Accessories, for the purpose of this catalog, are defined as those items which may be purchased which would increase the ease, safety, comfort or efficiency of operation under certain conditions but are not considered as standard equipment or a regular part of the standard truck. (Lights, horns, special lug tires, cabs, etc., are considered accessories.)

It is the same distinction between attachments and accessories which counsel for the Crown submits should have been applied to tractors by the Board.

The evidence above referred to is of such a nature that, if accepted in preference to other evidence, the Board might reasonably have reached a conclusion that angledozers were either *not* accessories or were, in fact, attachments.

There was also evidence referred to in the majority declaration of the Board that in the trade angledozers are referred to under the heading of "accessories or attachments", the terms apparently being used synonymously. More particularly, there was evidence in illustrated material filed that in the trade angledozers—as well as other similar pieces of equipment to be used with tractors—were described as accessories. In Exhibit A-7, an advertisement put out by the Baker Lull Corp. of Minneapolis (the appellant company being its Canadian distributor), and relating to a special form of tractor called a "Shovel loader", it is stated on pages 2 and 4:

1956  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 & EXCISE  
 v.  
 GENERAL  
 SUPPLY Co.  
 OF CANADA  
 LTD.  
 Cameron J.

1956  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 & EXCISE  
 v.  
 GENERAL  
 SUPPLY CO.  
 OF CANADA  
 LTD.  
 Cameron J.

Available accessories such as lift forks, solid tires, narrow bucket, crane hooks and special catalytic equipment increase Shovel loader's versatility still further.

*Accessories*

36" Lift Forks, Solid Tires for Rear and Front Wheels, Narrow Bucket and Crane Hook Available at Extra Cost . . .

Again, in Exhibit A-8—the advertisement of Galion Iron Works, illustrations of a scarifier, a snow plow and wing, and an all-steel cab appear under the heading "Accessories" in relation to a motor grader. In Exhibit A-9, an advertisement relating to tractor shovels, the bulldozer blades, fork lift, snow plows and snow bucket are all included as accessories. In Exhibit A-15, Towmotor Standard Accessories include a great variety of attachments for performing special types of moving and lifting goods.

In addition to the evidence the Board was referred to a number of standard dictionaries defining accessories:

*The Oxford English Dictionary*

1. An accessory thing; something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment;

*Webster New International Dictionary*

2. Any article or device that adds to the convenience or effectiveness of something else but is not essential, as a speedometer on an automotive vehicle.

*Webster's Dictionary of Synonyms*

Appendage, appurtenance, accessory, adjunct agree in designating something regarded as additional, and at the same time as subsidiary, to another object . . .

Accessory is applied usually to that which is dispensable yet contributes to the appearance, usefulness, comfort, convenience, or the like of the principal thing; as, automobile accessories; costume accessories.

It is clear, therefore, that there was material before the Board which indicated that in some parts of the trade at least angledozers were considered to be "accessories" to tractors. It was a matter for the Board to determine whether that evidence should be accepted rather than that which would lead to a contrary conclusion. It was also for the Board to determine whether on the evidence the relationship of the angledozer to the tractor was that of a subsidiary adjunct and therefore an accessory to the tractor within the dictionary definition of "accessory". I am unable to find that the majority of the Board in reaching their conclusions acted unreasonably or erred as a matter of law

in deciding that the angledozers in issue were accessories for internal combustion tractors and therefore classifiable under Tariff Item 409m(1) of the Customs Tariff.

The answer to the question submitted is therefore "No". It follows that the appeal herein must be dismissed with costs.

*Judgment accordingly.*

1956  
DEPUTY  
MINISTER OF  
NATIONAL  
REVENUE  
FOR CUSTOMS  
& EXCISE  
v.  
GENERAL  
SUPPLY Co.  
OF CANADA  
LTD.  
Cameron J.