1954
Feb. 1, 2
May 8

BETWEEN:

GENERAL SUPPLY COMPANY OF CANADA, LIMITED ..... APPELLANT;

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE, AND DOMINION HOIST AND SHOVEL COMPANY, AND DOMINION RUBBER COMPANY ..... RESPONDENTS.

*Revenue—Customs and Excise—Goods subject to duty—The Customs Tariff Act, R.S.C. 1927, c. 44, s. 2(2), Schedule A, Tariff items 427, 431 and 438a—The Customs Act, R.S.C. 1927, c. 42, as amended, ss. 2(1)(r), 20(a), 48(2) and 50—Tariff Board—Question of law on appeal from Tariff Board—Crawler machine—Power shovel essentially different from ordinary concept of shovel—"Shovel" means a hand shovel—Power shovel not a "motor vehicle"—"Other conveyance of what kind soever" in s. 2(1)(r) of the Customs Act to be construed with some limitation—Material before Tariff Board—Court not to interfere with decision of Tariff Board if reasonably made—Appeal from Tariff Board dismissed.*

In 1951 appellant imported from the United States "one New Bay City Model 45 Power Shovel equipped with 24" crawler shoes, 19 ft. Boom 14 ft. handle and ¾ yard dipper; also trench hoe attachment including 19' trench hoe boom, trench hoe mast and 36" trench hoe bucket, powered by General Motors Diesel Engine", which the Deputy Minister of National Revenue ruled as dutiable under tariff item 427 of the Customs Tariff Act, R.S.C. 1927, c. 44, namely "all machinery composed wholly or in part of iron or steel n.o.p. and complete parts thereof". From that ruling appellant appealed to the Tariff Board, contending that the imported article was within the term "shovel" in tariff item 431, or that it fell within tariff item 438a as being a conveyance and therefore within the definition of "vehicle" found in s. 2(r) of the Customs Act, R.S.C. 1927, c. 42, and further, and inasmuch it was powered by a motor, it was a motor vehicle. The Board without giving any reason for its finding held that the machinery at issue was properly classifiable as machinery of iron or steel. An application by appellant, under the provisions of s. 50 of the Customs Act, for leave to appeal to this Court from the Board's decision on a question of law was granted. *General Supply Co. of Canada Ltd.* v. *Deputy Minister of National Revenue, Customs and Excise* [1953] Ex. C. R. 185. On the appeal the question to be answered by the Court was "Did the Tariff Board err as a matter of law in deciding that the goods imported were not properly classifiable either (*a*) as a 'shovel' under tariff item 431; or (*b*) as a 'vehicle' under tariff item 438a".

*Held:* That what appellant purchased was a crawler called *the base machine* plus two front-end attachments, namely (*a*) a boom handle and dipper which, when attached to the base machine enabled the whole to be used as a power shovel; and (*b*) a boom mast and trench hoe bucket which, when attached to the base machine enabled the whole to be used as a trench hoe.

2. That assuming that what was imported was a power shovel only, a power shovel consisting of a very complicated piece of machinery, and costing nearly $20,000.00, is essentially different from the ordinary concept of a shovel—a small hand tool having a value of only a few dollars. To the public at large "shovel" means only a hand shovel. "Shovels" in item tariff 431 of the Customs Tariff Act, R.S.C. 1927, c. 44 does not include a power shovel.

3. That assuming again that the imported article is a power shovel only, no one in or out of the motor vehicle trade would consider a power shovel to be a motor vehicle. "Motor vehicle" to the public has a special and definite significance and it refers to such things as self-propelled vehicles equipped with facilities either in the form of a body or seats for use in the transportation of goods or persons from one location to another. The power shovel does not normally transport material by moving itself with its load from one place to another on its crawler mounting but its main purpose is digging and dropping its load in one location. It is not a "motor vehicle" and does not fall within tariff item 438a of the Customs Tariff Act, R.S.C. 1927, c. 44.

4. That in view of the context of s. 2(r) of the Customs Act, 1927, c. 42, as amended, "conveyance" as used therein is limited to a vehicle which is not only capable as a whole of moving from one location to another, but is designed for that purpose and whose function, while

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so moving, is the carrying or transporting of goods or passengers. "To convey" means more than the capacity to move from place to place; it involves the carrying or transporting of persons or of things other than its own component parts. A power shovel does not fulfill any of these requirements. Its chief function is that of excavation and not that of conveyance. It does not fall within any of the particular vehicles named in s. 2(r) of the Act.

5. That the Tariff Board was right in its conclusions that the imported article fell within tariff item 427—machinery composed wholly or in part of iron or steel n.o.p. If there was material before it from which it could reasonably decide as it did, the Court should not interfere with its decision, even if it might have reached a different conclusion if the matter had been originally before it. *Deputy Minister of National Revenue for Customs and Excise* v. *Parke, Davis Co. Ltd.* [1954] Ex. C.R. 1 referred to and followed.

6. There was material before the Board on which it could reasonably reach the conclusion it did and on the evidence it is not possible to see how it could have come to any other conclusion.

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

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

*G. F. Henderson, Q.C.* and *Paul Hewitt* for appellant.

*W. R. Jackett, Q.C.* and *George Rogers* for Deputy Minister of National Revenue.

*Hugh E. O'Donnell, Q.C.* for Dominion Rubber Company.

*André Forget, Q.C.* for Dominion Hoist and Shovel Company.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. now (May 8, 1954) delivered the following judgment:

This is an appeal from a decision of the Tariff Board dated September 16, 1952, and is brought under the provisions of s. 50 of The Customs Act, R.S.C. 1927, c. 42 as amended. All references herein to The Customs Act will refer to that Act and not to The Customs Act, R.S.C. 1952, c. 58.

Briefly, the facts are as follows. The appellant on February 13, 1951, imported certain goods from the United States, and at Montreal—the port of entry—the goods

were given Entry No. Z108570. There the port assessor classified a diesel engine, which formed part of the goods imported, under Tariff Item 428e and the balance under Tariff Item 427. In 1952 Mr. Gordon Hooper—a tariff consultant and agent of the appellant—requested a review of the appraiser's tariff classification (Tariff Item 427). Under the provisions of s. 48(2) of The Customs Act, the Deputy Minister of National Revenue—Customs and Excise—reviewed the appraiser's decision in regard to the entry, and by letter dated April 9, 1952 (Exhibit A-1) notified Mr. Hooper as follows:

> From information before the department, the Model 45 Power Shovel of ¾ cubic yard capacity, as illustrated and described in Bulletin 45D of the manufacturers, cleared on Montreal Entry No. Z-108570, February, 1951, together with complete parts thereof including the propulsion motor, is dutiable under Tariff Item 427 at 25% ad valorem, Most Favoured Nation Tariff, this rate of duty being in effect at time of importation.

From that decision of the Deputy Minister, the appellant, under the provisions of s. 49, appealed to the Tariff Board. The respondents herein, namely Dominion Hoist and Shovel Company and Dominion Rubber Company, entered appearances with the Secretary of the Tariff Board and were represented at the hearing before the Board, as well as on this appeal. The appellant's submission to the Board—which was the same as that made to the Deputy Minister—was that the goods imported should not have been classified under Tariff Item 437, but under Tariff Item 431 of The Customs Tariff Act (R.S.C. 1927, c. 44 as amended) as a "shovel"; or, alternatively, under Tariff Item 438*a* of that Act as a "vehicle".

The Tariff Board rejected the submissions of the appellant, its decision being as follows:

> The Power Shovel at issue, Model 45, is not properly classifiable under either tariff item 431 or tariff item 438*a*, but is properly classifiable as Machinery of Iron or Steel.

Under the provisions of s. 50 of The Customs Act the appellant applied for and was granted leave to appeal to this Court. Under that section the right of appeal is limited to "any question that in the opinion of the Court or judge is a question of law". The points of law raised by the appellant were:

> 1. Are the words "or other conveyance of what kind so ever" appearing in Section 2(r) of the said the Customs Act words limited in scope

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or are they words of enlargement to include anything that conveys and therefore the Power Shovel Model 45 constituting the subject matter of the Customs Import Entry herein.

2. Is the word "shovels" appearing in tariff item 431 of the Customs Tariff Act, R.S.C. 1927, c. 44, which reads "shovels and spades of iron or steel, n.o.p." used in its generic sense and therefore including the Power Shovel Model 45 constituting the subject matter of the tariff entry herein or in the restricted sense of a hand shovel.

On the application for leave to appeal, the questions submitted were not given as serious consideration as I now think should have been done. In his judgment in the case of *The Deputy Minister of National Revenue for Customs and Excise* v. *Parke, Davis and Company, Limited* (1), the President of this Court set out the form in which a question of law should be submitted to this Court on an appeal from the Tariff Board. Following the precedent there stated, I think that from a practical point of view, the question to be decided by me is this:

> Did the Tariff Board err as a matter of law in deciding that the goods imported by the appellant under Entry Z108570 were not properly classifiable either (a) as a "shovel" under Tariff Item 431; or (b) as a "vehicle" under Tariff Item 438*a*.

No oral evidence was submitted to the Tariff Board. Submissions were made to it on behalf of the appellant and the Deputy Minister and certain exhibits were filed in support. The parties have agreed that those submissions and exhibits would constitute the record before me. Later, by consent, one further exhibit—a cultivator shovel (Exhibit D-13)—was put in evidence.

At the hearing of this appeal there was some uncertainty as to whether the appeal had to do with all or only a portion of the goods described in Entry No. Z108570, and I think it advisable to state at once my conclusions on that point. Exhibit A-2 is the invoice submitted by or on behalf of the appellant to the appraiser at port of entry, pursuant to s. 20 (a) of The Customs Act. Therein the goods imported are said to be "one crawler crane—$\frac{3}{4}$ yard" and purchased by the appellant from Bay City Shovels Inc. of Bay City, Michigan. The quantities and description of goods is stated as follows:

> One (1) New Bay City Model 45 Power Shovel equipped with 24" crawler shoes, 19 ft. Boom 14 ft. handle and $\frac{3}{4}$ yd. dipper; also trench hoe attachment including 19' trench hoe boom, trench hoe mast and 36" trench hoe bucket.
>
> Powered by General Motors Diesel Engine.

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

The fair market value of the entry less the diesel engine was stated to be $19,370.00 and that of the diesel engine $2,000.00—a total of $21,370.00 After allowance was made for agency and cash discounts, the net cash price was stated at $18,271.35. The approximate weight was given as 55,000 lbs.

I have examined the record carefully and am quite satisfied that the Deputy Minister reviewed the classification to be given to all of the goods referred to in the invoice and in Entry Z108570; and that in his letter of April 9, 1952, to Mr. Hooper, he made it quite clear that he had classified the entry as a whole and as falling within tariff Item 427. At the hearing a certified copy of the notice of appeal dated June 6, 1952, was added to the record by consent. In that letter, which was signed by Mr. Hooper, it is stated that the appeal is from the decision of the Deputy Minister dated April 9, 1952, a copy of which was enclosed; and although the letter refers to "the Model 45 Power Shovel of $\frac{3}{4}$ cy. yd. capacity", I think that there can be no doubt whatever that the appeal was intended to be and was, in fact, from the Deputy Minister's decision as a whole. There is no suggestion in the letter that the importer accepted the decision as to a portion of the goods imported or that the appeal had to do with other than the entire entry. In my opinion, therefore, the appeal now before me relates to all the goods set out in the invoice and summarized in the entry.

As I have stated, the goods imported were classified under Tariff Item 427, which is as follows:

> Tariff Item 427: All machinery composed wholly or in part of iron or steel, n.o.p., and complete parts thereof.

The first and main contention of the appellant is that the goods should have been classified under Tariff 431, which is "Shovels and Spades, of iron and steel, n.o.p." It becomes necessary, therefore, to state in some greater detail the nature of the goods as illustrated and described in the illustrated bulletins supplied by the manufacturers and which form part of the record—Exhibits A-3, D-8 and D-12. As I have said, the invoice refers to the shipment as a Crawler

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Crane. In the bulletin it is referred to as a Crawler or Crawler Equipment, or as a Crawling Machine. In Exhibit 3 the following general description is given:

> The Model 45 is a heavy-duty full revolving crawler machine having a nominal crane rating of 14 tons at 10 foot radius with 35 foot boom and with bucket capacity of ¾ Cu. Yd. It is fully convertible and may be used as Shovel Hoe Crane Clamshell Dragline and Pile Driver.

The basic part of the equipment consists of a steel cab mounted on two wide crawlers, the cab enclosing and protecting the diesel engine and the operating machinery. It is called *the base machine,* and while there is no evidence on the point, I think I may assume that it is by far the most expensive part of the equipment. It is fully convertible, that is to say, that by changing the front-end attachments, the equipment may be used as a shovel, hoe, crane, clamshell, pile driver or dragline. In this case, the equipment purchased with it indicates that it could be used either as a shovel or as a trench hoe. There is no evidence as to whether at the time of importation it was assembled so as to operate as a shovel or as a trench hoe, or whether it was assembled at all, but I do not consider that to be of any great importance. The standard single speed of the crawler, forward or reverse, is ¾ m.p.h.

What the appellant purchased was, I think, the crawler or base machine, plus two front-end attachments, namely (*a*) a boom handle and dipper which, when attached to the base machine enabled the whole to be used as a power shovel; and (*b*) a boom mast and trench hoe bucket which, when attached to the base machine enabled the whole to be used as a trench hoe. I consider this finding to be of special significance because of the argument of appellant's counsel that what was imported was a power shovel—an argument with which I cannot agree. His entire argument on this point is based on that submission and on the further submission that the word "shovels" in Item 431 is broad enough to include all types of shovels, including a power shovel. It is true that the invoice—which, of course, was prepared by or on behalf of the appellant—uses the expression "Model 45 Power Shovel", and that later in the correspondence and Notice of Appeal that expression was

continued. With equal inaccuracy it might have been called a Model 45 Power Trench Hoe, or—if the purchase had included a pile driver—a Model 45 Pile Driver.

Notwithstanding this finding as to the true nature of the imported goods, I am prepared to dispose of the appeal on the assumption that what was imported was a power shovel only—that is, the base machine equipped with boom handle and dipper. I am of the opinion that "shovels" in Item 431 does not include a power shovel.

An ingenious and somewhat technical argument is put forward by the appellant and is based on the "n.o.p." phrase which appears at the end of Item 431. Counsel submits that as "shovels" are not classified *eo nomine* elsewhere in The Customs Tariff Act, all shovels, including power shovels, are included in Item 431. He points out that that item first appeared in its present form in c. 13, Statutes of Canada, 1930. At the same time, "shovels" appeared as one of the many articles set out in Item 422a and it is manifest from the context that "shovels" therein meant only "power shovels". That being the case, he argues that as of that date "shovels n.o.p." in Item 431 did not include "power shovels" which were otherwise provided for in Item 422a. Item 422a, however, was amended by c. 30, Statutes of Canada, 1931, and as so amended (it is still in the same form) did not include the word "shovels". He argues, therefore, that since that amendment "shovels" ceased to be otherwise provided for and therefore Item 431 included all types of shovels, including power shovels.

The answer to that argument is to be found, I think, in the statement of Mr. Hind, a customs officer who appeared before the Board. He was asked as to the effect of the "n.o.p." provision and stated that it could include not only *eo nomine* classifications, but also end use tariff items. He refers specifically to one example which then occurred to him, namely, Item 663b, which provides for articles which enter into the cost of manufacturing fertilizer, and stated that if a fertilizer manufacturer wanted to buy a hand shovel for exclusive use in the manufacture of fertilizers, it would be allowed in free under Item 663b. From that instance alone it is clear that not all shovels—or even all

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hand shovels—fall within Item 431 since they are "otherwise provided for". Exhibit D-13 is also called a shovel and is designed for use on a cultivator. As such it would be free of duty under Item 409b as "cultivators and complete parts thereof".

Since Item 431 was first incorporated in the tariff it has been uniformly and without exception administered as applying to hand tools and not to power-operated machines. As early as 1887 there was an item "shovels and spades and spade blanks", the rate of duty being $1.00 per dozen and 25 per cent. As late as 1924 the item was precisely the same as at present, but included also "shovel or spade blanks of iron or steel cut to shape for the same". It is clear that both these items refer exclusively to hand shovels.

Then there are a number of other matters, no one of which perhaps would be quite conclusive, but all of which combined point to the conclusion that power shovels are not within Item 431. First may be noted the fact that "shovels" is associated with "spades"—the latter being a hand tool that performs much the same function and is within the same price range as a hand shovel. Then Item 431 is the first of a series of items ending at 431f, made up almost altogether, if not entirely, of hand tools of one sort or another. Other tariff items refer directly or indirectly to shovels and assist in throwing some light on the meaning of that word. Item 502c refers to "wood handles or stems for handles, not further manufactured than turned, when imported by manufacturers of goods enumerated in tariff items . . . and 431 for use exclusively in the manufacture of goods enumerated in said items". Again, Item 501 is "D shovel handles, wholly of wood." Item 379c is "bars, when imported by manufacturers of shovels for use exclusively in the manufacture of shovels, in their own factories". Item 386(*e*) is "sheets, hoop, band or strip, hot or cold rolled, when imported by manufacturers of shovels for use exclusively in the manufacture of shovels, in their own factories". All of these items in their reference to "shovels" clearly mean hand shovels only.

As I have said, the Department has consistently construed "shovels" as being limited to hand shovels and in doing so I think they were right. There can be no doubt

that that is the primary meaning of the word. The word was used in the tariff long before there were any power shovels. The primary meaning and the meaning which I think would be normally attributed to the word is that found in the Shorter Oxford English Dictionary, as follows:

> A spade-like implement, consisting of a broad blade of metal or other material (more or less hollow and with upturned sides), attached to a handle and used for raising and removing quantities of earth, grain, coal or other loose material. (In some dialects applied to a spade.)

That dictionary makes no mention of a power-operated shovel and the definition is not wide enough to include anything operated other than by hand.

The French text of Item 431 is also of some assistance in determining the meaning of the word "shovels". There the word used is "pelles" and counsel for the appellant referred to the definition of that word in Nouveau Petit Larousse Illustré, 1952 Edition. I think, however, that the definition there supports the respondent's argument rather than the appellant's. It may be translated as follows:

> A tool which is made up of one part which is wide and flat, and a handle of various lengths, which may be put to a number of uses.

The appended four illustrations are all of hand shovels of various shapes. The definition there does not suggest that "pelle" includes a power-operated shovel, but it does refer to phrases in which it is used in combination with other words, including "pelle à vapeur"—a steam shovel. In the French text "pelles", in my opinion, is referable only to hand shovels.

In Funk & Wagnall's New Standard Dictionary, 1945, the first meaning of shovel is "A flattened scoop with a handle used to lift and throw earth, coal or other loose substance or for digging." Again, several instances are given in which "shovel" is used in combination with other words, including "steam shovel", an illustration of which is given. But it is not suggested that steam shovel is included in the definition of shovel.

In Webster's New International Dictionary, 2nd Ed., 1953, the primary meaning of shovel is "a broad scoop or a more or less hollow blade with a handle used to lift and

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throw earth, coal, grain, etc." The three illustrations provided are all of hand shovels. Reference is made to a "power shovel" which is defined and illustrated elsewhere under its own heading.

In my view, a power shovel consisting of a very complicated piece of machinery, and costing perhaps $20,000.00, is essentially different from the ordinary concept of a shovel—a small hand tool having a value of only a few dollars. To the public at large "shovel", I think, means only a hand shovel. It is apparent from the exhibits that even in the trade power shovels are not uniformly referred to as such, but as excavators, cranes, crawlers or crawler machines.

I have reached the conclusion, therefore, that the imported goods do not fall within Tariff Item 431.

The appellant in the alternative submits that if the goods imported are not "shovels", then they are "motor vehicles" and so fall within Tariff Item 438*a*, which is as follows:

> 438*a*. Automobiles and motor vehicles of all kinds, n.o.p.; electric trackless trolley buses; chassis for all the foregoing . . . Provided, that machines or other articles mounted on the foregoing or attached thereto for purposes other than loading or unloading the vehicle shall be valued separately and duty assessed under the tariff items regularly applicable thereto.

The submission is as follows: By section 2(2) of The Customs Tariff Act, R.S.C. 1927, c. 44 as amended, The expressions mentioned in section two of The Customs Act, whenever they occur herein or in any Act relating to the Customs, unless the context otherwise requires, have the meaning assigned to them respectively by the said section two. By s. 2.1.(*r*) of The Customs Act, "vehicle" is defined as follows:

> 2. In this Act, or in any other law relating to the Customs, unless the context otherwise requires,
>
> (*r*) "vehicle" means any cart, car, wagon, carriage, barrow, sleigh, aircraft or other conveyance of what kind soever, whether drawn or propelled by steam, by animal, or by hand or other power, and includes the harness or tackle of the animals, and the fittings, furnishings and appurtenances of the vehicle;

Counsel for the appellant emphasizes the broad terms which define "vehicle" and particularly the phrase "or other conveyance of what kind soever". He says that a motor vehicle is a vehicle powered by a motor; that the goods

imported are designed to and do in fact "convey" and are therefore within the broad term "conveyance of what kind soever".

In considering this submission I shall assume that we are dealing with the imported goods when set up as a power shovel. Now the Tariff Item refers to "motor vehicle" and in my opinion no one, in or out of the trade in which "motor vehicles" are dealt with, would consider a power shovel to be a motor vehicle. That term to the public has a special and definite significance and without attempting to define it precisely, I think it refers to such things as motorized trucks, buses, ambulances, hearses and other self-propelled vehicles equipped with facilities either in the form of a body or seats for use in the transportation of goods or persons from one location to another. In doing so the device moves on its own wheels with its load from one place to another. The power shovel, however, does not normally transport material by moving itself with its load from one place to another on its crawler mounting. In performing its normal function the base of the machine remains in a stationary position. The front-end attachment—the shovel—digs out the earth or stones, the materials being carried by the bucket in a horizontal arc within a radius of 360 degrees of the base machine and a distance not exceeding the length of the boom and dipper stick which in this case is 28 feet. It is possible, of course, that on some occasions it may be necessary for the base machine to move backward or forward a very short distance, with a full bucket, before dropping the load. But when one considers that its top speed over the ground is $\frac{3}{4}$ of a mile per hour, it is obvious that its main purpose is digging and dropping its load in one location and not that of transporting goods from place to place. None of the exhibits refer to it as a "motor vehicle" and I do not think that any one would consider it as such.

Quite obviously a power shovel does not fall within any of the particular vehicles named in subsection (*r*). It must be conceded that the phrase "other conveyance of what kind soever" is very broad. I think, however, that it must be construed with some limitation, particularly in view of its context, the opening words of s. 2 being: "Unless the context otherwise requires". Obviously the context excludes from the term "conveyance" many things which fall within

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the dictionary definitions of that term and which do, in fact, convey. For example, a deed of land is a conveyance of property; a fire hose conveys water; a spoon or fork conveys food; a hand shovel conveys earth. But none of these articles are "conveyances" within the definition and so are not vehicles or motor vehicles.

In view of the context, I think that "conveyance" as here used is limited to a vehicle which is not only capable as a whole of moving from one location to a different location, but is designed for that purpose and whose function, while so moving, is the carrying or transporting of goods or passengers. "To convey" means more than the capacity to move from place to place; it involves the carrying or transporting of persons or of things other than its own component parts. I do not think that a power shovel fulfills any of these requirements. The crawler and its crawler shoes are no doubt designed to provide not only stability while the machine is in operation, but also a limited amount of movement—a manoeuvreability which is essential to the operation. Normally its movement is confined to the scene of operations—an excavation for a foundation, a quarry or the like. It is not designed to move from one location to another distant location. I think I may assume that when it is moved from one location to a substantially different location, it does not move there under its own power, but is, in fact, transported on a carrier.

Moreover, the function of a power shovel is not to convey goods from one place to another except within the very limited area which I have stated. Its function is to work in a fixed location, to excavate material and to drop it; and when the material excavated is not left in the immediate area, it is placed in trucks which in turn transport it to some other location. Its chief function is that of excavation (in fact, it is frequently referred to as an excavator) and not that of conveyance.

In my view, the power shovel does not fall within the term "motor vehicles of all sorts".

I think, also, that the Board was right in its conclusion that the goods imported fell within Item 427—machinery composed wholly or in part of iron or steel n.o.p. The main and essential part of the equipment was the

base machine which comprised valuable and complicated machinery. In the exhibits the whole is repeatedly referred to as "machinery" and that is what it is in fact. I can see no reason whatever for classifying the goods imported by reference only to one of the front-end attachments or to one of several uses to which they might be put. If such a principle were followed, difficulties and unfairness would follow. One importer might bring in a base machine equipped with a shovel front-end; another with a pile driver front-end; and still another with a hoe attachment. Under the principle suggested, one importer would pay duty on his goods as a shovel, another as a pile driver and a third as a hoe; and in each case the imported goods, except for the front end—a very inexpensive part—would be the same.

The issue in this appeal is not whether the article imported by the appellant was a "shovel" within the meaning of that term in Tariff Item 431, or a "motor vehicle" under Tariff Item 438*a*; but whether the Tariff Board erred as a matter of law in deciding that they were in neither of those classes. 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 (*Deputy Minister of National Revenue* v. *Parke, Davis Co. Ltd. (supra)*). There was material before the Board on which it could reasonably reach the conclusion it did. Indeed, on the evidence I do not see how it could have come to any other conclusion. I am therefore of the opinion that the Tariff Board did not err as a matter of law in deciding as it did.

It follows, therefore, that the appeal herein must be dismissed with costs.

*Judgment accordingly.*