Toronto 1969 Sept. 16-17 Ottawa Sept. 24

DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE ..... APPELLANT;

AND

BRASCOP PRODUCTS LIMITED ..... RESPONDENT.

Customs duty—Canada-U.S. Auto Pact—Classification of parts—Wrong form for entry used—Right to reclassification—Motor Vehicles Tariff Order, 1965, P.C. 1965-99 of January 16, 1965.

On the importation of certain motor vehicle parts covered by s. 1 of the Motor Vehicles Tariff Order, 1965 (the Canada-U.S. Auto Pact), the importer's customs broker incorrectly used the white B-1 ordinary entry form instead of the prescribed form, the pink B-1 Special or the white B-1 ordinary with the word "Special" endorsed thereon, and incorrectly classified the goods under Tariff Item 40000-1 instead of 95004-1.

Held (affirming the Tariff Board), the importer was entitled to have the goods reclassified under Tariff Item 95004-1.

APPEAL from Tariff Board.

C. R. O. Munro, Q.C. and *J. E. Gilliland* for appellant.

Hon. R. L. Kellock, Q.C. and *C. W. Hately* for respondent.

GIBSON:—This is an appeal pursuant to section 45 of the *Customs Act*, R.S.C. 1952, c. 58 by the Deputy Minister of National Revenue for Customs and Excise from the declaration of the Tariff Board pronounced in the above cause on November 18, 1968.

By this declaration the Tariff Board found that the respondent Brascop Products Limited was entitled to have a reclassification of certain imported goods made in order to reclassify them in Tariff Item 95004–1[1] of Schedule "A" of the *Customs Tariff Act*; and declared such imported goods to be properly classified in Tariff Item 95004–1.

The respondent Brascop Products Limited, through its customs broker Russell A. Farrow Limited, acting as its agent, imported on the invoice of the exporter Essex Wire Corporation, C.P. Fittings Division, South Bend, Indiana,

[1] 95004–1 All parts, and accessories and parts thereof, except tires and tubes, when imported for use as original equipment in buses to be produced in Canada by a manufacturer of buses.

a quantity of pipe connections in fulfilment of orders in writing received by it from General Motors Diesel Limited of London, Ontario, a duly authorized manufacturer of automobiles, buses and commercial vehicles. These parts were within the meaning of "parts" in section 1 (4) of the *Motor Vehicles Tariff Order, 1965*[2], which implemented the so-called Canada-United States Auto Pact; and are now in said Tariff Item 95004–1 of Schedule "A" of the *Customs Tariff Act*, R.S.C. c. 44, s. 1. (As to numbering authorized by an amendment to *Customs Tariff Act*, S. of C. 1965, c. 17, s. 1 and the *Customs Tariff Re-numbering Order 1965-1*).

The importer at the time of importation classified the subject goods in and used incorrectly Tariff Item 40000-1 of said Schedule "A", *viz*:

> 40000–1 Fittings and couplings of iron or steel, n.o.p., for pipes and tubes; parts therefor

Invoking the provisions of section 43 of the *Customs Act*, the importer then asked for a reclassification to the correct one namely, in Tariff Item 95004–1. The Deputy Minister of National Revenue for Customs and Excise in his decision on this request by way of letter dated May 27, 1968, declined to do so. (See Exhibit "N" to the agreed statements of fact, filed.) But the Deputy Minister in his said decision reclassified the subject goods into Tariff Item 43829–1 of said Schedule "A", *viz.*:

> 43829–1 Parts, n.o.p., electro-plated or not, whether finished or not, for automobiles, motor vehicles, electric trackless trolley buses, fire fighting vehicles, ambulances and hearses, or chassis enumerated in tariff items 42400–1 and 43803–1, including engines, but not including ball or roller bearings,

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[2] MOTOR VEHICLES TARIFF ORDER 1965.

1. The rates of Customs duties on the following goods imported into Canada on or after January 18, 1965 from any country entitled to the benefit of the British Preferential Tariff or Most-Favoured-Nation Tariff, for which a special entry in such form and manner as is prescribed by the Minister has been made, are reduced to the rate set out as follows opposite the description of those goods:

. . .

(4) All parts, and accessories and parts thereof, except tires and tubes, when imported for use as original equipment in buses to be produced in Canada by a manufacturer of buses....Free

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wireless receiving sets, die castings of zinc, electric storage batteries, parts of wood, tires and tubes or parts of which the component material of chief value is rubber.

The reason given by the Deputy Minister for not reclassifying the said imported goods into their correct Tariff Item of said Schedule "A" to the *Customs Act*, namely Tariff Item 95004–1 was that:

> ...under the Motor Vehicles Tariff Order 1965, re-classification into any of the tariff items of the 95000 series is precluded where, at time of first entry of the goods, a special entry, in such form and manner as prescribed by the Minister, has not been made. Consequently, as this particular requirement was not met, it is the decision of the Deputy Minister that these parts are dutiable under tariff item 43829–1 at 25% ad valorem, Most-Favoured-Nation Tariff.

By his said decision, what the Deputy Minister said in effect was that he could not reclassify these subject goods into their proper Tariff Item classification because they were not goods imported into Canada (specifying them) "for which a special entry in such form and manner as is prescribed by the Minister has been made, . . ." within the meaning of those words in section 1 of the *Motor Vehicles Tariff Order, 1965*, at the time of or "forthwith" after the time of such importation into Canada. What this means is that the customs broker's clerk used Bill of Entry form B-1 ordinary (authorized by the Minister under section 124 of the *Customs Act*) which is white in colour instead of form B-1 "Special" pink in colour or B-1 ordinary with the word "Special" endorsed on it, (the latter two also both authorized by the Minister under section 124 of the *Customs Act*).

Form B-1 ordinary is white in colour and form B-1 "Special" is pink. Both are similar except for two matters namely, as is obvious, one is white and the other is pink, and the pink one has the word "Special" printed on it. (But as stated, the B-1 ordinary white in colour can also be used provided the word "Special" is endorsed on it.) All of the printing on both forms is identical.

The customs broker's clerk in error not only used the B-1 ordinary white form instead of the B-1 "Special" pink form, (or instead of a B-1 ordinary white form with the word "Special" endorsed on it as he also could have used) but also in classifying the said imported goods and record-

ing the same on the form, he wrote in the wrong Tariff Item (under Schedule "A" of the *Customs Tariff Act*) in the place for the Tariff Item on the form, namely 40000–1 instead of 95004–1.

Then this customs broker used what is called a B-2 form in an attempt to correct these two errors. Section 43(6) of the *Customs Act* authorizes the Governor-in-Council to prescribe this form for use in amending proceedings for re-determination of tariff classification or re-appraisal of the value for duty. This form on its face, is called a form for the purpose of "Amending Import Entry—Request for Re-determination or Re-appraisal by a Dominion Customs Appraiser—Re-Fund". In other words, it purports to be a form for use to serve three purposes, namely, to amend a customs entry, to request a re-determination or a re-appraisal and to request a re-fund (if applicable).

The appropriate customs officials when they received the said B-2 form from this said customs broker did purport to amend the customs entry in that they endorsed on the said B-1 Bill of Entry form (ordinary) used in error by the said customs broker which the customs official had given an entry number of 104707D, the words "Amended by Entry number 465276A".

The problem here is whether the words in section 1 of the *Motor Vehicles Tariff Order, 1965* "for which a special entry in such form and manner as is prescribed by the Minister has been made, . . ." were meant to be an enactment of law relating solely to the entry of such imported goods specified in the said order-in-council.

If such were the case, these words would not be an enactment of law relating to re-determination of tariff classification or re-appraisal of the value for duty of such imported goods. In that event, the appeal provisions permitting amendments to entries for classification and for appraisals of duty of any goods contained in the *Customs Act,* especially sections 43, 44 and 45 would not be affected in any way by these words.

As I view the problem, against this statutory background permitting amendments, these words were enacted in this order-in-council. As a result, they must be subject to the rule of strict construction. If it was intended that

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these words would have the effect of precluding an importer from recourse to these amendment procedures authorized by statute, more precise words, in my view, would have been employed than were employed[3].

As a consequence, I am of the view that these words in this order-in-council do not have such effect.

The conclusion therefore that I reach is that there was no error in law in the declaration of the Tariff Board in this matter.

The appeal is dismissed with costs.

[3] cf. Fauteux J. in *Goodyear Tire & Rubber Co. of Canada et al v. T. Eaton Co. et al* [1956] S C.R. 610 at 614 where he refers to the "rule that a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness,...".