

Ottawa
1967
Apr. 12
Apr. 28

BETWEEN:

CENTRAL ELECTRIC WIRE LIMITED . . APPELLANT;

AND

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

Customs duty—Appeal from Tariff Board—Classification of imported steel rods for use in manufacture of wire—Customs Tariff, R.S.C. 1952, c. 60, am. 1958, c. 27, Items 379b, c.

In November 1964 appellant imported coils of hot-rolled lead-coated stainless steel wire rods .217 inches in diameter for converting into wire in its factory. The majority of the Tariff Board held that the rods were properly classified under Tariff Item 379b as “. . . rods of . . . steel . . . further processed than hot- or cold-rolled, . . .”. Appellant appealed on the ground that they were properly classifiable under Item 379c as “rods of steel, in the coil, not more than 375 inches in diameter, when imported by manufacturers of wire for use in the manufacture of wire . . .”.

Held, allowing the appeal, the rods fell precisely within the language of Item 379c which was designed, by way of exception from the three preceding items, to cover these very circumstances.

APPEAL from Tariff Board.

John J. Urie, Q.C. for appellant.

L. R. Olsson for respondent.

CATTANACH J.:—This is an appeal, pursuant to section 45 of the *Customs Act*, R.S.C. 1952, chapter 58 as amended by Statutes of Canada, 1958, chapter 26, from a majority decision of the Tariff Board dated December 2, 1966 whereby coils of hot-rolled lead coated stainless steel wire rod imported from the United States of America, but originally manufactured in Japan, at the Port of Perth, in the Province of Ontario, under Customs Entry No. 1471 on November 25, 1964, were declared to be properly classified under Tariff Item 379b (now Tariff Item 37910-1) R.S.C. 1952, chapter 60 as amended by Statutes of Canada, 1958, chapter 27.

The appellant, in the Statement of Facts in its Notice of Appeal alleges the following:

1. The Appellant is a body corporate and politic carrying on the business of a manufacturer of electric wire and cable at the Town of Perth in the Province of Ontario.

2. The Appellant imports coils of hot-rolled, stainless steel wire rods 217 inches in diameter which is imported by the Appellant from the United States through the Port of Perth.

3. The goods in issue were entered under customs Entry No. 1471 on November 25th, 1964 under Tariff Item 37910-1, then Tariff Item numbered 379b.

4. The Appellant requested that the goods be classified under Tariff Item 37915-1 (then No. 379c), but the request was denied by a Dominion Customs Appraiser who ruled that the goods were properly classified under Tariff Item 37910-1 and so notified the Appellant by notification dated January 25, 1965, which decision was affirmed by the Deputy Minister of National Revenue on June 16, 1965.

5. The coils of wire in issue are made of hot-rolled stainless steel which has been immersed in a bath of molten lead so that a lead coating adheres to the rod. The purpose of the coating is to facilitate the drawing process, acting as a lubricant, which process takes place in the Appellant's factory in the course of its manufacture of electric wire. All of the lead must be completely removed before the manufacturing process is completed.

The respondent in his reply admits the foregoing facts alleged by the appellant, but relies upon the further following facts, with respect to which there is no dispute between the parties, adduced in evidence before the Tariff Board:

...

3. The goods were described in the customs invoice accompanying the entry as "hot-rolled lead-coated stainless steel wire rods". The Appellant in ordering stainless steel rods specifies a diameter of 0 217 inches, pickled, annealed and lead-coated. In the rod manufacturer's factory the rods are formed by a hot-rolling process applied to the steel and are annealed and pickled and coiled into large coils weighing about 400 pounds. These coils are then dipped into a molten lead bath and when the steel and lead reach the same temperature the lead adheres to the steel and forms a coating around the rod. The coils are then refrigerated to solidify the coating. The lead coating is approximately 3% of the cross section of the coated rod and it adheres to the steel very firmly.

4. In the Appellant's factory, wire is made from rod by a drawing process wherein the diameter of the rod is greatly reduced in the conversion to wire. The lead coating acts as a lubricant carrier in the drawing process. The Appellant uses a dry soap powder containing 7% lead in its lubricant box and this powder is picked up by the lead coating and carried into the drawing die to act as a lubricant. When the cross section of the rod has been reduced 85% in area by drawing, the lead coating is removed by the application of nitric acid, and the final 15% draw is completed with oil as a lubricant.

5. Stainless steel rods for drawing wire may also be coated with other coatings such as copper, cadmium, lime or various branded coating. Other steel rods may be drawn without any coating at all.

1967

CENTRAL
ELECTRIC
WIRE LTD.

v.

DEPUTY
MINISTER OF
NATIONAL
REVENUE FOR
CUSTOMS
AND EXCISE

Cattanach J.

1967

CENTRAL
ELECTRIC
WIRE LTD.

v.

DEPUTY
MINISTER OF
NATIONAL
REVENUE FOR
CUSTOMS
AND EXCISE

Cattanach J.

For purposes of convenience and consistency I shall refer to the tariff items by the numbers which were applicable when this cause arose.

Under section 45 of the *Customs Act* a party to an appeal from a decision of the Deputy Minister has an appeal, as of right, to this Court upon any question of law. The right of appeal so conferred by section 45 is, therefore, limited to a question of law.

The question to be decided is whether the majority of the Tariff Board erred as a matter of law in holding that the imported wares were properly classified under Tariff Item 379*b* as contended by the Deputy Minister rather than under Tariff Item 379*c* as contended by the appellant.

Section 3(1) of the *Customs Tariff* provides:

3. (1) Subject to the provisions of this Act and of the *Customs Act*, there shall be levied, collected and paid upon all goods enumerated, or referred to as not enumerated, in Schedule A, when such goods are imported into Canada or taken out of warehouse for consumption therein, the several rates of duties of Customs, if any, set opposite to each item respectively or charged on goods as not enumerated, in the column of the tariff applicable to the goods, subject to the conditions specified in this section.

The relevant tariff items in the present appeal appear in Schedule "A" as follows:

GOODS SUBJECT TO DUTY AND DUTY FREE GOODS

Tariff Item		British Preferential Tariff	Most-Favoured-Nation Tariff	General Tariff
	GROUP VIII			
	Metals, and Manufactures Thereof.			
379	Bars or rods of iron or steel, hot-rolled, plain or deformed, namely. rounds half-rounds, ovals, half-ovals, squares, round-cornered squares, hexagons, octagons or other multisided bars or rods, flats, 13/64 inch or more in thickness and eight inches or less in width	5 p.c.	10 p.c.	20 p.c.
379 <i>a</i>	Bars or rods of iron or steel, as described in tariff item 379, cold-rolled or cold-drawn	5 p.c.	15 p.c.	25 p.c.
379 <i>b</i>	Bars or rods of iron or steel, as described in tariff item 379, further processed than hot-or-cold-rolled or cold-drawn, or otherwise processed.	5 p.c.	15 p.c.	25 p.c.
379 <i>c</i>	Rods of iron or steel, in the coil, not more than 0.375 inch in diameter, when imported by manufacturers of wire for use in the manufacture of wire, in their own factories	Free	\$3.00	\$5.00
				per ton

Counsel for the appellant submits that the words of Tariff Item 379c are clear and unambiguous and that the wares imported fall precisely within those words as a consequence of which there is no necessity and it is an error in law in such circumstances to consider other tariff items as an aid to the interpretation of those words. He contends that the imported wares are (1) rods of steel, (2) in the coil, (3) not more than the prescribed diameter, (4) the appellant is a manufacturer of wire and (5) the wares are for use in the manufacture of wire in the appellant's factory. There is no dispute whatsoever that the last four qualifications in Tariff Item 379c are met by the appellant. However, counsel for the appellant further contends that the "rods of steel" which were imported, fall within the meaning of those words in Tariff Item 379c whether the rods were "coated" with lead or not so "coated".

On the other hand counsel for the Deputy Minister contends that for the purpose of construing any enactment it is proper to find the legislative intent from the statute as a whole. On this premise he concludes that the legislative scheme is clear from the many references to "coating" in other items and that where a tariff item, such as Tariff Item 379c makes no reference to "coating" then the item must be interpreted as not including coated metals and that there is no error in law on the part of the majority of the Board in having referred to other items in the *Customs Tariff* to so conclude. He then contends that Tariff Item 379b is applicable. Tariff Item 379b imports the description of the wares outlined in Item 379, that is to say hot-rolled rods of steel. The hot-rolled rods of steel have been further processed as contemplated in Tariff Item 379b by the application of a lead coating by the original manufacturer.

There is no doubt in my mind that the imported wares were "further processed", beyond being hot-rolled, by the application of a lead coating. The word "process" contemplates the wares being subjected to a treatment designed to effect a particular result. This is what the Tariff Board found and in my view correctly so.

The appellant specifically required, in placing its order for the wares, that they should be lead coated. It did so for the express purpose of facilitating its own manufacturing process of reducing the rods of steel to electrical wire. To

1967
 CENTRAL
 ELECTRIC
 WIRE LTD.
 v.
 DEPUTY
 MINISTER OF
 NATIONAL
 REVENUE FOR
 CUSTOMS
 AND EXCISE
 Cattanach J.

1967

CENTRAL
ELECTRIC
WIRE LTD.

v.

DEPUTY
MINISTER OF
NATIONAL
REVENUE FOR
CUSTOMS
AND EXCISE

Cattanach J.

the appellant the lead coating was temporary in the sense that it would be ultimately removed and the sole purpose of the lead coating was to serve as a lubricant carrier.

However, section 43 of the *Customs Act* as amended by Statutes of Canada 1955, chapter 32, appears to say clearly that the time for determining tariff classification is at the time of the entry into Canada of the goods subject to duty. (See Hall J. in *D.M.N.R. v. MacMillan & Bloedel (Alberni Ltd.)*¹). I think it is also clearly inferred in the above section that the state of goods for tariff classification is the state of the goods at the time of entry.

The narrow issue for determination is, therefore, whether the language of Tariff Item 379c is properly construed as including rods of steel coated with lead, although no reference to "coating" is contained therein and if not, whether the wares in question fall within the language of Tariff Item 379b.

I am unable to obtain any real assistance in construing the words of Tariff Item 379c from a perusal of the many items in the Customs Tariff to which Counsel for the Deputy Minister referred me, wherein words such as "coated or not", "not coated", "coated", "coated with metal", "whether or not coated" or "uncoated" appear. All such items are ranged under Group VIII of Schedule "A" headed "Metals, and Manufactures Thereof". Some of such items refer to basic metal formations and others appear to be end products. It is not clear whether the coatings therein referred to are permanent or temporary. There are many other items which do not refer to coatings. I can discern no consistent scheme and can only assume that when such description occurs in a specific item it must be taken as referring only to that item, *ex abundantia cautela*, and cannot be taken to serve as a guide to assist in the interpretation of another item.

Therefore, recourse must be had to the language of specific Tariff Items above quoted, that is, 379, 379a, 379b and 379c. It is apparent that Tariff Item 379 is a general item and attracts a lesser rate of customs duty than either 379a or 379b under the Most Favoured Nation Tariff and the General Tariff. (I assume that the wares here in question fall under the Most Favoured Nation Tariff). Tariff Item

¹ [1965] S.C.R. 366 at p. 371

379a covers bars or rods of iron or steel described in Item 379, but which have been "cold-rolled" or "cold-drawn" upon the importation of which a slightly higher customs duty is imposed. Tariff Item 379b covers bars or rods of iron or steel described as in Tariff Item 379, but further processed than "hot-rolled", which is defined in section 2(1)(c) of the Customs Tariff, or "cold-rolled", which is also defined in section 2(1)(c), or "cold-drawn". The Customs duties under Items 379a and 379b are identical.

1967
 CENTRAL
 ELECTRIC
 WIRE LTD.
 v.
 DEPUTY
 MINISTER OF
 NATIONAL
 REVENUE FOR
 CUSTOMS
 AND EXCISE
 Cattanach J.

However, Tariff Item 379c is obviously an exception to the three immediately preceding Tariff Items 379, 379a and 379b. It is directed to a very limited class of importer who imports "rods of iron or steel" of a limited diameter and "in the coil", who has the particular status of being a manufacturer of wire and who imports the wares for use in the manufacture of wire in his own factory. For such a very limited case, a lesser duty is imposed under Item 379c. If duty were imposed under the Most Favoured Nation Tariff under Item 379b the amount would be \$3,145.20, whereas under the same tariff under Item 379c the duty would be \$46.80.

As intimated before, the appellant meets precisely all the qualifications so imposed by Tariff Item 379c with the possible exception of the first. The only question which requires resolution therefore is whether the imported goods were "rods of steel" within the meaning of those words as they appear in Item 379c. That question comes to this: Is the application of a very thin coating of lead, (constituting 3% of the cross-section of the rod) sufficient to convert the imported wares from the category of "rods of steel" to one of rods composed of steel and lead?

While no evidence was adduced as to any trade acceptance of the meaning, or other definition, of the words "rods of steel", nevertheless, the majority of the Tariff Board declared the wares "to be properly classifiable under Tariff Item 379b". It follows from this that the Tariff Board must have found the ware to have been "rods of steel" within the meaning of those words as they appear in Tariff Item 379b. This is essentially a question of fact once the meaning of the words is ascertained.

I can see no reason for attributing a different meaning to those identical words where they appear in Tariff Item 379c from that which they have in Tariff Item 379b. It

1967

CENTRAL
ELECTRIC
WIRE LTD.

v.

DEPUTY
MINISTER OF
NATIONAL
REVENUE FOR
CUSTOMS
AND EXCISE

Cattanach J.

follows that the wares imported by the appellant fall precisely within each and every requirement of Tariff Item 379c.

No argument was addressed to me as to the consequences which would flow from the circumstance that the wares might be properly classified under both Tariff Items 379b and 379c. Counsel for the Deputy Minister made passing reference to that possibility from which he contended that Item 379c was ambiguous and resort might then be had to the Statute as a whole to resolve that ambiguity. However, in his argument, as I understood it, he was adamant that the wares fell within Tariff Item 379b and not within Item 379c.

Counsel for the appellant, during the course of his argument, made reference to this possibility in a back-handed or negative manner, that is to say, that if the wares did not fall within Item 379c or if Item 379c was not in the Customs Tariff, then it was a possibility that they did not fall within Item 379b.

In my view, for the reasons expressed above, the wares fall within Tariff Item 379c which was designed to cover the circumstance in which the present appellant finds itself. Accordingly the wares should be so classified because, in my view, Tariff Item 379c constitutes an exception from the more general Items 379 and 379b.

I am, therefore, of the opinion that the majority of the Tariff Board erred as a matter of law in declaring that the imported wares were properly classifiable under Tariff Item 379b and not under Tariff Item 379c.

The appeal is allowed with costs and it is declared that the goods in question are classified under Tariff Item 379c.