CUSTOMS APPEAL

Jamaica

No. 17 of 1972 - On 27th & 28th February and 1st & 2nd March, 1973

Before the Revenue Court

In re the Customs Law Cap. 89

BETWEEN

CARIBBEAN CEMENT COMPANY LIMITED - APPELLANT

AND

THE COLLECTOR GENERAL - RESPONDENT

For the Appellant - Dr. L.G. Barnett instructed by Messrs. Milholland, Ashenheim & Stone.

For the Respondent - Mr. V.D. Maxwell & Mr. R.G. Langrin

This is an appeal from a decision of the Respondent made on the 7th September, 1972 whereby it was ordered that certain equipment imported by the Appellant for use in its factory at Rockfort, should be classified under Item # 732.03 of the First Schedule to the Customs Tariff (Revision) Resolution 1954 as a - "Road Motor Vehicle, complete not elsewhere specified"; and that the duty payable thereon was $3,470.66. The equipment in question is an industrial machine described or known as, a "Tennant 92 Industrial Power Sweeper".

Before me it was contended for the Appellant that the Respondent's classification was wrong and that the equipment should have been classified under Item # 716.13.9 or Item # 713.01 of the aforesaid Tariff Resolution.

Evidence was given on behalf of the Appellant by Donald Lloyd Mattis, a Motor Vehicle Examiner employed by the Ministry of Works; and on behalf of the Respondent, by Stanley Rockwell Myers, Deputy Collector General in charge of the Customs Division of the Collector General's Department. A number of exhibits were also tendered in evidence including a brochure

printed...../

printed in colour and issued by the manufacturers of the equipment and including its specifications.

Item # 732.03 of the Tariff Resolution is to be found in Division 73 thereof, which deals with "transport equipment", and is located under the sub-heading "Road Motor Vehicles" and reads as follows:

> "Item # 732.03 - buses, trucks, lorries and road motor vehicles complete, not elsewhere specified".

It follows from this that the Respondent's classification of the equipment implicitly embodies an allegation that it is a Road Motor Vehicle. For reasons which will presently appear, I do not accept that this machine is a Road Motor Vehicle in the ordinary meaning of that expression, although on the evidence it may be capable of being used on the roads. However, the fact that it may be so used in an emergency, or for some limited special purpose, is not sufficient on my understanding of the approach to be taken to the Tariff, to bring it within Item # 732.03 thereof.

The Items of the Tariff relied on by the Appellant are to be found in Division 71, which deals with - "machinery other than electrical machinery".

Item 713.01 appears under the sub-heading -"Tractors other than Steam" and reads as follows:

> "Item 713.01 - Tractors other than steam (but excluding road motor tractors)".

The other item relied on by the Appellant, namely Item # 716.13.9, is located in the same Division and appears under the sub-heading - "Mining Construction and other Industrial Machinery", and reads:

> "Item # 716.13.9 - Other".

The respective rates of duty payable under all of these items are as follows:

(i) Under ...../

(i) Under Item # 732.03 - 20% ad valorem under the Preferential Tariff, and 40% ad valorem under the General Tariff;

(ii) Under Item # 713.01 the rate is - free preferential and 5% ad valorem general;

(iii) Under Item # 716.13.9 the rate is - free preferential and 5% ad valorem general.

In his evidence Mr. Mattis stated that in its present form the Tennant Sweeper could not be issued with a general certificate of fitness under the Road Traffic Regulations, and that it fell into that category of vehicles which required a special permit or certificate. He further explained that the latter type of permit was usually issued where the vehicle had no road springs and other essentials such as a speedometer, and that in his examination of the vehicle he found that it was not fitted with road springs and had no speedometer. In his view if he had to classify the vehicle, he would classify it as a tractor. He admitted under cross examination, however, that the sweeper was a motor vehicle and could be used on the road if specially adapted and if a special permit could be obtained. He also admitted that he had not examined the vehicle for purposes of Customs Duty.

The evidence of Mr. Myers dealt chiefly with the procedure adopted by his Department in classifying goods for purposes of the Customs Duty.

In Falkiner v. Whitton 1917 A.C. 106, Lord Atkinson, in delivering a Judgment of the Judicial Committee, which dismissed an appeal by an importer in Australia, against an assessment to Customs Duty under Schedule A of the Australian Customs Tariff 1911, made the following observations, at page 110, in connection with the Australian Tariff:

"It also..../

> "It also appears from an examination of these enactments that the words "motor cars, waggons and lorries" are not treated as terms of art, and are not used in them in any technical sense or with any special meaning. They must therefore be interpreted according to their common and ordinary meaning, namely, that which they bear in ordinary colloquial speech".

Lord Atkinson was there dealing with enactments which, although obviously not identical with the Jamaican Customs Tariff (Revision) Resolution 1954, were nevertheless sufficiently analogous to be relevant, and I accept the statement as indicating the approach which this Court ought to take in deciding questions under the Jamaican Tariff Resolution; subject always, of course, to any special definitions or rules of interpretation that may be set out therein.

Having therefore considered the evidence presented in the instant case, and in particular the coloured brochure of the Manufacturers of the Tennant Seeeper which contained several photographs of the machine, along with descriptions of its use, power, operational mobility etc., and guiding myself by the approach taken by Lord Atkinson to a somewhat similar question, I have formed the view that anyone describing this machine in ordinary colloquial speech would refer to it as a small industrial truck. It is fitted with three road wheels complete with tyres, a gas tank, a 70 horse power four cylinder engine, headlights, a steering wheel, brakes, an accellerator and an electric starter. It is approximately 112 inches long about 68 inches wide and between 60 to 80 inches high, depending on the type of equipment attached, and weighs about 4,100 lbs. It has all the obvious visual characteristics of the type of industrial trucks commonly seen in factories, workshops and other industrial areas. It is also fitted with detachable power operated brushes at the front and the side, and a vacuum mechanism which sucks up dirt and debris into a large hopper tank fitted to its underside, where the same is stored for disposal elsewhere. Apart from the brushes none of these special features is visible to the naked eye.

Counsel...../

Counsel for the Appellant, in response to a question from the bench, submitted that the machine could not be classified under Item # 716.02 of the Tariff, as an Industrial Truck, because, he said, it was not used for internal transport which was an essential condition for classification under that item. I do not accept that this machine is not used for internal transportation. In my view, although it operates in a special way and by use of special equipment (some of which is detachable) its predominant purpose is to keep the factory and its environs clean by collecting dirt and debris wherever the same may be found and moving them to some convenient spot elsewhere within the compound for dumping. There is no essential difference between that exercise and the use of a small open /which bodied truck on/dirt and debris that had been previously swept up could be loaded manually for removal elsewhere. The only difference being that in the case of the Tennant Sweeper, it is fitted with a number of attachments which eliminates the use of manual labour in the sweeping and collecting part of the process. While therefore, it may not be used exclusively for transport, it <u>is</u> used in that capacity, and the transportation of the rubbish which it collects is an integral part of its function. I therefore see it as a piece of machinery designed to sweep up and collect rubbish and transport the same to some central point for dumping. In short it is an industrial truck used internally within the factory for collecting and transporting garbage and other debris, and the fact that it is transporting rubbish, rather than goods or personnel, is, in my view, irrelevant.

While therefore, I accept that in the ordinary meaning of the term this machine is not a Road Motor Vehicle, and that the classification contended for by the Appellant may be more accurate than that of the Respondent, I am equally satisfied that none of these competing classifications provide the most specific description of the goods available under the Tariff. In my judgment, a more specific description of this

piece ...../

piece of equipment is to be found under Item # 716.02 of the Tariff which reads:

> "Industrial trucks (sometimes known as industrial tractors for use in factories, railroad stations, docks etc. for internal transport)".

So far as visual examination goes the equipment looks like an industrial truck, and the only question in my mind was whether it was an industrial truck used in a factory for internal transport which, as Counsel stated, is an essential element of classification under Item # 716.02. For the reasons already stated however, although this machine is described by its manufacturers as an industrial sweeper, it is, in my estimation, a more comprehensive machine than a mere sweeper, since it also collects and transports the debris which it has swept up or gathered. If, therefore, I am empowered to substitute my own classification for that of the parties to this appeal, I would classify the equipment as an industrial truck under Item # 716.02 of the Tariff Resolutio

At the end of the day therefore, it may be that the real question in this case is whether it is open to me to do so. Counsel for the Appellant submitted that such a course was not ope to this court, which he said was obliged to allow the appeal if it was satisfied that the classification of the Respondent was wrong. If that is so, then its effect would be that the goods would be entered under a classification and at a rate of duty which, on the true view taken by the Court would be contrary to the relevant statutory provisions. Counsel for the Respondent submitted that i was open to the Court to substitute its own classification, and relied on Rule 30 of the Revenue Court Rules 1972, published in the Jamaica Gazette Supplement of the 22nd September, 1972. That rule reads as follows:

> "The Court shall have power to draw inferences of fact and to give any decision and make any order which ought to have been given or made, and to make such further or other order as the

case ...../

> case may require, including the power to refer the matter back to the Respondent for reconsideration."

This rule moreorless speaks for itself, and I am therefore satisfied that it is open to me to make any order or give any decision which, in my judgment, ought to have been made or given by the Respondent in classifying the goods in question.

I might add however, that I have been encouraged in the view which I have taken generally in this matter, by the provisions of Section 19(1) of the Customs Law Cap, 89, which provide in effect that where goods are classifiable under two or more items of the Tariff, they should be classified under the item which attracts the highest rate of duty. This provision is a very important statutory departure from the rule of construction normally applied to the charging provisions of a taxing statute, namely that ambiguities therein should be resolved in favour of the subject or taxpayer. Even if, therefore, I had taken the view that the Appellant's classification provided an equally specific description of the goods, as that selected by me, it is clear that Section 19(1) would nevertheless have required them to be classified under Item # 716.02, the rate of duty under which, though lower than that of the Respondent's classification, is nonetheless higher than that of the Appellant's.

The decision of the Court, therefore, is that the Decision of the Respondent herein, made on the 7th September, 1972, is to be quashed and the goods reclassified under Item # 716.02 of the Customs Tariff (Revision) Resolution 1954, in accordance with this Judgment.

The Appellants, however, are to have the costs (taxed or agreed) of, and incident to, their Appeal to this Court, and it is hereby ordered accordingly.

/s/ D.W. Marsh
(D.W. Marsh)
Puisne Judge - Revenue Court
2nd March, 1973.