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CIVIL APPEAL No. 47/68

BEFORE - The Hon. Mr. Justice Moody  
The Hon. Mr. Justice Luckhoo  
The Hon. Mr. Justice Eccleston  
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BETWEEN - COLLECTOR GENERAL - APPELLANT and  
JAMAICA TRACTORS & EQUIPMENT COMPANY - RESPONDENT  
6th December 1968

MOODY, J. A.

This is an appeal from the decision of the Customs Appeal Board reversing the decision of the Collector General as to the rate of duty payable on certain tractor parts imported by the respondents Jamaica Tractor & Equipment Company.

The respondents carry on business as dealers in tractors and tractor parts manufactured by the Caterpillar American Company of Peoria, Ill., in the United States of America, and in connection with such business they imported tractors and tractor parts from that company. On December 1965, a shipment of tractor parts comprising of washers, bolts, nuts, pins, studs, springs, locks, clamps, brackets, seals and shims purchased by the respondents from the Caterpillar Americas Company in the United States having a total CIF value of £6,314-15-0 arrived in Kingston on the vessel "Limon" consigned to the respondents. The goods were entered by the respondents for the purposes of Customs Duty under Item 713-01 of the first schedule of the Customs Tariff Resolution 1954. The Appellant refused the entry and demanded duty as under:

Washers, bolts, nuts, pins, studs: Item 699-07.9. These are parts of general use and are excluded by virtue of notes 1(g) and 1(h) to Divisions 71 and 72.

Gaskets: Item 663-03.9 - parts of general use, and interchangeable.

Springs: Item 669-29.3 - parts of general use excluded by note 1(g).

Locks, Clamps,  
Brackets: Item 699-18

Seals: " 629-09.9 - excluded by note 1(a).

Shim: " 699-29.9 - an interchangeable article or metal

of the First Schedule to the Customs Tariff (Revision) Resolution, 1954. The Respondents disputed the classification demanded by the Appellant deposited the duty payable on the said goods under these items and on the 28th day of October, 1966, appealed to the Customs Appeal Board under Section 16 of the Customs Law Cap. 69. The appeal was heard by the Customs Appeal Board on the 10th of January, 1967, when the Board decided that the goods should be classified under Item 713-01 and/or 716-03.9 of the First Schedule of The Customs Tariff (Division) Resolution, 1954.

The appellants appeal to a judge in chambers was dismissed. The learned judge in his judgment stated: "I am satisfied that the evidence before the Customs Tariff Board was capable of sustaining the conclusion that all the parts in question are suitable for use solely or principally with the tractors in question." I agree with this finding and I see no reason why it should be disturbed.

Later in his judgment the learned judge said: "In my view all the articles are themselves constituent parts of a tractor and not the comparatively small objects of metal used in connection with it which would have caused them to fall within the category of fittings." In accordance with Sec. 16 sub-section 7, Cap.89 Revised Laws of Jamaica 1953, I treat these findings of fact as final. Having seen the exhibits I agree with them.

The grounds of appeal are as follows:-

- (1) The learned trial judge was wrong in law in holding that the goods, the subject of this appeal, should be classified under "Item No. 713-01 - tractors other than steam (but including road motor tractors) and/or Item No. 716-03.9 Mining (etc.) machinery - "other" of the Customs Tariff (Revision) Resolution 1954.
- (2) The learned trial judge has misconceived the effect of, and misconstrued note 2(b) of the general notes to divisions 71 and 72 of the aforesaid Resolution. The effect of the said note is that parts for tractors cannot be classified under the item of the Resolution relating to tractors if such parts are provided for separately in another item of the Resolution.
- (3) The learned trial judge was wrong in holding that reference could not be made to the provisions of the Standard International Trade Classification for the purpose of classifying the goods, the subject of this Appeal.

In support of Ground 1 learned counsel for the appellant submitted that in classifying goods the interpretation is governed by the principles set forth in the general provisions of the First Schedule of

the Customs Tariff Revision Resolution 1954 and by Sec. 19 of the Customs Law. That this Division can only be interpreted by construing and applying the general notes to the divisions and that these general notes provide the key to interpretation of any class or description of goods falling within the division. He does not contend that the learned judge was wrong in holding that the parts as a matter of fact were suitable for use at least principally with tractors. What is being argued is whether the interpretation of 2 (b) of Division 71 allowing classification to be made with the machine was correct. The Judge was wrong in holding that once a part fell within this description of the first paragraph of the provision of note 2 (b) of Division 71, it could not also fall within a category in Division 69. The Judge wrongly construed note 2 (b) of Division 71 as excluding any articles falling within a general category in Division 69, if such articles were solely or principally for use with a particular kind of machine and in so doing the Judge held that Division 69 was confined to manufacturers of metal not elsewhere specified or included in any part of the resolution as a whole. The Judge held that Division 69 did not include tractors as they specifically were covered by 713-01, nor did it cover parts for use with such tractors because on a proper construction of 2 (b) Division 71 these parts were also specifically included in the Item for tractors even though the Item did not include the word "parts". Furthermore the Judge accepted this argument that the description in 2(b) Division 71 was specific, whereas Manufacturers of Metal in Division 69 was a general description and accordingly by par. 2 (c) (1) of the General Provisions page 1 the specific description in 2 (b) Division 71 should be preferred to the general description in Division 69 and the items thereunder. That the learned judge in adopting this interpretation disregarded the words beginning Note 2 of Division 71 being subject to Note 1. That these words have the effect of giving precedence to the provisions of note 1 and making it mandatory for a classification for an Item provided for in Note 1 to be made under the category in Note 1 whether the category is specific or residual. He submitted that the contention that articles within Division 69 relate to a residual classification "Manufacturers of Metal not elsewhere specified" is insupportable by the internal structure of Note 1 which in the majority of cases deals with matters listed in a

residual category but f & i were not items of a residual category. He referred to 1 (d) "machinery parts of ceramic material" as an item of a residual character not elsewhere specified yet it intended to include machinery parts classified with articles of ceramic material N.E.S. 663-09, also item 1(1) brushes of a kind used as parts of machine classified with artisan brushes 899-13-1. Nowhere in the Tariff can we find an item "parts of tractors". He submitted that it is necessary for express provision in the notes that these items should be treated as parts of machine otherwise they are to be classified separately and not as parts of a machine.

He submitted that the proper approach in construing 2(b) Division 71 is first to ascertain whether any of the parts in question fall within matters listed in a-1 of Note 1. It is only permissible to fall back on provisions of Note 2 after an examination of a-1 when no item can be found therein answering the description of parts under which these parts could be classified, and submitted that the parts should be classified as set out above under Divisions 69, 66, 62.

The crucial test is, looking at the article itself, does it by intrinsic features satisfy the test as part of a machine?

Under Ground 2, he submitted that where parts of machines are provided for in the Tariff, classification should not be with the machine but under the separate parts provided. He pointed out that nowhere is there a separate item specifically for parts of machines falling within Divisions 71, 72, neither is there any specific item such as tractor and parts or parts of tractors or parts of any specific machinery. If one cannot find specific parts then it would be under part 1 of Note 2 (b) and thus subject to Note 1. He submitted that the true meaning of the second part of 2 (b) "where parts of such machines are provided for in a separate item, in that separate item" is that there must be a separate item distinct from the item under which the machine itself is classified under which the part is classified. Such item need not use the express term "parts" it was only necessary that the item should answer the description of parts like nuts, bolts, etc.. Parts are parts because they have an essential feature; and tariff shows that an item may provide for parts without express of specific mention of parts as such in the item. He referred to section 19(1) Cap. 89 R.L.J. 1953 that is an article can reasonably be classified under two or more names, headings or descriptions and there is a difference of duty, the highest duty provided shall be charged and collected thereon.

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On Ground 3, he referred to the General Provisions page 2 Sec. 6 wherein cases of doubtful classification reference should be made to the commodity indexes for the Standard International Trade Classification, and submitted at the lowest there was considerable doubt as to the meaning of Note 2(b) of Division 71. That the learned judge was persuaded by the contention that the tariff was an instrument of economic policy and that the fixing of a low rate of duty on tractors was deliberate and done in furtherance of that policy. He submitted that the rate of duty should not be used to alter a classification.

Learned Counsel for the respondent produced the articles to the Court and dealt with them seratim. He submitted that it was conceded that these articles satisfied the description in Note 2 (b) Division 71 and thus it follows they must be classified as set out therein unless they are excluded by virtue of either the categories in Note 1 Division 71 or by the second part of Note 2 (b). The appellant relies on Note 1, <sup>g</sup> & h. In respect of Note 1 (a) there is no evidence that the article is made of vulcanized rubber. The evidence before the Board is, it is made of metal, rubber and cork. In regard to Note 1(g), it is limited to screws, chains, springs or other parts of general use and cannot apply. The exhibit is a spring for a certain type of tractor and could not be described as of general use. In regard to Note 1 (h) Division 69 deals with miscellaneous artifacts not specifically dealt with in other divisions of the tariff. Looking at Item 699-07.9 which is limited within the Division "Other" means metal artifacts of a similar nature - clearly not intended to cover articles exhibited which are designed for tractors. Similarly Items 699.18 (Hardware of metal) (locks, padlocks, safety bolts, keys, fittings for doors, windows, furniture, vehicle trunks, etc.) and 699.29.9 "Other" are excluded. None of the exhibits are caught by Note 1 (a) and so they are not excluded from Note 2(b). This view is strengthened by a general consideration of what is the purpose of Note 2(b) Divisions 71-2 with one or two exceptions, embrace very low tariff items - mostly duty-free or only 5% general tariff. The type of articles it felt desirable in the general interest to admit free or on a very low rate of duty. Clearly, parts of these items designed for and which can only be used with the item would be expected to pay the same rate of duty. The purpose of Note 2 (b) is to ensure that unless there is some special reason, parts intended for use on these items should pay the same rate of duty.

Note 1 is designed to ensure that articles and artifacts of general use are not brought in under Divisions 71-2 as parts of specific machines and thereafter used for general purposes. The second part of Note 2(b) Division 71 carries out the general policy. If there is a special category for parts of a particular machine, it must be classified thereunder and not with the machine itself.

With regard to ground 3, the learned judge was correct in concluding that the problem was not one of factual classification but of the construction of Notes 1 and 2 of Division 71 and of the items in Division 69. There is nothing in the SITC which corresponds to the notes in Division 71-2. The local legislative has put in these notes to govern the position in Jamaica. No question of doubtful classification arises in this case.

In my view, goods have to be described or receive a description before they can be properly classified for the purposes of ascertaining the rate of duty payable under the Customs Tariff Revision Resolution of 1954. It appears that when the goods were entered for the purposes of Customs duty the description was general rather than particular, and no doubt this led to the dispute which has culminated in this appeal.

The learned judge who heard the appeal from the decision of the Customs Appeal Board made two important findings of fact (1) that all the articles exhibited are themselves constituent parts of a tractor, and (2) that all these parts are suitable for use solely or principally with the tractor. Accordingly the goods to be classified under the Tariff were all parts of a tractor and suitable for use solely and principally with that particular kind of machine.

The Division relevant to Machinery under the Tariff is 71 and in compliance with the General Provisions in the first schedule to the Tariff. Classification is to be determined according to the terms of the Items and any relative section or division notes.

The titles of sections, divisions and sub-divisions are provided for ease of reference only. There Item 713-01 appears tractors other than steam excluding motor tractors.

Note 2 reads as follows:-

Subject to Note 1 parts of machines or other articles of a kind falling within these Divisions (not being parts of the articles described in Item 716-15, 721-13, 663-05 or 721-19) are to be classified according to the following rules:-

- (a) Goods of a kind described in any of the items numbered 716-14 716-15, 663-05, 721-13 or 721-19 are to be classified in all cases in that heading.
- (b) Other parts which are suitable for use solely or principally with a particular kind of machine or other article falling within these Divisions (including a machine falling within Items 716-13 or 721-19) are to be classified with machines or articles of that kind or, where parts of such machines are provided for in a separate item, in that separate item.
- (c) All other parts are to be classified under Item 721-19 if containing electrical connectors, insulators, coils, contacts or other electrical features; otherwise they are to be classified under Item 716-15.

And Note 1 reads:-

- (a) Subject to note 6, transmission or conveyor belts of vulcanized rubber (Item 629.09.1) or other articles of a kind used for machinery, mechanical or electrical appliances, of unhardened vulcanized rubber (e.g. washers) (Item 629-09.9).
- (b) Articles of leather or composition leather of a kind used in machinery (Item 612-01).
- (c) Subject to note 6, transmission or conveyor belting of textile material (Item 655-09.1 or other articles of textile material of a kind commonly used in machinery or plant (Item 655-09.9).
- (d) Machinery parts of ceramic material (Item 663-09).
- (e) Articles of glass falling within Item 664-09 or 665-09 (e.g. laboratory glassware or glassware for industrial use).
- (f) Unmounted precious or semi-precious stones for use with machine. (Item 672-02).
- (g) Screws, chains, springs or other parts of general use.
- (h) Articles falling within Division 69.
- (i) Vehicles, aircraft, ships or boats including railway, breakdown cranes and workshop vans, motor breakdown lorries and other special purpose motor vehicles, and warehouse and factory trucks (Division 73).
- (j) Scientific, measuring or precision instruments and apparatus (Item 861-09).
- (k) Clocks, watches or parts thereof, or time switches with clock movements (Item 864-02).
- (l) Brushes of a kind used as parts of machines (Item 899-13.1).

Nearly, if not all, the items referred to in (a) - (l) in note 1 (except e) refer to parts of machinery or articles used in connection with machinery. However, none of the terms of these items (a) - (l)

define washers, bolts, nuts, pins, studs, gaskets, springs, locks, clamps, seals or shims which are suitable for use solely or principally with a particular kind of machine - although 1(g) refers to springs or other parts of general use. Item 1(h) refers to articles falling within Division 69. Examination of this Division 69 does not disclose any item or parts suitable for use solely or principally with a particular kind of machine, nor is there any item where parts of this particular kind of machine, viz, a tractor are provided for in a separate item. Thus in returning to Note 2(b) it is clear that such parts as are described as being suitable for use solely and principally with a particular kind of machine to wit a tractor, are to be classified with the particular kind of machine in this instance a tractor. Furthermore, if one used the titles of sections, divisions and sub-divisions in classifying goods contrary to the general provisions, it can readily be appreciated that an article of goods for classification under the Tariff may be regarded as a part of specific machinery as also a manufacture of metal where the description of the article is general, as for example, an article generally described as a spring. This approach renders classification unnecessarily difficult and complex; the more so when it is borne in mind that an article of goods may be made up of different materials.

A large part of the submissions of learned counsel for the Appellant was directed to a review of what must have been the learned judge's reasons in deciding to dismiss that appeal. I find no merit in these submissions and cannot agree with him that the goods should be classified as he contends. For the reasons given, Grounds 1 and 2 must fail. Ground 3 must in my view fail also as in view of the particular description of the goods no question of doubtful classification arises requiring reference to the Standard International Trade Classification.

In my judgment the goods were properly classified under Division 71, and this appeal should be dismissed with costs to the respondent.

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