

BETWEEN:

W. B. ELLIOTT, operating under the trade name, W. J. Elliott and Co. . . }

APPELLANT;

Ottawa 1968  
Sept. 6  
Sept. 24

AND

DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE . . . . . }

RESPONDENT.

*Customs duty—Appeal from Tariff Board—Device for re-shaping discharged cartridge cases—Whether loading tool or machinery for pressing metal—Whether question of law—Customs Act, R.S.C. 1952, c. 58, s. 45.*

The expression "loading tools" in tariff item 44100-1 is not an expression in common use except by persons concerned with firearms, and it is therefore open to the Tariff Board to attribute to such expression the meaning which those persons give to it.

Held accordingly, the Tariff Board did not err in law in classifying an imported article for rehabilitating discharged brass cartridge cases as a "loading tool" under tariff item 44100-1 rather than as "machinery for working metal by pressing" under tariff item 42753-1.

*Canadian Lift Truck Co. v. Dep. Min. of National Revenue for Customs and Excise* [1956] 1 D.L.R. (2d) 497, referred to.

APPEAL from Tariff Board.

*W. B. Elliott* on his own behalf.

*R. W. Law* for respondent.

KERR J.:—This is an appeal respecting the classification under the customs tariff of an article manufactured by E. C. Herkner Co., of Boise, Idaho, which was referred to in the manufacturer's catalogue brochure as an "Echo 'C' Model Loading Tool", which article is hereinafter sometimes referred to as the imported article.

The article was classified by the respondent under tariff item 42720-1 which reads as follows:

42720-1 All machinery composed wholly or in part of iron or steel, n.o.p., of a class or kind not made in Canada; complete parts of the foregoing.

The appellant appealed to the Tariff Board and urged that the article should be classified under tariff item 42753-1 which is as follows:

42753-1 Machinery, of a class or kind not made in Canada, for working metal by turning, milling, grinding, drilling, boring, planing, shaping, shearing or pressing, and accessories and attachments therefor; parts of the foregoing.

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The Tariff Board rejected both the classification made by the respondent and the classification urged by the appellant and declared the proper classification to be in tariff item 44100-1 which is as follows:

44100-1 Guns, rifles, including air guns and air rifles not being toys; muskets, cannons, pistols, revolvers, or other firearms, n.o.p.; cartridge cases, cartridges, primers, percussion caps, wads or other ammunition, n.o.p.; bayonets, swords, fencing foils and masks; gun or pistol covers or cases, game bags, loading tools and cartridge belts of any material.

The appellant explained to the Tariff Board that the firing of a brass cartridge with smokeless powder expands the brass case, but that the case can be brought back to its original size, or reformed, enabling it to be used again, by a loading tool or pressure device. The imported article serves that purpose.

The appeal to this Court is taken under section 45 of the *Customs Act*, R.S.C. 1952, c. 58, as amended, from the declaration of the Tariff Board.

At the hearing of the appeal in this court the appellant and counsel for the respondent agreed that the appeal should be argued upon a case consisting of:

1. Letter dated April 14, 1967, from the appellant to the Tariff Board giving notice of appeal from the Deputy Minister's decision, a copy of which was attached to the letter;
2. The transcript of the hearing held by the Tariff Board on October 23, 1967; and
3. The exhibits filed with the Tariff Board.

The exhibits filed with the Tariff Board were the following:

- A-1 Lyman Catalogue No. 43;
- A-2 Oxford dictionary meaning of the word "Machine";
- A-3 Webster dictionary meaning of the word "Tool";
- A-4 Echo Model "C" Loading Tool;
- A-5 Shaping die;
- D-1 Pages one to six of Echo Catalogue;
- D-2 K14E form; and
- D-3 Publication entitled "Machine Tools—Today" presented by the National Machine Tool Builders' Association.

The right of appeal to this court conferred by section 45 of the *Customs Act* is limited to a question of law.

The Board's declaration contains the following statements, which, in part, are findings of fact:

The appellant was represented by Mr. W. B. Elliott, the person doing business under the name of W. J. Elliott and Co., who put the imported article in evidence; evidence was also adduced in the form of two brochures, one of the E. C. Herkner Co., of Boise, Idaho, U.S.A., the manufacturer of the imported article and the other a brochure of the Lyman Gun Sight Company, also of the U.S.A.

The E. C. Herkner Co. refers, in its brochure, to the imported article as an "Echo 'C' Loading Tool". The Lyman Company, in its brochure, refers to similar equipment as "Re-Loading Equipment".

Under cross-examination Mr. W. B. Elliott admitted that in the trade the terms "loading" and "re-loading" have a similar meaning.

Mr. W. B. Elliott gave a demonstration of the functions of the imported article which are, in short, simply to rehabilitate a discharged brass cartridge case from its expanded size after discharge to its original size for insertion into the chamber of the rifle. He stated that "loading" and "re-loading" were improper terms as the functions of the imported article were performed prior to the re-charging of the cartridge with powder and bullet. However, on the evidence, the Board finds that in the trade these terms are used to describe the imported article.

The appellant then argued that the effect of the imported article was one of "working metal by pressing" and therefore it should have been classified under tariff item 42753-1. The Board rejects this argument: the mere fact that a manufactured article may be made of metal (to wit: brass) does not suggest that its mere compression is "working metal" within the meaning of the words in Tariff Item 42753-1.

Notwithstanding the stipulation of counsel for the respondent, the Board finds that, however that stipulation might seek to put the imported article under tariff item 42720-1, the fact remains that this item is qualified by the provision "n.o.p." and that the article in issue is provided for by the words "loading tools" in tariff item 44100-1. A reading of tariff item 44100-1 indicates an immediate "genus"-guns etc. Loading tools are provided for "eo nomine" thereunder and it matters little whether the same are hand tools, machines or other advances in the trade.

The Board rejects both the classification made by the respondent and that urged by the appellant and declares the proper classification of the imported article to be in tariff item 44100-1.

In this court the appellant argued that the declaration of the Tariff Board was so unreasonable as to constitute error in law. I may mention here that the appellant was not represented by counsel and conducted his own case before the Board and this court and, although not a lawyer, appeared to have an appreciation of the points in issue and argued the case with skill and resourcefulness. His argu-

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ment was based, largely, on his submissions (a) that the words "loading tools" are used in item 44100-1 in the context of accessories that normally accompany the hunter in the field and apply to tools for muzzle loading firearms but not to tools for ammunition, (b) that the word "tools", as used in the customs tariff, encompasses only manually operated tools (that is, tools whose use requires skill, e.g., a hammer) and machine operated tools, e.g., dies used in the imported article, and does not encompass "machines", and (c) that machines for working metal by pressing are provided for *eo nomine* in tariff item 42753-1 and the imported article is such a machine and should be classified under that item.<sup>1</sup>

The appeal to this court involves the two questions as to whether or not the Tariff Board was properly instructed in law as to the construction of the statutory items and whether or not there was evidence which enabled the Board, thus instructed, to reach the conclusion it did. These questions are subject to the same comment as that made by Kellock J., in delivering the judgment of the Supreme Court of Canada in *Canadian Lift Truck Co. v. Deputy Minister of National Revenue for Customs and Excise*<sup>2</sup>, when he said:

The question of law above propounded involves at least two questions, namely, the question as to whether or not the Tariff Board was properly instructed in law as to the construction of the statutory items, and the further question as to whether or not there was evidence which enabled the Board, thus instructed, to reach the conclusion it did.

While the construction of a statutory enactment is a question of law, and the question as to whether a particular matter or thing is of such a nature or kind as to fall within the legal definition is a question of fact, nevertheless if it appears to the appellate court that the tribunal of fact had acted either without any evidence or that no person, properly instructed as to the law and acting judicially,

<sup>1</sup> He put this contention in the following words in his notice of appeal to this Court:

"Since the legislators have provided for machines for working metal by pressing *eo nomine* in tariff item 42753-1 we must conclude that this classification is intended to override any less specific provisions such as machines not otherwise provided in tariff item 42720-1, also the ambiguous provision "tools" in tariff item 44100-1, otherwise tariff item 42753-1 is virtually ineffective.

This is not only a paramount rule for interpretation in the customs tariff but a fundamental rule of interpreting the English language.

This is the essence of my submission."

<sup>2</sup> [1956] 1 D.L.R. (2d) 497.

could have reached the particular determination, the court may proceed on the assumption that a misconception of law has been responsible for the determination; *Edwards v. Bairstow*, [1955] 3 All E.R. 48.

Counsel for the respondent submitted that the only issues in this appeal are:

- (1) Whether the Tariff Board erred as a matter of law in deciding that the imported article was a "loading tool" described *eo nomine* in tariff item 44100-1, and
- (2) Whether the Tariff Board erred as a matter of law in not deciding that the imported article was machinery of a class or kind not made in Canada for working metal by pressing within tariff item 42753-1;

and that the Board correctly decided those issues, there was no error on a question of law in deciding them, they are questions of fact, and the said findings of fact were based on ample evidence before the Board and are not so unreasonable as to amount to an error as a matter of law.

The meaning of a word is usually to be found in standard dictionaries. Words and expressions may have a particular meaning by reason of the circumstances in which or the persons by whom they are generally used; for example, in a profession or trade. In a statute a word does not stand alone and the sense in which it is there used and the meaning it has in its context there is a matter of construction of the statute or of the part in which the word is found.

Dealing now with the material before the Board. The appellant's description of the operation of the imported article appears in the following excerpts from the transcript of the hearing by the Board<sup>3</sup>:

Mr. LAW: Is a loading tool and a reloading tool the same thing?

Mr. ELLIOTT: Yes, but if you didn't reload there would be no pressure like that. I will show you why.

The Echo reloading tool is one of the latest examples.

On the downstroke of the machine the metallic body of the case is pressed into its original shape except that its neck is pressed in beyond its original shape and the spent primer pressed out.

THE CHAIRMAN: Now, you have in your text that the neck is pressed in instead of out.

Mr. ELLIOTT: That is pressed in with one stroke of the press and is pressed out with the next stroke of the press.

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<sup>3</sup> See pages 27 to 30 of the transcript.

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On the upstroke of the press the cartridge neck is pressed out to just under its original shape and a new primer pressed in.

The reshaped cartridge case is then removed from the machine and charged with powder, an operation, not, usually, connected with the machine.

Another die (correctly ruled by the Dominion customs appraiser as a tool for a machine) is then placed in the machine and, by means of the seating plug a bullet is pressed into the cartridge case working the metal to a "press-fit". Some reloaders crimp the cartridge case into the cannellure of the bullet but I do not do this.

THE CHAIRMAN: Now, you do not do this, or the tool does not?

MR. ELLIOTT: The tool will do it, but I do not do it.

THE CHAIRMAN: Do you use this tool yourself for your business?

MR. ELLIOTT: Yes. Well, I have used it. I have used a much larger and faster machine, but I have used this.

The metal in the cartridge case is worked by pressure substantially, the neck of the case is worked even more, and the metallic primer is worked to a lesser amount probably in some cases below its elastic limit.

Every operation, and every part of every operation of the reloading tool works the metal of the cartridge case to a varying degree. Thus it would be possible for a machine to conform as well to all the requirements of T.I. 42753-1 (works metal by pressing) as the Echo tool but not conform better.

Two manufacturer's trade catalogues were filed as exhibits before the Board. Exhibit D-1 consists of pages 1 to 6, inclusive, from the catalogue of E. C. Herkner Co., the manufacturer of the imported article. Page 3 shows a picture of the article, calls it the "Echo 'C' Model Loading Tool" and states that it is the result of ten years of careful study of the needs and wishes of shooters all over the country, shooters who had need for a low cost tool having features found only in higher priced tools, and that it has more than ample strength for all cartridge swaging operations. Exhibit A-1 is Catalogue No. 43 of the Lyman Gun Sight Corporation of Middlefield, Connecticut. The appellant demonstrated to the Tariff Board both the imported article and another article that is pictured as No. 1 on page 14 of the Lyman catalogue, and he said that the article shown as No. 3 on page 14, namely, "The All-American Comet Press", resembles closely the "Echo 'C' Model Loading Tool". Page 15 of the Lyman catalogue, on which information respecting the articles appears, is entitled "Lyman Reloading Equipment". Article No. 1 is referred to there as a reloading tool; Article No. 2, "The Tru-Line Jr. Press",

is there said to be the fastest tool on the market; No. 3, "The All-American Comet Press", is referred to as a re-loading press.

I think that, like the advertising material referred to in the *Canadian Lift Truck Co. Ltd.* case (*supra*), the catalogues filed as exhibits in this appeal were not prepared from the standpoint of the customs tariff but to give to prospective customers such pertinent information as would enable them to purchase articles fitted to their requirements.

Members of the Board and counsel for the respondent questioned the appellant as to whether loading tools and reloading tools are the same or different things. The concluding part of that discussion is as follows<sup>4</sup>:

THE CHAIRMAN: The word "tool" you say, is ambiguous?

MR. ELLIOTT: Yes.

THE CHAIRMAN: In the trade, if I use not the word "tool" alone, or "machine" alone, but if I say loading tool, what will people understand?

MR. ELLIOTT: I don't think they will know. I think it could be applied to either one or the other.

THE CHAIRMAN: In both devices that you showed us this morning?

MR. ELLIOTT: Yes.

THE CHAIRMAN: Well, indeed, it is so applied in one of the catalogues, if I remember.

MR. ELLIOTT: Yes, and more specifically applied as a reloading press. You must take the more specific name.

THE CHAIRMAN: But the word loading tool is used in at least the only two catalogues that are before us.

MR. ELLIOTT: Yes. One refers to a machine, the other to a tool; and the Lyman catalogue refers to a specific tool.

THE CHAIRMAN: The Lyman catalogue refers to a reloading tool, but you say a reloading tool and a loading tool have the same meaning.

MR. ELLIOTT: Well, yes, substantially, yes.

THE CHAIRMAN: But in referring to the press in No. 1, it says that the Tru-Line Junior Press is the fastest tool on the market. The catalogue deems it to be a tool.

MR. ELLIOTT: Well, it is a tool, a tool that shapes metal by pressing as defined in Webster.

THE CHAIRMAN: But this Tru-Line Junior Press, which is described as the fastest tool on the market, would this be known as a loading tool in the industry?

MR. ELLIOTT: Yes, or a reloading tool.

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<sup>4</sup> See pages 72 to 74 of the transcript.

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THE CHAIRMAN: Or a reloading tool?

MR. ELLIOTT: Yes.

THE CHAIRMAN: So the word loading tool or reloading tool implies an article the purpose of which is the reforming of these cartridges in the trade?

MR. ELLIOTT: Yes, with the power as applied by the human hand modified in some manner. That defines it as a machine.

THE CHAIRMAN: And you argue rather that that changes it into a machine?

MR. ELLIOTT: Yes. I mean, people don't use the same word to describe the same thing. They may use different words. Some people will call it a tool and some call it a machine, and some call it a press...

Several dictionary definitions of "tool" and "machine" were cited, including the following:

Oxford English Dictionary (Exhibit A-2)

Machine:

...

4. In a narrower sense: an apparatus for applying mechanical power, consisting of a number of interrelated parts, each having a definite function.

In recent use the word tends to be applied esp. to an apparatus so devised that the result of its operations is not dependent on the strength or manipulative skill of the workman; thus the term 'printing-machine' does not in ordinary language include the hand-press, but is reserved for those apparatus of later invention in which manual labour is superseded by the action of the mechanism.

Webster's Dictionary (Exhibit A-3)

Tool:

1. a An instrument of manual operation, as a hammer, saw, plane, file, or the like, used to facilitate mechanical operations; an implement.

b *Engineering* The cutting or shaping part in a machine or a machine tool (which see); also, a machine for shaping metal in any way, often specifically, a machine tool.

Shorter Oxford Dictionary

Tool:

Any instrument of manual operation; a mechanical implement for working upon something, as by cutting, striking, rubbing, or other process, in any manual art or industry; usually, one held in and operated directly by the hand, but including also certain simple machines, as the lathe.

Funk and Wagnall's New Standard Dictionary

Tool:

A simple mechanism or implement, as a hammer, saw, spade, or chisel, used in working, moving, shaping, or transforming material. A power-driven apparatus, as a lathe used for cutting and shaping the parts of a machine; also, the cutting or shaping part of such an apparatus.



Mechanism

Mechanism is a word of wide meaning, denoting any combination of mechanical devices for united action.

Machine:

A machine is distinguished from a tool by its complexity and by the combination and co-ordination of power and movement to produce results.

Webster's Third International Dictionary

Tool:

A machine for shaping metal.

The expression "loading tools" is not, it seems to me, an expression in common use except by persons who manufacture, sell, use or in some way have to do with firearms or related things. To them the expression is meaningful as being the name of a particular thing or class of things. I think that it was open to the Board to determine the meaning or sense which persons conversant with firearms attribute to that expression and to construe the expression, as used in item 44100-1, in that same sense. This the Board did, as I appreciate their declaration. It was also open to the Board on the material before it to construe "loading tools" in item 44100-1 as embracive of the imported article and to classify it under that item and not under item 42753-1 and, in my opinion, also, the Board did not err in law in so doing.

It appears to me that the view of the Board was tenable and I am unable to say that there is not evidence sufficient in point of law to sustain the Board's findings or that the Board, properly instructed as to the law and applying correct principles and acting judicially, could not reach the conclusions which it in fact reached.

The appeal herein is dismissed and it is declared that the imported article, the "Echo 'C' Model Loading Tool", is classified under tariff item 44100-1 of the customs tariff.

The appellant will pay the respondent's costs of the appeal to be taxed.

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