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 \*Feb. 13, 14  
 Apr. 12

ACCESSORIES MACHINERY LIMITED . APPELLANT;

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE AND CANADIAN ELECTRICAL MANUFACTURERS' ASSOCIATION . . . . . )  
 RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Revenue—Customs and excise—Electric motor imported as replacement to be installed in electric shovel—Whether dutiable under item 445g or 427a of Sched. “A” of the Customs Tariff, R.S.C. 1952, c. 60—Whether “otherwise provided for”.*

An electric motor imported from the United States by the appellant as a replacement motor to be installed in an electric shovel was classified by the Tariff Board, affirming the decision of the Deputy Minister, as an “electric motor” dutiable under item 445g of Sched. “A” of the *Customs Tariff*, and not as a “complete part” of machinery under item 427a as the appellant contended. The resulting duty under the latter item is less than under item 445g. The decision of the Board was affirmed in the Exchequer Court.

*Held* (Taschereau and Kellock JJ. dissenting): The Tariff Board did not err in law in classifying the motor under item 445g.

\*PRESENT: Kerwin C.J. and Taschereau, Kellock, Abbott and Nolan JJ.

*Per* Kerwin C.J. and Abbott and Nolan JJ.: The specific classification in item 445*g* was intended by Parliament to override and does override the general provision "complete parts of the foregoing" in item 427*a*. Parliament, in item 445*g*, has singled out a special piece of machinery, not specially dealt with elsewhere in the tariff, whereas in item 427*a*, it has imposed a lower rate of duty on machinery generally, not specifically dealt with elsewhere, and complete parts thereof.

*Per* Taschereau and Kellock JJ., *dissenting*: By its plain meaning, item 427*a* includes any parts of the class of machinery the item describes, whether it be a motor or any other component of the complete machine, and consequently the electric motor, constituting a part of the machinery, was "otherwise provided for" within the meaning of item 445*g*. If it be conceded, as it must be, that a part falls within item 427 or 427*a*, it is then otherwise provided for. An electric motor, taken by itself, is a machine, but from the standpoint of item 427*a*, the motor in question here is only a "part" and, as such, is within that item and not within item 445*g*. It is not necessary that the "provision otherwise" must be couched in any particular language but it is sufficient that another tariff item, properly construed, does, in fact, make provision otherwise, as does item 427*a*.

APPEAL from the judgment of Cameron J. of the Exchequer Court of Canada (1), affirming the decision of the Tariff Board. Appeal dismissed.

*G. F. Henderson, Q.C.*, and *R. H. McKercher*, for the appellant.

*K. E. Eaton* and *G. W. Ainslie*, for the respondent the Deputy Minister.

*R. I. Martin*, for the respondent Canadian Electrical Manufacturers' Association.

The judgment of Kerwin C.J. and Abbott and Nolan JJ. was delivered by

ABBOTT J.:—This is an appeal from a judgment of the Honourable Mr. Justice Cameron of the Exchequer Court of Canada (1), rendered on March 6, 1956, dismissing the appellant's appeal from a declaration of the Tariff Board dated March 1, 1955, by which the appellant's appeal to the Board from a decision of the Deputy Minister respondent dated August 10, 1954, under the *Customs Act*, R.S.C. 1952, c. 58, as to the tariff classification of an electric motor, imported by the appellant from the United States, had been dismissed.

The article imported was a replacement motor for a five cubic yard electric shovel, and the question in issue is

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whether this motor should be classified as a complete part of machinery under item 427a of Sched. "A" of the *Customs Tariff*, or as an electric motor under item 445g.

The appeal to the Exchequer Court and to this Court, pursuant to leave granted, was on the following question of law:

Did the Tariff Board err as a matter of law in deciding that a part, namely a 125 h.p. open ball bearing vertical shaft motor, for P & H Model 1500 5-cubic yard Electric Shovel, imported under Montreal Customs Entry No. 121526-C, February 3, 1954, is dutiable under tariff item 445g, rather than tariff item 427a?

The tariff items in question read as follows:

427a. 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 . . .

445g. Electric motors, and complete parts thereof, n.o.p. . . .

Briefly stated appellant's contention is that giving effect to the plain meaning of tariff item 427a, the electric motor in question is clearly covered by the words "complete parts of the foregoing" in that item and that in consequence item 445g cannot apply by reason of the n.o.p.\* provision contained therein.

Electric motors are machines in themselves and the Tariff Board found as a fact (and this finding is conclusive so far as this Court is concerned) that electric motors are in their very nature generally intended to be incorporated in or attached to machinery or equipment. This being so, it was urged by respondents that unless the symbol "n.o.p." in item 445g is interpreted as excluding from the operation of that item only electric motors provided for by special mention in other items in the tariff, there would be little room for the application of tariff item 445g. The Tariff Board stated in its decision that "since the legislators have provided for electric motors *eo nomine* in tariff item 445g, we must conclude that this classification is intended to override any 'basket' provision such as 'parts' in tariff item 427a; otherwise tariff item 445g is virtually ineffective". Respondents argued that such a result, *i.e.*, that item 445g would be virtually ineffective, is not one that could have been intended by Parliament.

\* Not otherwise provided for.

I believe this argument to be well founded. In item 445g Parliament has singled out a special piece of machinery, not specially dealt with elsewhere in the tariff, and has imposed a special rate of duty upon it, presumably to protect the Canadian manufacturers of that type of machine.

In item 427a, on the other hand, Parliament has imposed upon machinery generally, which is *not specifically dealt with elsewhere* and "complete parts" thereof another and a lower rate of duty than that imposed upon the special machines provided for in 445g and in other like items where specific types of machinery or equipment are singled out for special and higher rates of duty.

In my opinion the specific classification provided in 445g was intended to override and does override the general provision "complete parts of the foregoing" contained in item 427a.

For this reason, as well as for those given by Cameron J., with which I am in respectful agreement, in my opinion the Tariff Board did not err as a matter of law in classifying the motor in question as subject to duty under tariff item 445g.

I would therefore dismiss the appeal with costs.

The judgment of Taschereau and Kellock JJ. was delivered by

KELLOCK J. (*dissenting*):—This appeal comes to this Court by leave from the Exchequer Court upon the following question of law:

Did the Tariff Board err as a matter of law in deciding that a part, namely, a 125 h.p. open ball bearing vertical shaft motor, for P & H Model 1500 5-cubic yard Electric Shovel, imported under Montreal Customs Entry No. 121526-C, February 3, 1954, is dutiable under tariff item 445g, rather than tariff item 427a?

As stated in the factum of the respondent Deputy Minister, "the article imported was a *replacement* motor". The motor is so constructed that its shaft fits the shaft of a generator which it is the function of the motor to drive. The Tariff Board held that item 445g of Sched. "A" of the *Customs Tariff* was the governing item and not item 427a

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as the appellant contends. An appeal to the Exchequer Court (1) was dismissed. The tariff items in question are as follows:

427*a*. 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. . . .

445*g*. Electric motors, and complete parts thereof, n.o.p. . . .

In the view of the Board, item 445*g*, as it provides specifically for electric motors, should be considered as overriding a "basket" provision such as item 427*a*. The Board considered that if that were not so, item 445*g* would be rendered virtually ineffective. The Board therefore held that the "not otherwise provided for" provision in item 445*g* must be deemed to include all electric motors not elsewhere provided for in the tariff specifically "as motors".

In the Exchequer Court, this view was interpreted not as meaning that the actual words "electric motors" must occur but that any words clearly indicating "electric motors—that is, machinery providing motion", would be sufficient.

It is properly conceded in the case at bar that a complete shovel of the type here in question, including its motors, of which there are at least four, each performing a different function, is entitled to entry under 427*a* as "machinery" whether it arrives at the border completely assembled, or in its various components to be assembled in Canada. This involves the consequence that the motors are "parts" but there would remain nothing upon which the words "complete parts of the foregoing" in the item could operate unless they are to be applied to the importation of any of these components for replacement purposes. Accordingly, item 427*a*, construed in its ordinary plain meaning, includes all the parts of the class of machinery the item describes, whether the part in question is a motor, a generator, a scoop, or any other component of the complete machine.

Accordingly, an electric motor constituting a part of such machinery is "otherwise provided for" within the meaning of item 445*g*. By force of its own terms, therefore, the last-mentioned item cannot extend to such an article. It is not necessary, in my opinion, that the "provision otherwise"

must be couched in any particular language but it is sufficient that another tariff item, properly construed, does, in fact, make provision otherwise, as does item 427a.

To construe item 445g as it has been construed by the Tariff Board and the Exchequer Court involves, in my opinion, the addition to it of words not to be found therein. This is not a legitimate means of construing the statute.

It is contended that unless an electric motor, although it is a component part of a machine falling within item 427a, is to be considered as none the less falling within item 445g, notwithstanding the n.o.p. provision of that item, the last-mentioned item will be rendered virtually ineffective, particularly in view of the presence in the tariff of item 427, which is couched in language similar to 427a save that it does not include the words "of a class or kind not made in Canada". This contention involves a contradiction in its mere statement for the reason that if it be conceded that a part falls within item 427 or 427a, it is otherwise provided for within the meaning of item 445g.

Overlooking this contradiction, it may be, as stated by the Tariff Board, that electric motors are generally intended for incorporation in or attachment to machinery or equipment, but the only electric motors which fall within items 427 and 427a are those which can properly be regarded as parts of a machine which itself falls within one or other of these items. Unless a motor comes within the meaning of "parts" as that word is used in these items, they have no application to it. It would seem obvious that there must be many electric motors of which it cannot be said at the time of the importation into Canada, by a dealer, for example, that they are a "part" or a "replacement part" of any machine whatever. No doubt they may ultimately be used in conjunction with some machine, but that would not, in my opinion, of itself, render them "parts" of such machine within the meaning of either 427 or 427a.

A further argument was advanced by counsel for the Deputy Minister, namely, that as the electric motor here in question is itself "a machine", it falls within item 427a *qua* "machinery" and not *qua* "parts", while it is also within 445g as an electric motor. It is then said that, this being so, the n.o.p. provisions of these items cancel each other out

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with the result that item 445g, as the more specific provision, governs. It is quite true that an electric motor, taken by itself, is a machine, but from the standpoint of item 427a, such a motor as that here in question is only a "part" and, as such, is within that item and not within item 445g at all.

I would therefore allow the appeal, set aside the judgment of the Exchequer Court and the order of the Tariff Board and direct an appropriate declaration to be made in accordance with the above reasons. The appellant should have its costs throughout.

*Appeal dismissed with costs, TASCHEREAU and KELLOCK JJ. dissenting.*

*Solicitors for the appellant: Gowling, MacTavish, Osborne & Henderson, Ottawa.*

*Solicitor for the respondent, The Deputy Minister: K. E. Eaton, Ottawa.*

*Solicitors for the respondent, Canadian Electrical Manufacturers' Association: Hume & Martin, Toronto.*

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