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Wheels fall off Customs Rubbish Bin Case

This note is about a case in the Administrative Appeals Tribunal (AAT) decided on the 17th of February 2016 called Sulo MGB Australia Pty Ltd and CEO of Customs (it is not to be confused with an entirely unrelated AAT case called Solu Pty Ltd and CEO of Customs decided 11 December 2015).

The Sulo case concerned the correct tariff classification of wheels for wheelie bins. The Tribunal carefully examined the goods to establish their identity. It also applied the *Explanatory Notes to the Harmonised Commodity Description and Coding System (HSEN)* to assist with the tariff classification process.

The Customs position was that although they agreed the wheels were parts of wheelie bins, they claimed the wheels were wheels of general use and should be classified as wheels. It was clear from the Customs materials and submissions that they had failed to properly examine the goods and identify all the relevant features.

The Applicant's position was that the goods should be classified to 8716.90.00 as parts for "other non-mechanically propelled vehicles". For this argument to be successful, it was necessary for the Applicant to establish that the part was suitable for use solely or principally with the relevant article in Chapter 87.

If the wheels in question were in fact held to be parts of a wheelie bin, this still left the question of whether wheelie bins were correctly classified as "other non-mechanically propelled vehicles" or whether they were classified to 3924 as "other household articles" or 3926 as "other articles of plastics". The Customs argument was:

- (a) the wheels in question have no specific features about them which made them solely or principally used for wheelie bins and they were general wheels that could be used in numerous other usages as well as being wheels for wheelie bins; and
- (b) wheelie bins were not classified to 8716 because the wheels on a wheelie bin were a minor feature of little importance and that the main feature of a wheelie bin was to hold rubbish.

The first argument from Customs in respect of the wheels was unfortunately predicated on the fact that they had failed to properly examine the wheels in question. The wheels were not wheels of general use.

The Tribunal noted as follows:

“The wheel has, as an integral component, a hollow stub axle housing into which the axle is inserted. In addition, that stub axle housing has, at its far end, a steel spring loaded pin. I have no doubt that an informed observer would conclude that the steel spring loaded pin is designed to fit in to a particular axle which has a groove cut in to it to accommodate the pin. That would prevent the wheel from working its way off the axle as the wheel is rotated. In other words, the wheel, tyre and axle housing have been specifically designed to fit on to a purpose built axle, and not designed for any other use.

13. In addition, I had in evidence the assembly instruction for Sulo’s plastic mobile garbage bins. It depicts the wheel with its spring loaded locking pin being pushed onto a steel axle at the base of the bin so that the locking pin retracts as the wheel is pushed on and then returns to its original position as it slips into the groove in the axle. The outer end of the axle on the base of the Sulo bins is machined to a conical taper so as to allow the wheel to lock into place when pushed onto the axle in the course of assembly.

14. Given the fixed size of the stub axle housing and its locating steel spring loaded pin, there can be little room for doubt that the item in question was made specifically for the purpose of being fitted to a mobile garbage bin manufactured by Sulo. There was no evidence that it could have any other use in the condition it was imported.”

As noted above, these particular facts appear to have completely escaped both the original decision maker, the reviewer and the legal section who ran the case.

The second part of the Customs argument related to the correct classification of wheelie bins. Here again, the Customs position could only be said to be bizarre. The Customs position was:

“... that moving a garbage bin is a subsidiary or incidental function and does not provide the essential character of the good in question. A rubbish bin without wheels remains a rubbish bin.”

The Tribunals response was as follows:

*“Respectfully, the obvious problem with Mr. Millea’s contention is that the goods in question are parts of a purpose built rubbish bin, described as a **wheelie bin**. It is not simply a rubbish bin. If a person wished to acquire a bin for storing rubbish, they would not necessarily pay for a purpose built wheelie bin. The converse is also true. If the person wished to acquire a rubbish bin for a purpose of removing rubbish on a regular basis, they would acquire one which was capable of transporting that rubbish without lifting and carrying it. Furthermore, because rubbish is collected from the curb side on most properties, it is difficult not to conclude that the purpose of a wheelie bin is to convey rubbish to the curb side so that it can be collected. It is not only a storage device. If one was to store ones rubbish, and not have it removed for a regular collection, then there would be no purpose in acquiring a wheelie bin.”*

The lack of any common sense in the Customs argument was quite bewildering. It appeared to be put that it was entirely appropriate to drag a rubbish bin to the curb side irrespective of its weight and size. The fact, as pointed out by the Tribunal, that the goods were called “a wheelie bin” appeared to have escaped Customs attention.

The further matter of note in this case was the fact that the Tribunal, despite Customs submissions, referred to the HSEs. It has been the writer’s experience over many years that the Customs position as to their use or non-use of the HSEs is completely dependent upon whether those notes will assist them or not. In other words, if they think the HSEs will help them in a case then they will submit to the Tribunal that it is permissible to make reference to them. Conversely, as it was the case in this matter, if the HSEs do not assist them, they will submit that the matter is one of clarity and there is no ambiguity or no necessity to confirm any meaning as the matter is clear.

The Tribunal noted the Customs submissions and noted that this was despite *“the somewhat unclear distinctions drawn by Mr. Millea (for Customs) regarding what can be described as a vehicle and what should or should not be described as a vehicle based on its essential character...”*.

The Tribunal noted that the nature of the way descriptions are applied to articles in the Tariff Act and the various exclusions that apply, ambiguity is a constant problem in the process of classification. The Tribunal then made reference to the various authorities and had no difficulty in

concluding that it was appropriate to refer to the HSEs. These HSEs, in this instance, gave various examples of “hand or foot propelled vehicles”. This included items such as food carts, buffet trolleys, hand carts e.g. for waste disposals and small insulated barrows for use by ice-cream vendors. It was quite clear that the type of genus of goods described here would encompass a wheelie bin.

There was a relevant TCO for the classification but there was no argument that if the goods were classified as contended for by the Applicant, then they would fit the terms of the TCO. The Applicant was therefore successful in obtaining a change in the classification and having a TCO applied to the goods.

We believe that it is troubling that a case like this was able to proceed through the checks and balances of the Australian Border Force without a proper consideration of the goods. Furthermore, arguments such as it being acceptable to drag a wheelie bin because the wheels are of minor consequence, are also of concern. It was certainly clear that the Tribunal was not impressed with the arguments put up by Customs.

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