



**Administrative  
Appeals Tribunal**

**DECISION AND  
REASONS FOR DECISION**

**Sulo MGB Australia Pty Ltd and Comptroller-General of Customs [2018]  
AATA 1324 (17 May 2018)**

Division: GENERAL DIVISION

File Number(s): **2015/2533**

Re: **Sulo MGB Australia Pty Ltd**

APPLICANT

And **Comptroller-General of Customs**

RESPONDENT

**DECISION**

Tribunal: **Egon Fice, Senior Member**

Date: **17 May 2018**

Place: **Melbourne**

The Tribunal sets aside the decision under review and in substitution determines that the Applicant's wheels for its mobile garbage bins are correctly classified to subheading 8716.90.00. The Tribunal finds that the Applicant's wheels for its mobile garbage bins are eligible for concessional entry under Tariff Concession Order 0512190

[sgd].....

Egon Fice, Senior Member

**CUSTOMS** – remittal from Federal Court – classification of Sulo's wheelie bins – consideration of all possible classifications – use of extrinsic materials in aid of interpretation – meaning of other household articles – use of words not found in the legislation or extrinsic materials – identification of the correct descriptor of the goods – plastic wheels suitable for use solely or principally with Sulo's wheelie bins – application of Tariff Concession Order

**Legislation**

*Acts Interpretation Act 1901 s.15AB*

*Customs Tariff Act 1995 Chapters 39, 40, 73, 87*

**Cases**

*Barry R Liggins Pty Ltd v Comptroller-General of Customs and Others (1991) 103 ALR 565*

*Collector of Customs v Agfa-Gevaert Ltd (1995) 186 CLR 389*

*Gardner Smith Pty Ltd v Collector of Customs, Victoria (1986) 66 ALR 377*

*Primaplas Pty Ltd v Chief Executive Officer of Customs (2016) 242 FCR 268*

*Re Toyota Tsusho Australia Pty Ltd and Nippondenso Australia Pty Ltd v Collector of Customs [1992] FCA 211*

**Secondary Materials**

*Harmonised Commodity Description and Coding System Explanatory Notes*

*The Macquarie Dictionary*

*The Shorter Oxford English Dictionary*

*The Urban Dictionary*

**REASONS FOR DECISION**

**Egon Fice, Senior Member**

**17 May 2018**

1. This matter was first heard by me on 24 November 2015 following which I set aside the decision of the Chief Executive Officer of Customs (now the Comptroller-General of Customs) (Customs). I found that the wheels imported by Sulo MGB Australia Pty Limited (Sulo) for its mobile garbage bins were parts suitable for use solely or principally with its *wheelie bin*, as its mobile garbage bins are generally described. In establishing the correct classification for those wheels, I found that the wheelie bins were correctly classified as vehicles, not mechanically propelled, and fell under Heading 8716 of the *Customs Tariff Act 1995* (the Tariff Act).
2. On appeal to the Federal Court of Australia (Moshinsky J), the Court found that my decision should be set aside in the matter remitted for redetermination according to law. The grounds stated by the Court were summarised as follows:
  - (a) *As a matter of principle, I accept the proposition that there can be only one proper classification of the wheelie bins, and this must be determined consistently whether the case is directly concerned with the classification of wheelie bins or is concerned with the classification of wheels as a "part thereof". However, in light of my conclusion in relation to the Comptroller's second contention, it seems unlikely that the wheelie bins would be considered to fall within the description "other vehicles, not mechanically propelled" in heading 8716.*
  - (b) *The Tribunal erred in its construction of the words "other vehicles, not mechanically propelled" in heading 8716. In considering the meaning of this expression, the Tribunal was required to consider, not just the text and explanatory materials for Chapter 87, but other headings and subheadings in Sch 3 likely to apply to wheelie bins. The ambit of these headings and sub-headings, on their proper construction, is a relevant and necessary consideration in determining the meaning of heading 8716. On its true construction, the word "vehicles" refers to something constructed for the primary purpose of transporting goods or people.*
3. Customs conceded, as it did on the first occasion, that the subject goods, plastic wheels, are for use as a part of Sulo's wheelie bins as they are colloquially referred to. Those wheels are used principally if not solely with Sulo's bins. The wheels themselves are a composite construction and their essential character is a *plastic wheel*. Customs continued to dispute that Sulo's wheelie bins could be classified to Heading 8716 of the Tariff Act as non-mechanically propelled vehicles.
4. The same issues which arose on the first hearing arise in this hearing. That is, the correct classification of the subject goods for which duty was paid under protest and, if the goods

are correctly classified to subheading 8716.90.00 after taking into account any other classification which may be relevant, whether the goods are the subject goods described in Tariff Concession Order 0512190 (the TCO). The TCO aspect was conceded on the first hearing but on rehearing, it was not.

5. I need not repeat what I said at the first hearing regarding the identification of the goods as that was not in dispute. I found that the imported wheels were a part of Sulo's wheelie bins. They have been made specifically for the purpose of fitting onto the axle attached to the wheelie bin base housing or frame. Essentially, the wheels are composite goods comprising a plastic wheel with the solid rubber tire moulded to the wheel with a small spring-loaded steel pin inside the moulded plastic axle housing. The axing housing is integral to the wheel. I will say more about this when dealing with the TCO where it now seems to have come into question.

#### **GENERAL RULES FOR INTERPRETATION**

6. The general rules for the interpretation of Schedule 3 are set out in s. 7 of Schedule 2 of the Tariff Act. The relevant passages are:

*Classification of goods in Schedule 3 shall be governed by the following principles:*

1. *The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*
2. (a) ...  
(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of the goods consisting of more than one material or substance shall be in accordance to the principles of Rule 3.*
3. *When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
  - (a) *The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in the set put up for retail sale, those headings are to be*

- regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*
  - (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*
4. *Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.*
  5. ...
  6. *For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

#### **CONSIDERATION OF OTHER POSSIBLE CLASSIFICATIONS**

7. The question of law determined by the Court was whether the Tribunal erred by not considering other possible classifications of the wheelie bins. The first thing that must be said about this contention put by Mr Millea is that the transcript of the hearing before me at first instance shows that statement to be factually incorrect. Other classifications, including Heading 3924 in particular, were considered and discarded by Mr Millea at the hearing. That was in respect of the classification of the wheels, the imported goods. Having expressly discarded it for that purpose, it was never raised again in relation to the classification of the wheelie bins. In any event, with respect to the Court, its decision on this point seems somewhat equivocal. It relies on the acceptance of Customs' second contention regarding the correct classification of the wheelie bins to find that the Tribunal ought to have examined all other possible classifications under which the wheelie bins in question may fall.
8. The Court stated that the ambit of headings and sub-headings in Schedule 3, likely to apply to wheelie bins, needed to be considered as a relevant and necessary consideration in determining the meaning of Heading 8716. In my respectful opinion, consideration of other headings and sub-headings cannot possibly be a relevant and necessary consideration in determining the meaning of Heading 8716. Either the wheelie bins fall

under that heading or they do not. That depends entirely on the descriptions given under the relevant headings of Chapter 87 and any Notes which may be relevant. It may also include examination of extrinsic material to assist in correct identification.

9. In fact, given the exclusion set out in the Chapter 39 Notes regarding parts of aircraft or vehicles of Section XVII, which includes Chapter 87, I am first required to determine whether the goods in question (the wheels) are parts of a non-mechanically propelled vehicle which is properly classified to Heading 8716. If I find that the wheelie bins are a vehicle within the meaning of the classification set out in Heading 8716, no purpose can be served by looking to see if the wheelie bins also fall under Chapter 39. That is because, even if the wheelie bins also fall within the classification under Heading 3924, Chapter 39 cannot apply to the wheels which are the goods in question.

10. I also have concerns with the way in which extrinsic material, that is non-statutory material, has been used by Customs in this case to establish the correct classification of the goods. Before expressing those concerns, I should first examine what I understand to be the law regarding the use of the *Harmonised Commodity Description and Coding System Explanatory Notes* (HSEN). The Court referred to those as the Harmonised System Notes. It referred to the materials which I have set out below and stated, correctly, that I found the expression, *other vehicles, not mechanically propelled*, to be ambiguous which gave rise to proper use of the HSEN as an extrinsic aid to construction of the classification. The HSEN does not form part of the statutory material.

11. Mr Millea, who also appeared before the Court, opposed the use of the HSEN at the first Tribunal hearing. For that reason, and for reasons which I will explain shortly, contrary to what was stated by the Court, I did not have before me on the hearing of this matter the relevant HSEN dealing with Heading 3924. In my reasons for decision, I said at [34]:

*Despite the somewhat unclear distinctions drawn by Mr Millea regarding what can be described as a vehicle and what should or should not be described as vehicle based on its essential character, he nevertheless submitted that extrinsic materials, such as the Explanatory Notes to the Harmonised Commodity Description and Coding System (HSEN) **should not be used in this case to aid construction**. He directed my attention to s. 15 AB of the Acts Interpretation Act 1901 (the Interpretation Act) which relevantly provides... (My emphasis)*

12. The role and use of the HSEN has come before the Federal Court of Australia on a number of occasions. The following extracts are taken from the reasons in my first

decision. They are worth repeating in this case because of the way Customs appears to have used the HSEN before the Court on its appeal.

13. Given that the HSEN does not form part of the Act in question, I should begin with the *Acts Interpretation Act 1901* (the Interpretation Act). Section 15AB relevantly provides:

**15AB Use of extrinsic material in the interpretation of an Act**

(1) *Subject to subsection (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting the ascertainment of the meaning of the provision, consideration may be given to that material:*

- (a) *to confirm that the meaning of that provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or*
- (b) *to determine the meaning of the provision when:*
  - (i) *the provision is ambiguous or obscure; or*
  - (ii) *the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable....*

14. The Full Court of the Federal Court of Australia (Keely, Neaves and Wilcox JJ) in *Gardner Smith Pty Ltd v Collector of Customs, Victoria* (1986) 66 ALR 377 dealt with the use of the HSEN. The Court was required to determine the meaning of the words *or otherwise modified* in respect of certain imported vegetable oil. It referred to s. 15AB of the Interpretation Act and in particular the Applicant's contention that the words *or otherwise modified* were not ambiguous or obscure or, if given their ordinary meaning, would lead to a result that was manifestly absurd or unreasonable. The Court said, at 383 – 384:

*But is (sic) is plain that, to limit the use of extrinsic material to such circumstances – circumstances obviously referable to para 1(b) of s.15AB of the Acts Interpretation Act 1901 – is to deprive para 1(a) of that section of any operation.... It would, as we think, have been open to the Tribunal to consider the Explanatory Notes in order to confirm the meaning which, on the other material available to it, it considered the expression bore having regard to its context in the Tariff Act.*

15. A subsequent Full Court of the Federal Court of Australia (Lockhart, Beaumont and Gummow JJ) in *Barry R Liggins Pty Ltd v Comptroller-General of Customs and Others* (1991) 103 ALR 565 also gave consideration to the use of the HSEN when interpreting the Tariff Act. Beaumont J said, at 573:

*However, although the Customs Tariff Act 1987 refers to the International Convention of the Harmonised Commodity Description and Coding System done at Brussels in June 1983 (see Sch 2, adopting the "General Rules for the Adoption*

*of the Harmonised System”), the 1987 Act makes no reference to the Brussels Notes. It follows, in my opinion, that the problem discussed by Mason J in Henderson’s Case still remains. That is, that although it may be permissible to refer to extrinsic material where the statute is ambiguous, it does not follow that the extrinsic material can be used to contradict the meaning of the language of an Act of Parliament, that meaning being taken from its proper statutory context.*

16. The Full Court of the Federal Court of Australia (Black CJ, Gray and Heerey JJ) again addressed this issue in *Re Toyota Tsusho Australia Pty Ltd and Nippondenso Australia Pty Ltd v Collector of Customs* [1992] FCA 211 (unreported, 14 May 1992). The question in that case was the meaning of the word *machinery* conveyed by the text of Heading 8419. The Court explained that the machinery to which Heading 8419 applied was machinery which had a purpose. It noted that as used in that Heading, it was done so in a sense which would not readily be used in everyday speech. To that extent, it is not dissimilar to the problem which this case presents. The appellant sought to rely on the HSEN as an aid in the construction of Schedule 3 of the Tariff Act. While not denying that the HSEN was capable of being used for such a purpose, the respondent contended it was inappropriate to use the HSEN because the meaning was clear and unambiguous.
17. The Court, after examining the prior decisions of the Full Courts (to which I have referred above) regarding the use of the HSEN, said, at [25] – [28]:

*The limitations on the use of extrinsic materials must of course be kept in mind. In Barry R. Liggins Pty. Ltd. v Comptroller-General of Customs, Beaumont J., with whom Lockhart and Gummow JJ. agreed, quoted with approval a passage from E.J. Cooper, Customs and Excise Law (Cumulative Supplement to 30 June 1985 at 9) where it is said:*

*“... (The Brussels Notes) are a secondary guide only and cannot displace the plain words of the statute... **or be used when there is no ambiguity in the legislation, e.g. a doubt cannot be created by the use of the explanatory notes and then have the doubt settled by reference to the same notes.**” (emphasis added)*

*Beaumont J. also drew attention to the observations of Mason C.J., Wilson and Dawson JJ. in Re Bolton; Ex parte Beane [1987] HCA 12; (1987) 162 CLR 514 at 517-8 about the use of extrinsic material.*

*The appellant sought to rely upon the Explanatory Notes to confirm that the meaning of the relevant provision was the ordinary meaning conveyed by the text (s.15AB(1)(a)) but they contended that if there was any ambiguity (the respondent contended that there was none) then reference might be made to the Explanatory Notes to determine the meaning of the ambiguous provision (s. 15AB(1)(b)(i)).*

18. At the first hearing, Customs referred to Heading 3924 and 3926 of the Tariff Act. Heading 3924 provides:



**TABLEWARE, KITCHENWARE, OTHER HOUSEHOLD ARTICLES AND HYGIENIC OR TOILET ARTICLES, OF PLASTIC:**

19. Subheading 3924.90 .00 refers to *Other*.
20. Heading 3926 provides: OTHER ARTICLES OF PLASTICS AND ARTICLES OF OTHER MATERIALS OF 3901 TO 3914.00.00.
21. Reading the legislative provisions (the Tariff Act) regarding Headings 3924 and 3926 without reference to extrinsic material would not alert the reader to the possibility that Sulo's wheelie bins would fall within either of those headings. In fact, that is exactly what happened on the hearing of this matter, as I will explain presently.
22. In the Statement of Facts and Contentions lodged on behalf of Customs in the current proceeding, Mr Millea dealt with Heading 3924 and also referred to the HSEN under that Heading noting that it included articles of plastics such as dustbins. However, Mr Millea noted that Heading 3924 did not include parts and that there was no Section or Chapter Note expanding the Heading to include parts. Therefore, Mr Millea concluded:

*The subject goods (plastic wheel with the solid rubber tyre) is therefore not classified to the same heading as the plastic MGB [mobile garbage bin] but as a standalone item, in this case to subheading 3926.90.90.*

23. It should also be borne in mind that in his written submissions at the first hearing, Mr Millea said the CEO of Customs conceded that Sulo imported the subject goods for use with its mobile garbage bins and that the goods are used by Sulo as parts for its garbage bins.
24. In his oral submissions at the first hearing, Mr Millea said this about those two Headings:

*MR MILLEA: The 4R [the four (possible headings) are] 3924, which I think both my friend and I both agree that these goods do not fall within. Headings 3926 and heading 4012, both of which the respondent contends this particular good does fall in and 8716, which is what the applicant contends these goods fall in.*

*SENIOR MEMBER: I don't know how it conceivably fits within 3924.*

*MR MILLEA: I had some difficulty with that myself, I must admit.*

*SENIOR MEMBER: It's [the wheelie bin] not a household article. Just a generic description of those items doesn't seem to fit.*

*MR MILLEA: Yes.*

...

*MR MILLEA: The possible headings are going to be 3926, being the plastic for the the wheel.*

*SENIOR MEMBER: Yes, okay, 3926.*

25. The only other reference to Heading 3924 appears in Mr Millea's written submissions where he said the following:

*The Respondent contends that even if the applicant intends the end-use of the goods is on mobile garbage bins, the goods themselves are not identifiable as being parts solely or principally for garbage bins. Even if this was the case, there is no provision to classify goods to this heading as parts and hence the goods would still need to be classified in their own right: i.e. as plastic wheels with sold [sic – solid] rubber tyres and as composite goods.*

26. Given Mr Millea's submissions regarding the inappropriateness of using the HSEN in this matter, it came as no surprise that the HSEN dealing with Chapter 39 was not put before me nor were any submissions made about it in the context of Heading 3924. Effectively, because the subject goods were plastic wheels and not the wheelie bins, even if those wheels were identified as parts of Sulo's wheelie bins, there being no provision for parts of the items described by Heading 3924, they could not be classified to Heading 3924 in any event. An examination of the HSEN dealing with the articles of plastic to which Heading 3924 applies, while referring to dustbins, makes no mention of parts of dustbins or plastic wheels in their own right. In fact the exclusion I have referred to above may also apply.

27. However, it seems that Mr Millea, when before the Court and not convinced that wheelie bins should be classified to Heading 8716, submitted that the Tribunal ought to have examined other possible headings, particularly in Chapter 39, for an alternative classification for wheelie bins. This was not before me on the first hearing nor was the HSEN dealing with Heading 3924.

28. Even if it were correct to say that the Tribunal did not but ought to have examined all possible classifications under which the wheelie bins might be classified, the way in which this was done by Customs is questionable. This is particularly so given that Customs, on the first hearing of this matter, argued that the HSEN had no application in this case. While I disagreed with Mr Millea insofar as Heading 8716 was concerned, the issue was not raised in respect of any other Heading.

29. What comes to mind is the statement I have referred to above made by E. J. Cooper that doubt cannot be created by the use of the explanatory notes (in this case the HSEN

dealing with Heading 3924) and then have the doubt (regarding the application of Heading 8716) settled by reference to the same notes (which deal with a different Heading, 3924). That appears to be exactly what Customs has done in this case. I can find no expressed reason why the Court permitted Customs to use the HSEN in the way that it did. It is not obvious to me that there is any ambiguity in the description provided in Heading 3924; that the HSEN was used to confirm that a provision in that Heading should be given the ordinary meaning conveyed by the text taking into account its context in the Act and the purpose or object underlying the Act; or that the ordinary meaning conveyed by the text in the HSEN and the purpose or object underlying the it would lead to result that was manifestly absurd or would be unreasonable.

30. Then, as if to pull itself up by its bootstraps, Customs sought and was successful in convincing the Court that the reference to *dustbins* in the HSEN dealing with Heading 3924 settled any doubt that this was a classification deserving of consideration. Therefore, my failure to give consideration to HSEN 39.24 (C) constituted an error of law.

#### **THE CHAPTER 87 CLASSIFICATION**

31. If Sulo's wheelie bins can be properly classified under Sub-Heading 8716.00.00, that is, as parts of other vehicles not mechanically propelled, then I need not seek another classification for the plastic wheels in question. Otherwise, I may need to go to other classifications for the purpose of determining under which the plastic wheels by themselves and not as a part of a wheelie bin should be classified. That is the same approach I took on the first hearing of this matter.

32. Mr Millea, on the hearing of this application, also referred to the Section XVII Notes in the Tariff Act and in particular the following:

2. – *“Parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:*

- (a) *Joints, washes or the like of any material (classified according to their constituent material or in 8484) or other articles of vulcanised rubber other than hard rubber (4016);*

...

3. – *References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.*

33. Mr Millea submitted, correctly in my opinion, that the subject goods would only fall to Heading 8716 if the wheelie bin was a vehicle within the meaning of that word as used in Heading 8716; and the plastic wheels are suitable for use solely or principally with Sulo's wheelie bin. Mr Millea then said:

*If the applicant's garbage bin is not a vehicle within the meaning of tariff heading 8716 but properly classified elsewhere, that is the end of the matter. **It is then necessary to consider other classifications** for the subject goods, the wheels [emphasis added].*

34. Mr Millea submitted that because there were no specific Headings dealing with garbage bins or rubbish bins, it was necessary to consider the various headings which may be applicable. That statement is not contentious. However, Mr Millea then referred, not to Heading 3924, but rather to the HSEN dealing with that Heading. He provided no explanation as to why it was proper to refer to extrinsic materials in aid of the construction of Heading 3924. I am reminded that at the first hearing of this matter, Mr Millea expressly dismissed the application of Heading 3924 for the purposes of classifying the wheels in question, and also submitted that the HSEN should not be used in order to assist in the construction of the use of the word vehicles in Heading 8716. At the first hearing, Mr Millea said:

*... My friend has referred to the HSEN and has very flatteringly quoted me in a couple of cases referring to the HSEN, but the essential point about looking at the HSEN is that it should be something which either confirms the ordinary meaning of the word vehicle, or if the meaning of the word vehicle is ambiguous, then we can look at the HSEN.*

35. One cannot help but view Mr Millea's attempt to classify the wheelie bins to Heading 3924 as a second attempt at raising an argument that should have been raised, or, according to the transcript, was raised but rejected, on the first hearing, by him. Nevertheless, in fairness to Customs, I will proceed on the basis that these issues, now identified by the Court, are properly before me on this hearing.
36. In identifying the articles in question, Mr Millea described Sulo's bins as being made either from plastic with the steel axle or entirely metal (galvanised steel) with a steel axle. While that accords with the evidence before me, my recollection of the application as initially framed was that the emphasis was on the plastic bins. Mr Millea then submitted that Sulo's bins were used to store garbage/rubbish and therefore may be seen as rubbish bins. He said the wheels were attached to the rubbish bins to make them mobile. Hence,

the goods should be identified as plastic or metal mobile garbage bins. He accepted they were known as wheelie bins.

37. On reading those submissions, I realised there may be difficulty with the expression used by Mr Millea regarding the use to which the wheelie bins were put. While clearly rubbish and other materials are placed in wheelie bins, I did not have evidence of, nor am I aware of, anything being stored in the bins. Concerned that I did not properly understand the meaning of the word *store* when used as a verb, I consulted *The Shorter Oxford English Dictionary* and the *Macquarie Dictionary* and found the following relevant definitions:

**1.** *trans. to furnish, supply, stock (a person, place, etc.) with something. 2. to keep in store for future use; to collect and keep in reserve; to form a store, stock or supply of; to accumulate, or would 1600.*

**11.** *to supply or stock with something, as for future use. 12. Also, **store up.** to lay up or put away, as a supply for future use.*

38. It should be apparent from the above definitions that the description of use put by Mr Millea is inaccurate at best, if not misleading. Rubbish placed in any bin cannot properly be said to have been stored in that bin even though it may be left there for some time. It is placed there prior to being finally discarded, rather than being set aside, as it were, for some future use. It cannot be properly described as a storage container. Rubbish is placed in a rubbish bin and it remains there simply has a matter of convenience until there is sufficient rubbish accumulated or it is full. Then, rather than take each piece of rubbish or bag of rubbish to the place where it is finally disposed of, all of the pieces of rubbish or bags of rubbish can then be removed at the same time to the place where disposal occurs.

39. In other words, the rubbish bin is simply a device which allows a person to conveniently accumulate rubbish as it is created and then, whether the rubbish bin has wheels or does not have wheels, allows the accumulated rubbish in the rubbish bin to be taken to the disposal point, whether it is on a person's property or elsewhere, for final disposal of the entire amount of accumulated rubbish. In fact, in most residential households, there is a two-step process. There is usually some form of rubbish bin inside the house, being a small device placed conveniently under the kitchen sink or some like place to allow daily refuse to accumulate. It is convenient because it allows the residents to accumulate their rubbish in one place without going to an outside place to discard that rubbish either

temporarily or permanently. When that indoor rubbish bin is full, or sooner depending on what is put in it, the entire contents of that bin are transferred to a larger rubbish bin outside of the house. Final disposal of all of the rubbish accumulated over one or two weeks occurs when the rubbish is taken to a point of final disposal from the residential or commercial premises.

40. Having explained, rather tortuously, the purpose of any outdoor rubbish bin, which includes wheelie bins, it should be apparent that those bins are not a place for the storage of rubbish; they are a place where rubbish may be conveniently accumulated for the purpose of relocating it to the disposal point. The primary purpose of the wheelie bin or any other outdoor large rubbish bin is to conveniently allow the accumulated rubbish to be moved to a disposal point. Given that analysis, I searched for a more accurate definition of the expression *wheelie bin*. While no doubt there will be some criticism levelled at the source, I found this definition in the Urban Dictionary, an online dictionary:

*trash cart with a flip-open lid, often designed to be picked up and dumped by a robotic arm on a garbage truck.*

41. I should also mention the definition provided in the Macquarie Dictionary which is as follows:

*noun a large bin with wheels and handled, used for household rubbish; Otto bin; sulo bin.*

42. While the Macquarie Dictionary definition is purely descriptive, the Urban Dictionary definition incorporates its functional purpose. Although the Urban Dictionary is inclined to provide colloquial expressions of defined words, I find that definition succinctly encapsulates the primary nature of the wheelie bin and its sole purpose. It is a trash (rubbish) cart used for taking accumulated trash to a point of collection or disposal.

#### **APPLICATION OF HEADING 8716**

43. On this occasion, I did not understand Mr Millea to be disputing the ambiguity of the expression: *Other Vehicles, Not Mechanically Propelled*. That is because, in his written submissions, Mr Millea said:

*In considering the meaning of what is a "vehicle" in heading 8716 the Federal Court stated:*

... for something to constitute a "vehicle" for the purposes of heading 8716, it needs to be constructed for the **primary purpose** of transporting goods or people. (emphasis added)

44. In fact the Federal Court was there referring to the description provided in the HSEN and not in the statutory provision or any notes either to Section XVII or to Chapter 87. In fact, it seems to have done so by treating the HSEN as part of the legislative scheme. Nevertheless, for the present purposes, I can ignore that. After setting out the various sub-headings to Heading 8716, the HSEN states (87.16):

*This heading covers a group of non-mechanically propelled vehicles (other than those of the preceding headings) equipped with one or more wheels and **constructed for the transport of goods or persons**. It also includes non-mechanical vehicles not fitted with wheels (e.g., sledges, special sleds running on timber trackways). (emphasis added)*

*The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals. (emphasis added)*

45. The first point is that the words used by the Court, in particular the emphasised words *primary purpose*, do not appear in either the statutory provisions or the HSEN. The words used are: *constructed for the transport of goods or persons*. The *Macquarie Dictionary* defines the verb *construct* as: *1. to form by putting together parts; build; frame; devise*. Therefore, logically, to construct a device for the transport of goods or persons does not necessarily mean that it will be put to use for that purpose, even though it may. It is a statement about its suitability rather than purpose. Furthermore, it is the construction of the article which the HSEN states is the identifier for establishing whether the article is or is not a vehicle. The identifier is not its purpose. By way of example, there are many devices whose construction may permit the transport of goods or persons but are used for other specific tasks such as towing vehicles or trailers (such as a prime mover) or trucks designed to pump concrete for building construction. Arguably, if the transport of goods or persons is one of a number of purposes for which the vehicle is constructed, it fits within the Heading. However, it is its construction rather than its purpose which defines it as a vehicle for the purposes of the Tariff Act.

46. I have not altered my opinion that there is considerable ambiguity in the Heading 8716 expression and that the HSEN is an appropriate extrinsic aid to the construction of the statutory provision. On the second hearing of this matter, Mr Millea had clearly changed

his mind about the use of the HSEN and I did not understand him to now object to its use as an aid in interpreting the statutory classification dealing with vehicles.

47. The HSEN at 87.16 (B) deals with hand or foot-propelled vehicles. It provides:

*This group includes:*

- (1) *Trucks and trolleys of various kinds including those specialised for use in particular industries (in the textile or ceramic industries, in dairies, etc.).*
- (2) *Wheelbarrows, luggage-trucks, hopper-trucks and tipping-trucks.*
- (3) *Food carts, buffet trolleys (other than the type falling in heading 94.03), of a kind used in railway stations.*
- (4) **Hand-carts, e.g. for waste disposal.**
- (5) *Rickshaws.*
- (6) *Small insulated barrows for use by ice cream vendors.*
- (7) *Tradesman's barrows of all kinds. These lightweight vehicles are sometimes fitted with pneumatic tires.*
- (8) *Sledges (hand-drawn) for the transport of wood in mountainous country.*
- (9) *"Kicksleds", propelled by the direct pressure of the rider's foot on the snow-covered ground, designed particularly for the transport of person subarctic regions.*

*This heading does not cover:*

...

48. The types of items referred to in the HSEN dealing with vehicles are significantly varied; some of those devices would not ordinarily be understood to be a vehicle. The common theme amongst all of those devices is their construction. It includes trucks and trolleys which might not ordinarily be used for the purpose of transporting goods or persons. It is their construction which identifies them as fitting within this Heading of the Tariff Act. The HSEN refers specifically to hand-carts and cites the example, for waste disposal. The hand-cart is a vehicle because of its construction, not its primary purpose or purposes, which could be various.

49. In his written submissions, Mr Millea emphasised that the primary purpose of Sulo's bins was as a rubbish bin. Putting aside use of the expression *primary purpose* which, as I have already explained, does not appear either in the statutory material or in the HSEN, Mr Millea then referred to the grounds on which I relied at the first hearing for finding that Sulo's wheelie bins were vehicles, not mechanically propelled. I find there is no purpose in revisiting that explanation for the reason that, while I do not resile from my explanation



referring to a vehicle as being a device with a chassis (a French word meaning *frame*) as that necessarily goes to the construction of a device to transport goods or persons; and that every vehicle referred to in Heading 8716 has a chassis as does every vehicle referred to in the HSEN; I need not rely on that explanation for my findings regarding the proper classification of the wheelie bins. It is, nevertheless, consistent with the identifier, for the purposes of the Tariff Act, being its construction and not its purpose.

50. Mr Millea submitted that a person would not purchase a Sulo wheelie bin if that bin was not first and foremost a rubbish bin. While I accept that submission, I would add that it is a rubbish bin where one can accumulate rubbish for the purpose of subsequently transporting it for disposal. That is because not only are wheelie bins a convenient place to keep and accumulate rubbish, those bins are constructed specifically for transporting that rubbish to a collection point for final disposal by what is commonly referred to as the garbage truck. Furthermore, they are designed to be lifted and emptied into the garbage truck by a robotic arm on the truck. That certainly distinguishes the wheelie bin from what in the past used to be simply called a rubbish bin and was frequently a round metal can with a lid.
51. Furthermore, even those round metal rubbish bins which were common prior to the introduction of wheelie bins, are not properly described storage devices. As I have already indicated, the word storage has quite a different meaning. Those bins were devices where household rubbish was accumulated until the bin was full or the rubbish was due for collection. They provided a means of being able to carry all of the accumulated rubbish in the one receptacle to the place where disposal would occur, commonly at curb side. Having to carry the round metal bin to where the rubbish may be finally disposed of necessarily involves a person carrying the load. What distinguishes the round metal can without wheels from a vehicle such as the wheelie bin is it that the load is placed on or in a vehicle and it is the vehicle which carries the load, not the individual. That is the purpose of using a vehicle. Disposal, as far as the ordinary resident, business or factory operation is concerned, is a reference to the point where that person no longer has to deal with the rubbish. It does not necessarily mean that the resident, business or factory operation needs to undertake its final disposal at something like a rubbish tip although, on some occasions it may do so.

52. Mr Millea submitted that if the primary purpose of a rubbish bin is to transport rubbish, a person would not normally purchase a rubbish bin of any type, including the Sulo bin. A person would purchase something that is specifically designed for transporting rubbish. He then cited as examples, wheelbarrows, luggage-trucks and garden carts. With respect to Mr Millea, I have difficulty in following the logic in that submission. For example, why would a person purchase a wheelbarrow to transport rubbish to its point of collection by a garbage truck when the garbage truck would not collect rubbish placed in such a device because its equipment to raise and empty the device into the garbage truck would be inadequate? Why would a person purchase a garden cart if they were provided with a Sulo wheelie bin equipped with, commonly, a green lid indicating its use for garden refuse, which they can wheel to where the refuse is to be collected, accumulate refuse in the bin until sufficient had been accumulated for final disposal, and then wheel or transport the refuse using the bin to the place of final disposal where it is collected by a robotic arm on a garbage truck? With respect, the examples make no sense. Why is that particular wheelie bin not also properly described as a garden cart? That is precisely its purpose and only purpose.
53. Although I accept Mr Millea's submission that the wheelie bins will not be used in the way I have described in every case, that does not alter the fact that they are constructed for the transport of goods or persons. To suggest that if you accumulate refuse in a wheelie bin for a week or so, it has become a storage device is also illogical. Every vehicle described under Heading 8716 or the HSEN dealing with that Heading, by necessity, enables whatever it is to be transported to be loaded onto it or into it. In fact, it is designed specifically to allow a person to accumulate numerous single items of what is to be transported for the very purpose of moving all items loaded at the same time rather than an individual item at a time. The fact that the goods may spend a short period of time on or in the vehicle which is to transport those goods, cannot make that device something other than a vehicle. It does not become some kind of storage or accumulation device by reason of the vehicle waiting for a full load. Such a notion is highly artificial, particularly if that is described as storage of whatever is placed in or on the vehicle.
54. I find that Sulo's wheelie bins are constructed for the transport of goods or persons. That is also their primary purpose, if that is how these goods are to be identified, although the HSEN states otherwise. They may be used for many other purposes, but transport of goods or persons is what they were constructed for.

55. Given my findings above, Heading 3924 has no application. That is because the Chapter Heading notes state that Chapter 39 does not cover:

(t) *Parts of aircraft or vehicles of Section XVII.*

56. Chapter 87 falls under Section XVII. Nevertheless, if I am wrong about that, I will examine the applicability of Heading 3924.

#### **APPLICATION OF HEADING 3924**

57. Heading 3924 deals essentially with tableware, kitchenware and other household articles or toilet articles, of plastics. On appeal, the Court noted that the HSEN for this Heading included, amongst other things, dustbins. It did not explain why it was necessary to refer to the HSEN for items which fell under this Heading. It seems to have assumed that it was, relying on the Full Court of the Federal Court of Australia decision in *Primaplas Pty Ltd v Chief Executive Officer of Customs* (2016) 242 FCR 268. The grounds stated by the Full Court in that case were that the *relevant subheadings and Subheading Notes were somewhat ambiguous or susceptible to different interpretations*. Perhaps I can assume that those were the grounds in this case as well although it is not clear to me where the ambiguity lies.

58. Heading 3924 deals essentially with household articles made of plastics. There can be no doubt that this Heading does not apply to Sulo's metal bins. The Heading description does not appear, on its face, to be particularly complex or ambiguous given the detailed descriptions of items which are not covered by that Chapter. Nevertheless, assuming that it is so for these purposes, HSEN 39.24 I commences with the words: *Other household articles such as...* It is those words which give context to the articles then subsequently described. They come directly from the Heading. I have found the following definitions of the word *household* in The Shorter Oxford English Dictionary and the Macquarie Dictionary to be relevant:

4. *the contents of the house collectively; household goods – 1709.*

4. *of or relating to a household; domestic: household furniture. 3. Used for maintaining and keeping a house.*

59. Mr Millea submitted that the expression *dustbins* was synonymous with *rubbish bin*. I accept that submission. The difficulty in this case seems to me to be the context in which

the noun dustbins is used, that is, as a household article. While there are numerous types of plastic dustbins or rubbish bins which are used in the house or in relation to clearing rubbish from inside the house, those articles are usually relatively small and able to be located out of sight within the house. Sulo's large wheelie bins are not of that nature. They are an outdoor or garden item where rubbish can be accumulated outside the house by emptying the smaller collective receptacle, probably a dustbin, into the wheelie bin in preparation for transport of its entire contents to its disposal point.

60. Mr Millea referred to the definition of *dustbin* in the Cambridge English Dictionary (presumably online) where it is stated:

*a large container for rubbish from a house or other building, usually made of strong plastic or metal **and kept outside** (my emphasis)*

61. While I have no argument with the definition, the problem is that context has not been given to it in that particular definition. Because the definition refers to it being kept outside of the house is precisely why, contextually, it cannot be a reference to a household article. Even if the wheelie bin can be described as a dustbin, I find it is not a household article.

62. Mr Millea also attached to his written submissions Google extracts of pictures depicting dustbins. Obviously enough, they range from very large in size to very small in size. Some of those are undoubtedly household articles while some are plainly not. It is the failure to distinguish between the two, thereby reading the word dustbins as it appears in the HSEN in context, which gives rise to the misidentification.

63. I find that Sulo's wheelie bin cannot be correctly classified to Heading 3924 as it is not a household article. It follows that the wheels imported solely or primarily for the purpose of being attached to Sulo's wheelie bins cannot fall under Heading 3924 for the reason I have found and also for the reason that there is no subheading under that Heading which deals with Parts.

64. That being the case, Mr Millea submitted that I should determine whether Sulo's wheelie bins fall to Heading 3926 of the Tariff Act. That heading provides:

*OTHER ARTICLES OF PLASTICS AND ARTICLES OF OTHER MATERIALS OF 3901 to 3914.00.00:*

65. Having considered Heading 3926 and each of the subheadings, I find nothing to suggest that the rubbish bins in question fall to that classification. Although there seems to be no basis for referral to the HSEN, having examined HSEN 39.26, I agree with Mr Millea's submission that it provides no indication that plastic rubbish bins fall to this Heading.
66. Mr Millea also referred to Heading 7323 which essentially deals with table, kitchen or other household articles, made of iron or steel or iron or steel wool; and parts thereof. HSEN 73.23 (3) refers to other household articles such as dustbins. It is in fact identical to Heading 3924 save for the material from which the articles are made. There is further reference to items such as pot scourers and scouring or polishing pads, gloves and the like of iron or steel. Furthermore, as Mr Millea submitted, there is no reference to plastic parts and therefore the wheels cannot fall to that Heading. I find that Sulo's metal bins cannot be properly classified to Heading 7323 because, for reasons given above, they are not household items.

#### **CORRECT CLASSIFICATION OF SULO'S WHEELIE BINS AND IMPORTED WHEELS**

67. I have found that Sulo's wheelie bins, both plastic and metal are properly classified to Heading 8716 of the Tariff Act. They are properly described as other vehicles, not mechanically propelled. They are constructed for the transport of goods or persons. That is also the principal if not the sole purpose for which they were constructed.
68. The wheels which are fitted to Sulo's wheelie bins are used principally, if not solely, with those bins. So much was conceded by Customs. To be classified to subheading 8716.90 those wheels must be Parts of the vehicles described under Heading 8716. While the Tariff Act does not elaborate on what might be considered to be a part of a vehicle, the HSEN does so. Given the very broad meaning which might be given to the word *parts*, the possible ambiguities are patent. Therefore, in this case, it is appropriate to refer to the HSEN for guidance. Relevantly, it provides:

*This heading also includes parts of the vehicles mentioned above, **provided** the parts comply with **both** of the conditions:*

- (i) They must be identifiable as being suitable for use solely or principally with such vehicles; and*
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).*

69. There was no question that the wheels were suitable for use solely or principally for Sulo's wheelie bins. In addition, they are not excluded by the provisions of the Notes to Section XVII. While the HSEN dealing with Parts also sets out parts which are included under the heading, that list of parts clearly not exclusive and, although the wheels fitted to Sulo's wheelie bins are of plastic and rubber construction, they nevertheless satisfy the two conditions to which I have referred to above. I find that the imported goods, the wheels used by Sulo on its wheelie bins, are correctly classified to subheading 8716.90.

**CONCESSION ORDER 0512190**

70. TCO 0512190 describes the goods the subject of the Order as follows:

*WHEELS, NON—INFLATABLE, rubber and/or plastic, having a diameter NOT exceeding 400 mm*

The TCO is keyed to subheading 8716.90.00.

71. Although Customs conceded at the first hearing that if the goods were properly classified to subheading 8716.90.00, the TCO applied, on this occasion Customs resiled from that position. As I understood Mr Millea's submissions regarding this change of position, it was because the wheels in question were not simply wheels but will wheels with a stub axle included. In other words, they did not fit the precise description of the goods in question.

72. It is of some assistance to examine the basis upon which TCO's are made. The relevant provision, although couched in the negative, is found in s. 269SJ of the Customs Act. It provides:

*(1) The Comptroller-General of Customs must not make a TCO in respect of goods:*

*(aa) described in terms other than generic term; or*

*(a) described in terms of their intended end use; or*

*(b) declared by the regulations to be goods to which a TCO should not extend.*

*(1A) Without limiting the meaning of the reference in paragraph (1)(aa) to goods described in generic terms, goods are taken not to be so described if their description, either directly or by implication, indicates that they are goods of a particular brand or model, or that a particular part number applies to the goods.*

73. In the event that there should be any ambiguity seen in TCO 0512190, while I doubt that there is, it may be helpful to look at the *Explanatory Statement regarding Tariff Concession Instrument No. 0512190*. It states:

*TCO No 0512190 was made on 5 December 2005. It declares that those certain Non-Inflatable Wheels are goods to which item 50 of Schedule 4 to the Tariff applies since the CEO was satisfied that no substitutable goods were produced in Australia. The general rate of duty on these goods is 5%. The rate of duty for the goods subject to the TCO is 0%.*

74. The TCO was said to come into force on 14 September 2005. It has not been revoked.

75. There can be little doubt that the TCO is a legislative instrument. Even prior to the introduction of the *Legislative Instruments Act 2003*, subsequently renamed in 2015 with amendments, the *Legislation Act 2003*, the High Court of Australia found that to be the case. TCOs were then referred to as Commercial Tariff Concession Orders (CTCO's). The High Court said, in *Collector of Customs v Agfa-Gevaert Ltd* (1995) 186 CLR 389, at 398:

*It is convenient at this stage to note that, for the purposes of interpreting the relevant phrases, the CTCOs should be considered as a species of delegated legislation. (34) The general principles relating to the interpretation of Acts of Parliament are equally applicable to the interpretation of delegated legislation. (35)*

76. The expression *legislative instrument* is defined in the *Legislation Act*. Section 8 of the *Legislation Act* provides :

(1) A **legislative instrument** is an instrument to which subsection (2), (3), (4) or (5) applies.

...

(4) An instrument is a legislative instrument if:

- (a) the instrument is made under a power delegated by the Parliament; and
- (b) any provision of the instrument:
  - (i) determines the law or alters the content of the law, rather than determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply; and
  - (ii) has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

77. What the TCO does is to alter the content of the Tariff Act insofar as it applies to item number 8716.90.00 in Schedule 3 dealing with parts of vehicles, not mechanically propelled. It alters the duty payable on those goods on import from 5% to 0%.
78. There can be no doubt that the TCO in question was made pursuant to the exercise of the power delegated by Parliament. The drafting and approval of TCOs is authorised by Part XVA Division 1 of the Tariff Act.
79. The construction of legislative instruments is dealt with in s. 13 of the *Legislation Act*. Relevantly, it provides:
- (1) *If enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then, unless the contrary intention appears:*
- (a) *the Acts Interpretation Act 1901 applies to any legislative instrument so made as if it were an Act and as if each provision of the instrument were a section of an Act; and*
  - (b) *expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time; and*
  - (c) *any instrument so made is to be read and construed subject to the enabling legislation as in force from time to time, and so as not to exceed the power of the person to make the instrument.*

The provisions set out in s 13 of the *Legislation Act* are effectively replicated in s 46 of the *Interpretation Act*.

80. Section 15AA of the *Interpretation Act* provides:
- In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.*
81. Section 15AB(1)(b) of the *Interpretation Act*, which is set out above at [12], deals with the assistance which may be obtained by using extrinsic material.
82. The TCO provides a generic description of items subject to that Order. It must be a wheel; it cannot have a pneumatic tyre or tube because it must not be inflatable; it must be constructed of rubber and/or plastic; and its diameter must not exceed 400 mm.



83. The goods in question are definitely wheels. To alleviate any doubt, the definition of wheel in The Shorter Oxford English Dictionary is as follows:

- I. *A circular frame of wood, metal, or other hard substance (sometimes in the form of a solid disc, but usu. Of a ring (rim or felloe) with spokes radiating from the central part or nave) attached or capable of being attached at its centre to an axle around which it revolves. a. In a vehicle, et cetera, each of two or more such appliances which support it and, by rolling upon the ground or other surface, enable it to move along with the least possible friction.*

84. The imported wheels for Sulo's wheelie bins are made of hard plastic with a hard rubber (non-pneumatic) tire moulded to the rim, the diameter not exceeding 400 mm (there was no dispute that their diameter was 200 mm). The tire is not removable without destroying the rim. For a wheel to operate as a wheel, it must be able to be fixed to an axle around which it rotates. The Sulo wheels have a short extrusion which I have previously described as a stub axle housing. From the submissions made by Mr Millea in relation to this part of the wheel, it appears to me that I have not expressed the true nature of that device very clearly.

85. The adjective, stub, is a reference to the axle housing and not to any axle which is inserted into the housing. The axle is in fact a full-length axle, that is, one which, while attached to the moulded base of Sulo's bins which forms the frame, extends through that base with a wheel attached on either side of the axle. All that the housing does is provides a centre around which the wheel can rotate. More commonly, the axle protrudes through the centre of a wheel with some retaining form such as a nut, clip or plate on the outside to prevent the wheel from winding off the axle on rotation. In this case, as the definition states, the device designed to ensure that the wheel may be attached at its centre to an axle around which it revolves, a small or short housing protrudes from the centre of the wheel into which the axle is inserted and the housing of the wheel, which has a spring-loaded steel pin, is pushed onto the axle, the spring locating the pin in a groove to retain the wheel on the axle. Neither the steel spring-loaded pin nor the axle housing changes the generic description of the item. It is a wheel because it is capable of being fixed to an axle around which it rotates thus enabling loads to be moved with limited friction and without lifting.

86. Given the above description of the articles in question, I find that the wheels imported by Sulo for the sole purpose of fitting to their wheelie bins satisfies precisely the description

of the item which falls under TCO 0512190. Furthermore, I have found that the wheels are a part of a vehicle, not mechanically propelled and fall to be classified under subheading 8716.90.00 which is the subheading to which the item must be classified in order to satisfy the TCO. I find that Sulo is entitled to the benefit of TCO 0512190 in respect of the wheels, the subject matter of this dispute.

## **CONCLUSION**

87. I have found that Sulo's wheelie bins are correctly classified to Heading 8716. That is because they are properly described as vehicles, not mechanically propelled. They are constructed to transport goods or persons, which includes rubbish. Another appropriate description for the wheelie bin is trash cart. If its purpose is essential for identification of the item which goes to classification, which I doubt, then its sole or principal purpose is to transport accumulated rubbish to a point of disposal from either residential or commercial premises.
88. I have also found that the imported goods, which are properly described as plastic wheels, satisfied the description in TCO 0512190. That is so despite having an extruded centring device which allows the wheel to rotate about the axle, properly centred and able to be retained.
89. Accordingly, I find that the decision made by the Comptroller-General of Customs on 28 January 2015 classifying the wheels for Sulo's mobile garbage bins to subheading 4012.90.00 of the Tariff act and denying the application of TCO 0512190 was not the correct decision. I set aside that decision and in substitution determined that Sulo's wheels for its mobile garbage bins are correctly classified to subheading 8716.90.00. I find that Sulo's wheels for its mobile garbage bins are eligible for concessional entry under TCO 0512190.

*I certify that the preceding 89  
(eighty nine) paragraphs are  
a true copy of the reasons for  
the decision herein of Egon  
Fice, Senior Member*

[sgd].....

Associate

Dated: 17 May 2018

Date(s) of hearing: **21 March 2018**

Advocate for the Applicant: **Mr Andrew Milne**

Agency for the Applicant: **Transtar**

Advocate for the Respondent: **Mr James Millea**