THE "MORE THAN" RULE:- Classification

Although recognised and applied in various countries, it is surprising how little reference has been made until recently to the "more than" rule. Simply stated, the rule is:

"If an article is capable of being described in a particular way but is 'more than' articles of the type so described then it is not, for Tariff purposes, to be identified as an article of the simpler description".

Thus, in **Re Tridon Pty Ltd and Collector of Customs** (1982) 4 ALD 615; CAI 74 windscreen wiper bade refills were seen as "more than" articles of "unhardened vulcanised rubber" and were not identified and classified under this generic description.

In **Re Iwatani Must) Pty Ltd and Collector of Customs** (NSW) (1987) CAI 248 the Administrative Appeals Tribunal was concerned with pressure regulators and the competing identifications of these goods as "pressure reducing valves" or "apparatus for the automatic control of pressure of gas". The Tribunal was firmly of the opinion that the goods were "more than" pressure reduction valves since they enabled the operator to determine the pressure at which gas is delivered and to obtain visible confirmation from the gauges. In this case the decision favoured what might, at first glance, appear to be the less specific description covered by the then Item 90.24.

The decision in Re Iwatani (Aust) Pty Ltd parallels that in **Re Maplas Equipment and Services Pty Ltd and Collector of Customs** (NSW)(1982) 4 ALN N174; CAI 76. In the latter case automatic temperature and control units were in issue with the Collector of Customs arguing that they were machinery plant or equipment for the treatment of materials by a process involving a change of temperature. In holding against the Collector, the Tribunal said, in paragraph 12:

"We think the manner in which the 'Regloplas' operates shows that it does significantly more than that".

In **Re 600 Machinery Pty Ltd and Collector of Customs** (NSW) (1986) 4 AAR 467: CAI 200 the Administrative Appeals Tribunal held that a part of a mixing unit was "not just a pump. Its functions of pumping and mixing are equally important". The Tribunal went on to hold that the unit was "more than a pump and more than a mixer" and noted other of its previous decisions involving the "more than rule". It specifically referred to **Re Acrow Pty Ltd v Collector of Customs** (RS. FR; (1985) 8 ALD I; CAI 184 where "threaded rods" were seen as "more than" the cold drawn product (namely wire) from which they had been made.

Again in **Re McCormack International Pty Ltd and Collector of Customs** (1988) 16 ALD 702; CAI 283 the goods in question were base paper to which was added a thermal coating and an adhesive backing. The applicant sought to argue that the goods could be used as electrocardiograph charts but the respondent argued successfully that they should not be identified as such charts as they had "more than" double the density and thickness limits of electrocardiograph charts, while, at the same time, having a number of undesirable features when used in this manner.

Re Avian Engineering Pty Ltd and Collector of Customs (1988) CAI 282; provides an excellent example of the application of the rule. The goods in question were hospital beds, which incorporated facilities, which allowed a patient to be X-Rayed without being taken from the bed. The applicant sought to argue that the goods were "apparatus based on the use of X-Rays" but, in holding that the goods were "more than" X-Ray examination or treatment equipment the Administrative Appeals Tribunal said:

'The origin of the 'more than' line of cases is in a decision of the United States Customs Court cited as **Robert Bosch Corp v US** 63 Customs Court 96 at l03 or 104. The Court there held that if an article was 'more than' the goods specified in the Customs Tariff its identity was not the same as the identity of those goods, and that whether it was 'more than' those goods, depended upon whether or not its 'essential character' was retained or had been lost".

Reference to the decision in Robert Bosch Corp v US 63 Cust Ct 96 will show that the "more than" rule had been in existence even before that case was decided. However, in that case the Court expressed the rule as follows:

"The principle is well settled that where an article is in character or function something other than as described by a statutory provision - either more limited or more diversified - and the difference is significant, it cannot find classification within such provision. It is said to be 'more than' the article described in the statute..... "

"By contrast where the difference is in the nature of improvement or amplification, and the 'essential character 'is preserved or only incidentally altered: the applicable rule is..... that an unlimited eo nomine (by that name) statutory designation includes all forms of the article in the absence of a contrary legislative intent or commercial designation".

The rule has been applied more recently in **America in Dan-Dee Imports Inc. v US** (1986) 10 CIT 7, where the merchandise in question was a quantity of stuffed cloth figures each of which represented one of several children's fairy tales or stories. Each figure had a human or animal face and a general human shape and bore three or four apron-like flaps which, when raised, showed a new face and revealed a new page of words of a children's story on a background depiction of

clothing. Thus, as the flaps were raised, a new character appeared. Citing a number of prior similar decisions. the Court held that the goods were "more than" dolls but neither were they books; it classified them as "toys not specifically provided for".

In England, the question was considered in **Customs and Excise Commissioners v Mechanical Services (Trailer Engineers) Ltd** (1979) I All ER 50l, although little emphasis was there placed on the words "more than". The goods were general purpose trailer couplings, which the Commissioners sought to tax as "goods of a kind suitable for use as parts of trailers for carrying boats".

Browne L. J. noted that there was nothing intrinsic in the design or construction which ` indicated or particularly fitted the couplings for the purpose of a boat trailer, it was an all purpose component: he adopted what was said by O'Connor J. below

"articles cannot be accessories to boats unless they are designed or adapted for use.....with boats".

Megaw L. J. said:

"If it is made primarily for some other use, then, even through it may incidentally be used suitably as a part of a relevant boat or trailer, it is not of a kind which falls within Item 6".

In other words, the couplings were "more than" couplings for boat trailers and the Court unanimously rejected the submission that they should be taxed as such.

The reasons for decision in **Re Vita Pacific URL and Collector of Customs** (1986) CAI 220, are illustrative of the application of the "more than" rule. The goods in issue were wire mesh and other accessories designed to be attached to the frame of a sofa so that it could be converted into a bed. The Administrative Appeals Tribunal, at paragraph 15, first outlined the rule saying:

"If. In Robert Bosch Corp. v US 63 Cust. Ct. 96 at 103-104 the Customs Court of the USA held that, if an article was more than the goods specified in the Customs Tariff; its identity was not the same as the identity of those goods, and that whether it was more than those goods depended upon whether or not its essential character was retained or had been lost.

The reasoning has been adopted by the Administrative Appeals Tribunal in a number of decisions in particular **Re Tridon Pty Ltd and Collector of Customs** (1982) 4 ALD 615; **Re Vesatile Carpets Pty Ltd and Collector of Customs** (NSW) (1985) 8 ALD 1 and **600 Machinery Pty Ltd and Collector of Customs** (No 2647: 30 April, 1986).

Mr. Holloway pointed out that the High Court of Australia in **Markell v Wollaston**(1906) 4 CLR 141, **Chandler v Collector of Customs** (1907) 4 CLR 1719 and **Whitton v Falkiner** (1915) 20 CLR 118, has accepted that decisions of the American Courts in customs matters were persuasive. We are satisfied that the reasoning in the Bosch case is sound and we adopt it. The subject goods are more than simply mattress supports. The question which we have to decide is whether, in spite of being more than simply mattress supports, that is still their essential character or whether inclusion of the legs and the brackets has given then some other essential character".

The Tribunal went on in paragraph 16 to apply the rule saying:

"16. We have had the advantage of being able to inspect in the hearing room an article similar to the subject goods, as well as hearing the evidence of Mr. Gibson and Mr. Tonkin as to the manner in which the subject goods were designed to become part of a sofa made to be convertible into a sofa-bed. We observed in particular that the brackets were spring-loaded to enable them to be compressed so as to facilitate the fitting of the article into the 9 inch deep cavity in the sofa. We have come to the conclusion that the addition of the legs and the spring-loaded brackets has given to the subject goods the essential character of the bed component of a sofa convertible into a sofa-bed. The frame and the steel wire mesh, which on their own would have constituted a mattress support, have been integrated into that component and do not give it its essential character. We have concluded, therefore, that the subject goods fall to paragraph 94.01.9".

A more recent decision regarding the "more than" rule is that of the Federal Court (Davies J.) in **Johnson & Johnson Australia v Collector of Customs** (1989) 18 ALD 707. The goods in question were dental floss, which consisted of a particular quantity of polyamide yarn located on a spool within a plastic container incorporating a hinged lid and a cutting blade. Before the Administrative Appeals Tribunal it was held that Item 51.01 (under the CCC Tariff) was not applicable on the grounds that the goods were "more than" yarn of continuous man made fibres and the Court agreed with this.

Again, in **Re Suspa Australia Pty Ltd and Collector of Customs** (NSW) (1990) CAI 329, the Administrative Appeals Tribunal held that the goods in issue were not mountings or fittings suitable for furniture. They were "more than" goods of that description.

Even more recent is the decision of the Administrative Appeals Tribunal in **Re GCM Agencies Pty Ltd and Collector of Customs** (1991) CAI 377.The goods in that case was an asphalt batching plant which did not merely mix stone and sand with bitumen to form asphalt but carried out the steps or functions of weighing, screening and heating, all of which are critical to the production of high quality asphalt. The Tribunal said:

“In this Tribunal there is a line of decision dealing with “more than” definitions, the most notable being Re Tridon Pty Ltd and Collector of Customs (1982) 4 ALD 615 at 620 and Re Acrow Australia Ltd and Collector of Customs NSW (1985) 8 ALD 1 at 6. Having listened to the arguments, it seems to me that Mr. Lysewycz is correct in saying the plant is more than an asphalt mixing plant……”.

The draftsmen of the Customs Tariff have, from time to time, made provisions which take into account the “more than” rule. An example may be found in Heading 8450 of the Harmonised Tariff, which is as follows:

“8450 Household or laundry-type washing machines, including machines which both wash and dry”.

The reference to “machines which both wash and dry” operates as a statutory overruling of the general law “more than” rule which would otherwise exclude such composite machines from the Heading of 8450.