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CANADA

[2021] 4 F.C.R. D-11

CUSTOMS AND EXCISE

CUSTOMS TARIFF

Appeal from decision by Canadian International Trade Tribunal (CITT) dismissing appellant's appeal of decision of President of the Canada Border Services Agency (CBSA) regarding tariff classification of certain goods imported by appellant — Goods in question automatic single-cup brewing systems for home use — Classified under tariff item number 8516.71.10 of Schedule to *Customs Tariff*, S.C. 1997, c. 36 as "coffee makers" (K40 brewing systems) — In 2018, appellant applied to CBSA for refund of duties under *Customs Act*, s. 74(1)(e), arguing classification should be changed to tariff item number 8516.79.90, "other electro-thermic appliances" — Goods classified according to General Rules for the Interpretation of the Harmonized System (General Rules), Canadian Rules, both contained in Schedule to *Customs Tariff* — General Rules, Rule 1 stating that "classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes" — CITT determined whether goods fall under specific subheading "**8516.71 - -Coffee or tea makers**" before turning to residual "**8516.79 - -Other**" — Applied modern approach to statutory interpretation to determine that word "or" disjunctive, meaning that "goods may be classified in subheading No. 8516.71 if they are 'coffee makers' or 'tea makers'" — CITT ultimately confirmed that K40 brewing systems should be classified as "coffee makers" under tariff item 8516.71.10 — Appellant posited CITT correct in finding that word "or" in subheading "**8516.71 - -Coffee or tea makers**" disjunctive, but incorrect in concluding that it could still classify item that didn't only make coffee under subheading 8516.71 — Main issue whether CITT erred in its interpretation of Schedule to *Customs Tariff* — Word "or" can be interpreted conjunctively or disjunctively, depending on context — Subheading 8516.71 signaling that both coffee, tea makers properly classified as tariff items under subheading — Classification exercise is to identify appropriate tariff item, exercise should not stop at subheading level — Headings, subheadings in Schedule to *Customs Tariff* used to direct classifier to appropriate tariff item — Goods not classified as subheading, but classified as tariff item — In terms of tariff classification of goods, choice between two possibilities occurring at tariff item level, not at subheading level, which simply indicates types of goods covered by subheading — Word "or" in subheading 8516.71 conjunctive, not disjunctive — As result, CITT erred in finding that word "or" in subheading 8516.71 disjunctive because it was broken down into two tariff items — Whether subheading 8516.71 conjunctive or disjunctive not constraining definition of coffee maker, tea maker — "Coffee maker" appliance that primarily, though not necessarily exclusively, makes coffee —Tariff items should not be interpreted so restrictively as to lead to no goods actually falling within interpretation — Interpreting tariff items too strictly would undermine purpose of Harmonized System, which seeks to foster stable, predictable classification system — In context of subheadings, hierarchical nature of General Rules meaning that these rules only to be applied when good cannot be classified using Rule 1 alone — In this case, Rule 1 conclusively determining appropriate classification of K40 brewing system — CITT correctly interpreting tariff item 8516.71.10 — As such, no need to interfere in present case with CITT's classification of K40 brewing systems as "coffee makers" — Appeal dismissed.

KEURIG CANADA INC. V. CANADA (BORDER SERVICES AGENCY) (A-64-21, 2022 FCA 100, Pelletier J.A., reasons for judgment dated June 2, 2022, 18 pp.)