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CLASSIFICATION OF INFANT SLEEPING BAGS

In the decision of the Administrative Appeals Tribunal of Roger Armstrong Agency & Anor v CEO of Customs the classification of infants sleeping bags was under consideration. Gross & Becroft was successful on behalf of the importers in having the AAT overturn the position taken by Australian Customs.

Infant sleeping bags in most international jurisdictions have a requirement to have armholes to ensure that an infant does not slip into the bag and run the risk of suffocation or SIDS. Despite this being obviously a measure for public safety, Customs sought to argue that by having armholes, the subject goods ceased to be sleeping bags and became garments. If the goods were classified as garments then they would be classified under 6209.20.90 or 6111.20.90 for which 10% duty would be payable. If the goods were classified as sleeping bags then they would fall to 9404.30.00 which would attract duty of 5%. In addition, there was a Tariff Concession Order linked to the sleeping bag classification for sleeping bags which would mean that if classified as sleeping bags then the goods would be duty free.

Customs sought to argue that the goods were used other than as a sleeping bag and did not fall into the traditional concept of sleeping bags. In other words, if the goods did not appear to be a camping type of sleeping bags then they were not sleeping bags according to the Customs argument.

Evidence was provided by the Applicants of the essential safety requirements for infant sleeping bags to have armholes. Further evidence was provided to show that these types of goods were frequently referred to as either sleeping bags or sleep bags. The Tribunal found that these two terms were interchangeable.

In so far as occasionally the infant would be in the sleeping bag and would not be sleeping, the Tribunal found that that was not its principal use. In other words, the Tribunal looked to see what

the normal use or uses of the goods were as per the case of re *Sussan (Wholesale) Pty Ltd and the Bureau of Customs*.

Accordingly, the Tribunal accepted the arguments put forward by Gross & Becroft that the goods were articles of bedding and not garments and were properly classified under 9404.30.00. Furthermore, as the relevant Tariff Concession applied to sleeping bags it followed as a matter if course that the goods were eligible for the TCO.

There were two other sleeping bag items which were not stuffed and accordingly, did not qualify as sleeping bags. They were, however, classified as "other made up articles including patterns" under subheading 6307.90.29 and not as garments as Customs had sought.

Thus, Gross & Becroft were successful in being able to argue in respect of all three models of bags in contention that the argument by Customs that the goods were garments was incorrect. The key issue was to look at the goods themselves and to identify them in the context of their principal use and not focus on one extraneous feature.

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