1954

Sept. 7

Oct. 9

BETWEEN:

DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE ..... APPELLANT;

AND

FLEETWOOD LOGGING COMPANY LIMITED ..... RESPONDENT.

Revenue—Customs and Excise—Goods subject to duty—Logging operations—Logging cars used exclusively in the transportation of logs—Whether use thereof in removing logs part of the operation of logging—Whether railway cars—The Customs Tariff, R.S.C. 1952, c. 60, Schedule "A", Tariff items 411A and 438—The Customs Act, R.S.C. 1952, c. 58, ss. 2(2) and 45—Tariff Board—Question of law on appeal from Tariff Board—Whether Tariff Board as a matter of law erred in its finding—Appeal from Tariff Board dismissed.

Respondent company carries on logging operations in British Columbia. It cuts logs on its own property near Creekside, moves them by its own trucks to its railway spur there, connecting with the main line of the Pacific Great Eastern Railway, and loads them on logging cars used exclusively in the transportation of logs. The cars are then transported by the railway company locomotives, equipment and employees over its main line to Squamish where they are tracked onto a respondent spur line. There the logs are unloaded, dumped into the water and subsequently floated to respondent's mills at Vancouver, these latter operations being carried out by respondent's employees. It imported thirty-five of these railway logging cars which appellant ruled dutiable under Tariff item 438 of the Customs Tariff, R.S.C. 1952, c. 60, namely "railway cars and parts thereof, n.o.p.". On an appeal from that ruling the Tariff Board held that Tariff item 411A should be applied, namely ". . . logging cars . . . for use exclusively in the operation of logging, such operation to include the removal of the log from stump to skidway, log dump, or common or other carrier". Leave to appeal to this Court from the decision of the Board was granted upon the following question of law:

> Did the Tariff Board err as a matter of law in deciding that certain used railway logging cars, imported under Vancouver Customs Entry No. 44554-A dated November 5, 1951, were imported for use exclusively in the operation of logging and therefore classifiable under Tariff Item 411a of the Customs Tariff?

Held: That the "removal" in the manner specified in Tariff item 411A is part of the "operation of logging" for the purpose of the item. The concluding words of the item give recognition to the fact that in some cases the normal logging operations may cease when the log reaches the skidway; in others, when it reaches the log dump, and in still others when it reaches the common or other carrier. In each case the removal of the log from the stump to either of the places or carrier named, is part of the "operation of logging".

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2. That an importer who is otherwise qualified under Tariff item 411A is entitled to its benefit if he establishes that the removal of his logs from the stump is *either* to the skidway, to the log dump, or to a common or other carrier. These words are expressed in the alternative and it is sufficient if he brings himself within any one of them. Here the removal is the transportation by one means or another from the stump to the log dump at Squamish. The item does not require that the removal should be entirely by the logging operator or over his own property, or be carried out by his own employee.

3. That the use of the logging cars of respondent company in the removal of its logs from Creekside to its log dump at Squamish by using part of the facilities of the Pacific Great Eastern Railway cannot be distinguished from other cases in which similar logging cars are used by other companies in removing their logs to their log dumps over railway lines owned and operated by them. To find otherwise would be to disregard the provisions of the Customs Act, R.S.C. 1952, c. 58, s. 2(2) and to prevent the attainment of one of the purposes for which Tariff item 411A was inserted in the Act, namely, to assist those engaged in logging operations.

4. That the conveyance of respondent's logs by the Pacific Great Eastern Railway was a railroad operation within the "operation of logging".

APPEAL under the Customs Act, R.S.C. 1952, c. 58, s. 45, from a decision of the Tariff Board.

The appeal was heard before the Honourable Mr. Justice Cameron at Ottawa.

K. E. Eaton for appellant.

W. S. Owen, Q.C. and *J. M. Coyne* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. now (October 9, 1954) delivered the following judgment:

This is an appeal taken under section 45 of The Customs Act, R.S.C. 1952, chapter 58, from a decision of the Tariff Board dated January 21, 1954 (Tariff Appeal No. 308). On February 19, leave to appeal was granted on the following question of law:

> Did the Tariff Board err as a matter of law in deciding that certain used railway logging cars, imported under Vancouver Customs Entry No. 44554-A dated November 5, 1951, were imported for use exclusively in the operation of logging and therefore classifiable under Tariff Item 411a of the Customs Tariff?

The facts are not in dispute. The respondent is a logging company carrying on its operations in British Columbia. Under Customs Entry No. 44554-A, it imported thirty-five

used railway logging cars described in the entry as "logging machinery—logging skeleton railroad trucks with bunks". Tariff Item 411a was applied. The Dominion Customs Appraiser, however, ruled that such cars were dutiable under Tariff Item 438 and that decision was confirmed by the Deputy Minister of National Revenue, Customs and Excise, on November 12, 1953. An appeal to the Tariff Board was allowed, the Board holding that Tariff Item 411a should be applied. It is as follows:

411a. Machinery, logging cars, cranes, blocks and tackle, wire rope, but not including wire rope to be used for guy ropes or in braking logs going down grade, and complete parts of all the foregoing, for use exclusively in the operation of logging, such operation to include the removal of the log from stump to skidway, log dump, or common or other carrier.

It is not denied that if the logging cars are not dutiable under that tariff item, they are dutiable under Item 438, which reads:

railway cars and parts thereof, n.o.p.

The respondent cuts logs on its own property in the vicinity of Creekside. The logs are then moved by the respondent's own trucks to a "cold deck" which adjoins a railway spur connecting with the line of the Pacific Great Eastern Railway at Creekside. The spur is some 2,500 feet in length and is situated on lands leased by the respondent from the Department of Indians Affairs; but the rails, spikes, switches, etc., are owned by the railway. The respondent makes up trains of these logging cars, spots them on the spur at Creekside and loads them with logs. The cars are then transported by means of Pacific Great Eastern Railway locomotives, equipment and employees over the main line of the railway from Creekside to Squamish, a distance of approximately sixty-two miles. Fleetwood employees do not accompany the cars on that trip or on the return trip when the cars are returned empty to Creekside.

When the cars arrive at Squamish they are tracked onto a Fleetwood spur line there, the logs are unloaded, dumped into the water and subsequently floated to Vancouver for use in Fleetwood's mills. The spur line at Squamish was constructed at Fleetwood's expense over land leased from the railway; the dumping area and booming grounds at Squamish are owned by Fleetwood. From the time when the cars are placed on the spur at Squamish, all subsequent

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operations there are carried out by Fleetwood employees, including the unloading, piling and placing of the logs in the log dump or booming ground.

Counsel for the appellant admits that the cars in question are logging cars and that they are used exclusively in the transportation of the appellant's logs, the contract with the Pacific Great Eastern Railway providing that they cannot be used for any other purpose. He also admits that all operations carried out by Fleetwood up to the time when the railway locomotives commence to move the cars from Creekside are logging operations; and that from the time when the loaded cars are placed on the spur at Squamish until the logs are placed in the log dump there, the operations carried out by Fleetwood are logging operations. He contends, however, that when the railway locomotives commence the transportation of the cars at Creekside, the logs have been removed to a common or other carrier, that the transportation from the Creekside spur to the Squamish spur is excluded from those operations stated by Tariff Item 411a to be included in a logging operation; and that therefore the cars are not used exclusively in the operation of logging. Briefly, he says that the logging operation, under these circumstances, is suspended while the logs are being transported from Creekside to the spur at Squamish and that such transfer is not, in fact, a "logging operation" but rather a "railroad operation". He agrees, however, that if under the same circumstances the transportation from Creekside to Squamish had been carried out by Fleetwood, using its own cars, locomotives, equipment and employees over its own line of railway and on its own property, such an operation would have been part of its logging operations and Tariff Item 411a would have been applied.

Counsel for the respondent relies on the words of Item 411a and submits that the logging cars in question were used exclusively in the operation of logging and that the section specifically provides that a logging operation includes the removal of the logs from stump to log dump, the latter in this case being the appellant's log dump at Squamish.

I think it is clear that Item 411a, taken as a whole, is intended to confer a special benefit upon loggers in respect of the machinery and named equipment to be used exclusively in logging operations, as well as to raise revenue.

It is necessary, therefore, in endeavouring to construe its meaning, to keep in mind the provisions of section 2(2) of The Customs Act, R.S.C. 1952, chapter 42, which is as follows:

2(2). All the expressions and provisions of this Act, or of any law relating to the Customs, shall receive such fair and liberal construction and interpretation as will best ensure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit.

The parties are in agreement that the only portion of the item which needs to be considered is as follows:

. . . logging cars, . . . for use exclusively in the operation of logging, such operation to include the removal of the log from stump to skidway, log dump, or common or other carrier.

The term "operation of logging" is not defined either in the Customs Tariff Act or The Customs Act. Tariff Item 411a, in my opinion, does not attempt to define it; indeed, it might be difficult to attempt to do so, for the term as used in one part of the country might include some phase of the operation which would not be included in other areas. What the item does, I think, is to name the various articles which come within its purview (conditional upon the requirement that they must be for use exclusively in the operation of logging) and then to provide that for the purposes of the item the "operation of logging" would not terminate with those parts of the operation which normally precede the removal of the logs (such as felling and cutting logs), but would include a further step, namely, "the removal of the logs from stump to skidway, log dump or common or other carrier". These concluding words as I interpret them make it quite clear that the removal in the manner specified is part of the "operation of logging" for the purpose of the item. But they do more than that; they give recognition to the fact that in some cases the normal logging operations may cease when the log reaches the skidway; in others when it reaches the log dump, and in still others when it reaches the common or other carrier. In each case the removal of the log from the stump to either of the places or carrier named, is part of the "operation of logging".

As I have said, counsel for the appellant admits that the operations of Fleetwood at Squamish, which I have described, constitute part of its logging operations, and the

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evidence makes it clear that such is the case. Fleetwood expended some $50,000.00 in installing the necessary equipment, etc., after the railway had refused to provide the necessary facilities. It is an integral part of the operation; its log dump is there; and it is there that the logs are placed in the water, sorted, scaled, and the stumpage dues ascertained.

I think an importer who is otherwise qualified under Item 411a is entitled to its benefits if he demonstrates that the removal of his logs from the stump is *either* to the skidway, to the log dump, or to a common or other carrier. These words are expressed in the alternative and it is sufficient if he brings himself within any one of them. There is no provision that if, in the removal of the logs from the stump to the log dump, they are delivered to a common or other carrier, the operation of removal terminates or is suspended, the latter of which was suggested by counsel for the appellant. In this case the removal is the transportation by one means or another from the stump *to* the log dump at Squamish. The item does not require that the removal should be entirely by the logging operator, or over his own property, or be carried out by his own employees.

The test to be applied is this. "Is the equipment for use exclusively in the operation of logging?" In my opinion, the use of the logging cars of the respondent in the removal of its logs from Creekside to its log dump at Squamish by using in part the facilities of the Pacific Great Eastern Railway, cannot be distinguished from other cases in which similar logging cars are used by other companies in removing their logs to their log dumps over railroad lines owned and operated by them; and as I have stated above, counsel for the appellant admits that in the latter cases such user of the logging cars was a use exclusively in the operation of logging. To find otherwise, in my opinion, would be to disregard the provisions of section 2(2) of The Customs Act (*supra*) and to prevent the attainment of one of the purposes for which the item was inserted in the Act, namely, to assist those engaged in logging operations. It would also place at a disadvantage such companies as the respondent vis-a-vis other companies which are owners of logging cars

that are used to remove their logs to their log dumps over their own land and by means of their own equipment and employees.

It was stated by counsel for the respondent and not denied that on many occasions the Department has ruled that trucks owned and operated by haulage contractors, used exclusively in carrying logs for logging operators to the log dumps of the latter, and operating in part or entirely over public highways, are within Item 411a. I am unable to perceive any distinction between such a "removal" and the removal in the instant case. They are but different methods of accomplishing the same result, namely, the removal of the logs to the log dump.

I have not overlooked the submission of counsel for the appellant that the conveyance of the logs by the Pacific Great Eastern Railway constituted a railroad operation and not a logging operation. That submission may be quite true but I do not think it is of any importance in this case. The inclusion of "logging cars" in the list of equipment mentioned in Item 411a indicates in the clearest terms that their use in removing the logs is contemplated as part of the operation of logging and when so used it could quite properly be said that it was a railroad operation within the "operation of logging".

My opinion, therefore, is that the decision of the Tariff Board was right. It has been established that the imported articles were logging cars and that they were used exclusively in the operation of logging, and more particularly in the removal of the respondent's logs to its log dump. All the conditions of Item 411a have been met.

For these reasons, the question submitted will be answered in the negative. The decision of the Tariff Board is affirmed and the appeal will therefore be dismissed with costs.

Judgment accordingly.