



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-013

G. Thériault

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, March 12, 2013*

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IN THE MATTER OF an appeal heard on January 29, 2013, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated April 4, 2012, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

G. THÉRIAULT

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Daniel Petit
Daniel Petit
Presiding Member

Eric Wildhaber
Eric Wildhaber
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 29 2013
Tribunal Member: Daniel Petit, Presiding Member
Counsel for the Tribunal: Georges Bujold
Manager, Registrar Programs and Services: Michel Parent
Registrar Officer: Cheryl Unitt

PARTICIPANTS:**Appellant**

G. Thériault

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Ms. G. Thériault with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on April 4, 2012, by the President of Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether the CBSA properly classified a 2003 BMW vehicle, model 325i (the vehicle), under tariff item No. 8703.90.00 of the schedule to the *Customs Tariff*² as other motor vehicles principally designed for the transport of persons or whether it should be exempt from payment of customs duties, as claimed by Ms. Thériault.

SUMMARY OF FACTS AND PROCEDURAL HISTORY

3. Ms. Thériault normally resides in Meteghan, Nova Scotia. In January 2010, she started studying in the United States, at the University of Louisiana. After arriving in Louisiana, Ms. Thériault purchased the vehicle.

4. Ms. Thériault returned to Canada to work during the summers of 2010 and 2011. Indeed, she admitted this fact in the adjustment request dated December 23, 2011, that she submitted to the CBSA.³ However, she left the vehicle in Louisiana during these periods.

5. In the fall of 2011, Ms. Thériault decided to import her vehicle into Canada.⁴ On December 16, 2011, Ms. Thériault returned to Canada, passing through the St. Stephen, New Brunswick, point of entry. This time, she returned with the vehicle, with a view to importing it into Canada.

6. At the border, Ms. Thériault declared that she purchased the vehicle in the United States. The CBSA determined that the vehicle was properly classified under tariff item No. 8703.90.00. Therefore, Ms. Thériault had to pay \$608.93 in customs duties and taxes.

7. On December 23, 2011, Ms. Thériault submitted an informal adjustment request, claiming reimbursement of the customs duties and taxes that she had paid at the time of importing the vehicle. According to this request, Ms. Thériault and her father were told in telephone conversations with CBSA representatives that no customs duty or tax would be charged when the vehicle was imported, and she decided to import the vehicle on the basis of this incomplete and erroneous information.

8. On December 30, 2011, pursuant to subsection 59(1) of the *Act*, a CBSA agent issued a decision confirming that the vehicle was properly classified under tariff item No. 8703.90.00. In this decision, the CBSA agent indicated that the vehicle could not benefit from the exemption from payment of customs duties, which applies to residents or former residents of Canada who return to reside in Canada after having resided outside the country for at least one year.

9. On January 6, 2012, Ms. Thériault requested a re-determination of the December 30, 2011, decision under subsection 60(1) of the *Act*. On March 12, 2012, the CBSA rendered a preliminary decision informing

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. S.C. 1997, c. 36.

3. Tribunal Exhibit AP-2012-013-06B (protected), tab 10.

4. Tribunal Exhibit AP-2012-013-04 at para. 1.2.

Ms. Thériault that the December 30, 2011, decision would be upheld and that the vehicle was properly classified under tariff item No. 8703.90.00.

10. On March 19, 2012, Ms. Thériault wrote to the CBSA, stating that she did not agree with the preliminary decision. On April 4, 2012, the CBSA issued a decision pursuant to subsection 60(4) of the *Act*, confirming that the vehicle was properly classified under tariff item No. 8703.90.00.

11. On June 26, 2012, Ms. Thériault filed an appeal with the Tribunal from the April 4, 2012, decision pursuant to section 67 of the *Act*. The Tribunal decided to hear the matter by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.⁵ The hearing was held in Ottawa, Ontario, on January 29, 2013.

ANALYSIS

Statutory Framework

12. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).⁶ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

13. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁷ and the *Canadian Rules*⁸ set out in the schedule.

14. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

15. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹⁰ published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹¹

16. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative

5. S.O.R./91-499.

6. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

7. S.C. 1997, c. 36, schedule [*General Rules*].

8. S.C. 1997, c. 36, schedule.

9. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

10. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

11. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.

section or chapter notes in the *Customs Tariff*, having regard to any relevant *Classification Opinions* and *Explanatory Notes*. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.¹²

17. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹³ The final step is to determine the proper tariff item.¹⁴

Relevant Classification Provisions

18. The nomenclature of the *Customs Tariff* that the CBSA claims should apply to the goods in issue provides as follows:

Section XVII	
VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT	
...	
Chapter 87	
VEHICLES OTHER THAN RAILWAY OR TRAMWAY ROLLING-STOCK, AND PARTS AND ACCESSORIES THEREOF	
...	
87.03	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars.
...	
8703.90.00	-Other

19. With regard to the exemptions relating to the imposition and payment of customs duties, subsection 20(1) of the *Customs Tariff* provides as follows:

20.(1) *Unless otherwise indicated in Chapter 98 or 99 of the List of Tariff Provisions, in addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there shall be levied on all goods set out in the List of Tariff Provisions, at the time those goods are imported, and paid in accordance with the Customs Act, a customs duty at the rates set out in that List, the “F” Staging List or section 29 that are applicable to those goods.*

[Emphasis added]

12. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

13. Rule 6 of the *General Rules* provides that “. . . 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 [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

14. Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [General Rules] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

20. Tariff item No. 9805.00.00, which is a special classification provision of Chapter 98, provides for a tariff exemption for residents or former residents of Canada returning to Canada to resume residence after having been a resident of another country for a period of not less than one year. This provision provides for the exemption of customs duties on the following goods:

9805.00.00 Goods imported by a member of the Canadian Forces, by an employee of the Canadian government, or by a former resident of Canada returning to Canada to resume residence in Canada after having been a resident of another country for a period of not less than one year, or by a resident returning after an absence from Canada of not less than one year, and acquired by that person for personal or household use and actually owned, possessed and used abroad by that person for at least six months prior to that person's return to Canada and accompanying that person at the time of their return to Canada.

...

21. Moreover, heading No. 98.04 is another special classification provision of Chapter 98, which provides for a tariff exemption for residents of Canada who return to the country after a short stay abroad. In 2011, for any absence from Canada of at least seven days, the exemption was \$750. Thus, a resident of Canada who returned to Canada after an absence of at least seven days could bring back to Canada, free of customs duties, goods acquired abroad for a maximum value of \$750.

Positions of the parties

22. Ms. Thériault did not contest that the CBSA properly classified the vehicle under tariff item No. 8703.90.00 pursuant to the relevant provisions of the tariff nomenclature. In addition, she did not claim that the vehicle should be exempted from customs duties under the relevant provisions of Chapters 98 and 99.

23. Rather, this appeal is based on an argument that raises a question of equity. According to Ms. Thériault, she should not have to pay any duty under the *Act* because the CBSA did not provide her with complete and true information before the vehicle was imported. In particular, Ms. Thériault argued that, during telephone conversations, CBSA representatives erroneously led her and her father to believe that, since the vehicle had been in her possession for nearly two years, there would be nothing to pay when it was imported.

24. To summarize, Ms. Thériault argued the following:

... What is at issue is the fact that the CBSA communicated information in one manner and acted at the border in another manner. To obtain information on the process of importing a vehicle, insofar as the CBSA is concerned, I went onto the CBSA Web site. There was not enough information there that applied to my case. For more information, I had to reach the CBSA by telephone at a number provided. This is what I did in good faith. By doing this, I believed that I was receiving all the necessary information on the subject of importing a vehicle into Canada. This was not the case. It is therefore important to note that, when the CBSA gives a telephone number as a means of obtaining information, the CBSA has the obligation to provide true and complete information. The fact is that, in my case, the CBSA clearly failed in its obligation. ...¹⁵

[Translation]

15. Tribunal Exhibit AP-2012-013-04 at para. 4.1.

25. For its part, the CBSA submitted that the vehicle was properly classified under tariff item No. 8703.90.00. Moreover, it submitted that Ms. Thériault cannot benefit from the exemption provided under tariff item No. 9805.00.00 because the evidence indicates that she had not resided outside Canada without interruption for at least one year when she crossed the border into New Brunswick to return to Canada in December 2011. Thus, the CBSA concluded that, under the relevant provisions of the *Act* and those of the *Customs Tariff*, Ms. Thériault had to pay the duties and taxes that were imposed on her, namely, those required after the application of the \$750 exemption of heading No. 98.04 for travellers.

26. Regarding the equity arguments raised by Ms. Thériault, the CBSA submitted that, if she received incomplete or erroneous information during telephone conversations with the CBSA's representatives, this is because she led the CBSA to believe that she had resided outside Canada without interruption since January 2010, which is false.

27. In any case, even if all the information communicated by Ms. Thériault to the CBSA had been true and the CBSA had actually provided Ms. Thériault with erroneous information, the CBSA submitted that the Tribunal cannot order reimbursement of duties and taxes on this ground. Indeed, according to the CBSA, the Tribunal is not a court of equity and must apply the law as it is written and, therefore, cannot grant exemptions that go beyond those provided by law.

Tribunal's Analysis

28. In view of the information on the record, it is clear that Ms. Thériault does not contest the validity of the tariff classification of the vehicle under tariff item No. 8703.90.00. Therefore, the Tribunal agrees with the CBSA that, by application of Rule 1 of the *General Rules*, the vehicle was properly classified in heading No. 87.03.

29. The Tribunal also finds that the vehicle clearly falls within the scope of subheading No. 8703.90, by application of Rule 6 of the *General Rules*, and tariff item No. 8703.90.00, by application of Rule 1 of the *Canadian Rules*.

30. Despite the above, Ms. Thériault asked to be exempted from the payment of the applicable duties and taxes solely on the basis of telephone calls made by her and her father, during which they were allegedly told that there would be no customs duties or taxes payable or charged when the vehicle was imported.

31. As such, Ms. Thériault only claimed that she ought to be exempted from payment of the duties and taxes due because of the incomplete information that she allegedly received from the CBSA.

32. The Tribunal must therefore determine if Ms. Thériault is entitled to an exemption under subsection 20(1) of the *Customs Tariff*, which directs more precisely to Chapters 98 and 99 and heading No. 98.05, which provides in particular that the following goods are exempt from customs duties: Goods imported . . . by a former resident of Canada returning to Canada to resume residence in Canada after having been a resident of another country for a period of not less than one year, or by a resident returning after an absence from Canada of not less than one year, and acquired by that person for personal or household use and actually owned, possessed and used abroad by that person for at least six months prior to that person's return to Canada and accompanying that person at the time of their return to Canada."

33. Ms. Thériault herself admitted that she returned to Canada to work during the summers of 2010 and 2011 and that, a few months later, she returned to Canada with her vehicle, namely, on December 16, 2011,

and passed through the St. Stephen, New Brunswick, point of entry. Consequently, she does not meet the conditions to be entitled to the exemption provided by law.

34. There is no other provision of Chapters 98 and 99 that could potentially give rise to an exemption from the duties and taxes due and payable when the vehicle was imported.

35. The Tribunal has stated on several occasions that it must apply the law as it is and that it is not a court of equity.¹⁶ In addition, the Tribunal has previously stated that it does not have jurisdiction to grant relief on the basis of equity, even if a taxpayer was misled or received erroneous information.¹⁷ Therefore, it is not necessary for the Tribunal to address the issue of whether Ms. Thériault was actually misled by the CBSA in order to dispose of this appeal.

36. In view of these principles and after having considered the evidence filed by both parties, the Tribunal dismisses the appeal.

DECISION

37. For the foregoing reasons, the Tribunal finds that the vehicle is properly classified under tariff item No. 8703.90.00 and that it is not eligible for a tariff exemption pursuant to Chapters 98 and 99 of the schedule to the *Customs Tariff*.

38. Therefore, the appeal is dismissed.

Daniel Petit
Daniel Petit
Presiding Member

16. *R. Joschko v. President of the Canada Border Services Agency* (14 December 2011), AP-2011-012 (CITT); *Romain L. Klaasen v. President of the Canada Border Services Agency* (18 October 2005), AP-2004-007 (CITT); *Wayne Ericksen v. Commissioner of the Canada Customs and Revenue Agency* (3 January 2002), AP-2000-059 (CITT).

17. *Location Robert Ltée et Transport Robert (1973) Ltée v. Minister of National Revenue* (13 February 2008), AP-2006-036 and AP-2006-037 (CITT).