



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-007

Romain L. Klaasen

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, October 18, 2005*

TABLE OF CONTENTS

DECISION OF THE TRIBUNALi
STATEMENT OF REASONS1

IN THE MATTER OF an appeal heard on July 6, 2005, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2nd Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of the Canada Customs and Revenue Agency dated May 10, 2004, with respect to requests for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

ROMAIN L. KLAASEN

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 6, 2005

Tribunal Member: Ellen Fry, Presiding Member

Counsel for the Tribunal: Eric Wildhaber

Clerk of the Tribunal: Karine Turgeon

Appearances: Romain L. Klaasen, for the appellant
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STATEMENT OF REASONS

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency (CCRA) (now the President of the Canada Border Services Agency [CBSA]) dated May 10, 2004, made under subsection 60(4) of the *Act*.

2. The goods in issue are 12 pouches of Gauloises smoking tobacco, each pouch containing 50 grams, for a total of 600 grams. On November 23, 2003, Mr. Romain L. Klaasen received, by mail, a parcel containing the goods in issue, which allegedly were a gift from a friend in the United States. The CCRA classified the goods in issue under tariff item No. 2403.10.00 of the schedule to the *Customs Tariff*,² which carries a Most-Favoured-Nation Tariff rate of 4 percent; this rate was levied against the goods in issue. Excise duty, GST and a Canada Post handling fee were also charged. In total, Mr. Klaasen paid \$46.42 for customs and excise duties, GST and the handling fee.

3. Mr. Klaasen bases his appeal on the contention that, as a recipient of a gift, he is not an importer because he did not actively import the goods in issue and, therefore, should be exempt from paying the customs and excise duties and the ensuing taxes and handling fee. He also argues that he was not asked to pay duty and taxes on past shipments of similar gifts. If he is found to be an “importer”, Mr. Klaasen does not challenge the quantum of the duties, taxes and handling fee that were assessed or charged.

4. The parties gave notice to the Tribunal that they were amenable to this matter being decided by way of written submissions without an oral hearing, pursuant to rule 36.1 of the *Canadian International Trade Tribunal Rules*.³ The Tribunal decided to proceed accordingly and gave notice in the June 11, 2005, edition of the *Canada Gazette*,⁴ that a file hearing was scheduled for July 6, 2005.

5. According to Mr. Klaasen, the situation that brought him to the Tribunal is as follows. He has a friend in the United States who sometimes sends him a gift of tobacco by mail parcel with a customs sticker affixed to it that clearly indicates that its contents are indeed tobacco. Until November 2003, these parcels had never been intercepted by the CCRA and had therefore made their way to him unhindered by either customs duties or taxes. When he went to the post office on November 24, 2003, to pick up the goods in issue, the first of these shipments that had been intercepted by the CCRA, he was faced with the dilemma of whether to pay the levies described above in order to take possession of his “. . . birthday gift of (unwanted) tobacco . . .” or “. . . decline acceptance of the parcel . . .”, which, as he put it, could have been interpreted as “. . . a slap in the face of my friends in Washington State . . .” In the materials that he filed with the Tribunal, Mr. Klaasen explains that he then, “based on past experience, . . . considered the matter an error, and filled out the request for a refund forthwith”. The refund application was denied, and the CBSA also denied Mr. Klaasen’s request for re-determination. Mr. Klaasen then filed his appeal with the Tribunal on June 8, 2004.

6. The *Act* requires the Tribunal to determine the proper tariff treatment of the goods in issue based on the provisions of the law. The CCRA classified them under tariff item No. 2403.10.00 as smoking tobacco, and the Tribunal finds that this classification is correct. Mr. Klaasen cannot avoid paying duty because the goods in issue were allegedly a gift. Tariff item No. 9816.00.00 expressly excludes from duty-free benefit “casual donations” (i.e. gifts) consisting of tobacco that are sent by persons abroad to friends in Canada.

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

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

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

4. C. Gaz. 2005.I.2062.

7. In the Tribunal's view, that any previous shipments of tobacco received by Mr. Klaasen were not intercepted by the CBSA or its predecessors is irrelevant. The administrative action, or inaction, of the CBSA cannot change the law. Section 20 of the *Customs Tariff* provides that duties will be levied at the time of importation. The operation of section 17 and paragraph 32(1)(b) of the *Act* would have forbidden the goods in issue from being released until such duties were paid.

8. Despite his argument that he is not an importer, the Tribunal considers that Mr. Klaasen did indeed import the goods in issue. According to *Black's Law Dictionary*, seventh ed., to "import" is "the process of bringing foreign goods into a country". Subsection 2(1) of the *Act* states that "import" means import into Canada. When he went to the post office on November 24, 2003, Mr. Klaasen paid the duties and taxes that allowed him to gain release of the goods in issue and, by those actions, completed the process of bringing such foreign goods into Canada. Although he did not consider himself to be an importer, he nevertheless imported the goods in issue into Canada at that time. He had the option of refusing the package that was addressed to him.

9. Accordingly, in the Tribunal's view, the CBSA correctly denied him his claim.

10. For the foregoing reasons, the appeal is dismissed.

Ellen Fry

Ellen Fry

Presiding Member