



Ottawa, Wednesday, October 18, 1989

Appeal No. AP-89-026

IN THE MATTER OF an application heard September 21, 1989, pursuant to section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated December 19, 1988, with respect to a request for a redetermination filed pursuant to section 63 of the *Customs Act*.

BETWEEN

KALIANNAN RAJU

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the appellant's 1988 Ford Taurus L, s/n 1FABP50D6JG137642, is correctly classified under tariff item 8703.23.00.93.

W. Roy Hines

W. Roy Hines
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-026

KALIANNAN RAJU

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

Customs Tariff - Tariff Classification - Whether a car purchased by the appellant in the United States and imported into Canada should be classified under tariff item 9805.00.00 or whether it is correctly classified under tariff item 8703.23.00.93 - Whether the Tribunal can interpret tariff items in accordance with equitable principles.

DECISION: *The appeal is dismissed. It is a well-established principle of law that taxing statutes, such as the Customs Tariff, cannot be construed to avoid the effects of the legislation, no matter how great the hardship may appear to be. The appellant admits, and facts of the case clearly indicate, that the conditions set out in tariff item 9805.00.00 have not been satisfied. On the other hand, both parties agree, and the Tribunal considers, that tariff item 8703.23.00.93 accurately describes the subject vehicle.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: September 21, 1989
Date of Decision: October 18, 1989*

*Panel Members: W. Roy Hines, Presiding Member
Robert J. Bertrand, Q.C., Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: Clifford Sosnow

Clerk of the Tribunal: Lillian Pharand

*Appearances: Kaliannan Raju, the appellant
Brian R. Evernden, for the respondent*

Case Cited: Partington v. A.-G., (1869), L.R. 4 H.L. 100.

Statute Cited: Customs Tariff, S.C. 1987, c. 49, tariff items 87.03, 8703.23.00, 8703.23.00.93 and 9805.00.00.

Appeal No. AP-89-026

KALIANNAN RAJU

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
ROBERT J. BERTRAND, Q.C., Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

SUMMARY

The appellant, Mr. Kaliannan Raju, is a Canadian citizen who pursued postdoctoral training in the United States. He purchased a new car (1988 Ford Taurus L, s/n 1FABP50D6JG137642) while residing in that country.

When the appellant returned to Canada, the car was classified under tariff item 8703.23.00.93 of the *Customs Tariff*.¹ The appellant asks the Canadian International Trade Tribunal (the Tribunal) to classify the car under tariff item 9805.00.00, enabling him to import the car duty-free. The appellant admits that the car is accurately described under tariff item 8703.23.00.93 and that he has not satisfied the conditions set out in tariff item 9805.00.00, but asks the Tribunal to interpret the requirements of that tariff item in such a way as to enable the classification of his car under tariff item 9805.00.00.

The issue in this appeal is whether the vehicle that the appellant imported into Canada should be classified under tariff item 9805.00.00 and exempt from customs duty or whether the Deputy Minister correctly classified the vehicle under tariff item 8703.23.00.93.

The appeal is not allowed. It is a well-established principle of law that, in a taxing statute such as the *Customs Tariff*, the words, as they are written, must be applied to the facts of each case. The words cannot be modified to avoid hardship.

The appellant admits, and facts of the case clearly indicate, that the conditions set out in tariff item 9805.00.00 have not been satisfied. On the other hand, both parties agree, and the Tribunal considers, that tariff item 8703.23.00.93 accurately describes the subject vehicle.

1. S.C. 1987, c. 49.

THE LEGISLATION

The provisions of the *Customs Tariff* that are relevant to this appeal are as follows:

87.03

Motor Cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars.

...

8703.23.00

Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc.

...

8703.23.00.93

Of an interior volume exceeding 2.8 m³ but not exceeding 3.1 m³.

9805.00.00

Goods imported ... by a former resident of Canada returning to Canada to resume residence therein 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 use or household use and actually owned abroad by and in the possession and use of that person for at least six months prior to that person's return to Canada.

THE FACTS

The appellant, a Canadian citizen who pursued postdoctoral training in the United States, purchased a new car (1988 Ford Taurus L, s/n 1FABP50D6JG137642) while residing in that country. He resided in the United States for approximately nine months before he returned to Canada.

When the appellant imported the car into Canada, the car was classified under tariff item 8703.23.00.93. This classification meant that the car was subject to customs duty. Although the appellant agreed that the car was accurately classified under that tariff item, he asked that the vehicle be classified under tariff item 9805.00.00. This tariff classification permits duty-free entry of goods, such as the appellant's vehicle, acquired by a person during an absence from Canada. To benefit from this tariff item, the person must have been away from Canada and have owned and used the imported goods, while abroad, for a certain period of time.

On October 17, 1988, a Tariff and Value Administrator confirmed the original determination. The administrator said that the car did not come within tariff item 9805.00.00 because the appellant did not reside in the United States for at least one year.

On December 19, 1988, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) confirmed the original tariff classification. In order for the car to be classified under tariff item 9805.00.00, the appellant had to have resided in the United States for at least one year.

The appellant appealed this determination to the Tribunal on February 2, 1989, because he felt that the Deputy Minister should have taken into consideration his nine-month residency in the United States when interpreting the residency requirement of tariff item 9805.00.00.

Mr. Kaliannan Raju testified on his own behalf at the hearing. The respondent did not call any witnesses.

The appellant entered the United States and went to Columbus, Ohio, on September 2, 1987. His purpose was to get postdoctoral training in the field of plant molecular biology and biotechnology at the Ohio State Biotechnology Center, Ohio State University.

Although the appellant had planned on studying at the Center for two years, he spent only eight months and twenty-four days in the United States. Although the appellant could have stayed in the United States for a longer period, he chose to return to Canada on May 25, 1988, because he was not satisfied with the quality of his training at the Center.

Before the appellant made the decision to come back to Canada, he purchased the car in Columbus. The date of the purchase was January 26, 1988.

THE ISSUE

The issue in this appeal is whether the vehicle that the appellant imported into Canada should be classified under tariff item 9805.00.00 and exempt from customs duty or whether the Deputy Minister correctly classified the vehicle under tariff item 8703.23.00.93.

The appellant's argument was based on compassionate grounds. He said that the customs duty required to be paid on the car was a heavy financial burden. The appellant admitted that tariff item 8703.23.00.93 accurately described the vehicle in issue. He also admitted that he did not meet the requirements as set out in tariff item 9805.00.00. But he asked the Tribunal to take into consideration the fact that he had been in the United States for almost nine months.

The respondent argued that the car could not be imported into Canada under tariff item 9805.00.00 for two reasons. First, the appellant did not reside in the United States for at least 12 months. Second, the car was not owned by the appellant and in his use and possession for at least six months prior to his return to Canada.

The respondent also argued that the Tribunal did not have jurisdiction to waive the requirements set forth in tariff item 9805.00.00.

DECISION

The appellant and the respondent both agree that the vehicle in issue was accurately classified under tariff item 8703.23.00.93. Furthermore, the appellant accepts that he has not satisfied the conditions set out in tariff item 9805.00.00. Nevertheless, the appellant is asking the Tribunal to interpret the residency and ownership requirements set out in tariff item 9805.00.00 in such a way that would enable the duty-free access into Canada of his car.

The Tribunal sympathizes with the appellant. But it is a well-established principle of law that taxing statutes, such as the *Customs Tariff*, cannot be construed to avoid the effects of the legislation, no matter how great the hardship may appear to be. In *Partington v. A.-G.*,² Lord Cairns stated the rule of interpretation of fiscal legislation as follows:

I am not at all sure that, in a case of this kind - a fiscal case - form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called equitable construction, certainly such a construction is not admissible in a taxing statute where you simply adhere to the words of the statute. (emphasis added)

In the result, the Tribunal cannot modify tariff item 9805.00.00. It must apply the words of the tariff item, as they are written, to the facts of each case.

The words of tariff item 9805.00.00 state that in order for goods, such as the appellant's vehicle, to come within the tariff item, two broad conditions must be satisfied. First, the person who seeks to use the tariff item must have been a resident of another country or been absent from Canada for at least one year. Second, the goods that are sought to be imported under this tariff item must have been owned and in the possession and use of the person for at least six months prior to the person's return to Canada.

The appellant admits, and facts of the case clearly indicate, that neither of these conditions has been satisfied.

2. (1869), L.R. 4 H.L. 100, at p. 122.

CONCLUSION

The Tribunal concludes that the appellant's vehicle is not eligible for entry into Canada under tariff item 9805.00.00. On the other hand, both parties agree, and the Tribunal considers, that tariff item 8703.23.00.93 accurately describes the subject vehicle.

In view of the foregoing, the Tribunal concludes that the appellant's 1988 Ford Taurus L, s/n 1FABP50D6JG137642, has been properly classified under tariff item 8703.23.00.93.

Accordingly, the appeal is not allowed.

W. Roy Hines
W. Roy Hines
Presiding Member

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member