



Ottawa, Thursday, May 20, 1993

Appeal No. AP-91-152

IN THE MATTER OF an appeal heard on February 19, 1993, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated July 4, 1991, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

GASPAROTTO/PANONTIN CONSTRUCTION LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey

Desmond Hallissey
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Lise Bergeron

Lise Bergeron
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-152

GASPAROTTO/PANONTIN CONSTRUCTION LIMITED

Appellant

and

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

Respondent

The appellant carries on business as a construction company in Thunder Bay, Ontario. It imports some of its construction materials from the United States. In particular, it imports certain corrosion-resistant, heavy-duty tiles known as "fire clay tiles," which are the subject of this appeal. The issue in this appeal is whether the fire clay tiles imported by the appellant are more properly classified under tariff item No. 6901.00.00 as "[b]ricks, blocks, tiles and other ceramic goods of siliceous fossil meals ... or of similar siliceous earths," as contended by the appellant, or under tariff item No. 6908.90.10 as glazed ceramic wall tiles, as contended by the respondent. At the hearing, the appellant abandoned heading No. 69.01 and, instead, requested that the Tribunal declare that goods fired at temperatures of 1500°C or more are more properly classified under heading No. 69.02 or 69.03 and that an annex code or tariff item be created to cover all other goods qualifying for entry under former tariff item 28100-1.

HELD: *The appeal is dismissed. The Tribunal is of the opinion that it does not have the jurisdiction to make the declaration sought by the appellant.*

*Place of Hearing: Winnipeg, Manitoba
Date of Hearing: February 19, 1993
Date of Decision: May 20, 1993*

*Tribunal Members: Desmond Hallissey, Presiding Member
Michèle Blouin, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

*Appearances: George Carroll, for the appellant
Rick Woyiwada, for the respondent*

Appeal No. AP-91-152

GASPAROTTO/PANONTIN CONSTRUCTION LIMITED

Appellant

and

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

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
 MICHÈLE BLOUIN, Member
 LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated July 4, 1991.

The appellant carries on business as a construction company in Thunder Bay, Ontario. It imports some of its construction materials from the United States. In particular, it imports certain corrosion-resistant, heavy-duty tiles known as "fire clay tiles," which are the subject of this appeal.

The tiles in issue were imported on May 22 and 30, 1990. On both occasions, they were initially classified under tariff item No. 6902.90.90 as other "[r]efractory ... tiles ... other than those of siliceous fossil meals or similar siliceous earths." On June 19 and 28, 1990, respectively, the Deputy Minister re-determined the classification of the tiles in issue and classified them under tariff item No. 6908.90.10 as glazed ceramic wall tiles. On September 20, 1990, the appellant requested a re-determination. By decision dated November 22, 1990, the respondent maintained the classification of the tiles. On December 6, 1990, the appellant requested a further re-determination. By decision dated July 4, 1991, the respondent maintained the classification of the tiles under tariff item No. 6908.90.10. In its notice of appeal to the Tribunal, the appellant contended that the tiles were more properly classified under tariff item No. 6901.00.00 as "[b]ricks, blocks, tiles and other ceramic goods of siliceous fossil meals ... or of similar siliceous earths" and not under tariff item No. 6902.90.90, as previously contended.

The issue in this appeal is whether the fire clay tiles imported by the appellant are more properly classified under tariff item No. 6901.00.00 as "[b]ricks, blocks, tiles and other ceramic goods of siliceous fossil meals ... or of similar siliceous earths," as contended by the appellant, or under tariff item No. 6908.90.10 as glazed ceramic wall tiles, as contended by the respondent.

Prior to the hearing, the Tribunal received notice from the representative of Canadian Stebbins Engineering & Mfg. Co. Limited (Canadian Stebbins) of Ottawa, Ontario, that Canadian Stebbins wished to intervene in this appeal by means of written submissions. These submissions accompanied the notice. The materials received from Canadian Stebbins indicated that it imports

1. R.S.C. 1985, c. 1 (2nd Supp.).

different types of bricks which have different uses than those of the appellant's tiles. These bricks, however, do apparently share certain characteristics with the appellant's tiles.

During discussion of preliminary matters at the beginning of the hearing, the appellant's representative, Mr. George Carroll, indicated that he was prepared to accept the experts' reports filed by the respondent in respect of the technical conclusions made therein. The Tribunal specifically asked Mr. Carroll if he accepted these reports since, in the Tribunal's view, they concluded that the goods in issue were not made of siliceous fossil meals or of similar siliceous earths and, therefore, as the appellant had already acknowledged that the goods in issue were not refractory ceramic goods, there would be no evidentiary basis upon which to classify the goods under heading No. 69.01. Mr. Carroll confirmed that he accepted the technical conclusions in the reports, although he did have two questions for the experts, which in the Tribunal's view, did not bear on the technical or scientific conclusions reached in these reports. Following further discussion, it became clear that the appellant was abandoning heading No. 69.01 and was now seeking different relief from the Tribunal. More specifically, Mr. Carroll stated that the relief that the appellant was seeking was not to have the goods in issue classified under tariff item No. 6901.00.00, but rather for the Tribunal to declare that goods fired at temperatures of 1500°C or more are more properly classified under heading No. 69.02 or 69.03 and that an annex code or tariff item be created to cover all other goods qualifying for entry under former tariff item 28100-1.

The Tribunal notes that, since the goods in issue are fired at a temperature less than that identified in the appellant's request, only the second part of the appellant's request pertains to the goods in issue.² The appellant explained that the request that it was making was meant to cure the defect in the Act that the appellant claimed occurred when the duty-free status of the goods in issue was not maintained following the introduction of the Harmonized Commodity Description and Coding System into Canadian law. In effect, the appellant asked that the Tribunal direct that the legislation be amended in accordance with its request. The Tribunal is of the opinion that it does not have the jurisdiction to do so, and, accordingly, the appeal is dismissed.

Finally, with respect to the intervention by Canadian Stebbins, the Tribunal notes that, under subsection 67(2) of the Act, an intervenor may only intervene in respect of the actual case before the Tribunal. In this case, the Tribunal has been asked to consider the classification of the appellant's tiles, not Canadian Stebbin's bricks. The Tribunal is of the view that, unfortunately, Canadian Stebbins has misconstrued its role in these proceedings, as the Tribunal has no jurisdiction to consider the facts of a case that it may have against the Deputy Minister.

Desmond Hallissey

Desmond Hallissey

Presiding Member

Michèle Blouin

Michèle Blouin

Member

2. Based on Mr. Carroll's comments, the Tribunal notes that information in the brief of Canadian Stebbins indicates that its bricks would fall under the first part of the request.

Lise Bergeron
Lise Bergeron
Member