



Ottawa, Wednesday, February 24, 1993

Appeal No. AP-91-122

IN THE MATTER OF an appeal heard on November 25, 1992, 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 March 14, 1991, with respect to a request for re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

GENESPORT INDUSTRIES LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-122

GENESPORT INDUSTRIES LTD.

Appellant

and

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

Respondent

The appellant has imported Balisong knives - known as "butterfly knives" - into Canada from the United States. These goods were seized at the border by Canada Customs. The issue in this appeal is to determine whether these knives should be classified under tariff item No. 8211.93.00 of Schedule I to the Customs Tariff or whether they are prohibited weapons pursuant to paragraph (b) of the definition of "prohibited weapon" under subsection 84(1) of the Criminal Code and properly classified by the respondent under tariff code 9965 of Schedule VII to the Customs Tariff.

HELD: *The appeal is dismissed. The evidence has shown that the imported knives are butterfly knives. The decision of the Supreme Court of Canada in Her Majesty the Queen v. Debra Vaughan indicates clearly that such knives come within the meaning of paragraph (b) of the definition of "prohibited weapon" under subsection 84(1) of the Criminal Code. Thus, the goods are properly classified under tariff code 9965 of Schedule VII to the Customs Tariff.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 25, 1992
Date of Decision: February 24, 1993

Tribunal Members: Sidney A. Fraleigh, Presiding Member
Kathleen E. Macmillan, Member
Michèle Blouin, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

Appearances: Mark Kmec, for the appellant
Rosemarie Millar, for the respondent

Appeal No.AP-91-122

GENESPORT INDUSTRIES LTD.

Appellant

and

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

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
KATHLEEN E. MACMILLAN, Member
MICHÈLE BLOUIN, 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 March 14, 1991, made pursuant to subsection 63(3) of the Act.

The appellant is involved in the supply of martial arts equipment. On February 27, 1989, knives it imported from the United States were classified by a Canadian Customs officer as prohibited goods under tariff code 9965 of Schedule VII to the *Customs Tariff*.² Thus, the knives were seized by the Department of National Revenue (Revenue Canada). These knives - Balisong knives - had been sold to the appellant by the Hokkaido Karate Equipment MFG. Corp. (Hokkaido), a company located in the State of New York. The invoice attached to the appellant's brief indicates that this company is a U.S. corporation wholly owned by the appellant. It also describes the goods sold to the appellant as "Style 722 Korean Kamakaze BF Teflon 5-1/2 knives" and "Style 723 Butterfly Silver/BLK 5-1/2 Knives."

The issue in this appeal is to determine whether the butterfly knives should be classified under tariff item No. 8211.93.00 of Schedule I to the *Customs Tariff* or whether they are prohibited weapons pursuant to paragraph (b) of the definition of "prohibited weapon" under subsection 84(1) of the *Criminal Code* and were properly classified by the respondent under tariff code 9965 of Schedule VII to the *Customs Tariff*.

Mr. Tibor Schonbrun, president of Genesport Industries Ltd., was the appellant's first witness. He testified as to the nature of the knives in question and the transactions that had transpired leading up to the seizure of the goods in question. He also produced a knife (Exhibit A-1), Model No. 720, which he indicated had been given to him by Canada Customs. Under cross-examination, he confirmed that the subject knives were identified as Model Nos. 722 and 723 on the sales invoice from the exporter, Hokkaido.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).

Mr. Philip Gelinas, who was accepted by the Tribunal as an expert witness on martial arts, also testified on behalf of the appellant. He explained to the Tribunal the importance of various weapons in martial arts, including the development and making of Balisong knives. During cross-examination, Mr. Gelinas testified that the knives did not open automatically and that Exhibits A-1, B-1 and B-2 (the latter two being the respondent's exhibits) were all Balisong or butterfly knives.

Mrs. Luci Williams of Revenue Canada was the witness for the respondent. Responsible for administering the control of the importation of firearms and weapons into Canada, she is the officer in charge of the present appeal. In order to examine the goods in issue to determine if, in actual fact, they were butterfly knives, she told the Tribunal that she had contacted the Montreal regional office and requested that a sample of each type of knife involved in the present appeal be sent to her in Ottawa. Further to this request, she received the two knives filed as Exhibits B-1 and B-2. Mrs. Williams also produced as Exhibit B-3 an envelope with a transmittal note referring specifically to Genesport Industries Ltd.

Counsel for the appellant first argued that the respondent ought to have classified the goods in issue under tariff item No. 8211.93.00 of Schedule I to the *Customs Tariff* as opposed to tariff code 9965 of Schedule VII to the *Customs Tariff*. The tariff item upon which counsel relied deals with "[k]nives having other than fixed blades." He contended that, where Parliament provides a specific tariff item, the approach to be followed should be to look first at the specific provision rather than use any basket provision. Counsel also contended that, at the time of importation of the goods in issue, there was judicial ambiguity or doubt as to whether butterfly knives fell within the ambit of paragraph (b) of the definition of "prohibited weapon" under subsection 84(1) of the *Criminal Code*. Given this ambiguity, he argued that the benefit of the doubt ought to have been given to the appellant. Finally, counsel for the appellant submitted that the evidence of Mr. Schonbrun receiving Exhibit A-1 from Customs Canada had not been rebutted. This being so, he asked rhetorically why Revenue Canada, in light of the prohibited nature of that knife, gave it back to the appellant's president.

On this last point, counsel for the respondent remarked that the evidence was not very clear. She then argued that the matter at hand is about the classification of the goods imported by the appellant. She drew the Tribunal's attention to the reasons of Mr. Justice Beauregard of the Quebec Court of Appeal, dissenting judge in *R. v. Vaughan*.³ She contended that the goods in issue, in the present instance, fully correspond to the goods in that case - butterfly knives - which were considered by the dissenting judge to be prohibited weapons under the *Criminal Code*. On appeal, these reasons were entirely adopted by the Supreme Court of Canada in a judgment rendered on December 10, 1991.⁴ In counsel's view, that decision by the highest court in the land cannot be ignored. Thus, one has to come to the conclusion that the goods in issue are prohibited weapons under paragraph (b) of the definition of "prohibited weapon" under subsection 84(1) of the *Criminal Code* and that they are properly classified in tariff code 9965 of Schedule VII to the *Customs Tariff*. Finally, she characterized the importation of prohibited weapons as an important matter of public policy; if certain items, which can be imported, can also be prohibited goods, the first step is to consider whether these goods are prohibited before trying to classify them under other tariff items such as those provided, for example, in Schedule I.

3. 60 C.C.C. (3d) 87.

4. [1991] 3 S.C.R. 691.

The Tribunal is of the opinion that this appeal should be dismissed. It is undisputed that the goods in issue constitute butterfly knives. In *David Stadnyk v. The Deputy Minister of National Revenue for Customs and Excise*,⁵ the Tariff Board decided, on November 20, 1987, that the Balisong or butterfly knives were "prohibited weapons," their importation into Canada being forbidden by law. In the Tribunal's opinion, the decision of the Supreme Court of Canada in *Her Majesty the Queen v. Debra Vaughan* leaves no doubt that the butterfly knives come within the meaning of paragraph (b) of the definition of "prohibited weapon" under subsection 84(1) of the *Criminal Code*. In light of the foregoing, the Tribunal has come to the conclusion that the goods in issue are properly classified under tariff code 9965 of Schedule VII to the *Customs Tariff*.

The appeal is dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Michèle Blouin

Michèle Blouin
Member

5. [1987] 12 T.B.R. 487; [1987] 15 C.E.R. 143.