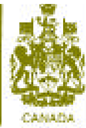
CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, July 21, 1993

Appeal No. AP-91-242

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 December 17, 1991, with respect to a request for a re-determination pursuant to subsection 63(3) of the *Customs Act*.

BETWEEN

GENE R. WHITE **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is allowed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-242

GENE R. WHITE **Appellant**

and

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

The appellant has resided in Canada continuously since December 1988, when he entered Canada as a temporary resident. The appellant applied for permanent resident status on July 23, 1989. He was granted this status on July 27, 1990, upon reentering Canada after a short visit to the United States. At the time the appellant reentered Canada as a permanent resident, he imported a 1990 Toyota Camry which he had purchased in the United States on July 26, 1990. The car was imported duty free under tariff item No. 9807.00.00 as a settler's effect.

The issue in this appeal is whether the Toyota Camry imported by the appellant is more properly classified under tariff item No. 9807.00.00 as "Goods ... imported by a settler for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the settler's arrival in Canada," as contended by the appellant, or under tariff item No. 8703.23.00 as "Motor cars ... [o]f a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc," as contended by the respondent.

***HELD:** The appeal is allowed. The evidence shows that the appellant was a "settler," as that word is defined in the Definition of "Settler" for the Purpose of Tariff Item No. 9807.00.00 Regulations when he entered Canada as a permanent resident on July 27, 1990, and the subject vehicle was owned and in his use and possession at that time.*

Place of Hearing:	*Winnipeg, Manitoba*
Date of Hearing:	*February 19, 1993*
Date of Decision:	*July 21, 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:	*G.R. White, for the appellant* *F.B. Woyiwada, for the respondent*

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-242

GENE R. WHITE **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 pursuant to 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 December 17, 1991.

The appellant has resided in Canada continuously since December 1988, when he entered Canada as a temporary resident. At that time, he imported various household and personal effects, including a 1976 automobile. All of these items were classified under tariff item No. 9803.00.00 as conveyances and baggage temporarily imported free of duty by a person who is not a resident of Canada for use by that person in Canada. The appellant applied for permanent resident status on July 23, 1989. He was granted this status on July 27, 1990, upon reentering Canada after a short visit to the United States. Prior to being granted permanent resident status, the appellant had written to Canada Customs to enquire whether he could purchase a car in the United States and import it free of duty. By letter dated October 2, 1989, a Canada Customs official advised him that only goods owned and in his possession and use prior to the date of his application would qualify for duty-free entry. The appellant also spoke with a member of the Canadian Consulate staff in Minneapolis, Minnesota, prior to reentering Canada as a permanent resident in July 1990. This individual advised the appellant, based on discussions with Canada Customs, that he could import the car duty free.

At the time the appellant reentered Canada as a permanent resident, he imported a 1990 Toyota Camry which he had purchased in the United States on July 26, 1990. The car was imported duty free under tariff item No. 9807.00.00 of the *Customs Tariff*[2] as a settler's effect (the actual customs slip introduced in evidence reads tariff item No. 9805.00.00 — both parties agreed that there was an error on the face of this document and that it should have read tariff item No. 9807.00.00).

By notice dated August 27, 1990, the appellant was advised by the respondent that the car should have been classified under tariff item No. 8703.23.00 and, therefore, duty, sales tax and excise tax in the amount of $4,542.49 was owing in respect of the car. On November 19, 1990, the appellant filed a request for reclassification under tariff item No. 9807.00.00. By notice of decision dated February 22, 1991, the classification of the car under tariff item No. 8703.23.00 was confirmed. The appellant filed a further request for reclassification

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

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

on April 22, 1991. By notice of decision dated December 17, 1991, the respondent confirmed the classification of the subject car.

The issue in this appeal is whether the subject vehicle is more properly classified under tariff item No. 9807.00.00 as "Goods ... imported by a settler for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the settler's arrival in Canada," as contended by the appellant, or under tariff item No. 8703.23.00 as "Motor cars ... [o]f a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc", as contended by the respondent.

The appellant began his testimony by indicating that in the course of events in this matter, he had received three different interpretations of the law from various employees of the Department of National Revenue and an official of Employment and Immigration Canada, which made it very difficult to know his rights, notwithstanding his efforts to clarify them. The appellant set out the four dates which he considered crucial to the Tribunal's understanding of the case: (i) December 30, 1988 — the date on which the appellant entered Canada as a temporary resident; (ii) July 23, 1989 — the date on which the appellant made application for permanent residence; (iii) September 2, 1989 — the date of a letter from the appellant to the respondent in which the appellant requested advice as to whether he could bring a car purchased in the United States into Canada duty free prior to his becoming a permanent resident in Canada (the appellant received a response dated October 2, 1989, in which he was advised that he would have to pay duty on a car purchased in the manner described in his letter); and (iv) July 27, 1990 — the date the appellant entered Canada as a permanent resident (his application being accepted on July 25, 1990). The appellant stated that, in his mind, the central issue was to determine on which of these dates he had entered Canada as a "settler," as that word is used in the tariff classification he was seeking.

During cross-examination, the appellant confirmed that he had resided in Canada continuously since December 30, 1988. With respect to the October 2, 1989, letter he received from the respondent, the appellant agreed that the letter included the statement that, if he had "already made application for permanent residence and [did] not return to resume residence in the United States, then only those goods which were owned and in [his] possession and use prior to the date of application would qualify for duty free entry as settlers effects" (emphasis added). The appellant also confirmed that he had bought the vehicle in question approximately one year after his application for permanent residence, on the day before he entered Canada as a permanent resident. Finally, the appellant agreed that when he entered the United States on July 25, 1990, he did not intend to buy a vehicle and that this lack of intention was formed, in part, by the advice in the respondent's letter of October 2, 1989.

In argument, the appellant reiterated his view that the central issue was the meaning of the phrase "the settler's [effects] prior to the settler's arrival in Canada." The appellant urged the Tribunal to consider that he arrived in Canada as a settler on July 27, 1990 — the date he reentered Canada after having been granted permanent residence status — and that, at that time, the subject vehicle was part of his effects.

Counsel for the respondent began his argument agreeing with the appellant that the crucial question was the date of the appellant's arrival in Canada. Counsel suggested that there were two possible dates which should be considered in this regard. First, December 30, 1988, the date on which the appellant arrived in Canada for the first time, and since which he has resided in Canada. Second, July 23, 1989, the date on which the appellant applied for permanent residence status. Counsel stated that it was not necessary for the Tribunal to determine exactly

which date applied because they both occur prior to the purchase of the subject vehicle and thus would preclude using the classification suggested by the appellant.

In the alternative, counsel submitted that the appellant's ownership of the vehicle for one day did not satisfy the following wording in tariff item No. 9807.00.00, that the subject goods be "in the possession and use of the settler prior to the settler's arrival." Counsel argued that it would be difficult for the Tribunal to conclude that the vehicle had been not only in the possession of the appellant, but also in his use prior to that date.

In reply, the appellant pointed out that, when he was advised that his application for permanent residence was to be considered, he was also advised that this did not guarantee the approval of the application. Also, he submitted that the subject vehicle was in his use on July 26, 1990, and thus it could be considered to be in his use and possession when he entered Canada.

The Tribunal considers that the subject vehicle is properly classified under tariff item No. 9807.00.00 as "Goods ... imported by a settler for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the settler's arrival in Canada." In coming to this conclusion, the Tribunal agrees with the parties that this case revolves around the meaning of the word "settler." More specifically, the Tribunal must determine on which of the possible dates in question the appellant did arrive in Canada as a settler. The Tribunal observes that, having answered these initial questions, it must also consider whether the subject vehicle was owned and in the possession and use of the appellant when he arrived in Canada as a settler.

The evidence contains three dates on which the appellant may be said to have arrived in Canada — December 30, 1988, July 23, 1989, and July 27, 1990. The first question is, on which of these dates, if any, can the appellant be said to have arrived as a settler. As noted by the Tribunal in *H.E. Wakelin v. The Deputy Minister of National Revenue for Customs and Excise*,[3] between the period January 1, 1988, and April 4, 1990, there were no regulations defining the word "settler" for the purposes of tariff item No. 9807.00.00. On April 5, 1990, this situation changed as the *Definition of "Settler" for the Purpose of Tariff Item No. 9807.00.00 Regulations*[4] (the Regulations), came into effect. Therefore, the Tribunal must be cognizant of the fact that the statutory definition only applies to the last of the dates under consideration.

"Settler" is defined in the Regulations, as follows:

> *2. For the purpose of tariff item No. 9807.00.00 of Schedule I to the Customs Tariff, "settler" means any person who enters Canada with the intention of establishing, for the first time, a residence for a period of not less than 12 months, but does not include a person who enters Canada in order to reside in Canada for the purpose of*
> *(a) employment for a temporary period not exceeding 36 months; or*
> *(b) studying at an institute of learning.*

The Tribunal is of the view that the critical phrase in this definition is "with the intention of establishing, for the first time, a residence for a period of not less than 12 months." This phrase highlights that it is the nature of the appellant's commitment or intent to

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3. Appeal No. AP-89-030, September 20, 1990.
4. SOR/90-226, April 5, 1990, Canada Gazette Part II, Vol. 124, No. 9 at 1437.

permanently reside in Canada that is fundamental to determining at what point he or she may be considered to be a settler. This understanding of the concept of "settler" was discussed at length by the Tribunal in *Wakelin*. The Tribunal found, in that case, that there is a distinction between having an intention of establishing permanent residence and merely returning to reside in Canada without having the requisite intention that such residence be permanent. The Tribunal found that the former condition is what distinguishes a settler from, for instance, a temporary resident returning to Canada to resume temporary residence.

The evidence shows that the appellant did not intend to establish permanent residence when he first entered Canada in 1988 as a temporary resident. This raises the question as to whether he could be considered to have the requisite intention to do so when he made his application for permanent residence. The Tribunal observes that such intention can only be complete when the applicant knows that he or she has been accepted and will be allowed to enter Canada as a permanent resident. Until that time, the applicant does not know whether he or she will be granted that status and thus cannot be said to be a settler. In this case, the appellant can be considered to have had the intention of establishing a residence for a period of not less than 12 months on July 27, 1990, when he reentered Canada after having been granted permanent residence. Therefore, the appellant can be considered to have arrived in Canada as a settler on July 27, 1990. Having made this determination, the Tribunal must now consider whether the subject vehicle was owned by, and in the possession and use of, the appellant on that date.

That the vehicle was owned by the appellant on July 27, 1990, is not in dispute. With respect to the question as to whether the subject vehicle was in the appellant's possession and use when he arrived in Canada, the Tribunal observes that the wording of tariff item No. 9807.00.00 does not provide for any limitations on the length of time that goods must be in the settler's possession or use to qualify under this provision. The Tribunal is of the opinion that, in the absence of such limitations and any other factors restricting the words in question, the Tribunal should give these words their plain meaning. In this case, the evidence shows that the appellant had been in possession and had use of the subject vehicle prior to his arrival in Canada. Therefore, all the conditions of tariff item No. 9807.00.00 have been satisfied.

Accordingly, the appeal is allowed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member