



Ottawa, Wednesday, May 5, 1993

Appeal No. AP-92-106

IN THE MATTER OF an appeal heard on February 24, 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 June 18, 1992, with respect to a request for a re-determination under section 63 of the *Customs Act*.

BETWEEN

PETER KANIS JR.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Kathleen E. Macmillan

Kathleen E. Macmillan

Presiding Member

John C. Coleman

John C. Coleman

Member

Charles A. Gracey

Charles A. Gracey

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-106

PETER KANIS JR.

Appellant

and

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

Respondent

The issue in this appeal is the proper method of valuation to be used in determining the value for duty of a 1985 Porsche automobile imported by the appellant.

***HELD:** The appeal is dismissed. The Tribunal finds that the appellant has not provided sufficient evidence to allow the Tribunal to apply the transaction value method of valuation set out in section 48 of the Customs Act. Further, the Tribunal does not have the information that allows it to apply the methods set out in sections 49 to 52 of the Customs Act. Therefore, the Tribunal must rely, as did the Deputy Minister of National Revenue for Customs and Excise, on the residual method of valuation set out in section 53 of the Customs Act. In doing so, the Tribunal upholds the value for duty as determined by the Deputy Minister of National Revenue for Customs and Excise.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: February 24, 1993
Date of Decision: May 5, 1993*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member
John C. Coleman, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

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PETER KANIS JR.

Appellant

and

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

Respondent

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
JOHN C. COLEMAN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) of a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated June 18, 1992, under section 63 of the Act. The appeal proceeded on the basis of written submissions in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.² In this regard, the parties submitted an agreed statement of facts, from which the facts set out herein are taken. At issue in this appeal is the proper method of valuation to be used in determining the value for duty of a 1985 Porsche automobile imported by the appellant.

The facts, briefly stated, are as follows. On May 2, 1991, the subject automobile was imported in the appellant's name. The value for duty was based on a bill of sale dated April 8, 1991, from Petar Kanis, father of the appellant, indicating a sale price of US\$3,000. Officials of the Department of National Revenue (Revenue Canada) converted this amount to Canadian funds to arrive at a value for duty of \$3,465.

Before purchasing the car from his father, the appellant had several thousand dollars worth of repair work done on it in Canada. This repair work took place in the fall of 1990 and winter of 1991. Additional repairs were made in Canada on April 25, 1991, after the date of purchase, but before accounting to Customs.

Also included in the material before the Tribunal was an "Odometer Certification" filed with the state of Florida showing that the car was a bona fide gift and an invoice made out to Petar Kanis, indicating that he had purchased the car for US\$6,000 approximately one year earlier, on April 17, 1990. The appellant was unable to provide a cancelled cheque or any persuasive documentary proof that he had paid his father the US\$3,000 claimed in April 1991.

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

2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

On June 17, 1991, Revenue Canada officials adjusted the value for duty to \$9,472.47, based on the value for the car listed in the Canadian Automobile Red Book - Official Used Car Valuations, adjusted downwards by the Goods and Services Tax, excise tax and duty. The appellant requested a re-appraisal of this amount. However, on June 18, 1992, the Deputy Minister upheld Revenue Canada's decision. Hence, the appellant's appeal to the Tribunal.

In his submission to the Tribunal, the appellant argued that the Porsche was in very poor condition, thus explaining the low value assigned to it. As evidence of this, he filed numerous repair invoices indicating the amount of work that had been necessary on the car.

Counsel for the respondent submitted that the Tribunal is bound by the various methods set out in the Act in determining the value for duty of the Porsche. In order to use the transaction value method under section 48 of the Act, two initial requirements must be met. First, there must be a sale for export to Canada. Second, a price paid or payable must be determined. In the first instance, counsel questioned whether a sale had actually occurred, citing the "Odometer Certification" which mentions the car as a bona fide gift and the repairs undertaken by the appellant before he had purchased the car. In addition, counsel argued that the lack of documentary evidence made it impossible to determine the price paid for the car. Consequently, according to counsel, the transaction value method of valuation could not be applied.

Counsel also argued that the Tribunal is precluded from applying alternative methods of valuation as set out in sections 49, 50, 51 and 52 of the Act because it lacks the necessary information in this case. For example, the Tribunal is unable to refer to identical goods imported at the same time, the selling price of the goods in Canada or the cost of production of the goods. As a result, counsel argued, the Tribunal is left with the residual method of valuation set out in section 53 of the Act. This was the method employed by the Deputy Minister to arrive at the figure of \$9,472.47 in value for duty of the car.

The Tribunal agrees with counsel for the respondent that it is bound to apply the requirements of the statute in calculating the value for duty of the car. Further, it finds that it lacks the necessary information to apply the transaction value method of valuation under section 48 of the Act. The Tribunal notes that, in this case, it must be cognizant not only of the two criteria referred to by counsel for the respondent but also of the requirements of subparagraph 48(1)(d)(ii) of the Act because the vendor and purchaser are related to each other. In this regard, the Tribunal is not satisfied that the relationship between the vendor and the purchaser did not influence the price allegedly paid for the car. Nor can the Tribunal be sure that the appellant bought the car rather than received it as a gift.

In order to apply the valuation methods set out in sections 49, 50, 51 and 52 of the Act, the Tribunal would have to have information that is not available to it in this case, such as the sale price of similar goods sold for export to Canada at the same time. Consequently, the Tribunal is forced to rely, as the Deputy Minister was, on section 53 of the Act which determines the value for duty by reference to information available in Canada. In so doing, the Tribunal upholds the Deputy Minister's value for duty of \$9,472.47 for the imported car.

During its deliberations, the Tribunal explored possible ways of using the sale price of US\$6,000 that was paid by Petar Kanis, approximately one year before the export of the car to Canada. It seemed to the Tribunal that, since this figure was apparently the result of an arm's length transaction, it might provide a useful basis upon which to formulate a value for duty. Unfortunately, none of the valuation methods offered in the Act permit the use of this

type of information, as references to sale price are set out in relation to goods for export to Canada or information available in Canada, not transactions within the exporting country. Therefore, it is beyond the authority or ability of the Tribunal to alter the value for duty determined by the Deputy Minister.

Accordingly, the appeal is dismissed.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

John C. Coleman
John C. Coleman
Member

Charles A. Gracey
Charles A. Gracey
Member