



Ottawa, Wednesday, September 14, 1994

Appeal No. AP-93-298

IN THE MATTER OF an appeal heard on June 3, 1994, 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 dated November 4, 1993, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

GLENN WHITTEN

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-298

GLENN WHITTEN

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the Customs Act. On March 23, 1993, the appellant attempted to import into Canada an MP5A3 submachine gun. On import, the gun in issue was detained by Canada Customs officials on the basis that it was a prohibited weapon within the meaning of Code 9965 of Schedule VII to the Customs Tariff and subsection 84(1) of the Criminal Code. That decision was upheld, first on re-determination by a designated officer under section 60 of the Customs Act and, subsequently, on a further re-determination by the Deputy Minister of National Revenue under section 63 of the Customs Act.

The issue in this appeal is whether the gun in issue is a prohibited weapon and whether, therefore, the respondent's decision, upholding the original decision to detain the gun in issue, was correct.

HELD: *The appeal is dismissed. The appellant conceded that the gun in issue was a "prohibited weapon." Prohibited weapons are, by definition under the Criminal Code, offensive weapons. Section 114 of the Customs Tariff, together with Code 9965 of Schedule VII to the Customs Tariff, prohibits the importation into Canada of offensive weapons. Code 9965 provides for a number of exceptions to this general prohibition; however, none of those exceptions apply to the appellant. The Tribunal has reviewed Code 9965 and finds that none of the exceptions contained therein are applicable to the appellant or to the gun in issue.*

As the gun in issue is an offensive weapon and none of the exceptions to the importation of an offensive weapon set out in Code 9965 of Schedule VII to the Customs Tariff apply to the appellant, the respondent was correct in upholding the decision of Canada Customs officials to detain the gun in issue.

*Place of Hearing: Ottawa, Ontario
Date of Hearing: June 3, 1994
Date of Decision: September 14, 1994*

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Charles A. Gracey, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Anne Jamieson

*Appearances: Glenn Whitten, for the appellant
Geoffrey S. Lester, for the respondent*

Appeal No. AP-93-298

GLENN WHITTEN

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
CHARLES A. GRACEY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act). On March 23, 1993, the appellant attempted to import into Canada an MP5A3 submachine gun. On import, the gun in issue was detained by Canada Customs officials on the basis that it was a prohibited weapon within the meaning of Code 9965 of Schedule VII to the *Customs Tariff*² and subsection 84(1) of the *Criminal Code*.³ That decision was upheld, first on re-determination by a designated officer under section 60 of the Act and, subsequently, on a further re-determination by the Deputy Minister of National Revenue (the Deputy Minister) under section 63 of the Act.

The issue in this appeal is whether the gun in issue is a prohibited weapon and whether, therefore, the Deputy Minister's decision, upholding the original decision to detain the gun in issue, was correct.

The appellant is a member of the Canadian Armed Forces who was stationed in Germany from July 1988 to March 1993. In January 1991, the appellant purchased the gun in issue, which had then been converted to operate in a semi-automatic mode only. In accordance with the procedures established by the Canadian Armed Forces, the appellant registered the gun in issue in Germany with the military police and the control office at the military base at which he was stationed. In early 1993, in anticipation of returning to Canada, the appellant completed a "Request to Import Personal Firearm(s) into Canada" form, which was approved by the authorities at Canadian Forces Base Baden-Soellingen and by the Department of National Revenue.

The appellant, appearing on his own behalf, conceded that the gun in issue was a prohibited weapon, but requested that the Tribunal consider making an exception in his case, given his extenuating circumstances. In particular, the appellant referred the Tribunal to the fact that, under section 84 of the *Criminal Code*, if certain conditions had been satisfied, the gun in issue could have been designated a restricted weapon rather than a prohibited weapon. Had the appellant been able to have the gun in issue so designated, he may have been able to import it into Canada under Code 9965 of Schedule VII to the *Customs Tariff*.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. R.S.C. 1985, c. C-46.

One of the requirements for obtaining the "restricted weapon" designation was the registration of the gun in issue with a "local registrar of firearms" prior to October 1, 1992.⁴ This requirement came about as a result of amendments to section 84 of the *Criminal Code* in respect of certain types of prohibited weapons. The appellant submitted that, because he was outside of Canada performing peace-keeping duties with the Canadian Armed Forces when the amendments to the *Criminal Code* took effect and, therefore, was unaware that registration was required, he never had the gun in issue registered.

The Tribunal notes that, at the hearing, the appellant conceded that the gun in issue was a "prohibited weapon." Prohibited weapons are, by definition under the *Criminal Code*, offensive weapons.⁵ Section 114 of the *Customs Tariff*, together with Code 9965 of Schedule VII to the *Customs Tariff*, prohibits the importation into Canada of offensive weapons. Code 9965 provides for a number of exceptions to this general prohibition. The Tribunal has reviewed Code 9965 and finds that none of the exceptions contained therein are applicable to the appellant or to the gun in issue.

Code 9965 of Schedule VII to the *Customs Tariff* makes provision for the importation of restricted weapons in certain circumstances. However, in order for the gun in issue to qualify as a restricted weapon, the appellant would have had to comply with the requirements of paragraph (c.1) of the definition of "restricted weapon." One of the requirements set out in paragraph (c.1) is that, on or before October 1, 1992, the gun in issue should have been registered with a "local registrar of firearms." Subsection 84(1) of the *Criminal Code* defines the "local registrar of firearms" to mean:

any person who has been designated in writing as a local registrar of firearms by the Commissioner⁶¹ or the Attorney General of a province or who is a member of a class of police officers or police constables that has been so designated.

As the appellant did not register the gun in issue with a local registrar of firearms, it remained a prohibited weapon and, thus, could not enter Canada under the exceptions provided for restricted weapons in Code 9965 of Schedule VII to the *Customs Tariff*.

4. Paragraph (c.1) of the definition of "restricted weapon" under subsection 84(1) of the *Criminal Code* provides that "restricted weapon" means

any firearm that is assembled or designed and manufactured with the capability of firing projectiles in rapid succession with one pressure of the trigger, to the extent that
(i) the firearm is altered to fire only one projectile with one such pressure [i.e. as opposed to rapid and repeated bursts of fire as long as the trigger remained squeezed],
(ii) on October 1, 1992, the firearm was registered as a restricted weapon, or an application for a registration certificate was made to a local registrar of firearms in respect of the firearm, and the firearm formed part of a gun collection in Canada of a genuine gun collector, and
(iii) subsections 109(4.1) and (4.2) were complied with in respect of that firearm.

(Emphasis added)

5. *Supra*, note 3, s. 2.

6. Subsection 84(1) of the *Criminal Code* defines "Commissioner" to mean "the Commissioner of the Royal Canadian Mounted Police."

The Tribunal notes that the appellant did take proper steps to register the gun in issue with military authorities and did file a request with Canada Customs to import it into Canada in the proper manner. However, the Tribunal is of the view that these steps do not provide a basis on which it can conclude that the requirement to register the gun in issue as a restricted weapon prior to October 1, 1992, is eliminated.

Notwithstanding its appreciation of the circumstances faced by the appellant, the Tribunal is bound to apply the law. As the gun in issue is an offensive weapon and none of the exceptions to the importation of an offensive weapon set out in Code 9965 of Schedule VII to the *Customs Tariff* apply to the appellant, the Deputy Minister was correct in upholding the decision of Canada Customs officials to detain the gun in issue.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Desmond Hallissey

Desmond Hallissey
Member