

Ottawa, Wednesday, November 6, 1996

Appeal No. AP-94-076

IN THE MATTER OF an appeal heard on June 27, 1996, 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 February 18, 1994, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

ROSARIUM ENR.

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

Susanne Grimes

Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-076

ROSARIUM ENR.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The main issue in this appeal is whether the goods in issue are properly classified under tariff item No. 0602.40.10 as multiflora rosebushes, as determined by the respondent, or should be classified under tariff item No. 0602.99.99 as other plants (vines, shrubs and bushes), as claimed by the appellant.

There is, however, a preliminary issue, which is whether Rosarium Enr. appealed the respondent's decision within 90 days after being notified of the decision. In the affirmative, the Tribunal would then have the jurisdiction to consider the merits of the appeal.

HELD: The appeal is dismissed. The Tribunal finds that it lacks the jurisdiction to consider the merits of the appeal, since the appellant filed its notice of appeal more than 90 days after being notified of the respondent's decision.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 27, 1996
Date of Decision:	November 6, 1996
Tribunal Member:	Arthur B. Trudeau, Presiding Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Parties:	Marcel Lajule, for the appellant Rosemarie Millar, for the respondent

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Appellant

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Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding 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 dated February 18, 1994, pursuant to subsection 63(3) of the Act. This appeal was heard by one member of the Tribunal.²

The goods in issue are described as being of the *rosa multiflora* species of plants, which are imported as rootstock at the whip tree stage (the diameter of the stock is from 5 to 7 cm or from 7 to 10 cm). The goods in issue cannot be used for ornamental purposes.

The main issue in this appeal is whether the goods in issue are properly classified under tariff item No. 0602.40.10 of Schedule I to the *Customs Tariff*³ as multiflora rosebushes, as determined by the respondent, or should be classified under tariff item No. 0602.99.99 as other plants (vines, shrubs and bushes), as claimed by the appellant.

There is, however, a preliminary issue, which is whether Rosarium Enr. appealed the respondent's decision within 90 days after being notified of the decision. In the affirmative, the Tribunal would then have the jurisdiction to consider the merits of the appeal.

The appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Regulations*,⁴ and the Tribunal disposed of the matter on the basis of its record, which includes the agreed statement of facts and the parties' briefs.

On May 13, 1993, the goods imported by the appellant were classified under tariff item No. 0602.40.10. On January 7, 1994, in accordance with paragraph 63(1)(a) of the Act, the appellant requested that the applicable classification be tariff item No. 0602.99.99. On February 18, 1994, pursuant to

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

2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.

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

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

subsection 63(3) of the Act, the respondent rejected the appellant's request. Finally, on May 31, 1994, Rosarium Enr. filed a notice of appeal with the Tribunal, hence this appeal.

The appellant did not submit an argument on the preliminary issue. On the other hand, the respondent submitted that the determination of a tariff classification is final and conclusive, except when a notice of appeal is filed within the prescribed time frame. As pointed out by the respondent, section 67 of the Act provides that "[a] person who deems himself aggrieved by a decision of the Deputy Minister made pursuant to section 63 or 64 may appeal from the decision to the ... Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the ... Tribunal within ninety days after the time notice of the decision was given." The respondent contended that the appellant could not avail itself of the right of appeal under section 67 of the Act, since it filed its written notice more than 90 days after being notified of the decision, i.e. 8 days late. The respondent claimed that the Tribunal lacks the jurisdiction to apply principles of equity and is limited to applying the law.

It is clear to the Tribunal that, under section 63 of the Act, a notice of appeal must be filed within 90 days after the issuance of a notice of decision.⁵ The appellant filed its notice of appeal 8 days after the prescribed deadline. Since the Tribunal lacks the jurisdiction to apply principles of equity and is limited to applying the law,⁶ it may not, therefore, exempt the appellant from the application of the deadline prescribed in section 63 of the Act. Accordingly, the Tribunal finds that it lacks the jurisdiction to consider the merits of the appeal.

Consequently, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

5. See *Shrimp Projectors Inc. v. The Deputy Minister of National Revenue for Customs and Excise*, Canadian International Trade Tribunal, Appeal No. AP-91-180, January 26, 1993.

6. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.