CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, October 3, 1996

Appeal No. AP-94-151

IN THE MATTER OF an appeal heard on June 4, 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 May 24, 1994, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

ELISE AMMON **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-94-151

ELISE AMMON **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated May 24, 1994, which was heard by one member of the Tribunal. The issue in this appeal is whether a 1991 Lincoln Town Car imported by the appellant is properly classified under tariff item No. 8703.24.00 as a motor car principally designed for the transport of persons, with a spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc, as determined by the respondent, or should be classified under tariff item No. 9803.00.00 as goods imported by a visitor for that person's use, as claimed by the appellant.

HELD: The appeal is dismissed. After having considered the agreed statement of facts and the submissions of the parties, the Tribunal finds that the vehicle in issue cannot be classified under tariff item No. 9803.00.00 as a conveyance and baggage temporarily imported by a person who is not a resident of Canada for use by that person in Canada, since the appellant entered Canada for a period exceeding 12 months and cannot, therefore, be considered a "visitor" within the meaning given to that word in section 2 of the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations*. Moreover, the vehicle in issue cannot be considered to be owned by and in the possession and use of a settler prior to the settler's arrival in Canada, as described in tariff item No. 9807.00.00, as the appellant formed an intention to establish a residence in Canada for a period of not less than 12 months when she applied for permanent resident status in September 1991, and she did not own the vehicle in issue, nor was it in her possession and use prior to her arrival in Canada.

The Tribunal is of the view that, based on the terms of heading No. 87.03 and taking into account the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to that heading, the vehicle in issue is properly classified under tariff item No. 8703.24.00 as a motor car principally designed for the transport of persons, with a spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 4, 1996
Date of Decision:	October 3, 1996
Tribunal Member:	Anthony T. Eyton, Presiding Member
Counsel for the Tribunal:	Shelley Rowe
Clerk of the Tribunal:	Anne Jamieson
Parties:	Elise Ammon, for the appellant Josephine A.L. Palumbo, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-94-151

ELISE AMMON **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ANTHONY T. EYTON, 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 May 24, 1994, which was heard by one member of the Tribunal.[2] The issue in this appeal is whether a 1991 Lincoln Town Car imported by the appellant is properly classified under tariff item No. 8703.24.00 as a motor car principally designed for the transport of persons, with a spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc, as determined by the respondent, or should be classified under tariff item No. 9803.00.00 as goods imported by a visitor for that person's use, as claimed by the appellant.

The relevant tariff nomenclature from Schedule I to the *Customs Tariff*[3] reads as follows:

87.03	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars.
8703.20	-Other vehicles, with spark-ignition internal combustion reciprocating piston engine:
8703.24.00	--Of a cylinder capacity exceeding 3,000 cc
9803.00.00	Conveyances and baggage temporarily imported by a person who is not a resident of Canada for use by that person in Canada.
9807.00.00	Goods, as defined by regulations made by the Minister, 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, under such regulations as the Minister may make.

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

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At the joint request of the appellant and respondent, the appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*[4] on the basis of the Tribunal's record, including the parties' briefs and the agreed statement of facts.

The agreed statement of facts provides, in part, as follows:

1. The Appellant arrived in Canada in July of 1991 as a visitor for medical reasons. She subsequently submitted an Application for Landed Immigrant (Permanent Resident) Status in Cranbrook, British Columbia, in September of 1991.

2. On October 22, 1992, having failed the statutory medical examination for prospective immigrants, the Appellant was granted a Minister's Permit valid only until October 22, 1993, which would allow her to remain in Canada until that date.

3. On April 22, 1993, the Appellant imported the vehicle in question which she had purchased in March of 1993, while vacationing in Mexico and the United States.

4. Duties were assessed on the vehicle in Nelway, British Columbia on the basis that first, the Appellant did not qualify as a "visitor" to Canada, in accordance with Tariff Item No. 9803.00.00, and second, that the vehicle in question, was not admissible as the effects of a "settler", under Tariff Item No. 9807.00.00, since it was not owned, possessed and used by the Appellant prior to her arrival in Canada.

5. Accordingly, the Respondent originally classified the vehicle, pursuant to Tariff Item No. 8703.21.90 as a vehicle, with spark-ignition internal combustion reciprocating piston engine and imposed duties and taxes in the amount of $3,336.67.

6. By letter dated June 8, 1993, the Appellant requested a refund of the said duties and taxes paid and for the re-classification of the tariff classification of the vehicle under Tariff Item No. 9803.00.00, as "visitor's goods".

8. By Notice of Decision dated December 3, 1993, the classification of the vehicle under Tariff Item No. 8703.21.90, was confirmed pursuant to subsection 60(3) of the *Act*.

9. A further request dated January 24, 1994, was filed by the Appellant pursuant to paragraph 63(1)(a) of the *Act*, which sought once again the re-classification of the vehicle under Tariff Item No. 9803.00.00.

10. On May [24], 1994, by Notice of Decision, the vehicle was classified under Tariff Item No. 8703.24.00 by the Respondent, in accordance with subsection 63(3) of the *Act*.

12. By letter dated October 18, 1994, the Appellant was informed, by the authorities at Citizenship and Immigration, that an additional Minister's Permit, on Humanitarian and Compassionate grounds, would **not** be issued. The Appellant was also informed that her application for visa exemption was denied and that her request to have her permanent residence application processed in Canada would be rejected.

In her submission, the appellant argued that she is a "visitor" to Canada and not a "settler," as contended by the respondent. In support of her argument, the appellant filed with the Tribunal several letters which, she submitted, acknowledge that she is a visitor. In particular, she filed a letter dated April 5, 1994, from the Medical Services Commission of the B.C. Ministry of Health and Ministry Responsible for Seniors,

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

which provides, in part, that "[a]s a visitor, [the appellant] is not entitled to any health coverage in British Columbia." She also filed a letter dated February 28, 1994, from the Regional Eligibility Officer of the Hospital Programs of the B.C. Ministry of Health which provides, in part, that the appellant was "initially admitted to Canada as a visitor and [her] status had been amended to a Minister's Permit."

Counsel for the respondent argued, in her brief, that the appellant cannot be considered a "visitor" to Canada and is, therefore, not eligible to import the vehicle in issue temporarily without the payment of duties. Counsel submitted that there is a substantial difference in the legislative classification of persons for immigration, customs and provincial health purposes. For customs purposes, a "visitor" is defined as a "person who is not a resident or a temporary resident and who enters Canada for a period not exceeding 12 months.[5]" Based on this definition, counsel submitted that the longest period of time for which the appellant could have remained classified as a "visitor" was one year. Since the appellant entered Canada in July 1991, she would no longer be considered a visitor as of July 1992.

In the alternative, counsel for the respondent submitted that, once the appellant ceased to be a visitor, she became a "settler." A "settler" is defined for the purpose of tariff item No. 9807.00.00 as "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.[6]" Counsel argued that, in assessing at what point in time the appellant became a "settler," the appellant's intention or commitment to permanently reside in Canada is crucial.[7] In counsel's view, the appellant ceased to be a "visitor" and became a "settler," at the earliest, when she made an application for permanent resident status in Canada in September 1991 or, at the latest, when she remained in Canada beyond the one-year period from the date of her arrival.

Counsel for the respondent submitted that, as a "settler," the appellant was only permitted to import into Canada duty free those goods that were owned by her or in her possession and use prior to her arrival in Canada, as required by tariff item No. 9807.00.00. It was counsel's position that, since the appellant purchased the vehicle in issue after she had arrived in Canada and resided continuously in Canada for almost two years, she could not establish that the vehicle in issue was in her ownership, possession and use prior to her arrival in Canada.

After having considered the agreed statement of facts and the submissions of the parties, the Tribunal is not persuaded that the vehicle in issue qualifies as a conveyance and baggage temporarily imported by a person who is not a resident of Canada. The Tribunal observes that Note 5 to Chapter 98 of Schedule I to the *Customs Tariff* provides in part, that, for the purpose of heading No. 98.03, the Governor in Council may make regulations "(a) prescribing terms and conditions on which goods or conveyances may be

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5. *Non-residents' Temporary Importation of Baggage and Conveyances Regulations*, SOR/87-720, December 10, 1987, *Canada Gazette* Part II, Vol. 121, No. 26 at 4693, s. 2.

6. *Definition of "Settler" for the Purpose of Tariff Item No. 9807.00.00 Regulations*, SOR/90-226, April 5, 1990, *Canada Gazette* Part II, Vol. 124, No. 9 at 1437, s. 2.

7. *Gene R. White* v. *The Deputy Minister of National Revenue for Customs and Excise*, Canadian International Trade Tribunal, Appeal No. AP-91-242, July 21, 1993, affirmed by *The Deputy Minister of National Revenue for Customs and Excise* v. *Gene R. White*, unreported, Federal Court of Canada—Trial Division, Court File No. T-2332-93, March 10, 1995.

imported and authorizing the Minister to set such terms and conditions in specified circumstances" and "(d) excluding any class of goods or conveyances from the operation of these headings."

Section 3 of the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations* (the Regulations) provides that, under certain circumstances, a person who is not a resident may import baggage or conveyances for the personal use of that person. A "resident" is defined in section 2 as a "person who, in the settled routine of that person's life, makes his home, resides and is ordinarily present in Canada." The Regulations also define two classes of persons who are not residents: a "temporary resident" and a "visitor." A "temporary resident" is defined, in part, as a person, or a spouse or dependant of a person, who is not a resident of Canada, but who resides temporarily in Canada for the purpose of employment or education. A "visitor" is defined as a "person who is not a resident or a temporary resident and who enters Canada for a period not exceeding 12 months." The agreed statement of facts indicates, in the Tribunal's view, that the appellant was neither a "temporary resident" nor a "visitor" when she imported the vehicle in issue into Canada. First, the appellant was not in Canada for the purpose of employment or education, as is required to be a "temporary resident." Second, the appellant entered Canada for a period exceeding 12 months and cannot, therefore, be considered a "visitor." Moreover, the Tribunal notes that, if the appellant was a visitor, she did not comply with the requirements under paragraph 3(*e*) of the Regulations which provides that, where the baggage or conveyances are imported by a visitor, the visitor is to declare that the visitor intends to leave Canada on a specified date.

The issue remains, however, whether the appellant is a "settler" and, if so, whether the vehicle in issue may be considered to be owned by and in the possession and use of the appellant prior to her arrival in Canada, as described in tariff item No. 9807.00.00. Whether or not the appellant is a "settler" will depend upon whether the facts show that the appellant entered Canada with the intention of establishing, for the first time, a residence for a period of not less than 12 months. In *The Deputy Minister of National Revenue for Customs and Excise* v. *Gene R. White*,[8] Mr. Justice Rothstein provided some guidance as to the factors that may be considered in determining intention. He stated that "it is possible for a person who is already in Canada on a temporary basis to form such an intention at the time the person begins the process of applying for permanent residency within [Canada] or sometime thereafter but before permanent resident status is granted.[9]" In the Tribunal's view, the agreed statement of facts indicates that the appellant formed an intention to establish a residence in Canada for a period of not less than 12 months when she applied for permanent resident status in September 1991, and she may, therefore, be considered a "settler," as contemplated by tariff item No. 9807.00.00. However, since the appellant purchased the vehicle in issue subsequent to her arrival in Canada and subsequent to her application for permanent resident status, the Tribunal cannot conclude that she owned the vehicle in issue or that it was in her possession and use prior to her arrival in Canada. As a result, the vehicle in issue may not be classified under tariff item No. 9807.00.00.

Having found that the vehicle in issue may not be classified under the special classification provisions of tariff item No. 9803.00.00 or 9807.00.00, the Tribunal is of the view, based on the description of the vehicle in issue in the Tribunal's record, the terms of heading No. 87.03 and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[10] to that heading, that the vehicle in issue is

8. Unreported, Federal Court of Canada—Trial Division, Court File No. T-2332-93, March 10, 1995.
9. *Ibid*. at 2.
10. Customs Co-operation Council, 1st ed., Brussels, 1986.

properly classified under tariff item No. 8703.24.00 as a motor car principally designed for the transport of persons, with a spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc.

Accordingly, the appeal is dismissed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member