

Ottawa, Thursday, January 25, 1996

Appeal No. AP-94-362

IN THE MATTER OF an appeal heard on October 18, 1995,
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 December 22, 1994, with respect to a
request for re-determination under section 63 of the *Customs Act*.

BETWEEN

DR. MARIA BLASS

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Lise Bergeron

Lise Bergeron
Member

Anita Szlajak

Anita Szlajak
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-362

DR. MARIA BLASS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether a 1991 Buick, imported from the United States, is properly classified under tariff item No. 8703.21.90 as a motor car of a cylinder capacity not exceeding 1,000 cc, principally designed for the transport of persons, as determined by the respondent, or should be classified under tariff item No. 9806.00.00 as personal and household effects received by a resident of Canada as a result or in anticipation of the death of a person who is not a resident of Canada, as claimed by the appellant.

***HELD:** The appeal is dismissed. In determining the proper tariff classification of the imported car, the Tribunal must establish whether Ms. Helga Schwallbach transferred it to the appellant as trustee of Mr. Blass's estate or as its owner. In resolving this issue, the Tribunal must determine the true intention of Mr. Blass for the disposition of the car. Based on its reading of the will, the Tribunal is satisfied that the car was bequeathed free from any trust obligations to Ms. Schwallbach. Furthermore, any spoken request by Mr. Blass that the car be given to the appellant, contrary to the terms of his will, was without effect in amending the will. This interpretation is supported by the actions of Ms. Schwallbach in securing title to the car in her name and then transferring that title through declaration to the appellant.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: October 18, 1995

Date of Decision: January 25, 1996

Tribunal Members: Robert C. Coates, Q.C., Presiding Member

Lise Bergeron, Member

Anita Szlazak, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearance: Josephine A.L. Palumbo, for the respondent

Appeal No. AP-94-362

DR. MARIA BLASS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
LISE BERGERON, Member
ANITA SZLAZAK, 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 made under subsection 63(3) of the Act. The issue in this appeal is whether a 1991 Buick, imported from the United States, is properly classified under tariff item No. 8703.21.90 of Schedule I to the *Customs Tariff*² as a motor car of a cylinder capacity not exceeding 1,000 cc, principally designed for the transport of persons, as determined by the respondent, or should be classified under tariff item No. 9806.00.00 as personal and household effects received by a resident of Canada as a result or in anticipation of the death of a person who is not a resident of Canada, as claimed by the appellant. Briefs were filed by the parties; however, the appellant did not appear at the public hearing.

For purposes of this appeal, the relevant tariff nomenclature of Schedule I to the *Customs Tariff* reads as follows:

87.03	<i>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.</i>
8703.21	<i>--Of a cylinder capacity not exceeding 1,000 cc</i>
8703.21.90	<i>---Other</i>
9806.00.00	<i>Personal and household effects of a resident of Canada dying abroad; personal and household effects received by a resident of Canada as a result or in anticipation of the death of a person who is not a resident of Canada; all the foregoing when given as a gift to a resident of Canada.</i>

The car, which was owned by the late Karl Blass, was brought into Canada by Ms. Helga Schwallbach eight months after Mr. Blass's death. Ms. Schwallbach was the Successor Trustee of Mr. Blass's estate. It is claimed (supported by sworn affidavit) that Mr. Blass, prior to his death, requested

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

that the car be given to the appellant. In fulfilment of this intention, Ms. Schwallbach executed a declaration transferring ownership for no consideration of the car to her sister-in-law, the appellant, on April 4, 1994.

In her brief, the appellant argued that Ms. Schwallbach held the car as a trustee until such time as she could fulfil her late father's intention. As such, the appellant received the car as a result of Mr. Blass's death and not as a gift from Ms. Schwallbach.

Counsel for the respondent argued that, in order to qualify for classification under tariff item No. 9806.00.00, the imported car must be: (1) personal or household effects; and (2) received as a result or in anticipation of the death of a person who is not a resident of Canada.

It is the respondent's position that the appellant received the car as a result of Ms. Schwallbach's decision to give it to her as a gift. In support of the proposition that the car was actually owned by Ms. Schwallbach, the respondent noted that: (1) Mr. Blass specifically bequeathed "any automobile that he may own" to Ms. Schwallbach "free of trust;" (2) though the will allows Ms. Schwallbach to "distribute undivided interests" as Successor Trustee of the estate, the car cannot be characterized as an undivided interest, as it is specifically bequeathed to Ms. Schwallbach in the will; (3) the declaration transferring ownership of the car by Ms. Schwallbach confirms that she was the beneficiary of the car in Mr. Blass's will; (4) the declaration also establishes that the car was given by Ms. Schwallbach to the appellant; and, (5) there is a certificate of title of ownership for the car that was issued by the State of Florida on June 7, 1994, which expressly names Ms. Schwallbach as the registered owner of the car and not as trustee.

As to varying the express terms of the will, counsel for the respondent noted that there is a specific provision in the will which states that Mr. Blass "reserves the right to alter or amend this Agreement at any time." However, "[a]ny amendment to [the] Trust Agreement must be in writing and executed by [Mr. Blass] in the presence of two (2) witnesses and a Notary, and written notice of said amendment shall be sent to the Successor Trustee." As such, any stated intention by Mr. Blass to give the car to the appellant, contrary to the express terms of the will, is without force, as it would constitute an alteration or amendment to the will not done in the manner required by the will. In addition, Ms. Schwallbach has no authority to unilaterally amend the will, as it specifically states that "[t]he rights herein reserved to [Mr. Blass] to revoke and amend this Agreement are hereby declared to be personal rights exercisable by [Mr. Blass] alone and not by any other person."

Based on these facts, counsel for the respondent contended that the car became the property of Ms. Schwallbach, who subsequently gave it to the appellant. As such, at the time of importation, the car was not a "personal effect" of Mr. Blass; nor did the appellant receive the car "as a result" or "in anticipation of" Mr. Blass's death. Accordingly, the terms of tariff item No. 9806.00.00 have not been met.

In determining the proper tariff classification of the imported car, the Tribunal must establish whether Ms. Schwallbach transferred it to the appellant as trustee of Mr. Blass's estate or as its owner. In resolving this issue, the Tribunal agrees with the submissions of counsel for the respondent that it must

determine the true intention of Mr. Blass for the disposition of the car. Furthermore, to discover this intention, the Tribunal should examine the words of the will and the conduct of the parties in relation to the will.³

Based on its reading of the will, in particular, those provisions emphasized by counsel for the respondent, the Tribunal is satisfied that the car was bequeathed free from any trust obligations to Ms. Schwallbach. Furthermore, any spoken request by Mr. Blass that the car be given to the appellant, contrary to the terms of his will, was without effect in amending the will.

This interpretation is supported by the actions of Ms. Schwallbach in securing title to the car in her name and then transferring that title through declaration to the appellant. Ms. Schwallbach's declaration is revealing in acknowledging that she was shown in the will as the beneficiary of the car.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Lise Bergeron

Lise Bergeron

Member

Anita Szlajak

Anita Szlajak

Member

3. In support of this proposition, counsel for the respondent referred to *Clarkson Co. Ltd. v. The Queen* (1988), 18 C.E.R. 139, Federal Court of Appeal, Court File No. A-623-88, December 6, 1988.