



Ottawa, Wednesday, May 2, 2001

Appeal Nos. AP-95-149 to AP-95-165, AP-95-167 and AP-95-168

IN THE MATTER OF appeals heard on April 12, 2001, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated June 27, 1995, with respect to requests for redetermination under section 63 of the *Customs Act*.

BETWEEN

TOYOTA CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

On consent of the parties, the appeals are dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal Nos. AP-95-149 to AP-95-165, AP-95-167 and AP-95-168

TOYOTA CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) dated June 27, 1995, regarding the re-appraisal of the value for duty of automobiles. The issue to be determined by the Tribunal is whether section 48 of the *Customs Act* is applicable and, specifically, whether the appellant's pricing method allowed for the determination of the "price paid or payable" for the vehicles at the time of importation.

HELD: On consent of the parties, the appeals are dismissed.

Place of Hearing: Ottawa, Ontario

Date of Hearing: April 12, 2001

Date of Decision: May 2, 2001

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Marie-France Dagenais

Clerk of the Tribunal: Anne Turcotte

Parties: Brenda C. Swick, for the appellant
Frederick B. Woyiwada, for the respondent



Appeal Nos. AP-95-149 to AP-95-165, AP-95-167 and AP-95-168

TOYOTA CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: Pierre Gosselin, Presiding Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) dated June 27, 1995, regarding the re-appraisal of the value for duty of automobiles. The issue to be determined by the Tribunal is whether section 48 of the Act is applicable and, specifically, whether the appellant's pricing method allowed for the determination of the "price paid or payable" for the vehicles at the time of importation.

These appeals follow a decision of the Federal Court of Appeal (the Court) in *DMNR v. Toyota Canada*,² which set aside and referred back for reconsideration a decision rendered by the Tribunal in previous appeals³ involving the same parties. In those appeals, the Tribunal had originally determined that the credit note stipulated on the Canada Customs Invoice was not a rebate or decrease in the "price paid or payable" for the subject vehicles pursuant to subsection 48(5) of the Act. Rather, the Tribunal found that the purpose of the credit note was simply to reflect the actual and final selling price of the goods. That decision was based on the evidence that showed that there existed an understanding between the parties to the effect that the price stipulated on the Canada Customs Invoice was a provisional selling price, estimated for purposes of calculating the value for duty, and that the final selling price of the vehicles would only be known at the conclusion of the negotiations between the parties.

The Court disagreed with the Tribunal's approach and allowed the appeal. The Court held that the Tribunal had failed to take into account the time requirements embodied in section 48 of the Act, which provides in part that, to avail itself of the transaction value, an importer must first show that the price paid or payable for the goods can be determined when the goods are sold for export to Canada.

In light of that decision, the Tribunal must determine in the present appeals whether the appellant's pricing method allowed for the determination of the "price paid or payable" for the vehicles at the time of importation and, thus, whether the appellant could avail itself of the transaction value. If the price submitted on entry was the "price paid or payable", then any price reduction brought about after importation as a result of the establishment of the final selling price has to be disregarded by the Tribunal. If, however, the appellant's pricing method does not allow for the determination of the "price paid or payable" at the time of

1. R.S.C. 1985 (2d Supp.), c.1 [hereinafter Act].
2. (28 June 1999) A—878—96 (FCA).
3. (15 August 1996), AP-95-090 and AP-95-166 (CITT).

importation, then the Tribunal must determine the value for duty of the imported goods by an alternative valuation method, as prescribed by subsection 47(2) of the Act.

At the rehearing of the primary appeals,⁴ the parties advised the Tribunal that they had agreed to a resolution of the appeal and filed a “Consent to Decision” with the Tribunal. Accordingly, the Tribunal issued a decision reflecting the agreement between the parties, which stated in part that the decisions of the Deputy Minister of National Revenue should be upheld, and, given the consent of the parties, dismissed the appeal.

On September 29, 2000, the Tribunal wrote to the appellant seeking its intentions with regard to the present appeals. On November 22, 2000, the appellant replied that the present appeals should be treated in the same manner as the primary appeals and be dismissed. On December 4, 2000, the respondent advised the Tribunal that he concurred with the submissions of the appellant on how these appeals should be treated.

In light of the foregoing, and given the consent of the parties, the Tribunal upholds the decisions of the Deputy Minister of National Revenue, dated June 27, 1995, regarding transaction numbers 56739000001977, 56739000001307, 56739000001329, 56739000001318, 56739000001933, 56739000001853, 56739000001819, 56739000001498, 56739000001410, 56739000001374, 56739000001330, 56739000001294, 17566800551026, 17566800677971, 17566800615670, 17566800599910, 56739000001454, 17566800604234 and 56739000001897.

On consent of the parties, the appeals are dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

4. (12 September 2000), AP-99-043 (CITT).