

Ottawa, Thursday, June 27, 1996

Appeal No. AP-95-266

IN THE MATTER OF an appeal heard on June 26, 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 October 24, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

CANSTOR CONSUMER STORAGE PRODUCTS INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-266

CANSTOR CONSUMER STORAGE PRODUCTS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal from a decision of the Deputy Minister of National Revenue in respect of the tariff treatment of certain goods imported by the appellant from the United States. The respondent raised, as a preliminary jurisdictional issue, whether the appeal had been filed within the time frame prescribed by the Customs Act.

HELD: *The appeal is dismissed. The Tribunal finds that the appeal was not filed within the time frame prescribed by the Customs Act and, therefore, concludes that it is without jurisdiction to consider the appeal.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: June 26, 1996

Date of Decision: June 27, 1996

Tribunal Member: Charles A. Gracey, Presiding Member

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Susanne Grimes

*Appearances: Denise Tapiero, for the appellant
Lubomyr Chabursky, for the respondent*

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CANSTOR CONSUMER STORAGE PRODUCTS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member

REASONS FOR DECISION

This is an appeal heard by one member of the Tribunal¹ from a decision of the Deputy Minister of National Revenue in respect of the tariff treatment of certain goods imported by the appellant from the United States. The respondent raised, as a preliminary jurisdictional issue, whether the appeal had been filed within the time frame prescribed by the *Customs Act*² (the Act). The Tribunal convened a hearing by way of telephone conference call to hear argument on this issue. The appellant was represented by Ms. Denise Tapiero, Office Manager for Canstor Consumer Storage Products Inc.

The relevant facts are as follows. In January 1993, the appellant imported certain goods into Canada. The appellant sought to obtain “United States tariff treatment” in respect of the goods. After a series of events not relevant to this appeal, the appellant requested a further re-determination in respect of the goods under subsection 63(1) of the Act. Pursuant to subsection 63(3) of the Act, the respondent denied United States tariff treatment with respect to the goods on the grounds that the exporter had not responded to requests for information concerning the origin of the goods. The respondent’s decision is dated October 24, 1995. On January 25, 1996, the appellant filed a notice of appeal with the Tribunal in respect of this matter.

Subsection 67(1) of the Act provides:

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.

Section 149 of the Act provides:

For the purposes of this Act, the date on which a notice is given ... shall, where it is given by mail, be deemed to be the date of mailing of the notice, and the date of mailing shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice to be the date thereof unless called into question by the Minister or by some person acting for him or Her Majesty.

1. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, *Canada Gazette* Part II, Vol. 129, No. 1, December 22, 1994, 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 and determining any appeal made to the Tribunal pursuant to the *Customs Act*.

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

During the hearing of this matter, Ms. Tapiero was most forthright and candid with the Tribunal. She conceded that the respondent's decision was mailed to her. She also conceded that more than 90 days had passed between the date of the decision and the time the appellant filed its notice of appeal. Finally, she acknowledged that the respondent's original decision and the subsequent correspondence which she received from the respondent advised her of the 90-day time limit imposed under subsection 67(1) of the Act.

The Tribunal has reviewed this matter carefully and comes to the conclusion, reluctantly, that the appellant's notice of appeal was not filed within the statutory time limit and that it, therefore, has no jurisdiction to hear this appeal. The Tribunal has reached this conclusion based on the fact that the respondent's decision, having been mailed, is deemed to have been "given" on October 24, 1995, pursuant to section 149 of the Act. The 90-day time limit imposed under subsection 67(3) of the Act, therefore, ran from October 24, 1995. The appellant was, thus, 3 days late when it filed its appeal on January 25, 1996.

It would appear that, throughout this, the respondent acted reasonably and, on at least two occasions, advised the appellant of its right of appeal. It would also appear from the record that the appellant may have been hindered in bringing this matter forward by certain parties, including its customs broker and certain upstream suppliers.

Consequently, the appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member