

Ottawa, Tuesday, January 14, 1997

Appeal No. AP-96-006

IN THE MATTER OF an appeal heard on December 9, 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 March 19, 1996, with respect to a request
for re-determination under section 63 of the *Customs Act*.

BETWEEN

ROBERT GUSTAS

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

Susanne Grimes _____

Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-96-006

ROBERT GUSTAS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act*. The product in issue is a relatively small, single-blade knife enclosed in a handle. The knife is deployed by pressing upon a button on the case and allowing the force of gravity or applying centrifugal force with a rapid flick of the wrist to open the blade.

HELD: The appeal is dismissed. Although the knife is neither large nor particularly menacing in appearance, it fits exactly the description of a “prohibited weapon” as defined under paragraph 84(1)(b) of the *Criminal Code*. There is no provision for the exemption from this definition on the basis of dimension, and prohibited weapons are properly classified as “offensive weapons” within the provisions of Code 9965 of Schedule VII to the *Customs Tariff*.

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 9, 1996
Date of Decision: January 14, 1997

Tribunal Member: Charles A. Gracey, Presiding Member

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Margaret Fisher

Appearance: R.J. Anderson, for the respondent

Appeal No. AP-96-006

ROBERT GUSTAS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*,¹ which was heard by one member of the Tribunal.² The issue in this appeal is the proper classification of a knife imported by mail by the appellant. The appellant did not appear at the hearing; therefore, the Tribunal relied upon the written record as furnished by the parties and the further arguments advanced by counsel for the respondent.

The knife was imported in June 1995 and, upon inspection by a customs official, was classified as a prohibited weapon and detained. The knife was entered as an exhibit and resembles an ordinary pocket knife. Its case is of metal construction inlaid with a hard plastic material and approximately 5 in. long. A small button is located near one end of the case and, when the button is pressed, the blade is released. Depending on how the knife is held, the blade falls open by the effect of gravity. Alternatively, a flick of the wrist while the button is depressed imparts centrifugal force to the blade which swings open to a locked position. The blade is restored to its case in the same manner. The blade itself is approximately 3 to 4 in. long and has a sharp point and cutting edge like many jack-knives. About half of its length closest to the handle is a serrated or scalloped edge.

The respondent determined that the knife was a prohibited weapon, within the meaning of that term as defined under paragraph 84(1)(b) of the *Criminal Code*.³ According to that definition, a prohibited weapon is “any knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.” The respondent also determined that, since the knife fell within the definition of a prohibited weapon, it was subject to the provisions of Code 9965 of Schedule VII to the *Customs Tariff*⁴ which do not permit the importation of prohibited weapons as defined in the *Criminal Code*. Code 9965 states, in part, as follows:

Offensive weapons as defined in the *Criminal Code*, or parts, components, accessories, ammunition or large-capacity cartridge magazines defined as “prohibited weapons” for the purposes of Part III of that Act.

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. C-46.
4. R.S.C. 1985, c. 41 (3rd Supp.).

The appellant, in his written submissions, argued, on three separate grounds, that the knife should not be classified as a prohibited weapon. First, the appellant advised the Tribunal that he has been a knife collector for many years and regards the knife in issue more as a work of art or a tool than as a weapon. Second, the appellant argued that, though the knife can be opened in the manner described, this facility can be overcome by simply tightening some set screws to increase the friction. Finally, from his experience as a knife collector, the appellant pointed out that there are many knives on the market which are very similar to the knife in issue and that do not require much force to open, but are not considered “offensive weapons.”

Counsel for the respondent assisted the Tribunal by summarizing the written submissions made by the appellant and responded to those submissions as follows. First, counsel pointed out that there were no provisions to exempt bona fide knife collectors from the provisions of the *Criminal Code* respecting the importation of such goods. Second, counsel pointed out that the mere fact that the automatic opening feature could be overridden by simply tightening some set screws was obviously not a permanent or irreversible modification to the knife and that the capability could be easily restored. Finally, counsel pointed out that the appellant’s contention that similar knives were commonplace in the domestic market could have no bearing upon or relevance to the proper classification of the knife in issue.

Inasmuch as the appellant did not appear at the hearing, it became necessary to rely entirely upon the appellant’s written submissions.

There can be no doubt, first of all, that the knife in issue falls squarely within the definition of knives that are “prohibited weapons.” There are no exemption provisions for bona fide collectors and, regrettably for the appellant, there are no dimensional limitations that would exempt knives as small and apparently inoffensive as the one in issue. Thus, the Tribunal is unable to find that the knife is not a prohibited weapon as defined. The Tribunal would comment, however, that the only feature that distinguished the knife in issue from garden-variety pocket knives is the automatic opening feature, a feature that would come in handy for many practical uses where the other hand was engaged.

Furthermore, the Tribunal cannot accept the claim that the automatic opening feature can be overridden by merely tightening some set screws. Clearly, this is no more than an adjustment and cannot be seen as a permanent or irreversible alteration to the knife. Finally, though the appellant is probably correct in his claim that many very similar knives exist in the market, this can have no bearing upon the Tribunal’s determination of whether or not the knife in issue is a prohibited weapon as defined in the *Criminal Code*.

The Tribunal, in several previous cases,⁵ has held that goods that are defined as “prohibited weapons” are properly classified under Code 9965. The actual wording that leads to that conclusion is somewhat ambiguous, as can be seen above, but inherently logical. Though the Tribunal has no jurisdiction to hear criminal matters, it is noted that, pursuant to section 90 of the *Criminal Code*, it is unlawful to possess a prohibited weapon. Thus, it would seem illogical to permit importation of same. This clarification would appear necessary to affirm the clear meaning of Code 9965. In that code, the initial reference is to “offensive weapons,” and the subsequent wording relating to prohibited weapons could lead to the conclusion that the later reference refers only to the parts, accessories, etc., of prohibited weapons and not to

5. *Genesport Industries Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-91-122, February 24, 1993; *Glenn Whitten v. The Deputy Minister of National Revenue*, Appeal No. AP-93-298, September 14, 1994; and *Daniel Spiess v. The Deputy Minister of National Revenue*, Appeal No. AP-94-256, October 27, 1995.

the weapons themselves. Thus, despite the ambiguity in the wording of Code 9965, the Tribunal relies upon the more logical interpretation that all prohibited weapons are properly classified under Code 9965.

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey

Presiding Member