

Ottawa, Monday, October 20, 1997

Appeal No. AP-96-213

IN THE MATTER OF an appeal heard on July 9, 1997, 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 November 8, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

LONDON S.W. ONTARIO MARTIAL ARTS SUPPLY INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Dr. Patricia M. Close

Dr. Patricia M. Close

Presiding Member

Michel P. Granger

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Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-96-213

LONDON S.W. ONTARIO MARTIAL ARTS SUPPLY INC.

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 that classified certain imported goods as prohibited weapons. The issue in this appeal is whether the goods in issue are “any instrument or device commonly known as ‘nunchaku’ and any similar instrument or device, being hard non-flexible sticks, clubs, pipes or rods linked by a length or lengths of rope, cord, wire or chain,” therefore meeting the definition of a “prohibited weapon” under paragraph 84(1)(e) of Part III of the *Criminal Code* and, pursuant to section 114 of the *Customs Tariff*, prohibited from being imported into Canada.

HELD: The appeal is dismissed. As the Tribunal has previously stated in appeals under the *Customs Act*, the onus is on the appellant to show that the respondent’s decision is incorrect. After having considered the record, examined the sample of the goods in issue introduced by counsel for the respondent at the hearing and considered the arguments of counsel, the Tribunal concludes that the respondent correctly determined that the goods in issue are prohibited weapons and that their importation by the appellant was, therefore, prohibited. The appellant did not provide sufficient evidence to persuade the Tribunal that the goods in issue are different from the goods described in *Prohibited Weapons Order, No. 2* or to refute the respondent’s decision that the goods in issue are “commonly known as” or are “similar” to nunchakus. Thus, the Tribunal finds that there is no prima facie reason to allow the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is dismissed.

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 9, 1997
Date of Decision: October 20, 1997

Tribunal Member: Dr. Patricia M. Close, Presiding Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Margaret Fisher

Appearance: Anne M. Turley, for the respondent

Appeal No. AP-96-213

LONDON S.W. ONTARIO MARTIAL ARTS SUPPLY INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: DR. PATRICIA M. CLOSE, 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 November 8, 1996, that classified certain imported goods as prohibited weapons.

Pursuant to section 114 of the *Customs Tariff*,² the importation of any goods enumerated or referred to in Schedule VII to the *Customs Tariff* is prohibited. Code 9965 of Schedule VII covers offensive weapons as defined in the *Criminal Code*³ or parts, components, accessories, ammunition or large-capacity cartridge magazines defined as “prohibited weapons” for the purposes of Part III of the *Criminal Code*.

Paragraph 84(1)(e) of Part III of the *Criminal Code* includes, within the definition of a “prohibited weapon,” the following:

a weapon of any kind, not being an antique firearm or a firearm of a kind commonly used in Canada for hunting or sporting purposes, or a part, component or accessory of such a weapon, or any ammunition, that is declared by order of the Governor in Council to be a prohibited weapon.

*Prohibited Weapons Order, No. 2*⁴ declares, in part, that the following is a prohibited weapon:

any instrument or device commonly known as “nunchaku” and any similar instrument or device, being hard non-flexible sticks, clubs, pipes or rods linked by a length or lengths of rope, cord, wire or chain.

The issue in this appeal is whether the goods in issue meet the definition of a “prohibited weapon” under paragraph 84(1)(e) of Part III of the *Criminal Code* and, therefore, pursuant to section 114 of the *Customs Tariff*, whether the appellant was prohibited from importing those goods into Canada.

The appellant did not appear at the hearing, but had filed a brief with the Tribunal. The Tribunal, therefore, considered the appellant’s submissions in its brief and gave them the appropriate weight in accordance with rule 22 of the *Canadian International Trade Tribunal Rules*.⁵

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

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

3. R.S.C. 1985, c. C-46.

4. SOR/78-277, March 28, 1978, *Canada Gazette* Part II, Vol. 112, No. 7 at 1271, as amended by SOR/85-215, February 28, 1985, *Canada Gazette* Part II, Vol. 119, No. 6 at 1501.

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

Counsel for the respondent submitted that the goods in issue have a hard plastic rod inside a foam covering and, as such, are not flexible. As result, counsel argued, the goods in issue fit the description of a “prohibited weapon” in *Prohibited Weapons Order, No. 2* as being an “instrument or device commonly known as ‘nunchaku’ ... being hard non-flexible ... rods linked by a length of ... chain,” and their importation is, therefore, prohibited under Code 9965 of Schedule VII to the *Customs Tariff*.

As the Tribunal has previously stated in appeals under the Act, the onus is on the appellant to show that the respondent’s decision is incorrect.⁶ After having considered the record, examined the sample of the goods in issue introduced by counsel for the respondent at the hearing and considered the arguments of counsel, the Tribunal concludes that the respondent correctly determined that the goods in issue are prohibited weapons and that their importation by the appellant was, therefore, prohibited. The appellant did not provide sufficient evidence to persuade the Tribunal that the goods in issue are different from the goods described in *Prohibited Weapons Order, No. 2* or to refute the respondent’s decision that the goods in issue are “commonly known as” or are “similar” to nunchakus. Thus, the Tribunal finds that there is no prima facie reason to allow the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is dismissed.

Nevertheless, the Tribunal wishes to express its concern as to the consistent application of *Prohibited Weapons Order, No. 2*. In its brief, the appellant states that it is “legally able to acquire these Items from Martial Art Suppliers in Toronto and Montreal whom legally Import these items from the United States.” The Tribunal could not verify this statement.

Accordingly, the goods in issue are properly classified as prohibited weapons, and the appeal is dismissed.

Dr. Patricia M. Close

Dr. Patricia M. Close

Presiding Member

6. See *The Deputy Minister of National Revenue for Customs and Excise v. Unicare Medical Products Inc.*, Appeal Nos. 2437, 2438, 2485, 2591 and 2592, April 30, 1990; and *Cross Canada Auto Body Supply (Windsor) Ltd. and AT PAC West Auto Parts Ltd. v. The Deputy Minister of National Revenue*, Appeal Nos. AP-95-214, AP-95-215 and AP-95-237, July 3, 1997.