CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, October 7, 1998

Appeal No. AP-97-140

IN THE MATTER OF an appeal heard on August 25, 1998, 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 28, 1997, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

MANJU BHOGAL **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-97-140

MANJU BHOGAL **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. The goods in issue are earrings, rings, necklaces and a chain made in India from gold bars taken by the appellant from Canada. There are three issues in this appeal: (1) whether the Tribunal has jurisdiction to apply principles of equity; (2) whether it has jurisdiction to deal with sections 88 to 92 of the *Customs Tariff*, being the "Canadian Goods Abroad" provisions of that act; and, finally, (3) whether the jewellery in issue was properly classified by the respondent under tariff item No. 7113.19.00.

HELD: The appeal is dismissed. With respect to the first jurisdictional issue, the Tribunal has concluded, as it has in many other instances, that it has no jurisdiction to apply principles of equity. Regarding the second jurisdictional issue, a decision made by the Minister of National Revenue under sections 88 to 92 of the *Customs Tariff* is not one of the kind contemplated in sections 63 and 64 of the *Customs Act*, which are the only decisions that can be appealed to the Tribunal under section 67 of the *Customs Act*. As to the issue of tariff classification, according to the appellant's own admission and the samples of the jewellery in issue submitted as evidence, the jewellery consists of earrings, rings, necklaces and a chain made of gold. Note 4 (a) to Chapter 71 includes "gold" in the definition of "precious metal" for the purposes of that chapter. Furthermore, the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 71.13 refer to articles of jewellery as "[s]mall objects of personal adornment … such as rings, bracelets, necklaces, brooches, ear-rings,… etc." Consequently, the Tribunal finds that the jewellery in issue was properly classified by the respondent.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	August 25, 1998
Date of Decision:	October 7, 1998
Tribunal Members:	Patricia M. Close, Presiding Member Raynald Guay, Member Peter F. Thalheimer, Member
Counsel for the Tribunal:	Gilles B. Legault
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Manju Bhogal and Ranjit Singh Bhogal, for the appellant Brian Tittemore, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-97-140

MANJU BHOGAL **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
RAYNALD GUAY, Member
PETER F. THALHEIMER, 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 December 28, 1997. The goods in issue are earrings, rings, necklaces and a chain made in India from gold bars taken by the appellant from Canada. This appeal involves three issues: (1) whether the Tribunal has jurisdiction to apply principles of equity; (2) whether it has jurisdiction to deal with sections 88 to 92 of the *Customs Tariff*,[2] being the "Canadian Goods Abroad" provisions of that act; and, finally, (3) whether the jewellery in issue was properly classified by the respondent under tariff item No. 7113.19.00 of Schedule I to the *Customs Tariff*.

The facts of this case, which are gathered from the documents on file and a public hearing, are as follows. In August 1994, the appellant travelled from Canada to India with her husband and their four daughters. She took with her 13 ounces of Canadian gold bars. She had the gold bars transformed into jewellery in India. She imported the jewellery into Canada on her way back on September 6, 1994. Based on the detailed adjustment statement, the value for duty of the jewellery was determined in the amount of $5,138.00. Some of the jewellery (having a value of $600.00) was classified within the "special classification provisions" of the *Customs Tariff* under tariff item No. 9804.30.00 as goods acquired abroad by a resident of Canada and reported by that person after an absence of not less than 48 hours, i.e. the $300.00 personal exemption. The remaining jewellery (having a value of $4,538.00) was classified under tariff item No. 7113.19.00 as jewellery of other precious metal. As a result, the appellant owed a total of $1,601.19 in duty and taxes. On January 9, 1995, the appellant was allowed additional deductions in the amount of $1,200.00 for that portion of the jewellery. These additional deductions were based on the personal exemptions of the appellant's four daughters accompanying her at the time of the family's return to Canada. This had the effect of further reducing the value for duty to $3,338.00. As a result, the appellant received a refund of duties paid in the amount of $417.98 (interest, reduced duties and taxes), albeit in two payments over a rather long period of 19 months.

At the hearing, the Tribunal heard the testimony of both the appellant and her husband, Mr. Ranjit Singh Bhogal. They produced as exhibits many items of jewellery, including samples of the jewellery in issue. Ms. Bhogal explained that, while she was planning her family's trip to India, she decided to take with her some Canadian gold bars. She intended to have jewellery made from the gold bars, given the variety of work and the low cost of labour in India. In response to her query to a Customs officer at the Toronto-Lester B. Pearson International Airport (Pearson airport), the appellant said that she was told that she could export the gold bars

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

and bring the jewellery back to Canada. She added that the Customs officer told her that she would only have to declare the labour charged on the jewellery as her personal exemption. She also said that the exportation of the gold bars was registered and produced, in support of her testimony, a copy of a Department of National Revenue (Revenue Canada) form entitled "Identification of Articles for Temporary Exportation[3]" that was stamped "Canada Customs, Aug 5 1994." When the family came back to Canada, the appellant's four daughters, wearing some of the jewellery, cleared customs, but the appellant declared to the Customs officer that she was bringing into Canada the jewellery that she was wearing. That is when she was first told that the jewellery in issue had to be classified under tariff item No. 7113.19.00 as jewellery of other precious metal and that the value for duty of the jewellery had to be assessed on both the gold and the labour costs. This included all of the jewellery made from the gold bars brought back to Canada by the appellant, including the jewellery that her children were wearing.

Mr. Bhogal testified that the Indian type of jewellery which he and his wife wanted is not made in Canada. In cross-examination, he said that he had asked goldsmiths in Canada whether they could make jewellery based on his specifications and that they told him that they did not do this kind of work, hence, the decision to take the Canadian gold bars to India. Mr. Bhogal also recalled telling the Customs officer who gave them the form in Exhibit A-1 that the kind of jewellery that they wanted was not made in Canada. The officer told them to keep the form and to get the labour value added, which they did, as Exhibit A-1 contains the amount in rupees for all the different kind of jewellery made from the gold bars.

Mr. Dennis Causley, an officer with Revenue Canada who attended the hearing with counsel for the respondent, was invited by the Tribunal to testify, especially with respect to the administration of the Canadian Goods Abroad Program. Mr. Causley explained to the Tribunal that individuals can benefit from the program by writing a letter to the local Customs office outlining the kind of article that they want to take abroad, the reason for taking it abroad and, in the case of repair or remanufacture, the Canadian sources contacted, if any, to have that work done, if such sources existed. Mr. Causley added that, when a question is not clearly answerable, the matter is referred to Customs' headquarters for a decision by the remission policy officers. He also said that, based on his knowledge, there were no formal provisions for an appeal of such a decision. With respect to Exhibit A-1, Mr. Causley explained that, when he received a copy of the form, he contacted Canada Customs at Pearson airport in Toronto, Ontario. He further told the Tribunal that the many efforts made by Revenue Canada to identify and locate the Customs officer who had advised the appellant on the day that she and her family left for India remained fruitless.

In argument, Mr. Bhogal stated that he and his wife faithfully believed what they were told by the Customs officer at Pearson airport before they travelled to India. In his view, whether the Customs Officer made a mistake or used the wrong form is not the appellant's fault, nor should it be detrimental to her claim. He added that neither the appellant nor her family had misrepresented themselves when consulting with Customs officers. They had always come forward to explain their intent both in exporting the Canadian gold bars from Canada and in importing the jewellery into Canada from India. Consequently, Mr. Bhogal requested that the "Canadian Goods Abroad" provisions be applied in this case.

In his argument, counsel for the respondent first questioned the Tribunal's jurisdiction to deal with duty relief for Canadian goods abroad as contemplated in sections 88 to 92 of the *Customs Tariff*. He stressed that an appeal under section 67 of the Act, such as the one in this case, is about a determination made by the respondent under section 63 or 64 of the Act regarding the tariff classification of goods, their value for duty or their origin. Counsel pointed out, in this regard, that a decision made under sections 88 to 92 of the *Customs Tariff* has no effect on the tariff classification because, under that regime, the classification of goods exported from Canada still applies, except that the value for duty is determined on the

3. Exhibit A-1.

value that was added to the goods by the work that was done outside Canada. Counsel further added that a decision under sections 88 to 92 of the *Customs Tariff* is made by the Minister of National Revenue and not the respondent. With respect to the alleged error made by the Customs officer at Pearson airport, counsel essentially argued that, based on the decision of the Federal Court of Appeal in *Joseph Granger* v. *Canada Employment and Immigration Commission*,[4] the Crown cannot be bound by representations of its representatives when those representations do not coincide with a legal interpretation of the provisions of the law. In fact, counsel added, the Tribunal is bound to apply the law, even if it found that a Customs officer misled the appellant.

Regarding the tariff classification of the jewellery in issue , counsel for the respondent relied on the Chapter Notes to the *Customs Tariff* and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[5] (the Explanatory Notes) to contend that the jewellery in issue was properly classified under tariff item No. 7113.19.00. Note 4 (a) to Chapter 71, he said, indicates that the expression "precious metal" means silver, gold and platinum, while the Explanatory Notes to heading No. 71.13 give a description of the articles of jewellery that the heading includes, namely, "[s]mall objects of personal adornment … such as rings, bracelets, necklaces, brooches, ear-rings, neck chains, watch-chains and other ornamental chains." Those, counsel argued, essentially describe the jewellery in issue.

After careful consideration of the evidence presented by the parties, their arguments, the relevant case law, previous decisions and the provisions of both the *Customs Tariff* and the Act, the Tribunal agrees with counsel for the respondent on the three issues raised in this appeal.

The first jurisdictional issue is whether the Tribunal can grant a remedy based on equity or humanitarian grounds. The response to this question is negative. The Tribunal has concluded, as it has in many other instances, that it has no jurisdiction to apply principles of equity.[6] As a statutorily created body, the Tribunal can only do what the law allows it to do; in this case, it is limited to hearing the appeal of the re-determination of the tariff classification made by the respondent pursuant to subsection 63(3) of the Act.

The second jurisdictional issue is whether, under the Act, the Tribunal can hear an appeal of a decision made by the Minister of National Revenue concerning the "Canadian Goods Abroad" provisions contained in sections 88 to 92 of the *Customs Tariff*. Again, the Tribunal's jurisdiction in this matter derives from section 67 of the Act which refers to decisions made by the respondent under section 63 or 64 of the Act. A decision made by the Minister of National Revenue under sections 88 to 92 of the *Customs Tariff* is simply not one of the kind contemplated in sections 63 and 64 of the Act. Consequently, the Tribunal has no jurisdiction to deal with the type of relief that the Minister of National Revenue may allow for Canadian goods abroad. This is in keeping with the Tribunal's decision in *C.J. Michael Flavell* v. *The Deputy Minister of National Revenue for Customs and Excise*.[7] The appellant may have been misled regarding the Tribunal's jurisdiction by the re-determination which refers to the "Canadian goods abroad legislation" and which states that it can be appealed to the Tribunal under section 67 of the Act. However, these facts are irrelevant in delimiting the Tribunal's jurisdiction, since the Tribunal is a statutorily created body. As such, it only has the power attributed to it by its enabling statute and other legislation enacted by Parliament.

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4. [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.
5. Customs Co-operation Council, 1st ed., Brussels, 1986.
6. See, for example, *Smith's Marine Instruments Ltd.* v. *The Minister of National Revenue,* Appeal No. AP-92-342, December 16, 1997, and decisions referred to therein.
7. Appeal No. AP-91-130, May 4, 1992. See both the reasons for decision at 1 and the transcript of the public hearing at 12, 18, 23 and 26. On appeal to the Federal Court of Appeal, the majority decision in that case was reversed, but the Tribunal's decision regarding its lack of jurisdiction to deal with sections 88 to 92 of the *Customs Tariff* was not advanced in the appeal before the Federal Court of Appeal, [1997] 1 F.C. 640.

On the last issue, the only one for which it has jurisdiction in this appeal, the Tribunal finds compelling the arguments raised by counsel for the respondent. The jewellery in issue was classified by the respondent under tariff item No. 7113.19.00 as articles of jewellery and parts thereof of "other precious metal." According to the appellant's own testimony and the samples of the jewellery submitted as evidence, the earrings, rings, necklaces and chain that she imported are made of gold. Based on section 10 of the *Customs Tariff*, the classification of goods in Schedule I to the *Customs Tariff* must be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[8] (the General Rules) and the *Canadian Rules*.[9] Rule 1 of the General Rules provides that, for legal purposes, classification must be determined, among other things, according to the Chapter Notes. Note 4 (a) to Chapter 71 includes "gold" in the definition of "precious metal" for the purposes of that chapter. Furthermore, the Explanatory Notes to heading No. 71.13, which the Tribunal is required to consider in interpreting that heading by virtue of section 11 of the *Customs Tariff*, refer to articles of jewellery as "[s]mall objects of personal adornment … such as rings, bracelets, necklaces, brooches, ear-rings,… etc." The Tribunal, therefore, concludes that the jewellery in issue was properly classified by the respondent.

The Tribunal notes that it sought further clarification from counsel for the respondent on the applicability of tariff item No. 9813.00.00 to this case. This tariff item provides duty-free treatment for goods returning to Canada after having been exported therefrom, provided certain conditions are met, including that they return without having been advanced in value or improved in condition by any process of manufacture or other means, or combined with any other article abroad. In this case, the jewellery, not the gold bars, was returned to Canada, and obviously none of the conditions in tariff item No. 9813.00.00 are satisfied. In fact, the premise for the application of this tariff item is the return of the original goods. This is a condition that is not met in this case. In other words, the level of transformation or manufacture from the gold bars to the jewellery is such that they are simply not the same goods anymore.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

8. *Supra* note 2, Schedule I.
9. *Ibid.*