



Ottawa, Monday, February 19, 2001

Appeal No. AP-97-138

IN THE MATTER OF a preliminary issue of jurisdiction in an appeal filed on behalf of Atlas Alloys, Division of Rio Algom Limited, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue to reject a request for redetermination pursuant to section 63 of the *Customs Act*.

BETWEEN

ATLAS ALLOYS, DIVISION OF RIO ALGOM LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-97-138

ATLAS ALLOYS, DIVISION OF RIO ALGOM LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is in respect of a preliminary issue of jurisdiction in an appeal under section 67 of the *Customs Act* (the Act) from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) to reject a request for redetermination pursuant to subsection 63(3). On May 14, 1997, the appellant filed an adjustment request with the respondent under paragraph 77(1)(a) of the Act for a refund with respect to duties paid on imported goods. The appellant's adjustment request was denied on the grounds that the importer knew the end use of the goods in issue at the time of importation and that the request for a refund should therefore have been filed under section 60, as there was no diversion. The appellant then filed a request for redetermination with the respondent pursuant to section 63. In a decision dated January 16, 1998, the respondent rejected the request for redetermination, indicating that the "time limits [had] expired, [and] no monies [were] forthcoming". On March 3, 1998, the appellant filed its appeal with the Tribunal. As the Tribunal was of the view that the present appeal raised a jurisdictional issue similar to the one previously dealt with in Appeal Nos. AP-94-365, AP-95-224, AP-97-073 and AP-97-108, the Tribunal requested submissions from parties regarding its jurisdiction to hear and decide this matter in view of the position taken in those appeals.

The appellant submitted, among other things, that the goods qualified for a refund of the customs duty pursuant to paragraph 77(1)(a) of the Act and under Code 300. Regarding the decisions issued by the Tribunal in Appeal Nos. AP-97-073 and AP-97-108, the appellant referred to an abstract of the decision where it was said that the Tribunal can only adjudicate those duties permitted by the legislation and that its jurisdiction to hear and decide matters under the Act was found under section 67, which only authorizes it to hear appeals from decisions made by the respondent under section 63 or 64.

The respondent submitted that subsection 67(1) of the Act grants a right of appeal to the Tribunal with respect to decisions made by the respondent under sections 63 and 64. The respondent submitted that section 77 does not provide a right of appeal to the Tribunal regarding a decision made with respect to an application for a refund. It was the respondent's position that, in Appeal Nos. AP-97-073 and AP-97-108, the Tribunal had already concluded that it did not have jurisdiction to consider appeals from the respondent's decision not to grant a refund made under section 77.

HELD: The appeal is dismissed. After having carefully reviewed the relevant provisions of the Act and the conclusions reached by the Tribunal in Appeal Nos. AP-97-073 and AP-97-108, the Tribunal adopts the same reasoning as that expressed in those appeals. The Tribunal is of the view that its jurisdiction under subsection 67(1) of the Act is strictly limited to the respondent's decisions made pursuant to section 63 or 64 and that neither of these provisions authorizes the respondent or the Tribunal to review an application for a refund made pursuant to section 77. As such, the Tribunal has no jurisdiction to consider this appeal.

Place of Hearing: Ottawa, Ontario

Date of Decision: February 19, 2001

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Dominique Laporte

Clerk of the Tribunal: Anne Turcotte

Parties: Robert Ducharme, for the appellant
Kim Conboy, for the respondent



Appeal No. AP-97-138

ATLAS ALLOYS, DIVISION OF RIO ALGOM LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PIERRE GOSSELIN, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is in respect of a preliminary issue of jurisdiction in an appeal filed on behalf of Atlas Alloys, Division of Rio Algom Limited, pursuant to subsection 67(1) of the *Customs Act*,¹ from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) to reject a request for redetermination pursuant to subsection 63(3) of the Act.² On May 14, 1997, the appellant filed an adjustment request with the respondent under paragraph 77(1)(a) for a refund with respect to duties paid on imported goods. On August 26, 1997, the respondent denied the appellant's request for a refund on the grounds that the importer knew the end use of the goods in issue at the time of importation and that the request for a refund should therefore have been filed under section 60, as there was no diversion. On September 24, 1997, the appellant filed a request for redetermination with the respondent pursuant to section 63. On January 16, 1998, the respondent issued a decision indicating that the "time limits [had] expired, [and] no monies [were] forthcoming". On March 3, 1998, the appellant filed an appeal with the Tribunal under section 67.

The Tribunal was of the view that the present appeal raised a jurisdictional issue similar to the one previously dealt with in Appeal Nos. AP-94-365³ and AP-95-224.⁴ In those appeals, the Tribunal concluded that it did not have jurisdiction to hear the matter, as it found that a decision of the respondent to refuse to entertain requests for redetermination of tariff classifications pursuant to section 64 of the Act did not constitute a decision for purposes of section 67. Accordingly, on March 24, 1998, the Tribunal requested the parties to file submissions regarding its jurisdiction to hear and decide the appeal in view of the *Vilico* and *Philip* decisions.

The parties were also informed that, following receipt of their submissions, the Tribunal would decide whether any further written submissions or oral representations would be needed to decide the jurisdictional issue and that, if the Tribunal were to conclude that it has jurisdiction to hear the appeal, then the appeal would be scheduled to be heard on its merits. The appellant filed its submission on that issue on April 27, 1998.

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

2. Transaction Nos. 14142000612749 and 14142000583608.

3. *Vilico Optical v. DMNR* (7 May 1996), AP-94-365 (CITT) [hereinafter *Vilico*].

4. *Philips Electronics v. DMNR* (18 December 1997), AP-95-224 (CITT) [hereinafter *Philips*].

In the meantime, on April 23, 1998, the Tribunal issued its decision in Appeal Nos. AP-97-073 and AP-97-108⁵ and concluded that it did not have jurisdiction to hear appeals from decisions not to grant a refund made by the respondent pursuant to section 77 of the Act. Accordingly, on May 29, 1998, the Tribunal requested the parties to provide their views on whether the facts and law, as set out in those decisions, were applicable to the present case. Submissions were filed by the appellant and the respondent on June 8 and 11, 1998, respectively.

ARGUMENT

In its submission of April 27, 1998, the appellant claimed that the imported goods were sold to a qualified user, as they ultimately entered into the cost of manufacturing fertilizers. Therefore, it is the appellant's position that the goods qualified for a refund of the customs duty, pursuant to paragraph 77(1)(a) of the Act and under Code 300.

The appellant argued that a decision had been issued by the respondent under section 63 of the Act and that, as section 67 clearly states that the Tribunal will hear the grievances of persons following decisions under section 63, the time limits were not at issue in this case.

The appellant further submitted that the respondent improperly administered the provisions of section 77 of the Act. The appellant argued that the respondent's own documentation clearly stated that subsection 77(1) was the appropriate authority to quote on refund claims for sales of imported goods to qualified users.⁶ Moreover, it is the appellant's position that Code 300 falls under the legislative definition of "tariff classification". The appellant also submitted that the respondent could not set aside the clearly worded prescription of section 77 and that imported goods sold to a qualified end user qualified for a refund, irrespective of the fact that the importer may or may not know, at the time of entry, where the goods are to be used.

With respect to the Tribunal's decision in *Vilico*, the appellant submitted that the Tribunal clearly defined what it considered the ground for an appeal. Regarding the decisions issued by the Tribunal in Appeal Nos. AP-97-073 and AP-97-108, in its submission of June 8, 1998, the appellant referred to an abstract of the decision where it was said that the Tribunal can only adjudicate those duties permitted by the legislation and that its jurisdiction to hear and decide matters under the Act was found under section 67, which only authorizes it to hear appeals from decisions made by the respondent under section 63 or 64.

The respondent submitted that subsection 67(1) of the Act grants a right of appeal to the Tribunal with respect to decisions made by the respondent under sections 63 and 64. The respondent submitted that section 77 does not provide a right of appeal to the Tribunal regarding a decision made with respect to an application for a refund.

The respondent further submitted that neither section 63 nor section 64 of the Act authorized the respondent to review a decision made under section 77. Accordingly, as a decision made under section 77 cannot be the subject of a review by the respondent under section 63 or 64, the Tribunal lacks jurisdiction to hear an appeal of a decision made pursuant to section 77, under its authority to hear an appeal under subsection 67(1).

5. *Atlas Alloys, Division of Rio Algom Limited* (23 April 1998) (CITT).

6. Memorandum D11-8-2 (18 February 1994) at 3.

Regarding the applicability of the Tribunal's decision in Appeal Nos. AP-97-073 and AP-97-108 to the present case, the respondent argued that the facts in the case at bar were virtually identical. It was the respondent's position that in Appeal Nos. AP-97-073 and AP-97-108, the Tribunal had already concluded that it did not have jurisdiction to consider appeals from the respondent's decision not to grant a refund under section 77 of the Act.

DECISION

The Tribunal is of the view that it has the authority to dismiss an appeal at any time for lack of jurisdiction.⁷ Further, it is important that the Tribunal address jurisdictional issues in a preliminary manner in order to ensure that it does not inquire into a matter that is beyond the authority given to it by Parliament.

This is an appeal from a decision of the respondent that rejected a request for redetermination made under section 63 of the Act. The respondent's decision stated that "time limits [had] expired, [and] no monies [were] forthcoming". The request for redetermination was in regard to an application for refund with respect to duties paid on imported goods made pursuant to paragraph 77(1)(a), which reads, in part, as follows:

Subject to this section, where duties have been paid on imported goods and before any use is made of the goods in Canada other than by their incorporation into other goods the goods or the other goods into which they have been incorporated are

(a) sold or otherwise disposed of to a person who would have been entitled to obtain release of the goods free of duty or at reduced rate of duty, or

the Minister may make a refund to the person by whom the duties were paid, in an amount equal to the difference between the duties paid thereon and the duties, if any, that would have been payable on the goods if at the time the goods were released they had been released to the person to whom they were sold or otherwise disposed of or released for the use to which they were diverted.

The Tribunal considers that the facts of the present appeal are similar to those in Appeal Nos. AP-97-073 and AP-97-108. In those appeals, requests for refund were also filed under paragraph 77(1)(a) of the Act by the same appellant, which was claiming the benefits of the statutory concession provisions of Code 1573. The Tribunal stated:

Having reviewed all the submissions, it is the Tribunal's view that it does not have jurisdiction to consider appeals from the respondent's decision not to grant a refund under section 77 of the Act. The Tribunal's jurisdiction is limited to what is stipulated in its enabling legislation. In matters under the Act, the Tribunal's jurisdiction is limited to appeals from the respondent's decisions made pursuant to sections 63 and 64 of the Act. Neither of these provisions authorizes the respondent or the Tribunal to review a refund application made pursuant to section 77.⁸ [Emphasis added]

After having carefully reviewed the relevant provisions of the Act and the conclusions reached by the Tribunal in those appeals, the Tribunal adopts the same reasoning as that expressed in Appeal Nos. AP-97-073 and AP-97-108. The Tribunal is of the view that its jurisdiction under subsection 67(1) of the Act is strictly limited to the respondent's decisions made pursuant to section 63 or 64.

7. *Newman's Valve v. DMNR* (10 October 1997), AP-96-121 (CITT).

8. AP-97-073 at 3-4.

Regarding the appellant's argument that, as the respondent issued a decision under section 63 of the Act, the Tribunal would have jurisdiction to hear the appeal under section 67, the Tribunal agrees with the respondent's position that section 63 does not provide any right of appeal from a decision of the respondent made under section 77. Moreover, the Tribunal notes that no decision on the merits of the tariff classification was issued by the respondent pursuant to section 63. In *Vilico and Philips*, the Tribunal held, on the basis of the decision of the Federal Court of Canada in *Mueller Canada v. MNR and DMNR*,⁹ that there clearly must be a decision of the respondent on the merits of the tariff classification in order to give the Tribunal jurisdiction to hear an appeal under section 67.

With respect to the appellant's contention that Code 300 falls under the legislative definition of "tariff classification", the Tribunal is of the opinion that the fact that an appeal may be filed pursuant to section 63 or 64 of the Act on matters involving tariff codes does not assist the appellant. In Appeal Nos. AP-97-073 and AP-97-108, the Tribunal, dealing with the same argument, reached the following conclusion:

Those appeals [pursuant to section 63 or 64 of the Act] are launched when an importer disagrees with Revenue Canada about the classification of goods and/or the applicability of a tariff code. While the effect of one of the Tribunal's classification decisions could be that a refund is given, it is not within the Tribunal's jurisdiction to adjudicate claims for refunds. The Tribunal simply decides whether or not the respondent's decision with respect to classification is correct.¹⁰

For the above reasons, the Tribunal concludes that it does not have jurisdiction to hear this appeal. Consequently, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

9. 70 F.T.R. 197, (15 November 1993), T—746—93 (FCA).

10. *Supra* note 8 at 4.