

Ottawa, Monday, June 14, 1999

Appeal No. AP-98-056

IN THE MATTER OF an appeal heard on April 26, 1999, 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 May 25, 1998, with respect to a request for re-determination under section 60 of the *Customs Act*.

BETWEEN

THÉRÈSE ABRANCHES

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-98-056

THÉRÈSE ABRANCHES

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The appellant imported the goods in issue, various items of personal jewellery, which were classified by the respondent under tariff item No. 7113.19.90 as other articles of jewellery of other precious metal. The appellant argued that Customs officers damaged the jewellery that she imported, that she was harassed by them while clearing Canadian customs, that customs duty is a fine that was not warranted and that she was not correctly informed as to the value of jewellery that she could import into Canada on her return from abroad. On that basis, she claimed the payment of an amount of \$469.76 for the refund of duties paid on the jewellery, including damages for the re-setting of an emerald on a ring and the payment of an amount of \$6,400.00 for harassment.

HELD: The appeal is dismissed. The sole issue relevant to the Tribunal's jurisdiction and that relates to the appellant's request for a refund of duties paid is whether the goods in issue are properly classified under tariff item No. 7113.19.90. The appellant claimed that she valued the jewellery as "liquid cash." Thus, the argument could have been made that the jewellery should be classified under tariff item No. 4907.00.10 as banknotes being legal tender. However, under the *Harmonized Commodity Description and Coding System*, whose principles guide classification under the Canadian customs tariff system, goods are classified according to what they are, not according to their investment value or personal uses. These are irrelevant to tariff classification. The goods in issue are, thus, properly classified under tariff item No. 7113.19.90.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	April 26, 1999
Date of Decision:	June 14, 1999
Tribunal Member:	Patricia M. Close, Presiding Member
Counsel for the Tribunal:	Gilles B. Legault
Clerk of the Tribunal:	Anne Turcotte
Appearance:	Lynne Soublière, for the respondent

Appeal No. AP-98-056

THÉRÈSE ABRANCHES

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Deputy Minister of National Revenue denying a refund claim filed by the appellant. The appellant did not appear at the hearing. The appeal was dismissed from the bench, taking into account the statutorily limited jurisdiction of the Tribunal and the documents on the record, including both the appellant's and the respondent's briefs.

On April 21, 1998, the appellant arrived at Toronto-Lester B. Pearson International Airport (Pearson Airport) from Mumbai (Bombay) via Amsterdam. She imported various items of personal jewellery, which were classified under tariff item No. 7113.19.90 of the schedule to the *Customs Tariff*² as other articles of jewellery of other precious metal.

The appellant argued that Customs officers at Pearson Airport damaged the jewellery that she imported, that she was harassed by them while clearing Canadian customs, that customs duty is a fine that was not warranted and that she was not correctly informed as to the value of jewellery that she could import into Canada on her return from abroad. On that basis, she claimed payment in the amount of \$469.76 for the refund of duties paid on the jewellery, including damages for the re-setting of an emerald on a ring and the payment of the amount of \$6,400.00 for harassment.

It is clear that the Tribunal does not have jurisdiction with respect to either the appellant's harassment claim or her claim for damages. As a statutorily created body, the Tribunal can only deal with matters for which it has jurisdiction and, in this case, it means hearing the appeal of the re-determination of the tariff classification made by the respondent. As to the appellant's argument that the customs duty that was applied constitutes a fine, a customs duty is a tax imposed by an act of Parliament, not a fine.

Consequently, in this case, the sole issue relevant to the Tribunal's jurisdiction and that somewhat relates to the appellant's request for refund of duties paid is whether the goods in issue are properly classified under tariff item No. 7113.19.90 as other articles of jewellery and parts thereof, of other precious metal.

The appellant, who admits that she imported jewellery, argued that she does not consider jewellery, under the "taxation laws," differently from cash, since jewellery has an investment value and is for personal use. Although not referenced by the appellant in her brief, this argument can only lead, as contended by

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. S.C. 1997, c. 36.

counsel for the respondent, to requesting that the jewellery be classified under tariff item No. 4907.00.10 as banknotes being legal tender.

In the Tribunal's view, jewellery is jewellery, not banknotes. Under the *Harmonized Commodity Description and Coding System*,³ whose principles guide classification under the Canadian customs tariff system, goods are classified according to what they are, not according to their investment value or personal uses. The appellant admitted that the goods in issue are jewellery; however, she considered them a liquid investment. For the purpose of tariff classification, why the appellant bought the jewellery or how she intends to use it is irrelevant. Again, what is relevant is what the goods are, which, in this case, is purely and simply jewellery presumably made of precious metal. The appellant, who has the burden of evidence, was thus unable to demonstrate that the classification of the goods is incorrect. Therefore, the goods in issue are properly classified under tariff item No. 7113.19.90.

Accordingly, the appeal is dismissed.

Patricia M. Close

Patricia M. Close
Presiding Member

3. Customs Co-operation Council, 2nd ed., Brussels, 1987.