

Ottawa, Wednesday, August 30, 2000

Appeal No. AP-99-042

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

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated March 9, 1999, with respect to a request for re-determination under subsection 63(3) of the *Customs Act*.

BETWEEN

PABLA FASHIONS LTD.

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-99-042

PABLA FASHIONS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The respondent raises a preliminary objection to the Tribunal's jurisdiction to hear this appeal. The respondent alleges that the appellant failed to file its appeal within 90 days from the decisions of the Deputy Minister of National (now the Commissioner of the Canada Customs and Revenue Agency) pursuant to section 63 of the *Customs Act*, as required by section 67 of the *Customs Act*. Therefore, the respondent submits that this appeal must be dismissed. The appellant did not respond to the allegation.

HELD: The appeal is dismissed. The information on file confirms that the appeal was filed with the Tribunal more than 90 days after the decision of the Deputy Minister of National Revenue pursuant to section 63 of the *Customs Act*. As such, the appeal was not initiated within the time period for doing so, as prescribed by section of the *Customs Act*. Therefore, and in accordance with the Tribunal's decision in *Shrimp Projectors v. DMNRCE*, the Tribunal is without jurisdiction to hear the appeal.

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 12, 2000
Date of Decision: August 30, 2000

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: John Dodsworth

Clerk of the Tribunal: Anne Turcotte

Parties: Shiraz Kaba, for the appellant
Susanne Pereira, for the respondent

Appeal No. AP-99-042

PABLA FASHIONS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PIERRE GOSSELIN, Presiding Member

REASONS FOR DECISION

This is in respect of a preliminary issue that has been raised by the respondent regarding the Tribunal's jurisdiction to consider this appeal filed under section 67 of the *Customs Act*.¹ The issue is whether the appellant has filed the appeal within 90 days from the decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) made under subsection 63(3), as required under section 67. If the appellant has failed to file the appeal within that time period, the respondent alleges that the Tribunal lacks the jurisdiction to hear the appeal.

The goods in issue are ladies' hand-decorated and embroidered clothing, *Diva*, *Dandia*, plates, lamps and pots imported in 1996. The appellant claimed that the goods qualified for tariff relief pursuant to Code 2955 of Schedule II to the *Customs Tariff*² under the *Handicraft Goods Order*.³ The respondent's decisions, made on March 9, 1999, denied the appellant's claim that the goods in issue qualified for tariff relief under the *Handicraft Goods Order*, on the grounds that the goods are not included in the schedule to that order.

On June 8, 1999, the appellant filed an appeal with the Tribunal pursuant to section 67 of the Act. In a letter dated July 27, 1999, the Tribunal accepted the appeal as filed, but informed the appellant that the appeal had been filed outside the 90-day appeal period and that the respondent could raise the issue at any hearing that may be held in the appeal. The appellant was also advised to file its brief by September 27, 1999.

On September 29, 1999, the Tribunal advised the appellant that the deadline for filing its brief had passed and requested that the appellant communicate with the Tribunal concerning the appeal. The appellant did not file its brief, nor did it communicate with the Tribunal. On October 13, 1999, the Tribunal again requested the appellant to file its brief or, in the alternative, to file a notice of discontinuance of the appeal.

On October 15, 1999, the Tribunal received correspondence from Schenker of Canada Limited on behalf of the appellant requesting that the appellant be provided relief on the interest incurred on the funds owing. The letter indicated that the appellant was attempting to obtain a settlement from another customs broker which, it claimed, was responsible for the matter and, in its view, should bear responsibility for the penalties and duties owing.

On October 26, 1999, the appellant filed a one-page document that it referred to as its brief and that simply requested that the imported goods be treated as handicrafts. The Tribunal informed the appellant on

1. R.S.C. 1985 (2nd Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.
3. C.R.C., c. 531 (1978).

November 2, 1999, that the document did not constitute a brief as required by rule 34 of the *Canadian International Trade Tribunal Rules*.⁴ The appellant was given until November 30, 1999, to file a properly completed brief. The appellant did not file a brief with the Tribunal at that time or since then. By letter dated December 7, 1999, the Tribunal informed the respondent that the appellant had failed to file a properly completed brief and requested that submissions be filed, by December 20, 1999, regarding the manner in which to dispose of the appeal.

In correspondence dated December 20, 1999, the respondent indicated that it was of the view that the appeal should be dismissed, given the failure of the appellant to file a properly completed brief. The respondent, therefore, requested that the Tribunal dismiss the appeal for delay and non-compliance with the Rules. In a subsequent letter, also dated December 20, 1999, the respondent further submitted that the Tribunal lacks jurisdiction to hear the appeal, given that the appellant failed to file the appeal within the 90 days prescribed by section 67 of the Act. The respondent cited the Tribunal's decision in *Shrimp Projectors v. DMNRCE*⁵ in support of its position.

In a letter dated January 5, 2000, the Tribunal directed the appellant to respond to the respondent's submissions by January 25, 2000. The appellant was informed that, in the event that no response was provided, the Tribunal would treat the respondent's submissions of December 20, 1999, as a motion to dismiss the appeal, pursuant to rule 29 of the Rules. The Tribunal did not receive a response to this letter.

In a subsequent letter dated February 18, 2000, the Tribunal provided the appellant yet another opportunity to respond to the respondent's allegation that the appeal should be dismissed, given that the appeal was filed outside the time frame for doing so, as set out in section 67 of the Act. The appellant was provided until March 3, 2000, to respond, but no response was received.

The Tribunal is of the view that it has the authority to dismiss an appeal at any time for lack of jurisdiction.⁶ Further, it is important that the Tribunal address jurisdictional issues by way of preliminary motions in order to ensure that it does not inquire into a matter that is beyond the authority given to it by Parliament. In this regard, the Tribunal is of the view that the appellant was notified of the respondent's decisions dated March 9, 1999, and did not file its appeal until June 8, 1999, a period of 91 days. Therefore, the appellant has exceeded the time period provided under section 67 of the Act for filing an appeal and, accordingly, the Tribunal is of the view that it does not have jurisdiction to hear this appeal.⁷

The Tribunal acknowledges that the respondent's request for dismissal of this appeal is contained in correspondence with the Tribunal and not in the form of a notice of motion as contemplated by rule 24 of the Rules. However, the Tribunal notes that it has authority to dispense with or vary any rule if it is fair and equitable to do so or to provide for a more expeditious or informal process.⁸ Moreover, the Tribunal is of the view that the respondent's correspondence of December 20, 1999, satisfies the essential requirements of rule 24.

Rule 24 of the Rules requires a notice of motion to be in writing and to set out a statement of the facts. It must state the decision or order sought and be served on the parties. The respondent's correspondence of December 20, 1999, clearly sets out, in writing, the decision or order sought, that being

4. S.O.R./91-499 [hereinafter Rules].

5. (26 January 1993), AP-91-180.

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

7. *Supra* note 4.

8. Rule 6 of the Rules.

dismissal of the appeal, together with the basic facts upon which the request is made. Further, the appellant was provided a copy of this letter and has had an opportunity to reply. The Tribunal informed the appellant that it would consider the respondent's request as a motion to dismiss the appeal, should no response be provided. However, the appellant has failed to respond or make any representations which would suggest that the appeal was, in fact, filed within the relevant time period. To the contrary, the Tribunal is of the view that, in its letter of June 8, 1999, in which it requested this appeal, the appellant acknowledged that it had missed the relevant time period for filing its appeal.

In such circumstances, no purpose would be served by now requiring the respondent to file a notice of motion setting out the request for dismissal. Given the foregoing, the Tribunal is of the view that it lacks jurisdiction to hear this appeal. Therefore, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member