



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

Ottawa, Wednesday, March 31, 2004

Application No. EP-2003-007

IN THE MATTER OF an application made by Mr. Gordon Grandison pursuant to section 67.1 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1, for an order extending the time within which a notice of appeal may be filed under section 67.

ORDER OF THE TRIBUNAL

The Canadian International Trade Tribunal grants the application for an extension of time and gives Mr. Gordon Grandison 30 days from the date of this order to file a notice of appeal with the Canadian International Trade Tribunal and the President of the Canada Border Services Agency.

Meriel V. M. Bradford

Meriel V. M. Bradford
Presiding Member

Patricia M. Close

Patricia M. Close
Member

Zdenek Kvarda

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Member

Michel P. Granger

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TRIBUNAL: MERIEL V. M. BRADFORD, Presiding Member
PATRICIA M. CLOSE, Member
ZDENEK KVARDA, Member

STATEMENT OF REASONS

BACKGROUND

On January 21, 2003, Mr. Gordon Grandison imported a knife. On February 11, 2003, the Commissioner of the Canada Customs and Revenue Agency (CCRA) re-determined the tariff classification of the knife in issue pursuant to subsection 60(4) of the *Customs Act*.¹ The knife in issue was found to be a “prohibited weapon” in accordance with the definition found in subsection 84(1) of the *Criminal Code*.²

According to Mr. Grandison, a notice of appeal dated March 25, 2003, was mailed to the Canadian International Trade Tribunal (Tribunal) and the CCRA. However, the Tribunal did not receive this notice, something that Mr. Grandison attributed to the fact that the CCRA had provided him with an incorrect postal code. On November 4, 2003, Mr. Grandison resent a copy of his notice of appeal dated March 25, 2003, to the Tribunal, which was received on November 10, 2003. On November 21, 2003, the Tribunal informed Mr. Grandison of the fact that his notice of appeal had been filed beyond the 90-day time limit provided for under the *Act* and that his letter of November 4, 2003, was therefore treated as an application for an extension of time to appeal under section 67.1 of the *Act*.

The Tribunal requested Mr. Grandison to provide, no later than December 17, 2003, the information required under paragraph 67.1(4)(b) of the *Act*. In a letter dated December 8, 2003, and received by the Tribunal on December 11, 2003, Mr. Grandison stated the following:

My original letter of appeal was dated March 25th and mailed to both the C.C.R.A. and C.I.T.T. After waiting for an extended period and receiving no response from either, I discovered the C.I.T.T. had not received my letter of appeal.

C.C.R.A. provided me with incorrect mailing information for the C.I.T.T. The correct postal code for the C.I.T.T. is K1A 0G7 and not K1G 0G7. This may have resulted in the non-receipt of my appeal by the C.I.T.T.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. R.S.C. 1985, c. C-46.

I promptly re-sent a copy of my appeal to the C.I.T.T. with a letter dated November 5th 2003 explaining the delay.

I believe this application for an extension of time would be just and equitable considering the circumstances. I did re-file immediately after discovering my appeal had not been received by the C.I.T.T. I feel I have reasonable grounds and have stated these in my original appeal.

On December 24, 2003, the Tribunal invited the CCRA to comment on Mr. Grandison's application under section 67.1 of the *Act*. The Canada Border Services Agency (CBSA) (formerly the CCRA) filed its response on January 20, 2004.

On January 26, 2004, the Tribunal invited Mr. Grandison to respond to the CBSA's comments. No comments were received.

ANALYSIS

Sections 67 of the *Act* reads, in part, as follows:

67. (1) A person aggrieved by a decision of the Commissioner made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the Commissioner and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

Section 67.1 of the *Act* reads as follows:

67.1 (1) If no notice of appeal has been filed within the time set out in section 67, a person may make an application to the Canadian International Trade Tribunal for an order extending the time within which a notice of appeal may be filed, and the Tribunal may make an order extending the time for appealing and may impose any terms that it considers just.

(2) The application must set out the reasons why the notice of appeal was not filed on time.

(3) The application must be made by filing with the Commissioner and the Secretary of the Canadian International Trade Tribunal the application accompanied by the notice of appeal.

(4) No order may be made under this section unless

(a) the application is made within one year after the expiry of the time set out in section 67; and

(b) the person making the application demonstrates that

(i) within the time set out in section 67 for appealing, the person was unable to act or to give a mandate to act in the person's name or the person had a *bona fide* intention to appeal,

(ii) it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

Section 67.1 of the *Act* contains five criteria, each of which an applicant must meet in order to succeed in his application for an extension of time.

First, paragraph 67.1(4)(a) of the *Act* requires that the application be made within one year after the expiry of the time set out in section 67. In this case, the 90-day period to file an appeal under section 67 expired on May 12, 2003. Accordingly, the last day to file the application for an extension of time is May 11, 2004. The complete application under section 67.1, with the reasons explaining why the notice of appeal was not filed on time, was received on December 11, 2003. This criterion has consequently been met.

Second, subparagraph 67.1(4)(b)(i) of the *Act* requires the applicant to demonstrate that, within the 90-day period prescribed in section 67, he was unable to act or to give a mandate to someone else to act in the applicant's name. Alternatively, the applicant could prove that he had a *bona fide* intention to appeal within the 90-day prescribed period. In its position paper, the CBSA submitted that Mr. Grandison has satisfied the criterion of having a *bona fide* intention to appeal, although it outlined that there was no manner to determine whether the letter dated March 25, 2003, was actually sent. There is no evidence to suggest that Mr. Grandison did not send his letter or that he is not acting in good faith, and the Tribunal finds that he had a *bona fide* intention to appeal within the 90-day prescribed period.

Third, subparagraph 67.1(4)(b)(ii) of the *Act* requires the applicant to demonstrate that it would be just and equitable to grant the application. If this application is not granted, Mr. Grandison will lose the opportunity to present his case. In addition, in light of the surrounding circumstances regarding the notice of appeal that was sent on time, but not received by the Tribunal, the Tribunal finds that this criterion is met.

Fourth, subparagraph 67.1(4)(b)(iii) of the *Act* requires the applicant to demonstrate that the application was made as soon as circumstances permitted. Mr. Grandison stated, in his letter dated December 8, 2003, that he promptly resent his appeal after having discovered that it had not been received. The 90-day period to file the appeal expired on May 12, 2003, and Mr. Grandison resent his appeal on November 4, 2003. While the Tribunal does not know exactly when Mr. Grandison learned that the Tribunal had not received his notice of appeal, it relies on Mr. Grandison's statement that he did re-file his notice of appeal immediately after discovering that it had not been received by the Tribunal. Accordingly, the Tribunal finds that this fourth criterion is met.

Fifth, subparagraph 67.1(4)(b)(iv) of the *Act* requires that there be reasonable grounds for the appeal. The CBSA submitted that this criterion was not met, made several arguments dealing with the merits of the case and referred in particular to the applicant's argument concerning the ambiguity of subsection 84(1) of the *Criminal Code* which leads the applicant to dispute the classification of the knife in issue as a "prohibited weapon" under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.³ The CBSA referred to the Tribunal's decision in *Wayne Ericksen v. Commissioner of the CCRA*⁴ in support of its position that the clear wording of the *Criminal Code* should be applied and that, consequently, the knife in issue is correctly classified under tariff item No. 9898.00.00. Although the Tribunal may have determined, in the past, that similar goods were prohibited weapons, the issue before the Tribunal is not the outcome of the appeal, but rather whether reasonable grounds for the appeal exist. All the facts of the appeal are not yet formally before the Tribunal, and every decision on classification must be dealt with on the basis of the evidence. In this regard, the Tribunal notes that it has not yet had the opportunity to examine the knife in issue. Accordingly, the Tribunal is of the opinion that this fifth criterion is met.

3. S.C. 1997, c. 36.

4. (3 January 2002), AP-200-059 (CITT).

Therefore, the Tribunal finds that Mr. Grandison has met all five statutory criteria and that his application should be granted. The Tribunal allows 30 days from the date of the issuance of the order for Mr. Grandison to file a notice of appeal with the Tribunal and the CBSA.

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Presiding Member

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Member