



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2006-001

Tiffany Woodworth

*Order issued
Wednesday, November 8, 2006*

*Reasons issued
Friday, December 1, 2006*

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IN THE MATTER OF an application made by Ms. Tiffany Woodworth under section 67.1 of the *Customs Act* for an order extending the time to file a notice of appeal under subsection 67(1) of the *Customs Act* with respect to a decision, dated December 28, 2005, of the President of the Canada Border Services Agency under subsection 60(4) of the *Customs Act*.

ORDER

The Canadian International Trade Tribunal grants the application and accepts the documents dated May 10, 2006, from Ms. Tiffany Woodworth, as a notice of appeal under subsection 67(1) of the *Customs Act* from the above decision.

Ellen Fry
Ellen Fry
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

BACKGROUND

1. This is an application made by Ms. Tiffany Woodworth under section 67.1 of the *Customs Act*¹ for an order extending the time to file a notice of appeal under subsection 67(1) with respect to a decision, dated December 28, 2005, of the President of the Canada Border Services Agency (CBSA) under subsection 60(4).

2. The product in issue is described as a necklace with a silver-plated pendant, which the CBSA determined to be a weapon prohibited from importation into Canada under subsection 84(1) of the *Criminal Code*,² subsection 136(1) of the *Act* and tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.³ The CBSA also relied on section 4 of the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*,⁴ which reads as follows:

4. The weapons listed in Part 3 of the schedule are prohibited weapons for the purposes of paragraph (b) of the definition “prohibited weapon” in subsection 84(1) of the *Criminal Code*.

4. Les armes énumérées à la partie 3 de l’annexe sont désignées des armes prohibées pour l’application de l’alinéa b) de la définition de « arme prohibée » au paragraphe 84(1) du *Code criminel*.

The CBSA further relied on sections 9 and 10 of Part 3 of the schedule to the *Regulations*, which read as follows:

9. Any knife commonly known as a “push-dagger” that is designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade and any other similar device other than the aboriginal “ulu” knife.

9. Tout couteau communément appelé « dague à pousser », conçu de telle façon que le manche est perpendiculaire au tranchant principal de la lame, ainsi que tout autre instrument semblable, à l’exception du couteau autochtone « ulu ».

10. Any device having a length of less than 30 cm and resembling an innocuous object but designed to conceal a knife or blade, including the device commonly known as the “knife-comb”, being a comb with the handle of the comb forming a handle for the knife, and any similar device.

10. Tout appareil d’une longueur inférieure à 30 cm, qui ressemble à un objet inoffensif mais qui est conçu pour dissimuler un couteau ou une lame, notamment l’instrument communément appelé « peigne-couteau », lequel est un peigne dont le manche sert de poignée au couteau, et tout autre appareil semblable.

3. Ms. Woodworth submitted a request for re-determination under subsection 60(1) of the *Act* on September 9, 2005, which was acknowledged by the CBSA on September 29, 2005. This request was denied in a detailed adjustment statement dated December 28, 2005. Ms. Woodworth filed an appeal of this decision under subsection 67(1) with the Tribunal on May 10, 2006. Given that the normal statutory deadline to do so had passed, the Tribunal must first consider whether to grant, under section 67.1, an extension of time to file such an appeal. It is this matter that is the subject of the present proceeding.

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

2. R.S.C. 1985, c. C-46.

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

4. S.O.R./98-462 [*Regulations*].

ANALYSIS

4. 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 President 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.

67.1(1) La personne qui n'a pas interjeté appel dans le délai prévu à l'article 67 peut présenter au Tribunal canadien du commerce extérieur une demande de prorogation du délai pour interjeter appel. Le tribunal peut faire droit à la demande et imposer les conditions qu'il estime justes.

(2) La demande de prorogation énonce les raisons pour lesquelles l'avis d'appel n'a pas été déposé dans le délai prévu.

(3) La demande de prorogation se fait par dépôt, auprès du président et du secrétaire du Tribunal canadien du commerce extérieur, de la demande et de l'avis d'appel.

(4) Il n'est fait droit à la demande de prorogation que si les conditions suivantes sont réunies:

a) la demande est présentée dans l'année suivant l'expiration du délai d'appel prévu à l'article 67;

b) l'auteur de la demande établit ce qui suit:

(i) au cours du délai d'appel prévu à l'article 67, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention d'interjeter appel,

(ii) il serait juste et équitable de faire droit à la demande,

(iii) la demande a été présentée dès que possible,

(iv) l'appel est fondé sur des motifs raisonnables.

5. The first condition, which is set out in paragraph 67.1(4)(a) of the *Act*, requires the Tribunal to verify that the application that is the subject of this proceeding was made within one year of the date set out in section 67 (i.e. one year from the end of the 90-day period after which the CBSA gave notice of its decision under subsection 60[4]). The CBSA gave notice of that decision on December 28, 2005. Ninety days from December 28, 2005, was March 28, 2006. One year from that date will be March 29, 2007. Ms. Woodworth filed the application that is the subject of this proceeding on May 10, 2006, which was prior to March 29, 2007. Accordingly, the first condition is met. The CBSA did not argue otherwise.

6. The second condition, which is set out in subparagraph 67.1(4)(b)(i) of the *Act*, requires that, within the period between December 28, 2005, and March 28, 2006,⁵ 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. Ms. Woodworth submitted the following: "... the documents were misplaced during some renovations at my home. As soon as I was able to locate the documents, I faxed a package to the Tribunal which was received by them on May 10 [2006]"⁶ The CBSA argued that home renovations do not reasonably amount to an inability to act and that Ms. Woodworth made no attempt to obtain a duplicate of the CBSA's decision and therefore "... merely neglected to [act] within the prescribed time limits"⁷ Consequently, according to the CBSA, Ms. Woodworth failed to meet this condition of the *Act*. The CBSA argued that "... [s]ending in her notice of appeal 'as soon as [she] was able to locate the documents' is not evidence of a *bona fide* intention to file within the 90-day time limit"⁸

7. Ms. Woodworth was prompt in filing her request for re-determination of the CBSA's initial decision. She filed this request with the CBSA under subsection 60(1) of the *Act* on September 9, 2005, very shortly after the CBSA's decision dated August 24, 2005. In seeking to appeal the CBSA's second decision, for which she is seeking an extension of time in this proceeding, Ms. Woodworth also acted promptly after she located the documents that she had misplaced. The Tribunal notes that the necklace in issue was a gift for a family member, a circumstance that would reasonably tend to motivate the pursuit of an appeal. Based on the foregoing, the Tribunal concludes that Ms. Woodworth had a *bona fide* intention to appeal the CBSA's decision. Accordingly, the second condition is met.

8. The third condition, which is set out in subparagraph 67.1(4)(b)(ii) of the *Act*, requires that it be just and equitable to grant the application. The CBSA's argument is essentially that Ms. Woodworth failed to act with sufficient diligence in letting 42 days elapse after the statutory deadline before dealing with this matter.

9. Although the application was 42 days late, Ms. Woodworth has provided a plausible explanation for the lateness. The Tribunal notes that Ms. Woodworth would not necessarily have as full an understanding of the applicable procedural requirements, and their implications, as would an appellant that is represented by counsel.

10. The Tribunal also notes that 42 days is not a long period of time when viewed in the context of the time frames that were required by the CBSA to take the necessary action on this file, e.g. 20 days to acknowledge Ms. Woodworth's request for re-determination (from September 9 to 29, 2005), then 102 days to render a decision (from September 9 to December 28, 2005). Accordingly, the third condition is met.

11. The fourth condition, which is set out in subparagraph 67.1(4)(b)(iii) of the *Act*, requires that the application be made as soon as circumstances permitted. In the Tribunal's view, as discussed above, Ms. Woodworth appears to have brought the application as soon as circumstances permitted. Accordingly, the fourth condition is met.

5. This period corresponds to the time frame that is set out in section 67 of the *Act*, i.e. the 90-day period beginning on December 28, 2005, when the CBSA gave notice of its decision under subsection 60(4), and ending on March 28, 2006.

6. Letter from Ms. Woodworth to the Tribunal dated June 13, 2006.

7. CBSA's brief, paras. 15, 20.

8. CBSA's brief, para. 21.

12. The fifth condition, which is set out in subparagraph 67.1(4)(b)(iv) of the *Act*, requires that the Tribunal be satisfied that there are reasonable grounds for the appeal. The CBSA submitted that this criterion was not met because, in its view, the necklace in issue is either a “push-dagger” within the meaning of section 9 of Part 3 of the schedule to the *Regulations* or the device described at section 10 of Part 3 of the schedule to the *Regulations* and, accordingly, is a prohibited weapon. In the Tribunal’s view, the information on the record at this stage of the proceeding indicates that it is arguable that the necklace in issue is not a prohibited weapon. Accordingly, the fifth condition is met.

DECISION

13. For the foregoing reasons, the application is granted.

Ellen Fry

Ellen Fry
Presiding Member