Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2006-002

Parkview Lease & Auto Sales Ltd.

Order issued
Monday, November 6, 2006

Reasons issued
Thursday, November 30, 2006

Canada

TABLE OF CONTENTS

IN THE MATTER OF an application made by Parkview Lease & Auto Sales Ltd., under section 60.2 of the *Customs Act*, for an order extending the time to file a request for a re-determination under subsection 60(1) of the *Customs Act* with respect to original transaction Nos. 13409022277259, 13409022277135, 13409022277909, 10827040293598, 10827039109547, 10827044925681, 13409026629505 and 13409026631166 issued by the President of the Canada Border Services Agency.

ORDER

The Canadian International Trade Tribunal grants the application and allows Parkview Lease & Auto Sales Ltd. until December 6, 2006, to file a request with the President of the Canada Border Services Agency for a re-determination under subsection 60(1) of the *Customs Act* with respect to the above transaction numbers.

Meriel V. M. Bradford
Meriel V. M. Bradford
Presiding Member

Ellen Fry
Ellen Fry
Member

Elaine Feldman
Elaine Feldman
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 by Parkview Lease & Auto Sales Ltd. (Parkview) under section 60.2 of the *Customs Act*[1] for an order extending the time to file requests for a re-determination under subsection 60(1). The application concerns eight importations that occurred between March 5 and November 20, 2002, in which Parkview imported various motor homes under United States Tariff (UST) treatment. The eight importations in issue bear the following original CBSA transaction Nos.: 13409022277259, 13409022277135, 13409022277909, 10827040293598, 10827039109547, 10827044925681, 13409026629505 and 13409026631166.

2. On June 1 and June 8, 2005, the Canada Border Services Agency (CBSA) issued detailed adjustment statements (DASs) under subsection 59(1) of the *Act* in respect of the transactions in issue, whereby the tariff treatment was changed from the UST to the Most-Favoured-Nation Tariff.

3. On July 6, 2005, Parkview filed requests for a re-determination of those decisions by the CBSA under section 60 of the *Act.* Those requests were not accepted because they had allegedly not been filed in the prescribed manner and because it appears that Parkview did not first pay all monies owing or give satisfactory security, as required by subsection 60(1)

4. On September 6, 2005, Parkview paid the amount owing ($24,445.44) and resubmitted requests for a re-determination of the decisions in issue. These were rejected on the basis that they had been filed beyond the 90-day time limit provided for under subsection 60(1) of the *Act*.

5. On January 5, 2006, Parkview made an application for an extension of time pursuant to section 60.1 of the *Act*. The CBSA denied the application on April 7, 2006.

6. On June 2, 2006, Parkview filed the application that is the subject of this proceeding. It was opposed by the CBSA.

ANALYSIS

7. Section 60.2 of the *Act* reads as follows:

> **60.2**(1) A person who has made an application under section 60.1 may apply to the Canadian International Trade Tribunal to have the application granted after either
>
> (*a*) the President has refused the application; or
>
> (*b*) ninety days have elapsed after the application was made and the President has not notified the person of the President's decision.
>
> If paragraph (*a*) applies, the application under this subsection must be made within ninety days after the application is refused.

> **60.2**(1) La personne qui a présenté une demande de prorogation en vertu de l'article 60.1 peut demander au Tribunal canadien du commerce extérieur d'y faire droit :
>
> *a*) soit après le rejet de la demande par le président;
>
> *b*) soit à l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le président ne l'a pas avisée de sa décision.
>
> La demande fondée sur l'alinéa *a*) est présentée dans les quatre-vingt-dix jours suivant le rejet de la demande.

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

(2) The application must be made by filing with the President and the Secretary of the Canadian International Trade Tribunal a copy of the application referred to in section 60.1 and, if notice has been given under subsection 60.1(4), a copy of the notice.

(3) The Canadian International Trade Tribunal may dispose of an application by dismissing or granting it and, in granting an application, it may impose any terms that it considers just or order that the request be deemed to be a valid request as of the date of the order.

(4) No application may be granted under this section unless

(*a*) the application under subsection 60.1(1) was made within one year after the expiry of the time set out in section 60; and

(*b*) the person making the application demonstrates that

(i) within the time set out in section 60, 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 make a request,

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

(iii) the application was made as soon as circumstances permitted.

(2) La demande se fait par dépôt, auprès du président et du secrétaire du Tribunal canadien du commerce extérieur, d'une copie de la demande de prorogation visée à l'article 60.1 et, si un avis a été donné en application du paragraphe 60.1(4), d'une copie de l'avis.

(3) Le Tribunal canadien du commerce extérieur peut rejeter la demande ou y faire droit. Dans ce dernier cas, il peut imposer les conditions qu'il estime justes ou ordonner que la demande de révision ou de réexamen soit réputée valide à compter de la date de l'ordonnance.

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

a) la demande de prorogation visée au paragraphe 60.1(1) a été présentée dans l'année suivant l'expiration du délai prévu à l'article 60;

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

(i) au cours du délai prévu à l'article 60, il n'a pu agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de présenter une demande de révision ou de réexamen,

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

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

8. The Tribunal will address each of the five conditions contained in this section, as they apply to the present case.

9. The first requirement, which is set out in subsection 60.2(1) of the *Act*, requires that the application under section 60.2 be made within 90 days of the refusal of the application that was made under section 60.1. On April 7, 2006, the CBSA denied Parkview's application made under section 60.1. As indicated above, Parkview filed the application that is the subject of this proceeding on June 2, 2006, which date is within the prescribed time frame. The parties did not dispute these facts. The first requirement is therefore met.

10. The second requirement, which is set out in paragraph 60.2(4)(*a*) of the *Act*, requires that Parkview's application to the CBSA under subsection 60.1(1) be made within one year of the date set out in section 60 (i.e. one year from the end of the 90-day period after which the CBSA gave notice of its decision under section 59). The CBSA gave notice of those decisions on June 1 and 8, 2005. Ninety days from June 1, 2005, was August 30, 2005. Ninety days from June 8, 2005, was September 6, 2005. One year from those dates was August 31, 2006, and September 7, 2006, respectively. Parkview filed the application that is the subject of this proceeding on June 2, 2006, which was prior to August 31 and September 7, 2006. Accordingly, the second requirement is met. The CBSA did not argue otherwise.

11. The third requirement, which is set out in subparagraph 60.2(4)(*b*)(i) of the *Act*, requires that the person making the application demonstrate that, within the time frame set out in section 60, i.e. within the 90-day period after which the CBSA gave notice of its decision under section 59 (in this case, for DAS Nos. 00001002117163, 0000102117174, 00001002122978, 00001002117642 and 00001002118288 dated June 1, 2005, before August 30, 2005, and for DAS Nos. 00001002118529, 00001002118541 and 00001002118379 dated June 8, 2005, before September 6, 2005), 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 make a request. Parkview did not argue that it was unable to act or to give a mandate to act, but that it had a *bona fide* intention to make a request. The CBSA acknowledged that Parkview had a *bona fide* intention to dispute the eight transactions in issue.

12. The Tribunal notes the following events that occurred between the CBSA's issuance of the DASs and Parkview's submission to the CBSA for a re-determination of these decisions (B2 requests).

13. On July 6, 2005, Parkview filed requests for a re-determination relative to the CBSA's decisions under section 59 of the *Act.* Parkview sent these requests to the Ottawa, Ontario, office of the CBSA, along with certificates of origin provided by the manufacturer. The CBSA acknowledged these requests on July 27, 2005, advising Parkview that they had been forwarded to its Pacific Region office.

14. On August 31, 2005, the CBSA apparently sent faxes to Parkview's representative, outlining the prescribed requirements for filing the B2 requests.[2] Although there is no copy of the faxes on the record, it appears that the CBSA informed Parkview that a request for a re-determination could not be filed until the duties and taxes owing had been paid or security posted in accordance with subsection 60(1) of the *Act*.

15. On September 6, 2005, Parkview's representative sent the CBSA a cheque ". . . covering the outstanding amounts due on these transactions . . ." and indicated that he trusted that ". . . these particular items [could] now be reviewed . . . ." That correspondence was sent by courier and is date stamped as received by the CBSA on September 8, 2005.

16. On September 9, 2005, the CBSA acknowledged receipt of the cheque and informed Parkview's representative that the requests for a re-determination were now time-barred from being accepted and suggested that he consider filing an application for an order extending the time to file the requests for a re-determination under section 60.1 of the *Act*.

17. On September 15, 2005, Parkview faxed a letter to the CBSA in which its representative ". . . formally request[ed] extensions on eight B2 Appeal Requests . . . ." Over the next several months, there followed an exchange of correspondence between Parkview's representative and the CBSA about the request for an extension of time. The exchange included a request from Parkview's representative for assistance from the CBSA.

18. On December 22, 2005, Parkview informed the CBSA that it had changed representatives.

19. On January 5, 2006, the application for an extension of time to appeal the transactions in issue was filed with the CBSA. A preliminary decision denying this application was made by the CBSA on March 22, 2006. As indicated above, on April 7, 2006, the CBSA denied Parkview's application made under section 60.1 of the *Act*.

2. Respondent's Brief, Tab B.

20. The Tribunal notes that Parkview initiated a process to appeal the CBSA's decision by sending a letter to the CBSA's Ottawa office on July 6, 2005, which was only approximately one month after the issuance of the CBSA's decisions dated June 1 and 8, 2005. Further, it appears from the record that, after routing the requests to its Pacific Region office (a process which took approximately three weeks), the CBSA took approximately one month (from July 27 to August 31, 2005) to advise Parkview that its requests for a re-determination could not be accepted until it made the necessary payment of moneys owing or gave satisfactory security and that its requests needed to be submitted on the necessary forms before they could be considered.

21. On September 8, 2005, only approximately a week after receiving CBSA's instructions, Parkview provided the CBSA with the requests for a re-determination on the prescribed B2 form, together with a cheque for outstanding duties; the CBSA acknowledged this in a letter to Parkview the following day. As indicated above, 90 days from the decisions under section 59 of the *Act* dated June 1, 2005, was August 30, 2005, and 90 days from June 8, 2005, was September 6, 2005. Therefore, Parkview missed the statutory deadlines by two days with respect to original transaction Nos. 10827044925681, 13409026629505 and 13409026631166, and by six days with respect to original transaction Nos. 13409022277259, 13409022277135, 13409022277909, 10827040293598 and 10827039109547

22. Furthermore, Parkview sent this application by fax, presumably in an effort to submit it as quickly as possible. The Tribunal is of the view that the record shows that Parkview made continuing attempts over the period beginning from at least July 6, 2005, and ending on September 6, 2005, to submit the necessary material in support of requests for a re-determination under section 60 and that it therefore had demonstrated a *bona fide* intention to contest the CBSA's decisions under section 59 relating to the transactions in issue. Accordingly, the third requirement is met.

23. The fourth requirement, which is set out in subparagraph 60.2(4)(*b*)(ii) of the *Act*, pertains to whether it would be just and equitable to grant the application.

24. Parkview submitted that it would be just and equitable to grant the application, as no person other than CBSA is concerned by this proceeding. It also stated that three of its four suppliers have stopped doing business with it as a result of the CBSA's demands. In addition, Parkview's principal submitted that this matter has left his wife fearful of doing business with the CBSA, has caused him difficulties with his financial institution and is threatening the survival of his business. The CBSA argued that Parkview failed to demonstrate that it would be just and equitable to grant this application.

25. The record shows that Parkview made sustained attempts to file requests for a re-determination before the deadline and then missed the deadline by only a few days. Furthermore, Parkview's initial attempt to file the requests (although incomplete) was made on July 6, 2005, well before the deadline. The Tribunal is of the view that, had the CBSA more promptly addressed Parkview's letter dated July 6, 2005, Parkview may well have made a complete filing within the statutory time limit to do so. In the Tribunal's view, it is not just and equitable to deprive someone of their right to an appeal because of a minor technical violation, particularly when the CBSA's actions or omissions might well have contributed to a party failing to comply with a statutory deadline. Consequently, the Tribunal is persuaded that it would be just and equitable to grant the application and, therefore, the fourth requirement is met.

26. The fifth requirement, set out at subparagraph 60.2(4)(*b*)(iii) of the *Act*, requires that the Tribunal be satisfied that the application was made as soon as circumstances permitted. The CBSA argued that Parkview did not make its application in a timely manner and that, despite advice from the CBSA on September 9, 2006, that it should consider filing an application for an extension of time, it waited until January 5, 2006, almost

four months after payment was made, to ask for an extension of time from the CBSA. The Tribunal disagrees. Again, the Tribunal notes that Parkview made consistent and sustained efforts to make the necessary application as soon as it learned of the CBSA's decision. The record then shows that it was on September 15, 2005, or very shortly after it would reasonably have received the CBSA's letter dated September 9, 2005, that Parkview applied to the CBSA under section 60.1 of the *Act* for an extension of time to submit the requests for a re-determination. Because of a lack of knowledge, the proper format was not followed, and Parkview indicated that, when it became aware of the problem, it engaged a different firm, in December 2005, to file its application, which was then duly filed on January 5, 2006. The Tribunal finds that the application was therefore made as soon as circumstances permitted and that the fifth requirement is met.

DECISION

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

Meriel V. M. Bradford
Meriel V. M. Bradford
Presiding Member

Ellen Fry
Ellen Fry
Member

Elaine Feldman
Elaine Feldman
Member