



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2012-002

Hydraulic Source Inc.

*Order and reasons issued
Friday, August 31, 2012*

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IN THE MATTER OF an application made by Hydraulic Source Inc., pursuant to section 60.2 of the *Customs Act*, for an order extending the time to file a request for a further re-determination of tariff classification pursuant to section 60 of the *Customs Act*.

ORDER

The Canadian International Trade Tribunal denies the application for an extension of time to file a request for a further re-determination under section 60 of the *Customs Act*.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Dominique Laporte

Dominique Laporte
Secretary

STATEMENT OF REASONS

BACKGROUND

1. This concerns an application pursuant to section 60.2 of the *Customs Act*¹ made by Hydraulic Source Inc. (Hydraulic) for an order extending the time to file a request for a further re-determination under section 60.
2. On March 25, 2009, following a customs compliance verification audit, the President of the Canada Border Services Agency (CBSA) issued a notice of re-determination of tariff classification for goods imported by Hydraulic between January 1 and December 31, 2007, pursuant to subsection 59(2) of the *Act*.
3. On June 15, 2010, Hydraulic's original customs broker, UTI Canada Inc. (UTI), filed four "B2" voluntary blanket adjustment statements, in compliance with subsection 32.2 of the *Act*, in order to correct all transactions of the same goods as those affected by the notice of re-determination dated March 25, 2009, that had been imported by Hydraulic since January 1, 2007.
4. In response to these four blanket adjustment statements, the CBSA issued notices of re-determination decisions on July 23 and August 4, 2010, pursuant to subsection 59(2) of the *Act*. It is these decisions that are at issue in the present application.
5. On September 22, 2010, Hydraulic retained MSR Customs & Commodities Tax Group (MSR) to review its import compliance. UTI continued to serve as Hydraulic's customs broker until early 2011.
6. The 90-day deadline to request a further re-determination of the CBSA's decision of July 23, 2010, expired on October 21, 2010.
7. In February 22, 2011, MSR contacted the CBSA to request a copy of the detailed adjustment statement (DAS) issued under subsection 59(2) of the *Act*, and subsequently filed an application with the CBSA under section 60.1 on September 2, 2011, for an extension of time to make a request for re-determination of tariff classification.
8. On May 29, 2012, the CBSA dismissed the application.
9. On June 27, 2012, Hydraulic applied to the Canadian International Trade Tribunal (the Tribunal) contesting that decision, pursuant to section 60.2 of the *Act*.

LEGAL FRAMEWORK

10. Subsection 59(1) of the *Act* reads as follows:

59.(1) An officer, or any officer within a class of officers, designated by the [CBSA] for the purposes of this section may

(a) in the case of a determination under section 57.01 or 58, re-determine the origin, tariff classification, value for duty or marking determination of any imported goods at any time within

(i) four years after the date of the determination, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1, or

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

(ii) four years after the date of the determination, if the Minister considers it advisable to make the re-determination; and

(b) further re-determine the origin, tariff classification or value for duty of imported goods, within four years after the date of the determination or, if the Minister deems it advisable, within such further time as may be prescribed, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1 that is conducted after the granting of a refund under paragraphs 74(1)(c.1), (c.11), (e), (f) or (g) that is treated by subsection 74(1.1) as a re-determination under paragraph (a) or the making of a correction under section 32.2 that is treated by subsection 32.2(3) as a re-determination under paragraph (a).

[Emphasis added]

11. Subsection 59(2) of the *Act* reads as follows:

(2) An officer who makes a determination under subsection 57.01(1) or 58(1) or a re-determination or further re-determination under subsection (1) shall without delay give notice of the determination, re-determination or further re-determination, including the rationale on which it is made, to the prescribed persons.

12. Subsection 60(1) of the *Act* stipulates as follows:

60.(1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of origin, tariff classification, value for duty or marking. The request may be made only after all amounts owing as duties and interest in respect of the goods are paid *or security satisfactory to the Minister* is given in respect of the total amount owing.

13. Subsection 60.1(1) of the *Act* specifies as follows:

60.1(1) If no request is made under section 60 within the time set out in that section, a person may make an application to the [CBSA] for an extension of the time within which the request may be made, and the [CBSA] may extend the time for making the request.

14. 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 [Tribunal] to have the application granted after . . .

(a) the [CBSA] has refused the application; . . .

If paragraph (a) applies, the application under this subsection must be made within ninety days after the application is refused.

(2) The application must be made by filing with the [CBSA] and the Secretary of the [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 [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.

ANALYSIS

15. In this case, the CBSA refused the application on May 29, 2012, pursuant to section 60.1 of the *Act*. Hydraulic made the present application on June 27, 2012, which is less than 90 days after the CBSA's refusal and, therefore, within the required time period under subsection 60.2(1)(a).

16. Subsection 60.2(4) of the *Act* lists the four conditions that must be satisfied before the Tribunal can grant an application under subsection 60.2(3). The *Act* clearly establishes that each of these conditions is mandatory. Failure to meet any one of them will cause the application to fail.

17. With respect to the first condition, the Tribunal notes that the application was made within the time frame set out in subparagraph 60.2(4)(a) of the *Act*. The CBSA does not dispute that this condition has been met.² The remaining three conditions are disputed by the parties.

18. The Tribunal is of the view that Hydraulic's application does not meet the condition set out in paragraph 60.2(4)(b)(iii) of the *Act*. Hydraulic does not dispute that it waited 11 months before making the application for an extension of time to the CBSA under section 60. The Tribunal must therefore determine if the circumstances permitted Hydraulic to apply earlier.³

19. In this regard, Hydraulic submitted that it needed to "get its house in order" before applying to the CBSA. Hydraulic refers to what it claims was UTI's failure to pursue a further re-determination by the CBSA within the 90-day deadline, despite Hydraulic's instructions to do so. According to Hydraulic, MSR was brought in to review its import compliance and it needed time to properly assess the situation, which resulted in the termination of Hydraulic's relationship with UTI. Then, according to Hydraulic, MSR needed to obtain an additional copy of the CBSA's decisions at issue (since, it appears, Hydraulic had lost its own copy), which it says the CBSA failed to provide in a timely manner.⁴

20. The CBSA submitted that there is no evidence that Hydraulic was prevented from applying for an extension of time before October 21, 2010.⁵ The CBSA added that Hydraulic's claim of competing priorities is irrelevant for the purposes of this application.

21. In the Tribunal's view, Hydraulic has not demonstrated that it was prevented from applying earlier. While Hydraulic has filed copies of e-mails with UTI that demonstrates it had instructed UTI to pursue the initial recourse with the CBSA, it has submitted no such evidence with respect to a request for a further re-determination under section 60 of the *Act*. All the Tribunal has in this regard are Hydraulic's assertions.⁶

2. CBSA's submission at para. 15.

3. See *Volpak Inc.* (2 February 2012), EP-2011-002 (CITT) at para. 25.

4. Hydraulic's submission, 6 July 2012, at 3-4; Hydraulic's reply submission, 20 August 2012, at paras. 17-21.

5. CBSA's submission at paras. 29-31.

6. In the case of an alleged *bona fide* intention to make a timely request, proof is required of the intention to contest the specific decision at issue. See *Costco Wholesale Canada Ltd.* (5 October 2006), EP-2005-008 (CITT) at para. 18. Likewise, proof of an intention to seek recourse under section 59 is not sufficient to demonstrate an intention to seek further recourse under section 60.

22. Moreover, even if the Tribunal were to give Hydraulic the benefit of the doubt and accept that it had instructed UTI to request a further re-determination, the Tribunal is of the view that nothing reasonably prevented Hydraulic from applying for an extension of time earlier. Hydraulic has not demonstrated that it was unable to apply for an extension as early as, say, March 2011, which was a few weeks after MSR requested a copy of the DAS from the CBSA, or in mid-2011 after Hydraulic terminated UTI's services.

23. With respect to Hydraulic's assertion that MSR requested a copy of the DAS from the CBSA "so we could appeal the decisions",⁷ to which it did not receive a timely response, it seems that this request was for a second copy and, in any case, the prudent course of action would have been to file an application while waiting to receive another copy.

24. The filing of an application for an extension of time is not an onerous step. As soon as Hydraulic realized that UTI had failed to request a further re-determination, it should have filed an application forthwith. Doing so would have preserved its right to further recourse while allowing it to take the additional time it claims it needed to finish sorting out its affairs.

25. The Tribunal is therefore of the view that the fourth statutory condition has not been met. Accordingly, it is unnecessary to deal with the second and third statutory conditions, under subparagraphs 60.2(4)(b)(i) and (ii) of the *Act*.

DECISION

26. The application is dismissed.

Stephen A. Leach
Stephen A. Leach
Presiding Member

7. Hydraulic's submission, 6 July 2012, at 3.