



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2006-007

Spike Marks Inc.

v.

President of the Canada Border
Services Agency

*Order and reasons issued
Tuesday, October 31, 2006*

TABLE OF CONTENTS

ORDERi
STATEMENT OF REASONS1

IN THE MATTER OF an appeal filed by Spike Marks Inc. under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a motion by Spike Marks Inc. under rule 24 of the *Canadian International Trade Tribunal Rules* for an order dismissing the appeal on the basis that the Canadian International Trade Tribunal does not have the jurisdiction to deal with the issue on appeal.

BETWEEN

SPIKE MARKS INC.

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

ORDER

The Canadian International Trade Tribunal grants the motion filed by Spike Marks Inc. and dismisses the appeal.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

STATEMENT OF REASONS

1. This is a decision in a motion brought by Spike Marks Inc. (Spike Marks) to the Tribunal pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*.¹

2. As mentioned in the Tribunal's letter of August 9, 2006, Spike Marks sought a dismissal of the appeal on the basis that the Tribunal lacked jurisdiction to deal with the issue on appeal, i.e. the calculation and assessment of the volume-based excise duty and additional value-based duty (additional duty) owing on the imported goods, but not the tariff classification of those goods. Spike Marks filed the appeal as a precautionary step in aid of its application for judicial review of the calculation and assessment of the duties.

3. The dispute stems from the results of a compliance audit that the President of the Canada Border Services Agency (CBSA) conducted on Spike Marks's importations of cigars for the 2004 calendar year. Prior to the audit, the imported cigars and containers were classified under different tariff items, but after the audit, the CBSA reclassified them under the same tariff item, i.e. tariff item No. 2402.10.00 of the schedule to the *Customs Tariff*. Following the reclassification, and in accordance with section 43 of the *Excise Act, 2001*, the CBSA imposed an additional duty.² Spike Marks contends that the amount of the additional duty was computed incorrectly, because it was based upon, among other things, the amount of the *volume*-based excise duty imposed under section 42 of the *Excise Act, 2001*.³

4. Spike Marks submits that the calculation and assessment of the duties, having been provided for under the *Excise Act, 2001*, are outside the Tribunal's jurisdiction, because they are not delegated to the Tribunal by section 16 of the *Canadian International Trade Tribunal Act (CITT Act)*, section 67 of the *Customs Act* or any other legislation.⁴

5. The CBSA replies that the Tribunal *does* have jurisdiction over the dispute, because it arose as a "direct consequence" of the re-determination of the tariff classification of the containers and because the combination of paragraph 16(c) of the *CITT Act* and section 67 of the *Customs Act* allow the Tribunal to deal with classification appeals "and all matters related thereto."⁵ The CBSA buttresses its position by arguing that section 44 of the *Excise Act, 2001* makes the volume-based and additional duty payable under the *Customs Act*.⁶

6. With respect, the Tribunal disagrees with the CBSA's submission. It is true that paragraph 16(c) of the *CITT Act* gives the Tribunal power to "hear, determine and deal with" appeals and "all matters related thereto." However, that is not the same thing as a grant of authority to determine *all* questions of law that arise in any matter before it.

7. What the CBSA is asking in this appeal is for the Tribunal to apply its powers in such a way as potentially to deprive Spike Marks of the benefit of the entire legislative scheme put in place by sections 195 through 205 of the *Excise Act, 2001* for objecting to and appealing assessments under the *Excise Act, 2001*. Nowhere does the *CITT Act* authorize the Tribunal to consider the applicability of another statute of Parliament to a matter before it, or would it ordinarily be necessary for it to do so in order to determine appeals under paragraph 16(c) of the *CITT Act*.

1. S.O.R./91-499.

2. Submission on the preliminary question of jurisdiction filed on behalf of the CBSA, 17 July 2006, para. 10.

3. Amended submission on behalf of Spike Marks, 16 June 2006, para. 9.

4. Amended submission on behalf of Spike Marks, 16 June 2006, paras. 19-30.

5. Letter from counsel for the CBSA, 28 August 2006.

6. Submission on the preliminary question of jurisdiction filed on behalf of the CBSA, 17 July 2006, paras. 20-27.

8. Spike Marks has made it clear that it does not challenge the tariff classification, origin or value for duty of the imported cigar containers.⁷ And yet, *these* are the matters that Parliament has entrusted to the Tribunal, not the methodology for assessing and calculating volume-based excise duty and additional duty under the *Excise Act, 2001*. Therefore, the Tribunal must dismiss the appeal on the basis that it lacks jurisdiction to deal with the issue before it.

9. For the foregoing reasons, the Tribunal grants the motion filed by Spike Marks and dismisses the appeal.

Pierre Gosselin
Pierre Gosselin
Presiding Member

7. Amended submission on behalf of Spike Marks, 16 June 2006, paras. 17-18.