



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2005-024

John Campeau

v.

President of the Canada Border
Services Agency

*Order and reasons issued
Thursday, March 2, 2006*

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IN THE MATTER OF an appeal filed on September 26, 2005, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency dated July 14, 2005, with respect to a request for redetermination under subsection 60(4) of the *Customs Act*;

AND IN THE MATTER OF a motion by the President of the Canada Border Services Agency for an order dismissing the appeal for lack of jurisdiction.

BETWEEN

JOHN CAMPEAU

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The motion is granted, and the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Duane Schippers

Clerk of the Tribunal: Valérie Cannavino

Parties: John Campeau, for the appellant
Alexandre Kaufman, for the respondent

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REASONS FOR DECISION

1. This concerns the motion by the President of the Canada Border Services Agency (CBSA), pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*,¹ for an order dismissing Mr. John Campeau's appeal, on the basis that the Canadian International Trade Tribunal (the Tribunal) does not have jurisdiction to grant the remedy sought in the appeal. The appeal is made pursuant to subsection 67(1) of the *Customs Act*² from a decision of the CBSA dated July 14, 2005, made under subsection 60(4) of the *Act*.
2. Mr. Campeau claims a refund of taxes collected in the amount of CAN\$1,483.48, consisting of CAN\$741.74 of goods and services tax (GST) and CAN\$741.74 of Manitoba provincial sales tax (PST), on an alleged purchase of camera equipment for US\$10,923.00 (CAN\$10,188.50).
3. Mr. Campeau alleges that he never received the camera equipment.
4. Mr. Campeau filed a Customs Informal Adjustment Request dated August 13, 2004; this document was received by the CBSA on August 30, 2004.
5. Mr. Campeau's request for an adjustment or refund was denied on September 15, 2004, on the basis that the goods were properly classified and that the incident report did not substantiate Mr. Campeau's claim. Mr. Campeau was advised that this decision was made pursuant to subparagraph 59(1)(a)(ii) of the *Act*.
6. In a letter dated November 17, 2004, which the CBSA received on November 23, 2004, Mr. Campeau appealed the decision.
7. A decision of the CBSA was issued pursuant to subsection 60(4) of the *Act* on July 14, 2005, denying Mr. Campeau's request for a redetermination.
8. Mr. Campeau filed an appeal from that decision with the Tribunal on September 26, 2005.
9. On January 19, 2006, the CBSA filed a motion with the Tribunal, requesting that the appeal be dismissed for want of jurisdiction or, in the alternative, that the Tribunal grant a delay for the filing of the CBSA's brief.
10. On January 25, 2006, the Tribunal advised the parties that it would grant a short extension to February 7, 2006, for the filing of the CBSA's brief and requested that, in its brief, the CBSA address the jurisdictional objection. The Tribunal required that Mr. Campeau file a response to the CBSA's jurisdictional arguments, if any, by February 15, 2006.
11. Mr. Campeau advised the Tribunal, on February 16, 2006, that he would not be filing any response to the motion, as he had nothing to add to his original brief.
12. The Tribunal advised the parties, on February 21, 2006, that it had adjourned the hearing scheduled for February 28, 2006, and that it would rule on the motion in due course.

1. S.O.R./91-499 [*Rules*].

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

ARGUMENT

13. This section is an overview of the parties' arguments. It is not a comprehensive statement of the arguments submitted by the parties in their briefs.

14. Mr. Campeau argued that he did not receive the goods on which GST and PST were assessed and was therefore entitled to a refund of those taxes.

15. Mr. Campeau submitted that, after being informed by the CBSA that there was no provision for a refund of the taxes that he paid, he was advised that he could appeal the CBSA's decision to the Tribunal.

16. The CBSA argued that the Tribunal only has jurisdiction in an appeal pursuant to section 67 of the *Act* in respect of a redetermination relating to a determination of origin, tariff classification, marking or value for duty of imported goods.

17. The CBSA argued that Mr. Campeau's appeal does not relate to tariff classification, origin, marking or value for duty of imported goods and that, therefore, the Tribunal does not have jurisdiction to grant the relief requested.

18. The CBSA further argued that Mr. Campeau's recourse lies in an application for judicial review in the Federal Court of Canada pursuant to section 18.1 of the *Federal Courts Act*.³

DECISION

19. The Tribunal determined that it was appropriate, pursuant to rule 25 of the *Rules*, to hear this motion by way of written submissions, given that there were no factual issues in dispute.

20. For the purposes of the motion for an order dismissing the appeal for want of jurisdiction, the Tribunal accepts as proven the allegations of fact made by Mr. Campeau, namely, that Mr. Campeau paid for the camera equipment and paid GST and PST on that equipment at the time of importation and that he did not receive the equipment. The Tribunal notes that these facts would be disputed at any hearing on the merits of the appeal and that determinations of credibility would have to be made if the Tribunal had jurisdiction to hear the appeal.

21. The Tribunal's jurisdiction is statutory. The Tribunal has no equitable jurisdiction to grant relief simply in the interest of fairness or relieving hardship.⁴

22. Pursuant to section 67 of the *Act*, a person aggrieved by a decision made under section 60 or 61 may appeal that decision to the Tribunal.

23. Section 60 of the *Act* permits an aggrieved person to whom a notice under section 59(2) is given to request a redetermination or further redetermination of the origin, tariff classification, value for duty or marking of imported goods. Section 61 permits a redetermination or further redetermination of the origin, tariff classification, value for duty or marking of imported goods.

3. S.C. 2002, c. 8.

4. See, for example, *Walbern Agri-Systems Ltd. v. M.N.R.* (21 December 1989), 3000 (CITT); *Peniston Interiors (1980) Inc. v. M.N.R.* (22 July 1991), AP-89-225 (CITT); *Sturdy Truck Body (1972) Limited v. M.N.R.* (23 June 1989), 2979 (CITT); *A.G. Green Co. Limited v. M.N.R.* (9 August 1990), AP-89-134 (CITT).

24. The relief requested by Mr. Campeau in this appeal is not within the Tribunal's jurisdiction to grant under section 67 of the *Act*, since Mr. Campeau is not appealing from, or seeking to change, a determination of origin, tariff classification, value for duty or marking of imported goods.

25. For the foregoing reasons, the motion is granted, and the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member