



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## ORDER AND REASONS

Appeal No. AP-2018-061

T. Ellery

v.

President of the Canada Border  
Services Agency

*Order and reasons issued  
Thursday, April 11, 2019*

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IN THE MATTER OF an appeal filed by T. Ellery on January 27, 2019, concerning a request for a re-determination of the tax status of imported goods made pursuant to subsection 60(4) of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

**BETWEEN**

**T. ELLERY**

**Appellant**

**AND**

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

**Respondent**

**ORDER**

The appeal is dismissed for lack of jurisdiction.

Jean Bédard  
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Jean Bédard, Q.C.  
Presiding Member

## STATEMENT OF REASONS

[1] In January of 2018, Ms. Ellery imported dental loupes, which are used to enhance vision when treating dental clients. She was charged \$212.12 in GST/HST. Ms. Ellery claims that the dental loupes are prescription eyewear and should therefore be GST/HST exempt.<sup>1</sup> She therefore requested a refund of the GST/HST she paid on the prescription portion of the dental loupes from the Canada Border Services Agency (CBSA).

[2] On November 27, 2018, the CBSA decided, under subsection 60(4) of the *Customs Act*,<sup>2</sup> that the dental loupes were not GST/HST exempt because Ms. Ellery did not provide a valid optometrist's prescription. The CBSA sent a letter to Ms. Ellery communicating this decision, in which it informed her that she could appeal the decision to this Tribunal under section 67 of the *Customs Act*.<sup>3</sup>

[3] Appeals under subsection 67(1) of the *Customs Act* normally do come to the Tribunal. These appeals concern the tariff classification, value for duty, and origin of imported goods. However, subsection 216(4) of the *Excise Tax Act* provides that appeals from a decision of the CBSA concerning the collection of GST/HST on imported goods should be made to the Tax Court of Canada and not the Tribunal.<sup>4</sup> The CBSA, in its letter to the Tribunal of March 22, 2019, acknowledged that the Tribunal does not have jurisdiction over Ms. Ellery's appeal, and that the Tax Court of Canada does.<sup>5</sup>

[4] In other words, the Tribunal does not have the authority to make a decision about whether Ms. Ellery should have paid GST/HST on the dental loupes she imported. The CBSA made a mistake when it informed Ms. Ellery that she could appeal its decision to this Tribunal instead of the Tax Court of Canada.

[5] Accordingly, the Tribunal dismisses Ms. Ellery's appeal for lack of jurisdiction.

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1. The collection of GST and HST on imported goods is provided for in Division III of Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15. Section 213 of the *Excise Tax Act* provides that certain goods, which are listed in Schedule VII to that Act, are exempt from the payment of GST/HST when they are imported. Section 6 of Schedule VII refers to goods listed in certain parts of Schedule VI. Sections 9 and 9.1 of Schedule VI include prescription eyewear. Accordingly, imported prescription eyewear can be exempt from GST/HST.
  2. Subsection 60(4) of the *Customs Act* refers to re-determinations or further re-determinations by the CBSA of the origin, tariff classification or value for duty of imported goods. However, according to subsections 216(1) and (2) of the *Excise Tax Act*, a re-determination or further re-determination that imported goods are, or are not, included in Schedule VII to the *Excise Tax Act* is made by the CBSA as if it was a re-determination or further re-determination of the tariff classification of the goods.
  3. Exhibit AP-2018-061-01, Vol. 1 at 7-9.
  4. Subsection 216(4) of the *Excise Tax Act* provides as follows: "In applying the *Customs Act* to a determination of the tax status of goods, the references in that Act to the 'Canadian International Trade Tribunal' shall be read as references to the 'Tax Court of Canada'."
  5. Exhibit AP-2018-061-06, Vol. 1 at 1.

Jean Bédard

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Jean Bédard, Q.C.  
Presiding Member