



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2018-003

G. Awad

*Order and reasons issued
Friday, February 8, 2019*

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IN THE MATTER OF an application made by G. Awad., pursuant to section 67.1 of the *Customs Act*, for an order extending the time to file a notice of appeal pursuant to section 67 of the *Customs Act* with respect to a decision of the President of the Canada Border Services Agency dated July 17, 2017.

ORDER

The application is denied.

Georges Bujold

Georges Bujold
Presiding Member

STATEMENT OF REASONS

BACKGROUND

[1] This is an application filed by Mr. Glenn Awad on September 15, 2018, under section 67.1 of the *Customs Act*¹ (the “*Act*”) for an order extending the time to file a notice of appeal pursuant to subsection 67(1) of the *Act* from a decision made by the President of the Canada Border Services Agency (CBSA) on July 17, 2017.

[2] According to the information filed by Mr. Awad, after the vehicle he used in Canada was stolen and involved in an accident, he imported a 2015 Chevrolet Silverado from the United States on December 28, 2016. At the time of importation, the vehicle was assessed as free of customs duty. However, Mr. Awad was charged a \$100.00 excise tax on the air conditioner, and the goods and services tax (GST), which amounted to \$1,666.25. Mr. Awad paid these amounts.

[3] On January 4, 2017, Mr. Awad requested a refund for the GST and excise tax. On February 10, 2017, the CBSA denied this request pursuant to subparagraph 59(1)(ii) of the *Act*. On March 14, 2017, Mr. Awad availed himself of the CBSA’s internal recourse mechanism and requested a redetermination of the tariff classification and a refund for the GST and excise tax on the basis that he no longer wished to finish the importation process.

[4] On July 17, 2017, through a decision issued pursuant to subsection 60(4) of the *Act*, the CBSA dismissed Mr. Awad’s request. Pursuant to subsection 67(1) of the *Act*, Mr. Awad had 90 days from this July 17, 2017, decision, that is, until October 15, 2017, to file a notice of appeal with the Tribunal.

[5] Mr. Awad filed a notice of appeal on September 3, 2018, more than 400 days after the CBSA’s final decision was rendered. On September 15, 2018, shortly after the Tribunal informed him that his appeal had not been filed in a timely manner, Mr. Awad submitted the present application for an extension of time to file an appeal.

[6] Mr. Awad alleges that, at the time of import, he did not know that he would have to pay an import fee. Mr. Awad alleges that on January 8, 2018, he returned the vehicle to the United States, given that he did not have the financial means to pay the import amount. Further, Mr. Awad submits that the repairs to his primary vehicle were completed and he no longer required the imported vehicle. As such, Mr. Awad is requesting the reimbursement of the \$1,766.25 he paid to import the vehicle.

STATUTORY FRAMEWORK

[7] Section 67.1 of the *Act* provides as follows:

67.1 (1) If no notice of appeal has been filed within the time set out in section 67, a person may make an application to the Canadian International Trade Tribunal for an order extending the time within which a notice of appeal may be filed, and the Tribunal may make an order extending the time for appealing and may impose any terms that it considers just.

1. R.S.C. 1985 (2nd Supp.), c. 1.

- (2) The application must set out the reasons why the notice of appeal was not filed on time.
- (3) The application must be made by filing with the President and the Canadian International Trade Tribunal the application accompanied by the notice of appeal.
- (4) No order may be made under this section unless
- (a) the application is made within one year after the expiry of the time set out in section 67; and
- (b) the person making the application demonstrates that
- (i) within the time set out in section 67 for appealing, 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 appeal,
- (ii) it would be just and equitable to grant the application,
- (iii) the application was made as soon as circumstances permitted, and
- (iv) there are reasonable grounds for the appeal.

ANALYSIS

[8] Section 67.1 of the *Act* sets out five conditions that are cumulative and that must be met before the Tribunal can grant an application for an extension of time. In addition to making the application within a one-year timeline after the expiration of the 90-day deadline to file the appeal after notice of the CBSA decision was given,² the applicant must demonstrate that:

- he was unable to act or to give a mandate to act in his name or that he had a *bona fide* intention to appeal;
- it would be just and equitable to grant the application;
- the application was made as soon as circumstances permitted; and
- there are reasonable grounds for the appeal.

[9] An applicant has the onus to establish, on a balance of probabilities, that these conditions have been met. In order to satisfy that burden, the evidence presented must be sufficiently clear, convincing and cogent.³

[10] The Tribunal has previously stated that the time frames set by legislation must be respected; they are not notional. With respect to four conditions set out in paragraph 67.1(4)(b) of the *Act*, the

2. *Customs Act*, R.S.C., 1985, c. 1, (2nd Supp.), subsection 67(1).

3. *F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (CanLII) at para. 46.

wording of this provision and the Tribunal's jurisprudence make it clear that each of these conditions is mandatory and the failure to meet any one of them is sufficient for the application to fail.

[11] With regard to the importance of the time period to file a notice of appeal, the Tribunal has indicated that:

[t]he 90-day appeal period is a clear signal from Parliament of its intention to bring closure to the administrative proceedings under the *Customs Act* in a relatively short time frame, unless an appeal has been filed during that period. Accordingly, a sense of urgency should be present at all times.⁴

[12] Mr. Awad satisfied certain of the requirements of section 67.1 of the *Act*. In particular, the application was accompanied with a notice of appeal, as required by subsection 67.1(3). Furthermore, the application was made within the one-year time period stipulated under paragraph 67.1(4)(a).

[13] Mr. Awad also provided reasons for the delay in filing his notice of appeal, as required by subsection 67.1(2) of the *Act*. However, the sufficiency of those reasons remains a vital consideration and the subject matter of the analysis in applications of this nature. In his application, Mr. Awad provided the following explanation:

- 1) I did not realize there was a deadline to file an appeal by October 17th 2017 because I was over burdened with preparing and representing myself in a personal legal matter in which I am a victim of a crime with a loss in the amount of 20,000 and working full-time and a 2nd job. The small claims court case # is SC-17-00057061-001 and I can provide all supporting documentation related to this crime if needed.
- 2) I have done my best to respond and act on all matters that come to my attention in a timely manner and respond to them as quickly as possible.
- 3) The decision to import vehicle on Dec. 28, 2016 is directly related to being a victim of a crime and ask you to grant an extension of time to file an appeal.
- 4) It would be just and equitable to grant the application due to being a victim of a crime and I responded to this matter as the circumstances permitted.
- 5) The application was made when time permitted.⁵

[14] The CBSA objects to the application for an extension of time to file an appeal and submits that Mr. Awad's application fails on all four grounds set out in paragraph 67.1(4)(b) of the *Act*.

[15] It is against this backdrop that the Tribunal must assess the merits of Mr. Awad's application.

4. *B. Erickson Manufacturing Limited* (3 April 2017), EP-2016-001 (CITT) at para. 34.

5. Appellant's Appeal for Time Extension.

Mr. Awad did not demonstrate an inability to act or to give a mandate to act in his name or a *bona fide* intention to appeal

[16] With respect to the condition set out in subparagraph 67.1(4)(b)(i) of the *Act*, in *National Food Distribution Centre*,⁶ the Tribunal posited that the essential requirement is that the inability must be readily apparent to the reasonable observer in that it emanates from a profound limitation of free will. It also found that “[a]n exhaustive list of circumstances that would qualify as giving rise to an inability to act is not known to the Tribunal. Whether circumstances qualify as such remains to be determined on a case-by-case basis.”⁷ The Tribunal cautioned, however, that in order to demonstrate an inability to act, an applicant must establish an element of irresistible and compelling restraint beyond one’s own free will.

[17] In terms of elements which could be indicative of a *bona fide* intention to appeal, in *Fritz Marketing Inc.*,⁸ the Tribunal allowed the application when it found that the applicant had, during the 90-day appeal period, been working on its appeal, reviewing its position and assembling the documentation necessary to file the appeal. In that case, the applicant had also filed its notice shortly after the expiry of the 90-day appeal period.

[18] The reasons invoked by Mr. Awad are insufficient to convince the Tribunal that his failure to file a notice of appeal in a timely manner resulted from of profound limitation of free will or an element of compelling restraint beyond his control. While he appears to have been forced to deal with one of those misfortunes that occur in life, he did not provide any details or supporting evidence indicating why or how this situation prevented him from filing a notice of appeal on time.

[19] Mere allegations without supporting evidence that an event gave rise to an inability to act are not enough. The onus is on the applicant to demonstrate that a constraint beyond one’s free will or control existed. In this case, the Tribunal is not persuaded that Mr. Awad could not act or instruct another person to file an appeal on time despite his involvement in another legal matter. Indeed, Mr. Awad did not address whether he considered giving someone a mandate to act for him in this matter and provides no explanation in that regard. Moreover, the fact that Mr. Awad was working full-time and had two jobs does not constitute a profound limitation of free will giving rise to an inability to act.

[20] There is also no evidence that Mr. Awad formed the intention to appeal or that he took any steps to prepare an appeal of the CBSA’s decision during the 90-day appeal period that could indicate that he had a *bona fide* intention to appeal. In this regard, the Tribunal has previously found that the mere intention formed by an applicant, without taking any meaningful subsequent action before the expiry of the 90-day period to file an appeal is not indicative of a *bona fide* intention to appeal as contemplated by subparagraph 67.1(4)(b)(i) of the *Act*.⁹ Finally, the fact that the applicant waited more than 400 days before filing his application is not indicative of a *bona fide* intention to appeal.

6. *National Food Distribution Centre* (12 March 2010), EP-2009-002 (CITT).

7. Para. 14, note 5.

8. *Fritz Marketing Inc. v. President of the Canada Border Services Agency* (2 November 2006), AP-2005-029 (CITT).

9. *B. Erickson Manufacturing Limited* (3 April 2017), EP-2016-001 (CITT) at para. 24.

[21] Accordingly, the Tribunal finds that Mr. Awad failed to present sufficiently clear, convincing and cogent evidence to demonstrate on a balance of probabilities that during the 90-day period to file an appeal, he was unable to act or to give a mandate to act in his name or that he had a *bona fide* intention to appeal.

[22] The failure to establish that this condition is met is fatal to Mr. Awad's application. However, the Tribunal finds that even if Mr. Awad had met the first test, he would have, in any event, also failed the fourth test set out in subparagraph 67.1(4)(b)(iv) of the *Act*.¹⁰ The Tribunal deems it necessary to address this issue to inform Mr. Awad of the Tribunal's limited statutory mandate in appeals of this nature.

There are no reasonable grounds for an appeal

[23] It is not in dispute that Mr. Awad imported the vehicle. However, Mr. Awad claims that he did not know that the vehicle would be subject to the application of the GST and that he does not have the means to pay that sum. Mr. Awad submits that he returned the vehicle to the United States; however, he also states that he did so only after his other vehicle had been repaired, i.e. when he no longer needed the imported vehicle. The Tribunal's jurisdiction under the *Act* is limited to issues pertaining to the tariff classification, value for duty, origin and marking of imported goods. Thus, it is not within the Tribunal's jurisdiction to grant refunds of GST paid on imported goods on the basis claimed by Mr. Awad. To the extent that an appellant can argue that the value for duty of a certain imported good should be reduced, this may directly impact upon the amount of GST payable. However, Mr. Awad has not submitted arguments on this issue or on an alternative legal basis upon which the Tribunal might order the reimbursement of the GST or excise tax paid in this case. In fact, Mr. Awad does not appear to be challenging the CBSA's determination of origin, tariff classification or value for duty of the good in issue.

[24] With respect to the *Excise Tax Act*, the Tribunal agrees with the CBSA that there are no reasonable grounds for an appeal relying on section 215.1 of the *Excise Tax Act* or, for that matter, any other provisions of the *Excise tax Act*. In any event, Mr. Awad failed to address this issue in his application.

[25] Therefore, it is unclear that the Tribunal would have the power to grant the requested relief and, for this reason, Mr. Awad has not demonstrated that there are reasonable grounds for the appeal.

DECISION

[26] For the foregoing reasons, the Tribunal denies this application.

10. This should not be interpreted as meaning that the Tribunal would have found that Mr. Awad would have met the second and third conditions set out in subparagraphs 67.1(4)(b)(ii) and (iii) of the *Act*. The Tribunal has simply decided, for judicial economy reasons, that it was not necessary to address those conditions.

Georges Bujold

Georges Bujold
Presiding Member