Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2022-020

G. Grunbaum

v.

President of the Canada Border Services Agency

Decision and reasons issued
Tuesday, August 1, 2023

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IN THE MATTER OF an appeal heard on March 21, 2023, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 23, 2022, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

G. GRUNBAUM **Appellant**

AND

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

DECISION

The appeal is dismissed.

Georges Bujold

Georges Bujold
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 21, 2023
Tribunal Panel:	Georges Bujold, Presiding Member
Tribunal Secretariat Staff:	Emilie Audy, Counsel Michael Carfagnini, Counsel Esther Song-Ledlow, Senior Registrar Officer

PARTICIPANTS:

Appellant	**Counsel/Representatives**
G. Grunbaum	Neil Bass
Respondent	**Counsel/Representatives**
President of the Canada Border Services Agency	Sarah Rajguru

Please address all communications to:

The Deputy Registrar
Telephone: 613-993-3595
Email: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

OVERVIEW

[1] This is an appeal filed by Mr. G. Grunbaum, pursuant to subsection 67(1) of the *Customs Act* (the Act)[1], with respect to a decision made by the President of the Canada Border Services Agency (CBSA) dated June 23, 2022, pursuant to subsection 60(4) of the Act.

[2] In 2020, Mr. Grunbaum imported 2,651 gold coins that he claims were inherited from his late mother and, therefore, can be imported free of charge. The CBSA determined that only a portion of the imported coins (i.e., 1,960 out of the 2,651 units) qualified for classification under tariff item 9806.00.00. This tariff item is a special classification provision which notably allows the duty-free importation of personal and household effects bequeathed to a resident of Canada where certain conditions are met. The CBSA determined that the remaining 691 coins (the goods in issue) did not qualify for the benefits of tariff item 9806.00.00 and were rather classified under tariff item 7118.90.00.[2]

[3] At issue in this appeal is whether the goods in issue are properly classified under tariff item 7118.90.00 as "other … coin", as determined by the CBSA, or should be classified under tariff item 9806.00.00 as "… personal and household effects received by a resident of Canada as a result of the death or in anticipation of death of a person who is not a resident of Canada, on condition that such goods were owned, possessed and used abroad by that non-resident; All the foregoing when bequeathed to a resident of Canada", as submitted by Mr. Grunbaum.

BACKGROUND AND PROCEDURAL HISTORY

[4] Mr. Grunbaum's mother, Ms. S. Scholem, was a resident of Mulhouse, France. She died intestate on March 5, 2014. Mr. Grunbaum is the sole heir to his mother's estate. It is not disputed that he inherited various gold coins dated from 1814 to 1947 following his mother's death. These coins, representing approximately 75% of the coins imported by Mr. Grunbaum, were stored in a safety deposit box belonging to Ms. Scholem at a financial institution abroad.[3] The central issue in this appeal is whether the remaining 691 gold coins, which were not accounted for in the Minutes of Inventory listing the contents of the safety deposit box prepared by a notary in France, also formed part of Ms. Scholem's estate. Specifically, the Tribunal must determine whether there is sufficient evidence to find that these coins were personal effects owned, possessed and used in France by Mr. Grunbaum's late mother, and that he received them as a result of her death.

[5] The events that culminated in these appeal proceedings can be summarized as follows.

[6] On August 6, 2020, Mr. Grunbaum entered Canada at Toronto Pearson International Airport carrying 2,651 coins, including the goods in issue, in his personal luggage. As Mr. Grunbaum did not voluntarily report the gold coins upon entrance, the CBSA seized them and issued a seizure receipt.[4] The gold coins were subsequently appraised for the CBSA.

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

2 Goods classified under tariff item 7118.90.00 are not subject to duties on importation. However, such goods are subject to taxes based on the purity of the gold of the coin.

3 See the notary's minutes of inventory of the contents of the safety deposit box. See Exhibit AP-2022-020-03.A at 33–37.

4 Exhibit AP-2022-020-11.A (protected) at 15.

[7] On March 1, 2021, the seized goods were determined under subsection 58(1) of the Act to be 2,651 gold coins classified under tariff item 7118.90.00.10 (other gold coin) of the schedule to the *Customs Tariff*. According to the evidence, the imported gold coins are worth a considerable amount of money.[5]

[8] On May 31, 2021, Mr. Grunbaum requested a re-determination of the tariff classification of the imported gold coins pursuant to subsection 60(1) of the Act.[6]

[9] On February 3, 2022, Mr. Grunbaum provided to the CBSA a Canada Revenue Agency's letter certifying his Canadian residency during the relevant period, an inheritance certificate, confirming that he is the sole heir to his late mother's estate, and a document prepared by a notary in France (Minutes of Inventory) listing the contents of his late mother's safety deposit box.[7]

[10] On June 23, 2022, the CBSA re-determined the tariff classification under subsection 60(4) of the Act and granted Mr. Grunbaum's request in part. It determined that, while all the imported gold coins are classifiable under tariff item 7118.90.00, 1,960 of them qualified for the benefits of tariff item 9806.00.00. However, the CBSA determined that the remaining gold coins (691 coins comprising the subject goods in this appeal) did not qualify for classification under tariff item 9806.00.00 on the grounds that there was no information indicating that "… these coins were in the safety deposit box or elsewhere in the bequestor's possession, and formed part of the bequest."[8] The CBSA indicated that, as a result, the goods in issue were subject to the applicable taxes, which, in this case, is the harmonized sales tax levied in the province of Ontario.[9]

[11] On September 21, 2022, Mr. Grunbaum filed this appeal with the Tribunal pursuant to subsection 67(1) of the Act.[10]

[12] On January 17, 2023, the CBSA requested, on behalf of both parties, that the hearing proceed by way of written submissions. On the same day, counsel for Mr. Grunbaum sent an email to the Tribunal confirming the request. On January 18, 2023, the Tribunal granted the parties' joint request and informed them that the file hearing would take place on March 21, 2023.

[13] On February 7, 2023, the Tribunal informed Mr. Grunbaum that he was given an opportunity to make additional submissions in response to the CBSA's case brief before the matter is heard by the Tribunal. Such additional submissions were filed on behalf of Mr. Grunbaum on March 8, 2023.

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5 *Ibid.* (protected) at 29–30.

6 Exhibit AP-2022-020-03.B (protected) at 68–70.

7 *Ibid.* (protected) at 72–82.

8 Exhibit AP-2022-020-03.A at 90.

9 *Ibid.* at 89. Goods classified under tariff item 7118.90.00 are not subject to customs duties. However, such goods are subject to applicable taxes based on the purity of the gold of the coin. Pursuant to the *Excise Tax Act*, every person who would be liable to pay duty on imported goods if such goods were subject to duty shall, where prescribed conditions are met, pay a tax on the goods calculated at the tax rate for a participating province on the value of the goods.

10 Exhibit AP-2022-020-01.

[14] On March 21, 2023, the Tribunal held a hearing by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.[11] The following documents were filed on the record: public and protected versions of Mr. Grunbaum's brief, as well as a revised protected brief with attachments, the CBSA's brief and attachments and Mr. Grunbaum's additional submissions.[12]

GOODS IN ISSUE

[15] The goods in issue are 691 French and Swiss Franc gold coins, dating from 1814 to 1947. These coins were appraised by a third party and are of the same general description. According to the decision appealed and the appraisal, each coin contains 0.1867 oz of gold and is of generally similar size at 21 mm in diameter and 1.25 mm in thickness. Based on publicly available information, coins of this nature weigh 6.45 g and are composed of 90% pure gold.[13]

LEGAL FRAMEWORK

[16] The legal framework for the tariff classification of imported goods is set out in the appendix to these reasons. In this case, it is beyond dispute that the goods in issue are *prima facie* classifiable under tariff item 7118.90.00, applying the *General Rules for the Interpretation of the Harmonized System* (General Rules)[14] and the *Canadian Rules*[15] set out in the schedule to the *Customs Tariff*.

[17] Specifically, the goods in issue meet the terms of heading 71.18, which covers coins.[16] There are two subheadings in heading 71.18, namely subheading 7118.10, which covers coins other than gold coins, and 7118.90, which covers all other coins. Therefore, it is the terms of the latter that describe the goods in issue because they are made of gold. Since tariff item 7118.90.00 is the only tariff item of subheading 7118.90, the goods in issue may be classified under it.

[18] However, the question before the Tribunal is whether the goods in issue also fall within the scope of tariff item 9806.00.00 and thus are entitled to the benefit of duty-free and tax-free treatment. Indeed, Chapter 98, which includes tariff item 9806.00.00, provides for special classification provisions that allow certain goods imported into Canada on a non-commercial basis to benefit from tariff and tax relief.

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11 SOR/91-499.

12 Exhibit AP-2022-020-03 (protected); Exhibit AP-2022-020-03.A; Exhibit AP-2022-020-03.B (protected); Exhibit AP-2022-020-11; Exhibit AP-2022-020-11.A (protected); Exhibit AP-2022-020-14; Exhibit AP-2022-020-14.A (protected).

13 Exhibit AP-2022-020-01 at 5–6.

14 S.C. 1997, c. 36, schedule.

15 *Ibid.*

16 While note 3 to Chapter 71 provides that this chapter does not cover collectors' pieces (heading 97.05) or antiques of an age exceeding one hundred years (heading 97.06), Mr. Grunbaum did not argue that the goods in issue would have to be classified in either heading 97.05 or 97.06, should they fail to meet the conditions to be classified in Chapter 98. In any event, the Tribunal is not persuaded, based on the evidence before it, that the goods in issue are of numismatic interest or that there are only a few examples of any one coin. For this reason, it has not been established that the goods in issue should be classified as collectors' pieces or antiques.

[19] According to note 1 to Chapter 98, "[g]oods which are described in any provision of this chapter are classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met." Therefore, the debate between the parties is whether the goods in issue satisfy the requirements to be classified under tariff item 9806.00.00. In that event, this chapter note mandates their classification under this provision.[17] Conversely, if they do not fulfill the conditions to be classified under this tariff item of Chapter 98, they would be correctly classified, by default, under tariff item 7118.90.00, as the CBSA determined.

[20] Tariff item 9806.00.00 provides as follows:

> 9806.00.00 - Personal and household effects of a resident of Canada who has died, on the condition that such goods were owned, possessed and used abroad by that resident; Personal and household effects received by a resident of Canada as a result of the death or in anticipation of death of a person who is not a resident of Canada, on condition that such goods were owned, possessed and used abroad by that non-resident; All the foregoing when bequeathed to a resident of Canada.

[21] It is the second element of the above tariff item (the provision after the first semicolon) that is relevant in this case. As discussed below, the dispute is whether the evidence establishes that the goods in issue were owned, possessed and used in France by Mr. Grunbaum's late mother and formed part of his inheritance as the sole heir to her entire estate.

POSITION OF THE PARTIES

[22] Mr. Grunbaum submits that the only issue in this appeal is whether he inherited the goods in issue from his late mother, which would make them classifiable under tariff item 9806.00.00. He argues that there is no basis in law or fact for the CBSA's determination that the goods in issue were not bequeathed to him by his mother.

[23] In this regard, Mr. Grunbaum notes that he provided documentation in support of the inheritance demonstrating that he is the sole heir to her entire estate. He adds that the goods in issue were imported together and are of the same type and kind as other coins, which the CBSA determined qualified for classification under tariff item 9806.00.00. In his view, the CBSA incorrectly imposed a condition not stipulated in the relevant legislation, namely, that separate documentation be provided for each personal effect inherited.

[24] Mr. Grunbaum further submits that the goods in issue were kept by Ms. Scholem elsewhere than in her safety deposit box at a financial institution, including in her personal effects prior to her death, such as boxes, pouches and purses, and that he found them as part of his inheritance in the years following Ms. Scholem's death.[18] In these circumstances, he claims that the only logical inference is that all the coins that he carried on August 6, 2020, previously belonged to his mother, and that common sense dictates that they were from the same source, his mother's estate.

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17 Indeed, note 1 to Chapter 98 also stipulates that the provisions of this chapter are not subject to Rule 3(a) of the General Rules, which ordinarily dictates how to determine the proper tariff classification when goods are *prima facie* classifiable in two or more headings of the nomenclature.

18 Exhibit AP-2022-020-03.A at para. 11.

[25] The CBSA submits that the goods are classified under tariff item 7118.90.00 and do not qualify for the duty-free benefits of tariff item 9806.00.00 because they do not meet the conditions for classification in that tariff item. In particular, the CSA argues that Mr. Grunbaum has not established, on a balance of probabilities, that he received the goods in issue as a result of an inheritance from his late mother, and that the coins were previously owned, possessed and used abroad by his late mother.

[26] According to the CBSA, Mr. Grunbaum's allegations in this regard lack specifics and are not supported by adequate evidence, such as an affidavit. It also submits that the goods in issue cannot be assumed to be from a particular source given that similar goods are commercially available online and that, by his own admission, Mr. Grunbaum is a collector of coins.

ANALYSIS

Burden of proof

[27] In appeals under section 67 of the Act, the appellant, by operation of law, bears the burden of demonstrating that the respondent incorrectly classified imported goods.[19] The burden of proof therefore resides with Mr. Grunbaum. To discharge this onus, an appellant is expected to submit evidence establishing the basic facts supporting the tariff classification it argues, which may include physical exhibits, witness testimony and expert reports.[20]

[28] A legal burden of proof is discharged where the party bearing that onus demonstrates to a court or tribunal that the outcome that they seek is more likely to be correct than not (i.e., on the balance of probabilities), based on an assessment of all the evidence that has been tendered.[21]

Criteria for classification under tariff item 9806.00.00 and application to the facts of this appeal

[29] Based on the text of the provision, the CBSA submits that, in order for the goods in issue to qualify for classification under tariff item 9806.00.00, Mr. Grunbaum must demonstrate that they meet the following four conditions. The goods: (1) are personal or household effects; (2) were received by a resident of Canada; (3) were received as a result or in anticipation of the death of a person who is not a resident of Canada; and (4) were owned, possessed and used abroad by that non-resident.[22] The Tribunal agrees.

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19 In this regard, subsection 152(3) of the Act provides as follows: "… in any proceeding under this Act, the burden of proof in any question relating to … (c) the payment of duties on any goods … lies on the person, other than [His] Majesty, who is a party to the proceeding …." The present appeal is a proceeding under subsection 67(1) and pursuant to subsection 2(1), the term "duties" means any duties or taxes levied or imposed on imported goods under any Act of Parliament, subject to certain exceptions that are not relevant in this appeal. Moreover, because duty liability on imported goods depends upon their tariff classification, tariff classification is a question "relating to" the payment of duties on goods, within the meaning of paragraph 152(3)(c). See *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII) at paras. 17, 21–22.

20 *Kao Brands Canada Inc. v. President of the Canada Border Services Agency* (16 January 2014), AP-2013-018 (CITT) at paras. 21–24.

21 *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 SCR 41 at paras. 40–49; *Morrison v. The Queen*, 2018 TCC 220 at paras. 65–89. See also *Rona Inc. v. President of the Canada Border Services Agency* (24 June 2020), AP-2018-10 (CITT) at para. 109; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (3 February 2021) AP-9-044 (CITT) at para. 147; *Osiris Inc. v. President of the Canada Border Services Agency* (26 February 2021), AP-2018-054 (CITT) at para. 128.

22 Exhibit AP-2022-020-11 at para. 22.

[30] The Tribunal notes that, according to the terms of this tariff item, a fifth condition might apply: the goods must be bequeathed to a resident of Canada. This condition appears to be related to condition (3) listed above, in that it confirms that the personal or household effects in question must have been received by a Canadian resident as part of an inheritance. However, the use of the word "bequeathed" (*legs* in French) might mean that the requirements of tariff item 9806.00.00 could *not* be met in a situation where the non-resident dies intestate, as in this case. The verb "to bequeath" generally means to leave or give property through a will, and the noun "bequest" is defined as personal property given by will.[23]

[31] Since neither party has argued that such an additional requirement existed and noting that the CBSA's re-determination appears to have implicitly accepted the evidence of intestate inheritance as documentation in support of a bequest,[24] the Tribunal will not make a pronouncement on this issue in this case. Therefore, it will dispose of the matter by determining whether the evidence establishes that the previously noted four conditions are met on the facts of this case.[25]

[32] Applying these criteria to the case at hand, the Tribunal accepts that the goods in issue are personal or household effects. The CBSA did not dispute Mr. Grunbaum's assertion in this regard. Moreover, the CBSA's Memorandum D2-1-5, while non-binding on the Tribunal, indicates that the phrase "personal and household effects" includes personal collections of coins.

[33] In the impugned decision, the CBSA also acknowledged that Mr. Grunbaum met the Canadian residency requirement for the year ending in December 2020. This determination is based on a document from the Canada Revenue Agency, which indicates that Mr. Grunbaum was considered a resident of Canada for income tax purposes from July 31, 2015, to the year 2020.[26] On this basis, the Tribunal finds that Mr. Grunbaum demonstrated he was a Canadian resident during the relevant period and that, at the time of their importation, the goods in issue were received by a resident of Canada.

[34] However, based on its assessment of the totality of the evidence on the record, the Tribunal is unable to find that Mr. Grunbaum has discharged his burden to demonstrate that the goods in issue satisfy the third and fourth conditions of application of tariff item 9806.00.00. Read together, these conditions require personal and household effects for which the benefits of tariff item 9806.00.00 are claimed to: (1) form part of the estate owned abroad by a non-resident of Canada; and (2) be received by a resident of Canada as a result of death of the former.[27] In other words, they must constitute goods possessed abroad by a person who is not a resident of Canada that were inherited by a Canadian resident.

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23 The Dictionary of Canadian Law, 3rd Edition, by Daphne A. Dukelow, Thomson Carswell, 2004, *s.v.* "bequeath"; "bequest."

24 Exhibit AP-2022-020-11 at 38. The Tribunal further notes that Memorandum D2-1-5, which sets out the CBSA's administrative practice and policy concerning the application of tariff item 9806.00.00, states that imported goods may qualify as bequests even if there is no will.

25 Obviously, to the extent that any of the first four conditions is not satisfied, then the goods in issue would not be eligible for the benefits of tariff item 9806.00.00 and the appeal would have to be dismissed anyway, making it unnecessary to address the issue of whether the goods in issue were bequeathed to Mr. Grunbaum.

26 Exhibit AP-2022-020-11 at 38; Exhibit AP-2022-020-03.B (protected) at 74.

27 The other possible scenario, that is, the imported goods were received in anticipation of the death of the person that is not a resident of Canada, is not relevant here.

[35] While Mr. Grunbaum established that he inherited his mother's estate in its entirety, there is simply insufficient credible and cogent evidence to support his allegation that the goods in issue were previously owned, possessed and used abroad by Ms. Scholem, that is, formed part of her estate. Mr. Grunbaum therefore failed to establish that he received the goods in issue as a result of her death.

[36] In fact, Mr. Grunbaum submissions that his mother owned and was in possession of the goods in issue at all relevant times up to her death and were kept by her in her personal effects such as boxes, pouches and purses prior to her death amount to bald assertions.[28] Mr. Grunbaum's brief does not refer to any evidence to substantiate his claim that he found the goods in issue as part of his inheritance in the years following his mother's death.

[37] Contrary to Mr. Grunbaum's arguments, such evidence could have been provided. For example, he could have filed a witness statement or an affidavit describing how he found or came into possession of the goods in issue.[29] As the person who allegedly discovered them in the years following his mother's death, he should have direct knowledge of the circumstances of this discovery and of the specific facts that would show that the goods in issue were indeed in the possession of his mother or included in her personal belongings. Yet, Mr. Grunbaum did not even provide basic details such as the approximate time and exact place he found them.

[38] A review of the confidential reports of the CBSA officers who seized the imported coins and interacted with Mr. Grunbaum when he arrived at Pearson International Airport on August 6, 2020, also reveals no specific information as to how he obtained the goods in issue.[30] To the contrary, these reports suggest that Mr. Grunbaum was either unable or reluctant to provide precise information in this regard.

[39] In the Tribunal's opinion, the complete absence of evidence from Mr. Grunbaum on the circumstances surrounding how he came into possession of the goods in issue casts serious doubt on the credibility of his submissions in this appeal. The Tribunal also notes that both in the decision under appeal and in its case brief, the CBSA points to the lack of specific information supporting the view that the goods in issue were in the possession of Ms. Scholem (elsewhere than in her safety deposit box) as the main ground for the decision that it made. The main problem with Mr. Grunbaum's position in this appeal is that he never squarely addressed this factual issue.[31]

[40] Rather than providing the necessary evidence to establish a solid factual basis for his claim that he inherited the goods in issue, Mr. Grunbaum requests the Tribunal to draw an inference in his favour based on certain known facts. Specifically, he claims that the facts that the goods in issue are of the same type and description as those that were included in the safety deposit box and were imported at the same time are sufficient for the Tribunal to find that they were obtained from his late mother. According to Mr. Grunbaum, these facts must mean that the goods in issue were found among her personal possessions. He even argues that it is absurd for the CBSA to suggest that he could have obtained them from other sources in these circumstances.

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28 Exhibit AP-2022-020-03 at paras. 10–11.

29 Such a piece of evidence would have allowed the Tribunal to hear directly from Mr. Grunbaum regarding how, when and where he received the goods in issue.

30 Exhibit AP-2022-020-11A (protected) at 21–28.

31 The CBSA correctly notes in its brief that Mr. Grunbaum's allegations are imprecise and not properly supported by an affidavit.

[41] The Tribunal disagrees. First, Mr. Grunbaum informed the CBSA officers at the time of importation that he was a coin collector.[32] There is no evidence that his collection consists solely of coins that he inherited from his mother. The evidence rather indicates that he was not carrying all the coins that were included in his mother's safety deposit box when he arrived in Toronto on August 6, 2020.[33] Based on these facts, it cannot be assumed that Mr. Grunbaum kept all the coins that he inherited from his mother or possesses only coins that were part of her estate. To the contrary, they suggest that, as a collector, he owns coins from various sources and may even have replaced some of the coins that he inherited with other coins. Be that as it may, the fact that only a subset of the coins contained in his mother's safety deposit box was imported on August 6, 2020, makes it difficult for the Tribunal to conclude that Mr. Grunbaum's collection of coins is limited to coins that previously belonged to Ms. Scholem.

[42] Second, almost six years passed between the death of his mother and the importation of the goods in issue. As a collector, Mr. Grunbaum could certainly have acquired the goods in issue overseas from someone other than his mother between 2014 and 2020.[34] In view of these facts, it does not defy logic that Mr. Grunbaum could have obtained the goods in issue from other sources than the estate of his late mother; it is a plausible scenario. The Tribunal finds that, based on the evidence on the record, this is equally a logical inference that can be drawn.

[43] In any event, while Mr. Grunbaum asserts that the CBSA's submissions on this issue amount to unfounded insinuations nowhere in his submissions does he expressly deny that he obtained, or could have obtained, the goods in issue from sources other than his mother's estate. It should have been straightforward to solemnly affirm in a witness statement or an affidavit that the goods in issue were *not* obtained from a different source and describe the actual way he found them or came into their possession, if they formed part of his mother's estate. The fact that Mr. Grunbaum chose not to do so or was unable to provide such details and resorted to asking the Tribunal to draw inferences instead is questionable. At the very least, it suggests that he cannot certify that the goods in issue were owned, possessed and used by his late mother and received as a result of her death.[35]

[44] Mr. Grunbaum also submits that the CBSA's position improperly insinuates that all the deceased's personal and household effects would have been situated in her safety deposit box. He also argues that the CBSA seeks to impose a requirement that does not exist and would be impossible to satisfy, namely, that the importer provide documentation in respect of each and every inherited personal effect to prove that it was owned by the deceased non-resident of Canada. This is not the Tribunal's understanding of the CBSA's submissions.

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32 Exhibit AP-2022-020-11 at para. 6; Exhibit AP-2022-020-11A (protected) at 21–22.

33 Indeed, the notary's minutes of inventory lists Deutsche marks and Mexican pesos which were not found in the gold coins the appellant attempted to import. See Exhibit AP-2022-020-03A at 9; Exhibit AP-2022-020-11 at 8; and Exhibit AP-2022-020-11A at 14 (protected).

34 The CBSA provided evidence indicating that coins similar to the goods in issue are commercially available online. Exhibit AP-2022-020-11 at 40–53 (tab 6). This evidence confirms that gold coins from this period are fungible goods.

35 G. Grunbaum's oral statement to the CBSA officers upon entry into Canada that all the coins found in his luggage were inherited from his mother is therefore not the best evidence that he could have provided and, at any rate, is insufficient to convince the Tribunal that this is indeed the case.

[45] Essentially, the CBSA determined that the goods in issue did not qualify for classification under tariff item 9806.00.00 because it could not find information to support the claim that they were in Ms. Scholem's possession prior to her death. The CBSA noted in the decision appealed from that these coins could have been found elsewhere than in her safety deposit box and, therefore, formed part of the bequest. However, the rationale underpinning its determination is that Mr. Grunbaum did not provide sufficient evidence to establish that the goods in issue were kept by her at another place (e.g., at her home). Given this situation, it correctly stated that it is unclear where the goods in issue were acquired and, therefore, it could not conclude that they formed part of a bequest.

[46] Thus, it is incorrect to claim, as Mr. Grunbaum does, that the CBSA dismissed out of hand the notion that the goods in issue were kept at her home and not in a safety deposit box and that it improperly required him to provide perfect evidence, or evidence that would have been impossible for him to file with the Tribunal, to support his allegations. The CBSA was simply looking for some evidence as to how and where the goods in issue were acquired by Mr. Grunbaum, which, as discussed above, he failed to provide. On balance, the Tribunal accepts the CBSA's submissions that Mr. Grunbaum failed to present a reliable factual basis for his position and did not put his best foot forward with cogent evidence that the goods in issue were owned, possessed and used by Ms. Scholem at her home or elsewhere abroad. Again, a witness statement or an affidavit from Mr. Grunbaum explaining how he received the goods in issue would not have been hearsay and could have constituted persuasive evidence in this matter to fill in the gaps flagged by the CBSA.

[47] For these reasons, the Tribunal is unable to find, on a balance of probabilities, that Mr. Grunbaum inherited the goods in issue from his mother. In the Tribunal's view, there is insufficient evidence for it to conclude that it is more likely than not that the goods in issue were owned, possessed and used by his mother abroad and received by him as a result of her death.

[48] Finally, the Tribunal notes that the parties disagreed on whether Mr. Grunbaum complied with the requirements of the *Accounting for Imported Goods and Payment of Duties Regulations* (Regulations).[36] These Regulations require importers to provide documentation or other evidence to enable CBSA officers to determine the appropriate tariff classification of imported goods,[37] except where a person is authorized to account for casual goods orally under paragraph 3(1)(b) of the

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36 SOR/86-1062.

37 See section 5 of the Regulations.

Regulations.[38] While nothing turns on this issue, there is no indication on the record that Mr. Grunbaum is a person who holds an authorization to orally account for goods.[39]

[49] In addition, it warrants noting that the publicly available clearance procedures for personal effects such as bequests set out in Memorandum D2-1-5 clearly state that before the goods arrive in Canada, the importer should prepare a list of all the goods to be imported, giving descriptions and approximate values of each item. It is also possible for importers to complete relevant forms describing the goods and identifying themselves as beneficiaries of the estate of a deceased person who is not a resident of Canada, in advance, to facilitate the clearance process. Mr. Grunbaum certainly did not help his cause by failing to declare the goods in issue when he arrived in Toronto on August 6, 2020. It would have been prudent for him to seek information on the applicable legal and administrative requirements prior to his arrival and to voluntarily report the goods in issue as forming part of an inheritance to the CBSA officers upon his entry into Canada. This course of action would have enhanced the credibility of his assertions in these proceedings.

Classification under tariff item 7118.90.00

[50] Having determined that Mr. Grunbaum has not demonstrated, on a balance of probabilities, that the goods in issue meet the conditions of tariff item 9806.00.00, based on its prior conclusion that tariff item 7118.90.00 is the only other tariff item that describes the goods in issue, the Tribunal finds that, in accordance with rules 1 and 6 of the General Rules and, Rule I of the *Canadian Rules*, they are properly classified under this tariff item, as determined by the CBSA.

DECISION

[51] The appeal is dismissed. The goods in issue are not entitled to the benefits of tariff item 9806.00.00 and are properly classified under tariff item 7118.90.00 of the schedule to the *Customs Tariff*.

Georges Bujold

Georges Bujold
Presiding Member

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38 Paragraph 3(1)(b) of the Regulations provides that, "[e]xcept as otherwise provided for in the Act or these Regulations, every person required by subsection 32(1), (3) or (5) of the Act to account for goods, or by subsection 32(2)(a) of the Act to make an interim accounting in respect of goods, shall do so … (b) orally either by telephone or by other means of telecommunication at a customs office designated for that purpose by the Minister under section 5 of the Act, in the case of a person who holds an authorization to present themselves in an alternative manner under paragraph 11(b), (c) or (e) of the Presentation of Persons (2003) Regulations…"

39 Even if it is not necessary for the Tribunal to rule on this issue to dispose of the appeal, it deems it useful to note that Mr. Grunbaum's arrival in Canada on a commercial aircraft (see Exhibit AP-2022-020-11.A [protected] at 20) does not appear to satisfy the conditions of paragraphs 11(b), (c) and (e), which apply to arrivals in Canada aboard private aircraft, corporate aircraft and marine pleasure craft, respectively. Further, section 12 provides that every authorized person, other than a person whose authorization was issued under section 8 (persons in charge of a corporate aircraft), must carry their authorization on their person when presenting themself in an alternate manner, and must show it to an officer if so requested. There is no indication that Mr. Grunbaum was carrying such an authorization upon his arrival in Canada.

APPENDIX: LEGAL FRAMEWORK

The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System developed by the World Customs Organization (WCO).[40] The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System* (General Rules)[41] and the *Canadian Rules*[42] set out in the schedule.

The General Rules comprise six rules. Classification begins with Rule 1, which provides that classification must be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard must be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System* (classification opinions)[43] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (explanatory notes)[44] published by the WCO. While the classification opinions and the explanatory notes are not binding, the Tribunal applies them unless there is a sound reason to do otherwise.[45]

The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the General Rules as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.[46] Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.[47] The final step is to determine the proper tariff item.[48]

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40. Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.
41. S.C. 1997, c. 36, schedule.
42. *Ibid.*
43. WCO, 4th ed., Brussels, 2017.
44. *Ibid.*, 6th ed., Brussels, 2017.
45. See *Attorney General (Canada) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4; *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the explanatory notes be respected unless there is a sound reason to do otherwise. The Tribunal was of the view that this interpretation is equally applicable to the classification opinions upheld in *Best Buy*.
46. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.
47. Rules 1 through 5 of the General Rules apply to classification at the heading level. Rule 6 of the General Rules provides that "… the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e., rules 1 through 5] …" and that "… the relative Section and Chapter Notes also apply, unless the context otherwise requires."
48. Rule 1 of the *Canadian Rules* provides that "… the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [General Rules] …" and that "… the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." Classification opinions and explanatory notes do not apply to classification at the tariff item level.