

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150908

Docket: A-384-14

Citation: 2015 FCA 187

**CORAM: GAUTHIER J.A.
SCOTT J.A.
BOIVIN J.A.**

BETWEEN:

**CROSS COUNTRY PARTS DISTRIBUTION
LTD.**

Appellant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Ottawa, Ontario, on September 8, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on September 8, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150908

Docket: A-384-14

Citation: 2015 FCA 187

**CORAM: GAUTHIER J.A.
SCOTT J.A.
BOIVIN J.A.**

BETWEEN:

**CROSS COUNTRY PARTS DISTRIBUTION
LTD.**

Appellant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 8, 2015).

GAUTHIER J.A.

[1] Cross Country Parts Distribution Ltd. (Cross Country) appeals the decision of the Canadian International Trade Tribunal (CITT) in Appeal No. AP-2012-052, dealing with the third Canada Border Services Agency's advance ruling in respect of certain inflatable decontamination shower cabins imported by Cross Country. The issue before the CITT was

whether these cabins are to be classified under Item No. 3922.10.0 of the Schedule to the *Customs Tariff*, S.C. 1997, c. 36 (the Tariff) , as shower-baths of plastic or under the Tariff Item No. 8424.89.00 as other mechanical appliances for dispersing or spraying liquids.

[2] In their memoranda and at the hearing, the parties agree that CITT erred in interpreting Note 2(s) to Chapter 39 of the Tariff (see paragraphs 41 and 42 of the decision of the CITT). They say that the CITT intended to apply the standard interpretation developed in its prior jurisprudence. However, after accurately stating the test set out in the note, it then applied it backward. As a result, the CITT never considered the application of Chapter 84 and of the Tariff Item No. 8424.89.00.

[3] We agree that the CITT should have begun its analysis with Chapter 84 rather than Chapter 39. This error justifies our intervention for, as a result thereof, the decision is unreasonable.

[4] Still, Cross Country insists that we should also comment on other findings of the CITT in respect of the application of the Tariff Item No. 3922.10.00, as well as declare that the Tariff Item No. 8424.89.00 applies to these products.

[5] The CITT made no factual determination in respect of elements essential to determine whether or not the Tariff Item No. 8424.89.00 could apply. It would be inappropriate for this Court to make such findings given that the analysis required is at the very heart of the CITT's expertise.

[6] We have also not been persuaded that the CITT made another reviewable error in its analysis under Chapter 39. Considering the decision as a whole (including particularly paragraphs 12 to 17), it is implicit that the CITT considered *General Rule 1* and *2(a)* before it construed *Rule 2(b)*. Cross Country has not established either that the CITT's conclusion, based on its factual findings (paragraphs 58, 62 and 68), is not within the range of outcomes that are defensible in respect of the facts and the law.

[7] The appeal is therefore granted in part and the matter shall be sent back for redetermination to the President of the CITT. In light of the unusual circumstances of this matter, each party shall bear its own costs.

“Johanne Gauthier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-384-14
STYLE OF CAUSE: CROSS COUNTRY PARTS
DISTRIBUTION LTD. v.
PRESIDENT OF THE CANADA
BORDER SERVICES AGENCY

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: SEPTEMBER 8, 2015

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
SCOTT J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Mr. Benham Borojeni
Mr. Viet Truong

FOR THE APPELLANT

Mr. Kirk Shannon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Benham Borojeni
Barrister & Solicitor
Mississauga Ontario

FOR THE APPELLANT

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT