

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20090623

Docket: A-195-08

Citation: 2009 FCA 215

**CORAM: PELLETIER J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

GLADU TOOLS INC.

Appellant

and

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

Heard at Ottawa, Ontario, on June 23, 2009.

Judgment delivered at Ottawa, Ontario, on June 23, 2009.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**PELLETIER J.A.
RYER J.A.**

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REASONS FOR JUDGMENT

TRUDEL J.A.

INTRODUCTION

[1] Did the Canadian International Trade Tribunal (the Tribunal) properly determine that the goods in issue on this appeal should be classified as “plates” in subheading No. 8209.00 of the schedule to the *Customs Tariff*, S.C. 1997, c. 36 (the Tariff), rather than as “knives and cutting blades” in heading No. 82.08, as claimed by the appellant?

[2] This question and this appeal flow from an earlier decision of this Court in *The President of the Canada Border Services Agency v. Gladu Tools Inc.*, 2007 FCA 213 [*Gladu Tools*] dated May 31, 2007. In that decision, this Court allowed an appeal by the President of the Canada Border Services Agency (CBSA or the respondent) from the Tribunal's decision in AP-2004-018 of September 7, 2005 and directed the Tribunal to determine the proper classification of the goods in issue on the basis that "both heading No. 82.08 and subheading No. 8209.00 are *prima facie* applicable to the goods in issue" (*Gladu Tools, supra*, at paragraph 20). As a result, the Tribunal applied Rule 3(a) of the *General Rules for the Interpretation of the Harmonized System* (the General Rules) and determined that the goods in issue were properly classified in subheading No. 8209.00 and, more specifically, under tariff item No. 8209.00.92 (AP-2004-018R or reasons at paragraph 12).

[3] In this appeal, in addition to challenging the Tribunal's determination, Gladu Tools Inc. (the appellant) contends that the Tribunal erred by classifying the goods according to Rule 3(a) and that Rule 1 alone applies to the goods (appellant's memorandum of fact and law (factum) at paragraphs 13 and 23).

ANALYSIS

[4] The goods in issue consist of cutters made of cermets imported by the appellant for use with the Spiramax device, also imported by the appellant and used to make straight cuts in the secondary woodworking industry (*Gladu Tools, supra*, at paragraph 3). The goods in issue are imported

separately or in excess of the number required for assembling Spiramax (AP-2004-018 at paragraph 31). The classification of Spiramax is not an issue on this appeal.

[5] It is unnecessary, for the purpose of this appeal, to reproduce at length the headings and subheadings of the Tariff relevant to the goods in issue. Suffice to say that the competing nomenclature reads as follows:

- **82.08 Knives and cutting blades, for machines or for mechanical appliances.**
- **8208.20.00 - For wood working**

- **8209.00 Plates, sticks, tips and the like for tools, unmounted, of cermets.**
 - Other
- 8209.00.92 ---- Other carbide inserts and bits

[6] Paragraphs 9 and 10 of the impugned decision are at the core of the appellant's arguments:

9. The Tribunal notes that the knives are manufactured from "carbide plates", which are ground to form a sharp edge on all four sides (Tribunal Exhibit AP-2004-018R-4, at para. 2). In the Tribunal's view, this implies that the knives are made from plates (blanks) that have been ground to form four sharp edges. The Tribunal is also of the view that there is no doubt that the goods in issue are composed of the hard material called "cermet" (*Transcript of Public Hearing*, 3 February 2005 at 38.64).

10. The Tribunal therefore finds that, in accordance with the first sentence of Rule 3 (a) of the *General Rules*, subheading No. 8209.00 is to be preferred over heading No. 82.08 because the terms contained in the former provide the most specific description of the goods in issue, whereas those in the latter offer only a more general description. Thus, in accordance with the terms of subheading No. 8209.00, the Tribunal finds that the evidence supports the description of the goods in issue as "plates", that they are certainly "for tools" (i.e. for the Spiramax device), that they are "unmounted" and that they are made of "cermets".

[7] I find no error in the fact that the Tribunal relied on Rule 3 to determine the classification of the goods in issue. Under subsection 10(1) of the Tariff, classification of goods is determined according to the General Rules for the interpretation of the *Harmonized System* and the Canadian Rules set out in the schedule. According to section 11 of the Tariff, the headings and subheadings of the schedule are to be interpreted with regard to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System. The General Rules are structured in cascading form: if and only if Rule 1 does not resolve the classification, then regard must be had to Rule 2, and so on as necessary (*Agri Pack v. Canada (Customs and Revenue Agency)*, 2005 FCA 414 at paragraph 14). When by application of Rule 2 (b) goods are *prima facie* classifiable under two or more headings, classification is made according to Rule 3. According to Rule 3(a), the heading with the most specific description is preferred to headings with a more general description.

[8] The Tribunal was bound by this Court's direction that the goods were *prima facie* classifiable under two headings, and therefore had to apply Rule 3 (*Gladu Tools, supra*, at paragraph 20), which it did. There was ample and cogent evidence in the record, supporting the Tribunal's conclusion that the goods in issue are unmounted plates for tools made of cermets. The Tribunal classified them under the heading which, it found, contained the most specific description of the goods in issue (AP-2004-018 at paragraphs 7 and 31; appeal book, volume I at pages 108, 110-111 and 234-236; volume II at pages 318-336 and page 391 at paragraph 17).

[9] It is not disputed that on appeal under subsection 68(1) of the *Customs Act*, R.S.C. 1985, c. 1, construction and interpretation of the Tariff are questions within the Tribunal's expertise, attracting the standard of reasonableness (*Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210 at paragraph 16; *Star Choice Television Network Inc. v. Canada (Customs and Revenue Agency)*, 2004 FCA 153 at paragraph 7; *Gladu Tools, supra*, at paragraph 13).

[10] This being said, I have not been persuaded by the appellant that the Tribunal's decision "does not stand up to a somewhat probing examination and therefore must be set aside" (appellant's factum at paragraph 18) for being unreasonable. The Tribunal's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the relevant provisions of the Tariff.

CONCLUSION

[11] For these reasons, this appeal will be dismissed with costs.

"Johanne Trudel"

J.A.

"I agree

J.D. Denis Pelletier J.A."

"I agree

C. Michael Ryer J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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