

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171205

Docket: A-477-16

Citation: 2017 FCA 237

**CORAM: NADON J.A.
BOIVIN J.A.
GLEASON J.A.**

BETWEEN:

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Appellant

and

GLOBE UNION (CANADA) INC.

Respondent

Heard at Montréal, Quebec, on December 5, 2017.
Judgment delivered from the Bench at Montréal, Quebec, on December 5, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on December 5, 2017).

GLEASON J.A.

[1] The appellant seeks to set aside the September 30, 2016 decision of the Canadian International Trade Tribunal (the CITT or the Tribunal) in *Globe Union (Canada) Inc. v. Canada (Border Services Agency President)*, [2016] C.I.T.T. No. 85, 21 T.T.R. (2d) 19. In that decision, the CITT determined that several models of bathroom vanities and mirrors imported by the

respondent as sets for retail sale should be classified under tariff item No. 6910.90.00 of the schedule to the *Customs Tariff*, S.C. 1997, c. 36 and not under tariff item No. 9403.60.10. The former encompasses ceramic sinks, wash basins and other similar goods whereas the latter encompasses cupboards, bookcases, other shelved furniture and unit furniture. The vanities in question consist of units comprised of a vitreous china sink (or two sinks in some cases), a granite counter top and a wooden base with front doors and/or drawers. They are designed to be attached to the wall and to be hooked up to plumbing.

[2] The CITT held that the goods in issue should be classified under tariff item No. 6910.90.00 for three reasons. First, it determined that the goods were not excluded from that tariff item by inclusion in Chapter 94. More specifically, the Tribunal held that the goods did not fall within tariff item No. 9403.60.10 because they did not meet the characteristics of a cupboard, which is something that is designed to hold articles, as the vanities were primarily designed to function as sinks and storage opportunities were secondary. Second, the CITT determined that the vanities were *prima facie* classifiable under tariff item No. 6910.90.00 as they met the criteria for inclusion as ceramic sanitary fixtures under heading 69.10 of the schedule to the *Customs Tariff*. Finally, the Tribunal determined that the other components of the goods did not deprive them of their characteristics as sanitary fixtures. The CITT's reasons offered in support of these conclusions are detailed and thoroughly canvass the arguments the parties made to the Tribunal as well as the applicable case law and provisions of the *Customs Tariff*.

[3] The deferential reasonableness standard applies to the review of the CITT's decision: *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 at para. 17, [2016] 2 S.C.R. 80

[*Igloo Vikski*]; *Canada (Border Services Agency) v. Euro-Line Appliances Inc.*, 2014 FCA 208 at para. 22, [2014] F.C.J. No. 981. Under this standard, a court cannot interfere with a decision like that of the CITT if it is transparent, intelligible and justifiable and if the result reached is defensible in light of the applicable facts and law: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[4] Here, the CITT’s decision was transparent and intelligible as its reasons are both thorough and clear. Nor is the decision indefensible or unjustifiable as the result reached was open to the CITT in light of its decided authorities, the nature of the goods and the relevant provisions in the schedule to the *Customs Tariff*. The Tribunal reached the same result as it reached in *Home Depot Canada v. President of the Canada Border Services Agency*, AP-2014-026 (CITT), which is very similar to the present case. Moreover the conclusion that an item that primarily functions as a sink ought to be classified as such strikes us as unassailable under the reasonableness standard as the same has been delineated by the Supreme Court of Canada in the *Igloo Vikski* case. While we might not have reached the same conclusion as the CITT, the deferential reasonableness standard prevents us from intervening.

[5] We would therefore dismiss this appeal with costs.

“Mary J.L. Gleason”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OR ORDER OF THE CANADIAN INTERNATIONAL
TRADE TRIBUNAL (CITT) DATED SEPTEMBER 30, 2016, BEARING CITT FILE
NUMBER AP-2014-024**

DOCKET: A-477-16

STYLE OF CAUSE: THE PRESIDENT OF THE
CANADA BORDER SERVICES
AGENCY v. GLOBE UNION
(CANADA) INC.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: DECEMBER 5, 2017

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
BOIVIN J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

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