

**CORAM:**STRAYER, J.A.  
LINDEN, J.A.  
McDONALD, J.A.

**B E T W E E N:**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

Appellant,

-and-

**PIGMALION SERVICES**

Respondent.

HEARD at Toronto, Ontario, Monday, October 20, 1997.

JUDGMENT delivered from the Bench at Toronto, Ontario, on Monday, October 20, 1997.

REASONS FOR JUDGMENT BY:

STRAYER, J.A.

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**REASONS FOR JUDGMENT**

(Delivered from the Bench, at Toronto, Ontario  
on Monday, October 20, 1997)

**STRAYER, J.A.:**

We are all of the view that this appeal must be dismissed. We admit to some difficulty in understanding the reasons for decision of the Canadian International Trade Tribunal. The reasons of the Tribunal are not fully explained and in the last paragraph are ambiguous, unclear, and possibly contradictory with what precedes. Nevertheless, we believe that the learned Trial Judge on the appeal from the Tribunal on questions of law came to the right result in confirming the Tribunal's order. This is so even if, as the appellant has argued, she misinterpreted one of the Tribunal's determinations of questions of law. She did what she was authorized to do under subsection 68(2) of the *Customs Act* in dismissing the appeal on the basis of her own legal interpretation.

We wish to make two further observations. First, the learned Trial Judge confirmed the Tribunal's interpretation of the term "packaging" because it was not "patently unreasonable." As the matter came before her on an appeal of a question of law, under a right of appeal to which no privative clause applies, the test of "patent unreasonability" may not have been appropriate. Nevertheless, as this involved an appeal from a specialized tribunal, it would appear from recent jurisdiction that some deference was indeed owed to the Tribunal even on interpretations of law<sup>1</sup>. We accordingly do not believe that this result was incorrect, however the standard of review was articulated by the Trial Judge.

Secondly, counsel for the respondent has objected, before the Trial Judge and before us, to issues being argued by the appellant which were not covered by the terms on which leave to appeal was granted. Having regard to our views of the merits of the appeal, we did not consider it necessary to hear counsel for the respondent on this point, nor to decide specifically whether the new issues could be entertained.

The appeal should therefore be dismissed with costs.

"B.L. Strayer"

J.A.

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<sup>1</sup>See e.g., *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.

CANADA

FEDERAL COURT OF

Names of Counsel and Solicitors of Record

COURT NO: A-247-94

STYLE OF CAUSE: THE DEPUTY MINISTER OF NATIONAL  
REVENUE FOR CUSTOMS AND  
EXCISE

- and -

PIGMALION SERVICES

DATE OF HEARING: OCTOBER 20, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR JUDGMENT BY: STRAYER, J.A.

Delivered from the Bench at Toronto, Ontario  
on Monday, October 20, 1997

APPEARANCES:

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For the Appellant

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For the Respondent

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For the Respondent

**FEDERAL COURT OF CANADA**

Court No.: A-247-94

Between:

**THE DEPUTY MINISTER OF NATIONAL  
REVENUE FOR CUSTOMS AND  
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Appellant

- and -

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**REASONS FOR JUDGMENT**