

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110906

Docket: A-324-10

Citation: 2011 FCA 242

**CORAM: BLAIS C.J.
EVANS J.A.
DAWSON J.A.**

BETWEEN:

CANADIAN TIRE CORPORATION LIMITED

Appellant

and

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

Heard at Ottawa, Ontario, on September 6, 2011.

Judgment delivered from the Bench at Ottawa, Ontario, on September 6, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 6, 2011)

DAWSON J.A.

[1] Canadian Tire Corporation Ltd. (Canadian Tire) is appealing a decision of the Canadian International Trade Tribunal (CITT) as to the tariff classification of personal flotation devices (PFDs) imported by Canadian Tire. The decision of the CITT is cited as AP-2009-019.

[2] The PFDs in question are made to fit children weighing from 20 to 90 lbs. They have a front zipper and two plastic snap buckles. The outer layer of each PFD is made of a laminated textile material, which itself consists of a layer of neoprene between two layers of polyester fabric. The neck panel and two front panels of the PFDs consist of this laminated textile material sewn to contain loose cellular plastic sheets. These plastic sheets provide the PFDs with their buoyancy. The back panel of each PFD consists solely of the laminated textile material.

[3] The CITT found that the PFDs are properly classified under heading 63.07 as “[o]ther made up articles, including dress patterns,” and then under subheading 6307.20 and tariff item 6307.20.00 as life-jackets. The CITT rejected Canadian Tire’s assertion that the goods should be classified under tariff item No. 3926.90.90.

[4] The standard of review to be applied to the CITT’s interpretation of the *Customs Tariff*, and to its application of the tariff to the facts of the case, is reasonableness (see, for example, *Helly Hansen Leisure Canada Inc. v. Canada (Border Services Agency)*, 2009 FCA 345, 397 N.R. 323 at paragraph 9).

[5] The CITT began its analysis by noting that, according to Rule 1 of the *General Rules*:

[...] the Tribunal must first determine whether the goods in issue can be classified according to the terms of the headings and in which tariff heading the goods in issue can be classified according to the terms of the heading and any relevant section or chapter notes in the *Customs Tariff*.

[6] Once the CITT had determined the correct heading, the next step would be to determine the proper subheading and tariff item.

[7] The parties agreed that the PFDs met the common definition of life-jackets, and that life-jackets and PFDs closely resemble each other. An expert witness testified that the main distinction between the two is that life-jackets are more buoyant and are used where higher performance is required; visually, though, the two are indistinguishable.

[8] Canadian Tire focused its argument upon the explanatory notes to Chapter 63, the relevant parts of which read as follows:

The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of furskin, metal (including precious metal), leather, plastics, etc.

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with other General Interpretative Rules as the case may be.

[9] The CITT rejected Canadian Tire's argument that this explanatory note precluded the classification of the PFDs pursuant to Rule 1, writing that:

On the contrary, the *Explanatory Notes* to Chapter 63 expressly reaffirm that, where such articles consist of materials that are more than mere accessories, classification shall be "determined according to the terms of the headings and any relative Section or Chapter Notes", as contemplated by Rule 1 of the *General Rules*, or in accordance with other rules if applicable.

[10] Only if classification could not be resolved on the basis of Rule 1 could the CITT move on to Rule 2.

[11] The CITT found that the plastic sheets contained in the PFDs were more than mere accessories, but this did not preclude the application of Rule 1. The CITT saw no reason to deviate from the explanatory notes' inclusion of life-jackets within heading 63.07. The explanatory notes did not limit the classification of goods as "life-jackets" based on the materials from which those goods were made. Nor was there any indication in the *Customs Tariff* or explanatory notes that life-jackets were to be classified according to the material that provided them with their buoyancy.

[12] Having determined that the PFDs were classifiable in heading 63.07, the CITT moved to examine heading No. 39.26. Note 2(p) to Chapter 39 excluded the "Goods of Section XI", meaning that goods classified in heading 63.07 were excluded from classification under heading No. 39.26. There was only one applicable heading (63.07), so Rule 1 was sufficient to determine the classification of the PFDs.

[13] Having classified the goods at the heading level, the CITT classified the PFDs under sub-heading 6307.20 (life-jackets and life-belts) and under tariff item 6307.20.00 since PFDs are "the same goods as 'life- jackets'."

[14] Relying upon the explanatory notes to Chapter 63, Canadian Tire argues that heading 63.07 does not include goods that incorporate plastic to an extent that goes beyond mere trimming or accessories. However, the explanatory notes do not state that the presence of significant amounts of plastic in goods automatically precludes their classification under the sub-Chapter. The explanatory

notes only require that when plastic or other materials are present as more than mere trimmings or accessories, that presence must be taken into account when the goods are classified.

[15] The Tribunal took this into account when it based its decision on heading 63.07 and the explanatory notes which state that life-jackets and life-belts are included within heading 63.07. The evidence is that, like the PFDs in issue here, inherently buoyant life-jackets derive their buoyancy from non-textile components, and that PFDs and life-jackets are functionally similar.

[16] Neither 6307.20.00 nor the explanatory notes limit life-jackets and life-belts to those that are made from only textiles.

[17] On the basis of the plain wording of tariff item 6307.20.00 and the explanatory notes' inclusion of life-jackets, and the evidence, we have not been persuaded that the CITT's reasoning or the outcome is unreasonable.

[18] This appeal will be dismissed with costs.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-324-10

STYLE OF CAUSE: CANADIAN TIRE CORPORATION LIMITED v.
PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY

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REASONS FOR JUDGMENT OF THE COURT BY: (BLAIS C.J., EVANS AND
DAWSON J.J.A.)

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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