

Federal Court of Appeal



Cour d'appel fédérale

Date: 20221207

Docket: A-124-20

Citation: 2022 FCA 214

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

BETWEEN:

**ATLANTIC OWL (PAS) LIMITED
PARTNERSHIP
and
OCEANEERING CANADA LTD.**

Appellants

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Halifax, Nova Scotia, on December 7, 2022.

Judgment delivered from the Bench at Halifax, Nova Scotia, on December 7, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Halifax, Nova Scotia, on December 7, 2022).

BOIVIN J.A.

[1] The appellants appeal before our Court a decision of the Canadian International Trade Tribunal (the Tribunal), dated February 21, 2020 (Appeal no AP-2018-029) dismissing their appeal for lack of jurisdiction.

[2] Pursuant to subsection 68(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) (the Act), appeals from the Tribunal to this Court are limited to questions of law (*Neptune Wellness Solutions v. Canada (Border Services Agency)*, 2020 FCA 151; *Canada (Attorney General) v. Impex Solutions Inc.*, 2020 FCA 171; *Canada (Border Services Agency v. Danson Décor Inc.*, 2022 FCA 205). As such, the applicable standard in the present case is correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[3] The appellants argue that the Tribunal erred in interpreting its jurisdiction. We cannot agree. We are all of the view that the Tribunal correctly interpreted its jurisdiction according to the Act.

[4] The appellants imported two remotely operated vehicles (ROVs) into Canada at the same time as a vessel. The only good declared by the appellants was the vessel, the value of the ROVs was included in that of the vessel, and the import duties were calculated accordingly. The appellants then requested to separate these goods on the basis of an alleged classification and valuation error through requests for re-determination of the tariff classification of the ROVs and valuation of the vessel sought a refund of duties under paragraph 74(1)(e) of the Act. These requests were denied by Canada Border Services Agency (CBSA) and the President of the CBSA. The appellants then instituted appeal proceedings before the Tribunal.

[5] The Tribunal reviewed the legislative scheme in which its jurisdiction operates and in accordance with the text of section 67 of the Act, concluded that its jurisdiction is contingent on a prior decision having been rendered by the President of the CBSA (*C.B. Powell Limited v. President of the Canada Border Services Agency* (11 August 2010), AP-2010-007 and AP-2010-008 (*C.B. Powell*, CITT), aff'd 2011 FCA 137).

[6] Applying this legal principle to the facts of this case, the Tribunal found that no decision had been made capable of triggering its jurisdiction in relation to the ROVs. Indeed, since there was no declaration made in conformity with the requirements of section 32 of the Act and no determination of the tariff classification of the ROVs, there was no decision made by the President of the CBSA under section 60 of the Act regarding the tariff classification of the ROVs as they were never accounted separately from the vessel. As such, absent a determination of tariff classification, a refund of duties request under paragraph 74(1)(e) of the Act could not be granted for the ROVs. The Tribunal was thus correct in deciding as it did.

[7] As this Court observed in *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332 at paragraphs 28-29, the self-reporting scheme under the Act is designed carefully to set up explicit and exacting procedures to deal with the flood of goods that arrive at Canada's borders, with all the revenue and regulatory matters that entails. The scheme must be given its literal effect and there is no room for courts to ignore the statutory scheme, as the appellants here asks us to do, to remedy possibly harsh consequences in individual cases.

[8] For these reasons, the appeal will be dismissed with costs. We thank counsel for their able submissions.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-124-20

STYLE OF CAUSE: ATLANTIC OWL (PAS)
LIMITED PARTNERSHIP AND
OCEANEERING CANADA LTD.
v. PRESIDENT OF THE
CANADA BORDER SERVICES
AGENCY

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: DECEMBER 7, 2022

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

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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