

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140507

Docket: A-223-13

Citation: 2014 FCA 116

**CORAM: MAINVILLE J.A.
NEAR J.A.
SCOTT J.A.**

BETWEEN:

PROCTOR-SILEX CANADA

Appellant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Ottawa, Ontario, on April 30, 2014.

Judgment delivered at Ottawa, Ontario, on May 7, 2014.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

**MAINVILLE J.A.
NEAR J.A.**

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] This is an appeal from a decision of the Canadian International Trade Tribunal (CITT) pursuant to subsection 68(1) of the *Customs Act*, R.S.C. 1985, c. 1. The CITT upheld a decision of the President of the Canada Border Services Agency (CBSA) refusing the appellant Proctor-Silex Canada's (the appellant) request to classify cordless electric kettles (the goods) under tariff item No. 8516.10.90 as "immersion heaters".

[2] The issue in this appeal is the classification of the goods at the subheading level. More specifically, whether they qualify as “other electro-thermic appliances”, tariff item No. 8516.79.90, or as “immersion heaters”, tariff item No. 8516.10.90, as both parties acknowledge that electric kettles are properly classified in heading 85.16.

[3] For the reasons that follow, I am satisfied that it was reasonable for the Tribunal to classify the goods as “other electro-thermic appliances” under tariff item No. 8516.79.90.

[4] The goods which are the object of this appeal consist of a plastic container, oval in shape, with a closed plastic handle and hinged flip-back lid equipped with a thermostat, power cord, on-off switch and heating element.

[5] The *Customs Tariff*, S.C. 1997, c. 36 gives legal effect to Canada’s obligations under the International Convention on the Harmonized Commodity Description and Coding System which harmonizes the classification of all trade commodities among signatory nations. Goods brought into Canada are classified under the *Customs Tariff*.

[6] Subsection 10(1) of the *Customs Tariff* specifies that the classification of goods must be effected in accordance with *General Rules for the Interpretation of the Harmonized System (General Rules)* and the *Canadian Rules* as set out in the Schedule.

[7] The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relevant

section or chapter notes and, unless such headings or notes do not specify otherwise, according to the other rules.

[8] As the dispute between the parties is related to classification at the subheading level, the CITT determined that the classification was to be made by reference to Rules 1 and 6 of the *General Rules* in the schedule and the applicable section or chapter notes. After consideration of the *Explanatory Notes* to heading No. 85.16, it found that the goods could not be classified as immersion heaters and rejected the appellant's arguments for the following reasons:

1. Classification should be based on the goods as a whole rather than their individual components;
2. A component of the goods does meet the definition of immersion heaters found in paragraph 3 of note (A)(5) of the *Explanatory Notes* to heading No. 85.16 but the immersion heater is only one of the components of the goods, and more importantly, that paragraph only directs classification at the heading level.

[9] Rather, the Tribunal found that the goods could be classified under subheading No. 8516.79 as other electro-thermic appliances based on:

1. The dictionary definitions of "electro-thermal" and "appliances";
2. The testimony of an expert witness; and
3. Note (E) of the *Explanatory Notes* to heading No. 85.16 which lists kettles as electro-thermic appliances.

[10] The standard of review to be applied to decisions of the CITT in customs tariff classification appeals is reasonableness (see *Suzuki Canada Inc. v. Canada (Customs and Revenue Agency)*, 2004 CAF 131, [2004] F.C.J. No. 615 (QL), at para. 11 [*Suzuki*] and *Helly Hansen Leisure Canada Inc. v. Canada (Border Services Agency)*, 2009 FCA 345, [2009] F.C.J. No. 1541 (QL), at para. 9).

[11] At the hearing the appellant argued that the CITT erred by declining to properly engage in the analytical exercise necessary to determine the purpose of paragraph 3 of *Explanatory Note (A)(5)* once it found that the assembly in that paragraph described the goods in issue. Moreover, the appellant argues that the CITT ignored the preamble to the *Explanatory Notes* to Group A of heading 85.16 which specifies that: “this group includes.”

[12] I find that the appellant has provided an alternative interpretation for the scope of the third paragraph of *Explanatory Note (A)(5)*. Based on the applicable standard of review, it was nonetheless open to the CITT to conclude that paragraph 3 of *Explanatory Note (A)(5)* does not expand the definition of an immersion heater to include assemblies. The wording in that note only refers to classification at the heading level and not at the subheading level. This interpretation “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

[13] Consequently, I would dismiss this appeal with costs.

"A.F. Scott"

J.A.

"I agree.

Robert M. Mainville J.A."

"I agree.

D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-223-13

APPEAL FROM THE DECISION OF THE PRESIDENT OF THE *CANADA BORDER SERVICES AGENCY* DATED SEPTEMBER 19, 2011, FILE NO. APP T0319801 (JXS)

STYLE OF CAUSE: PROCTOR-SILEX CANADA v.
PRESIDENT OF THE CANADA
BORDER SERVICES AGENCY

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 30, 2014

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: MAINVILLE J.A.
NEAR J.A.

DATED: MAY 7, 2014

APPEARANCES:

Michael Kaylor FOR THE APPELLANT

Peter Nostbakken FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lapointe Rosenstein Marchand Melançon L.L.P. FOR THE APPELLANT
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada