Federal Court of Appeal | Cour d'appel fédérale

Date: 20140108

Docket: A-136-13

Citation: 2014 FCA 3

CORAM: **SHARLOW J.A.**
GAUTHIER J.A.
STRATAS J.A.

BETWEEN:

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Appellant

and

SAF-HOLLAND CANADA LTD.

Respondent

Heard at Ottawa, Ontario, on January 8, 2014.

Judgment delivered from the Bench at Ottawa, Ontario, on January 8, 2014.

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 8, 2014).

SHARLOW J.A.

[1] In a decision dated January 18, 2013 (AP-2012-004, [2013] C.I.T.T. No. 7 (QL)), the Canadian International Trade Tribunal allowed the tariff classification appeal of the respondent SAF-HOLLAND Canada Ltd. (formerly Holland Hitch of Canada Limited). The Tribunal concluded that certain models of top plates, or fifth-wheel castings, imported by the respondent

from France were entitled to the duty-free treatment conferred by Tariff Item No. 9958.00.00 of the *Customs Tariff*, R.S.C. 1985, c. I-21.

[2] Tariff Item No. 9958.00.00 reads as follows:

Parts, accessories and articles, excluding tires and tubes, for use in the manufacture of original equipment parts for passenger automobiles, trucks or buses, or for use as original equipment in the manufacture of such vehicles or chassis therefor.	Parties, accessoires et articles, à l'exclusion des pneumatiques et chambres à air, devant servir à la fabrication de parties d'équipement d'origine de véhicules de tourisme, de camions ou d'autobus, ou devant servir d'équipement d'origine dans la fabrication de ces véhicules ou de leurs châssis.

[3] The Tribunal's conclusion as to the scope of Tariff Item No. 9958.00.00 is encapsulated in these words from paragraph 106 of its reasons:

> … "original equipment" refers to fifth wheels destined for use in original vehicle manufacture, "first fit" assembly or for aftermarket replacement for trucks originally equipped with the same fifth-wheel product and covered by vehicle warranty....

[4] The President of the Canada Border Services Agency (the Crown) has appealed the Tribunal's decision to this Court pursuant to section 68 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.). The position of the Crown is that the phrase "original equipment" in Tariff Item No. 9958.00.00 should be interpreted to exclude products intended for any application other than the original manufacture and assembly of trucks, and specifically should exclude any repair application.

[5] A decision of the Tribunal with respect to tariff classification is reviewed on the standard of reasonableness (see, for example, *Standard Products Inc. v. Canada (Border Services Agency)*,

2010 FCA 27). A decision of the Tribunal is reasonable if it falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law, and the reasons establish "justification, transparency and intelligibility within the decision-making process": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47.

[6] In this case, the principal argument of the Crown is that the Tribunal misinterpreted the phrase "original equipment" as used in Tariff Item No. 9958.00.00 because the Tribunal did not apply the statutory definition of "original equipment" in the *NAFTA Rules of Origin Regulations*, SOR/94-14. That definition reads as follows:

2. (1) For purposes of these Regulations,	**2.** (1) Les définitions qui suivent s'appliquent au présent règlement.
…	[…]
"original equipment" means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is	« élément d'origine » Matière qui est incorporée dans un véhicule automobile avant la première cession du titre de propriété de celui-ci ou la première consignation du véhicule à une personne qui n'est pas un monteur de véhicules automobiles, et qui est :
(a) a good of a tariff provision listed in Schedule IV, or	*a)* soit un produit d'un poste tarifaire énuméré à l'annexe IV;
(b) an automotive component assembly, automotive component, sub-component or listed material;	*b)* soit un montage de composantes d'automobile, une composante d'automobile, une sous-composante ou une matière répertoriée.

[7] In making this argument, the Crown invokes the rebuttable presumption that the same words within two enactments should bear the same meaning if the two enactments deal with the same subject matter, or they form part of a comprehensive legislative scheme (referring to subsection 15(2) of the *Interpretation Act*, R.S.C. 1985, c. I-21).

[8] That argument was put to the Tribunal and rejected for the reasons explained in paragraphs 55 to 75 of the Tribunal's reasons. The Tribunal concluded, in essence, that the phrase "original equipment" may bear one meaning for the purposes of the *Regulations* relating to the rules of origin under the *North American Free Trade Agreement* and a different meaning in Tariff Item No. 9958.00.00 of the *Customs Tariff*. In our view, those reasons are cogent and thorough, and led the Tribunal to a conclusion that is reasonable.

[9] We observe also that the Crown has cited no authority that says or implies that the definitions in the *Regulations* are intended to apply for all purposes of the *Customs Tariff*, or that they are intended to apply to the determination of the classification of goods under the *Customs Tariff*. Nor did the Crown cite any authority that says or implies that all of Canada's trading partners are intended to be bound by regulations expressly stated to relate to the rules of origin under the *North American Free Trade Agreement*.

[10] The Crown also argues that the Tribunal's interpretation of the phrase "original equipment" as used in Tariff Item No. 9958.00.00 is inconsistent with the ordinary meaning of that phrase. The Tribunal was presented with conflicting evidence of the meaning of that phrase, including evidence of industry usage. The Tribunal considered that evidence as well as its own jurisprudence. In our

view, the Tribunal's understanding of the ordinary meaning of the phrase "original equipment" in the context of this case is reasonable.

[11] Having carefully considered the written and oral submissions of the Crown, we have been unable to discern any error on the part of the Tribunal that warrants the intervention of this Court. For that reason, the appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-136-13

(APPEAL FROM A JUDGMENT OR ORDER (AP-2012-004) OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL DATED JANUARY 18, 2013)

STYLE OF CAUSE:	PRESIDENT OF THE CANADA BORDER SERVICES AGENCY v. SAF-HOLLAND CANADA LTD.
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 8, 2014
REASONS FOR JUDGMENT OF THE COURT BY:	SHARLOW J.A. GAUTHIER J.A. STRATAS J.A.
DELIVERED FROM THE BENCH BY:	SHARLOW J.A.

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