



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-037

R. Sulit

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, September 5, 2017*

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IN THE MATTER OF an appeal heard on July 6, 2017, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated December 7, 2016, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

R. SULIT

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 6, 2017
Tribunal Panel: Jason W. Downey, Presiding Member
Support Staff: Amélie Cournoyer, Counsel

PARTICIPANTS:**Appellant**

R. Sulit

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

1. This is an appeal filed with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on December 7, 2016, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether two brass knuckles (the goods in issue) imported by Mr. R. Sulit are properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as prohibited weapons and are therefore prohibited from importation into Canada pursuant to subsection 136(1).

PROCEDURAL HISTORY

3. On or about August 15, 2016, Mr. Sulit ordered the goods in issue.

4. On August 31, 2016, the CBSA detained the goods in issue pursuant to section 101 of the *Act*.

5. On September 8, 2016, pursuant to subsection 58(1) of the *Act*, the CBSA issued a decision classifying the goods in issue as prohibited weapons under tariff item No. 9898.00.00. This classification was based on the CBSA's determination that the goods in issue are prohibited weapons within the meaning of subsection 84(1) of the *Criminal Code*³.

6. On September 16, 2016, pursuant to subsection 60(1) of the *Act*, Mr. Sulit requested a re-determination of the CBSA's decision.

7. On December 7, 2016, pursuant to subsection 60(4) of the *Act*, the CBSA confirmed its original determination with regard to the tariff classification of the goods in issue.

8. On January 9, 2017, pursuant to subsection 67(1) of the *Act*, Mr. Sulit filed the present appeal with the Tribunal.

9. The Tribunal decided to hear the matter by way of written submissions in accordance with Rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*,⁴ to which the parties did not object. The hearing was held in Ottawa, Ontario, on July 6, 2017. The goods in issue were made available and were examined by the Tribunal.

GOODS IN ISSUE

10. There is no dispute between the parties that the goods in issue are brass knuckles.

11. Mr. Sulit described the goods in issue as pieces of metal shaped to fit around the knuckles. The CBSA described the goods in issue as gold-colored pieces of metal featuring four finger holes designed to fit over the fingers of the hand.

1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].

2. S.C. 1997, c. 36.

3. R.S.C., 1985, c. C-46.

4. S.O.R./91-499.

STATUTORY FRAMEWORK

12. Subsection 136(1) of the *Customs Tariff* provides as follows:

<p>The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.</p>	<p>L'importation des marchandises des n^{os} tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.</p>
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[Emphasis added]

13. When dealing with the classification of goods under tariff item No. 9898.00.00, subsection 136(2) of the *Customs Tariff* provides that the *General Rules for the Interpretation of the Harmonized System*⁵ do not apply. Furthermore, note 1 to Chapter 98 provides that “[g]oods which are described in any provision of this Chapter are classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.”

14. The question of whether the goods in issue are properly classified under tariff item No. 9898.00.00 must therefore be determined according to the terms of that tariff item and the applicable provisions of the *Criminal Code*.

15. The list of prohibited goods in tariff item No. 9898.00.00 includes “prohibited weapons”. For the purposes of tariff item No. 9898.00.00, the expression “prohibited weapons” has the same meaning as in subsection 84(1) of the *Criminal Code*.

16. Subsection 84(1) of the *Criminal Code* defines “prohibited weapon” as follows, of which only paragraph (b) is relevant:

<p>(a) a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, or</p>	<p>a) Couteau dont la lame s’ouvre automatiquement par gravité ou force centrifuge ou par pression manuelle sur un bouton, un ressort ou autre dispositif incorporé ou attaché au manche;</p>
<p>(b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon . . .</p>	<p>b) toute arme – qui n’est pas une arme à feu – désignée comme telle par règlement.</p>

17. Section 4 of the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*⁶ provides that weapons listed in Part 3 of the schedule to those regulations are considered to be “prohibited weapons” under subsection 84(1) of the *Criminal Code*.

18. Section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited* provides for the following, designating such goods as prohibited weapons:

<p>The device known as “Brass Knuckles” and any similar device consisting of a band of metal with one or more finger holes designed to fit over the fingers of the hand.</p>	<p>L’instrument communément appelé « coup-de-poing américain » et autre instrument semblable consistant en une armature métallique trouée dans laquelle on enfile les doigts.</p>
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5. S.C. 1997, c. 36, schedule.

6. S.O.R./98-462 [*Regulations Prescribing Certain Weapons as Prohibited*].

POSITIONS OF PARTIES

19. Mr. Sulit acknowledged that the goods in issue are brass knuckles and consequently prohibited weapons, but submitted that he required them for his personal protection, and that he had a right to them in accordance with his personal beliefs.

20. The CBSA submitted that the goods in issue meet the definition of brass knuckles provided by section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited*. The CBSA argued that Mr. Sulit has not discharged his burden of proving that the goods in issue are not properly classified as prohibited weapons under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*. Finally, the CBSA submitted that the Tribunal does not have discretion to exclude the goods in issue from the scope of the prohibition.

ANALYSIS

21. Based on the language in section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited*, in order to be considered brass knuckles, the goods in issue must meet three criteria. Specifically, the goods in issue must (1) be a band of metal (2) with one or more finger holes (3) designed to fit over the fingers of the hand.

22. Having examined the goods in issue, the Tribunal has no difficulty concluding that they meet all three elements of the definition: they consist of a band of metal with four finger holes designed to fit over the fingers of the hand.

23. It must also be noted that there is no dispute between the parties that the goods in issue meet the definition of brass knuckles. Indeed, Mr. Sulit admitted that the goods in issue are brass knuckles and, more particularly, that they are pieces of metal shaped to fit around the knuckles to assist the user to deliver a punch force that increases the likelihood of a victim suffering tissue damage and bone fractures.

24. Further, Mr. Sulit admitted that the goods in issue should be classified as prohibited weapons under tariff item No. 9898.00.00 of the *Customs Tariff*.

25. The Tribunal must apply the law as it stands and does not have the power to dispense equity in such a matter.⁷ As the CBSA noted, the fact that an individual wishes to use a prohibited weapon for self-defence is not a consideration in the determination of the tariff classification, given the relevant provisions of the legislation and the *Regulations Prescribing Certain Weapons as Prohibited*. Accordingly, the Tribunal has no discretion on this issue, as the legislative and regulatory framework does not provide for the exclusion of brass knuckles used for self-defence from the scope of the prohibition.⁸ Moreover, the personal beliefs raised by Mr. Sulit in support of his position do not constitute a basis upon which the Tribunal could classify the goods in issue.

7. *Wayne Erikson v. Commissioner of the Canada Customs and Revenue Agency* (3 January 2002), AP-2000-059 (CIIT) at 3; *G. Bradford v. President of the Canada Border Services Agency* (12 September 2016), AP-2015-031 (CIIT) at para. 34.

8. *Andrew Taylor v. President of the Canada Border Services Agency* (3 December 2008), AP-2007-025 (CIIT) at para. 40.

26. Given the foregoing, the Tribunal finds that Mr. Sulit failed to demonstrate that the goods in issue are not properly classified as prohibited weapons under tariff item No. 9898.00.00 of the *Customs Tariff*.⁹

DECISION

27. The appeal is dismissed.

Jason W. Downey

Jason W. Downey
Presiding Member

9. Under subsection 152(3) of the *Customs Act*, the appellant bears the burden of demonstrating that the classification of the imported goods at issue was incorrect and thereby that they are not prohibited weapons. See *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII) at paras. 7, 21.