Date: 20080429

Docket: 07-T-60

Citation: 2008 FC 557

Ottawa, Ontario, April 29, 2008

Present: The Honourable Mr. Justice Harrington

BETWEEN:

JEAN-PIERRE SAMSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] In September 2005, a manager of the Minister of Public Safety and Emergency Preparedness, pursuant to section 133 of the *Customs Act*, confirmed a decision of the Minister assessing a penalty of $2,000 against Mr. Samson for erroneously declaring the value of goods that he imported to Canada. Mr. Samson is seeking a judicial review of this decision. Subsection 18.1(2) of the *Federal Courts Act* requires that such an application be made within 30 days of the impugned decision or "within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days." Mr. Samson is seeking to have such additional time granted to him.

[2] The applicant, Mr. Samson, carries on business using the trade name and the style of identity "Boutique de timbres, postes et monnaies." In this capacity, he regularly imports stamps. Carrying out a random audit, the Canada Customs and Revenue Agency was of the opinion that the information relating to one cargo of goods in particular was incorrect. According to section 7.1 of the *Customs Act*, "[a]ny information provided to an officer … shall be true, accurate and complete…"

[3] In September 2004, a customs agent issued a "notice of penalty assessment" of $2,000 against the applicant, stating that he "…intentionally provided false information in any permit, certificate, licence, document or declaration required to be provided for imported … goods under the *Customs Act*…" Mr. Samson contested this decision by sending a letter to the Minister requesting a redress. Ultimately, he received two decisions from the Agency in a letter dated September 14, 2005, stating that:

> [TRANSLATION]
>
> . . . after considering all of the circumstances of your case, I have decided that there was an offence under section 131 of the *Customs Act*, or under the regulations regarding the notice served pursuant to section 109.3. Under section 133 of the *Customs Act*, this demand for payment of the sum of $2,000 constitutes a debt to Her Majesty.

[4] The *Customs Act* is somewhat distinctive in that the issue of whether the offence was committed or not may be heard *de novo* through a regular action, while recourse regarding a penalty issued under the auspices of section 133 is strictly connected with an application for judicial review. All of this was clearly explained by Mr. Justice Mackay in *ACL Canada Inc. v. Canada (Minister*

of National Revenue-M.N.R.), [1993] F.C.J. No. 1048, 68 F.T.R. 180. The two different forms of recourse are also found in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act,* and were discussed in *Dokaj v. Canada (Minister of National Revenue- M.N.R.),* [2005] F.C.J. No. 1783, [2006] 2 F.C.R. 152 and in *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 50, [2006] F.C.J. No. 52, which was confirmed by the Federal Court of Appeal (2007 FCA 186, [2007] F.C.J. No. 685).

[5] This implies, therefore, that it is best to file an application for judicial review of a penalty even before a hearing is held deciding the grounds of the offence. Clearly, if it were determined that no offence was ever committed, the penalty would fall and the judicial review would become moot. In any event, the judicial review ought to be suspended pending a decision on the matter before the Court.

[6] The issue bearing on the commission of the offence indeed ended up before the Court. On September 28, 2007, Madam Justice Tremblay-Lamer decided that an offence had been committed. In her opinion, Mr. Samson's good faith was not relevant. Her reasons are found in *Samson v. Canada (Minister of National Revenue- M.N.R.)*, 2007 FC 975, [2007] F.C.J. No. 1272.
Mr. Samson had 30 days to appeal this decision, which he failed to do.

[7] On December 30, 2007, he filed the application in the case at bar, intending to get an extension of time in order to seek a judicial review of the amount of the penalty.

ANALYSIS

[8] In *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846, 244 N.R. 3996, the Federal Court of Appeal set out a list of criteria, while not exhaustive, where the necessary extension of time could be allowed. At paragraph 3 of this decision, Mr. Justice McDonald stated that:

> The proper test is whether the applicant has demonstrated:
>
> 1. a continuing intention to pursue his or her application;
>
> 2. that the application has some merit;
>
> 3. that no prejudice to the respondent arises from the delay; and
>
> 4. that a reasonable explanation for the delay exists.

[9] The Minister did not join issue on points 2 and 3 referred to above. The other two points may be analyzed together.

[10] There are several valid reasons for excusing Mr. Samson's failure to file the application for judicial review within the 30-day period stipulated by the Act. The department misread its own legislation by alleging the applicant's bad faith. The applicant was confidant that he had acted in good faith. Further, Mr. Samson had been properly informed of his right to bring an action, but not of the option of applying for a judicial review of the notice of assessment of penalty.

[11] However, after the Attorney General became involved as counsel of record in the hearing before the Court, everything was rectified. The legislation and case law were set out in detail in his pre-trial conference memorandum filed with the Registry on February 6, 2008, and even in

Prothonotary Morneau's order issued on April 24, 2007, in which he had clearly indicated that the penalty was not an issue before the Court.

[12] At that time, Mr. Samson was handling his own case and may have been confident that he would prevail despite the clear and specific arguments of the Attorney General that good faith was not a relevant point in this matter.

[13] Mr. Samson at that time should have requested an extension of time. Now it is too late because he did not establish that he had a continuing intention to dispute the penalty and his reasonable explanations lapsed around the end of May 2007.

[14] For the reasons given above, I will dismiss the application, with costs.

ORDER

THE COURT ORDERS that:

1. On consent of the parties, the style of cause is amended by withdrawing "Minister of National Revenue" and adding "Attorney General of Canada" as respondent.
2. On consent of the parties, the application is amended to read that the application for extension of time relates to the decision dated September 14, 2005, imposing an administrative penalty of $2,000.
3. The application for extension of time be dismissed.
4. With costs.

"Sean Harrington"

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	07-T-60
STYLE OF CAUSE:	JEAN-PIERRE SAMSON v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Québec, Québec
DATE OF HEARING:	April 17, 2008
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATE OF REASONS:	April 29, 2008

APPEARANCES:

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