

Date: 20070905

Docket: A-166-06

Citation: 2007 FCA 277

**CORAM: LÉTOURNEAU J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

ARCTIC CAT SALES INC.

Appellant

and

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

Heard at Ottawa, Ontario, on September 5, 2007.

Judgment delivered from the Bench at Ottawa, Ontario, on September 5, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Date: 20070905

Docket: A-166-06

Citation: 2007 FCA 277

**CORAM: LÉTOURNEAU J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

ARCTIC CAT SALES INC.

Appellant

and

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 5, 2007)

PELLETIER J.A.

[1] Notwithstanding Mr. Meehan's vigorous argument, we are of the view that this appeal should be dismissed.

[2] In *Suzuki Canada Inc. v. Canada (Customs and Revenue Agency)*, 2004 FCA 131, [2004] F.C.J. No. 615 (*Suzuki*), this Court decided that the CITT erred in classifying all-terrain vehicles (quad bikes) without regard to the Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System). The Court held that while the Explanatory Notes were

not binding, they should be given effect unless there exists a good reason for not doing so. When regard is had to the Explanatory Notes, the inescapable conclusion is that all-terrain vehicles are to be classified under tariff heading 87.03.

[3] The appellant argues that this Court should depart from *Suzuki* on the ground that the decision was based on the agreement of counsel that Rule 1 of the General Rules was determinative, an agreement which is absent here.

[4] We are not persuaded that the agreement in question was the basis of the decision, having regard to the decision as a whole. That said, we are satisfied that the decision in *Suzuki* is correct, as is the CITT's decision under review. The predictability of the law as well as the need for consistency in the application of the Harmonized System are both advanced by such a finding.

[5] In the result, the appeal will be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-166-06

STYLE OF CAUSE: *ARCTIC CAT SALES INC. v.
PRESIDENT OF THE CANADA
BORDER SERVICES AGENCY*

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 5, 2007

REASONS FOR JUDGMENT OF THE COURT BY: LETOURNEAU, PELLETIER,
RYER, J.J.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

Eugene Meehan, Q.C.
Marie-France Major
J. Peter Jorosz
Jeffrey Beedell

FOR THE APPELLANT

Michael Roach

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lang Michener LLP
Ottawa, Ontario

FOR THE APPELLANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT