

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20100125

Docket: A-619-08

Citation: 2010 FCA 27

**CORAM: BLAIS C.J.
LÉTOURNEAU J.A.
TRUDEL J.A.**

BETWEEN:

STANDARD PRODUCTS INC.

Appellant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Montréal, Quebec, on January 25, 2010.

Judgment delivered from the Bench at Montréal, Quebec, on January 25, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on January 25, 2010)

TRUDEL J.A.

[1] This is an appeal from a decision of the Canadian International Trade Tribunal (the CITT) dated October 28, 2008 (Appeal No. AP-2007-011), which dismissed an appeal, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985, c.1 (2nd Supp.), from decisions of the President

of the Canada Border Services Agency (CBSA) dated May 17, 2007. The CITT concluded that electronic ballasts imported by Standard Products Inc. (Standard Products) are properly classified under tariff item No. 8504.10.00 of the schedule to the *Customs Tariff*, S.C. 1997, c. 36, as “ballasts for discharge lamps or tubes”.

[2] The issue before this Court is whether the CITT erred in classifying the goods in issue under tariff item No. 8504.10.00 as determined by the CBSA, rather than under tariff item No. 8542.60.00 as hybrid integrated circuits (HICs) as proposed by Standard Products. The heart of the appellant’s argument on appeal is that the CITT erred in applying *Explanatory Note* (I)(2) to Chapter 85 in an effort to further describe HICs (appellant’s memorandum of fact and law, at paragraphs 9-15). This error, it alleges, consisted in raising the status of *Explanatory Note* 5 to the level of a legal requirement. We disagree.

[3] In its reasons, the CITT has explained that the proper tariff classification of goods is determined in accordance with prescribed interpretative rules found under sections 10 and 11 of the *Customs Tariff* (reasons for decision, at paragraphs 14-20). While section 11 provides that regard shall be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System* [*Explanatory Notes*] in interpreting the headings and subheadings of chapters under the schedule, this Court found in *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, leave to appeal to S.C.C. refused 30362 (October 21, 2004) [*Suzuki*], that the CITT is not bound to apply the *Explanatory Notes* where there is a sound reason to depart from their guidance (*Suzuki*, at paragraph 17). In its analysis of tariff item No. 8542.60.00, the CITT concluded that it was obliged

to have regard to the *Explanatory Notes* as the “sound reason” test in *Suzuki, supra*, had not been met (reasons for decision, at paragraph 45). We do not see, in the CITT’s approach, justification for the appellant’s argument that *Explanatory Note 5* has been made into a legal requirement.

[4] This Court has consistently held that reasonableness is the appropriate standard of review of the Tribunal’s decisions in customs tariff classification appeals (*Gladu Tools Inc. v. Canada (Border Services Agency)*, 2009 FCA 215, at paragraph 9; *Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210, at paragraph 16; *Star Choice Television Network Inc. v. Canada (Customs and Revenue Agency)*, 2004 FCA 153, leave to appeal to S.C.C. refused 30389 (October 21, 2004), at paragraph 7; *Suzuki*, at paragraph 11). We have not been convinced that the CITT erred with regard to the *Explanatory Notes* and find that its decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the relevant provisions of the *Customs Tariff*.

[5] Finally, at paragraph 49 of its memorandum of fact and law, and although it did not press the issue at the hearing of this appeal, the appellant has argued that the goods in issue could also be classified in heading 90.32 as “automatic voltage regulators”. This new argument, allegedly flowing from the CITT’s statement of reasons, is in direct contradiction with the appellant’s admission, at the hearing in front of the CITT, that “the goods in issue should be classified in Chapter 85” (CITT’s statement of reasons, at paragraph 21; appeal book, volume 4, at page 1251, lines 23-25). It is also in direct contradiction with the CITT’s statement of reasons that although the goods in issue are sometimes referred to as voltage or current regulators, “they are not – by their

makeup, by their function, or by the vocabulary of the heading, the tariff item and the *Explanatory Notes*- excluded from [Chapter 85]" (*ibidem*, at paragraph 57).

[6] For these reasons, this appeal will be dismissed with costs.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

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