

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100909

Docket: A-497-09

Citation: 2010 FCA 226

**CORAM: SEXTON J.A.
EVANS J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

**PRESIDENT OF THE CANADA
BORDER SERVICES AGENCY**

Appellant

and

P.L. LIGHT SYSTEMS CANADA, INC.

Respondent

Heard at Ottawa, Ontario, on September 8, 2010.

Judgment delivered at Ottawa, Ontario, on September 9, 2010.

REASONS FOR JUDGMENT BY:

EVANS J.A.

CONCURRED IN BY:

SEXTON J.A.
LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT

EVANS J.A.

[1] This is an appeal on a question of law by the President of the Canada Border Services Agency (CBSA) under subsection 68(1) of the *Customs Act*, R.S.C. 1985, c. 1 (2^d Supp.) (Act) from a decision of the Canadian International Trade Tribunal (CITT), dated September 16, 2009.

[2] In that decision, the CITT allowed an appeal by P.L. Light Systems Canada Inc. (P.L. Light) under subsection 60(4) of the Act and held that aluminum reflectors attached to lighting fixtures used to provide supplementary lighting for commercial greenhouses were entitled to customs duty relief under tariff item 9903.00.00 of the *Customs Tariff* as “articles for use in ... agricultural or horticultural machines of heading 84.36”.

[3] Counsel for the CBSA argued that the appeal should be allowed because the Tribunal's reasons do not withstand scrutiny on either a correctness or a reasonableness standard. This is because, counsel said, the Tribunal had classified the aluminum reflectors as parts of lighting fixtures under heading 9405.99.90. It follows that the lighting fixtures of which the reflectors are parts must themselves also be classified under heading 9405. Consequently, he submitted, it was illogical for the CITT to have concluded that the reflectors qualified for relief from duty under heading 9903.00.00 on the ground that the lighting fixtures were "agricultural or horticultural machines of heading 84.36" and the reflectors were "articles for use in" them.

[4] In other words, counsel argued, since goods can have only one classification under chapters 1-97 of the *Customs Tariff*, the CITT erred in law when, having implicitly classified the lighting fixtures under 9405 by classifying the reflectors under 9405.99.90 as parts of lighting fixtures, it went on to hold that the lighting fixtures were "agricultural or horticultural machines of heading 84.36" for the purpose of heading 9903.

[5] Abandoning the position that he had taken in his memorandum of fact and law, counsel for P.L. Light in oral argument agreed with the CBSA's submissions on this point and invited the Court to allow the appeal and remit the matter to the CITT. Counsel submitted that at paragraph 25 of its reasons the CITT had accurately summarized, but did not go on to address, P. L. Light's argument, namely that

...the goods in issue are eligible for the benefit of tariff item No. 9903.00.000 because they are affixed to lighting fixtures that are for use in integrated systems which, pursuant to the Tribunal's decision in *Prins Greenhouses Ltd. v. Deputy M.N.R.* [(9 April 2001), AP-99-045] are classified as agricultural machines of heading No. 84.36.

[6] I agree that the CITT's decision cannot be supported on the basis of the reasons that it gave. Hence, I would allow the appeal, set aside the decision, and remit the matter with a direction that it be determined by the CITT on the basis advanced before it by P. L. Light.

[7] Accordingly, on the evidential record already before it, the CITT must base its decision on its answers to the following questions:

1. Are integrated climate and environmental control systems for greenhouses "agricultural or horticultural machines of heading 84.36"?
2. If integrated greenhouse systems are "agricultural or horticultural machines of heading 84.36", are the aluminum reflectors (the goods in issue in this case) "articles for use in" or "articles that enter into the cost of manufacture of" integrated systems for the purpose of heading 9903.00.00, on the ground that they are attached to lighting fixtures which are used in integrated systems?

"John M. Evans"

J.A.

"I agree
J. Edgar Sexton J.A."

"I agree
Carolyn Layden-Stevenson J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-497-09

**APPEAL FROM A DECISION OF THE CANADIAN INTERNATIONAL TRADE
TRIBUNAL DATED SEPTEMBER 16, 2009, APPEAL NO. AP-2008-012**

STYLE OF CAUSE: President of the Canada Border
Services Agency v. P.L. Light
Systems Canada, Inc.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 8, 2010

REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: SEXTON J.A.
LAYDEN-STEVENSON J.A.

DATED: September 9, 2010

APPEARANCES:

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