Federal Court of Appeal Cour d'appel fédérale

Date: 20191218

Docket: A-202-19

Citation: 2019 FCA 318

CORAM: **GAUTHIER J.A.**
DE MONTIGNY J.A.
LOCKE J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

NOUVEAU AMERICANA DBA NUEVO AMERICANA

Respondent

Heard at Ottawa, Ontario, on December 17, 2019.

Judgment delivered at Ottawa, Ontario, on December 18, 2019.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
LOCKE J.A.

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<u>REASONS FOR JUDGMENT</u>

<u>GAUTHIER J.A.</u>

[1] The appellant challenges the decision of the Canadian International Trade Tribunal (AP-2017-004) (the Tribunal) allowing the appeal of Nouveau Americana DBA Nuevo Americana (Nuevo), pursuant to section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

[2] The appellant argues that the jurisprudential test used by the Tribunal to determine whether goods should be classified under item numbers 9401.30.10, 9401.61.10, 9401.71.10, and 9401.79.10 of the *Customs Tariff*, S.C. 1997, c. 36 (Customs Tariff), as goods for "domestic purposes", results in a situation in which few goods could ever be classified as such. The appellant further argues that the Tribunal's test essentially ignores the principles set out in the Customs Tariff and the *General Rules for the Interpretation of the Harmonized System* (General Rules), particularly Rule 3(a) of the General Rules dealing with specificity.

[3] In *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 at para. 16 (*Igloo*), the Supreme Court of Canada reaffirmed that the applicable standard of review here is reasonableness. At paragraph 17, the Supreme Court notes that the Tribunal has specific expertise in interpreting the "very complex" customs tariff rules. Even questions of law have a "very technical nature". Thus, the Tribunal will often be better equipped than this Court to answer these questions.

[4] The case law of the Tribunal is quite settled that "for domestic purposes" applies only to goods which are "primarily intended" for domestic purposes. This refers to the "intended use" as opposed to the "actual or end use" of the goods. See, for example, *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency*, AP-2016-005 at para. 25; and *IKEA Supply AG v. President of the Canada Border Services Agency*, AP-2013-053 at para. 18. This is not in dispute before us.

[5] The Tribunal usually considers a variety of factors to apply this test to any particular case. Of note, the appellant does not dispute any of the factual findings made by the Tribunal. It is also worth mentioning that the appellant did not present any witness to the Tribunal. Rather, it appears to have relied on the fact that Nuevo had the burden of demonstrating that the Canada Border Services Agency's classification of its chairs as "for domestic purposes" under the abovementioned tariff items was incorrect.

[6] Again, following its own jurisprudence, the Tribunal noted at paragraph 18 that to meet its burden, Nuevo must establish that its chairs: i) were equally intended for domestic and non-domestic purposes, or ii) were primarily intended for non-domestic purposes. I have not been persuaded that this perfectly logical statement is unreasonable.

[7] The appellant is particularly concerned with paragraph 21 where the Tribunal notes that Nuevo must submit evidence providing a solid basis to establish that non-domestic use of the goods "is more than merely potential, incidental, occasional or ancillary".

[8] The appellant appears to fear that in applying this last statement which has also been made in earlier cases, the Tribunal could end up stripping this category of its meaning.

[9] In my view, that paragraph must be read in context. It does not, *per se*, change the test set out by the Tribunal. Nor does it amount to a reviewable error that would justify our intervention.

[10] In fact, the hypothesis or fear raised before us is not borne out by the facts of this case. It is clear that the Tribunal was satisfied on the evidentiary record that the chairs in question were not “primarily intended” for domestic purposes because, after weighing all the relevant factors, the goods in issue were equally intended for domestic and non-domestic purposes.

[11] With due respect to the appellant’s view to the contrary, I also conclude that the Tribunal followed the exact approach mandated by the Supreme Court in *Igloo* (at paras. 20-29). The Tribunal made it clear that this was not a case where the goods in issue could fall under two classifications. The goods simply could not be categorized as “for domestic purposes”. There was no need to resort to Rule 3; it was not relevant.

[12] I would therefore dismiss the appeal with costs set at the mutually agreed all-inclusive amount of $1,500.00.

"Johanne Gauthier"
J.A.

“I agree
Yves de Montigny J.A.”

“I agree
George R. Locke J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A DECISION OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL ("CITT") DATED MARCH 6, 2019, FILE NO. AP-2017-004

DOCKET:	A-202-19
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. NOUVEAU AMERICANA DBA NUEVO AMERICANA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	DECEMBER 17, 2019
REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	DE MONTIGNY J.A. LOCKE J.A.
DATED:	DECEMBER 18, 2019

APPEARANCES:

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