

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230530

Docket: A-3-22

Citation: 2023 FCA 117

CORAM: **DE MONTIGNY J.A.**
 LASKIN J.A.
 MACTAVISH J.A.

BETWEEN:

CANADIAN TIRE CORPORATION LTD.

Appellant

and

**PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

Heard at Ottawa, Ontario, on May 30, 2023.

Judgment delivered from the Bench at Ottawa, Ontario, on May 30, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

DE MONTIGNY J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on May 30, 2023).

DE MONTIGNY J.A.

[1] At issue in this appeal is the proper classification under the *Customs Tariff* of goods described as “marine winch straps” (the goods at issue). They comprise both a textile strap and a forged metal hook at one end of the strap, which is used to fasten the strap to the load that is to

be moved by operation of a winch (sold separately). The sole issue before the Canadian International Trade Tribunal (the Tribunal), and now before us on appeal, is whether the goods should be classified under heading 59.11 as “Textile products and articles, for technical uses, specified in Note 7 to this Chapter” or under heading 63.07 as “Other made up articles, including dress patterns”. The appellant argues that these goods should be classified under heading 59.11. Once the goods are placed under the correct heading, the parties do not dispute the applicable subheading or specific tariff item.

[2] In its Decision of November 9, 2021 (*Canadian Tire Corporation Limited v. President of the Canada Border Services Agency*, AP-2020-20), the Tribunal confirmed the Canada Border Service Agency’s decision that the goods at issue do not fall within heading 59.11, but are rather classifiable under heading 63.07. The Tribunal came to that conclusion on the basis of Legal Note 7 to Section XI of Chapter 59 of the *Customs Tariff* (S.C. 1997, c. 36), which prescribes that only goods falling within either Note 7(a) or Note 7(b) may be classified under heading 59.11. The Tribunal further found that Note 7(b) was the only one being applicable to the goods at issue. It reads as follows:

Textile articles (other than those of headings 59.08 to 59.10) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts.

[3] While recognizing that the goods at issue were both “textile articles” and “used for technical purposes”, the Tribunal nevertheless found that they could not be classified under heading 59.11 because explanatory note (B) to heading 59.11 requires that goods must remain

“essentially articles of textile” to fall under that heading. Relying on earlier jurisprudence considering the nature of an “accessory”, the Tribunal determined that the metal hook would have to be “optional, incidental or a mere accessory” for the goods to be “essentially” an article of textile. Since the hook is essential to the operable functionality of the marine winch strap and cannot be removed or replaced with another type of fastener, the Tribunal found that these goods were not classifiable under heading 59.11 but fell under heading 63.07.

[4] Before us, the appellant claims that the Tribunal erred in applying heading 59.11 to the goods at issue, and contends that the marine winch straps are indeed essentially articles of textile. Yet the application of a provision of the *Customs Tariff* to a set of facts is a mixed question of fact and law, and is not properly before us. Pursuant to subsection 68(1) of the *Customs Act*, R.S.C. 1985, c. 1, this Court may only hear appeals from decisions of the Tribunal based on questions of law. We have not been persuaded that the Tribunal erred in its application of the *General Rules for the Interpretation of the Harmonized System* found in the Schedule to the *Customs Tariff*, and in particular of Rule 1 and of its interplay with Rule 2.

[5] Even if we were prepared to entertain the appellant’s arguments, we have not been convinced that the Tribunal erred in its interpretation of Legal Notes 7(b) or 8(a). With regard to Note 7(b), the appellant argues that the Tribunal failed to consider that “paper-making machines” is but one example of the type of machine that the goods can be attached to in order to benefit from heading 59.11. A careful reading of the Tribunal’s reasons belies that claim. Not only did the Tribunal italicize the words “of a kind used in paper-making or similar machines” when quoting Legal Note 7(b) (at para. 72 of its reasons), but it also stressed in the following

paragraph that the marine winch is not “of a kind” used for paper-making machines and observed that there was no evidence that the hand operated winch is used in conjunction with the goods at issue is “similar” to a paper-making machine.

[6] As for Legal Note 8(a), the appellant contends that the Tribunal erred in relying on Legal Note 8, pursuant to which goods that are “made up articles” within the meaning of Legal Note 7 are *prima facie* excluded from Chapter 59. There is no issue that the goods are “made up articles”; what the appellant claims is that the Tribunal paid no attention to the words “except where the context otherwise requires” in Legal Note 8. Once again, this argument is without merit because the Tribunal did advert to these words and expressly found there to be “no probative evidence ... concerning the nature of any context that would render legal note 8 (sic) inapplicable or irrelevant to the goods at issue or to the classification analysis” (at para. 84). Moreover, the appellant failed to provide any element of context that was put forward and ignored by the Tribunal.

[7] For all of the foregoing reasons, we are therefore of the view that the Tribunal did not err in finding that heading 59.11 does not apply to the goods at issue, and that the goods at issue are more properly classifiable under heading 63.07. As such, the appeal will be dismissed, with costs.

"Yves de Montigny"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-3-22

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PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 30, 2023

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DELIVERED FROM THE BENCH BY: DE MONTIGNY J.A.

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