Lanctôt (Raymond) ltée v. Canada, (1990) 35 F.T.R. 96 (TD)

Judge:	Joyal, J.
Court:	Federal Court (Canada)
Case Date:	January 11, 1990
Jurisdiction:	Canada (Federal)
Citations:	(1990), 35 F.T.R. 96 (TD)

Text

Lanctôt ltée v. Can. (1990), 35 F.T.R. 96 (TD)
MLB headnote and full text
[French language version follows English language version]
[La version française vient à la suite de la version anglaise]

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Raymond Lanctôt Ltée v. Sa Majesté la Reine
(T-1900-88)
Indexed As: Lanctôt (Raymond) ltée v. Canada
Federal Court of Canada
Trial Division
Joyal, J.
February 16, 1990.

Summary:

The plaintiff imported four packages of spectacle parts through Mirabel Airport. To obtain release of the shipment the plaintiff's broker filled out an interim release form that there were 10 sunglasses and 9,044 frames. Upon inspection the customs officer found 9,044 sunglasses and 10 frames. Because of this interim misdescription, the inspector seized all the goods. The property was later released, but an $8,789.73 penalty was imposed. The plaintiff commenced an action against the federal Crown for return of the penalty.

The Federal Court of Canada, Trial Division, dismissed the action and affirmed the penalty.

Customs - Topic 2845

Report and entry inwards - Declarations - Requirement of accuracy - The Federal Court of Canada, Trial Division, held that the Customs Act imposes on all importers a strict requirement of submitting an accounting which contains no errors - See paragraph 24.

Customs - Topic 8209

Penalties - Failure by importer to account - The plaintiff imported four packages of spectacle parts through Mirabel Airport. To obtain release of the shipment, the plaintiff's broker filled out an interim release form indicating that there were 10 sunglasses and 9,044 frames - Upon inspection the customs officer found 9,044 sunglasses and 10 frames - Because of this interim misdescription, the inspector seized all the goods - The property was later released, but an $8,789.73 penalty was imposed - The Federal Court of Canada, Trial Division, affirmed the penalty, notwithstanding that the misdeclaration may have been an inadvertent error.

Cases Noticed:

R. v. Canabec Trailers Inc., [1982] 1 F.C. 788, refd to. [paras. 16, 17].

Canada (Minister of Customs and Excise) v. Jay Norris Canada Inc. (1986), 1 F.T.R. 149; 11 C.E.R. 66, refd to. [para. 18].

R. v. Mondev Corporation Limited (1974), 33 C.P.R.(2d) 183, refd to. [para. 19].

R. v. Kay Silver Inc., [1981] 2 F.C. 436, refd to. [para. 20].

Noël and André Noël Ltée v. R. (1983), 6 C.E.R. 72, refd to. [para. 22].

R. v. Emilien Letarte, [1981] 2 F.C. 76, refd to. [para. 23].

Porter v. Canada (1989), 26 F.T.R. 69, refd to. [para. 27].

Statutes Noticed:

Customs Act, S.C. 1986, c. 1, sect. 32 [para. 3]; sect. 33 [para. 4]; sect. 154 [para. 5].

Counsel:

Claude Trinque, for the plaintiff;

Claude Bonneau, for the defendant.

Solicitors of Record:

Latour, Trinque and Durocher, Montréal, Quebec, for the plaintiff;

John C. Tait, Q.C., Deputy Attorney General of Canada, for the defendant.

This case was heard in Montreal, Quebec, on January 11, 1990, before Joyal, J., of the Federal Court of Canada, Trial Division, who delivered the following decision on February 16, 1990.

[1] Joyal, J. [Translation]: This case concerns a claim by the plaintiff against the defendant Crown for reimbursement of the sum of $8,789.73.

[2] This amount was paid by the plaintiff as a penalty to obtain the release of certain goods imported from France, which had been seized by the defendant on March 9, 1988, on the ground that the goods were misdescribed when they were taken to Customs on arrival by air at Mirabel.

Legislation

[3] To set the discussion in its context we need only refer to s. 32 of the Customs Act, S.C. 1986, c. 1, which reads as follows:

"32(1) Subject to subs. (2) and (4) and any regulations made under subs. (6) and to ss. 33 and 34, no goods shall be released until

(a) they have been accounted for by the importer or owner thereof in the prescribed manner and, where they are to be accounted for in writing, in the prescribed form containing the

prescribed information; and

(b) all duties thereon have been paid.

"32(2) In such circumstances as may be prescribed, goods may be released prior to the accounting required under subs. (1) if the importer or owner of the goods makes an interim accounting in the prescribed manner and in the prescribed form containing the presecribed information, or in such form containing such information as is satisfactory to the Minister.

"32(3) Where goods are released under subs. (2), the person who made the interim accounting thereunder in respect of the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a).

"32(4) In such circumstances as may be prescribed, mail may be released prior to the accounting required under subs. (1) and prior to the payment of duties thereon.

"32(5) Where mail is released under subs. (4), the importer or owner of the mail shall, within the prescribed time, account for the mail in the manner described in paragraph (1)(a) and pay the duties thereon.

"32(6) The Governor-in-Council may make regulations

(a) specifying classes of persons who are authorized to account for goods under this section in lieu of the importer or owner thereof and prescribing the circumstances in which and the conditions under which such classes of persons are so authorized; and

(b) prescribing the circumstances in which goods that are not charged with duties may be released without any requirement of accounting."

[4] There is also s. 33 of the Act, which states:

"33. In such circumstances as may be prescribed, goods may be released prior to the payment of duties thereon, and where goods are released under this section the person who accounted for the goods shall pay the duties thereon within a prescribed time."

[5] Finally, I quote s. 154 of the Act, which prohibits misdescription of goods:

"154. No person shall include in any document used for the purpose of accounting under s. 32 a description of goods that does not correspond with the goods so described."

[6] These provisions, which date from the time the Act came into effect in 1986, allow the release of commercial shipments by an interim accounting in certain circumstances and subject to the prescribed regulations. This system is known as release of commercial shipments on minimum documentation (RMD). This allows an importer or broker to obtain possession of goods before duties are paid, so long as detailed accounting documents (document B-3) are produced within five days. The system also requires the importer or his broker to post security the amount of which is set by Revenue Canada, Customs and Excise.

[7] The procedure required by the Department is set out in a pamphlet entered in evidence

as Exhibit P-6. The RMD system requires that the importer produce an invoice or other document indicating, inter alia, "the unit of measurement and quantity of the goods, the value of the goods and a sufficiently detailed description of the goods" for the Customs officer responsible for the release to decide whether to grant the release or undertake an examination.

Facts

[8] This is the legislative background to certain events which occurred at Mirabel on March 7, 1988, when Denpha Customs Brokers Inc., the plaintiff's brokers, filed an interim release showing four packages of spectacle parts valued at 1,199,544.40f, or $261,980.49, to which was added by hand the following information:

(1) OP012 NMB9044 (2) OP010
10 = 880.00 1,198,664.40

[9] Attached to this document was the air waybill and invoice from the importer (sic) to the plaintiff. This three-page invoice gave a detailed description of the models, quantities, unit prices and total values of each item. The first item in the invoice was "10 Rhodoid Jaspe Clai frames only", for a price of 88f each and a value of 880f. The other items were all sunglasses the prices of which ranged from 99f to 196f.

[10] On receipt of this documentation, the Customs inspector by a form Y-50 requested particulars, namely "plastic, metal, etc. frame", and on this the brokers wrote:

"1 sunglasses

"2 plastic frame"

[11] The Customs inspector then decided to examine the goods in detail. He found that they consisted not of 10 sunglasses and 9,044 frames but 10 frames and 9,044 sunglasses. Because of this interim misdescription, the inspector seized all the goods, and some time later the defendant released the property but imposed a penalty of $8,789.73.

Plaintiff's Position

[12] The plaintiff argued that this penalty was not payable. The codes OP012 and OP010 appearing on the interim accounting are only a clerical error by the brokers, who inadvertently transposed the codes that are part of their computer system and which they use daily in services they provide regularly to the plaintiff. The brokers acted in good faith, they had no intention of defrauding the treasury, and in any case the accounting which the brokers would have filed within five days of the interim accounting would have clearly showed the various quantities of the goods.

[13] Further, the information given to the Customs inspector by the importer's detailed invoice clearly indicated the quantities of frames and glasses, and accordingly the error made cannot have any effect within the meaning of the Act.

[14] Finally, the plaintiff submitted, there was absolutely no need to enter the code numbers.

The goods were sufficiently described for purposes of the interim accounting and the commercial invoice itself was the basis of the information. The further information supplied to the inspector in response to his request Y-50, specifying "glasses" and "frames", met the Department's requirements. In the plaintiff's submission, the inspector simply acted prematurely. The filing of the detailed accounting within five days of the interim accounting would have eliminated any risk inherent in the type of mistake made.

Defendant's Position

[15] The defendant's short reply to all this was that, though made unwittingly, the mistake carried a penalty and the question of mens rea or the absence of any guilty intent is not relevant.

Case Law

[16] In The Queen v. Canabec Trailers Inc., [1982] 1 F.C. 788, Marceau, J., as he then was, considered certain declarations made when importing used trailers equipped with refrigeration systems. The declarations did not include the value of the systems because as far as the importer knew the system was exempt from import duty. It was not until later that the Customs inspectors found that, though the system was exempt from duty, its value still had to be added to the declared value of the trailers. The importer was accordingly assessed with additional duty and a penalty was added to this.

[17] In his conclusion, Marceau, J., said this at 791:

"On the other hand, the claim for a penalty appears to me to be without foundation. The defendant, through the testimony of its manager at the time, has proved to my satisfaction that its declarations were not made for the purpose of misleading or avoiding the payment of duty. On the contrary, the defendant acted in good faith, in my view, its error in interpreting the scope of the exemption being quite understandable, as indicated by the fact that it has been made by certain customs officers themselves."

[18] In The Queen v. Jay Norris Canada Inc. (1986), 1 F.T.R. 149; 11 C.E.R. 66, I myself stressed the importance to be given to commercial invoices. They are prima facie evidence of the validity of a declaration.

[19] In The Queen v. Mondev Corporation Limited (1974), 33 C.P.R.(2d) 183, at 199, my brother Addy, J., said the following:

"In considering the meaning of the words 'to make out a false invoice' in the context of s. 192 of the Customs Act one must consider the general character of the words creating other offences in the same section. All of these words imply something fraudulent, something furtive or an intention to deprive the Crown of revenue. From the fraudulent element contained in all of these expressions, it appears that Parliament intended the word 'false' to include an element of blameworthy intention and did not intend the word to be merely synonymous of 'incorrect' or 'erroneous'. It would seem, therefore, that in order to result in forfeiture under s. 192, there must exist an intention on the part of a person to deprive the Crown of some duty. Altogether apart from s. 248 of the Act , which relates to onus, the intention required in s. 192 would normally be implied by the mere fact that the declaration

as to value was not a true one, if no evidence were led by the defendant which would tend to contradict or negate any wilful or improper conduct or intention on the part of the person importing the goods.

"In the case at bar, although innocent intent and clerical error were pleaded in the statement of defence, there was no evidence of any kind adduced at trial as to what the clerical error was or where or how it occurred, or to establish good faith or lack of intention to undervalue, on the part of the defendant; the mere statement that there was a clerical error, without more, is not sufficient. Even if proof of good faith or of an innocent intent would exempt a person from the operation of s. 192, it seems clear to me that, once undervaluation for duty purposes has been established, the defendant would be obliged to adduce some credible evidence of good faith and lack of blameworthy conduct on its part ." (My emphasis)

[20] This same principle was followed in Her Majesty the Queen v. Kay Silver Inc., [1981] 2 F.C. 436, in which Walsh, J., would have ruled in favour of the Crown even if it was not possible to establish on the evidence that there was a general intent to defraud.

[21] In Steve Gervais v. The Queen, T-780-85, a decision of September 12, 1985, Rouleau, J., allowed a motion by the Crown to strike out the plaintiff's action against a seizure, as allowed by rule 419(1)(a) of the Federal Court Rules. Rouleau, J., adopted the principle that good faith is not relevant when a seizure is made on the basis of an inaccurate declaration.

[22] In André Noël and André Noël Limitée v. Her Majesty the Queen (1983), 6 C.E.R. 72, Addy, J., dismissed the importer's action to cancel a penalty, holding that a misdescription carried with it and justified a penalty regardless of the circumstances in which it was made.

[23] In R. v. Emilien Letarte, [1981] 2 F.C. 76, the Federal Court of Appeal held that it is not a Customs officer's responsibility to correct incomplete declarations or inform the importer thereof. In this sense, the Court said, it could not be maintained that the seizure was premature and so invalid.

Conclusions

[24] It follows from all this case law that the Customs Act imposes on all importers a strict requirement of submitting an accounting which contains no errors. On the facts, the result of transposing the code numbers was to show over 900 frames when there were only 10 and 10 glasses when there were several hundred. The evidence at the hearing was that the tariff on frames in 9.2% and glasses 10.2%, a difference of a couple thousand dollars in duty. It may be argued that in light of the total value of the goods this is not much, but it is still a tax payable which is objective and clear in itself.

[25] I must also take into account that this was an interim accounting any mistake in which, the plaintiff said, would certainly have been corrected in the detailed accounting. While admitting the cogency of this argument the fact remains, in my humble opinion, that the nexus of the obligation imposed on an importer and the provisions of the Act regarding seizure lies not in the consequences but in the very fact of a misdescription.

[26] On this point, I would stress that the system recently introduced by the defendant,

giving importers a rapid procedure using an interim accounting, requires the same standards of responsibility from the importer as formerly. It would indeed be contrary to the purpose of the system and the legislature's intentions in making specific provisions in the new Customs Act to make an interim accounting subject to a less strict examination.

[27] It was apparent during the hearing that the error made could be explained, and that accordingly the penalty imposed seemed a draconian and unfair sanction. However, the custom has long been established that regulations are made in the field of customs and excise taxes to ensure the security of the public treasury, and the severity of penalties has been recognized and approved by the courts. Even in opposition to the Canadian Charter of Rights and Freedoms, as in the decision of the Federal Court in Porter v. Her Majesty the Queen, T-370-88, a decision of March 14, 1989, [Porter v. Canada (1989), 26 F.T.R. 69], the trial judge held that the seizure of a truck used to transport unlawful alcoholic beverages, even after the beverages were confiscated and a fine imposed on the defendant, was not a breach of ss. 8, 11 and 12 of the Charter.

[28] It is clear, as I see it, that in order to adequately ensure that imported goods are cleared through Customs, the government has to rely on the accounting by the importer, whether interim or detailed. Somewhat as in the case of voluntary tax returns, the government must always assume that the returns are accurate. It is the only way of reconciling observance of the law with administrative requirements and at the same time avoiding the subjecting of all imported goods to complete inspection or the auditing in depth of all tax returns. It goes without saying that such a policy would simply lead to deadlock.

[29] In fact, the statutory measures authorizing seizure do not impose a principle of absolute liability or culpability. As can be seen from the case law, the importer may always avoid the seizure imposed on him by submitting evidence. Further, this is indicated by Canabec Trailers (supra) and Donald Stanley Harris v. Her Majesty the Queen, a decision of Walsh, J., No. T-2579-82, dated March 28, 1984. However, these are sui generis cases reflecting very special circumstances. Unfortunately, I do not have before me this type of special circumstance that would allow me to exempt the plaintiff from this strict obligation.

[30] It should not be suggested here that the importer or his brokers demonstrated the element of fraud which usually invites disapproval and hasty judgments. On the contrary, it was admitted that on all sides the experience of the brokers of their client, the plaintiff, has been most satisfactory in the field of customs declarations, and in view of the millions of dollars' worth of imported goods which have passed through their hands. I will simply say that the plaintiff was unable to shift the heavy burden of proof imposed on it by the Act.

[31] Accordingly, and with all due respect for the plaintiff, I must dismiss its action and find that the penalty imposed is correct in fact and in law. However, in view of the circumstances I make no order as to costs.

Action dismissed.

Editor: Elizabeth M.A. Turgeon/slg