

REASONS FOR JUDGMENT OF THE COURT BY:

DÉCARY J.A.

Date: 20060911

Docket: A-232-05

Citation: 2006 FCA 298

CORAM: DÉCARY J.A.
LÉTOURNEAU J.A.
NADON J.A.

BETWEEN:

A & R DRESS CO. INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on September 11, 2006)

DÉCARY J.A.

[1] At issue in this appeal from a decision of the Federal Court (2005 FC 681) is the interpretation of paragraph 110(b) of the *Customs Tariff*, S.C. 1997, c. 36, which provides a duties relief for obsolete or surplus goods. The issue being one of statutory construction, the standard of review, admittedly and undoubtedly, is that of correctness.

[2] The Appellant imports fabric from Korea, to make dresses. It pays the applicable customs duty in respect of the full value of the imported fabric. As a result of the process by which the dresses are manufactured in Canada, certain textile cuttings remain as leftover

material. The leftover material is no longer usable to manufacture dresses (A.B. p. 29) and is “thrown in the garbage” (A.B. p. 32). It is eventually destroyed by the Appellant in a manner directed by the Minister of Public Safety and Emergency Preparedness (“The Minister”).

[3] The Appellant filed a claim for a refund, by way of drawback, of the customs duty which had been paid in respect of the leftover material. The claim was made under Division 3 (“Obsolete or Surplus Goods”) of Part 3 (“Duties Relief”) of the *Customs Tariff*. Division 3 is composed of the following three articles:

<u>CUSTOMS TARIFF</u> (1997, C. 36)	TARIF DES DOUANES (1997, ch. 36)
[...]	...
PART 3 DUTIES RELIEF	PARTIE 3 EXONÉRATION DE DROITS
DIVISION 3 OBSOLETE OR SURPLUS GOODS	SECTION 3 MARCHANDISES SURANNÉES OU EXCÉDENTAIRES EXCÉDENTAIRES
<u>Definition of “obsolete or surplus goods”</u>	<u>Définition de « marchandises surannées ou excédentaires »</u>
109. In this Division, “obsolete or surplus goods” means goods that are	109. Dans la présente section, « marchandises surannées ou excédentaires » s’entend des marchandises qui, à la fois :
(a) found to be obsolete or surplus	a) sont jugées surannées ou excédentaires par :
(i) in the case of imported goods, by their importer or owner, or	(i) leur importateur ou propriétaire, dans le cas de marchandises importées,
(ii) in any other case, by their manufacturer, producer or owner;	(ii) leur fabricant, producteur ou propriétaire, dans les autres cas;
(b) not used in Canada;	b) ne sont pas utilisées au Canada;
(c) destroyed in such manner as the Minister of Public Safety and	c) sont détruites selon les instructions du ministre de la Sécurité publique et de la Protection civile;