



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Recourse Directorate 1686 Woodward Dr.
Ottawa, ON, K1A 0L8

Radu Sebastian Hociung
226 Willowdale Ave.
Waterloo, ON N2J 3M1

November 3, 2014

Subject: Request for a Ministerial Decision CS-74472/4273-14-0724

We have accepted your letter dated October 23, 2014 as a request for a ministerial review (appeal) under section 129 of the *Customs Act*.

In accordance with privacy legislation, we require written authorization from you confirming that we may correspond with Martin F. Mahlstedt of Giesbrecht Griffin Funk and Irvine LLP and release information relating to this matter. Until we receive such authorization, we will direct all correspondence relating to this request to you.

The Recourse Directorate of the Canada Border Services Agency (CBSA) has the mandate to conduct a full and impartial review of the decision taken by the officer who made the enforcement action. The Recourse Directorate is committed to making the redress process as transparent and timely as possible.

Please accept this letter as the written Notice of Reasons for Action required by section 130 of the *Act*. To assist you in understanding the decision-making process, I have attached a copy of the relevant sections of the *Act* outlining the various documents, timelines, and conditions. I have also attached a copy of the issuing officer's Narrative Report relating to the enforcement action for your review and consideration.

According to the report prepared by the issuing office, the enforcement action was taken because "the said goods (as per Statement of Goods Seized) are seized because they have been unlawfully imported by reason of Non-report" in contravention of section 12 of the *Customs Act*.

Briefly, these reports indicate that, on October 21, 2014, you presented yourself at the Queenston bridge port-of-entry in Niagara, Ontario. You declared to the primary officer having purchased two tires valued at \$500.00. The officer asked you whether you had bought or received anything other than the two tires and you replied "yes" you had purchased a bottle of Advil. The officer then proceeded to ask all the mandatory questions as outlined on the E-67 (Canada Border Services Agency Declaration Card) and you were referred for a secondary examination.

Upon examination of your vehicle were discovered undeclared gold and silver coins with a value of \$5,700.00 USD. These were seized for non-report and held for payment.

Under the provisions of section 12 of the *Customs Act*, all goods imported into Canada must be reported in accordance with the *Regulations Respecting the Reporting of Imported Goods*.

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Under the provisions of the section 110 of the *Customs Act*, an officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize them as forfeit.

Your comments have been noted and are appreciated. You appealed this enforcement action stating:

- The silver eagle coins are US legal tender and IRA eligible investments.
- The coins are classified as financial instruments by Canada Revenue Agency.
- The combined value of all the coins which are thus monetary instruments is USD \$5,700.00 and as their value was below the \$10,000 CAD, you were not required to declare them, per CBSA regulations.
- You were not asked about cash or financial instruments you carried, which would have required you to disclose.

Please be advised that I will be thoroughly examining the merits of this enforcement action.

At this point in the review, I should explain that that all goods entering Canada, regardless of how obtained or for whatever reason being imported and whether used or new, must be reported to the CBSA and the onus to do so rests upon the individual bringing the goods into the country. The duty to report goods is not dependent on any questioning or prompting by an officer as to whether any goods are being brought into Canada.

Please note that *Customs Act* is contravened when an incorrect declaration is made by, or on behalf of, the importer even if that error was made with a lack of intent to mislead Customs. An inadvertent error in reporting imported goods does not affect the validity of a seizure of those goods.

Please be advised that the coins are classified as goods, as there is a tariff code for collectable coins. Further to this I should inform you that I have confirmed that under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, currency includes all foreign and domestic bank notes and "circulation coins". Based on the seizure, the silver and gold coins are considered as "uncirculated", they are not considered to be currency and consequently, the seized coins are classified as goods, which must be declared in accordance with section 12 of the *Customs Act*.

You may, within 30 days from the date of mailing of this letter, provide any additional information or documentation that you believe will assist us in coming to a decision. If we do not receive a response within this timeframe, we will assume that none is forthcoming and make the decision based on the evidence currently on file. When replying, please quote our file number (see the Subject line) and send your response to the address below:

Canada Border Services Agency
Recourse Directorate
1686 Woodward Drive
Ottawa ON K1A 0L8

I can assure you that we will review and consider all documents and information before making a final decision. You will be notified by registered mail as soon as a decision is made.

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Yours truly,

A. Kendall
Adjudicator
Recourse Directorate
For the President of the Canada Border Services Agency

Tel. No.: (613) 960-5051
Fax No.: (613) 960-5129

Attachments

Canada

c.c. 4273-Canada Border Services Agency
Queenston Bridge - Traffic Operations
P.O. Box 126
Niagara Falls, Ontario
L2E 6T1

- P.S. As the claimant is stating that he was never asked at primary about cash or financial instruments he carried, please have the primary officer submit a detailed narrative report with all questions posed to the claimant and his answers.
- Please submit the full documentation package including the E-67, etc.
- It has been concluded that the silver coins are considered to be goods and therefore, were required to be reported as per section 12 of the *Customs Act*. As the claimant did not declare the silver/gold coins it appears there was a contravention of non-report as alleged.
- It appears the coins fall under tariff classification 7118.10.00.00. As the coins are silver/gold and are from the US (UST), it also appears they may be duty and tax free. However, as I am not an expert in reading the Customs Tariff I would ask that you please conduct a TEPS on-line rating to confirm the applicable duty and tax rate for these goods.
- For your information, Part 5, Chapter 2, Paragraph 101 of the Enforcement Manual states that when unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:
 - Level 1 and less than \$2000 value, forced accounting;
 - Level 1 and \$2000 or over in value, 5 per cent of value;
 - Level 2 or 3 and less than \$1000 value, forced accounting; or
 - Level 2 or 3 and \$1000 or over in value, 10 per cent of value.
- Based on this reference, if the coins are determined to be duty and tax free, and since they were seized level 1, it will be recommended to mitigate the terms of release to reflect the aforementioned. However, if it is determined that the coins are not duty and tax free it will be recommended to maintain the enforcement action and terms of release as originally assessed.

Please forward further comments or representations to my attention within 15 days from the date of this letter. If you do not respond within this timeframe, we will assume that none is forthcoming and will make the decision based on the evidence currently on file.

Thank you for your assistance in this matter.

c.c. File