

Court File No.: T-1295-20

**FEDERAL COURT**

BETWEEN:

**RONSCO INC.**

-and-

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
14-DEC-2020		
Shaylee Martin		
OTT	Doc. 4	

Plaintiff

**HER MAJESTY THE QUEEN**

Defendant

**STATEMENT OF DEFENCE**

1. The Attorney General of Canada defends this action on behalf of the Defendant, Her Majesty the Queen.
2. The Defendant does not admit any of the allegations contained in the Statement of Claim except as set out below.
3. The Defendant denies the allegations contained in paragraphs 4, 5, 8, 10, 17, 19, 26, 28, 29, 30, 31, 32, 34, 35, 36, 39 of the Statement of Claim.
4. The Defendant has no knowledge of, or takes no position on, the allegations contained in paragraphs 2, 3, 6, 7, 9, 11, 12, 13, 14, 15, 33, 37, 38, 40 of the Statement of Claim.
5. The Defendant admits the allegations contained in paragraphs 16, 20, 21, 22, 23, 24 and 27 of the Statement of Claim.
6. The Defendant denies that the Plaintiff is entitled to the relief sought in paragraphs 1, 41 and 42 of the Statement of Claim.

7. For over a decade, the Plaintiff, Ronsco Inc., imported into Canada rail wheels, specifically: H36 wheels, Class C, for use on freight rolling-stock (the “Goods”). The Goods are rail wheels produced to industry standards, which require a rough-cut bore. After importation, the rough bore is finished so that the goods can be attached to axles.
8. The Goods are properly classified under the *Customs Tariff* as “other wheels, with or without axles” under tariff item 8607.19.29 (the “Goods”). Goods classified under this tariff item attract a duty of 9.5% pursuant to the *Customs Tariff*.
9. On its importations of the Goods, the Plaintiff incorrectly declared the Goods under tariff item 8607.19.21 as, “blanks, for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; for self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; for use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes” (“wheel blanks for passenger coaches”). Goods classified under this tariff item attract no duties, and the Plaintiff paid no duties on its importations of the Goods.
10. The Goods a) are not blanks, and b) are not used for passenger coaches, self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic, or tramway vehicles (excluding subway cars) with magnetic track brakes – two clear, *prima facie*, evident and transparent requirements for classification under tariff item 8607.19.21.
11. By failing to correct its declarations related to tariff classification for the Goods and pay ensuing duties within 90 days, when it had reason to believe the declarations were incorrect, the Plaintiff contravened the *Customs Act*.

#### **Requirements of the *Customs Act***

12. The *Customs Act* and related legislation seeks to oversee, regulate and control the cross-border movements and importations of goods. To achieve these objectives, the *Customs Act* relies upon an effective voluntary self-reporting scheme.

13. Importers are required to account for imported goods and to pay any required duties, pursuant to section 32 of the *Customs Act*. This accounting includes accounting for tariff classification.
14. Subsection 32.2(2) of the *Customs Act* requires that an importer of goods shall, within ninety days after the importer has reason to believe that the declaration of tariff classification for any of those goods is incorrect, correct the declaration of tariff classification and pay any amount owing as duties and interest as a result of the correction.
15. This obligation to self-correct a particular importation ends four years after the goods were originally accounted for, pursuant to subsection 32.2(4) of the *Customs Act*.
16. An importer's failure to self correct within 90 days of an importation, when it has reason to believe its declaration as to tariff classification is incorrect, constitutes a contravention of the *Customs Act* that attracts a penalty, pursuant to section 109.1 of the *Customs Act* and the *Designated Provisions (Customs) Regulations*.
17. From time to time, the Canada Border Services Agency (the "CBSA") initiates verifications in order to promote and ensure compliance with *Customs Act* obligations, pursuant to section 42.01 of the *Customs Act*.

### **Verification of the Plaintiff's Importations**

18. On July 11, 2017, the CBSA initiated a trade compliance verification into the Plaintiff's importations of the Goods: Trade Compliance Verification #C-2016-011118. The objective of the verification was to promote and ensure compliance with customs accounting obligations as they relate to tariff classification. The verification period, from which the CBSA took samples, ran from January 1, 2015 to December 31, 2015, and covered a sample of five importation transactions of the Goods.

### **Interim Verification Report**

19. On April 20, 2018, the CBSA issued an Interim Verification Report, in which it preliminarily determined that, with respect to the Goods,

- a) the Goods should have been classified under tariff item 8607.19.29, as “other wheels, with or without axles”, and not under tariff item 8607.19.21 as “wheel blanks for passenger coaches” as declared by the Plaintiff;
- b) the Plaintiff previously had information giving rise to a reason to believe that the Goods were incorrectly classified because the legislative provisions at issue were “*prima facie*, evident and transparent”. Accordingly, a Notice of Penalty Assessment would be issued with a penalty assessed for each declaration made in error that had not been corrected within 90 days with ensuing duties paid, which constitute contraventions of the *Customs Act*.

20. On May 25, 2018, the Plaintiff submitted to the CBSA a response to the Interim Verification Report. In its response, the Plaintiff, *inter alia*:

- agreed that the Goods are not correctly classified under tariff item 8607.19.21 as “wheel blanks for passenger coaches”;
- stated that it had relied on classification advice from its customs broker, FedEx, in selecting the tariff item;
- agreed that the Goods are not “blanks”;
- acknowledged that the fact the Goods are not blanks was demonstrated by the Plaintiff’s contract with Taiyuan Heavy Industrial Railway Transit Equipment Co. Ltd. (“Taiyuan”), the Plaintiff’s principle supplier of the Goods, and by commercial invoices from Taiyuan; and
- indicated that it was willing to pay the administrative monetary penalty.

21. The Plaintiff did not dispute the CBSA’s preliminary finding that it had earlier reason to believe that the Goods were incorrectly classified under tariff item 8607.19.21. Instead, the Plaintiff argued in its response to the Interim Verification Report that it did not have reason to believe that the Goods would fall within a category on which duty is payable. The Plaintiff argued that the Goods were properly classified as “parts of axles or wheels” under tariff item number 8607.19.30, which, like tariff item 8607.19.21, is duty-free.

22. Neither before nor after the Interim Verification Report did the Plaintiff furnish any evidence indicating the Goods were used for for passenger coaches, self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic, or tramway vehicles (excluding subway cars) with magnetic track brakes, as required for classification under tariff item 8607.19.21.

### **Final Verification Report**

23. On July 24, 2018, the CBSA issued its Final Verification Report. The CBSA confirmed its preliminary decision with respect to the Goods that,
- a) the Goods were incorrectly classified by the Plaintiff under tariff item 8607.19.21 as “wheel blanks for passenger coaches” and that the Goods are properly classified under tariff item 8607.19.29, as “other wheels, with or without axles”; and
  - b) the Plaintiff previously had information giving rise to a reason to believe that the Goods were incorrectly classified because the legislative provisions at issue were “*prima facie*, evident and transparent”. Accordingly, a Notice of Penalty Assessment would be issued with a penalty assessed for each declaration made in error that had not been corrected within 90 days, which constitute contraventions of the *Customs Act*.

### **CITT Confirmed Proper Tariff Classification of the Goods**

24. On March 17, 2020, the CITT issued a decision in AP-2019-003, confirming the CBSA’s determination that the Goods are properly classified under tariff item 8607.19.29, as “other wheels, with or without axles” was correct. The decision dismissed the Plaintiff’s appeal of the CBSA’s tariff classification re-determinations for the verified samples. The Plaintiff did not appeal the CITT’s decision.

### **Notice of Penalty Assessment and Appeal**

25. On October 3, 2019, as a result of the finding that the Plaintiff had contravened the *Customs Act*, the CBSA lawfully issued a Notice of Penalty Assessment (No. 209442) to the Plaintiff, pursuant to s. 109.3 of the *Customs Act*. The Notice of Penalty Assessment indicated that the Plaintiff was required to pay an Administrative Monetary Penalty of a total of \$1,000.

26. Section 127 of the *Customs Act* provides that the debt due to Her Majesty as a result of a notice served under section 109.3 is final and not subject to review, except to the extent and in the manner provided by sections 127.1 and 129 of the *Customs Act*.
27. Section 129 of the *Customs Act* provides that any person on whom a notice is served under section 109.3 may request a decision of the Minister under section 131 by giving notice in writing, or by any other means satisfactory to the Minister.
28. By letter dated December 17, 2019, the Plaintiff contested the Notice of Penalty Assessment issued on October 3, 2019 and requested that the Minister make a decision under section 131 of the *Customs Act*.
29. On September 15, 2020, after considering the submissions of the Plaintiff and all the circumstances of the case, the CBSA issued a ministerial decision pursuant to section 131 of the *Customs Act*, which upheld the Notice of Penalty Assessment issued on October 3, 2019.
30. The Minister lawfully concluded that Plaintiff had contravened the *Customs Act*, confirming that:
  - a) it was evident from the language of tariff item 8607.19.21 that it did not apply to the Goods imported by the Plaintiff;
  - b) the Plaintiff had “reason to believe” its declarations that the Goods were classified under tariff item 8607.19.21 were incorrect because the relevant provisions are *prima facie*, evident and transparent; and
  - c) the Plaintiff had contravened the *Customs Act* by failing to make corrections to its tariff classification declarations and pay resulting duties within 90 days after having reason to believe that the declaration was incorrect.
31. On October 26, 2020, the Plaintiff commenced this action under section 135 of the *Customs Act*, which constitutes an appeal of the September 15, 2020 ministerial decision made pursuant to section 131 of the *Customs Act*.

### **The Plaintiff Contravened the *Customs Act***

32. In response to the allegations in paragraphs 29 to 39 of the Statement of Claim, the Defendant states the following.
33. The Plaintiff made importations of the Goods and incorrectly declared them as being under tariff classification item 8607.19.21, including during the verification period and otherwise during the years 2015 to 2018.
34. At the time of those importations, the Plaintiff had reason to believe its declarations of tariff classification for the Goods was incorrect because the relevant tariff items were *prima facie*, evident and transparent. It was clear from the wording of the provisions that the Goods were not properly classified as declared by the Plaintiff under tariff item 8607.19.21.
35. As the plaintiff did not correct its tariff classification declarations with respect to the Goods and pay the ensuing duties within 90 days, the plaintiff was in contravention of the *Customs Act*.
36. Advance rulings are binding only between the CBSA and the ruling recipient and cannot be relied upon by other importers. The fact that an advance ruling had been issued to another importer, for different goods, does not mean the Plaintiff did not have reason to believe that its tariff classification declarations for the Goods were incorrect.
37. American policy, statements made by CBSA personnel at later points in time, and a general statement by the Minister of Finance are irrelevant to whether the Plaintiff had reason to believe that its tariff classification declarations for the Goods were incorrect, and do not mean that the Plaintiff did not have “reason to believe”.
38. Accordingly, the Plaintiff’s appeal of the September 15, 2020 decision issued pursuant to section 131 of the *Customs Act* should be dismissed.

### **Jurisdiction of the Court on Section 135 Appeal**

39. This Court has jurisdiction to review the Minister's decision rendered under section 131 of the *Customs Act* by way of an appeal under section 135, and thus determine at trial whether the Plaintiff contravened the *Customs Act*.
40. However, this Court does not have jurisdiction in this section 135 appeal to grant the other relief sought by the Plaintiff, including:
  - a) Quashing the July 30, 2020 Detailed Adjustment Statements issued by the CBSA which required the Plaintiff to pay duties on its importations of the Goods from 2015 to 2018;
  - b) The reimbursement of duties and interest as "damages" or otherwise;
  - c) The reimbursement of legal and other fees the Plaintiff alleges it incurred, as "damages" or otherwise.
41. The Defendant further states that the Plaintiff has not plead any cause of action that could ground a claim for damages.
42. As a result of the foregoing, the Plaintiff is not entitled to any of the relief sought in the Statement of Claim.
43. The Defendant asks that the Plaintiff's claim be dismissed with costs payable to the Defendant.



44. The Defendant pleads and relies upon the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp); *Customs Tariff*, S.C. 1997, c. 36; *Tariff Classification Advance Rulings Regulations*, SOR/2005-256; *Designated Provisions (Customs) Regulations*, SOR/2002-336; *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 (as amended); and the *Federal Courts Act*, R.S.C., 1985, c. F-7.

December 14, 2020



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