Federal Court Cour fédérale

Date: 20241015

Docket: T-2581-22

Citation: 2024 FC 1630

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, October 15, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

DAVID SEGALL BLOUIN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA

Respondent

JUDGMENT AND REASONS

[1] "Time is money." No doubt inspired by this saying popularized by Benjamin Franklin, the applicant, David Segall Blouin, travelled to the United States to acquire a watch worth more than $100,000.

[2] The Canada Border Services Agency [CBSA] alleges that Mr. Blouin failed to report the watch when he returned to Canada. The applicant is now challenging the penalty imposed on him by the CBSA. He asserts that this penalty resulted from the mechanical application of the CBSA's guidelines and that the delegate of the Minister of Public Safety and Emergency Preparedness [Minister's delegate] who reviewed the decision failed to take into account the particular circumstances of his case.

[3] Mr. Blouin's application for judicial review is dismissed. The Minister's delegate understood that she had broad discretion to set the amount of the penalty. However, she reasonably concluded that nothing in the circumstances of the present matter justified departing from the guidelines.

I. Background

[4] Mr. Blouin describes himself as the owner of a transportation and logistics company. In July 2022, he purchased an A. Lange & Söhne watch from Luxury Bazaar, a retailer in Philadelphia, United States of America. The purchase price of the watch was US$89,990, or approximately CAD$115,000. On August 2, 2022, Mr. Blouin flew to Philadelphia to take possession of the watch. He returned to Montréal the same day. Upon arrival at Pierre Elliott Trudeau Airport, he did not report anything to CBSA officers.

[5] At the same time, Mr. Blouin asked Luxury Bazaar to send him the empty watch case by courier. This case was accompanied by a manifest showing a value of CAD$6. Following verifications that allowed them to find out the true value of the watch, CBSA officers issued a

notice of ascertained forfeiture under section 124 of the *Customs Act*, RSC 1985, c 1 (2nd Supp) [the Act]. The notice demanded a penalty of $34,650.65, or 30% of the watch's value, and Quebec sales tax in the amount of $11,405.83.

[6] Mr. Blouin then requested a Minister's decision on the notice of forfeiture under section 129 of the Act. The Minister's delegate therefore reviewed the case and, after giving Mr. Blouin an opportunity to make submissions, confirmed the notice of forfeiture and the amount of the penalty.

[7] First, the Minister's delegate found that Mr. Blouin had contravened section 12 of the Act by failing to report the watch upon his arrival at Pierre Elliott Trudeau Airport on August 2, 2022. She noted his explanations that he intended to make a report when he picked up the case, but she pointed out that the Act requires that imported property be reported at the time it is imported.

[8] Second, with respect to the amount of the penalty, the Minister's delegate indicated that the amount demanded was in line with the lowest level set out in the CBSA's guidelines, namely 30% of the unreported property's value. She concluded that [TRANSLATION] "this level is appropriate in the circumstances as the penalty was applied at the lowest level and is consistent with other similar situations".

[9] Mr. Blouin is now bringing an application for judicial review of the Minister's delegate's decision on the amount of the penalty. He did not appeal the first part of the decision, which

dealt with the contravention of section 12 of the Act, as would have been permitted under section 135 of the Act. It should be noted that an appeal from a decision finding that a contravention occurred is a distinct recourse from an application for judicial review of the penalty: *Chen v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at paragraph 9 [*Chen*]. I am therefore not empowered to rule on the validity of the contravention finding, but only on the reasonableness of the penalty.

II. Analysis

[10] Mr. Blouin submits that the Minister's delegate's decision is unreasonable within the meaning of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. Specifically, he alleges that the Minister's delegate fettered her discretion under the Act by mechanically applying the CBSA's guidelines, which require that a penalty of 30% of the seized property's value be imposed when the contravention falls within the category of the least serious violations. In his view, the Minister's delegate failed to consider the very particular circumstances of his case, which should have led her to impose a lower penalty than those set out in the guidelines, or even no penalty at all.

[11] I reject Mr. Blouin's contentions. The Minister's delegate did not fetter her discretion. In addition, the particular circumstances that Mr. Blouin relied on are contrary to the evidence before the Minister's delegate.

[12] An administrative authority exercising statutory discretion may issue guidelines that set out how it intends to use that discretion, thereby ensuring a certain degree of transparency and

predictability. However, the authority cannot treat these guidelines as legislation. Rather, it must be prepared to consider the particular circumstances of each case and to depart from the guidelines if necessary. If it applies the guidelines without regard to the specifics of the case, it is said to be fettering its discretion, and this renders its decision unreasonable: *Maple Lodge Farms v Government of Canada*, [1982] 2 SCR 2 at 7; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 32, [2015] 3 SCR 909; *Vavilov* at paragraph 108.

[13] In this case, the Minister's delegate did not fetter her discretion under paragraph 124(1)(b) of the Act, which empowers her to determine the appropriate amount of the penalty. In her decision, the Minister's delegate stated the following:

> [TRANSLATION]
> I have concluded that this level is appropriate in the circumstances as the penalty was applied at the lowest level and is consistent with other similar situations.

[14] As stated at paragraphs 127 and 128 of *Vavilov*, the reasonableness of the reasons must be assessed in light of the submissions made by the parties. The submissions that Mr. Blouin made are reproduced in full in the decision. Their main goal was to convince the Minister's delegate that no contravention had occurred. Mr. Blouin did not directly address the appropriateness of the penalty demanded. In these circumstances, the Minister's delegate was not required to discuss the issue of the penalty at length. The conciseness of her reasons is insufficient to show that she fettered her discretion.

[15] Mr. Blouin nevertheless maintains that by stating that [TRANSLATION] "the penalty was applied at the lowest level", the Minister's delegate mechanically applied the CBSA's guidelines

concerning the imposition of penalties and that she considered herself bound by them. I disagree. The Minister's delegate indicated that the level of the penalty [TRANSLATION] "is appropriate in the circumstances", which demonstrates that she took the specifics of the case into account. The Federal Court of Appeal's findings at paragraph 34 of *Chen* are also applicable to Mr. Blouin's case:

> ... There is simply no reason to think that the Minister's delegate, who has undeniable expertise in interpreting and applying the Act, was unaware of his discretion with respect to possible relief under that provision.

[16] Moreover, Mr. Blouin's allegations are based on a view of the facts that is not supported by the evidence before the Minister's delegate. Essentially, Mr. Blouin submits that he considered he had made a sufficient report when Luxury Bazaar entrusted the package containing the watch case to FedEx, as this package was accompanied by a statement regarding the watch's true value. He states that he intended to pay the customs duties once this package was delivered to him.

[17] However, the statements of the CBSA officers, which are in the Minister's delegate's record, paint a completely different picture. The manifest that accompanied the package indicated that the value was CAD$6. The package did not contain any document attesting to the watch's true value. It was only when a CBSA officer asked FedEx to provide additional information that an invoice showing this true value was transmitted. As part of the review process, the statements of the CBSA officers were disclosed to Mr. Blouin, but he did not dispute their content. On judicial review, he sought to introduce into evidence a tracking record regarding a package shipped on July 29, 2022, by FedEx. However, such a document is

inadmissible because it was not submitted to the Minister's delegate and is not captured by one of the recognized exceptions to the prohibition on adducing new evidence on judicial review. In any event, this document does not contradict the statements of the CBSA officers that the reported value of the package was CAD$6. In short, there is no reason to believe that Mr. Blouin intended to report the watch or that the whole affair was a mere misunderstanding.

[18] Moreover, it is difficult to understand what legitimate goal Mr. Blouin might have been pursuing in asking for the case to be sent to him by courier, when he was taking the watch with him. When questioned on this subject at the hearing, counsel for Mr. Blouin gave no satisfactory answer. A CBSA officer's notes explain that a known scheme is to enter the country with unreported property and then send the packaging or invoice by courier or mail.

[19] Mr. Blouin also states that he had already imported other watches of a lesser value and paid customs duties when those watches were delivered to him by the carrier. He claims that he expected to proceed in the same manner this time as well. Such a claim does not stand up to scrutiny. In these other instances, it must be presumed that the watch was shipped in its case and that its true value was reported. It was therefore normal that customs duties were collected upon delivery. In this case, Mr. Blouin imported the watch into Canada himself, and the value shown on the package sent by courier was nominal.

[20] Lastly, Mr. Blouin pointed out that the Minister's delegate did not find that he had acted in bad faith. He suggests that his good faith is an element that the Minister's delegate should

have taken into account and that would have led to the imposition of a lower penalty, or of a zero penalty. However, the guidelines describe the lowest level of contravention as follows:

> Level 1 applies to violations of lesser culpability. The degree to which the importer carried out a scheme to contravene the *Customs Act* was not furthered beyond an initial ineffectual attempt. This level might generally be applied to offences of omission, rather than commission. Commission offences require more active involvement by the importer.

[21] It was not necessary for the Minister's delegate to make a finding of bad faith in order to impose a Level 1 penalty. If such a requirement existed, many contraventions of the Act would not be subject to any penalties. In any event, it is apparent from a reading of the decision as a whole, in particular the description of the undisputed facts, that the Minister's delegate concluded that Mr. Blouin had resorted to a scheme aimed at avoiding the payment of taxes or customs duties. This also makes it possible to distinguish *Dutton v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1170, on which Mr. Blouin relies. In that case, the applicant had indeed challenged the penalty imposed and had submitted evidence that tended to show that he intended to comply with the Act and had taken steps to do so.

[22] In these circumstances, the Minister's delegate's decision to impose a penalty amounting to 30% of the watch's value was not unreasonable.

III. Conclusion

[23] For these reasons, the impugned decision is reasonable. Mr. Blouin's application for judicial review will therefore be dismissed, with costs.

JUDGMENT in T-2581-22

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. The applicant is ordered to pay costs to the respondent.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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