Federal Court  Cour fédérale

Date: 20251127

Docket: T-1011-25

Citation: 2025 FC 1891

Ottawa, Ontario, November 27, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

LUFTHANSA TECHNIK AKTIENGESELLSCHAFT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated February 25, 2025 [the Decision] of the Executive Director, Trade Compliance, of the Commercial and Trade Branch of the Canada Border Services Agency [the CBSA], made pursuant to section 3.3 of the *Customs Act*, RSC 1985, c 1 (2nd Supp) [the Customs Act], denying the Applicant's application for a waiver of interest pursuant to that section [the Waiver Request].

[2] As explained in greater detail below, this application for judicial review is granted, because the Applicant has satisfied the Court that the Decision is unreasonable, as it does not engage with the Applicant's principal submissions in support of the Waiver Request.

II. **Background**

[3] The Applicant is Lufthansa Technik Aktiengesellschaft, a company in the business of aircraft maintenance, repair, overhaul and modification. In 2022, the Applicant acted as the importer of record for certain goods purchased abroad and directed to be delivered to the Applicant's premises in Canada for repair and installation work.

[4] On April 18, 2024, the CBSA commenced a trade compliance verification of selected transactions involving goods imported by the Applicant during 2022.

[5] On December 10, 2024, the CBSA issued a Trade Compliance Verification Interim Report [the Interim Report], identifying the Applicant's incorrect use of Goods and Service Tax [GST] exemption codes in connection with its importation of goods. The CBSA concluded that the Applicant was therefore required to correct its erroneous GST filings, which resulted in the Applicant owing significant amount in unpaid GST [the GST Owing]. The Applicant was afforded an opportunity to comment on the Interim Report, the conclusions of which were subsequently confirmed in a Trade Compliance Verification Final Report dated March 6, 2025 [the Final Report].

[6] The Applicant is not seeking judicial review of either the Interim Report or the Final Report and is not challenging the GST Owing. However, on February 7, 2024, the Applicant submitted the Waiver Request pursuant to s 3.3 of the Customs Act, seeking a waiver of interest on the GST Owing. The record before the Court indicates that the interest figure calculated by the CBSA is $3,717,912.22. I will address the details of the Waiver Request later in these Reasons. In short, the Applicant argued in its written submissions in support of the Waiver Request that, as the GST owing would be refunded to the Applicant as an input tax credit, the debt had not caused any revenue loss to the Government of Canada.

[7] On February 18, 2025, the CBSA's Verification and Trade Enforcement Unit authored a document entitled Case Synopsis and Recommendation, which analyzed the Applicant's request and recommended that it be denied [the Recommendation]. Following receipt of the Recommendation, through a letter dated February 25, 2025 [the Decision Letter], the Executive Director, Trade Compliance, of the Commercial and Trade Branch of the CBSA, acting as a designated officer for this purpose under the Customs Act [the Officer], issued the Decision denying the Waiver Request.

III. **Decision under Review**

[8] After referencing the Applicant's Waiver Request, the Decision Letter set out as follows the basis for that request and the reasoning in support of its denial:

> […]
>
> In your Section 3.3 application, you asked that CBSA waive interest because Goods and Services Tax (GST) owing, as a result of corrections required by section 32.2 of the Act, will be refunded to LHT as an Input Tax Credit (ITC) and it is your claim that the

debt has not caused any revenue loss to the Government of Canada. In addition, you cite the Canada Revenue Agency's (CRA) *GST/HST Memorandum 16.3.1, Reduction of Penalty and Interest in Wash Transaction Situations*. Finally, you note paragraph 2 of the *General Agreement on Tariffs and Trade 1947* and suggest that imposing interest on LHT's imports in circumstances where the GST wash transactions policy would apply if a vendor in Canada failed to charge/pay GST on a domestic transaction would discriminate against imported goods and is arguably contrary to Canada's international trade obligations.

The CBSA's policy on the Minister's discretionary use of subsection 3.3(1) of the Act applies primarily to situations where a client can successfully demonstrate that at least one of the following types of situations exist(s):

- **Extraordinary circumstances beyond the client's control prevented the client from complying with legislation enforced by the CBSA** – for example: natural or man-made disasters; civil disturbances or disruptions in service; a serious illness or accident; and serious emotional or mental distress;

- **Actions of the CBSA led to the client's failure to comply with legislation enforced by the CBSA or contributed significantly to the amount of interest assessed** – such as: an error in materials available to the public; client was given incorrect written information by a CBSA employee; or errors or significant delays in CBSA processing; or

- **The client made a valid voluntary disclosure of the non-compliance** – the client initiated the disclosure voluntarily and not as a result of any action taken by the CBSA or other government department.

I have reviewed all of your submissions for interest relief. I do not find that any of the circumstances described above would apply.

In addition, the CRA policy document concerning the reduction of interest in wash transaction situations explicitly does not apply to imported goods. However, even if it were to apply to imported goods, your company has not provided any information or representations demonstrating how the required conditions in order

> for this policy to apply, as set out in paragraph 22 of the document, were met. Finally, it should be noted that even if the policy were to apply and the conditions set out in paragraph 22 are met, the waiver or cancellation of interest is not automatic; in that situation the CRA would consider waiving or cancelling interest.
>
> As a result, after consideration, no waiver of interest is granted. Interest will be charged at the specified rate dating back to 2022.
>
> […]

[9] On March 27, 2025, the Applicant filed a Notice of Application seeking judicial review of the Decision.

IV. **Tax Law and Policy**

[10] Pursuant to subsection 32(1) of the Customs Act, importers are required to account for the goods they import into Canada and to pay any required duties on the goods. Pursuant to the definitions in subsection 2(2) of the Act, "duties" include GST imposed under the *Excise Tax Act*, RSC, 1985, c E-15 [Excise Tax Act], other than for purposes of certain sections of the Excise Tax Act that do not apply to the matter at hand.

[11] Section 212 of the Excise Tax Act requires the importer to pay 5% GST on the value of the goods imported. However, section 213 of the Excise Tax Act provides that GST is not payable in respect of goods included in Schedule VII. Exemption codes are provided by the CBSA for use on the importation forms that record Schedule VII goods.

[12] Under subsection 32.2(2) of the Customs Act, within ninety days after an importer has reason to believe that its declaration of value for duty is incorrect, the importer is required to

make a correction to the declaration in the prescribed form and manner and pay any amount owing as duties and any interest owing on that amount.

[13] Section 3.1 of the Customs Act provides that interest may be computed at either a prescribed rate or at a specified rate. The prescribed rate is calculated by a formula based on the yield of Government of Canada Treasury Bills (*Interest Rate for Customs Purposes Regulations*, SOR/86-1121, s 3). The specified rate is defined as the prescribed rate plus 6% (Customs Act, s 2). Pursuant to subsection 33.4(1) of the Customs Act, any person who is liable to pay an amount of duties in respect of imported goods shall, in addition to paying the duties, pay interest at the specified rate. However, section 3.2 of the Customs Act provides that, where a person is required to pay interest on an amount at the specified rate, the Minister of Public Safety and Emergency Preparedness [the Minister] or any other officer designated by the Minister may authorize the person to pay interest on that amount at the prescribed rate instead.

[14] Subsection 3.3(1) of the Customs Act further provides as follows that the Minister or any designated officer may at any time waive or cancel all or any portion of any penalty or interest otherwise payable by a person:

Waiver of penalty or interest	**Renonciation aux pénalités ou aux intérêts**
3.3 (1) Except with respect to the collection of any debt due to Her Majesty under Part V.1, the Minister or any officer designated by the President for the purposes of this section may at any time waive or cancel all or any portion of any penalty or interest otherwise	**3.3 (1)** Sauf à l'égard de la perception de toute créance de Sa Majesté sous le régime de la partie V.1, le ministre ou l'agent que le président charge de l'application du présent article peut, en tout temps, annuler tout ou partie des pénalités ou intérêts à payer par ailleurs par une personne

payable by a person under this Act.	en application de la présente loi, ou y renoncer.

[15] *Memorandum D11-6-4*, published by the CBSA and entitled "Relief of Interest and/or Penalties Including Voluntary Disclosure" [the Waiver Memorandum], provides guidance on the exercise of this discretionary authority to waive interest and penalties. The Waiver Memorandum states that the CBSA will consider whether it is appropriate to grant relief on a case-by-case basis and identifies, in a section entitled "Part I - Criteria for Relief", the following conditions and factors to guide officials in exercising their discretion when they consider applications for relief [the Criteria]:

A. extraordinary circumstances beyond the taxpayer's control that prevented them from complying with their legislative obligations;

B. certain actions of the CBSA that primarily caused or significantly contributed to the amount of interest to which the taxpayer became liable; and

C. voluntary disclosures on behalf of the taxpayer.

[16] The parties' arguments in this application also raise a policy document published by the Canada Revenue Agency entitled "Reduction of Penalty and Interest in Wash Transaction Situations" [the Wash Transactions Policy], which provides guidelines on so-called "wash transaction" situations where a supplier fails to charge and remit GST from a recipient that is a GST registrant and that would have been entitled to claim a full input tax credit had the tax been applied correctly. The Wash Transactions Policy provides guidelines for the reduction of

penalties and interest, as authorized under section 280 of the Excise Tax Act, in wash transaction situations. The Wash Transactions Policy explains that waiver of penalty and interest is an exceptional matter but recognizes that on occasions errors in applying tax do not result in any net revenue loss to the government, in which case waiving or cancelling a portion of the penalty and interest payable may be supported.

[17] Finally, the parties also advance arguments in relation to the World Trade Organization's *General Agreement on Tariffs and Trade* (GATT 1947), to which Canada is a signatory [the GATT]. The significance of the GATT will be explained later in these Reasons.

V. **Issues and Standard of Review**

[18] This matter raises the following issues for the Court's determination:

A. Did the Decision reasonably reject the Waiver Request?

B. Was the Decision reasonable, and reached in a procedurally fair manner, in imposing the specified rate of interest rather than the prescribed rate?

C. In the event this application succeeds, what is the appropriate relief to be granted by the Court?

[19] The parties agree, and I concur, that the court's review of the merits of the Decision is subject to the reasonableness standard of review, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (at paras 16-17).

[20] In relation to procedural fairness arguments, the standard of review is akin to correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35), requiring an assessment as to whether the administrative proceedings were procedurally fair (*Algoma Tubes Inc v Canada (Attorney General)*, 2022 FCA 89 at para 8).

VI. **Analysis**

A. *Did the Decision reasonably reject the Waiver Request?*

[21] In support of its position that the Decision to reject the Waiver Request was unreasonable, the Applicant argues that the Decision is a product of fettered discretion and that the Officer failed to provide sufficient reasons for the Decision.

[22] As noted above, the merits of the Decision are reviewable on the standard of reasonableness. However, in *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 [*Stemijon*] at paragraphs 24, the Federal Court of Appeal explained that a decision that is the product of fettered discretion is *per se* unreasonable. This principle has not been affected by the subsequent decision in *Vavilov* (*Az-Zahraa Housing Society v Canada (National Revenue)*, 2023 FC 842, at paras 22-23).

[23] The Applicant argues that the Officer fettered their discretion by basing the Decision solely on the three Criteria identified in the Waiver Memorandum, without considering whether the particular circumstances advanced by the Applicant in the Relief Request warranted a positive exercise of discretion.

[24] The Applicant accepts that administrative agencies may issue guidelines or policy statements to assist in their decision-making. However, it invokes the following explanation in *Stemijon* of the manner in which a decision-maker may fetter its discretion by relying exclusively on such guidelines (at para 60):

> 60. However, as explained in paragraphs 20-25 above, decision-makers who have a broad discretion under a law cannot fetter the exercise of their discretion by relying exclusively on an administrative policy: *Thamotharem, supra* at paragraph 59; *Maple Lodge Farms, supra* at page 6; *Dunsmuir, supra* (as explained in paragraph 24 above). An administrative policy is not law. It cannot cut down the discretion that the law gives to a decision-maker. It cannot amend the legislator's law. A policy can aid or guide the exercise of discretion under a law, but it cannot dictate in a binding way how that discretion is to be exercised.

[25] The Applicant argues that the circumstances underlying the decision in *Stemijon* are analogous to the case at hand. That case involved a request by the applicant taxpayers to the Minister of National Revenue [MNR] for relief against interest and taxes, which the MNR denied because the taxpayers did not fall within one of the three specific scenarios set out in a relevant policy statement (see para 13). The Federal Court of Appeal concluded that the MNR's decision was unreasonable, in that it did not draw upon the law that was the source of the relevant authority, but rather drew exclusively upon the administrative policy statement (at para 43)

[26] The Applicant also relies on subsequent decisions of this Court, which have found administrative decisions to be unreasonable because the relevant decision-makers considered only applicable guidelines or policy and thereby failed to give any consideration to the applicant's particular circumstances (*Gordon v Canada (Attorney General)*, 2016 FC 643 at

paras 35-37; *687567 Canada In. v Canada (Foreign Affairs and International Trade Canada)*, 2013 FC 1191 at paras 75-76).

[27] The Respondent does not take issue with the jurisprudential principles upon which the Applicant relies. Rather, the Respondent submits that a review of the Decision Letter demonstrates that, although the Officer considered the Relief Request within the framework of the Criteria enumerated in the Waiver Memorandum, they also considered the Applicant's submissions outside that framework.

[28] The Applicant's arguments challenging the reasonableness of the Decision are premised in part on treating not only the Decision Letter, but also the Recommendation, as informing an understanding of the reasons for the Decision. I do not understand the Respondent to take issue with this approach, as some of its own submissions also rely on the Recommendation. I accept that this approach is appropriate.

[29] Applying this approach, the Applicant argues that various portions of the Recommendation support a conclusion that the analysis therein, and the resulting recommendation against granting relief under section 3.3, was based entirely upon considering whether the Relief Request fell within the Criteria in the Waiver Memorandum. The Applicant notes the following:

A. The introductory paragraph of the analysis portion of the Recommendation states that the Minister may grant relief from the application of penalty and interest where specific situations or criteria exist;

B. Following identification of the Criteria in the Waiver Memorandum, the Recommendation conducts an analysis under each of the three Criteria, at the end of each of which it states that the relevant criterion was not applicable and/or met;

C. The analysis portion of the Recommendation then concludes by stating that, after reviewing the information provided, the author does not believe that the Applicant qualifies for relief under section 3.3 of the Customs Act; and

D. The final portion of the Memorandum states that the author has reviewed the matter in accordance with the Criteria and, based upon the information provided by the Applicant, does not recommend granting relief.

[30] If I were basing my review of the Decision solely on the Recommendation, I would agree with the Applicant that the Decision is a product of fettered discretion. That is, a review of the Recommendation would support a conclusion that the author analysed the Relief Request solely within the framework of the Waiver Memorandum and arrived at the conclusion that relief should not be granted solely because the Criteria were not satisfied.

[31] However, I agree with the Respondent that the Decision Letter demonstrates that the Officer who actually made the Decision went beyond consideration of the Waiver Memorandum. As reflected in the excerpt from the Decision Letter reproduced earlier in these Reasons, the Decision Letter explicitly set out the Applicant's arguments. The Officer then stated that the CBSA's policy on the Minister's discretionary use of subsection 3.3(1) of the Customs Act applies primarily to situations where a client can successfully demonstrate that at least one of the

Criteria exists (my emphasis). That is, the Decision Letter recognized both the arguments that the Applicant was pursuing and the fact that the discretion afforded by section 3.3 applied not only to situations where the Criteria were met.

[32] More importantly, following a conclusion that none of the circumstances identified in the Criteria would apply, the Officer considered the application of the Wash Transactions Policy, before concluding that no waiver of interest should be granted. The consideration of the Wash Transactions Policy demonstrates that, unlike the Recommendation, the analysis in the Decision Letter was not restricted to consideration of the three Criteria.

[33] I note the Applicant's submission that the Decision Letter's consideration of the Wash Transactions Policy itself represented a fettering of discretion, as the Officer concluded that the policy did not apply, which was not what the Applicant was arguing. I will return shortly to the Applicant's argument surrounding the Wash Transactions Policy, when considering the Applicant's position that the Officer failed to provide sufficient reasons for the Decision. However, as the Applicant alluded to in oral submissions, an argument that a decision-maker fettered its discretion, in failing to give sufficient attention to an administrative policy that is acknowledged not to apply to the particular statutory scheme under review, is an unusual argument.

[34] In my view, the principles surrounding the fettering of administrative decision-making authority are not the correct lens through which to view the Applicant's concerns about the Decision. Rather, as explained below, my conclusion that the Decision is unreasonable turns on

the Applicant's argument that the Decision does not provide reasons that engage with the Applicant's principal submissions.

[35] Again, the relevant jurisprudential principles are not in dispute. As emphasized in *Vavilov*, the principles of justification and transparency that animate reasonableness review require that an administrative decision-maker's reasons meaningfully account for the central issues and concerns raised by the parties (at para 127). As expressed more recently in *Meyer Housewares Canada Inc v Canada (Attorney General)*, 2024 FC 1435, a decision is unreasonable if it fails to engage meaningfully with key issues raised by an applicant (at para 28). Regardless of the fact that a decision is discretionary, responsive reasons are necessary to achieve the transparency and intelligibility required to withstand reasonableness review (at para 35).

[36] As previously noted, the Applicant advanced three principal arguments:

A. given that the Applicant is a GST registrant and therefore entitled to input tax credits [ITC], its errors in applying the exemption codes and resulting tax debt caused no revenue loss to the government of Canada [the ITC Argument];

B. in similar circumstances (although outside the context of the importation of goods) involving collection of GST by the CRA, the Wash Transactions Policy provides that a waiver of interest may be available when errors do not result in any net revenue loss to the government [the Wash Transactions Policy Argument]; and

C. imposing interest on the Applicant's imports, in circumstances where the Wash Transactions Policy would apply on a domestic transaction, would discriminate against imported goods and is contrary to Canada's international trade obligations under the GATT [the GATT Argument].

[37] The Applicant also emphasized in the Relief Request that the CBSA was required to consider the Applicant's particular circumstances and could not limit its consideration of the Relief Requests to whether any of the three Criteria in the Waiver Memorandum applied. Indeed, none of the Applicant's arguments sought to engage the Criteria.

[38] However, as previously noted, the analysis in the Recommendation was indeed limited to application of the three Criteria, as was the first portion of the Officer's analysis in the Decision Letter. Therefore, for the Decision to withstand reasonableness review, on the basis that it intelligibly engaged with the Applicant's principal submissions, the reasoning demonstrating that engagement would have to be found in the remaining substantive paragraph of the Decision Letter, which for ease of reference I repeat as follows:

> In addition, the CRA policy document concerning the reduction of interest in wash transaction situations explicitly does not apply to imported goods. However, even if it were to apply to imported goods, your company has not provided any information or representations demonstrating how the required conditions in order for this policy to apply, as set out in paragraph 22 of the document, were met. Finally, it should be noted that even if the policy were to apply and the conditions set out in paragraph 22 are met, the waiver or cancellation of interest is not automatic; in that situation the CRA would consider waiving or cancelling interest.

[39] As demonstrated by this paragraph, the Decision Letter considered the Wash Transactions Policy, noting that it did not apply to imported goods. I appreciate that the Applicant was not arguing that the policy was technically applicable but rather raised it as an indicator of other similar circumstances in which interest can be waived when errors do not result in any net revenue loss to the government. However, the Officer's treatment of the argument extended beyond the conclusion that the policy did not apply to imported goods and considered conditions that the policy required to be met in order to favour granting relief. The Officer found that the Applicant had not provided any information to demonstrate how those conditions were met in the case at hand.

[40] As the Respondent emphasizes, judicial review of administrative decision-making does not require perfection in a decision-maker's reasons, and it is not the Court's role to consider how it might have analysed an argument in the decision-maker's stead. In my view, the Decision Letter demonstrates engagement with the Wash Transactions Policy Argument sufficient to withstand reasonableness review in connection with that argument.

[41] While the Decision Letter is silent on the GATT Argument, that argument was to some extent premised on the asserted similarities between the Applicant's circumstances and those contemplated by the Wash Transactions Policy. I interpret the Decision Letter as demonstrating that, given the Officer's conclusion that the Wash Transactions Policy did not assist the Applicant, the GATT Argument required no further analysis. In other words, the Applicant has not convinced me that the lack of an explicit analysis of the GATT Argument renders the Decision unreasonable.

[42] However, in my view, the Decision Letter's paragraph engaging with the Wash Transactions Policy Argument does not materially engage with the ITC Argument. I appreciate that the Wash Transactions Policy itself involves circumstances where the government suffers no revenue loss resulting from a tax error. However, the Decision Letter's analysis of the Wash Transactions Policy Argument addresses only the extent to which that policy informed the determination of the Relief Request. That analysis does not engage with the Applicant's submission that, in the absence of revenue loss to the government, no interest is warranted.

[43] Expressed in slightly more detail, the ITC Argument, which I would regard as the Applicant's primary argument in support of its Relief Request, argued that in the Applicant's particular circumstances, in which the Applicant's errors resulted in no government revenue loss (or indeed any benefit to the Applicant), the imposition of interest represented an unnecessary and inappropriate windfall to the government. Nowhere in the Recommendation or the Decision Letter is this argument considered.

[44] The Respondent justifies the rejection of the ITC Argument on the basis of a submission that penalties and interest are not charged to make the government whole but rather to achieve the objective of deterrence as a response to taxpayer noncompliance with the Customs Act (see *Demma v Canada (Attorney General)*, 2024 FC 2091 at para 21, in the context of penalties and interest imposed under the Excise Tax Act). In the Respondent's submission, the Applicant being a GST registrant (while many non-resident importers are not), the resulting availability of ITCs, and the consequent lack of impact of the Applicant's errors upon government revenues are not material to achieving the objective of deterrence.

[45] While I understand the Respondent's submission, this reasoning is not found (in my view, either explicitly or implicitly) in the Recommendation or the Decision Letter. There is no basis in the record leading to the Decision for the Court to conclude that the Officer considered the ITC Argument but rejected it based on the reasoning advanced by the Respondent. I find that the Decision is unreasonable, because the Officer failed to engage with the Applicant's primary argument.

B. *Was the Decision reasonable, and reached in a procedurally fair manner, in imposing the specified rate of interest rather than the prescribed rate?*

[46] As I have found that the Decision is unreasonable, based on the arguments canvassed above, the Court will allow this application for judicial review and grant appropriate relief, the form of which will be addressed under the next issue below. As such, it is unnecessary for the Court to consider the issue the Applicant raises in the alternative, related to the particular category of interest rate that CBSA has imposed. However, for the sake of good order, I will address this issue briefly.

[47] The last line of the Decision Letter states that interest will be charged at the specified rate. The Applicant argues that, in this respect, the Decision is both procedurally unfair and unreasonable.

[48] Invoking principles of procedural fairness, the Applicant submits that the CBSA did not afford the Applicant an opportunity to make submissions on whether interest should be charged at the (higher) specified rate or the (lower) prescribed rate.

[49] In challenging the reasonableness of this aspect of the Decision, the Applicant argues that the Officer imposed the specified rate without providing any supporting reasons; that this aspect itself represents a fettering of discretion as the Recommendation refers to interest being applied at the specified rate based solely on a referenced CBSA policy (CBSA Memorandum D-11-6-5); and that reliance on that policy is irrational because the policy itself references outdated legislation and contains erroneous characterizations of the applicable statutory provisions.

[50] In my view, the Respondent has convincingly responded to all these arguments by pointing out that the specified rate is the rate that applies by default under the relevant legislation. The following three provisions of the Customs Act, referenced earlier in these Reasons, are relevant to the Respondent's submission:

A. Section 3.1 provides that interest may be computed at either a prescribed rate or at a specified rate;

B. Subsection 33.4(1) provides that any person who is liable to pay an amount of duties (which, under the subsection 2(2) definition, includes GST) in respect of imported goods shall, in addition to paying the duties, pay interest at the specified rate;

C. Section 3.2 provides that, where a person is required to pay interest on an amount at the specified rate, the Minister or any other officer designated by the Minister may authorize the person to pay interest on that amount at the prescribed rate instead.

[51] Based on these provisions, I agree with the Respondent's position that, in the absence of an exercise of discretion under section 3.2, the legislation applies the specified rate to the GST Owing. It was available to the Applicant to advance submissions, in the context of its Waiver Request or otherwise, in support of a request for a discretionary decision to apply the prescribed rate instead. However, the Applicant did not do so.

[52] In relation to procedural fairness, it is clear from the fact that the Applicant submitted the Waiver Request that it was aware that it faced the imposition of interest. Given that, in the absence of a discretionary decision to apply the prescribed rate, the application of the specified rate is matter of statute, I find no merit to any argument that the Applicant did not know the case it had to meet. Nor was the Applicant deprived of a meaningful opportunity to present its own case fully and fairly.

[53] Turning to reasonableness, considering the Decision in the context of the statutory framework, I infer that the Officer imposed the specified rate because it was prescribed by statute and the Applicant had advanced no submissions, or indeed any request, for a discretionary decision in favour of the lower prescribed rate. In that respect, the decision is intelligible, rational, and cannot be characterized as a product of fettered discretion. To the extent the Applicant is arguing that its Waiver Request should itself have been interpreted by the Officer as a request under section 3.2 for consideration of the prescribed rate, I find no merit to that argument, as there is nothing in the Waiver Request that can reasonably be characterized as either an explicit or implicit request for such relief.

[54] As such, if I were not granting this application for judicial review for the reasons explained under the first issue analysed above, I would not have found in the Applicant's favour under the second issue.

C. *In the event this application succeeds, what is the appropriate relief to be granted by the Court?*

[55] Under this issue, the parties argued their respective positions on whether, if this application were to succeed, the Court should impose a remedy akin to a directed verdict (the Applicant's position) or the more usual remedy of quashing the Decision and referring it back to the CBSA for redetermination (the Respondent's position).

[56] As the Applicant notes, *Vavilov* addressed this issue as follows at paragraph 142:

> 142. However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended … An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose .... Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed ...

[57] In support of its position that the Court should grant relief that not only sets aside the Decision but also orders a waiver of interest pursuant to subsection 3.3(1) of the Customs Act (or orders the CBSA to grant such a waiver), the Applicant argues that the only reasonable outcome on the redetermination of its Relief Request is a finding that imposing interest would be inappropriate and contrary to the purposes of section 3.1 and 3.3 of the Customs Act.

[58] The Applicant argues that imposing millions of dollars of interest upon it would amount to a significant and unjustified windfall for the government at the Applicant's expense. The Applicant reiterates that it has not benefited, and the government has not suffered, any loss resulting from the Applicant's use of the incorrect GST exemption codes, and it notes that there has been no suggestion that the Applicant acted in bad faith or intentionally applied the incorrect codes.

[59] The Applicant also submits that imposing interest in this case is inconsistent with the deterrent and punitive rationale underlying the interest provisions in the Customs Act. Relying on relevant House of Commons debates, it argues that interest is intended to disincentivize noncompliance and to deter deliberate and chronic late payers, a profile distinct from that of the Applicant. The Applicant further submits that the deterrence represented by interest was intended to be tempered by the Minister's ability to waive interest, which supports the Applicant being granted such relief in the case at hand.

[60] I decline to exercise my discretion in the manner the Applicant requests. The Applicant's arguments are comparable to those that it advanced in support of the Waiver Request. With the

decision quashed and returned to a different designated officer for redetermination, the Applicant will have an opportunity to have those arguments reconsidered, along with any updated submissions (including in relation to the selection of the appropriate interest rate) that the Applicant may wish to provide. However, as contemplated by paragraph 142 of *Vavilov*, it is the administrative decision-maker that Parliament has entrusted with the consideration of such arguments, and I find no merit to the Applicant's position that those arguments support only one reasonable outcome.

VII. **Costs**

[61] The parties have jointly proposed that costs of this application be quantified in the lump sum amount of $5000, payable to the successful party. I agree that this is an appropriate amount.

[62] Therefore, as the Applicant has prevailed in this application, my Judgment will award costs to the Applicant in the amount of $5000.

JUDGMENT IN T-1011-25

THIS COURT'S JUDGMENT is that:

1. This application is granted, the Decision is set aside, and the Applicant's Waiver Request is returned to the CBSA for redetermination in accordance with these Reasons by a different officer designated for the purposes of section 3.3 of the Customs Act, following an opportunity for the Applicant to provide updated submissions.

2. Costs of this application are awarded to the Applicant in the lump sum all-inclusive amount of $5000.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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