



TC03985

Appeal number: TC/2013/07125

*CUSTOMS DUTIES– seizure of gold jewellery – restoration -
reasonableness of decision to refuse restoration – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FAIZA SAID

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE GUY BRANNAN
 MRS CAROLINE DE ALBUQUERQUE**

Sitting in public at Bedford Square, London WC1 on 23 July 2014

The Appellant appeared in person

William Hayes for the Respondents

DECISION

Introduction

5 1. This is an appeal against the decision of the UK Border Force (the Respondents) dated 6 September 2013 to refuse to restore 13 items of gold jewellery ("the jewellery") seized at Heathrow Airport on 6 July 2013.

2. The Appellant appeared in person with the assistance of her daughter, Ms Naima Noor.

10 The facts

3. The Appellant and Officer Raymond Brenton both gave evidence and were cross-examined.

4. We find the following facts.

5. On 6 July 2013 the Appellant was stopped in the Green Channel (i.e. "Nothing to Declare" Channel) at Terminal 3 Heathrow Airport, having just arrived on a flight
15 from Dubai, United Arab Emirates.

6. We were shown an e-mail from the Border Force Officer ("the Officer") who stopped the Appellant describing what happened.

7. The Appellant told him that she had nothing to declare. The Officer asked the
20 Appellant if she had purchased any goods on her trip. The Appellant replied that she had not done so, explaining that she had been on holiday to Dubai.

8. The Officer searched the Appellant's baggage, finding a quantity of gold jewellery. The Officer, in his e-mail, said that this jewellery was dispersed across all of the passenger's baggage including her handbag. The Appellant, in her evidence
25 before the Tribunal, insisted that the jewellery had all been in her handbag. We consider that, however, nothing turns on this distinction.

9. The Officer asked the Appellant where she had acquired the jewellery and the Appellant informed him that she had purchased goods from Dubai. When asked about the value of the jewellery Appellant replied that she did not know its value and that it
30 had been gifts for her family. The Officer asked for a receipt for the goods but the Appellant could not produce a receipt, saying that she had left it behind in Dubai.

10. The Officer explained that the Appellant had evaded Customs duty by entering the Green Channel and that she should have entered the Red Channel and declared the jewellery.

35 11. The Appellant was then escorted to the Red Channel. It was explained to her that she could have the jewellery back if she paid the duty, otherwise the goods would

5 be seized. She said that she could not pay the duty. The Officer advised the Appellant that the goods would be kept for 30 days, she was given a "duty slip" and the Officer seized the goods (pursuant to s139 of the Customs and Excise Management Act 1979 ("CEMA")). The Appellant was informed that the goods would be sent for a valuation and that she could pay the duty at a later date.

12. The valuation report was received on 1 August 2013 and indicated that the jewellery was worth £7,719.85 and that the total duty therefore amounted to £1,544.

10 13. After the seizure on 6 July 2013 and before the receipt of the valuation report the Appellant's daughter telephoned the Border Force from Dubai. The Officer reported in his e-mail that the Border Force had spoken to the Appellant or her daughter on a total of three occasions, but it was explained that the Border Force were waiting for the independent valuation to be received.

15 14. In a letter dated 9 July 2013 (the letter was re-sent by fax received on 26 July 2013) the Appellant wrote to the Border Force stating that she had not intentionally failed to declare the jewellery:

"I did not intentionally undeclare the items in bag [sic], I honestly did not know....

Again the items in your possession are gifts from my children, I do not have that kind of money myself.

20 I realise and accept what has happened partly due to ignorance on my part. I now know better."

15 15. In a letter dated 5 July 2013, but received by the Respondents only on 6 August 2013, the Appellant stated that the jewellery:

25 "is not new gold purchased from Dubai, this is my old jewellery that has been in my possession for a long time and I simply took it abroad to get rings re-sized and polished. When detained by the staff at Heathrow I did mention all of this and disclosed all the information they needed."

30 16. This second account is, of course, at variance with what the Officer said the Appellant had told him. Also, there is no mention that the jewellery was a gift from the Appellant's children (as per the Appellant's letter dated 9 July) or that the jewellery was a gift "for" the Appellant's children (as per the Officer's account of what the Appellant told him at Heathrow). The letter also enclosed a receipt for a gold necklace dated 4 June 2013.

35 17. The Officer wrote to the Appellant on 8 August 2013 and explained in the review process. He invited the Appellant to supply any further information in a relation to her request for a review.

18. On 6 September 2013 Officer Brenton wrote to the Appellant refusing restoration of the jewellery.

19. In the course of cross-examination the Appellant claimed to have taken two gold rings out to Dubai and that she brought them back to the UK on 6 July 2013. However, the evidence established that only one ring was brought back into the UK.
20. Also, in cross-examination the Appellant admitted that one of the bracelets had, in fact, been bought in Dubai during her trip. This contradicted her account of the jewellery having been "old gold."
21. The Appellant was cross-examined in relation to the receipt for a gold necklace dated 4 June 2013 obtained from the gold souk in Dubai. The receipt was dated 4 June 2013 (i.e. over a month before the jewellery was seized at Heathrow). The receipt related to a 21 carat gold necklace. The receipt contained the statement in manuscript:
- "She brought and we repair it [sic], her daughter Aisha paid the amount 1505/AED (US \$410)"
22. The Appellant said that she had visited Dubai for three weeks before returning to the UK on 6 July 2013. She was asked, in cross-examination, when the "polishing" took place. She replied that the polishing was done three days before leaving Dubai for the UK and claimed that she had seen the jeweller fill out the receipt. The Appellant was unable to explain how, on this basis, the receipt was dated 4 June 2013. When pressed, she said that the receipt was a copy of the original receipt and was obtained by her daughter. We did not find the Appellant's evidence credible.
23. In her Notice of Appeal dated 9 October 2013, the Appellant claimed that the jewellery was "my old jewellery that was cleaned and smelted and mixed with new gold that I purchased from jewellers in Dubai." This seemed to us to contradict her earlier claim that the jewellery consisted of old gold.
24. In short, even allowing for the language difficulties, we did not find the Appellant's evidence credible.
25. The legality of the seizure of the jewellery was not challenged in condemnation proceedings before the Magistrates Court.
26. Officer Brenton's evidence was that he conducted a review of the decision whether to restore the 13 pieces of jewellery under ss 14 and 15 Finance Act 1994.
27. Officer Brenton informed us that the usual policy of the Border Force was not to restore illegally imported goods except in exceptional circumstances. He had taken account of the e-mail from the Officer who seized the goods, the Officer's notebook, the valuation report, the correspondence from the Appellant referred to above (plus a letter dated 6 August 2013 requesting a review).
28. On 6 September 2013 Officer Brenton wrote to the Appellant informing her of the results of his review. Officer Brenton noted that he had not considered the legality or the correctness of the seizure because that was a matter that should have been appealed to the Magistrates Court within one month of the date of seizure.

29. Officer Brenton's review letter noted the inconsistencies in the Appellant's accounts and also noted that the valuation of the jewellery was almost 20 times her allowance of £390. Officer Brenton noted that the Appellant had entered the Green Channel and indicated to the Officer that she had nothing to declare. Officer Brenton considered the receipt dated 4 June 2013 and gave it little weight. Officer Brenton noted that the Appellant did not keep a receipt for the jewellery. He further observed that the Officer on 6 July 2013 attempted to treat the Appellant more leniently than others in her situation by offering to return the jewellery on payment of the duty evaded (i.e. he had treated her as if she had gone through the Red Channel). He noted that the general policy of the Border Force was that seized goods should not normally be restored but that each case was examined on its merits to determine whether or not restoration could be offered exceptionally. In the light of the above factors, he concluded that the application of the Border Force's policy treated the Appellant no more harshly or leniently than anyone else in the circumstances. However, the offer of the Officer to restore the jewellery on payment of the duty put the Appellant in a more favourable position than others in her situation. He therefore concluded that the decision to offer to restore the jewellery for payment of the duty should be varied to a decision that the jewellery should not be restored.

The Law

30. The Tribunal's jurisdiction in relation to this appeal is set by s 16(4) FA 1994 which states, so far as relevant:

“In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

- (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and
- (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.”

31. Thus, the Tribunal's jurisdiction is limited to determining whether the original decision to seize the goods and Officer Brenton's review decision were unreasonable in the *Wednesbury* sense (see *Associated Provisional Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223) – a matter which we explained to the Appellant at the outset of the hearing.

32. The position as regards the Tribunal's jurisdiction was helpfully summarised by this Tribunal (Judge Kempster and Mr Jolly) in the recent case of *Imran Bakht v Director of Border Revenue* [2014] UKFTT 551 (TC) where the Tribunal said:

5 4. That jurisdiction is a supervisory one and, from the case-law in *Customs and Excise Comrs v J H Corbitt (Numismatists) Ltd* [1980] STC 231, *Customs and Excise Comrs v Peachtree Enterprises Ltd* [1994] STC 747 and *Kohanzad v Customs and Excise Commissioners* [1994] STC 967, we derive the following approach, which we understand is uncontroversial:

10 (1) The jurisdiction of the Tribunal in this matter is only supervisory.

(2) The Tribunal cannot substitute its own discretion for that of UKBA.

15 (3) The question for the Tribunal is whether UKBA's decision was unreasonable in the sense that no reasonable adjudicator properly directing himself could reasonably reach that decision.

20 (4) To enable the Tribunal to interfere with UKBA's decision it would have to be shown that UKBA took into account some irrelevant matter or had disregarded something to which they should have given weight.

25 (5) In exercising its supervisory jurisdiction the Tribunal must limit itself to considering facts and matters which existed at the time the challenged decision of UKBA was taken. Facts and matters which arise after that time cannot in law vitiate an exercise of discretion which was reasonable and lawful at the time that it was effected.

(6) The burden of proof lies on an appellant to satisfy the Tribunal that the decision of UKBA was unreasonable.

33. We respectfully agree with this summary of the applicable law and adopt it in this case.

30 **The Appellant's case**

34. The Appellant argued that the jewellery was a combination of gifts from her children and her original wedding jewellery. She described them as "old gold" and not subject to duty.

35 35. She complained that the amounts of duty she had been asked to pay for the restoration of her jewellery were excessive.

The Respondents' case

40 36. Mr Hayes submitted that Officer Brenton's decision was not unreasonable. He had taken account of all relevant facts and had not taken into account irrelevant facts. He had correctly applied the Border Force's policy in respect of restoration, but did not consider that this fettered his discretion if circumstances were exceptional.

Accordingly, as the legality of the seizure was not contested, Officer Brenton's decision not to restore the jewellery should be upheld.

Discussion

5 37. As discussed above, the only issue in this appeal was whether Officer Brenton's decision to deny restoration was unreasonable in the public law sense. The legality of the seizure was not challenged before the Magistrates Court and cannot now be challenged before this Tribunal: *Revenue and Customs v Jones & Anor* [2011] EWCA Civ 824.

10 38. Officer Brenton considered all the circumstances and, in our view, took account of all material facts and did not allow his decision to be influenced by irrelevant facts. Moreover, he made no error of law.

39. Officer Brenton considered all the correspondence and representations made by or on behalf of the Appellant and considered the inconsistencies and contradictions, in particular:

15 (1) in the letter dated 9 July 2013, the Appellant stated that the jewellery was a gift(s) from her children,

(2) but in the letter dated 5 July 2013 said that the jewellery was old gold taken abroad to get the rings polished and resized."

20 40. We also note that Officer Brenton noted that the Officer recorded the Appellant telling him, when she was stopped at Heathrow, that the jewellery was "gifts for her children." We have no reason to doubt the Officer's account and, in the light of the inconsistent versions of the facts given by the Appellant regard the Officer's account to be a correct record of what he was told by the Appellant.

41. In particular, Officer Brenton took account of the fact that:

25 (1) on 6 July 2013 the Appellant had entered the Green Channel (i.e. the "nothing to Declare" channel) thereby indicating that she was not importing goods of the value that exceeded £390.

(2) The Appellant failed to declare the jewellery when challenged by the Officer.

30 (3) The value of the jewellery was almost 20 times the duty-free allowance of £390

35 42. Little weight was given by Officer Brenton to the receipt dated 4 June 2013. His evidence was that he considered that the wording of the receipt indicated that it was written for the purposes of being shown to the Respondents rather than being a genuine contemporaneous receipt. For what it is worth, on the basis of evidence given at the hearing, particularly as regards the dating of the receipt,(evidence which was obviously not available to Officer Brenton when he took his decision but seemed to us to reinforce his doubts about the receipt's authenticity) we agree with that observation. He noted that the Appellant had originally stated that she had not kept

the receipt for the jewellery and he considered this to be a common feature of cases involving the evasion of duty and that legitimate importers usually kept receipts.

5 43. We are satisfied that Officer Brenton applied the Respondent's policy on the restoration of goods, but that his decision was not fettered by it. Instead, he considered the case in the round and considered whether an exception to the policy should be made on the facts before him, but decided that this was not justified.

44. Officer Brenton considered that the Respondents' policy treated the Appellant no more harshly or leniently than anyone else similarly placed and that there were no exceptional circumstances which justified a deviation from that policy.

10 45. He further considered that by offering restoration in return for the payment of the duty, the Officer did, in fact, treat the Appellant more leniently than others in the same situation. Accordingly, Officer Brenton concluded that the jewellery should not be restored to the Appellant.

15 46. In our view, Officer Brenton fully and fairly considered all the relevant circumstances known to him at the time and did not take account of any irrelevant facts. He applied the correct legal test, applied The Border Force's policy correctly (but did not consider himself fettered by this policy) and we consider that his decision was proportionate. In all the circumstances, we consider that the decision reached by Officer Brenton was reasonable in the *Wednesbury* sense.

20 47. For these reasons, we dismiss this appeal.

48. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**GUY BRANNAN
TRIBUNAL JUDGE**

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RELEASE DATE: 3 September 2014