



[2019] UKFTT 318 (TC)

TC07146

Customs duty – restoration – gold jewellery under-declared – jewellery seized as liable to forfeiture – restoration refused – whether decision not to restore was one that could reasonably have been arrived at – yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2017/00785

BETWEEN

DHARMESH SANGANI LIMITED

Appellant

-and-

DIRECTOR OF BORDER REVENUE

Respondent

**TRIBUNAL: JUDGE KEVIN POOLE
AMANDA DARLEY**

Sitting in public at Taylor House, Rosebery Avenue, London on 16 January 2019

Hammad Baig, counsel, instructed by Law Lane Solicitors, for the Appellant

James Jackson, counsel, instructed by the Cash Forfeiture and Condemnation Legal Team of the Home Office, for the Respondent

DECISION

INTRODUCTION

1. This appeal relates to a decision of the Respondent (“DBR”), confirmed by formal review, not to restore to the Appellant 7.412 kg of gold jewellery which was seized from its director Dharmesh Sangani (“DS”) at Heathrow Airport on 4 September 2016.

2. As a preliminary matter, it appeared to us that DS had originally been incorrectly named as the appellant in these proceedings. This had occurred because his solicitors, in lodging the notice of appeal, had identified DS as the appellant, whilst giving his address as “Dharmesh Sangani LTD” at an address in Harrow. In fact however, it is clear that the decision under appeal was addressed (correctly) to Dharmesh Sangani Limited (“the Appellant”), which clearly ought to have been named as the appellant in these proceedings from the outset as the relevant goods were being imported by it. In practical terms, it is clear that the Appellant was controlled by DS, who was its sole shareholder. Accordingly we have made a direction (pursuant to rule 9(1)(a) of the Tribunal’s Procedure Rules) substituting Dharmesh Sangani Limited as the Appellant in place of DS.

3. We note that the Appellant has actually been struck off the Register of Companies and dissolved since the hearing, but we do not consider this affects our decision, though of course if the Appellant wishes to seek permission to appeal this decision, it would first need to be restored to the Register of Companies.

THE FACTS

Introduction

4. We received witness statements and heard oral testimony as follows:

- (1) From DS. His oral testimony was given by video link.
- (2) From DS’s wife Mrs Rajeeta Sambhoolaul Sangani. Her oral testimony was given by video link.
- (3) From Mr Kedarnath Jha, an accounts manager in M/S Kalanee Impex Pvt Ltd, based in Mumbai, India. Mr Jha works for DS. His oral testimony was given by video link.
- (4) From Mr Shri Datt Bhardwaj, also known as Mr Sharma, of Quick Airfreight Services, DS’s UK Customs Clearance Agent.
- (5) From Edward Grant Cameron, the DBR officer who seized the jewellery.
- (6) From Helen Perkins, the DBR officer who upheld the decision to refuse to restore the jewellery.

5. There were some direct conflicts of evidence between DS and his wife (on the one hand) and officer Cameron (on the other). Having seen the witnesses give evidence and having considered the surrounding circumstances, as set out below, in general we prefer the evidence of officer Cameron where such conflicts arose.

6. We find the following facts.

Background and events leading up to DS’s arrival at Heathrow

7. DS is an Indian citizen. He carries on business as a wholesale jeweller, supplying retailers in the UK, France and Mauritius. Some of the jewellery is manufactured in India and Dubai. As part of his business, he has for some years exported gold from the UK under the

“Outward Processing Relief” provisions for making into jewellery and then re-imported the finished jewellery into the UK, claiming relief from duty in respect of the cost of the gold so re-imported. For the purposes of these proceedings, he was carrying on his business through the Appellant.

8. On 21 August 2016 the Appellant had exported 8.879 kg of gold bars and grains by means of DS carrying them on a flight from Heathrow to Dubai. A customs declaration was made on that date (by Mr Sharma as clearance agent on behalf of the Appellant, whose filed micro company accounts to 31 January 2016 showed it as having total net assets of £6,172), stating that “OPR” (outward processing relief) would be claimed on re-importation of the gold as jewellery. The consignee was declared as “Rizan Jewellery LLC” of Dubai.

9. DS was intending to fly back to the UK on 4 September 2016, along with his wife and children. He was intending to carry some of the Appellant’s jewellery back with him from Dubai, in addition to a consignment that his wife would be carrying back from Mumbai via Dubai. He flew from Mumbai to Dubai on 2 September 2016 without his family.

10. Mr Jha described DS as “my boss” and had been an accounts manager at M.S Kalanee Impex Pvt Ltd (“Kalanee”) in Mumbai since 2012. He handled all documents/paper work for the import and export of gold and gold jewellery. We accept Mr Jha’s evidence that he only had knowledge of a consignment of 3,834.9 grams of gold jewellery which was to be carried by Mrs Sangani from Mumbai to London via Dubai. He prepared a certificate of origin dated 2 September 2016 which identified the jewellery in question and certified it as being of Indian origin, and gave it to Mrs Sangani to take with her, along with an invoice of the same date from Kalanee which related to it (addressed to her as “consignee”) and the jewellery itself. Both documents were stamped by customs control in Mumbai. He took Mrs Sangani to the airport in Mumbai for the start of her journey.

11. Mrs Sangani and her two daughters (all of whom hold Mauritius passports) flew from Mumbai to Dubai on 4 September 2016, where they met DS at the departure gate for the onward flight; the whole family then flew on to Heathrow together.

12. As part of his duties, Mr Jha was responsible for contacting Mr Sharma and arranging for him to assist with the import formalities in the UK. He sent Mr Sharma by email a copy of a different invoice for the jewellery being carried by Mrs Sangani; this was an invoice issued by Rizan Jewellery LLC of Dubai (the same entity as had been named on the export declaration for the gold some two weeks before) and it was addressed to the Appellant as “consignee”. It set out precisely the same description and value of goods as was shown on the documents he had given to Mrs Sangani, but stated the country of origin of the goods was “UAE”. The layout of this invoice was exactly the same as the invoice from Kalanee which was being carried by Mrs Sangani, and the invoice number was identical. It did however show a credit of £74,643.17 (against the invoice value of £75,729.17), resulting in a net balance of £1,086. The calculation was not explained, but we infer the deduction was a calculation of the cost of the gold used in making the jewellery.

13. On the basis of this invoice, Mr Sharma prepared an import declaration in the name of the Appellant in respect of the re-importation of the jewellery with the benefit of OPR, meaning that only a small amount of VAT and duty was payable (essentially on the £1,086 value of the processing involved in turning the gold into jewellery). He took this declaration and the supporting copy invoice and calculation to the customs hall at Heathrow Terminal 3 to meet DS and deal with the formalities. He had prepaid the duty which he had calculated to be due, £265.78. When he arrived at the customs hall, he showed officer Cameron the import entry he had prepared on the basis of the information he had received. He then waited for DS to arrive.

14. Mrs Sangani was still carrying the jewellery from India with her and DS was carrying additional gold jewellery from Dubai, a further 3,424.4 grams in weight. We accept Mr Jha's original evidence that "I only had knowledge of the consignment from India which was 3834.90 grams. I was not aware of the jewellery that was to be taken from Dubai". We do not accept his evidence that he spoke to DS by telephone at some point on 4 September, during which DS had asked him if he had sent both the Indian and Dubai jewellery documents to Mr Sharma, and that he had only delayed doing so because it was already after business hours in India and he had decided to delay dealing with it until the next day, not realising that DS was arriving at Heathrow the same day. Nor do we accept his evidence that he received a text from DS providing him with the weight to be sent to Mr Sharma in relation to the Dubai jewellery; this would not have been adequate for Mr Sharma's purposes, he would have needed a copy invoice showing the value as well. We found the accounts by Mr Jha and DS of both a text and a telephone call confused and inconsistent, and there was no evidence before us that Mr Jha actually sent any documents, even subsequently. Indeed Mr Sharma said he had received nothing further from Mr Jha at that time.

The events of 4 September 2016 at Heathrow

15. Mr Sharma was waiting at Heathrow, in the red channel of the customs hall, in order to assist with the import formalities. He had already shared with officer Cameron the details of the goods he was expecting (i.e. the 3,834 grams referred to in the email sent to him by Mr Jha).

16. Before reaching Mr Sharma, the family were stopped by immigration officers of the UK Border Force, who were suspicious that DS and his family were seeking to enter the UK to settle rather than (as they maintained) for a combined business trip and summer holiday. They were not satisfied with the explanations they received and cancelled DS's visa, but subsequently gave permission for DS and his family to remain in the UK for 48 hours and retained their passports.

17. The family were then escorted to the customs hall, where DS approached officer Cameron, who was with Mr Sharma. DS told officer Cameron that he had a consignment of jewellery to declare, and the two of them stepped behind a partition to deal with the detail. Officer Cameron asked DS whether he had anything to declare over and above the jewellery which had been notified to Mr Sharma and DS said no.

18. Officer Cameron informed DS that he required to weigh the jewellery. DS started to take it out and officer Cameron weighed it without removing all of the packaging. It came to 5,735 grams, which was significantly in excess of the amount declared, and this was without weighing all of it – there was still some more elaborately packed jewellery which had not been unwrapped and weighed. DS said that the wrong documentation must have been supplied by his office. Officer Cameron proceeded to remove all the packaging and weigh the jewellery accurately.

19. There is then a conflict of evidence between officer Cameron, DS and Mrs Sangani. Officer Cameron stated that Mrs Sangani joined DS at the desk and further jewellery was produced from her handbag, whilst DS produced a further amount of jewellery from about his person (in particular around his neck under his clothing, taped together). DS and Mrs Sangani stated that DS came to see Mrs Sangani at the immigration desk and took from her a few pieces of her personal jewellery (both from her person and her luggage); DS stated that this jewellery must have weighed 152.7 grams, being the difference between the combined weight of the Dubai and Mumbai commercial jewellery and the final weight arrived at by officer Cameron. Mr Sharma's evidence (in his second witness statement dated 27 September 2018) was that DS had told officer Cameron that his wife may have some personal jewellery, was asked to go and

collect it and returned with a small amount of jewellery which he told officer Cameron was his wife's personal jewellery.

20. We prefer the evidence of officer Cameron. His outline note of the events was compiled the following day and his first witness statement was made on 17 February 2017, whereas DS's first witness statement was not made until 31 August 2017, and was supplemented by a second statement made on 28 September 2018 in which he amended a fairly significant statement in his earlier witness statement (where he had referred to a few pieces of jewellery on his own neck, which he changed so as to refer to his wife's neck). Mrs Sangani's witness statement was not made until 28 September 2018, the day after Mr Sharma's second witness statement; and when Mr Sharma made the statements in his second witness statement about the events surrounding Mrs Sangani's personal jewellery, he started by saying he was standing at the customs counter, from where he could not see DS or Mrs Sangani; we consider his report of the conversation between DS and officer Cameron to be simply a report of what DS had told him.

21. There was also some disagreement about whether the jewellery was formally seized on 4 September 2016 or merely detained pending further investigation. Whilst this was a point of contention on the evidence, there was no argument that it undermined in some way the case put forward by the DBR, so we devote no further time to it, beyond saying we are satisfied the jewellery was validly seized on 4 September 2016.

Subsequent events

22. On 12 September 2016 DS wrote to the DBR requesting restoration of the seized jewellery. In his letter (which had a "Dharmesh Sangani Limited" stamp on it), he said this:

"I would like to admit that I made a mistake in not declaring part quantity of my gold jewellery. I apologise for this mistake and would like to appeal to you to consider the restoration of my jewellery. You know that more than half of the quantity was declared on the customs entry submitted by my appointed agent, Quick Airfreight services. I hereby plead guilty and request you to allow me to restore my jewellery as there are a lot of items which are on orders by various jewellers for the wedding occasions of their clients.

I want to inform you about my physical and mental condition after all this blunder. I fell down from the top of the stairs and was admitted into hospital. All this happened because of the heavy stress caused by the situation and as I have to answer to a lot of my clients who depend on me for their orders and because of my mistake they are also suffering. I am losing my reputation in the business and all my clients' trust, which took me 10 years to build.

My future depends on the sale of this jewellery. I cannot see it getting ruined. I have two young children, a wife and also my old parents all of whom depend on me. After this mistake made by me, my family has been very much disturbed.

I can assure you this will not happen again and request you to kindly allow the restoration of my jewellery as soon as possible."

23. By email dated 19 September 2016, Mr Sharma followed up the application. His email included the following:

"I am the appointed Customs Clearance Agent for Dharmesh Sangani Limited
I was present in the red Channel when goods were Seized

More than Half of Gold Jewellery was already Declared on C88 but on examination More Jewellery was found in his wife's bag. Hence goods were seized.

So far as ownership is concerned the Gold was exported from UK for processing into Jewellery. Evidence of Export by Dharmesh Sangani Ltd was submitted to the Customs House/MIB Office... and Seizure Officer had Original Export Entry & Invoice duly Certified by Border Force.... This Jewellery is being returned under OPR.

...

Since Mr Dharmesh Sangani is not in Good Health he has requested me to deal with the Restoration of his Jewellery."

24. The DBR gave a decision on the restoration application in a letter dated 25 October 2016 addressed to Mr Sharma (but naming the Appellant as his client). That letter concluded that "there are no exceptional circumstances that would justify a departure from the Commissioners' policy as there are no mitigating circumstances to consider. Consequently I can confirm on this occasion the **goods will not be restored.**"

25. By letter dated 1 November 2016, the Appellant asked for this decision to be reviewed. In this letter, the following was included:

"My whole future carrier [*sic*] in this trade depends upon restoring these goods and supply to the respective buyers who have placed orders to my company and are still waiting for delivery.

I am enclosing my previous letter dated 12/09/2016 for your perusal.

I think the officer has not considered that I had declared more than half of the jewellery on which all the entry documents were correctly submitted and the gold bars were legally exported from U.K.

You are requested to please discuss with my appointed agent Mr S. D. Sharma and let us know your favourable decision for the restoration of my jewellery.

I assure you that this mistake will not happen again."

26. In a reply dated 10 November 2016, the DBR confirmed that the statutory review would be carried out and gave a timetable. The letter also said this:

"If in the meantime you have any further *evidence* or *information* that you would like to provide in the support of this request then please send it to the Review Officers at the address shown at the top of this letter. This is your last opportunity to provide the Review Officers with such information: if you do not provide it now it cannot be taken into account in the review."

27. Nothing further having been received, the DBR issued a letter dated 13 December 2016 to Mr Sharma setting out the outcome of the review which had been carried out by officer Perkins. This letter (which referred to the Appellant in the subject line) set out the factual background as officer Perkins saw it, including the following:

"Your client was asked if he had anything over and above what he had declared on the invoice (£75,729.17, weight 3.834 kg) and he replied, 'No'. Both you (his agent) and Mr Sangani were informed that the gold was to be weighed. As the items were unpacked it was noted that your client was sweating profusely. The weight of the gold with the minimum packaging was recorded as 5.735 kg, which was significantly over the declared weight. Your client stated that his office had sent the wrong invoice. Your client was advised that all the jewellery would now have to be unwrapped and weighed. Your

client then produced more jewellery from the handbag belonging to his wife. Mr Sangani himself also removed multiple gold chains/earrings (female) that he had around his neck under his clothing. The total weight was 7.412 kgs with a newly declared verbal valuation provided of £174,000.00, it was determined there was an under declaration of £98,270.83.

The Officer seized the items under section 139 of CEMA because your client had failed to declare all the jewellery he was carrying so that they were liable to forfeiture under sections 78(4), 49(1)(a) and 167. When the items were seized, your client was given a Seizure Information Notice and Notice 12A, “What you can do if things are seized by H. M. Revenue & Customs”: Notice 12A explained that one can challenge the legality of the seizure in a Magistrates’ Court by sending a Notice of claim to the Border Force *within one month of the date seizure [sic]*. The Officer also issued and explained Notice 1 “Travelling to the UK”.

Correspondence

On 12 September 2016, Border Force received a letter from your client asking for the jewellery to be restored. In that letter your client stated:

- He admitted that he had made a mistake in not declaring part quantity of his gold jewellery and wished to apologise.
- More than half the quantity was declared on the Customs entry submitted by his appointed agent (Quick Airfreight Services).
- He pleaded guilty and asked for the jewellery to be restored *‘as there is a lot of items of jewellery which are on order by various jewellers for their clients wedding occasions’*.
- As a consequence of this blunder he fell downstairs and was admitted to hospital, all this was due to the heavy stress caused by the situation. He is losing his reputation in the business and his clients’ trust which has taken 10 years to build.
- His future depends on the sale of the jewellery; he has two young children, a wife and his elderly parents who all depend on him. This will not happen again.

...”

28. This letter said that “The general policy is that seized goods should not normally be restored. However, each case is examined on its merits to determine whether or not restoration may be offered exceptionally.”

29. After noting that DS had not challenged the lawfulness of the seizure, the letter went on to say this:

“Your client must have known that he was expected both to answer questions truthfully and to declared *[sic]* the full quantities of any jewellery being imported, particularly as he is a commercial trader. Your client failed to disclose all of the jewellery he was carrying, thus misleading the Officer about the true quantity of them. If there was nothing to hide there was no need to mislead the Officer, and, on those grounds alone, I have good reason to doubt your client’s credibility. Your client initially declared goods to the value of £75,729.17 (3.83 kg) on entry to the UK that were documented on a C88 (Customs entry). However, he failed to declare additional goods with a value of £98,270.83 contrary to section 49(1) and 78 (4) of *CEMA*. Your client was given sufficient opportunity to be honest with BF, indeed the Officer also

asked whether he had anything over and above what he had declared on the invoice. Your client chose to reply 'No', it is therefore reasonable to conclude that your client deliberately intended to evade a significant amount of Customs and VAT due on import.

Furthermore, your client initially claimed that his office had presented the wrong invoice. Subsequently he states that he made a mistake in not declaring '*part quantity of my gold jewellery*'. I do not accept that he would have forgotten to declare the goods and this was merely a mistake given the total value of the jewellery and original purpose of the export of the gold bars. It was only after further questioning by BF that your client eventually presented to the Officer additional items of jewellery from his wife's handbag and also, himself, removing multiple gold chains and ear-rings (female) that he had around his neck, under his clothing. Taking these factors into account I am satisfied, on the balance of probability, that this was a further blatant attempt by your client to conceal goods with the deliberate intention of evading customs duty and VAT.

I have read all the correspondence carefully to see whether a case has been presented for disapplying the Border Force policy and whether there are any exceptional circumstances for doing so:

Your client on this occasion has claimed that sufficient consideration has not been given to the fact that he declared a proportion of it properly with the correct documentation and it was a legal export from the UK. This is a serious matter and one BF does not take lightly involving a commercial trader who has failed to declare all goods being imported correctly; a deliberate attempt to evade the relevant taxes and concealing the goods around his person in a manner that can only be considered designed to deceive. Your client has presented no exceptional circumstances for me to consider other than he is sorry for 'the mistake' and a distinction must be made between those who failed to declare goods and those who openly pay the taxes due at the red point. If Mr Sangani had not been stopped by Border Force I am not persuaded that he would have paid the taxes due on this importation.

I have also paid particular attention to the degree of hardship caused by the loss of the jewellery I am aware that your client has raised the issue that his health and reputation has suffered; his trade depends on the jewellery being restored and that he has a family to support. One must expect a considerable inconvenience as a result of having goods seized by Border Force. Hardship is a natural consequence of having goods seized and I would consider only *exceptional* hardship as a reason not to apply the policy not to restore the goods. Your client chose to become involved in a smuggling attempt; if he finds that the consequences of those actions puts him in a difficult financial position, that was something he should have considered before choosing to become involved. I do not regard either the inconvenience or expense in this case as *exceptional* hardships over and above what one should expect. In the circumstances I do not consider that your client has suffered *exceptional* hardship by the loss of the goods and I have been presented with no evidence to support this. I conclude that there is no reason to depart from the policy of not restoring the goods in all of the circumstances. I consider the decision not to restore to be both a reasonable and proportionate in all of the circumstances."

30. The Tribunal received DS's notice of appeal on 11 January 2017.

THE LAW

31. This is an appeal against the DBR's refusal, following review, to restore the jewellery to the Appellant.

32. This Tribunal has no power to adjudicate on the validity of the seizure, that is a matter which must be decided through condemnation proceedings in the courts if relevant. As the Appellant did not require condemnation proceedings to be instituted, the seizure of the goods is deemed to have been lawful, and this deeming process limits the scope of the issues that the Appellant is entitled to ventilate before this Tribunal in its restoration appeal. See *HMRC v Jones & Jones* [2011] EWCA Civ 824. In particular, in the present case, this means that the Tribunal is required to accept that the jewellery did not correspond with the customs entry made for it or, to the extent it did, it was concealed or packed in a manner intended to deceive an officer or it was mixed, packed or found with the concealed goods (see sections 49(1)(e) & (f) and 141(1)(b) Customs & Excise Management Act 1979 ("CEMA")).

33. The scope of the Tribunal's jurisdiction in this appeal is set out in s 16(4) Finance Act 1994 ("FA94"), which provides, so far as relevant, as follows:

"(4) ... the powers of an appeal tribunal 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"

ARGUMENTS

For DS

34. In the grounds of appeal, DS argued that the DBR's decision was unreasonable on, broadly, the following bases:

(1) Approximately half the goods had been legitimately declared.

(2) Those goods had been incorrectly seized under s 139 CEMA, they were only liable for seizure under s 141 CEMA as being mixed, packed or found with other goods liable to forfeiture; and this had not been properly taken into account.

(3) All the goods had been voluntarily produced, without the need for Mrs Sangani's bags to be searched.

(4) Because Outward Processing Relief was available in respect of the undeclared goods, the total customs duty and import VAT liability on them was around £2600, of which £600 was VAT which would have been recoverable in any event. The actual loss to the revenue was therefore only £2000, which was wholly disproportionate to the value of the goods if not restored.

(5) There were very serious consequences for DS's finances. He had a wife and young children and his reputation in the business community was also at stake.

35. Following the hearing, Mr Baig submitted that DS's response to officer Cameron's first question (i.e. whether DS had anything further to declare over and above what was reflected on his written declaration) had a very easy innocent explanation. As DS did not at that stage realise that the written declaration was wrong, it was perfectly understandable for him to confirm there was nothing else he wished to declare. By effectively jumping to the conclusion that this simple misunderstanding reflected an explicit attempt to deceive, officer Perkins had acted unreasonably.

36. He also submitted that various problems arose from officer Cameron's *ad hoc* weighing of the jewellery, and in particular his failure to record carefully the weights of the separate elements of it. This effectively robbed DS of the opportunity of demonstrating that he had laid before officer Cameron at the outset the full extent of both consignments of commercial jewellery. He submitted that according to the evidence at the hearing it was clear that he had in fact done so, and it was unreasonable for officer Perkins to have proceeded on the basis that DS had in fact attempted to conceal much of the jewellery.

37. He also attacked the DBR's failure to produce the CCTV footage of the seizure, effectively inviting the Tribunal to infer that it would have supported DS's case. Officer Perkins' failure to follow up that line of enquiry again demonstrated the unreasonableness of her decision.

38. On the basis of an updated calculation, he submitted it was unreasonable for officer Perkins not to take account of the fact that the duty on the undeclared goods was minuscule by reference to their value by reason of the availability of OPR. Given the availability of that relief, it was impossible reasonably to conclude that restoration was not appropriate. It was absurd to suggest that DS would have attempted to smuggle the jewellery, with all the concomitant risks, rather than pay such a small amount of duty. By his calculation, the total customs duty and VAT on the undeclared goods was £1243.75.

39. He submitted it was clear from the correspondence that officer Perkins had also mis-read DS's apology for making a mistake as an explicit admission of guilt for smuggling. This was both incorrect and displayed a closed mind on her part.

40. Both in the light of the availability of OPR referred to above and the effects on DS's health, financial position and reputation, he submitted that officer Perkins' decision was so disproportionate as to be unreasonable.

41. He also submitted it was unreasonable for officer Perkins to make her decision partly by reference to material that had been provided to her by officer Cameron but which had not been provided to DS to give him the opportunity to contradict it. Effectively, we take him to be submitting that the rules of natural justice required that DS be made fully aware of all the case against him so as to give him a proper opportunity of addressing it; instead, officer Perkins' decision had been based at least in part on material which DS had had no opportunity of contradicting.

For the DBR

42. Mr Jackson submitted there was nothing in the point about sections 139 and 141 CEMA. The jewellery had been seized on perfectly valid grounds and the seizure had not been challenged in the appropriate forum. It was quite correct for officer Perkins to regard it as a perfectly valid seizure.

43. So far as DS's verbal confirmation to officer Cameron of the written declaration was concerned, he submitted it was clear that DS had the opportunity to speak with Mr Sharma before the written declaration was presented to officer Cameron. Given this fact and the other surrounding circumstances, it would have been reasonable for officer Perkins to believe that the under-declaration was deliberate, especially given the concealment of jewellery about the person of DS, the late production of the jewellery being carried by Mrs Sangani, and DS's "guilty plea" in his letter requesting restoration.

44. As to the method of weighing the jewellery, he rejected any suggestion that this was in any way deficient. The simple fact was that there was an initial test weighing of the more lightly wrapped items which came to significantly more than the amount declared, so officer Cameron proceeded to weigh it all carefully. He could not be criticised for doing so in the way he did.

45. As to the CCTV footage, Mr Jackson did not specifically respond to the point. Officer Cameron had previously explained however that CCTV data was only routinely retained for 31 days at most; there had been no reason to suppose in September 2016 that it would be relevant to any dispute about the seizure and accordingly it had not been retained.

46. The OPR point had, he submitted, already been covered in officer Cameron's witness statement. First, given the Indian origin of the consignment carried by DS's wife, OPR would not have been technically available for it in any event. Second, the under-declaration would, if undetected, have allowed DS to utilise the OPR to eliminate duty on a future import of gold; therefore the potential saving was far from minuscule.

47. As to officer Perkins' supposed mis-reading of DS's letter of apology as an admission of guilt, he pointed out that the letter gave no detailed explanation of how the alleged error was supposed to have arisen. In the circumstances, officer Perkins could not fairly be criticised in the way Mr Baig suggested.

48. On proportionality generally, Mr Jackson submitted that officer Perkins had reached a perfectly reasonable conclusion on the basis of the evidence before her.

49. On the failure to provide DS with a copy of officer Cameron's notes before reaching her decision, Mr Jackson did not really address the point, simply observing that the DBR had more than complied with all relevant disclosure obligations in the context of the proceedings.

DISCUSSION AND DECISION

50. The question before us is whether officer Perkins' decision to confirm the earlier decision not to restore any of the seized jewellery was a decision she could reasonably have arrived at.

51. We must decide this question by reference to the facts as we find them to have been.

52. The central undisputed fact is that DS and his wife were together carrying approximately twice the amount of gold than had been declared. DS was an experienced commercial importer of gold, and knew the import declaration process well. A coherent and convincing explanation, supported by as much corroborative evidence as possible, to show there was an innocent explanation for the under-declaration, would be an essential first step for DS if he is to show officer Perkins' decision to have been unreasonable.

53. DS has maintained that the under-declaration was a simple administrative error due to a failure in communication between him and Mr Jha. We are not satisfied that this was the case. The evidence of both DS and Mr Jha was anything but clear on the point, they did not give anything approaching a consistent, full and convincing explanation to satisfy us, nor was there any documentary corroboration. We would have expected Mr Jha to rush to email the missing

documents to Mr Sharma at the earliest possible moment, but Mr Sharma received nothing for some days.

54. As an experienced commercial trader carrying an extremely high value consignment of gold jewellery, we would have expected DS to take great care to ensure that the documents upon which Mr Sharma had prepared the declaration were complete and that they included all the jewellery he was importing, especially given the split nature of the consignment and the fact that some of it had travelled with his wife from Mumbai whilst he had carried the rest for Dubai himself. We are satisfied that he had a full opportunity to do so before confirming Mr Sharma's draft declaration to officer Cameron. As officer Cameron made clear in evidence (and we accept), the final declaration could only be made if accompanied by original invoice documentation, so DS would have had every opportunity to check that the declaration tallied with the original documents in his possession.

55. We put no weight on the fact that DS voluntarily produced more jewellery than had been declared; by that time, it would have been clear to him that it would all have been discovered in any event and therefore nothing was to be gained by attempting to continue the concealment.

56. Nor do we consider that the availability of OPR supports his case by demonstrating that the saving he would make by the under-declaration was minimal. If he had been able to import the Dubai consignment without declaring it, that would then have meant that he would have had a later opportunity to take the benefit of the relief on a subsequent import of gold which would therefore have escaped full duty.

57. To the extent it is relevant, we prefer the detailed evidence of officer Cameron to that of DS and Mrs Sangani as to the precise circumstances in which all the gold jewellery was produced. We are therefore satisfied that some of it at least was initially concealed.

58. We do not consider the seizure (and subsequent refusal of restoration) to be disproportionate. Once it is accepted (as we do) that the under-declaration was not an innocent error, this argument falls away entirely. Nor do we consider that the hardship and personal suffering caused as a result of the seizure render the refusal to restore unreasonable. These were in our view simply natural consequences of the seizure which were brought upon DS by his own actions.

59. We do however consider that in not providing to DS copies of all the material upon which she would make her decision (and in particular the notes of officer Cameron), officer Perkins deprived DS of the opportunity of trying to convince her that officer Cameron's account (upon which she clearly placed great reliance) was not correct. This is in our view a clear breach of natural justice.

60. If we were required to apply the normal principles of judicial review, that would be sufficient to undermine officer Perkins' decision on its own. However, as was accepted by the Upper Tribunal in *Putri Projosujadi v Director of Border Revenue* [2015] UKUT 297 (TCC) at [23] – [24], this Tribunal is applying a statutory test, as set out in s 16 FA94, and whilst it was accepted in that case that “*Wednesbury*-type principles” were “factors within the one overall statutory test”, it was also emphasised that there is a single overall statutory test.

61. As set out above, the statutory test is whether officer Perkins could not reasonably have arrived at the decision to confirm the refusal to restore the jewellery. Given the facts as we have found them, her decision was well within the range of reasonable decisions in spite of her failure to disclose to the Appellant in advance the evidence of officer Cameron which would be included in her review. We are satisfied that DS initially intended to import the Dubai consignment without declaring it and he only produced it when it was already clearly apparent to him that his plan would not succeed.

62. In those circumstances, officer Perkins' decision must be upheld and the appeal DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

63. 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 should 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.

64. As the Appellant is now dissolved and therefore no longer exists in law, it cannot make a valid application for permission to appeal. It can only do so if it is first restored to the Register of Companies, which requires an application to the Courts. DS should be aware that if he intends to pursue this course in order to seek permission to appeal against this decision, he must notify the Tribunal of his intention to do so **within 28 days of the date of release of this decision**, and subsequently pursue the application to restore the Appellant to the Register diligently. If no notification is received from him within such 28 day period, then it is extremely unlikely any extension of time would be granted in respect of the 56 day time limit referred to at [63] above, as the Tribunal's papers are likely to be destroyed shortly after that period in accordance with its usual document retention policies.

65. Equally, even if DS promptly notifies his intention to make application for the Appellant to be restored to the Register then unless he actually makes that application to the Courts promptly, pursues it diligently and informs the Tribunal **at intervals of not less than 28 days** of its progress, the Tribunal is unlikely to grant any extension of the 56 day time limit referred to at [63] above.

**KEVIN POOLE
TRIBUNAL JUDGE**

RELEASE DATE: 20 MAY 2019