



**TC02003**

**Appeal number: TC/2010/09210**

*SEIZURE OF SWORDS - no condemnation proceedings – refusal to restore  
– whether reasonable in the circumstances? – Yes – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LIEUTENANT-COLONEL STEPHEN SILVA**

**Appellant**

**- and -**

**DIRECTOR OF BORDER REVENUE**

**Respondent**

**TRIBUNAL: JUDGE ADRIAN SHIPWRIGHT**

**Sitting in public at 45 Bedford Square, London WC1 on 30 November, 2011**

**The Appellant did not appear**

**David Bedenham, counsel, instructed by the Director of Border Revenue**

## DECISION

### Introduction

1. This is an appeal by Lieutenant-Colonel Stephen Silva ("the Appellant") against the Respondents' ("UKBA") refusal to restore two swords ("the Swords") that had been seized.
2. The appeal is expressed to be against a review letter dated 9 November 2010. It may be that properly it should be against a deemed confirmation of the decision.
3. Counsel for UKBA very properly pointed this out and confirmed that UKBA did not want to take any point procedurally in respect of this.
4. The Appellant is a member of the Armed Forces of the United States of America. His tour of duty in the UK having ended he had returned to United States of America. He e-mailed the Tribunal to inform the Tribunal that he had been reassigned to the City of Washington DC, USA. He "... therefore regretted that he would not be able to fly back to the UK to attend the hearing in person". He did not appear.
5. The Tribunal decided to proceed under Rule 33 of the Tribunal Rules. The Tribunal was satisfied that the Appellant had been notified of the hearing and that reasonable steps have been taken to notify the Appellant of the hearing. It also considered that it was in the interests of justice to proceed with the hearing. This was particularly so as the Swords were seized in August 2009 and it was clear both parties wished a resolution to the matter.
6. As noted above the Respondents' decision not to restore the Swords was set out in a letter dated 9 November, 2010.

### The Issue

3. The essential issue in this case is whether or not the decision not to restore the Swords was within the range of possible reasonable decisions.

### The Law

4. The legislation in so far as is relevant here is found in the Customs and Excise Management Act 1979 ("CEMA"), the Criminal Justice Act 1988 ("CJA") and FA 1994.
5. Section 49 CEMA provides that where any goods are imported or landed contrary to any prohibition or restriction in force at the time those goods are liable to forfeiture.
6. Section 152 CEMA allows the authorities to restore anything seized or forfeited under the Customs and Excise Acts subject to such conditions (if any) as they think proper.
7. Section 141 CJA provides that the importation of certain weapons is prohibited.
8. Under paragraph 1(r) of the Schedule to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 "... A sword with a curved blade of 50 cm or over in length; and for the purposes of this subparagraph, the length of the blade shall be the straight line distance from the top of the handle to the tip of the blade" falls within the prohibition.
9. Section 141ZC CJA provides for certain exceptions. These include where the weapon is imported for the purposes only of:
- (1) functions carried out on behalf of... a visiting force;
  - (2) making it available to a museum or gallery which does not distribute profits;
  - (3) making it available for theatrical performances and the production of films and television programmes.

These do not seem to be in point here.

10. FA 1994 provides for the review of certain decisions and in section 16 provides for an appeal to the Tribunal which is given certain powers where the Tribunal was satisfied that the decision is one that the decision-makers could not reasonably have arrived at i.e. is not within the range of possible reasonable decisions.

### **The Evidence**

11. I was provided with a bundle of documentation. The documents were all admitted in evidence, no objection having been taken to any of the documents.

12. I was provided with a Witness Statement for Officer Graham Crouch which had a number of documents exhibited to it which I read and carefully considered.

### **The Facts**

13. From the evidence I make the following findings of fact.

(1) The Appellant was a member of the United States' Armed Forces. He was posted to the UK for a tour of duty which has now concluded.

(2) The Appellant brought various items including the Swords with him into the UK.

(3) The Appellant's personal effects were intercepted by UKBA officers on 16 August, 2009 at Arrowdene depot.

(4) These effects were found to contain the Swords each of which had a blade exceeding 50 cm in length. There was no evidence that this was not the case and the legality of the seizure was not challenged.

(5) There is a form DD 1434 headed "United Kingdom (UK) Customs Declaration for the importation personal effects of U.S. Forces/Civilians on duty in the UK". The Swords had not been declared on this form or in any other way by the Appellant.

(6) The Swords were seized as being liable to forfeiture as they fell within the prohibition set out above for swords with curved blades. The Appellant was given Notice of the Seizure. He was informed that the legality of the seizure could be challenged by way of condemnation proceedings in the Magistrate's Court.

(7) The Appellant did not bring condemnation proceedings. It seems to be accepted by the Appellant that the legality of the seizure could not be challenged.

(8) Accordingly, the Swords were deemed condemned as forfeit and legally forfeit. I did not consider the legality of the seizure for the purposes of this decision and considered them as legally forfeit.

(9) The Appellant requested the restoration of the Swords. UKBA refused this.

(10) The Appellant requested a review of this decision in a letter dated 4 December, 2009. The Appellant said that the Swords were items of art that had been made by a guilded Japanese sword maker and had been registered with the Japanese Art Association and the Society Japanese of Art. The Swords were said not to have been crafted to the same standards as usable Swords particularly as their blades were made to break under the lowest tension.

(11) However, it does not seem to be the case that the Swords are Japanese and I so find as a matter of primary fact. No evidence was produced of the registration with Japanese Art entities.

(12) We were shown photographs of the Swords. They show that both Swords have the word "China" date of the place of the handle. They also show that the

box for the Swords is marked “China Longuan”. This indicates that the Swords were not Japanese but Chinese. I find this as a primary fact.

(13) A brochure was enclosure with the Swords. A translation from the Chinese original was provided in the bundle. This reads:

5 “Acclaimed as ‘the best sword of the world’ Longuan swords have been the pride of the Chinese nation. From the legends of Ou Ye Yu’s casting swords, Longuan swords have witnessed more than 2600 years of the history. Longuan swords have four unique characteristics, which are always appreciated by people, it is so firm and sharp that it can cut through copper like mud; it is so resilient that it can bend and straighten up freely; it is so chilly that it is like the frost on the coldest day, and it has exquisite decorations which add to its elegance.

10 Our factory is specialised in the development and production of knives and swords for different tiers customers. We have combined the traditional processes with modern technologies in casting swords, and have earned high reputation in the knives and swords industry. We are highly regarded by customers and we shall continue to make effort to innovate and bring new glories to our products and the industry.

15 To show our gratitude to the love from our customers, all our staff working at Jiang’s Knives and Swords Factory will keep our customers at heart; try relentlessly to provide good products and services to our customers. We welcome all those with insights, from home or abroad, to our factory to talk about cooperation or investment, and work together with us for better prospects.

20 A trademark of ‘Jiang’s’ can be found on all our knives and swords produced by Zhejiang Jiang’s Knives and Swords Co Ltd so please pay attention to the trademark with discretion when you purchase a product, and beware of imitations...”

25 I accept the manufacturer’s description of the properties of the Swords and find this as fact.

30 (14) Photographs of the Swords and their packaging showed the Jiang Knives and Swords trademark on them.

(15) I find as primary fact that:

- 35 (a) The Swords were not Japanese but Chinese and were not shown to have been made by guilded Japanese sword maker;
- (b) The Swords were not imported for an excepted purpose for the purposes of the CJA;
- (c) No evidence was produced to show that the Swords were made by traditional methods only by hand; and
- (d) No evidence was produced to show that the Swords were not of weapons grade quality nor that they were made before 1954.

#### 40 **The Submissions of the Parties**

##### *The Appellant’s Submissions in outline*

14. In essence, the Appellant argued that:

- 45 (a) the Appellant had not been told at Fort Bragg about the prohibition of importing weapons such as the Swords into the UK but only that firearms could not be imported;
- (b) the Appellant's action was not malicious;

Accordingly, the Swords should be restored to him.

15. The Appellant said in his Notice of Appeal dated 7 December, 2010:  
“I was not properly informed of the laws governing the importation of the items (2 Japanese crafted Katans... The lack of information was due to the moving officials from my last duty station in the U.S., not the UK government.

5 I did not bring the items into the UK in any malicious manner. If I had been aware of the restrictions I would have placed the... Items into storage with the rest of my goods back in the U.S. Both Katans are forged as decorative items and not actually as weapons. The Swords are registered as Japanese artwork and are very valuable... I have requested to have the Swords shipped back to the U.S. at my expense in order to  
10 avoid the unnecessary destruction of valuable artwork. This course of action would remove any danger to UK citizens and would allow me to retrieve my goods when I returned to the States after my assignment to the Ministry of Defence ends. Therefore I am not asking to have the items returned to me while I am here in the UK”.

*UKBA’s Submissions in outline*

15 16. In essence, UKBA submitted that the decision not to restore the Swords was within the range of possible decisions which could be made that were reasonable. Accordingly, the appeal should be dismissed.

17. In more detail UKBA argued:

20 (a) UKBA had regard to and applied its stated policy that prohibited imported weapons should not normally be restored on the grounds of public interest and public safety unless one of the grounds in section 141 ZC CJA applies;

(b) Although the CJA does not provide exceptions to the prohibition on the importation of swords with a blade exceeding 50 cm in length UKBA’s policy is to consider certain factors in determining whether or not restoration should be made.

25 These are:

1. If the weapon was made before 1954 always made as any other time according to traditional methods of making swords by hand;

2. The sole purpose for the importation of the weapon was for use in religious ceremonies;

30 3. The sole purpose for the importation of the weapon was for the organisation and holding of a permitted activity (such as an historical re-enactment, sporting activity) for which public insurance is held.

This was not the case here.

35 (c) That there were no exceptional reasons here to support a restoration.

(d) The decision not to restore the swords was reasonable and within the range of reasonable decisions. This was particularly so as the Appellant had not provided any evidence to make good the position that the importation fell in any of the defences in the CJA or the respondent’s policy on restoration as it applied to the Swords.

#### 40 **Discussion**

18. The issue for determination here is whether or not the decision not to restore the Swords was within the range of possible reasonable decisions.

19. I consider it was within that range. There is nothing to suggest that the UKBA acted in any way which was not entirely proper and reasonable and I so find.

45 20. The Appellant has not shown that the decision not to restore the Swords was unreasonable.

21. The Swords appear to be Chinese and their importation does not fall within any of the exceptions in the CJA nor the UKBA's policy for restoration.

22. No grounds have been shown as to why the decision not to restore was outside the range of reasonable decisions and I so find.

5 **Conclusion**

23. I have found that:

1. The Swords did not fall within any of the exceptions in the legislation or the published policy;

10 2. No grounds have been shown as to why the decision not to restore was unreasonable;

Accordingly, I find against by the Appellant.

24. Consequently, the Appeal is dismissed.

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25. 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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**ADRIAN SHIPWRIGHT  
TRIBUNAL JUDGE**

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**RELEASE DATE: 30 April 2012**

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