



TC03734

Appeal number: TC/2013/06185

Customs duty and VAT – importation of dutiable goods to a value of more than £390 without declaring them – goods seized – legality of seizure not challenged – restoration applied for and refused – review of refusal requested, and decision confirmed – whether confirmation of decision on review was within range of decisions that could reasonably have been arrived at – held yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NAZIA SALEEM

Appellant

-and-

HOME OFFICE

Respondent

**TRIBUNAL: JUDGE KEVIN POOLE
MR MICHAEL ATKINSON**

Sitting in public in Priory Court, Birmingham on 21 March 2014

The Appellant's husband, Ahmed Hussain, appeared on her behalf

Andrew Evans of counsel, instructed by the Cash Forfeiture and Condemnation Legal Team, for the Respondent

DECISION

Introduction

1. This case involves an appeal against a decision of the Home Office not to
5 restore to the Appellant some gold jewellery seized from her on entering the UK at
Birmingham Airport.

2. Following the hearing on 21 March 2014, a summary decision was released to
the parties on 31 March 2014. These full findings of fact and reasons have been
prepared in response to a subsequent request made by the Appellant.

10 The facts

3. We received a bundle of documents prepared by the Home Office and we
heard oral evidence from Officer Helen Perkins (the Reviewing Officer whose
decision was under appeal) and the Appellant. We find the following facts.

4. The Appellant was travelling back from Pakistan to the UK via Dubai when
15 she was stopped in the green channel at Birmingham airport on 28 April 2013. Two
sets of four gold bangles and a gold pendant were seized from her, along with three
cartons of cigarettes. The Appellant has made no claim for restoration of the
cigarettes and we therefore consider those no further.

5. The Appellant was travelling with her four young children (aged from 4 to
20 12). She had transited through Dubai, where she had spent about two hours in the
airport, during which time she had purchased the gold pendant for 994 Dhirams
(approximately £158) as a birthday present for her daughter (whose birthday was
shortly afterwards). Her husband had purchased one of the sets of bangles in Dubai
on the journey out to Pakistan, on 1 April 2013, for 23,300 Dhirams (approximately
25 £3,800). He had bought the other set of bangles in Dubai about a year earlier for
10,208 Dhirams (approximately £1,700).

6. The Appellant was wearing one of the sets of bangles when she was stopped at
Birmingham airport on 28 April 2013. The other set was in her hand luggage, along
with the pendant.

30 7. The Appellant did not contest the legality of the seizure by requesting the
Respondent to initiate condemnation proceedings in the magistrates' court.

8. There was some dispute about the detail of events at the time of the seizure.
In particular, the Appellant maintained she had requested that an interpreter be
provided but the seizing officer's notes made no reference to any such request. In the
35 circumstances of this case, we consider the disputed detail to be peripheral. The
Appellant accepts that she was carrying the various seized goods, on which no UK
import duty or VAT had been paid, that she entered the green channel at Birmingham
airport with them and that their value was well in excess of £390.

9. We accept that the Appellant was somewhat stressed as a result of her long journey with her four young children and the long wait for her luggage at Birmingham, and that she was nervous as a result of being stopped by the Border Force officer.

5 10. The Appellant's husband drew up a letter for her to send to the Respondent requesting restoration of the seized goods. This letter was dated 7 May 2013 and the Appellant signed it. In it, she claimed that four of the bangles had been a wedding present from her parents, for which the purchase receipts were still with her parents in Pakistan; the receipt for "changing the style" of those items in Dubai was, she
10 claimed, one of the receipts kept by the seizing officer at Birmingham airport. She claimed that these items had been "old" when she had left the UK with them. She claimed that the other four bangles had been bought by her mother in Dubai airport four years earlier and she had no receipt for them. This account of the origin of the two sets of bangles was, we find, untrue. It became clear at the hearing that the true
15 position was as set out at [5] above.

11. By letter dated 19 June 2013, the Respondent refused the Appellant's request for restoration of her jewellery. It refused her request and told her that she had the option of asking for a review of that decision. She did so, by letter dated 5 July 2013 from her solicitors Kumari-Banga, which was written on her instructions.

20 12. In that letter, it was stated that four of the bangles had been taken out of the UK by the Appellant at the start of her journey, having been bought a year earlier (the receipt for that purchase having been retained by the seizing officer). This must refer to the receipt for the purchase of the items in Dubai in April 2012 which was included in the bundle of documents before us at the hearing. As to the second set of bangles,
25 the letter said they had been bought by the Appellant's husband in Dubai on the outbound journey in April 2013. A receipt for this purchase was produced to us at the hearing, showing Mr Hussain's purchase of the bangles in Dubai on 1 April 2013.

30 13. The letter went on to refer to the anxiety and stress caused to the Appellant by her journey, her pre-occupation with looking after her children and her lack of awareness of any laws about having to declare imported goods of any particular type or value.

35 14. We note that the account given of the origin of one set of the bangles given in the Solicitors' letter (bought by the Appellant or her husband on a previous overseas trip and taken out of the UK before being brought back on 28 April 2013) is different from the account given in the earlier letter signed by the Appellant but drafted by her husband (a wedding present from her parents in Pakistan).

15. The Respondent carried out a review of the earlier decision not to restore the seized goods through officer Helen Perkins, who wrote to the Appellant's solicitors on 2 August 2013 confirming the decision not to restore the goods.

40 16. The Appellant now appeals against that decision.

The law

17. The provisions relating to an appeal against a decision on a review of an earlier decision not to restore seized goods are contained in s 16 Finance Act 1994. The key provision is contained in s 16(4), which provides as follows:

- 5 “(4) 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
10 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
15 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
20 the steps to be taken for securing that repetitions of the
unreasonableness do not occur when comparable circumstances
arise in future.”

Discussion and conclusion

18. It is important to observe that the Tribunal has no power to order the
25 Respondent to restore the goods to the Appellant. Our power is limited to requiring
the Respondent to carry out a further review of the decision not to restore the goods to
her, in accordance with such directions as we may consider appropriate. Further, that
power only arises if we are satisfied that no reasonable reviewing officer could, on the
basis of the information provided, have reached the decision not to restore the goods.
30 It does not matter whether we would have made a different decision, the question is
whether the decision of officer Perkins was within the range of possible reasonable
decisions, having regard to the fact that the stated policy of the Respondent is that,
although seized goods should not normally be restored, each case must be examined
on its merits to determine whether or not there are exceptional factors to support
35 restoration.

19. We should also record that, as the Appellant did not challenge the lawfulness
of the seizure by requiring the Respondent to commence condemnation proceedings
in the Courts, we are bound by the legal presumption that the goods were lawfully
seized, and we must accept as true the facts upon which such seizure was based. In
40 the present case, this is not particularly relevant, as the Appellant has not disputed the
legality of the seizure and she does not dispute that no VAT or import duty had been
paid on the goods, or that they were worth more than the £390 limit.

20. The Appellant claims that there are “exceptional circumstances”, as a result of which the goods should be restored to her. Those special circumstances are said to comprise:

- 5 • The fact that this was the end of a long and stressful journey with her four young children (one of whom was unwell), the first time she had travelled without her husband;
- The fact that she is not well educated and did not know of the restrictions or the procedures that she should have followed;
- 10 • The fact that she did not really understand what the officer was saying to her and her requests for an interpreter were ignored;
- The fact that she considered she had replied honestly and openly to all the questions asked of her by the officer;
- The jewellery was personal and the ones taken off her wrist had been “purchased/exchanged from Dubai”;
- 15 • The other set of bangles had been bought on a previous trip by her husband a year before and she had taken them out of the UK with her on this trip;
- The review officer was wrong to say that she had clearly made a previous trip or trips to Dubai. She had not done so;
- The fact that this was her first trip outside the UK for four years;
- 20 • When she got home, her husband was still in Pakistan and although she had been to the Citizen’s Advice Bureau, various delays had resulted in her losing the opportunity to dispute the legality of the seizure;
- The seized jewellery was her personal property, bought over the years with legitimately obtained money;
- 25 • The seizing officer was rude and uncooperative, asking her about her shoes and clothing as well as seizing the bangles from her wrist;
- She had no restricted or banned items, so was being treated unfairly.

21. We do not consider that any of these factors make the decision of officer Perkins unreasonable. The bare facts are that the Appellant entered the UK without
30 declaring goods which were well in excess of the permitted value, being goods on which duty and VAT had not been paid on any previous importation into the UK. Ignorance of the limit or of the procedure to be followed is no excuse, and none of the other factors she refers to affect these basic facts. Furthermore, the Appellant’s account as to the history and origin of the jewellery changed over time and this very
35 fact undermined her credibility as a witness.

22. We are forced to the conclusion that the decision of Officer Perkins not to restore the goods to the Appellant was within the range of reasonable decisions that she could have taken and therefore we have no power to direct that a further review should be undertaken.

5 23. The appeal must therefore be DISMISSED.

24. 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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**KEVIN POOLE
TRIBUNAL JUDGE**

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RELEASE DATE: 19 June 2014