



[2021] UKFTT 105 (TC)

TC08086

Customs and Excise Duty – Restoration – Sword – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/05297

BETWEEN

MICHAEL STEPHEN

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE SARAH ALLATT

The Tribunal determined the appeal on 22 March 2021 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 2 August 2019 (with enclosures), HMRC's Statement of Case dated 13 September 2020 and the associated documents in the bundle.

DECISION

INTRODUCTION

1. This decision concerns the decision by the Border Force not to restore a Samurai sword over 50cm in length, imported by the Appellant from Muscat, Oman.

BACKGROUND

2. On 16 April 2019 the Border Force at Southampton spoke to the Appellant about the sword in question.

3. It had been purchased by the Appellant in Muscat and he intended to bring it to his home in the UK.

4. The sword had been purchased for around \$175 and the blade measured around 78cm.

5. As the blade measured over 50cm the officer considered the sword was a prohibited item and seized it.

6. No challenge has been made to the legality of the seizure and therefore the sword is deemed to be imported illegally.

7. The Appellant sought restoration of the sword in a letter on 29 April 2019. He stated that he was a collector of swords and had similar items from around the world, and that he had security measured in place at his home address.

8. In a letter of 6 June 2019 the restoration request was refused.

9. The Appellant requested a review of the decision in a letter of 10 June 2019.

10. A review was carried out and restoration was again refused in a letter dated 22 July 2019.

11. The Appellant appealed to the Tribunal on 2 August 2019.

THE ISSUE

12. The decision I am required to make is whether the decision not to restore the sword was unreasonable. If I decide that it was, the power of the Tribunal is limited in the way set out below under 'The Law'.

THE LAW

Importation

13. 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.

14. 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.

15. 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.

16. Section 141 CJA provides that the importation of certain weapons is prohibited.

17. 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.

18. There are a number of defences to the prohibition (for example, swords made in accordance with the traditional making of swords by hand).

The Power of the Tribunal

19. Section 14 of the Finance Act 1994 (“FA 1994”) permits a person to require a review of a decision by HMRC to refuse to restore seized goods. Section 15 of FA 1994 sets out the procedure to be followed on a review under s14 of FA 1994.

20. Section 16 of FA 1994 sets out rights of appeal to the Tribunal in relation to matters connected with a refusal to restore goods and provides, relevantly, as follows:

16 Appeals to a tribunal

(1) An appeal against a decision on a review under section 15 (not including a deemed confirmation under section 15(2)) may be made to an appeal tribunal within the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates.

...

(4) In relation to any decision as to an ancillary matter[2], 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.

The decision in Jones

21. 19. In *HMRC v Jones and Jones* [2011] EWCA Civ 824, the Court of Appeal considered the potential overlap between condemnation proceedings and an appeal to the Tribunal under s16 of FA 1994 against HMRC’s refusal to restore seized goods. In that case Mummery LJ said:

The deeming process [contained in paragraph 5 of Schedule 3 of CEMA] limited the scope of the issues that the respondents were entitled to ventilate in the FTT on their restoration appeal. The FTT had to take it that the goods had been "duly" condemned as illegal imports. It was not open to it to conclude that the goods were legal imports illegally seized by HMRC by finding as a fact that they were being imported for own use. The role of the tribunal, as defined in the 1979 Act, does not extend to deciding as a fact that the goods were, as the respondents argued in the tribunal, being imported legally for personal use. That issue could only be decided by the court. The FTT's jurisdiction is limited to hearing an appeal against a discretionary decision by HMRC not to restore the seized goods to the respondents. In brief, the deemed effect of the respondents' failure to contest condemnation of the goods by the court was that the goods were being illegally imported by the respondents for commercial use.

Approach to assessing the “reasonableness” or otherwise of a review decision

22. Following the approach set out in *Customs and Excise Commissioners v J H Corbitt (Numismatists) Ltd* [1980] 2 WLR 753 at 663 I consider that I must address the following questions in order to assess the reasonableness or otherwise of the decision:

- (1) Did the Officer reach a decision which no reasonable officer could have reached?
- (2) Does the decision betray an error of law material to it?
- (3) Did the Officer take into account all relevant considerations?
- (4) Did the Officer leave out of account all irrelevant considerations?

DISCUSSION

23. I have read all the correspondence from the Appellant to the Border Force, the original decision, the review of that decision and all the documents that were mentioned in the review, and the witness statement of Officer Brenton and the documents associated with that.

24. As set out under ‘The Law’ above, the decision I am required to make is whether the decision (or the review decision) was reasonable. I am not allowed to remake that decision were I to have decided differently but the initial decision was reasonable.

25. If I decide the decision was unreasonable, my power is limited to requiring a further review.

26. I looked first at the original decision.

27. Under the ‘decision’ section of the letter there were a mere 3 lines. ‘I have considered your request under s152 (b) of the Customs & Excise Management Act 1979 (‘the Act’), and our policy. In considering restoration I have looked at all of the circumstances surrounding the seizure but I do not consider the legality or the correctness of the seizure itself. I conclude that there are no exceptional circumstances that would justify a departure from our policy as [sic] and I can confirm on this occasion the sword will not be restored.

28. I am not surprised that Mr Stephen requested a review of this decision. Other than the date of seizure and the description of the sword it contains no details of the personal circumstances of Mr Stephen and no specific details at all about the method of the decision and how it has been arrived at. More than that, it reads as if something has been copied and pasted, with an irrelevant part removed and not replaced by anything relevant.

29. I turned next to the review. This is more detailed and under the ‘Correspondence’ section it details the information that has been provided by Mr Stephen, so at least he can be sure what has been taken into consideration.

30. I note that this letter too has imperfections, notably the fourth paragraph on the second page which ends ...’the thing is duly condemned as forfeit to the Crown by the passage of time under paragraph 5 of schedule 3 of CEMA and’

31. However the contents of this letter, together with the witness statement, allow me to be satisfied that

- (1) The decision was open to a reasonable officer
- (2) It contained no error of law
- (3) It took into account all relevant considerations
- (4) It did not include any irrelevant considerations

32. The decision clearly took into account the information that Mr Stephen had provided about his collection of swords, and the security measures in place at his home.

DECISION

33. Accordingly, I conclude that the decision was reasonable and this appeal is dismissed

RIGHT TO APPLY FOR PERMISSION TO APPEAL

34. 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.

**JUDGE SARAH ALLATT
TRIBUNAL JUDGE**

RELEASE DATE: 16 APRIL 2021