TC01353

Appeal number: TC/2010/09242

Excise duty – restoration of seized goods – decision on review – whether decision not to restore unreasonable – on facts, no – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

ANDREW AISHMAIL KOROMA **Appellant**

- and -

DIRECTOR OF BORDER REVENUE **Respondents**

TRIBUNAL: JOHN CLARK (TRIBUNAL JUDGE)
RICHARD THOMAS

Sitting in public at 45 Bedford Square, London WC1 on 13 June 2011

Benjamin Abu of Lambeth Solicitors for the Appellant

Miss Hale, of the UK Border Agency, for the Respondents

DECISION

1. The Appellant, Mr Koroma, appeals against a decision by the Respondents ("UKBA") that following a departmental review, his gold would not be restored following seizure on 4 September 2010.

Mr Koroma's application and our decision on it

2. On 10 June an application had been made on behalf of Mr Koroma for the hearing to be adjourned. That application had been refused by a Judge on that day on the basis that it would be open to Mr Koroma to renew the application at the hearing. Mr Abu made the renewed application at the start of the hearing.

3. He explained that his firm had been instructed on 24 May. The file papers had not been received until 10 June. The documents consisted of "bits and pieces". He had also requested the return of original documents from UKBA.

4. Particular issues had arisen in relation to Mr Koroma's witness statement as prepared by Mr Koroma's previous advisers and the Statement of Case submitted on his behalf. In his present solicitors' view, Mr Koroma had been given inadequate advice by his previous solicitors; the witness statement had been prepared by them following a meeting which had lasted only 45 minutes, and Mr Koroma had had no participation in the preparation of his Statement of Case.

5. Mr Abu explained that his firm had prepared a new witness statement for Mr Koroma, who wished the previous witness statement to be withdrawn.

6. Mr Abu had been sent the bundle from UKBA; he would have liked more time to digest that. He submitted that there should be an adjournment of, say, four weeks to allow for preparation of the case. He referred to the application which had been made on the previous Friday, 10 June; this had been refused. For the reasons given, he submitted that the adjournment should be granted.

7. For UKBA, Miss Hale opposed the application. The main witness had had to travel from Plymouth, and the expense of a hotel stay had had to be incurred. The three week period from 24 June had been more than adequate for Mr Koroma's new advisers to review the questions raised by the appeal. Documents had been obtained from the previous solicitors; Mr Koroma could have obtained the file from them. The request to UKBA for original documents was entirely new; photocopies were available. It was a very late stage for the application to be made; UKBA was here and ready to deal with the appeal. Her understanding was that a reason for adjourning was the need on Mr Koroma's behalf for the UKBA's intercepting officer to be present at the hearing. She submitted that this was not necessary in the circumstances.

8. In reply, Mr Abu indicated that one of the reasons for requesting the original documents was the reference in UKBA's Statement of case to "clear evidence of manuscript doctoring". Mr Koroma needed to show that the document was an official document from the relevant Sierra Leone authority. The Sierra Leone Embassy

needed to see the original documents to authenticate them. The request for the original documents had been made to UKBA on Friday 10 June.

9. Other issues of fact needed to be resolved. The Review Officer had arrived at his conclusion based on the officer's notes. These had been signed only by the officer and not by Mr Koroma. Mr Abu had asked for the officer to attend the hearing in order to clarify some of the facts in his notes. Miss Hale submitted that a request made on Friday, the last working day before the hearing, was inadequate.

10. After discussion, we decided that the reasons put forward on Mr Koroma's behalf were not sufficient to outweigh the expense and inconvenience which would have resulted from the postponement of the hearing; we considered that it was in the interests of justice to proceed with the hearing after allowing a delay to permit Mr Abu to confer with Mr Koroma.

The substantive hearing

11. Following Mr Abu's discussion with Mr Koroma, the hearing commenced one hour later than the time originally listed.

The facts

12. The evidence consisted of a bundle of documents, including witness statements given by Mr Koroma and by Mrs Deborah Hodge, the UKBA Review Officer. Two witness statements made by Mr Koroma were included in the documentation provided to us; the second was dated 10 June 2011. However, in the light of Mr Abu's submissions that the original witness statement prepared for Mr Koroma by his previous advisers was defective in a number of respects, we ignored that original statement. Both Mr Koroma and Mrs Hodge gave oral evidence.

13. From the evidence we find the following background facts. We consider disputed evidence later in this decision.

14. Mr Koroma was born in Sierra Leone in 1970, and came to the UK in 1992; he is now a British citizen. Together with his brother he runs a small family business, run as a limited company. The business is a high street shop, with no other branches and no persons employed in the business apart from Mr Koroma and his brother.

15. Mr Koroma wished to expand his business in a way that would ensure some connection with Sierra Leone. As he was aware of other persons from the UK buying goods in the UK and selling them in Sierra Leone, he wished to do so as well, taking goods purchased in the UK to Sierra Leone and selling them at a profit. He travelled there from the UK on 6 April 2010, taking a range of goods.

16. During his time there he succeeded in selling all the goods that he had bought in the UK. He came into contact with Edna M Kamara, a licensed gold exporter. She advised him that with the profits which he had made he would be able to buy gold and sell this in the UK. She informed him that there were a number of formalities which

needed to be fulfilled in Sierra Leone before he would be allowed to take the gold to the UK. He arranged to buy gold through her.

17. He made the purchase through Ms Kamara. On 3 September 2010 he accompanied her to the Government Gold and Diamond Office of the Ministry of Mineral Resources at their office in the Bank of Sierra Leone where he completed a number of official forms. He was aware that the gold was weighed and valued and export forms were completed; he paid an export charge. In evidence, he stated that he would not have been able to follow the procedure in Sierra Leone without the assistance of Ms Kamara; he did not know what the procedure was and he was completely reliant on her advice. He believed her to be competent to provide him with advice, because she provided him with a copy of her licence. He believed that once the gold had been through the Ministry of Resources, he would be free to take it back to the UK. Ms Kamara told him that there were no other formalities for him to follow and he could freely take the gold back to the UK and sell it once he arrived.

18. The gold had been put in a box at the Bank of Sierra Leone. The bank seal had been put on the box and the bank stamp had been put on the four corners of the box. To travel back to the UK, Mr Koroma put the box in his hand luggage bag; it was not hidden, and Mr Koroma did not attempt to conceal the box in his luggage.

19. When Mr Koroma left Sierra Leone he left through Lungi Airport. Ms Kamara had explained to him that he needed to inform the officials at the airport that he was carrying gold; he did so, in accordance with those instructions. He was given further documentation at Lungi Airport relating to the gold.

20. On 4 September 2010 at Heathrow Airport, Mr Koroma was stopped by a UKBA officer in the green channel (for persons arriving from "Third Countries", ie non-EU countries, having nothing to declare). He had arrived on a flight from Sierra Leone.

21. According to the officer's notes, Mr Koroma answered the officer's questions as follows:

(1) He confirmed to the officer that he was travelling alone, and had travelled from Sierra Leone. He lived in Tottenham.

(2) He had been away for two months. What he did for a living was that he and others had a family business, a supermarket. His brother had been running this while he had been away.

(3) He confirmed that the bag which he had with him was his own, that he had packed it, and that everything in it belonged to him.

(4) When the officer referred to Mr Koroma being in the green channel and asked him whether he had anything to declare, he answered "No".

(5) In response to the question whether he had any cigarettes, tobacco or meat, Mr Koroma stated that he did not.

22. The officer then examined Mr Koroma's baggage. Within it he found a small box; he asked Mr Koroma what was in it. The officer's notes record Mr Koroma's answer as follows:

> "A bar of gold. It's a sample. I want to by [ie, buy] and do some business like export. If it doesn't work then I'll turn it into jewellery."

[The form which the gold took was a matter of dispute; we consider this later in this decision.]

23. In response to the question how much he had paid for the gold, Mr Koroma produced a receipt and export papers for the gold. He stated the cost [and Sierra Leone export duty] in Sierra Leone currency. The officer recorded the approximate sterling valuation as £9,327.48 purchase price and £279.82 in duty, totalling £9,607.30.

24. The officer included the following further details in his notebook:

> "AK is a director of Koroms International Ltd @ [address, telephone number, Company number, VAT registration number].
>
> 08:30: Goods seized. I issued & explained notice 1, 12A, C156 and C162. Seal No [number].The Gold was placed in a clear plastic bag and sealed in front of AK. I wrote the Seal No on the C156 and AK signed it."

The officer put his initials at the end of the note in his notebook, but the notes were not signed by Mr Koroma; we refer to this later.

25. The duplicate copy of the form C156 (Seizure Information Notice) included in the evidence showed, under the heading "Schedule of things seized", the quantity as being 446.54 grams, the description as "of gold", and the condition as "Gold Bar". The form contained the following acknowledgment:

> "I acknowledge receipt of Form C 156 (Original) and agree that the above description of the things seized is correct."

Beneath these words appeared Mr Koroma's signature, the date and his name in block letters (but not his full name). The officer's "unique identifier" [a number] appeared before the acknowledgment; as this identifier was shown, the officer's signature was not required.

26. In the same way, Mr Koroma's signature appeared on the duplicate copy of form C162, acknowledging receipt. The officer's unique identifier was shown, but no name stated.

27. On 7 September 2010 Mr Koroma's then solicitors wrote to UKBA on his behalf. Their letter explained that, before his interception by the officer at Heathrow, there had been nobody to whom he could speak in order to declare the gold. The letter enclosed various documents (considered below). Although the letter referred to a letter of authority signed by Mr Koroma and addressed to his solicitors, the version enclosed was a photocopy rather than an original. The letter stated that Mr Koroma

was a genuine businessman, both in the UK and Sierra Leone; he paid tax in both countries, and had no intention to deceive Customs [ie UKBA]. Nor had Mr Koroma intended to smuggle the gold into the UK.

28. On 29 September 2010, in response to a letter from UKBA dated 22 September 2010, that firm provided the original letter of authority and repeated their request for the gold to be restored to Mr Koroma.

29. On 8 October 2010 an officer of UKBA's National Post Seizure Unit wrote to the solicitors. The officer emphasised that the decision in the letter concerned the question whether the gold should be restored. In considering restoration, the officer had looked at all of the circumstances surrounding the seizure but did not consider the legality or the correctness of the seizure itself. If Mr Koroma had contested the legality or correctness of the seizure, his appeal would be heard in a Magistrates' Court in due course, as had been explained in Customs Notice 12A given to Mr Koroma at the time of the seizure.

30. The officer's conclusion was that there were no exceptional circumstances that would justify a departure from the UKBA's policy, and confirmed that on this occasion the gold bar would not be restored.

31. By letter to UKBA dated 15 October 2010 Mr Koroma's solicitors requested a review of the decision not to restore the gold. They contended that the decision not to do so was unfair, unreasonable and not in accordance with the law.

32. On 21 October 2010 the solicitors wrote to UKBA, seeking to appeal against the legality of UKBA's seizure of the gold. UKBA subsequently advised that this appeal was out of time.

33. On 16 November 2010 the Review Officer, Mrs Hodge, wrote to the solicitors setting out the results of her review. Her conclusion was that the gold should not be restored. On 26 November 2010 the solicitors gave Notice of Appeal on Mr Koroma's behalf to the Tribunals Service.

The law

34. Section 49(1) of the Customs and Excise Management Act 1979 ("CEMA 1979") provides:

> "**49 Forfeiture of goods improperly imported**
>
> (1) Where—
>
> (a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being goods chargeable on their importation with customs or excise duty, are, without payment of that duty—
>
> (i) unshipped in any port,
>
> (ii) unloaded from any aircraft in the United Kingdom,

. . .

(iv) removed from their place of importation . . . or . . .

those goods shall . . . be liable to forfeiture."

35. Section 78(1) and (4) CEMA 1979 provides:

"**78 Customs and excise control of persons entering or leaving the United Kingdom**

(1) Any person entering the United Kingdom shall, at such place and in such manner as the Commissioners may direct, declare any thing contained in his baggage or carried with him which—

(a) he has obtained outside the United Kingdom; or

(b) being dutiable goods or chargeable goods, he has obtained in the United Kingdom without payment of duty or tax,

and in respect of which he is not entitled to exemption from duty and tax by virtue of any order under section 13 of the Customs and Excise Duties (General Reliefs) Act 1979 (personal reliefs).

. . .

(4) Any thing chargeable with any duty or tax which is found concealed, or is not declared, and any thing which is being taken into or out of the United Kingdom contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, shall be liable to forfeiture."

36. Section 167(1) CEMA 1979 sets out further circumstances in which goods may be liable to forfeiture:

"**167 Untrue declarations, etc**

(1) If any person either knowingly or recklessly—

(a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Commissioners or an officer, any declaration, notice, certificate or other document whatsoever; or

(b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of any assigned matter, which is untrue in any material particular, he shall be guilty of an offence under this subsection and may be arrested; and any goods in relation to which the document or statement was made shall be liable to forfeiture."

37. Section 16(4) of the Finance Act 1994 ("FA 1994") provides:

"**16 Appeals to a tribunal**

(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 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 Mr Koroma

38. Mr Abu argued that the facts relied on in the Review Officer's letter were inaccurate. He submitted that many of the questions recorded had not actually been asked. Although the entry in the officer's notebook showed the officer's signature, there was no confirmation by Mr Koroma that the notes were true and accurate.

39. In relation to the facts, Mr Koroma had provided a new witness statement. Mr Abu reviewed in detail the facts as set out in that statement. (We consider the relevant facts later in this decision.)

40. The advice and assistance which Mr Koroma had received from his previous solicitors had been completely inadequate. Following his instructions to Mr Abu's firm, grave errors had been discovered in the original witness statement, which was why the new statement had been presented at the hearing. Mr Koroma had only become aware of the Statement of Case prepared for him by his previous solicitors when they sent it to the Tribunal; there were grave errors in this also, and therefore no reliance should be placed on either the original witness statement or that Statement of Case.

41. Mr Abu submitted that it would be unreasonable for the gold not to be restored to Mr Koroma, and, given his personal circumstances, that there were exceptional grounds for the gold to be restored; his appeal should be allowed.

Arguments for UKBA

42. Miss Hale put the main points of UKBA's case; reliance on another person was not an exceptional reason justifying restoration of the goods, and there had been no argument relating to proportionality.

43. She explained that the goods had been seized pursuant to the power under s 49 CEMA 1979, which made them liable to forfeiture. The importer had a right to

challenge the forfeiture. If there was no such challenge, the goods were deemed to be forfeited. Section 14 of the Finance Act 1994 ("FA 1994") enabled the person liable to duty to request a review of the decision not to restore the goods. The appeal to the Tribunal concerned the question whether or not the goods should be given back to the importer after forfeiture.

44. Miss Hale referred to the evidence of Mr Koroma and Mrs Hodge. The UKBA's case, put at its highest, was that Mr Koroma had lied. Even if the intercepting officer's notes were not correct, Mr Koroma's evidence still indicated that his own behaviour had been misleading.

45. On Mr Koroma's evidence, his lack of knowledge was said to mean that the decision not to restore the gold was unreasonable. Miss Hale contended that lack of knowledge was not a reason for the return of the goods. It was well known that duty was owing on goods coming into the UK. The decision of Mrs Hodge, the Review Officer, had not been unreasonable in the *Wednesbury* sense (*Associated Provincial Picture Houses, Ltd v Wednesbury Corporation* [1948] 1 KB 223).

Discussion and conclusions

46. As no effective attempt was made to challenge the validity or correctness of the seizure by taking an appeal to the Magistrates' Court, no questions relating to those matters can be raised in these proceedings. That this is the correct approach has very recently been confirmed by the Court of Appeal in *HMRC v Jones and another* [2011] EWCA Civ 824. We accept the evidence that at the time of the seizure Mr Koroma received from the intercepting officer the information relating to his rights following the seizure; such information included the methods of appeal both for proceedings in the Magistrates Court to challenge the seizure and for proceedings in the Tribunal to reconsider the decision not to restore the goods. This information was there for Mr Koroma to read himself, as well as to pass on to his then advisers. The letter dated 21 October 2010 from Mr Koroma's previous solicitors was clearly outside the 30 day time limit for an appeal challenging a seizure. The reason for that delay is not apparent, but this is not a question within our jurisdiction.

47. Under s 16(4) FA 1994 the powers of the Tribunal in relation to an appeal against refusal to restore goods are limited. We would emphasise that if an appellant in such proceedings is successful, this does not mean that the Tribunal can order the restoration of the goods. It is clear from *Lindsay v Customs and Excise Commissioners* [2002] STC 588 at [68]-[69] that such an order cannot be made.

48. In order for an appeal to succeed so as to enable the Tribunal to take any of the steps listed in s 16(4), it is necessary for the Tribunal to be satisfied that UKBA or the person making the decision could not reasonably have arrived at it. The test adopted in relation to such matters is that set out by Lord Greene MR in the *Wednesbury* case at p 229:

> "For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the

> matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably."”

49. In Mr Koroma’s case, the question is therefore whether UKBA’s decision, as confirmed on review, not to restore the gold was one that it could not reasonably have arrived at. This requires further consideration of the facts, before we examine the review letter.

50. Mr Koroma’s arrival at Heathrow was stated in his witness statement of 10 June to have been through Terminal 4. This is not consistent with the information set out in the officer’s handwritten notes and in form C156, both of which stated the location as “LHR T1”. As Mr Koroma signed this form at the time when the gold was seized, we find that this evidence is to be preferred to that in his witness statement.

51. In his witness statement Mr Koroma referred to the officer’s handwritten notes, and stated that the notes of what he had said were not accurate or true; during the time while he was with the officer, the officer had made no notes of the conversation with Mr Koroma. Mr Koroma’s evidence was that when approached by the officer, he had told the officer that he was travelling alone and had come from Sierra Leone; the first thing that the officer had asked him was if he could search Mr Koroma’s suitcase. In oral evidence, Mr Koroma stated again that the officer had not written any notes while Mr Koroma had been present.

52. In relation to the officer’s notebook, Mrs Hodge stated in oral evidence that there were initial questions which officers always asked; these were standard questions. Every person who was stopped would be asked those questions. In carrying out her review she had to rely on the officer’s notebook as a prime source of evidence. She accepted that the officer should have asked Mr Koroma to sign the notebook, and that this had not been done. Her view was that the person stopped should always be asked to sign the notebook; this made the reviewer’s job easier and fairer.

53. We accept Mrs Hodge’s evidence as to the general practice in asking questions of persons at UK entry points, being a standard series of questions. She did not specify that it was standard practice for notes to be taken during the interview, but two factors persuade us that this is the case. The first is that in the majority of cases which reach the Tribunal, the person stopped has signed the officer’s notes. The second is the time entries on the notes taken by the officer who intercepted Mr Koroma. The first is at 07:50 – “Green channel at LHR T1”. The second is at 08:30 – “Goods seized. I issued and explained Notice 1, 12a, C156 and C162 . . .” Thirdly, the officer stated at the end of the notes: “I wrote the Seal No on the C156 and AK signed it.” Below this the officer added his initials, “04/09/10” and “09:15 hrs”. On the balance of probabilities, we find that the notes were contemporaneous with the interview, as otherwise the officer would have had to keep separate notes of the timings. The matter would have been put beyond doubt if the officer had asked Mr Koroma to sign the notebook. We make the general suggestion that UKBA should issue instructions to officers that they should always ask the person stopped to sign the officer’s notebook, to avoid disputes of this nature.

54. We accept the officer's notebook as the best evidence of the questions put by the officer to Mr Koroma and the answers given by Mr Koroma to the officer on 4 September 2010. As Mr Koroma did not refer to any record which he might have kept of the interview, his evidence was necessarily based on his recollections after the event, rather than from contemporaneous notes. We accept the evidence based on the officer's notes, as set out earlier in this decision. We therefore reject Mr Koroma's evidence that the officer's first question was whether he could search Mr Koroma's suitcase, and also Mr Koroma's evidence that he was not asked if he had anything to declare and that he was only told that he needed to declare the gold in the UK. We also reject the evidence that the officer did not make any notes while Mr Koroma was with him.

55. Mr Koroma stated both in his witness statement and in oral evidence that the officer had told him that he needed to declare the gold and that Mr Koroma offered to declare it. We do not accept this evidence. Nothing to this effect appears in the officer's notes. Further, by going through the green channel and failing to draw the officer's attention to the box containing the gold, Mr Koroma had already brought himself within s 78(1) and (4) CEMA 1979. If the gold was for personal use, the limit for personal importations as set out in the Schedule to the Travellers' Allowances Order 1994 (SI 1994/955) is £390, a small fraction of the actual sterling value of £9,607.30 inclusive of duty. As Mr Koroma's evidence in his 10 June witness statement was that he had told the officer that the gold was for marketing purposes, and as the officer's notes report Mr Koroma's response to the question as being that set out at paragraph 22 above, we find that Mr Koroma intended to use the gold for commercial purposes. By failing to declare the gold before the officer found it as a result of the search of Mr Koroma's baggage, Mr Koroma was clearly within s 78 CEMA 1979. Further, by not declaring the gold to the officer when asked "Do you have anything to declare?", Mr Koroma also brought himself within s 167 CEMA 1979. Thus there were two separate reasons for the gold to be forfeited. At that stage, therefore, it would not have been appropriate for the officer to tell Mr Koroma that he needed to declare the gold.

56. Mr Koroma's evidence was that he believed that once the gold had been through the Ministry of Resources in Sierra Leone, he would be free to take it back to the UK; he was told by Ms Kamara that there were no other formalities for him to follow and he could freely take the gold back to the UK and sell it once he arrived. We find that whatever advice he may have received in Sierra Leone, this did not absolve him of his responsibility to check the position when he returned to the UK. Ms Koroma's comments presumably reflected the position in Sierra Leone, but without any express indication to the contrary, could not reasonably be expected to amount to definitive advice on the duty and tax position in the UK.

57. Mr Koroma also stated that as he had paid tax in Sierra Leone and had not been informed that he would have to declare the goods in the UK, he did not think that he had to check the position or speak to any officials when he arrived at Heathrow. Had he been aware, he would have asked. In his previous advisers' letter dated 7 September 2010, which was part of the documentation reviewed by Mrs Hodge, it was stated that Mr Koroma had gone through UKBA-Customs, but there had been no-

one he could speak to in order to declare what they referred to as "his gold bar". These respective statements are inconsistent with each other. In any event, Mrs Hodge stated in the review letter that the officer at Heathrow had confirmed that the red channels were manned at the time when Mr Koroma had arrived, but that Mr Koroma had opted to walk through the green channel. In his oral evidence, Mr Koroma said that he had not been informed in Sierra Leone that he would have to declare the gold; if he had been aware of this, he would have asked. We conclude from his oral evidence and his 10 June witness statement that the assertion in the advisers' letter dated 7 September 2010 was incorrect; the case now put on his behalf is that he was ignorant of the requirement to declare the gold and therefore did not seek to make any enquiries of UKBA officers when he arrived at Heathrow.

58. There was a dispute as to the exact form which the gold was in, namely whether it was a gold bar or gold dust. The documentation supplied to UKBA contained inconsistencies in this respect. The handwritten note of examination at Lungi Customs on 3 September 2010, which was on plain paper with a stamped imprint reading: "National Revenue Authority: Collector: Lungi" referred to a package examined externally and said to contain gold dust samples. The "Gold Valuation and Exports Form", with a heading referring to the Sierra Leone Government and subtitle "Ministry of Mineral Resources: Government Gold and Diamond Office", referred to the same weight of "granules samples".

59. A further document, which may have been provided after the event with a note from Ms Kamara dated 27 September 2010, described the gold as "bar samples". This document appears to us to be of dubious provenance. It purports to be an export clearance certificate from the Sierra Leone Ministry of Mineral Resources "Mines Monitoring Office". However, the letterheading contains errors. Although the details are in block capitals, the second letter "i" in the word "Ministry" is in lower case. The word "Import" in the title of the certificate has been deleted by a number of pen strokes and the word "Export" in block capitals inserted in pen rather than in print. The next word in the title, instead of "Clearance", is "Clearamce". Above a pressed stamp showing the details "Mines Division: Senior Mines Monitoring Office: Lungi Airport" and impressed upside down on the document but with a signature the right way up, there is an annotation "Verefied" [*sic*]. We are not convinced that this document is genuine.

60. As we have set out at paragraph [22] above, the officer's notes of the seizure interview at Heathrow record Mr Koroma as having referred to the gold as a bar of gold. No additional evidence was adduced at the hearing to enable us to decide whether the gold was in the form of a bar or was "gold dust samples". However, we do not consider it material to our decision to establish what form the gold took. The question at issue is the importation of this quantity of gold; its form does not affect that question. Accordingly we make no decision or finding as to the form of the gold.

61. Whatever the doubts may be as to any or all of the documents relating to the export from Sierra Leone, they are not in our view material to the question of the importation of the gold into the UK. We therefore make no findings concerning those documents.

62. A material part of the evidence and submissions related to Mr Koroma's lack of international business experience, and his consequent lack of knowledge of the requirements relating to the importation of the gold into the UK. These matters concern Mr Koroma's subjective state of knowledge. The same is the case for his understanding derived from the information provided to him in Sierra Leone by Ms Kamara, whether or not that understanding was justified by the actual advice given. Liability in respect of duties and taxes on import, and the obligation to declare goods on importation where their value is in excess of the "personal relief" level of £390, are matters which do not depend on the state of knowledge of the importer. The only relevance of Mr Koroma's state of knowledge is to the question whether there were exceptional circumstances justifying restoration.

63. In the light of our findings of fact, we now consider the review letter written by Mrs Hodge. Her letter set out the background; we accept her evidence that she relied on the officer's notes, and consider it reasonable for her to have done so. She referred to the £390 limit for importations from "third countries" without payment of duty and/or tax. She indicated that the officer had seized the gold because, by entering the green channel, Mr Koroma had failed to declare goods in excess of his allowance. Although (for the reasons given above) this is not within our jurisdiction, we regard this as a reasonable justification for the seizure.

64. Mrs Hodge referred to the history of the correspondence, and in particular to the letter dated 15 October 2010 requesting a review of the decision not to restore the gold. She summarised the contentions included in the advisers' letter. She then referred to the restoration policy for goods. The general policy was that goods would not be restored; however, each case was examined on its merits to determine whether, exceptionally, restoration might be offered.

65. Mrs Hodge then set out her consideration of the case. She described the terms on which she had considered the decision afresh, and the representations and other material taken into account. We are satisfied that the general approach described and adopted by her was reasonable. She stated that Mr Koroma's advisers had not provided her with details of exceptional circumstances that would result in her deciding to restore the gold to their client under the UKBA's policy.

66. Further, a number of circumstances formed positive additional reasons for concluding that the gold should not be restored:

(1) Goods over the value of £390 should be declared in the Customs red channel. The signs at Heathrow clearly directed travellers from outside the EU to use the green or red channels. Mr Koroma had entered the green channel, indicating that he had no goods of any kind to declare. In doing so, he failed to declare his gold, worth almost £9,000. Mrs Hodge referred to s 78(1), (4) and (3) CEMA 1979.

(2) The red channels were manned at the time, but Mr Koroma had opted to walk through the green channel and was then stopped by the officer. Mr Koroma must have known that he was expected to answer questions truthfully and to disclose the full quantities of any goods in his baggage. Even though he was in

the green channel, he was give ample opportunity to make a declaration to the officer and yet when asked if he had anything to declare he responded by answering "no". The gold was only discovered when his bag was searched. Miss Hodge stated that it was clear to her that this was a deliberate deception and that Mr Koroma had made no attempt to enter the red channel or declare the goods.

(3) Mr Koroma had told the officer that he wanted to do some business like export or turn the gold into jewellery. The advisers had stated that he was a legitimate business man in the UK and Sierra Leone. If this were the case, he should have been aware that if the gold was being imported for a commercial purpose, it should have been properly entered as 'Merchandise in Baggage' using a Form C88/SAD or he could have used a clearance agent. Details of the procedure were published on the HMRC website in Notice 6. Not only had Mr Koroma failed to investigate the proper methods of entering the gold, he had also failed to mention the existence of the gold when given the opportunity.

(4) Mrs Hodge had read the advisers' letter carefully to see whether a case had been presented for disapplying the UKBA policy and whether there were any exceptional circumstances for doing so: she had found no reason for disapplying the policy and no exceptional circumstances.

(5) In her conclusion she stated her opinion that the application of the UKBA policy in Mr Koroma's case treated him no more harshly or leniently than anyone else in similar circumstances, and she could find no reason in this case to vary the policy not to restore. For the reasons which she had set out, she concluded that the seized gold should not be restored.

67. Having considered Mrs Hodge's letter in the light of all the evidence, we are not satisfied, in terms of s 16(4) FA 1994, that UKBA or the person making the decision, ie Mrs Hodge, could not reasonably have arrived at it. We consider that she took into account all relevant considerations and excluded from her consideration all matters irrelevant to what she had to consider. There is therefore no basis for us to take any of the actions listed in s 16(4) FA 1994.

68. In the light of our conclusion, we dismiss Mr Koroma's appeal.

Right to apply for permission to appeal

69. 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.

JOHN CLARK

TRIBUNAL JUDGE
RELEASE DATE: 26 July 2011