# TC02578

**Appeal number: TC/2009/14724**

***EXCISE DUTY – Restoration of jewellery for a fee – civil evasion penalty for under-declaration of value of jewellery – whether Review Officer's decision that there had been a deliberate evasion of the payment of duty was reasonable – yes – whether civil evasion penalty should have been imposed – yes – Appeal dismissed.***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**ABN JEWELLERS** **Appellant**

**- and -**

**DIRECTOR OF BORDER REVENUE ("UKBA")** **Respondents**

**TRIBUNAL: JUDGE J. BLEWITT**
**MS C. S. DE ALBUQUERQUE**

**Sitting in public at Bedford Square on 6 and 7 February 2013**

**Mr Baig, instructed by Graman Solicitors, on behalf of the Appellant.**

**Mr Powell, Counsel instructed on behalf of UKBA, for the Respondents.**

## DECISION

1. This is an appeal against the decision of the UKBA contained in a letter dated 2 September 2009 in which the UKBA upheld on review its decision to impose a Customs Civil Penalty on the Appellant for the under-declaration of the value of jewellery imported into the UK on 17 March 2009.

*Background*

2. On 17 March 2009 Dr Khowaja Ahmed Christi Pathan ("Dr Pathan") and Mr Sehban Ahmed Khan ("Mr Khan") entered the red channel at Terminal 3, London Heathrow Airport as they were in possession of a quantity of Asian 22 carat gold and 22 carat gold/gem jewellery items ("the jewellery"/"the goods").

3. A Customs C88 import declaration document stated that the value of the jewellery was £50,757.80. With the jewellery were 2 invoices; one showed a consignment of jewellery with a value of £29,512.42 and the other a consignment valued at £21,245.44. The invoices totalled 6p less than the declared value of the goods on the C88.

4. Officer questioned Dr Pathan and Mr Khan about their journey and the goods. It transpired that Dr Pathan had started his journey in Pakistan and met Mr Khan en route to the UK in Dubai. Mr Khan initially stated to officers that he was a director of the Appellant Company, however he later clarified that he was not a director of the Appellant but was a director of another business called Daata Jewellers. Dr Pathan told officers that he was a partner in the Appellant Company. Dr Pathan also owned a jewellery business called Abdullah Jewellers.

5. The UKBA officers weighed the jewellery and were not satisfied that the value declared by Dr Pathan and Mr Khan was correct. The jewellery was detained while further enquiries were carried out.

6. On 26 March 2009 Mr Peter Buckie, a professional jewellery appraiser and official jewellery valuer for HMRC at Heathrow Airport valued the jewellery at £75,000 (wholesale price excluding VAT).

7. On 2 April 2009 Dr Pathan was interviewed for a second time at Heathrow Airport during which he indicated that he did not agree with Mr Buckie's valuation of the jewellery. As a result, a second, more detailed valuation was carried out which valued the jewellery at £79,000 (wholesale excluding VAT). The difference in unpaid VAT revenue was £4,236.33; consequently on 9 June 2009 a Customs Civil Evasions Penalty ("CCEP") was calculated and imposed in that sum. On the same date the jewellery was seized under s 139 (1) of the Customs and Excise Management Act 1979 ("CEMA") as being liable to forfeiture under s 49 (1) of the same Act.

8. The Appellant challenged the legality of the seizure on 7 July 2009 but on 20 January 2010 chose to abandon condemnation proceedings which were formally discontinued.

9. On 7 March 2010 Mr Buckie provided a third valuation report which confirmed the valuation provided in his second report.

*Review and Appeal*

10. On 18 June 2009 Mr Baig was authorised to act on behalf of the Appellant and Abdullah's Jewels. A review of the decision to impose a CCEP was requested by the Appellant by letter dated 14 July 2009. The letter stated:

*"In reference to custom civil evasion penalty notice, dated 9th June 2009, please find below request for a departmental review...We submit, the valuation is incorrect, GSP is incorrectly ignored and the step taken to seize goods and charge penalty is disproportionate....Please release out goods after taking a deposit for the disputed amount, whilst you undertake review."*

11. The Appellant via Mr Baig continued to correspond with the UKBA over the course of 2009. It is right to say that the correspondence relates to issues of restoration and condemnation.

12. On 2 September 2009 the UKBA upheld its decision to impose a CCEP (which was reduced by 30% to take account of mitigating factors) following a review of the case.

13. The Appellant appealed to the Tribunal Service on 30 September 2009. The grounds of appeal relied upon were that:

- The surveyor's valuation is incorrect;
- The application of a penalty is unjust; and
- The officers' guidance and their adamant stance on the review matter is negligent and a breach of duty.

14. The Appellant also provided detailed particulars of the grounds of appeal which can be summarised as follows: in respect of the valuation issue, Mr Buckie lacks substantial Pakistani manufacturing and purchasing experience and his valuation exceeds the retail value in the UK as indicated by testimonials from the Appellant's buyers. The dispute regarding the valuation only related to the consignment which was purchased from Abdullah's Jewels which was declared at a lower amount as that was the price at which it was purchased some time before the date of importation. As regards the CCEP the Appellant submitted that a dispute over the value of the goods is not an indication that the goods were dishonestly misdeclared. The final point of appeal alleging negligence and breach of duty related to whether an appeal could be made once the restoration fee was paid. This matter was not pursued at the hearing as,

for reasons we will set out below, we were satisfied that the Appellant could pay a restoration fee and appeal the same.

*Preliminary Matters*

15. Two issues arose in respect of this appeal which we will address at this point in order to ensure the reader has no confusion as to the decisions against which the appeal is made and the jurisdiction of this Tribunal.

16. The request for a review made by the Appellant referred only to the imposition of a CCEP. At that time the Appellant was also contesting the legality of seizure and was in the process of instigating condemnation proceedings in respect of that issue.

17. The Appellant's statement of case indicated the intention of the Appellant's to challenge the legality of seizure on the basis that it was not accepted that the value of jewellery imported had been under-declared. This case has a protracted history and the Appellant's statement of case and Notice of Appeal were prepared prior to the release of the decision of *Jones v HMRC* [2011] EWCA Civ 824. Mr Baig confirmed that condemnation proceedings in the Magistrates Court had been withdrawn by the Appellant and that there was no challenge to the legality of seizure. However, Mr Baig stated that there still remained a challenge to the UKBA's valuation of the jewellery imported.

18. We spent time considering the matters set out above. In our view there was no bar to an Appellant paying a restoration fee and pursuing an appeal in respect of that fee; to find otherwise would deprive an Appellant of his right to appeal and we could easily envisage circumstances, such as a commercial context, in which goods seized were required by an Appellant who did not agree with the restoration fee but felt compelled to retrieve the goods as soon as possible.

19. Having reached this view, we considered the relevance of the valuation of the jewellery in the context of this appeal. The Appellant had provided the UKBA with 3 valuations (more about which we will say later in this decision) but had no live evidence to call on the valuation issue. When we queried why this was, we were informed that it was a choice the Appellant had made (and we note as is their right). In our view, the valuation issue raised by the Appellant related, in the main, to the legality of seizure, which was no longer a matter under appeal and not a matter over which this Tribunal has jurisdiction.

20. However we also took the view that the valuation of the goods could be a matter relevant to the fee for which the goods were restored and to that limited extent we indicated to the parties that we would be content for the Appellant to raise the issue.

21. The legislation governing this type of appeal is found in CEMA 1979. There was no dispute as to the applicable provisions, however we were concerned at a point raised by the review officer in this case who stated that had he been asked to review the valuation issue in relation to the restoration fee, he would have. We fully accepted this evidence as we could see no reason why the officer would have failed to act in

accordance with the legislation and as required by his employment. However it was clear to us that the review decision centred on the CCEP.

22. In order to ensure that the legislation applicable to this case was complied with, and to ensure complete fairness to the Appellant in understanding the decision against which it appealed pertaining to the valuation issue we requested that the review officer review this aspect of the case and provide an addendum to his written statement which effectively acted as his review decision and evidence on the valuation point.

23. In summary therefore, we treated this appeal as an appeal against the fee for which the goods were restored and an appeal against the Customs Civil Evasion Penalty imposed for the under-declaration of the value of the goods.

*Evidence*

24. We heard oral evidence on behalf of the UKBA from the review officer Mr Raymond Brenton and, on behalf of the Appellant, Dr Pathan (with the assistance of an interpreter) and Mr Khan gave evidence.

25. The review decision of Mr Brenton can be summarised as follows: the Commissioners' general policy is that a CCEP will be imposed where Customs duty or import VAT has been evaded and dishonest conduct has been established. The policy is derived from legislation. An independent valuation was carried out by the Jewellery Evaluation & Mediation Services. The first valuation adopted a random selection procedure due to time constraints and the quantity and diversity of the jewellery. The goods were valued at £75,000 (wholesale excluding VAT). In a second interview Dr Pathan did not agree the valuation obtained by the UKBA as accurate and consequently a second and more detailed valuation was arranged. This gave a value of £79,000(wholesale excluding VAT).

26. Mr Brenton considered the evidence that Dr Pathan is a partner of the Appellant Company and well versed in the MIB procedure having regularly exported gold to Abdullah's Jewels in Pakistan. At the premises of Abdullah's Jewels, gold and gems are manufactured into jewellery, sold to the Appellant and imported back into the UK. Mr Brenton noted that Mr Khan who accompanied Dr Pathan is a director of Daata Jewellers in London, as is his wife. Mr Khan's wife is also a partner in the Appellant Company. As such, Mr Brenton took the view that Mr Khan is inextricably linked to Dr Pathan and the Appellant Company and also aware of MIB procedures. On the balance of probabilities Mr Brenton concluded that Dr Pathan, acting as the Appellant, knowingly misdeclared the goods in a deliberate attempt to evade Customs duties and import; Dr Pathan was fully aware of the procedure for importing such goods, he had demonstrated in interview that he was aware of his obligations and the effect of price fluctuations and furthermore he had produced 2 invoices with the same date but containing different figures by which the value had been calculated. Mr Brenton explained that he was satisfied that the value of the goods had been deliberately under-declared on the C88 and he could find no reason to vary the policy

of the UKBA in such circumstances. Consequently he upheld the decision to impose a CCEP as both reasonable and proportionate.

27. Mr Brenton explained that the amount of the penalty was based on the valuation of the goods provided by the valuer instructed by the UKBA. The amount of the penalty was reduced by 30% to take account of mitigating factors such as the cooperation of Dr Pathan in interview and information he had provided.

28. Mr Brenton's addendum to his witness statement confirmed that he had accepted the valuations of Mr Buckie on behalf of the UKBA as accurate because the Company used was an accredited valuation service regularly used by HMRC and the UKBA. Mr Breton was satisfied that the two reports of Mr Buckie were authentic and reliable and that had the Appellant wished to challenge the valuation condemnation proceedings should not have been abandoned. The valuation of Mr Buckie was the basis of the VAT calculation and the restoration fee. Mr Brenton confirmed that there had been no request that the restoration fee which was paid by the Appellant be reviewed by him.

29. Mr Brenton referred to 3 valuations provided by the Appellant after the date of his review. Mr Brenton attached no evidential weight to the documents which he noted could have been produced by anyone. In cross examination Mr Brenton explained that there was no evidence upon which he could be satisfied as to the authenticity of the valuations provided by the Appellant; he agreed that one of the documents was notarised but explained that he had seen numerous falsified stamps on documents and that he had attached more weight to the independent valuer used by the UKBA. Mr Brenton explained that none of the documents provided by the Appellant were exhibited by a signed witness statement and that he was not satisfied as to the veracity of the documents or that they should be afforded more weight than the UKBA's independent valuer.

30. Also, to accept the valuations provided by the Appellant would, his view, re-open the issue of legality of seizure (that being the basis upon which the valuations were provided) which was not within his jurisdiction.

31. We heard evidence from Mr Khan in addition to his written witness statement. Mr Khan confirmed that he is the brother of Dr Pathan with whom his wife is a partner in the Appellant Company. Mr Khan stated that he represents his wife's interest in the Appellant Company, providing guidance and management of the operation in the UK, including imports and exports. He stated that he had taught Dr Pathan about the jewellery import and export business. He took responsibility for the Appellant's tax affairs and that he undertook the functions of a director despite not being appointed an official officer of the Company.

32. Mr Khan clarified that for the last 20 years he has travelled with Dr Pathan approximately 4 or 5 times per year between the UK, Dubai and Pakistan in order to collect consignments for his and Dr Pathan's respective businesses. He explained in respect of the two invoices which accompanied the imported goods that one gave the value of the jewellery at the date of import into the UK and the other gave the value of

the jewellery at the time it had been imported into Pakistan and assessed by the export bureau.

33. He confirmed that he had initially told Customs officers that he was a director of the Appellant but had then corrected himself and clarified that he was the director of Daata Jewellers (which makes purchases from the Appellant Company amongst others) not the Appellant.

34. Mr Khan had attended with Dr Pathan at his second interview at Heathrow airport. He stated that the officers present did not let him speak despite Dr Pathan's poor grasp of English and the fact that the translation offered by Officer Chugh was Punjabi instead of Urdu.

35. Mr Khan took the view that the UKBA officers were incorrect in stating that the higher value of gold should have been declared as opposed to the value for which it had been purchased previously and stated that the latter method "has remained our practice since the business started." He disputed the valuation provided by the UKBA as it falls between the UK wholesale value and UK retail price, furthermore he doubted whether Mr Buckie had any Pakistani jewellery related experience.

36. In cross examination Mr Khan agreed that he had not been present when the invoices in respect of the jewellery had been raised by Abduallah's Jewels, a company run by Dr Pathan. He also agreed that he had not filled in or signed the C88 form on importation into the UK, which was the responsibility of Dr Pathan. Mr Khan took us through a number of invoices exhibited on behalf of the Appellant, explaining that both the Appellant and his own company Daata dealt with a number of companies, including Classic Gold where his contact was Mr Ather. Mr Khan agreed that Mr Ather was also involved in a company called Classic Jewellers which had provided one of the valuations given to the UKBA in support of the Appellant's case; he stated that he had sought Mr Ather's opinion as he was an importer/exporter and wholesaler of jewellery.

37. Mr Khan knew the importance of compliance with import obligations and the declaration made on the C88 form. He stated that although he had not filled in the form on this occasion nor raised the invoice from Abdullah's Jewels, he had been responsible for placing the order with Abdullah's Jewels.

38. He agreed that there was no evidence in the papers for this appeal showing that part of the imported consignment was the same gold as was exported to Pakistan in December 2008 nor could he point to a legal provision supporting the Appellant's business practice of declaring the import value at the same rate as it was previously exported despite the fact that it had, in the meantime, been manufactured and lost its original identity.

39. Dr Pathan gave evidence that he joined the Appellant as a partner about 10 years ago and that he is also the owner of Abdullah Jewels in Pakistan. He regularly travels between the UK and Pakistan for the purposes of having jewellery manufactured which is later sold wholesale in the UK. In the course of usual business

the Appellant would purchase gold in London to be melted and manufactured into jewellery by Abdullah's Jewels. The jewellery would then be sent back to the UK for sale by the Appellant. The invoice value of such jewellery is obtained by the value of the gold at the date of sale plus labour costs and value of stones/gems and non gold content. The Appellant has invoiced its jewellery using this method since its inception without the UKBA ever having objected. This was explained to the seizing officers at the time of importation as it was the method used for one of the consignments seized.

40. Dr Pathan disputed the valuation provided by the UKBA, stating in his witness statement that he believed it was based on UK wholesale rather than CIF value.

41. In oral evidence Dr Pathan explained that the two separate invoices, which bore the same date but different values of gold, related to the goods which were made up of two consignments; one which was gold purchased from the Appellant in the UK, exported, manufactured and imported back into the UK, and the second which was gold purchased in Pakistan. The value on the first consignment represented the value at the date of export from the UK.

42. Dr Pathan agreed that although Mrs Khan is his partner in the company, Mr Khan effectively manages the business, although Dr Pathan would seek Mrs Khan's permission for all tasks carried out and Mrs Khan would make the purchases.

43. Dr Pathan explained that the purpose of an invoice, such as that provided by him in his role as owner of Abdullah's Jewels for the Appellant is to document what is imported and exported and provide proof of a sale. Dr Pathan went on to explain that although the invoices produced by Abdullah's Jewels for the Appellant, relating to the goods seized and subsequently restored, showed a sale price, in fact there was no money exchanged in the transaction except for the cost of labour and stones/gems in manufacturing the jewellery. In that respect Dr Pathan agreed that the invoice was false.

44. Dr Pathan accepted that he understood the VAT obligations associated with importing goods, that being the reason why he went through the red channel at the airport, that he had filled in and signed the C88 document and that he is aware of HMRC's Public Notices which provide guidance.

45. Dr Pathan explained the difficulties he had during his interviews with the UKBA due to his limited grasp of English and we should note that Dr Pathan had the benefit of an interpreter during the hearing to assist him. He stated that in his second interview the officers would not let Mr Khan assist him and that he had been told to sign a note of the interview despite his lack of understanding.

*Submissions*

46. On behalf of the Appellant Mr Baig accepted that the burden of proof in the matter of dishonesty relating to the CCEP rested with the UKBA to the civil standard. We were referred to the case of *Ghandi Tandoori Restaurant v C & E Comrs* (1989) VATTR 39 in which it was said:

*"The meaning of the word 'dishonesty' in the context of Section 13*

*It is to be observed that in section 13(1) the first requirement for liability to a penalty is that the taxpayer shall have done, or refrained from doing, something "for the purpose of evading tax". But that alone is not sufficient to impose liability, something else is necessary, namely, his conduct must involve "dishonesty". It seems to us clear that in such a context, where a person has, ex hypothesi, done, or omitted to do, something with the intention of evading tax, then by adding that that conduct must involve dishonesty before the penalty is to attach, Parliament must have intended to add a further mental element in addition to the mental element of intending to evade tax. We think that that element can only be that when he did, or omitted to do, the act with the intention of evading tax, he knew that according to the ordinary standards of reasonable and honest people that what he was doing would be regarded as dishonest. In other words we think that it is evidence from the wording of section 13(1) taken as a whole that the word 'dishonesty' is to bear the meaning that was given to it, where it appears in the Theft Act 1968, ... In the majority of cases brought under this section the course of conduct adopted by the taxpayer will be such that the necessary mental element of dishonesty can be readily inferred."*

47. We were also referred to *Sahib Restaurant Ltd v Revenue and Customs Commissioners* (2007) VATTR 20264 and *R v Dealy* [1995] STC 217, both of which we considered. In the case of *R v Dealy* it was stated (the Judge citing a direction on law to a jury in a criminal case):

"*You must decide for yourselves, first of all, whether ordinary, right-thinking people would describe what Mr. Dealy did as dishonest. If the answer is "No, ordinary, sensible people would not regard what he did as being dishonest" then he is not guilty. However, if you decide that ordinary, reasonable people would see his conduct as dishonest, you must then go on to decide what he thought about it. If you come to the conclusion that Mr. Dealy might have thought, quite honestly, that he had a perfect right to do as he did, and that no-one would regard it as dishonest, then he is not guilty. If he was convinced, throughout, that he was doing the right thing, and that other people would agree with him, that is not dishonesty."*

48. The Appellant's written submissions contended that the actions of the Appellant *"...in mistakenly declaring the value of the gold...as compromising the value of the gold at the date of export, followed a practice which had been used multiple times in the past, and which had been specifically endorsed by customs officials on at least one prior occasion"* could not be deemed to have acted dishonestly. Regular importations and knowledge of the MIB procedures on the part of Mr Khan and Dr Pathan is not conclusive evidence that an under-declaration was dishonest and no reasonable person could arrive at such a conclusion bearing in mind the Appellant's previous exemplary history in its tax obligations.

49. Mr Baig submitted that the review decision of Mr Brenton was no more than "*a rubber stamping exercise"* and that the fact that Mr Khan and Dr Pathan are

experienced international businessmen should be viewed in the context of their experience and their practices.

50. The valuations submitted on behalf of the Appellant should have been given weight by the reviewing officer whose comment that to accept the documents would be to accept Dr Pathan's evidence demonstrates a lack of impartially or reasonableness in the review.

51. It is the responsibility of the UKBA to ensure that traders are aware of their obligations.

52. On behalf of the UKBA, Mr Powell submitted that ignorance of tax obligations does not provide an excuse for the Appellant. The onus rests on the taxpayer to ensure that he complies with his responsibilities.

53. The majority of the Appellant's arguments relate to the legality of seizure which should have been challenged in the Magistrates' Court, this Tribunal having no jurisdiction to hear such matters. As regards the issues taken by the Appellant which relate to the interviews conducted at Heathrow Airport, the officers involved were not required to give evidence by the Appellant as their evidence is only relevant to the legality of seizure.

54. As regards the valuation of Mr Buckie on behalf of the UKBA, his CV demonstrates a significant amount of experience as an independent valuer and his witness statement is signed as an expert who is aware of his duty to the court.

55. Mr Brenton was correct to attach no weight to the valuations provided by the Appellant: one was provided by an associate of the Appellant, Mr Athar, who used the Pakistan wholesale value instead of the UK value; one was provided by a company in Pakistan, the original document was not provided and the officer took the reasonable view that the document could not be relied upon without the Appellant providing verification; the final valuation is in the form of a statement rather than a valuation report and the review officer reached the reasonable conclusion that he preferred the valuation provided by Mr Buckie for the UKBA.

56. The review officer applied the correct policy, took into account all relevant matters and disregarded irrelevant matters. He considered the knowledge and experience of Mr Khan and Dr Pathan together with the information provided on behalf of the Appellant and reached the view that the Appellant had dishonestly misdeclared the value of the goods. Mr Powell submitted that there was no real challenge to this conclusion by the Appellant.

*Decision*

57. We carefully considered the evidence and submissions summarised above. The issues for us to determine are twofold:

> (a) Was the decision to restore the goods and the fee charged for that restoration reasonable; and

(b) Was the decision to impose a CCEP and the amount of that penalty reasonable?

58. Turning to the issue of restoration, there was no issue taken with the decision to restore the goods. As explained earlier in this decision we treated the challenge to the UKBA's valuations of the goods as an appeal against the fee imposed for the restoration. The fee of £14,121.25 was comprised of Customs duty as 2.5% and VAT of 15% of the UKBA's valuation of £79,000.

59. At this point it is necessary to set out our findings on the valuation issue. We should note that we were invited by both parties to consider a number of calculations. In our view it would be inappropriate to do so. The task of this Tribunal is to determine the reasonableness or otherwise of the officer decision on review and we approached our task on that basis.

60. Mr Buckie's witness statement detailed his extensive experience exceeding 45 years in the jewellery industry and the fact that he is the officially appointed jewellery, gems, diamond and watch valuer for HMRC at Heathrow Airport, a position which he has held for ten years. Mr Buckie's witness statement explained that he had provided the UKBA with 3 valuations. The first dated 26 March 2009, the second dated 13 May 2009 and the third dated 7 March 2010 (the latter which we noted was not prepared until after the date of Mr Brenton's review). Mr Buckie's first valuation provided a detailed note about the items under the heading "comment(s)". He explained that a random selective procedure had been adopted with estimated gross process per gram/carat used in calculations to arrive at the approximated likely UK wholesale price of £75,000. Mr Buckie's second report used the value at the same date and all bags were opened and the items therein examined, counted and weighed leading to a value calculation of £79,000.

61. The Appellant provided three valuations after the date of the review upon which Mr Buckie commented in his witness statement. The first from Mr Ather at Classic Jewellers dated 6 October 2009 valued the jewellery at the manufacturer and wholesaler's price in Pakistan rather than the UK. The weights of the stones were recorded as the same declared in the corresponding invoice from Abdullah's Jewellers but goes on to state that the exact weight could not be established as the stones had already been set in jewellery. The valuation followed no clear methodology for example it stated that jewellery which includes stones etc will contain 25 to 30% of the total weight but then weights are recorded outside of this band. The second valuation by M. Shoaib/M. Sohail & Brothers dated 14 December 2009 provided a weight for the goods without any explanation as to how that weight was arrived at (and which is 5% more than that stated in the report by Classic Jewellers). The gold price is quoted at £19.79 and £13.74 per gram for the respective consignments despite the fact that the goods were imported from the same country into the UK on the same date. The report bears a notary stamp from Pakistan, about which we have already noted Mr Brenton's comments. The third valuation which takes the form of a statement from Krunal Jewellers and is dated 5 November 2005. Mr Buckie noted in his witness statement that the tolerance percentages applied in respect of fluctuation

of labour charges and cost variances between countries is far greater than indicated in the report.

62. In the absence of a challenge to the Magistrates Court regarding the legality of seizure we concluded that it was not within our jurisdiction to re-open the issue beyond the extent to which we have already indicated. We heard no live evidence on the issue of valuation of the goods and we limited our consideration to the view expressed by the reviewing officer on the point. We accepted as reasonable his evidence that he had preferred the evidence of Mr Buckie, an experienced, independent and accredited professional, to the documents provided by the Appellant, the provenance of which were either not known or had not been verified. We found as a fact that Mr Brenton had been reasonable to reach the conclusion that Mr Buckie's valuation was reliable and that in so reaching that conclusion he had considered all relevant matters and disregarded all irrelevant matters.

63. In those circumstances we were wholly satisfied that the fee charged for restoration which was calculated on the additional duty and VAT identified by Mr Buckie's valuation was reasonable and proportionate.

64. As regards the CCEP imposed, there was no specific challenge to the amount of the penalty beyond the issue of Mr Buckie's valuation upon which we have already set out our findings. The penalty imposed was £2,965 which allowed a reduction of 10% for Dr Pathan attending for interview and a further 20% reduction for Dr Pathan's explanation as to how the under-declaration came about.

65. We considered whether Mr Brenton's conclusions on review were reasonable, specifically in relation to the element of dishonesty. Mr Brenton's review decision was thorough and set out clearly the matters he had considered. In summary, he was satisfied that:

- The C88 declaration form had contained a mis-declaration;
- Mr Khan and Dr Pathan were fully aware of the importation procedures and obligations, based on their regular travel for such purposes and comments in interview;
- Two invoices raised by Dr Pathan were produced in support of the C88 declaration: both contained the same date, both came from a business which was owned by Dr Pathan and both contained different valuations;
- The Appellant, in taking the factors set out above into account, should and would have known that the value of the goods had been mis-declared and the inference arising was that the purpose of the mis-declaration was to deliberately evade tax.

66. We balanced Mr Brenton's conclusions against the evidence we heard from Mr Khan and Dr Pathan. Both witnesses agreed that they regularly imported and exported goods and were fully aware of the obligations and procedures involved with such

activities. Neither witness could provide any basis for their assertions that they were entitled to declare the value of goods imported as being the value as at the date of export from the UK, irrespective of the length of time that had passed since that export. We noted that Mr Khan had relatively little involvement in the importation; he had not filled in the C88 nor raised the invoices to support the goods. In addition, Mr Khan is not an officer of the company, although we accept that he has significant involvement in the day to day running of the company albeit without a formal title. Mr Khan accepted that he had taught Dr Pathan about the procedure for importing and exporting, stating that is a mistake was made by Dr Pathan it was the fault of his, Mr Khan's, teaching.

67. Dr Pathan accepted in evidence that the invoices raised by his company were false in the sense that they clearly showed a monetary transaction between Abdullah's Jewels and the Appellant but this was not "a money transaction" (save for labour costs and stones). Dr Pathan was also vague in attempting to explain the discrepancies in the two invoices. Aside from the fact that the invoices contained the same date but one represented the value of the goods at the date of import into the UK and the other represented the value of goods purported to have been exported from the UK to Pakistan prior to their importation in this consignment, there was a further discrepancy in the form of the price stated as "one gram in UK" which on one invoice was £21.71 and on the other was £21.61. When asked to explain this anomaly, Dr Pathan stated it was a mistake. Dr Pathan also appeared to us to struggle to explain the invoices and figures contained therein with any clarity despite the fact they were documents which had been raised by him.

68. We found as a fact that the onus rests with a taxpayer to ensure his obligations are met and therefore even if Mr Khan or Dr Pathan was mistaken in his understanding of the importation procedures the Appellant remains potentially liable to the consequences. We did not accept that two professional and intelligent businessmen would both be mistaken and we found as a fact that either both failed to ensure their understanding was correct or they deliberately ignored the fact that it was not. We were satisfied that either act or omission was done with the intention of evading tax and was, therefore, dishonest. We inferred from our findings that the Appellant, through Dr Pathan, would have known that according to the ordinary standards of reasonable and honest people that what he was doing would be regarded as dishonest.

69. Even if we had accepted that the mis-declaration arose from a genuine misunderstanding, we noted that in *R v Dealy* it was stated:

"*If you come to the conclusion that Mr. Dealy might have thought, quite honestly, that he had a perfect right to do as he did, and that no-one would regard it as dishonest, then he is not guilty. If he was convinced, throughout, that he was doing the right thing, and that other people would agree with him, that is not dishonesty.*"

70. The evidence of Dr Pathan was vague and at times contradictory to that given by Mr Khan. His evidence that he was acting as he had been advised in the past by

HMRC was unconvincing and we found as a fact that in following the case of *R v Dealy*, dishonesty could reasonably be inferred.

71. The issue for us to decide is whether the reviewing officer's view that the Appellant had acted dishonestly and a CCEP was appropriate was reasonable. We were satisfied that the officer's conclusion in review was reasonable on the evidence available to him both at the time of his review and after that date when further information was provided by the Appellant. We found as a fact that Mr Brenton had considered all relevant matters and disregarded irrelevant points.

72. The appeal is dismissed.

73. 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.

**J. BLEWITT**
**TRIBUNAL JUDGE**

**RELEASE DATE: 5 March 2013**