



TC03889

Appeal number: TC/2013/01418

Customs duty – restoration – lawfulness of seizure not challenged – whether decision not to restore was one which could reasonably have been arrived at – yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HANIFA MAGID

Appellant

-and-

HOME OFFICE

Respondent

**TRIBUNAL: JUDGE KEVIN POOLE
NIGEL COLLARD**

Sitting in public in Priory Court, Bull Street, Birmingham on 12 June 2014

Davinia Riley of counsel, instructed by the Cash Forfeiture and Condemnation Legal Team of the Home Office, for the Respondent

The Appellant did not appear and was not represented

DECISION

Introduction

1. This is an appeal against the Respondent's confirmation, on review, of its
5 earlier decision not to restore a 1kg silver bar to the Appellant. The silver bar had
been seized from her upon her arrival at Birmingham Airport. The Appellant had not
challenged the validity of the seizure by requiring the commencement of
condemnation proceedings.

2. The Appellant did not attend the hearing, and made no request for it to be
10 postponed. The Tribunal clerk telephoned her on the day of the hearing when she did
not attend and it was apparent from the conversation that the Appellant was well
aware of the time and place of the hearing.

3. Following the issue of a summary decision after the hearing, dismissing the
15 appeal, the Appellant has requested a full decision. In doing so, she has also stated
that she now lives in London, and attended her doctor on the day of the hearing with
"borderline high blood pressure issues". She goes on to say "How then would I travel
so far in my condition to attend trial when suddenly I was unwell".

4. Insofar as the Appellant might be regarded as applying for the decision to be
20 set aside and for her appeal to be re-heard afresh, I do not consider this to be an
appropriate case to exercise my discretion to do so. The date and time of the hearing
were well known to the Appellant, she made a decision neither to attend nor to apply
for a postponement and the Respondents attended with counsel and their witness. In
the circumstances, I do not consider it would be in the interests of justice for any
25 further resource of either the Tribunal or the Respondent to be expended in
reconsidering a case which involves goods bought for approximately £587 and with a
market value at the time of seizure of approximately £687.

The facts

5. The Appellant and her son were stopped at Birmingham Airport in the
30 "nothing to declare" channel on 26 August 2012. They had arrived on a flight from
Dubai, having travelled originally from Durban, South Africa.

6. It came to light that the Appellant was carrying a 1kg bar of silver. Her son
said he had given it to her. A receipt for its purchase in Dubai on 26 July 2012 was
35 produced, showing a purchase price of 3,410 Dhirams (approximately £587). At
prevailing prices on 26 August 2012, its value was some £687 (excluding VAT and
duty).

7. An officer of the Respondent seized the silver bar as liable to forfeiture. The
Appellant did not request the Respondent to commence condemnation proceedings in
respect of the seizure within the applicable time limit. The silver bar was therefore
deemed duly condemned as forfeit.

8. The Appellant requested restoration of the silver bar in a letter dated 21 September 2012 from her solicitors Bond Adams LLP.

9. By letter dated 29 November 2012, the Respondent refused the request for restoration.

5 10. By letter dated 9 December 2012, the Appellant asked for the refusal decision to be formally reviewed. The Respondent's Review Officer (Officer Rayden) issued his decision on 22 January 2013, confirming the decision to refuse restoration. He did not accept the Appellant's account of events at the time of the seizure, and saw no reason to depart from the usual policy of non-restoration in the absence of special
10 circumstances.

11. The Appellant then appealed to the Tribunal on 21 February 2013.

12. There was clearly some disagreement over what was actually said and done at the time of seizure. The Appellant did not attend the hearing to give evidence in an attempt to persuade us of the accuracy of her (and her son's) account of events.

15 **The law**

13. In a case such as this, the jurisdiction of the Tribunal is set out in section 16 Finance Act 1994, which (so far as relevant) reads as follows:

20 (4) In relation to any decision as to an ancillary matter¹, 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 –

25 (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

30 (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
35 arise in future.”

¹ The decision under examination in this appeal, a decision not to restore seized goods, is “a decision as to an ancillary matter” for the purposes of section 16.

14. Accordingly we cannot make any order requiring a further review to be carried out unless we are satisfied that the reviewing officer in this case “could not reasonably have arrived at” the decision to uphold the Respondent’s refusal to restore the silver bar to the Appellant.

5 15. By virtue of the Court of Appeal decision in *HMRC v Jones and Jones* [2011] EWCA Civ 824, the scope of the issues which the Appellant may ventilate before this Tribunal in this appeal is limited. We are required to take it that the goods have been
10 duly condemned as illegal imports. This means we are required to take it that they were of the necessary value (more than £390) and that the Appellant did not declare them on arrival at Birmingham Airport.

Discussion and decision

16. In relation to the appeal, the jurisdiction of this Tribunal extends only to deciding whether the Reviewing Officer’s decision to uphold the decision not to restore the goods was a decision which he could reasonably have arrived at. If we
15 find in favour of the Appellant on this point, then we have the further powers set out above.

17. The burden lies on the Appellant to persuade the Tribunal, by evidence and argument, that no reasonable reviewing officer could have decided not to restore the silver bar to her.

20 18. We do not consider that the written material provided by the Appellant is sufficient to discharge this burden, indeed it raises as many questions as it answers and we would have welcomed the opportunity to see the Appellant’s (and her son’s) evidence tested in cross examination at the hearing.

19. The Appellant made a number of assertions in her notice of appeal about the
25 behaviour of the seizing officer. Whilst these might form the basis of a complaint to the Respondent, the nature of those assertions does not fundamentally affect the basic facts of the case, namely that the Appellant attempted to carry a 1kg bar of silver into the UK without paying the relevant duty. The only potentially relevant other matters set out in the documents before us were:

30 (1) The Appellant’s statement that she suffered from post-traumatic stress as a result of having been shot three times in an attempted carjacking in South Africa in March 2010 and “I am on high dosages of medication to treat the stress and depression. I became very agitated and concerned that the silver bar was being seized even though I was willing to pay the duty for it.”

35 (2) The Appellant’s assertion that the silver bar was a gift from her son, “of great sentimental value to me”.

(3) The Appellant’s assertion that she had no intention of breaking any laws and only failed to inform herself of the rules because of “my condition and the stresses I have gone through”.

(4) The Appellant's assertion that she "was totally co-operative with the officer and volunteered all the information without him having to search any of our luggage."

5 20. We accept that the Appellant was injured as she states. We are not persuaded however by the documentary material before us that her injuries or her consequent psychiatric issues are such as to provide any kind of justification for her actions. We discount as fanciful the assertion that a 1kg bar of silver bought a month or so earlier could have any significant sentimental value, and we consider that her lack of any unlawful intent and her co-operation, even if accepted, do not affect the correctness of
10 Officer Rayden's decision.

21. In those circumstances, and as the Appellant has chosen not to attend the hearing and have her evidence tested, we consider she has failed to discharge the burden that lies upon her in this appeal, that is to say the burden of establishing that
15 no reasonable reviewing officer could have reached the decision which Officer Rayden reached.

22. It follows that the appeal must therefore be dismissed.

23. 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
20 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: 6 August 2014