



TC02966

Appeal number: TC/2012/08897

CUSTOMS DUTY – seizure of jewellery – reasonableness of the Respondents’ refusal of restoration – interpretation of the interview notes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KIRAN SULTANA

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE LADY JUDITH MITTING
BEVERLEY TANNER**

Sitting in Birmingham on 28 August 2013

The Appellant appeared in person

David Griffiths of Counsel instructed by the Director of Border Revenue for the Respondents.

DECISION

1. The Appellant, Ms Kiran Sultana, was appealing against the review decision of
5 the Respondents dated 8 August 2012 to refuse restoration of certain items of
jewellery seized from her at Birmingham airport on 23 February 2012.

2. We heard oral evidence from the Appellant and, on behalf of the Respondents,
from the review officer, Mr Graham Crouch.

The Background

10 3. Ms Sultana was born on 18 February 1992. On 25 August 2011, she travelled
to Pakistan with her family for her wedding. It was the first time she had ever been
abroad. Her engagement ceremony took place on 28 August 2011 followed by the
wedding on 8 September. Her family returned to the UK shortly afterwards leaving
15 her in Pakistan with her husband and his family. She returned to the UK on 23
February 2012, leaving her husband in Pakistan as he was still waiting for his visa.
She therefore travelled alone. On arrival at Birmingham airport, Ms Sultana,
accompanied by a Mr Ijaz Hussein, went through the “green (nothing to declare)
channel” and was intercepted by officers. Her baggage was searched and found to
20 contain nothing which she should have declared. She was however wearing certain
items of gold jewellery which had been given to her on her marriage by her
bridegroom’s family. The jewellery was weighed by officers who valued it at
approximately £2,850. The permitted allowance for “other goods” for incoming
travellers from outside the EU is £390 worth. After interview, officers seized the
25 jewellery as being liable to forfeiture under s78(4) CEMA 1979 as it should have been
declared but had not been.

4. On 8 May 2012, Ms Sultana wrote in seeking restoration of the jewellery. This
was refused. A review followed for which further representations were made and by
letter dated 8 August 2012, Mr Crouch refused restoration. It is against this decision
which Ms Sultana was appealing.

The Review

30 5. In carrying out his review, Mr Crouch had before him the seizure documentation
including the officer’s notebook and the written representations made both by Ms
Sultana and by her lawyers, Messrs Khan Solicitors. The gist of the written
representations was that traditionally on marriage, a bride is bestowed with jewellery
35 from her bridegroom’s family. We were referred to the marriage certificate which
refers to the gifted gold. Ms Sultana had pointed out in her letter that she was a new
bride and totally unaware of the need to declare the jewellery. As it was gift she had
no receipts for it but she was more than happy to have it weighed and valued and pay
the tax due. Her lawyers contended that by the time she returned to the UK, some
40 months after her marriage, the jewellery was no longer a gift but her own personal
property as it could not be taken back by her husband’s family and being part of the

Islamic marriage contract is ultimately the property of the wife from the moment of the contract.

6. The exact content of the interview notes is important because Mr Crouch had no contact with the intercepting officers. His understanding of what occurred at the point of seizure is based solely on his interpretation of the notes. This is not to criticise Mr Crouch. It is the way these reviews are carried out. The interview was short and the notes are therefore brief. It is clear that Mr Hussein was obstructive and difficult and reference is made at the outset that the PNC had revealed that he had previous convictions for assault. Mr Hussein had tried to prevent officers searching Ms Sultana's case but the note records that she intervened and readily allowed the search. Ms Sultana was asked how much she had spent on "gifts, goods and souvenirs" to which she had replied "about £10". She was asked if she was bringing any gold or jewellery back into the UK to which her recorded reply is "yes I have gold my husband gave me, I am wearing it". She told officers she did not have a receipt for the jewellery and did not know its cost. After weighing the jewellery she was informed it would be seized for her failure to declare it.

7. The notes then contain a reference to a phone conversation between Ms Sultana and her father which followed the seizure. At Ms Sultana's request, the officer explained to her father what had occurred and the notes go on to record:

20 "While on the phone Sultana said to her dad "I did wear it. I did what you told me. But he asked me about it anyway".

She went on to say she was wearing it to bring back for someone else".

8. Mr Crouch in his review outlined the background to the seizure, the interview notes, the correspondence and the Border Agency's restoration policy which is that only in exceptional circumstances are seized goods restored. Mr Crouch began his consideration by stating that he had not been provided with any exceptional circumstances which would result in the restoration of the goods. He went on to say that there were further "positive additional reasons" for concluding that the goods should not be restored. He pointed out that Ms Sultana had gone straight through the green channel rather than the red, i.e. deliberately not declaring. He relied heavily on the reported conversation between Ms Sultana and her father and took this to be "a clear intent to deceive". He believed that Ms Sultana and her father were complicit in a smuggling attempt. He considered this to be a case where Ms Sultana had knowingly concealed the goods with the positive intent to evade payment of the duty. Further, he refers to the fact that when initially questioned Ms Sultana stated that she wasn't bringing anything back for anyone else but that the quoted passage above refers clearly to her wearing them for someone else. He finally stated that ignorance of the law was no excuse and that the onus rested on the traveller to make him or herself aware of the duty free allowances. It was however his view that she had quite deliberately carried the goods through the green channel and had no intention to pay the duty.

9. In his oral evidence, Mr Crouch stated that had Ms Sultana made a full and open declaration when she was challenged it was highly probable that the goods would have been restored to her on payment of the duty and a penalty but he did not see that this was the case here. The significant factor to him was the conversation between Ms Sultana and her father from which it was clear to him that there had been a deliberate attempt to deceive officers. In answer to questions from the Tribunal, Mr Crouch said that no other factors were taken into account. His decision was formed by what he took as the intent to deceive. Specifically he said that he had not taken into account the symbolic and traditional significance of the jewellery.

10 **Ms Sultana’s Evidence**

10. Ms Sultana told us that when she left the UK for Pakistan, the first time she had travelled abroad, she was accompanied by her family. They had all come home before her and she was therefore travelling back unattended. When her groom’s family put her on the aeroplane in Pakistan, they had asked a family to look after her but she had become separated from them and when she got off the plane at Birmingham she had no idea what to do. She was befriended by Mr Hussein whom she had never met before but had been sitting next to her on the plane and he merely advised her to follow him and together they followed “everyone else”. Ms Sultana said she had no knowledge of going through red or green channels but merely followed the crowd.

11. Whilst the interview was taking place, Mr Sultana’s husband phoned her mobile from Pakistan to ensure that she had arrived safely. She told us that when she took the call, the interviewing officer told her that she was to take no further calls or she would be arrested. Also waiting to speak to her was her father who was in the car park waiting to meet her and to take her home. He was constantly ringing her mobile, due to increasing concern as to why everybody else off the plane had come through but she had not. In the end she asked the officer if he would allow her to take one of the calls from her father to which he replied that she could provided she came forward and took it directly in front of him (the officer). She confirmed that she was still uncertain as to what was happening and did indeed ask the officer to explain it to her father. Ms Sultana then explained to us that the tradition in Islamic marriages which take place in Pakistan is that the homecoming bride is dressed in her jewellery by her groom’s family before she gets on the plane. She wears it throughout the journey and is received by her own family in the UK still dressed in the jewellery. This was why she was wearing it. This also was her explanation of the reported phone conversation which had been overheard by the officers. Initially, when her father knew that the jewellery had been seized he thought that it had been from her suitcase but she explained to him that, exactly as she had been told tradition expected, she had been wearing it. She totally denied saying “but he asked me about it anyway” and had no idea where that could have come from. She did however go on to explain to the officer the tradition of being dressed in the jewellery by her groom’s family before coming home and she thinks this is the source of the misinterpreted comment that she was “wearing it to bring back for someone else”. There was some slight confusion in Ms Sultana’s evidence in that she told the Tribunal that the officer was repeatedly asking her how much it weighed and what it was worth but this does not quite make

sense when put against the notes where it is clear that the officer had in fact already weighed it and valued it. This was put to Ms Sultana in cross-examination but she could only repeat that that was her recollection. She also left with the distinct impression that the officer was only taking the jewellery away to have it properly weighed and valued and that it would then be returned to her once she had paid the allotted duty. She had not understood that it was being seized with the possibility of no restoration.

Our Jurisdiction

12. As we explained to Ms Sultana and her father, our jurisdiction is strictly defined by statute. We can only consider the reasonableness of Mr Crouch's decision. In so doing we consider the factors which he took into account and whether there are any which he should have taken account of but failed to. We consider the weight which he attached to the various factors and we also consider whether he made any error in law. It is only if we consider his decision was one which no reasonable officer could have reached that the appeal can be allowed. Even then, if the appeal is allowed, we cannot restore the jewellery to her but can only refer the matter back to the Border Agency for a further review.

Our Conclusions

13. We begin by saying that we accept the truthfulness of Ms Sultana's evidence throughout. In his written submission, Mr Griffiths cited that in telling the intercepting officer that "she was not carrying any excise goods and that she had only spent about £10 on gifts, goods and souvenirs" she was attempting to mislead the officer and that that provided reasonable grounds for our doubting her credibility. In fact this is just not right. She quite truthfully told the officer that she was carrying no excise goods and no evidence was produced so show that she had spent more than £10 on gifts, goods or souvenirs. She had not purchased the jewellery, it was gifted to her. She had no reason to believe that that could form any part of her response to the officer's question. We believe when she made this statement she was being entirely truthful and we do not think anything which we have heard gives us reason to doubt her credibility. It is clear from what she told us that the interview was rather longer than has been recorded as it does not record any of the explanations which we accept she gave to the officer about the origin of the jewellery.

14. On the face of it, the record of her side of the telephone conversation with her father is indeed damning and we have no criticism of Mr Crouch in his interpretation of what was said. However, we believe Ms Sultana in her version of the conversation and the overheard part of it is entirely consistent with this. Far from revealing an intent to deceive, we accept it was an entirely understandable question from her father and a completely honest response by Ms Sultana. She could not explain the origin of her purported comment that she was "wearing it to bring back for someone else" but her supposition that it was derived from a misunderstanding of her explanation as to her being dressed in the jewellery by her bridegroom's family seems reasonable to us. Without knowing, all we can find and we do so find, is that she was not bringing in

the jewellery for someone else and she did not say that she was wearing it to bring back for someone else.

15. We should say that in making the above findings, we are not doubting the honesty or integrity of the intercepting officers. They reported one side of the conversation and their understanding of something which she had said. In our view in each case they were wrong but that is not to say they were deliberately lying.

16. The problem with Mr Crouch's review is that he relied on his interpretation of the officers' notes. This was all he could do as he had no other evidence but we have had the benefit of hearing Ms Sultana and we accept that the interpretation put on the comments was wrong. As Mr Crouch told us, it was his interpretation of the comments which was the decisive factor in his review because to him it was clear evidence of deceit. It follows that his review cannot be upheld as it is not reasonable in the light of our findings.

17. Given that the review took place on an incorrect assumption, there may well also be other factors which ought to have been taken into account in considering the restoration such as the traditional and symbolic significance of the jewellery. Having said this we totally accept Mr Griffith's submission that this cannot be a defining factor but is perhaps something which ought to have been taken into account.

18. Mr Crouch also considered that by merely walking through the green channel, Ms Sultana had knowingly and intentionally perpetrated a deceit. We do not accept this interpretation of what she did. Again Mr Crouch had not had the benefit of hearing Ms Sultana's evidence but we accept the evidence which she gave us that she was a very young woman coming from a close and no doubt protective family. She travelled out with her family but was coming home alone. We do not believe she had been primed to go through the green channel but that she quite genuinely had no idea what to do and seized on the offer by Mr Hussein (who Mr Crouch again incorrectly took to be her husband) to guide her. Her decision therefore to go through the green channel was not a deliberate attempt to evade the payment of duty.

19. Mr Griffiths contended that ignorance of the law is no defence. Clearly it is not and the mere fact that Ms Sultana did not know the goods were dutiable does not mean that they were not. However, her ignorance of the law is of course evidence of her mind-set and her thought process. Because she was ignorant of the fact that the goods had to be declared, she cannot have deliberately formed the intention not to declare them.

20. For all these reasons, Mr Crouch's decision cannot be allowed to stand. Mr Crouch reached his decision on an incorrect, as we have found, understanding of certain factors which were critical to him in his decision-making process. Accordingly we allow the appeal and, in line with our jurisdiction, direct that there should be a further review to be carried out within 40 days of the release of this decision by an officer with no previous knowledge of the case. The officer carrying out the new review should take into account the findings of fact which we have made in this decision.

21. The appeal is allowed.

22. 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.

10

**JUDGE LADY JUDITH MITTING
TRIBUNAL JUDGE**

15

RELEASE DATE: 15 October 2013