



TC03677

Appeal number: TC/2013/7575

*CUSTOMS DUTIES – seizure of gold jewellery – reasonableness of decision
to refuse restoration – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR S M IMRAN BAKHT

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE PETER KEMPSTER
MR PHILIP JOLLY**

Sitting in public at Priory Courts, Birmingham on 3 June 2014

The Appellant did not appear and was not represented

Mr Rupert Davies of counsel, instructed by the Solicitor for UKBA, Home Office

DECISION

1. The Appellant (Mr Bakht) did not appear and was not represented. Prior to commencement of the hearing the Tribunal's clerk telephoned Mr Bakht using the telephone number stated on the notice of appeal but there was no reply. The Tribunal was satisfied that reasonable steps had been taken to notify Mr Bakht of the hearing (there was on file a letter dated 9 April 2014) and considered that it was in the interests of justice to proceed with the hearing, pursuant to Tribunal Procedure Rule 33.

10 Facts

2. We find the following facts, most or all of which are not in dispute.

(1) On 3 May 2013 Mr Bakht was stopped by an officer of the Respondents ("UKBA") in the Green Channel at Birmingham Airport, having arrived on a flight from Dhaka via Dubai.

15 (2) On initial questioning Mr Bakht stated that he had packed his bags himself, was aware of the contents, was not carrying anything for anyone else, and was not carrying any excise goods or food.

(3) On examination of Mr Bakht's luggage there were discovered ten pieces of gold jewellery, which Mr Bakht had purchased on the trip for around £1,100, and almost 3 kg of potatoes.

(4) The gold was seized by UKBA (s 139 CEMA 1979) as being liable to forfeiture (ss 78 & 167 CEMA 1979) as Mr Bakht had failed to declare goods in excess of his £390 allowance (for travellers from "third countries") and had misled UKBA. Mr Bakht was given a formal seizure notice.

25 (5) Mr Bakht did not challenge the legality of seizure within the prescribed time limit and thus the gold was condemned as forfeit (para 4 sch 3 CEMA 1979).

(6) On 17 August 2013 UKBA refused to restore the gold.

(7) On 9 September 2013 Mr Bakht requested a review of that decision.

30 (8) On 8 October 2013 UKBA upheld their decision by formal internal review.

(9) On 6 November 2013 Mr Bakht appealed to the Tribunal against the decision to refuse restoration.

Law

35 3. The Tribunal's jurisdiction in relation to this dispute is set by s 16(4) FA 1994 which states, so far as relevant:

"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—

5 (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

10 (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.”

15 4. That jurisdiction is a supervisory one and, from the caselaw in *Customs and Excise Comrs v J H Corbitt (Numismatists) Ltd* [1980] STC 231, *Customs and Excise Comrs v Peachtree Enterprises Ltd* [1994] STC 747 and *Kohanzad v Customs and Excise Commissioners* [1994] STC 967, we derive the following approach, which we understand is uncontroversial:

20 (1) The jurisdiction of the Tribunal in this matter is only supervisory.

(2) The Tribunal cannot substitute its own discretion for that of UKBA.

(3) The question for the Tribunal is whether UKBA’s decision was unreasonable in the sense that no reasonable adjudicator properly directing himself could reasonably reach that decision.

25 (4) To enable the Tribunal to interfere with UKBA’s decision it would have to be shown that UKBA took into account some irrelevant matter or had disregarded something to which they should have given weight.

30 (5) In exercising its supervisory jurisdiction the Tribunal must limit itself to considering facts and matters which existed at the time the challenged decision of UKBA was taken. Facts and matters which arise after that time cannot in law vitiate an exercise of discretion which was reasonable and lawful at the time that it was effected.

(6) The burden of proof lies on an appellant to satisfy the Tribunal that the decision of UKBA was unreasonable.

35 **Appellant’s case**

5. From the notice of appeal and associated correspondence, the grounds of appeal were:

40 (1) Mr Bakht was unfamiliar with the rules and the procedures at the airport. It was unfair to punish someone for not knowing the procedures. The law was designed to catch criminals, not to punish an error.

(2) Mr Bakht was a hard-working man of good character. He had bought the gold in Bangladesh for the wedding of his eldest daughter, who was due to finish university.

5 (3) When Mr Bakht was asked about whether his luggage contained food, he thought that referred to cooked food, not raw vegetables.

(4) The gold should be restored, and Mr Bakht was prepared to pay the duty and VAT due.

Respondents' case

6. For UKBA Mr Davies submitted:

10 (1) The seizure was lawful and had not been challenged.

(2) Ignorance of the law could not be advanced as an excuse. The relevant rules were basic and not obscure. If Mr Bakht had been unclear then the onus was on him to check the position.

(3) The gold was well in excess of the £390 allowance.

15 (4) Mr Bakht chose to walk through the Green Channel at the airport, despite large and visible signs advising travellers from outside the EU to enter the appropriate channel.

20 (5) On being stopped Mr Bakht was given the opportunity to disclose the gold (and potatoes) but chose not to do so. Instead, he gave misleading or untruthful answers to the uniformed officer's questions. Misleading the officer was reasonable grounds for doubting Mr Bakht's credibility: *Grimshaw v CCE* (2004) E00825.

25 (6) UKBA's policy is not to restore seized goods except in exceptional circumstances. The policy itself was reasonable and had been endorsed by the Tribunal on many occasions – see *Clear PLC v DBR* [2011] UKFTT 11 (TC)

(7) UKBA were not satisfied that there were exceptional factors in this case.

(8) Given all the above, the decision not to restore was in accordance with stated policy and was reasonable.

(9) The appeal should be dismissed.

30 Consideration and Conclusions

7. The only matter for us is, whether UKBA's decision to refuse restoration of the seized gold jewellery was unreasonable, in the terms outlined at paragraph [4] above.

8. We have read and considered carefully all of:

(1) the original decision to refuse restoration;

35 (2) the review decision;

(3) the correspondence between the parties;

- (4) the grounds of appeal; and
- (5) the submissions of both parties.

9. We are satisfied that:

- 5 (1) UKBA took into account all the factors mentioned by Mr Davies in his submissions above.
- (2) UKBA took into account all the representations made by Mr Bakht himself and on his behalf by his friends and relatives.
- (3) UKBA's policy not restore seized goods in the absence of exceptional circumstances is a reasonable policy.
- 10 (4) UKBA's opinion that there were no exceptional circumstances in Mr Bakht's case was reached after full and fair consideration of all the information available to them at the relevant time.

10. We are firmly of the view that UKBA's decision not to restore was not unreasonable. Accordingly, we must dismiss Mr Bakht's appeal.

15 **Decision**

11. The appeal is DISMISSED.

12. 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.

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**PETER KEMPSTER
TRIBUNAL JUDGE**

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RELEASE DATE: 5 June 2014