



TC03936

Appeal number: TC/2013/04903

Jewellery seized – decision not to restore – seizure deemed to be lawful – was decision reasonable – yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PRANAY PATEL & AMISHA PATEL

Appellants

- and -

DIRECTOR OF BORDER REVENUE

Respondent

**TRIBUNAL: JUDGE JUDITH POWELL
MS ELIZABETH BRIDGE**

Sitting in public at Bedford Square, London on 27 May 2014

The Appellants were present in person

Mr Hayes of Counsel instructed by the Border Force for the Respondent

DECISION

The Appeal

1. This is an appeal by Mr and Mrs Patel concerning the decision of Officer Collins
5 not to restore jewellery seized from them. The Appellants say that the decision of
Officer Collins is not one which could reasonably have been arrived at; they accept
that the seizure was lawful but challenge the decision made by Officer Collins not to
restore the items.

Background facts

10 2. Mr and Mrs Patel landed at Birmingham airport on 17 February 2013 and
proceeded to the green channel (“Nothing to Declare” for persons arriving from
third countries) having arrived on a flight from Dubai which is a third country for
these purposes since it is outside the EU. They had been away for some 10 days and
had spent a week in India before spending a couple of nights in Dubai. Whilst in the
15 green channel, Mr and Mrs Patel were stopped by a border force officer. They
confirmed to the officer that they had packed their bags (which they were carrying)
themselves and they also confirmed they were aware it was illegal to import certain
prohibited and restricted goods such as firearms, drugs, weapons and so on and they
confirmed they were carrying 400 cigarettes. The rest of the conversation is
20 disputed and we shall return to that below. What is not disputed is that Mr and Mrs
Patel were carrying eight new saris and seven jewellery boxes and were wearing the
jewellery from those boxes for which they produced invoices showing they had all
been purchased made whilst they were away. The saris were returned to Mr and
Mrs Patel but the jewellery was seized. The jewellery consisted of a man’s ring, a
25 woman’s engagement and wedding rings, a man’s necklace and bracelet and a
woman’s necklace, bracelet and earrings. The total value of these is agreed as being
£7,345.72.

3. Mr and Mrs Patel were given form ENF156 “Seizure Information Notice” and
Notice 12A “What you can do if things are seized by HM Revenue and Customs”.
30 Form 12A explained that a person can challenge the legality of the seizure in a
Magistrate’s Court within one month of the date of seizure. The officer also issued
Notice 1 “Travelling to the UK”.

4. On 20 February 2013 the Appellants wrote asking for restoration of the
jewellery. They stated their understanding that the goods had been seized because
35 their value exceeded £390 and had not been declared and explained the goods were
imported for their wedding, it was a genuine error that they had not been declared as
they had never purchased goods abroad previously. On 14 May 2013 an Officer
wrote refusing to restore the jewellery having concluded there were no exceptional
circumstances that would justify a departure from the usual policy not to restore and
40 on 29th May the Appellants’ solicitors wrote asking for a review of that decision
saying that because the Appellants though restoration was a formality they had not
appreciated they had to justify it and give reasons why the goods should be restored.
An officer replied on 11 June explaining the review process and inviting any further
information to support the application for a review. On 28th June 2013, having

heard nothing further from the Appellants or their solicitors, Officer Collins wrote to the Appellant's solicitors having reviewed the original decision and he upheld the decision not to restore the jewellery and it is this decision which is the subject of the appeal.

5 *Preliminary Matters*

5. We have summarised the background facts which led to the disputed decision being made. We shall have to consider the decision of Officer Collins in detail and we shall do this below. Before we do that there are a couple of preliminary matters to deal with.

10 6. The appeal is against the decision made by Officer Collins not to restore the jewellery. We have already said that the Appellants did not challenge the legality of the seizure and in fact they could not bring a challenge of that type to this Tribunal. Their appeal to this Tribunal is limited to challenging the reasonableness of the
15 decision not to restore is a decision that Officer Collins could not reasonably have reached. It is not sufficient if we conclude that we might have reached a different decision. If we did reach the conclusion that the decision was not one that the Officer could have reached if he was acting reasonably we could not substitute a
20 different decision but would have to remit the matter back to the Respondent for further consideration.

7. We heard oral evidence from Officer Collins. An application was made to the Tribunal before the hearing for Officer Marlow to attend as a witness; Officer Marlow was the officer who seized the jewellery. The application was refused by Judge Kevin Poole even though part of the decision made by Officer Collins was
25 based on conversations between the Appellant and Officer Marlow and we shall see that there is disagreement about the exact content of those conversations. Judge Poole noted this and said that if the Respondent did not wish to produce her as a witness it is not appropriate for the Tribunal to require her to do so whilst commenting that the Tribunal might draw adverse inferences from that failure.
30 Officer Marlow did not attend the hearing but Officer Collins attended and gave oral evidence.

The decision of Officer Collins

8. The decision of Officer Collins was conveyed to the Appellants in his letter dated 28 June 2013. In that letter he explained how he arrived at his decision not to
35 restore the jewellery. He set out the general policy that seized goods should not normally be restored and that each case is examined on its merits to determine whether restoration should be offered exceptionally. He acknowledged what the Appellants' solicitors had said in favour of restoration in their letter of 29 May 2013 that the Appellants did not realise there was a limit on the value of goods they could
40 bring to the country, there was no deliberate attempt to break the law, it was the first time they "had been in trouble", they fully co-operated and there was no attempt to mislead or deceive the authorities, it was a one off incident, the goods were for

personal use, they were not being imported for commercial gain, the jewellery had special meaning and could not be replaced and the loss of the jewellery would cause financial hardship.

5 9. Officer Collins in recording his decision referred to his understanding from the papers made available to him and to conversations that took place between the Appellants and the intercepting Officer. We understand that these papers included the notebook of the Officer which records the conversations between the Officer and the Appellants. In particular he referred to the Officer asking “Have you bought or been given anything whilst you've been away. Have you done any shopping?”. He records that Mr Patel answered “We bought a sari”. After Officer Collins refers to the discovery of the various items he then referred to the Officer asking “Where is the jewellery that belongs in these boxes?” and Mr Patel’s answer “We’re wearing it”. Finally he recorded the Officer asking “Why didn’t you tell me about all these clothes and the jewellery when I asked you had you bought anything whilst you’d been away?” Mr Patel as responding “Well, we did buy saris” to which the Officer said “And the jewellery” with Mr Patel responding “I didn’t understand”.

10. In the letter informing the Appellants of his decision Officer Collins said he found the replies deliberately evasive. That the original question whether the Appellants had bought anything was an opportunity for them to be full and frank which they were not because they limited their response to saying they had bought a sari. He inferred that their choice to wear the jewellery was a clear intention to deceive. He said his conclusion was “the jewellery had been deliberately removed from the boxes and placed on the person to deceive the Border Force officers”. He did not accept as credible the explanation that the jewellery had not been mentioned because Mr Patel misunderstood the question.

11. Officer Collins did not give weight to the claim that the Appellants made an error in failing to check the statutory allowances and said that most people are aware that there are UK Customs regulations and if they had been unaware of the position they should have entered the red channel and enquired.

12. The Appellants dispute that the notebook contains an accurate record of what happened. Officer Collins and Mr Patel both gave oral evidence from which we established further facts.

Further facts and the decision of Officer Collins

13. Mr Patel was a straightforward witness and it was evident to us that he was extremely distressed about the position in which he found himself. We can see that he found the process difficult to understand and felt at the time that if he paid the duty (for which he would have been liable if he had declared the jewellery upon arrival in Birmingham) he would have the jewellery restored to him and was extremely upset to find this did not happen. We could see that he disagreed with the summary in Officer Marlow’s notebook in two important respects. First, he said they reported having bought “saris” rather than “sari” and secondly he recalled the question from Officer Marlow as being “have you bought anything whilst you were in India” rather than

“have you bought anything whilst you were away”. On this basis he said that he answered the questions accurately since they did buy saris in India and did not buy the jewellery in India but bought it in Dubai. He said the decision to wear the jewellery was not an attempt to deceive and if it was it was a very poor attempt since if he had intended to deceive he would not have carried the jewellery boxes and invoices with him.

14. Of course Officer Collins was not present at Birmingham airport and Officer Marlow was not present at the hearing. Officer Collins based his decision on what was recorded in the notebook and what Officer Marlow recorded as her questions did not surprise him and he did not talk direct to her. Officer Collins pointed out Officer Marlow had recorded that she knew the Appellants had arrived on a plane from Dubai. The entry in her notebook recorded her asking whether they had arrived via Dubai to which the answer was yes and in answer to her further question how long they had been away she recorded their answer that they had spent 10 days in India and two nights in Dubai. According to her notebook Officer Marlow pursued that answer by saying "So you spent some time in Dubai" to which the answer was "yes". Officer Collins explained that in his experience which involves him reading numbers of officers' notebooks the questions recorded by Officer Marlow are standard questions asked of someone arriving from Dubai. He explained that arrivals on flights from Dubai are targeted frequently because individuals often make high value purchases whilst in Dubai. He said it is very unlikely that Officer Marlow would have confined her questions to what the Appellants had bought in India when they arrived on a flight from Dubai. In any case his decision was based on what was said in the notebook since the Appellants had not told him anything which might cast doubt on what was said in that notebook and the notebook did not contain anything which surprised him when he read it.

15. We took into account that Officer Collins was not present at Birmingham and that Mr Patel was a straightforward witness but we have concluded that the question recorded by Officer Marlow did not surprise Officer Collins and so it was not unreasonable of him to accept what she had recorded without further enquiry of her. We conclude that the points put forward by the Appellants' solicitors were insufficiently specific to cause him to query whether the notebook entries were correct and accept that they are little different from points put forward in many restoration requests. We believe that Mr Patel may have misunderstood what he was being asked by Officer Marlow at the airport but we do not accept his explanation that the question was directed to what he bought in India and if it had been it would have been natural for him to have said at the time that this was what he had understood to be the question. Even if he did not do so at the time he might have elaborated upon why he did not volunteer the purchase of the jewellery when he was first questioned at Birmingham airport. He must have realised that what his solicitors said in their letter of 29 May 2013 about co-operation and so on was not consistent with his failure to disclose the purchase of the jewellery even if he had not seen the notebook entries at the time. We accept he did not obtain copies of these until after Officer Collins had reached his decision.

16. We could see the force of what Mr Patel said that wearing the jewellery but carrying the boxes and the invoices was not consistent with trying to deceive the Officer. Officer Collins did not address this specifically but did say it was not unusual for people to keep boxes and invoices in case they decided to return the goods but that his decision that they were intending to deceive was not based on this alone but was based on their answers to questions and the fact they chose in the first place to go through the green channel thus making a positive statement they had nothing to declare. We concluded that the act of wearing the jewellery was also consistent with a wish to keep it safe during the journey but this did not explain why Mr Patel had not offered a satisfactory explanation why they had used the green channel.

17. There was some discussion whether the Appellants had been told at the airport they would have the jewellery restored to them so that it was inappropriate for this to be considered again by Officer Collins. We were satisfied that this was not the case. We believe that the Officer may have led the Appellant to believe that he might have the jewellery restored but we accept that the Officer did not make a positive assurance. It is unfortunate if the Officer in any way misled the Appellants so that they failed to put forward a more detailed case for restoration in February but by May 2013 when they were asked for further information they must have realised that restoration was not a formality and they needed to explain fully why they did not disclose the purchase of the jewellery but instead waited until after the boxes were found in their luggage. They did not do that.

18. In reaching his decision Officer Collins concluded that the arguments for restoration put forward on behalf of the Appellants by their solicitors were not exceptional and did not contain any mitigating factors and to the extent they said or implied the Appellants had not intended to deceive and were co-operative he did not agree with them. Officer Collins explained what circumstances he would consider to be exceptional and he gave as examples where the person concerned was taken unwell and had failed to declare goods as a direct result of the effect of his illness, where the labels to the channels had been hidden or were obscured so that a person entered the green channel in error or where there were no labels at all at the entrances to the channels so that both channels were apparently the same. He said that there might be mitigating circumstances where a person was a first time traveller or was not fluent in the language and misunderstood the signage if he was then open and honest when questioned.

35 *Submissions*

20. Mr Patel submitted that he felt let down that the jewellery had not been restored because he came away from the airport believing that he had been promised this would happen. He said that the Officer's notebook was not correct and that he had answered the questions he was asked and had answered them accurately. He did not understand that he could have provided further evidence to Officer Collins. He agreed that he had got things wrong but said it was not deliberate. He felt it was harsh if the jewellery was not restored to him upon payment of the duty.

21. Mr Hayes submitted that the Tribunal must concentrate on the material that was before the Officer when he made his decision and if it was thought to be incomplete the time to say so was at that time. The Appellants had legal representation and could have asked them what was meant by the request for further facts and circumstances to justify restoration. The Tribunal is concerned with whether the decision was reasonable in view of the evidence.

Our decision

22. As we have recorded earlier we have to decide whether the decision of Officer Collins is one which he could not reasonably have reached. Unless that is what we decide we must dismiss the appeal. We have concluded that his decision was one that he could reasonably have made. He may have concluded rather harshly on the reasons why the Appellants chose to wear the jewellery; we do not accept that was necessarily done with the intention of deceiving the Officers. But that was not the only reason for his decision. The answers to the questions which Officer Marlow records as having asked were plainly not correct. The questions were those which Officer Collins would have expected her to ask. He had no reason to speak to her to check they were accurate. We accept what he said that the letter from the Appellant's solicitors would not have caused him to query the notebooks and that the Appellants could have elaborated further on the events leading to the discovery of the jewellery even if they had not appreciated what was recorded in the notebooks. They knew the jewellery purchases had not been volunteered by them and they might have said why this was the case. If they had said they thought they were only being asked what they had purchased in India they could have said so and this might have caused Officer Collins to query what was said in Officer Marlow's notebook. What is not in doubt is that they chose to enter the green channel, they did not query when they were stopped what they could validly bring through that channel and they did not query whether they should declare the purchase of the jewellery. We are not surprised that Officer Collins decided there were no mitigating circumstances to justify a departure from the usual policy not to restore seized goods and we dismiss the appeal. We have some sympathy for the Appellants who we found to be straightforward and upset by the position they find themselves in and we believe they were probably no more than careless but that is not sufficient for us to conclude that Officer Collins reached an unreasonable decision.

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 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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**JUDITH POWELL
TRIBUNAL JUDGE**

RELEASE DATE: 20 August 2014

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