



TC04415

Appeal number: TC/2014/03496

*CUSTOMS DUTIES - seizure of watch – reasonableness of decision to
refuse restoration – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

USMAN SHAH

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondent

**TRIBUNAL: JUDGE VICTORIA NICHOLL
MR HENRY RUSSELL OBE**

Sitting in public at Priory Courts, Birmingham B4 6DS on 1 April 2015

The Appellant appeared in person

**David Griffiths, Counsel, instructed by the Cash Forfeiture and Condemnation
Legal Team of the Home Office, for the Respondent**

DECISION

Introduction

- 5 1. This is an appeal against the decision of the Respondent (Border Force) dated 28 May 2014 to refuse to restore a watch and six hundred cigarettes seized at Birmingham Airport on 4 March 2014 to the Appellant (Mr Shah).

The facts

- 10 2. Mr Shah and Mr Graham Charles Crouch, a Higher Officer of Border Force currently employed as a Review Officer, both gave evidence and were cross-examined. From this and the evidence in the Tribunal bundle we find the following facts:

- 15 3. On 4 March 2014 Mr Shah was stopped in the “Nothing to Declare Channel” at Birmingham Airport. He was returning from Peshawar via Dubai. Mr Shah had travelled to the United Kingdom from outside European Union at least twice in the previous five years as he visits his mother most years. He has declared duty free cigarettes in excess of the one carton (two hundred cigarettes) allowance on at least one such previous visit but had not been required to pay duty.

- 20 4. When Mr Shah was stopped by Border Force officers on 4 March 2014 he was asked if he was bringing anything in his bags for anyone. Mr Shah declared that he had three cartons of two hundred cigarettes and that he had been told that he could bring in three cartons. The officer then looked in one of Mr Shah’s bags and found the cigarettes and a Rado watch that Mr Shah had bought in Dubai as a gift for his wife. Mr Shah produced a receipt showing that he had paid the UK sterling equivalent of £679.36 for the watch. The officer then seized the cigarettes and the watch.

- 30 5. On 7 March 2014 Mr Shah wrote to Border Force asking for restoration of his watch and cigarettes. On 27 March 2014 Border Force wrote to Mr Shah refusing to restore the watch. In a letter received on 8 May 2014 Mr Shah asked for a review of the decision not to restore. Mr Shah was aware that he could challenge the legality of the seizure in the Magistrates’ Court but did not do so because of the potential costs of such action and instead offered to pay the duty or penalty for the release of the watch. On 28 May 2014 Mr Graham Crouch of Border Force wrote a review decision confirming that the watch and cigarettes should not be restored to Mr Shah.

The Law

- 35 6. The Customs and Excise Management Act 1970 (“CEMA 1979”) provides as follows:

“49 (1) Where-

...any imported goods, being goods chargeable on their importation with customs or excise duty, are, without payment of that

duty...unloaded from any aircraft in the United Kingdom...those goods shall, subject to subsection (2) below, be liable to forfeiture.”

5 “78(1) Any person entering the United Kingdom shall, at such place and in such manner as the Commissioners may direct, declare any thing contained in his baggage or carried with him which –

...He has obtained outside the United Kingdom...

And in respect of which he is not entitled to exemption from duty and tax by virtue of any order under section 13 Customs and Excise Duties (General Reliefs) Act 1979 (personal reliefs).

10 “78(4) Any thing chargeable with any duty or tax which is found concealed, or is not declared, any thing which is being taken into or out of the United Kingdom contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, shall be liable to forfeiture.”

15 “139(1) Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer...

7. The Travellers’ Allowance Order 1994 made pursuant to section 13 Customs and Excise Duties (General Reliefs) Act 1979 provides that a person who has travelled from a third country shall on entering the United Kingdom be relieved from payment of value added tax and excise duty of goods to a total value of £390 or less and tobacco products of up to 200 cigarettes.

8. Paragraph 1 Schedule 3 CEMA 1979 provides for notice of the seizure to be given in certain circumstances. Paragraph 3 Schedule 3 CEMA 1979 then states:

25 “Any person claiming that anything seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners...”

9. If a notice of claim is given under Paragraph 1 Schedule 3 CEMA 1979 condemnation proceedings are heard in the Magistrates’ Court. If no notice of claim is given Paragraph 5 Schedule 3 CEMA 1979 provides:

35 “If ...no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied with the thing in question shall be deemed to have been duly condemned as forfeited.”

10. Section 152 CEMA 1979 provides:

“The Commissioners may as they see fit –

(a)...

40 (b) restore, subject to such conditions (if any) as they think proper, anything forfeited or seized under [the Customs and Excise Acts]...”

11. Section 14(2) Finance Act 1994 makes provision for a person to require a review of a decision under section 152(b) CEMA 1979 not to restore anything seized from that person.

5 12. Section 16 Finance Act 1994 makes provision for a person to appeal against any review of a decision under section 152(b) CEMA 1979. It specifies that the power of an appeal tribunal shall be confined to a power, where the tribunal are satisfied that the review decision is one that the reviewing officer making that decision could not reasonably have arrived at on the basis of the information provided, to do one or more of the following:

10 (a) Direct that the decision, so far as it remains in force, is to cease to have effect;

(b) Require a further review of the original decision in accordance with such directions as the tribunal considers appropriate;

15 (c) Where the decision has already been acted on or taken effect, declare the decision to have been unreasonable and to give directions as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in the future.

20 13. The appeal tribunal has no power to order the restoration of goods. The jurisdiction of the tribunal is limited to determining whether the review of the decision of Border Force was unreasonable. Mr Shah did not challenge the legality of the seizure in proceedings before the Magistrates' Court and cannot now raise a challenge as Paragraph 5 of Schedule 3 CEMA 1979 provides that the goods are
25 deemed to have been duly condemned as forfeited in the absence of such proceedings. This was confirmed by Mummery LJ in *HMRC V Jones and Jones [2011] EWCA Civ 824* at paragraph 73.

Submissions

30 14. Mr Shah Appellant claims that he bought the Rado watch as a gift for his wife in the duty free shop in Dubai. He claims that he was of the view that anything purchased from duty free shops is exempted from customs duty and that was why he went through the "Green Channel" at Birmingham Airport. Mr Shah claims in his Notice of Appeal that he mentioned the cigarettes and the watch before the Border Force officer opened his baggage. At the hearing Mr Shah conceded that he had not
35 mentioned the watch before it was found but said that this is because he regards his wife as himself. Mr Shah does not dispute the applicable law and duty payable and would like to pay the duty in order to have the watch restored.

40 15. The Respondent has a policy of not restoring goods that have been properly seized, even on payment of the duty, unless there are any exceptional factors to support restoration. The Respondent claims that this policy is necessarily hard in order to deter travellers from trying to bring in goods in excess of the personal limits through the "Green Channel", while allowing exceptional circumstances to be taken

into account on a case by case basis. It has been held to be reasonable the case of *Clear PLC v The Director of Border Revenue* TC/2009/14440. The Respondent submits that a consideration of the facts in this case supports the decision in accordance with the policy not to restore the goods. Mr Shah had walked past significant signage about the “Channels” in arrivals and chose the “Nothing to Declare” Channel. He then failed to mention the watch before it was found by the officer. Even if the Tribunal accept Mr Shah’s claim that he was not aware of the declaration procedure the Respondent considers that this does not affect the reasonableness of the decision. In *Saleem v Home Office* TC/2013/061850 Judge Poole and Mr Atkinson said:

“The bare facts are that the Appellant entered the UK without declaring goods which were well in excess of the permitted value. Ignorance of the limits or of the procedure to be followed is no excuse, and none of the other factors [she] refers to affect these basic facts.”

15 Discussion

16. In determining whether the decision of Border Force was reasonable we adopted and applied the summary of the applicable law helpfully provided by Judge Kempster and Mr Jolly in *Imran Bakht v Director of Border Revenue* [2014] UKFTT 551 (TC) and in which the Tribunal said:

20 4. That jurisdiction is a supervisory one, and from the case law 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:

- 25 (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.
- 30 (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.
- 35 (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.
- 40 (6) The burden of proof lies on an appellant to satisfy the Tribunal that the decision of UKBA was unreasonable.”

17. We are satisfied that Review Officer Crouch did not take into account some irrelevant matter or disregard something to which he should have given weight.

Review Officer Crouch considered the general policy not to restore seized goods, but his decision was not fettered by it as he considered whether an exception to the policy could be made because of the merits of the case. He took into account the record of the questioning after Mr Shah had entered the “Green Channel” and Mr Shah’s failure to declare the watch. He noted that the facts that the watch was a gift for Mrs Shah and that the cigarettes were for Mr Shah’s personal consumption were not relevant. He also considered the correspondence and representations made by Mr Shah. Even if Review Officer Crouch accepted that Mr Shah was not aware that there were limits and procedures for bringing in goods purchased outside the UK (despite his declaration of cigarettes on previous journeys and the signage at Birmingham Airport), this was not a reason to restore the goods as ignorance of the limits is no excuse as noted in paragraph 15 above. Mr Shah did not raise any exceptional circumstances.

18. We accept that Review Officer Crouch could reasonably reach the decision not to restore the watch and cigarettes to Mr Shah and dismiss this appeal.

19. 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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**VICTORIA NICHOLL
TRIBUNAL JUDGE**

RELEASE DATE: 30 April 2015

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