



**TC04580**

**Appeal number: TC/2014/5288**

*CUSTOMS DUTIES – seizure of wedding jewellery – reasonableness of decision to refuse restoration*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mrs BIBI ANIISAH EDOO**

**Appellant**

**- and -**

**THE DIRECTOR OF BORDER REVENUE**

**Respondents**

**TRIBUNAL: Judge Peter Kempster  
Mr Mohammed Farooq**

**Sitting in public at Priory Courts, Birmingham on 17 June 2015**

**The Appellant in person**

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

## DECISION

1. The Appellant (“Mrs Edo”) appeals against a formal internal review decision of the Respondents (“UKBA”) dated 5 September 2014 (“the Disputed Decision”) refusing to restore items of jewellery seized at Birmingham Airport on 24 April 2014.

### Background

2. On 24 April 2014 Mrs Edo’s sister, Mrs Bibi Farzana Iqbal, and other family members arrived at Birmingham Airport on a flight from Turkey. They were stopped by a Border Force officer (Officer Ward Westwater) in the Green Channel and the officer identified seven items of jewellery (seven gold bangles) (“the Jewellery”), which had an aggregate value in excess of the maximum allowance of £390 (Travellers’ Allowance Order 1994 (SI 1994/955) refers). The Jewellery was seized (s 78 Customs & Excise Management Act 1979 refers).

3. On 28 April 2014 Mrs Edo wrote to UKBA requesting restoration of the Jewellery. She commenced a challenge to the legality of the seizure by appeal to the magistrates’ court but subsequently withdrew that. On 24 June 2014 UKBA refused restoration. On 31 July 2014 Mrs Edo requested a formal review. On 5 September 2014 the decision not to restore was upheld by the review officer (Ms Helen Perkins) in the Disputed Decision.

### Law

4. 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—

(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

(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.”

5. 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*

6. *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:

- (1) The jurisdiction of the Tribunal in this matter is only supervisory.
- 5 (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.
- (4) To enable the Tribunal to interfere with UKBA's decision it would have  
10 to be shown that UKBA took into account some irrelevant matter or had disregarded something to which they should have given weight.
- (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  
15 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.

7. In particular, the legality of the seizure under is not a matter for this Tribunal:  
20 *Revenue and Customs Commissioners v Jones and Jones* [2011] EWCA Civ 824, per Mummery LJ (at [73]):

25 "To sum up: the FTT erred in law; the UTT should have allowed the HMRC's appeal on the ground that the FTT had no power to re-open and re-determine the question whether or not the seized goods had been legally imported for the Respondents' personal use; that question was already the subject of a valid and binding deemed determination under the 1979 Act [ie Customs & Excise Management Act 1979]; the  
30 deeming was the consequence of the Respondents' own decision to withdraw their notice of claim contesting the condemnation and forfeiture of the goods and the car in the courts; the FTT only had jurisdiction to hear an appeal against a review decision made by HMRC on the deemed basis of the unchallenged process of forfeiture and condemnation; and the appellate jurisdiction of the FTT was confined to the correctness or otherwise of the discretionary review  
35 decision not to restore the seized goods and car. No [Human Rights] Convention issue arises on that outcome, as the process was compliant with art 6 and art 1 of the First Protocol: there is no judge-made exception to the application of para 5 according to its terms; the Respondents had the option of contesting in the courts forfeiture on the basis of importation for personal use; they had decided on legal advice  
40 to withdraw from their initial step to engage in it; and that withdrawal of notice gave rise to the statutory deeming process which was conclusive on the issue of the illegal purpose of the importation."

### **Evidence**

45 8. We had a joint bundle of documents and took oral evidence from the following witnesses (all of whom apart from Mr Westwater also adopted and confirmed formal witness statements):

- (1) For the Appellant:
- (a) Mrs Bibi Farzana Iqbal (Mrs Edoos sister)
  - (b) Mr Abdool Monaf Edoos (Mrs Edoos father)
  - (c) Mr Mustafa Atas (Mrs Edoos husband)
  - (d) Mrs Edoos
- (2) For the Respondents:
- (a) Ms Helen Perkins (review officer)
  - (b) Mr Ward Westwater (seizure officer)

5

*Evidence of Mr Westwater*

- 10 9. Mr Westwater confirmed the contents of his notebook. The notes had been made immediately after the seizure. He asked the same basic questions of every traveller. The notebook recorded the following exchange:

Officer	Are these your bags?
Mrs Iqbal	Yes.
Officer	Did you pack them yourself?
Mrs Iqbal	Yes.
Officer	Does everything in the bags belong to you?
Mrs Iqbal	Yes.
Officer	Are you carrying anything for anyone else today?
Mrs Iqbal	No.
Officer	Are you aware it is illegal to bring drugs, weapons, firearms and indecent or obscene material into the UK?
Mrs Iqbal	Yes.
Officer	Do you have any cigarettes or tobacco?
Mrs Iqbal	No.
Officer	Did you buy any gold or jewellery?
Mrs Iqbal	No.
Officer	Did anyone give you any gold or jewellery?
Mrs Iqbal	No.
Officer	Can you pass me your first bag for searching?
Mrs Iqbal	We have some gold but it was bought here.
Officer	Can I see it?
Mrs Iqbal	Yes
	<i>PAX [ie passenger] produced a red box containing two necklaces and 7 yellow metal bangles</i>
Officer	Where did you buy the jewellery?
Mrs Iqbal	Alum Rock

Officer	Do you have a receipt?
Mrs Iqbal	Yes, my Dad has it.
Officer	Madam, this bangle does not bear a UK hallmark and the inscriptions do not appear to be British.
Mrs Iqbal	Yes, my sister got married. Her mother in law bought her that in Turkey.
Officer	Why do you have it?
Mrs Iqbal	I am bringing them back to the UK as my sister is on honeymoon.
Officer	Where does your sister live?
Mrs Iqbal	In the UK.
Officer	Where does her mother in law live?
Mrs Iqbal	Turkey
Officer	Where did the rest of the bangles come from?
Mrs Iqbal	They were all bought by her mother in law in Turkey.
	<i>I examined the receipt provided by her father marked [ ]. I telephoned the jewellers in Alum Rock who confirmed the other gold was bought in the UK. I returned the box and its contents witnessed by Officer Raj and seized the seven yellow metal bangles ... and explained the appeals process ...</i>

10. He confirmed that he had called the family group to the Customs bench together and that his questions had been addressed to the group of travellers. His notebook recorded Mrs Iqbal because he recalled her taking over the conversation and being responsible for the seized goods. Mrs Iqbal's replies had been succinct and coherent, and he took it that she understood what was going on. He recalled that he asked for the hand luggage and when reaching for it Mrs Iqbal had explained about the gold. However, there had been no attempt to conceal the Jewellery.

#### *Evidence of Ms Perkins*

11. Ms Perkins confirmed that when making the Disputed Decision she had considered all the documents supplied by Mrs Edoo in support of her objection to the refusal to restore. She was not authorised to consider the legality of seizure as that matter was final after it was not challenged before the magistrates' court. UKBA accepted that the Jewellery was a wedding gift, as claimed by Mrs Edoo.

12. UKBA's general policy is that seized goods (including non-excise goods) should not be restored. However, each case is considered on its own merits to determine whether there are exceptional reasons to support restoration.

13. She considered there were three points which were aggravating circumstances in the current case.

(1) Travellers entering the Green Channel would see the notices and posters advising clearly of limits and instructions. Thus Mrs Iqbal and her family were

5 aware of the significance of entering the “nothing to declare” Green Channel but chose to do so when they had in their luggage jewellery with a value of some £2,000, which was in excess of the maximum allowance. By entering the Green Channel they were in effect stating that they had nothing to declare and thus had no intention of paying the duty legally due on the Jewellery. Mrs Iqbal’s actions rendered her liable to prosecution (pursuant to s 78(3) Customs & Excise Management Act 1997) but UKBA had demonstrated leniency by restricting their offence action to seizure of the goods only.

10 (2) As Mrs Iqbal was stopped by a uniformed Border Force officer she must have known that she was expected to answer questions truthfully and disclose the Jewellery. The questions and answers were clear and unequivocal. When asked whether she was carrying anything for anyone else and whether anyone had given her any gold or jewellery she had replied “No” to both questions. It appeared that Mrs Iqbal only disclosed the Jewellery when the Border Force officer made it clear that he intended to search the baggage. On the balance of probability Ms Perkins was satisfied that this was a deliberate attempt to evade the duty and tax payable on first import.

15 (3) When the Jewellery was discovered by the Border Force officer Mrs Iqbal had stated that it had been purchased in the UK. Only when the Border Force officer spotted and queried the lack of a UK hallmark was the true origin disclosed. This further reinforced her view that Mrs Iqbal chose to deliberately deceive the Border Force officer so as to evade the duty and tax payable.

20 14. Ms Perkins did not consider that there were exceptional circumstances in the current case. She had considered Mrs Edoos’ statements that the Jewellery was important to her, and that its seizure had affected her relationship with her husband. As stated in the Disputed Decision:

30 “I acknowledge the cultural significance of jewellery gifted to individuals at certain phases of their lives, such as birth, coming of age, marriage and becoming a parent. However, this does not absolve individuals who travel abroad for either business, a holiday or indeed to be married who return to the UK from failing to declare goods that are liable to UK customs duty and VAT, over and above the accepted allowances. These seized items were purchased in Turkey and “gift” or not were required to be declared upon first import to the UK. If as well as their high value in excess of £2000, they were also of sentimental or cultural value due to your marriage, then I would expect at the very least, for you to have made reasonable enquiries to the UK Customs Authorities prior to import. ...

40 You have commented that the loss of these gold bangles has impacted on your relationship and indeed is unfair on your in-laws who worked hard and made sacrifices to afford this gold for you for your wedding. Although I sympathise these in my view do not constitute exceptional hardship and I have seen no evidence of that.”

45 15. Although there had been an offer to pay the taxes due that option passed when the goods were not declared at the Red Channel on arrival.

16. Having heard all the evidence presented at the hearing, she was still of the same opinion as expressed in the Disputed Decision.

*Evidence of Mrs Iqbal*

17. Mrs Iqbal had attended the wedding of her sister and Mr Atas in Turkey. She travelled back to the UK with her three infant children (including a 4 month old baby), her father and mother, and her aunt. They departed at 2.00 am and had a 5½  
5 hour stopover in Istanbul before arriving at Birmingham. After a long and stressful journey she had been totally worn out and wanted to get home quickly. She had not noticed any information about the Red and Green Channels.

18. After collecting their luggage they proceeded together to the exit. Her aunt was first intercepted by the Border Force officer who asked if they were all travelling  
10 together. His questions had been addressed to the whole group rather than one-to-one. Her father is not fluent in English and her mother could not hear the officer. Mrs Iqbal answered some of the questions in respect of her own luggage, not that of the rest of the party. She was being distracted by her children who were tired and frustrated after the journey. The officer was not sympathetic and, although he was  
15 only doing his job, a more patient approach should have been employed. There may have been some misunderstandings but she had tried her best to answer, and there was certainly no intention to give any answers that were not completely honest.

19. The officer asked Mr Edoo whether he was carrying any jewellery such as gold; Mr Edoo replied yes and took the red case out of his hand luggage and disclosed  
20 the Jewellery when the officer asked to view the gold; this was done before the officer searched the luggage. In the red case there was also a necklace belonging to her mother and her sister's necklace bought from Alum Rock. Mr Edoo explained to the officer that he was carrying the gold for his daughter for security reasons as she was spending more time travelling in Turkey and it was not safe for her to carry the gold  
25 with her. He showed the receipts for the Alum Rock necklace. The officer had warned Mrs Iqbal that she would be in trouble if she was lying, and he checked with the shop by phone. He weighed the Jewellery and said they had a value of £1,000 to £2,500. They were shocked when the Jewellery was seized. Her father had offered to pay the taxes due. She gave her contact details as she lived in the UK but her father  
30 would be returning to Mauritius.

20. They were all unaware of the rules and regulations. They had been naïve but there had been no deception. There had just been a huge misunderstanding.

21. In cross-examination Mr Davies for UKBA asked Mrs Iqbal about a letter dated 23 April 2014 that had been disclosed and which read:

35 **“Re: Authorisation letter to carry my gold back to the United Kingdom**

April 23, 2014

Mrs Bibi Farzana Iqbal

[UK address]

40 Dear Mrs Bibi Farzana Iqbal,

I, Bibi Anisah Edoo, authorises you, Bibi Farzana Iqbal who is travelling with Mr Monaf Edoo (Dad) and Mrs Rooksana Lutchumun (Mum) on April 24, 2014 to carry the gold that I have received as gifts  
45 on my wedding back to the United Kingdom. The reason being due to the fact that I will be flying to Cappadocia on April 24, 2014 with my husband, Mr Mustafa Atas for our honeymoon. I do not want to carry

all my gold with me while I am away as I do not deem it safe. I am hereby authorising you to be in possession of and to look after my gold while I am away from April 24, 2014 to April 28, 2014.

I appreciate your cooperation in this matter and am very grateful for your help.

Kind Regards

Bibi Anisah Edoos

5  
10 (1) Mrs Iqbal said this had been typed by Mrs Edoos in Turkey, at Mr Atas's sister's house, the day before Mrs Iqbal left to return to the UK. Mrs Iqbal had asked for the letter because she felt she needed an authorisation letter as the Jewellery did not belong to her.

(2) She had forgotten about the letter at the airport.

15 (3) She accepted that the Jewellery had in fact been carried by her father; that was because when packing she did not have room for it.

#### *Evidence of Mr Edoos*

22. Mr Edoos confirmed the statements of his daughter Mrs Iqbal summarised at [16-19] above.

20 23. At the airport he and Mrs Iqbal had tried to answer all questions honestly. Because some of the questions had been addressed generally to the group there may have been some confusion. There had certainly been no deception. They had three or four luggage trollies between them and he felt some questions had been addressed to him as the head of the family. There had not been any question of searching the luggage; he had answered about the box, taken it out and showed it to the officer.

25 24. The Jewellery was a gift from Mrs Edoos's in-laws and thus had extreme cultural and sentimental value. He had no idea that the Jewellery should be declared; he knew that if he had bought the gold then he should declare it but this had been received by Mrs Edoos as a wedding gift.

30 25. He had the receipt for the Alum Rock item because it just happened to be in his wallet – he had not taken it with him intentionally.

26. He knew about the authorisation letter but had not seen it.

#### *Evidence of Mr Atas*

35 27. Mr Atas's family were of poor means living from agriculture in rural Turkey. He had attended post-graduate study in London and was now employed in the UK as a scientist. He married Mrs Edoos at Birmingham Registry Office in March 2014 and the wedding celebrations were held near his family home in Turkey. The Jewellery was presented to his wife by his family during the wedding celebrations; this was in accordance with cultural and religious requirements. After the celebrations he and his wife spent some time travelling in Cappadocia; they felt it was not safe to take the  
40 Jewellery with them and decided to send it with his wife's family. He was unaware that there could be any duty payable on the wedding gifts because there was no

commercial intent; the gifts would never be sold. Since the seizure he had heard of other people bringing in valuable wedding gifts without any problem.

28. Mr Edoo telephoned him to tell him about the seizure and he had been devastated. His family had taken many years of hard work to save the money for the gifts. The news had ruined the honeymoon and had affected his relationship with his wife since. The seized Jewellery symbolised his marriage to his wife and was of extreme cultural value.

29. He had been involved in the preparation of the authority letter. It had been prepared just in case his sister-in-law had taken the Jewellery.

30. If there had been any intention to smuggle the Jewellery into the UK then the bangles could have been distributed between several travellers so that each person had less than the duty-free amount – the fact that the bangles were all together in the box demonstrated that there was no attempt to smuggle them.

#### *Evidence of Mrs Edoo*

31. Mrs Edoo stated that she is a registered pharmacist, which demonstrated that she is a person of honesty and integrity in a position of high responsibility. The Jewellery was presented to her by her groom's family in the wedding celebrations in accordance with cultural and religious requirements. When it was brought to the UK there was no intention of any financial gain or commercial activity; it would be treasured and worn on special family occasions. She was completely unaware of any tax implications of bringing her wedding gifts home to the UK.

32. She accepted that the seizure had been legal and that taxes were properly due, but was shocked that UKBA had refused to restore the Jewellery to her given its importance to her. The absence of the Jewellery had caused constant tension between her and her husband, and there was exceptional hardship.

33. In cross-examination Mr Davies for UKBA asked Mrs Edoo about the authorisation letter described at [20] above.

(1) It was written at her sister-in-law's house as there was no PC at the rented villa where she and her husband were staying. She had needed to print their e-tickets for the honeymoon and had prepared the letter at the same time. She denied that it was written later, when the appeal was being put together.

(2) Her sister had suggested the letter. On a previous occasion she had taken her sister's passport with her to Mauritius and her sister had given her a similar letter. She did not think it was odd. Not much thought had gone into it. She was not expecting her sister to do anything with the letter.

#### **Respondents' case**

34. For UKBA Mr Davies submitted as follows.

35. Mrs Iqbal's actions rendered her liable to prosecution (pursuant to s 78(3) Customs & Excise Management Act 1997) but UKBA had restricted any offence action to seizure of the goods only. UKBA's general policy is that seized goods should not be restored. That policy had been judged to be a reasonable one by the Tribunal in *Clear plc v Director of Border Revenue* [2011] UKFTT 11 (TC) (at [53]).

However, each case is considered on its own merits to determine whether there are exceptional reasons to support restoration.

36. The Disputed Decision took into account all relevant matters and disregarded all irrelevant matters.

5 (1) Travellers entering the Green Channel would see the notices and posters advising clearly of limits and instructions. Thus Mrs Iqbal was aware of the significance of entering the “nothing to declare” Green Channel but chose to do so when her group had in their luggage jewellery with a value in excess of the maximum allowance.

10 (2) The Border Force officer’s notebook was a contemporaneous record of events and although its accuracy had been challenged by the Appellant’s witnesses, UKBA did not accept that the notebook was incorrect. The notes were compiled in the course of professional line of duty and were intended to be an accurate record. It was accepted that the questions were put to the travelling group rather than any particular individual, however the replies had apparently  
15 been made by Mrs Iqbal speaking on behalf of the group.

(3) The review officer (Ms Perkins) had noted that Mrs Edoo’s account of the conversation with the Border Force officer was at variance to the account in the notebook. As stated clearly in the Disputed Decision, the review officer had  
20 concluded that:

(a) Mrs Iqbal would have been aware of the Red and Green Channel system. By entering the Green Channel she was in effect stating that she had nothing to declare and thus had no intention of paying the duty legally due on the Jewellery.

25 (b) As she was stopped by a uniformed Border Force officer she must have known that she was expected to answer questions truthfully and disclose the Jewellery.

(c) The questions and answers were clear and unequivocal. When  
30 asked whether she was carrying anything for anyone else and whether anyone had given her any gold or jewellery she had replied “No” to both questions. Further, Mrs Iqbal had incorrectly stated to the Border Force officer that the Jewellery had been purchased in the UK. Ms Perkins had formed the reasonable view that this was behaviour intended to deceive the Border Force officer and to evade the tax payable.

35 (4) Both the cultural significance of the jewellery and the effect on Mrs Edoo’s relationship were considered and the conclusion was reasonable that these did not amount to exceptional circumstances or exceptional hardship.

37. Although Mrs Edoo claimed to be ignorant of the requirement to declare the goods, the general requirement to pay customs duties and taxes on imported gold was  
40 not obscure or complex law and ignorance was not an excuse. The onus was on the traveller to be aware of the duties and allowances when entering the UK.

38. The decision not to restore was proportionate; the value was well in excess of the £390 allowance.

39. The authorisation letter was very odd. It was superfluous as a letter to Mrs Iqbal  
45 explaining details already known to her. If, as claimed, it was written in Turkey then

it would appear to be an attempt to justify why the Jewellery was being brought into the UK. What appeared more likely was that the letter was prepared later but backdated – it appeared to be in the same layout and font as later letters from Mrs Edoo. Although the contents were not in dispute, it may affect the Tribunal’s view of the credibility of the three witnesses who had commented on it.

40. The Disputed Decision had been reasonably arrived at, and the appeal should be dismissed.

### **Appellant’s case**

41. Mrs Edoo submitted as follows.

42. UKBA had accepted that the Jewellery was a wedding gift. The gift from her in-laws was made in good faith as a gesture of love and respect and in accordance with cultural and religious requirements. She sent the Jewellery back to the UK with her family because she felt it would not be safe to travel with it on honeymoon. The Jewellery was not being brought to the UK for any financial gain or commercial activity. No one had any idea that wedding gifts should be declared for Customs purposes. That was why no enquiries had been made about allowances and tax liabilities, and also why the Jewellery was taken through the Green Channel. It was a genuine mistake and simple naivety.

43. The scenario at the airport was that Mrs Iqbal was accompanied by six other people, including her three young children who were tired and frustrated after a long flight and who Mrs Iqbal was trying to deal with. Officer Westwater had confirmed that he addressed his questions to the group as a whole rather than on a one-to-one basis. Mrs Iqbal had answered some of the questions because Mr Edoo was not fluent in English. This seems to have led to misunderstandings and misinterpretations of what was said. Mrs Iqbal and Mr Edoo disputed the conversation as recorded in the notebook, as explained by the witnesses. The Jewellery was in Mr Edoo’s hand luggage. He answered the questions about having packed his own luggage, not carrying any forbidden items, and not having any alcohol or cigarettes. When asked about jewellery or gold, Mr Edoo had automatically disclosed the goods when the officer asked to view the gold – not when the officer intended to search the bags. The Jewellery was not in Mrs Iqbal’s bags, so her answers were correct. When questioned about the origin of the gold, the officer was told that some was purchased in the UK and some was gifted to Mrs Edoo. The officer had confirmed that was true by telephoning the jeweller.

44. There was no question of any intention to deceive the officer, nor of trying to evade taxes. No attempt had been made to conceal the gold. Payment of the taxes due in full had been offered but refused.

45. Mrs Edoo was a registered Pharmacist and an honest person. The Jewellery was a significant gift from her in-laws who had worked long and hard to save the money for it. The Jewellery had high sentimental value. The refusal to restore had serious consequences for her relationship with her husband and his family. There had been a genuine mistake and apologies had been made. She had been punished enough already and deserved a second chance. The Jewellery should be restored.

## Consideration and Conclusions

46. The Tribunal in considering this appeal has the limited jurisdiction conferred by s 16(4) FA 1994; we must decide only whether Ms Perkins' decision to uphold the refusal of restoration of Mrs Edoo's wedding jewellery was unreasonable, in the sense described at [5] above.

47. After careful consideration we have decided that on balance the appeal should be allowed, for two specific reasons. Before describing those reasons we must deal with the evidence we received concerning the conversation in the Green Channel. In reaching the Disputed Decision Ms Perkins relied on the account recorded in the seizure officer's notebook. Ms Perkins also had the information provided by Mrs Edoo in her letter dated 31 July 2014 in support of her request for a review, and in the Disputed Decision Ms Perkins fairly summarised Mrs Edoo's submissions. However, when making those submissions Mrs Edoo was not aware of the contents of the notebook; it was only when she received the Disputed Decision and saw what Ms Perkins had (again, fairly) extracted from the notebook report that she was aware of the specific exchanges that led Ms Perkins to conclude that Mrs Iqbal had attempted to deceive the officer. Mrs Edoo was not shown the notebook report and invited to comment on it before the Disputed Decision was made; she only became aware of the reported conversation when extracts were quoted in the Disputed Decision (and of course the notebook extract was subsequently fully disclosed in the preparation for this hearing). Mr Westwater explained to us that although his notebook records the conversation as if it were one-to-one with Mrs Iqbal, in fact he addressed the travelling group generally and recorded the answers he was given to his standard questions. That was reasonable as there was a group of six all travelling together with several baggage trollies full of luggage. However, it does mean that some of the detail of the exchanges – with contributions from both Mr Edoo and Mrs Iqbal – may have become confused. Also, this was not a formal interview but instead a conversation at the Customs bench while Mrs Iqbal was trying to deal with three fractious infants at the same time as answering some of the questions being put to the group. Mr Westwater stated that there had been no attempt to conceal the Jewellery. On balance we accept the statements by Mrs Iqbal and Mr Edoo that they were not attempting to deceive the officer but were simply unaware that there was any requirement to declare the wedding gifts to Customs.

48. We have decided the appeal should be allowed because there were two matters that were relevant but, in our view, were not adequately taken into consideration by Ms Perkins.

(1) First, although Ms Perkins did address the matter of whether there were exceptional circumstances, she did so from the perspective of whether the sentimental value of the Jewellery should override the requirement for travellers to acquaint themselves with the legal import requirements, and concluded that it did not (the passage in the Disputed Decision is quoted at [13] above). We consider that the review officer should have taken into account that the particular items were unique in their religious and cultural significance to the Appellant, being the wedding items from her groom's family. The Jewellery has more than just the sentimental value attaching to a family gift; it has a particular and unique religious and cultural significance.

(2) Secondly, although the Disputed Decision concludes that, "I believe the decision not to restore the seized goods is reasonable, fair and proportionate", it

5 does not state any reasons why that decision was proportionate. Accordingly,  
we are not satisfied that the proportionality of the decision not to restore was  
adequately considered. We have in mind particularly the very recent decision of  
the Upper Tribunal in *Putri Projosujadi v Director of Border Revenue* [2015]  
UKUT 0297 (TCC) (which was issued only one week before the hearing of the  
current appeal and so understandably was not cited to us) where Mann J  
emphasised (at [29]) that the matter of proportionality is distinct from that of  
whether there are exceptional circumstances, and (at [31]) that proportionality is  
a relevant matter in a restoration appeal, for both the review officer and this  
10 Tribunal.

49. For those two reasons we hold that the decision to refuse restoration was  
unreasonable. We have decided (pursuant to s 16(4) FA 1994) to require UKBA to  
conduct a further review of the decision not to restore the Jewellery.

### **Decision**

15 50. The Tribunal decided that the appeal is ALLOWED. The Tribunal DIRECTS  
that the Respondents shall conduct a further review of the decision to refuse  
restoration of the goods, the result of such further review to be communicated to the  
Appellant no later than 23 October 2015.

20 51. 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)”  
25 which accompanies and forms part of this decision notice.

30 **PETER KEMPSTER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 14 AUGUST 2015**