



**TC04865**

**Appeal number: TC/2014/02949**

*CUSTOMS DUTIES – seizure of wedding jewellery and recently purchased jewellery – whether refusal to restore was reasonable*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mrs FATIMA HAFAJEE**

**Appellant**

**- and -**

**THE DIRECTOR OF BORDER REVENUE**

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO  
WILLIAM SILSBY**

**Sitting in public at Nottingham Justice Centre on 28 October 2015**

**The Appellant in person**

**Ms Kate Wilson, instructed by the Solicitor for UKBA, Home Office, for the Respondents**

## DECISION

### Background

1. The Appellant (“Mrs Hafajee”) appeals against a formal internal review decision of the Respondents (“Border Force”) dated 30 April 2014 refusing to restore items of jewellery seized at Birmingham Airport on 13 February 2014.

### Background

2. Mrs Hafajee was stopped by a Border Force Officer in the Green Channel at Birmingham Airport on 13 February 2014, having arrived on a flight from Gujarat in India. Use of the Green Channel is for travellers from non-EU countries with nothing to declare for VAT and import duties purposes, and entering the Green Channel is a declaration by the traveller that they are importing goods with a value of less than £390 into the UK at that time (Travellers’ Allowance Order 1994 (SI 1994/955)). The other allowances for tobacco and alcohol etc are not relevant to this appeal.

3. Mrs Hafajee had in her possession four gold bangles, a ring and a pair of earrings. She also had an invoice in her possession for four bangles with a purchase price in excess of £390. As such, the jewellery was seized on the basis that Mrs Hafajee had failed to declare goods in excess of the statutory allowances, and Mrs Hafajee was issued with the appropriate information notice.

4. By undated letter received by Border Force on 19 February 2014, Mrs Hafajee wrote to Border Force asking for the jewellery to be restored, on the basis that two of the bangles had been given to her by her husband’s family as a wedding gift during a visit to India in February 2010 and, in respect of the other jewellery, that she had paid the relevant taxes when she had purchased the jewellery in India. Mrs Hafajee did not challenge the legality of the seizure itself.

5. On 11 March 2014, Border Force replied, refusing to restore the jewellery on the basis that Border Force policy is not to restore goods which have been seized following a failure to declare goods in excess of the statutory allowances on import. They did not consider that there were any exceptional circumstances that would justify a departure from that policy.

6. On 31 March 2014, Mrs Hafajee requested a review of Border Force’s decision, on the basis that the jewellery had not all been acquired in India during that trip, that two of the bangles had been given to her by her husband’s family during an earlier visit, and that the ring had not been purchased by her but was a gift from her grandmother to her niece living in the UK and that, in addition, the ring had little value.

7. On 30 April 2014, Border Force replied with their review of the decision and concluded that the decision not to restore was upheld. That letter advised Mrs Hafajee that she could appeal the decision.

8. This is Mrs Hafajee’s appeal against that decision.

## Law

9. The Tribunal's jurisdiction in relation to restoration refusals is set out in s16(4) FA 1994:

5 "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—

10 (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

15 (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  
20 comparable circumstances arise in future."

10. This Tribunal's jurisdiction is, therefore, supervisory and we are limited to considering whether the decision to refuse to restore the jewellery was unreasonable in the sense that no reasonable Border Force officer properly considering the matter could reasonably reach that decision.

25 11. As this Tribunal's jurisdiction is supervisory, we have no power to consider the legality of the seizure itself, a matter that was confirmed in *Revenue and Customs Commissioners v Jones and Jones* [2011] EWCA Civ 824.

### Submissions for Border Force

30 12. Border Force's policy is not to restore seized goods unless there are exceptional circumstance that warrant restoration; each case is considered on its merits to determine whether there are such exceptional circumstances.

35 13. In this case, the Border Force officer had concluded that there were no exceptional circumstances. The contention that two of the bangles were wedding gifts was not regarded as credible and so did not amount to exceptional circumstances or hardship.

14. In addition, the Border Force officer's notes stated that Mrs Hafajee had told the Border Force officer that she had "not really" bought anything of value whilst she was abroad, and had not been given anything to bring back for herself or anyone else.

40 15. A search of her luggage had revealed four empty jewellery boxes. When asked whether she had removed jewellery from the boxes and was wearing it, she said "no", but then said she was wearing the bangles from the boxes and that the other bangles

and earrings were in her handbag. Mrs Hafajee then pointed out invoices for four bangles and earrings. When asked to show what new jewellery she had, Mrs Hafajee showed the two bangles she was wearing, the earrings, a second pair of bangles and a ring.

5 16. The review officer concluded that as Mrs Hafajee had travelled to India before she would have been aware of the Red and Green Channel system. By entering the Green Channel she was effectively stating that she had nothing to declare and so had no intention of paying the duty legally due on the jewellery.

10 17. The Border Force officer's questions were clear. Mrs Hafajee's initial answer that she had "not really" bought anything of value was a deliberate attempt to conceal the jewellery and the review officer considered these to be additional reasons for reaching the conclusion that the jewellery should not be restored.

15 18. Ms Wilson further submitted that Mrs Hafajee's subsequent correspondence with Border Force showed inconsistent accounts as to the origins of the jewellery, as did her oral evidence in the hearing. As such, the explanation that two of the bangles were wedding gifts was not credible and did not amount to special circumstances.

20 19. With regard to Mrs Hafajee's contention that the review should have taken account of her request that the bangles seized be examined and compared with the information on the invoices, it was submitted the bangles would not be available to the officer undertaking the review. The question of whether the decision is reasonable must be made on the basis of the information available to a reasonable officer in his position at the time, and HMRC stated that access to goods seized is outside the power and duties of such an officer.

### **Mrs Hafajee's submissions**

25 20. Mrs Hafajee explained the origins of the jewellery seized. Two of the bangles seized had been given to her by her husband's family as a wedding gift during an earlier visit to India and were a symbol of her wedding, which are not supposed to be removed until her spouse passes away. She did not pay any VAT when she brought those bangles back to the UK after that earlier visit. She had been wearing the bangles  
30 at the time of the seizure, and they had been removed from her.

35 21. The other two bangles had been purchased during this visit to India and she had paid VAT on the purchase in India. Her invoice showed four bangles being purchased because it included two bangles purchased by her mother, which had remained with her mother in India. This would be obvious if the bangles were examined, as the jewellery weight is shown on the invoices and it would be clear that the bangles she was wearing at the time of seizure were not any of the bangles on the invoice; they would also be also clearly visibly older.

22. The earrings had been purchased by Mrs Hafajee in India from money given to her on her wedding. The ring was a gift for her niece.

23. Mrs Hafajee disputed the Border Force officer's notes, and said that she had not been asked about purchases – only whether or not she had cigarettes and alcohol with her, which she did not. She considered that there might have been some misunderstanding because she did not speak English very well. She had tried to co-operate with the Border Force officer: she had shown him the jewellery in her handbag, and had shown him the invoices, and had tried to explain that the bangles she was wearing were not any of those mentioned in the invoice. She had told him that the other two bangles on the invoice were with her mother in India. She did not know why this was not in the report in the Border Force officer's notebook.
24. Mrs Hafajee submitted that she had not been inconsistent in her responses, and that if there were any inconsistencies in her correspondence that they must have arisen as transcription errors. She had to dictate her letters in Gujarati to her niece, who then translated the letter into English; although her niece read the letters back to her in Gujarati, mistakes may have been made in translation.
25. Mrs Hafajee submitted that the review had not properly taken into account the cultural significance of the bangles seized, and had not paid any consideration to her situation. She requested the return of the wedding jewellery and was prepared to pay duty, VAT and taxes on the new items as necessary to have them restored.

**Discussion**

26. The Tribunal's jurisdiction in this matter is limited to determining whether the decision not to restore the jewellery is unreasonable.
27. There are clearly discrepancies between Mrs Hafajee's version of events and the Border Force Officer's notebook. It appears that Mrs Hafajee was not given an opportunity to comment on the contents of the Border Force notebook before the review of the refusal to restore was made and she only became aware of the report of the conversation when extracts were quoted in the review letter.
28. We consider that matters in this case were clearly not assisted by Mrs Hafajee's limited understanding of English, and in oral evidence – even with an interpreter – Mrs Hafajee had some difficulty in understanding the questions being put to her. However, we consider that Mrs Hafajee was attempting to answer questions to the best of her ability. We consider that any apparent inconsistency in evidence arises from communication difficulties and that Mrs Hafajee was not deliberately attempting to obfuscate the position. We accept that she was not deliberately attempting to smuggle jewellery into the UK.
29. Officer Brenton, the reviewing officer, was present at the hearing and we asked him whether he had taken into account the two bangles being wedding gifts and their cultural significance. He replied that the bangles had been legally seized and, from the Border Force officer's notebook account, he was satisfied that Mrs Hafajee had attempted not to declare the jewellery and so he considered that the decision not to restore was reasonable in the circumstances.

30. We find therefore that the review dismissed without due consideration Mrs Hafajee's assertion that two of the bangles were wedding gifts which had been given to her some years earlier and that an examination of the items would have shown that they had been used. This does not go to the legality of the seizure, which is deemed to have been correct as it was not challenged, but we consider that a review officer, acting reasonably, would make enquiries before dismissing the assertion as not credible. Whilst we appreciate that the items in question would not have been available to the review officer, we cannot think that it is correct that departmental procedures should hinder the establishment of relevant facts.

31. It would in our opinion have been reasonable and appropriate for the review officer to have at least sought information from the section of the department where the items were being held as to the existence or otherwise of evidence that the items showed signs of use before dismissing Mrs Hafajee's assertion as not credible. By failing to consider such evidence, the review failed to take into account a material matter. This, in our opinion, also means that the refusal to restore the jewellery was not reasonably made.

32. We also find that the two bangles worn by Mrs Hafajee were wedding gifts and that the review did not take into account the significance of jewellery given as wedding gifts in Indian culture and therefore on that ground alone that the refusal to restore the jewellery was not reasonably made.

33. The appeal is therefore allowed.

34. The Tribunal DIRECTS that the Respondent shall conduct a further review of the decision to refuse restoration of the jewellery, the result of such further review to be communicated to the Appellant no later than six weeks after the date of this decision.

35. 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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**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 3 FEBRUARY 2016**

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