[2020] UKFTT 0118 (TC)

TC07612

CUSTOMS AND EXCISE – Restoration of seized goods – s139 Customs and Excise Management Act 1979 - whether the Respondents' decision not to restore was reasonable - Appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/04634

BETWEEN

ANWAR ENAJAH **Appellant**

-and-

BORDER FORCE **Respondents**

TRIBUNAL: JUDGE ABIGAIL HUDSON
ANN CHRISTIAN

Sitting in public at Manchester Tax Tribunal on 11 February 2020

The Appellant appeared unrepresented.

Rupert Davies of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. This appeal is the Appellant's challenge to the Respondents' review decision, dated 6 July 2018, not to restore to it a large quantity of Roman and Carthaginian coins seized at Felixstowe Port on 29 January 2018.

INTRODUCTION

2. On 29 January 2018 a container arrived at Felixstowe Port from Libya containing a classic car. It also contained a number of other items that had not been declared. Within the container were 588 Roman and Carthaginian coins ('the coins') concealed within various electrical items in a suitcase. The coins having not been declared they were seized by the UK Border Agency ('UKBA').

3. The importer of the vehicle was sent a Notice of Seizure dated 7 March 2018 and a copy of notice 12 A "What you can do if things are seized by H. M. Revenue & Customs." which explained how to challenge the legality of the seizure. The importer indicated in writing that he did not own the coins and gave the details of the Appellant. In the meantime the Appellant had sought to retrieve the goods in written correspondence on 6 March 2018, 15 March 2018 and 3 April 2018. Mr Enajah initially appeared to challenge the legality of the seizure, but did not pursue his claim at the Magistrates' Court, thereby acknowledging that the coins had been legally seized.

4. Mr Abdy of the Department of Coins and Medals at the British Museum examined the coins and he and his colleague gave a provisional opinion on them to the UKBA. He concluded that the majority of the coins were Roman brass sestertii dating to the first and second centuries AD, but also included some Carthaginian bronzes originating from an area including what is now western Libya.

5. The Appellant sought restoration of the 588 coins. This application was refused by UKBA on 10 May 2018.

6. The Appellant requested a review of the decision not to restore by email dated 25 May 2018. UKBA wrote to him on 30 May 2018 explaining the review process and inviting further information in support of the request. Further information was provided by email on 21 June 2018 and UKBA wrote to the Appellant on 6 July 2018 stating that following a full review it had decided to uphold the decision not to restore the goods.

7. Mr Enajah appealed to the Tribunal in a notice of appeal dated 15 July 2018**.** He appeals against the decision not to restore the coins to him.

Parties' submissions

8. In brief, the Appellant challenged the decision not to restore the coins seized on the basis that the decision-maker, in reaching his decision, had taken into account irrelevant material, ignored relevant material and reached a conclusion which no reasonable decision-maker could have reached. The Respondents defended the decision-maker's conclusions. We consider the detail of these submissions when setting out our decision below.

Evidence

9. We heard oral evidence from Mr Enajah. The Appellant was a difficult witness to obtain evidence from because he had a tendency to answer direct questions with a long recitation of preceding information before coming to the point. We are aware that his first language is not English and that both lack of familiarity with the language and cultural norms of communication may be a factor in the way in which he gave his evidence. That said, there were a number of areas where he gave an answer to a question, but then a few minutes later

gave an answer which appeared to conflict with the evidence just given. For example, he told us that he had no connection to the company trading as "Service Partnership for Trading" and that it was a Libyan company with no presence in the UK. Some minutes later he told us – when talking about a different issue – that the company was registered in the UK with him as a director but had never traded. When challenged about the conflict in his evidence he said that the Libyan company was as above while the UK company had the addition of "UK" after the name. We acknowledged that but it did not explain why he had not told us about the UK connection when originally asked about the company and why he had a card with that company name on. We found his evidence to be often unreliable.

10. On behalf of the Respondents we heard oral evidence from Mr Raymond Brenton. Mr David Harris was in fact the decision maker but sadly, since making the decision he has passed away. Mr Brenton concluded that upon all of the evidence before him today, he would have made the same decision. Mr Brenton also submitted a brief witness statement prior to the hearing which was also taken as read when he gave his oral evidence. We considered Mr Brenton to be a truthful witness. He candidly conceded that Mr Harris may not have received some of the information emailed to the department by the Appellant, prior to the making of his review decision.

11. We heard further oral evidence from Mr Richard Abdy, curator of Roman coins at the British Museum. Mr Abdy was plainly an honest witness and an expert in this field, having been the curator of Roman coins for some twenty years. We found him to be very reasoned in his opinions making a number of concessions upon cross-examination, in particular for example where Mr Harris appeared to have understood him to be saying that the coins did originate in the area now known as western Libya, he candidly stated that in fact he would only go so far as to say that they "could have" originated there. We found his evidence to be reliable.

12. In addition, the bundles contained a comprehensive collection of correspondence and other documentation generated by the enquiries which we have taken into account in this decision.

The law

13. The Appellant appeals against to the Respondents' decision to refuse to restore goods which were seized by the Respondents exercising their powers under Section 139 Customs and Excise Management Act 1979 ("CEMA 1979").

14. Section 152 of CEMA 1979 provides the Respondents with the discretion to restore goods which have been seized. The relevant part is as follows:

> The Commissioners may, as they see fit—
>
> (b) restore, subject to such conditions (if any) as they think proper, anything forfeited or seized under [the customs and excise] Acts;

15. When exercising this wide discretion the Respondents follow their Policy. That policy is that, in general, goods which have been seized as liable to forfeiture will not be restored but that each case should be considered on its own merits to determine whether there are circumstances which would make it appropriate for restoration to be offered.

16. Section 14(2) Finance Act 1995 provides as follows:

> "(2) Any person who is -

(a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,

(b) a person in relation to whom, on his application, such a decisions has been made, or

(c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,

may by notice in writing to the Commissioners require them to review that decision."

17. Section 15(1) Finance Act 1995 provides that:

"Where the Commissioners are required in accordance with this chapter to review any decision, it shall be their duty to do so and they may, on that review, either:

(a) confirm the decision; or

(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate."

18. Section 16(4)-(6) Finance Act 1995 provides that:

"(4) 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 further review of the original decision;

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, 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) In relation to other decisions, the powers of an Appeal Tribunal on an appeal under this section shall also include a power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

(6) On an appeal under this section the burden of proof as to-

(a) the matters mentioned in sub-section (1)(a) and (b) of section 8 above.

(b) …

.... shall lie upon the Commissioners, but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established."

19. Therefore, to be successful before this Tribunal the Appellant needs to satisfy us that the Respondents' decision not to restore the coins seized was one which could not reasonably have been arrived at. It is worth setting out the comments of Judge Hellier in *Harris v Director of Border Revenue* [2013] UKFTT 134 (TC), para 6, where it is helpfully noted:

> "It is important to remember that a conclusion that a decision is not unreasonable is not the same as a conclusion that it is correct. There can be circumstances where different people could reasonably reach different conclusions. The mere fact that we might have reached a different conclusion is not enough us to declare that a conclusion reached by UKBA should be set aside."

20. So, we cannot conclude that the decision-maker here was unreasonable simply because we might reach a different conclusion. We can conclude that the decision-maker was unreasonable only if he took into account material he should not have taken account of, ignored material he should have taken into account, or reached a decision which no reasonable decision-maker could have reached on the material before him (*Customs and Excise v JH Corbitt (Numismatists) Ltd [1980] STC 231*).

21. There are two points to make in relation to the jurisdiction and the burden upon the Appellant. The first of these is that, as the challenge to the legality of the seizure was not pursued, the Tribunal must proceed on the basis that the goods were legally seized. The effect of this is that any facts necessary to the legality of the seizure must be assumed to be proved and those points cannot be re-opened, see *HMRC v Jones and Jones* [2011] EWCA Civ 824.

22. The second point is that the reasonableness of the decision-maker's decision is to be judged against the information available to us at the date of the hearing (even though in some cases this may include information which was not available to the decision-maker when the decision was taken). This unusual jurisdiction derives from the wording of Section 16(4) Finance Act 1994 and the Tribunal's fact-finding power, as conceded by the Commissioners of Customs and Excise in *Commissioners of Customs and Excise in Gora v CCE* [2003] EWCA Civ 525. The relevant part of the Commissioners' concession was set out in paragraph 38(e) of the judgment of Lord Justice Pill, as follows, with his view of that concession set out in paragraph 39:

> "Strictly speaking, it appears that under s 16(4) of the 1994 Act, the Tribunal would be limited to considering whether there was sufficient evidence to support the Commissioners' finding of blameworthiness. However, in practice, given the power of the Tribunal to carry out a fact-finding exercise, the Tribunal could decide for itself this primary fact. The Tribunal should then go on to decide whether, in the light of its findings of fact, the decision on restoration was reasonable. The Commissioners would not challenge such an approach and would conduct a further review in accordance with the findings of the Tribunal."

23. This jurisdiction was commented upon by Judge Hellier in paragraph 11 of *Harris*:

> "There is one other oddity about this procedure. We are required to determine whether or not the UKBA's decision was "unreasonable"; normally such an exercise is performed by looking at the evidence before the decision maker and considering whether he took into account all relevant matters, included none that were irrelevant, made no mistake of

law, and came to a decision to which a reasonable tribunal could have come. But we are a fact-finding tribunal, and in *Gora and Others v Customs and Excise Commissioners* [2003] EWCA Civ 525 Pill LJ approved an approach under which the tribunal should decide the primary facts and then decide whether, in the light of the tribunal's findings, the decision on restoration was in that sense reasonable. Thus we may find that a decision is "unreasonable" even if the officer had been, by reference to what was before him, perfectly reasonable in all senses".

24. So, having set out the Tribunal's jurisdiction, we will now consider the conclusion reached by the review decision-maker and our findings of fact (set out above), and decide whether, on all the facts available to us, the review decision reached was unreasonable.

Agreed Facts

25. We find that Mr Enajah is of Libyan descent and has a number of relatives still resident in Libya. He has been resident in the UK since around 1999.

26. We conclude that the Appellant has had an interest in ancient coins for nearly twenty years, and during that period has subscribed to magazines dedicated to the topic. He has attended coin fairs and purchased coins from overseas. He has also sold coins. He has held himself out as being a representative of a company when purchasing coins, and he has purchased coins in large 'lots' of miscellaneous coins.

27. He arranged for 588 ancient coins to be shipped to the UK via container and concealed those coins in the battery compartments of electrical items specifically obtained for the purposes of concealing the items.

Discussion

28. In reaching our decision it is quite clear (following the case of *HMRC v Jones & Jones 2011 EWCA Civ 824)* that as the appellant never challenged the lawfulness of the seizure, the factual basis on which the seizure occurred cannot now be challenged. There is no doubt that a large quantity of Roman coins were imported into the UK, they were not declared and no duty was paid.

29. The primary issue before us is whether we accept that the coins seized by HM Border Force on 29 January 2018 were present in the UK, before been removed to Libya by the Appellant and then reimported. In order to determine that issue, we have considered some peripheral matters.

30. We accept that the Appellant is a collector of ancient coins, particularly Roman coins. He has purchased coins over a number of years. He does not have much documentation in relation to the 588 coins that we are concerned with, save that he has provided invoices from "Classical Numismatic Group, Inc" and 'Roma Numismatics Limited" in relation to nearly 200 coins that he says were within the collection seized. He has further provided a cleaning receipt in relation to 300 Sestertii coins which he says were also within the collection. It is not clear whether the cleaning receipt relates to some of the coins within the invoices or other coins.

31. Mr Abdy told us in his evidence that the coins that he inspected were dirty and blackened. He suggested that they had the look of a collection of coins that had been recently exhumed rather than that had been cleaned and displayed. That evidence suggests that the coins evidenced by the receipts cannot have been the same coins as those considered by Mr Abdy. Although Mr Abdy deals with coins on a daily basis and examined these coins some two years before the hearing, we considered it unlikely that he would not recollect whether the coins appeared to be part of a collector's cache or a newly exhumed haul. He specifically denied that the coins in the photographs provided by Mr Enajah were within the collection seized, because

those coins had been cleaned. The Appellant contends that the photographs were of the 15 coins cleaned by "Classical Numismatic Group, Inc" in 2011. In those circumstances it appears to be unlikely that the coins seized are those evidenced by the invoices.

32. The Appellant put to Mr Abdy that the seized coins included a significant number of low grade and blackened follis coins – a particular type of Roman coin. Mr Abdy denied this and stated that there were no follis in the seized collection. Given Mr Abdy's interest and experience in Roman coinage, we again considered it unlikely that he would not have noticed and recorded a significant number of follis.

33. The Appellant asserts that some of the coins seized originate in the 5th century. Mr Abdy was certain that there were no coins from such a late period but that the coins were from no later than the second century AD. Again Mr Abdy has vast experience with Roman coins and it seems unlikely that he would make such an error. It would be unlikely that if Mr Enajah did previously own these coins from his UK collection, they would be limited to the first two centuries AD rather than spread across the entire time period of the Roman Empire.

34. Mr Abdy further stated that some of the coins appeared to have been burnt. Mr Enajah accepted this but said that he had been attempting to clean them of "coin disease" and so had used fire for that purpose. Mr Abdy explained that he was not an expert in cleaning coins, but had never heard of anyone using burning in order to eradicate coin disease and with his vast experience, if such a technique were common we would expect him to have heard of it. We could conceive of no reason to suppose burning a brass or bronze coin would successfully result in a cleaner appearance.

35. Further, the Appellant was at pains to show us his cleaning solutions and equipment which presumably he would use prior to attempts at burning, and yet the coins seized were "not cleaned up to showroom standards although they had been washed of any adhering soil". Mr Abdy therefore did not accept that efforts had been made to clean these coins. In addition, the Appellant's evidence was that the attempts to clean by burning were unsuccessful. Given the sentimental value of these coins to him, we considered it unlikely that one would use the burning technique on a number of coins before trying it out on one. Upon it becoming clear that the technique did not work, one would not then use it on others, yet the seized collection had a number of burnt coins within it. We concluded that the coins were not burnt for the purposes of cleaning them and therefore that the Appellant had not caused them to become burnt.

36. We heard evidence that the coins were largely brass sestertii from the first and second centuries AD with the older coins more worn that the more recent. Mr Abdy said that it was likely therefore that the sestertii were part of a single archaeological discovery, because if each coin came from a different hoard it is likely that there would be more recent but more worn coins, or older less worn coins. The spectrum of wear would not be so indicative of all of those coins being left undisturbed for the same length of time and therefore deposited at the same time. There were however Carthaginian coins within the group which would be unlikely to form part of the same archaeological find having been out of usage for some considerable time by the first and second century, and therefore those coins cannot form part of the same hoard. Given the Appellant's argument that this is a collection purchased piecemeal, we considered it unlikely that the level of wear would be as found.

37. The seized coins included a number of duplicate types of coins. We could see no reason for a coin collector to want a number of similar coins rather than a single good example of each type. For all of these reasons, we accept the Respondent's contention that the coins were not those evidenced within the documentation provided by the Appellant. There is no evidence

before us upon which we conclude that the coins were previously in the possession of the Appellant.

38. Mr Abdy concluded that the coins could have originated in Libya, or rather the part of the Roman empire now known as Libya. The Appellant had concerns that Mr Abdy had been alerted to the fact that the coins were being imported from Libya, and that prejudiced his opinion as to where their archaeological origin may have been. We found that contention to be unlikely given the level of expertise of Mr Abdy and the level of impartiality displayed throughout his evidence. He explained that although the Roman sestertii within the collection could have come from anywhere within the western half of the Roman Empire, there were also bronzes from the Carthaginian Empire which would date from significantly earlier and be specific to the area known as Carthage. Although that part of the world would stretch as far as Iberia and Spain, it would also include Western Libya. Although we go no further in our conclusion than that the coins 'could' all have originally been archeologically discovered in western Libya, it does support HMRC case in that a random collection of 588 coins from a private collection would be likely to contain coins from across the whole Roman Empire and therefore some examples which could not have originated in Libya.

39. Mr Abdy was somewhat diffident in his evidence and stated candidly that he had examined these coins some considerable time ago. We therefore accepted that it is possible that there are some errors in his recollection. He would have no reason to lie about his evidence and indeed we considered his evidence to be eminently reasonable. However, we considered it highly unlikely that there were so many significant errors as the Appellant suggests. On that basis we found that Mr Abdy's evidence is likely to be reliable. We therefore accept that the coins were not cleaned to showroom standard, dated to no later than the second century, did not include a collection of follis, included many duplicate coins and were likely to be from two or possibly three specific hoards of coins.

40. The Respondent asserts that there is significant evidence that Mr Enajah trades in ancient coins. Clearly, a trader may have financial motivation to smuggle ancient coins without paying the import taxes. We did not consider that this issue was of any great relevance to the issues in this case, aside potentially assisting us in terms of credibility. For that reason we considered the evidence in relation to this allegation.

41. The Appellant challenges the value of the coins. The Respondent appears to have calculated the total value of £20,000 based on the estimates given by Mr Abdy and his colleague. The table provided of individual coin value suggested that most of the coins have been given a value of around £50. The Appellant's invoices show the purchase of coins for anything from just over a pound per coin to around £80. On either case the value of the coins is several thousand pounds.

42. The Appellant has provided receipts in relation to purchases made by him under the business name "Service Partnership For Trading". That is a business name and suggests that he indicated to the seller that he was buying the coins through his business. He tells us that he just used a card with this business name on because that's a convention in Libya, notwithstanding that the business is Libyan, has never traded in the UK, has no connection to him (save being owned by his father) and ceased to exist in the 1990s, over a decade prior to the use of the card. That does appear to demonstrate a level of deceit which does not assist the Appellant's credibility. Mr Enajah's evidence was that the cards show his home address and indeed the invoice does show his Liverpool address. However, he also stated that he did not move to the UK until 1999 and therefore after the company in Libya no longer existed. He also told us that they contain his telephone number and his email address. If they contain such up to date information that suggests that he had them made relatively recently – certainly within

the last two decades – and therefore that he had them created after the company which he never worked for ceased to exist. He therefore obtained those cards in order to create the impression that he was a representative of a company, and by implication at least led sellers to believe he was obtaining the coins as part of a trade.

43. Mr Enajah initially told us that he didn't sell coins but only bought them, although he may have sold one or two. He then stated that he had no recollection of selling any. The eBay documentation provided by him demonstrates a couple of incidents of sale of coins. If he is a collector only, it seems odd to have chosen to purchase large lots of around 200 coins as evidenced by the invoices. Collectors would not ordinarily be collecting by quantity rather than quality. Should you be collecting, you would then have the pick of the lot, and a significant number of similar coins to sell on.

44. We then turn to the explanation given by the Appellant for the route the coins travelled. Mr Enajah told us that in 2017 he was considering returning to live in Libya with his family. He explained that his father had had five strokes and he was worried about him. Although the implication was that the Appellant's father had become recently unwell necessitating a potential move, in fact the most recent stroke was three years earlier. That said, it is entirely reasonable for a son to wish to be near his father as his health deteriorates through the rigours of age. He said that because he had considered moving to Libya, he shipped these coins to Libya at the beginning of 2017. In the summer of 2017 he took his wife and children during the school holiday and the family decided not to relocate permanently. He told us that his reason for changing his mind about relocating is because he discovered that the airports had been taken over by militias and Libya was involved in other infrastructure problems. However, according to his email to the National Post Seizure Unit in May 2018 that had been the situation in Libya since 2014 and he told us that he regularly visits, returning at least a couple of times per year. We therefore considered his explanation that the family were thinking of moving in 2017 but changed their minds during the family holiday unlikely. Each of his trips to Libya were for between a week and two weeks. Following that decision in the summer of 2017 he had the coins shipped back to the UK in January 2018.

45. We found this explanation bizarre. At the beginning of 2017 Mr Enajah and his family had made no arrangements to facilitate a move to Libya. They had not enrolled in new schools, closed down utility accounts, sought new employment etc. It appears that the only thing done in furtherance of a move to Libya was the transport of some coins. Mr Enajah was in Libya for only a few weeks in total throughout 2017 and yet he considered it necessary to transport his cherished collection to storage in Libya. Further, it was not even the whole collection but a random part of it. He suggested to us that this was akin to going on holiday and taking some of your clothes with you. With respect, it is not. One would wear and use clothes during the course of the time on holiday, whereas his own evidence is that he wouldn't have had time to clean or "play" with the coins during the short visits.

46. We are supported in our conclusions regarding this point by the fact that the explanation for transporting the coins to Libya given at the hearing differs materially from the explanation that he put forward in his email dated 5 April 2018 to the National Post Seizure Unit. In that email he stated that the family had been dually resident in both countries and so the collection went to Libya. During their visit there in 2017 the Appellant noticed signs of bronze disease and determined that there was a need to treat the coins. It was for that purpose that they were brought back. No reference was made in that letter to decisions to move to Libya permanently.

47. Mr Enajah was keen to stress that as a collector, these coins were precious to him. That was why he shipped them to Libya before he had even decided to relocate there – to ensure that they were safe. That being the case – and with the risk of theft a consideration – he was asked

why he would ship the coins in a container rather than carry them on his person. He told us that it was cheaper to ship via container, but his evidence was that the cost was £25 per bag no matter how big. Excess baggage on an aircraft is unlikely to be hugely more expensive, particularly when one considers the necessity of collecting items from the container in Felixstowe. However, the Appellant does state that he shipped over other items at the same time and so possibly there was a financial expedient. He also stated that on the way to Libya he often has a significant amount of luggage because of the necessity of carrying presents for his family. We note that that is at odds with his assertion in his email of 5 April 2018 that he purchases air tickets without baggage.

48. On his evidence the company that shipped the items to the UK is one which Mr Enajah has used previously and particularly used to ship the coins out in 2017. Notwithstanding the fact that there appears to be an email within the bundle from a person purporting to be the managing director of the shipping company and confirming the use of the service on 29 January 2018, he has not provided a receipt for that outward journey to Libya or any documentation to support the assertion that the items were taken out in 2017.

49. Clearly it is not dispute that the coins were concealed within the container. That is of course indicative of an attempt to conceal from the British authorities. Mr Enajah states that he did not conceal the coins on the way out because it never occurred to him that the British authorities would object to the coins, whereas he concealed them on return because he was concerned about the Libyan authorities stealing the coins. That appears to be inconsistent in that a shipment is far more likely to be searched by the country it is entering than the country it is leaving. We would therefore expect the concealment to be necessary on the way to Libya, but less so on the return rather than vice versa. We did not accept that these coins had been previously transported from the UK to Libya.

50. For all of those reasons, we conclude that the coins seized are part of hoards found in or around Libya and leaving the area of archaeological discovery for the first time to travel to the UK. We do not accept that the coins have previously been present in the UK and transported to Libya by the Appellant. In those circumstances we accept that the decision to refuse to restore the coins to Mr Enajah is reasonable.

51. As the decision was challenged for taking into account irrelevant material, for ignoring relevant material and for being a decision which no reasonable decision- maker could have reached, we consider each of these in turn.

<u>In light of the facts available to us, was irrelevant material taken into account?</u>

52. Mr Abdy gave a provisional opinion as to the value of the coins, which led the UKBA to attach an estimated value of £20,000 to the goods. Mr Abdy's evidence is clear that he is not an expert in valuation and that the figure of £20,000 may not be accurate. There is no indication on the evidence before us that Mr Harris understood that valuation to be inaccurate, however, we could not envisage a difference in valuation to have altered the decision. On either case, the coins have a significant value.

53. The coins were concealed on importation. The Appellant's case is that they were concealed to avoid theft by Libyan militias and not to deceive customs. The fact of concealment is plainly a relevant consideration. The review officer does not make reference to the possibility that they could have been concealed to avoid theft, and we acknowledge that in and of itself, it may be sensible to conceal goods of value when transporting them to Libya to avoid theft. However, on the facts of this case, we do not accept that the concealment was effected for that sole purpose

In light of the facts available to us, was relevant material ignored?

54. The Appellant contends that the coins were purchased in the UK and exported to Libya. They were therefore being re-imported and were therefore not liable to import duties and / or VAT. For the reasons above we did not accept that the coins had previously been exported to Libya and were now being re-imported.

55. The Appellant sent information to the review decision maker on 25 May 2018 and 21 June 2018 and has concerns that that evidence was not considered in making the decision. Mr Enajah draws our attention to the review later dated 6 July 2018 in which although the email of 25 May is referenced no mention is made of the information attached to that email. The email of 21 June is not referenced at all and frankly given the issues common to governmental departments, it may be that it had not reached Mr Harris within the 15 days prior to the date of the review letter.

56. The email dated 25 May 2018 attached a letter along with an eBay printout and some photographs that the Appellant asserts are of coins within the seizure. We cannot imagine that either of those documents would have affected the review decision and nor do they affect our conclusions. It is not challenged that the Appellant purchases coins. Mr Enajah's own case is that the coins are of a very common type and the photographs are very difficult to make out. We note that Mr Abdy was specifically asked at the hearing if the photographed coins were within the coins seized and he said that they were not.

57. The email dated 21 June 2018 attached a list of coins for sale at a local auction and the same coin photographs. Again we could not envisage those attachments materially affecting the decision.

58. Mr Brenton told us that the review letter is intended to only summarise the information flow and we accept that. It is not therefore accurate to suggest that because a piece of evidence is not specifically referenced it was not considered. Certainly Mr Brenton told us that all of the documentary evidence before us today had been within the file of evidence that he reviewed. It is therefore likely that all of it was with Mr Harris, either at the time of his review, or possibly with the final email arriving very shortly thereafter.

59. On both the evidence before us, and all of that information provided to Officer Brenton there is simply no documentary evidence linking the 588 coins to a purchase of those coins in the UK. There is evidence that the Appellant has purchased coins of a similar type in the past, but no evidence to demonstrate that these were the same coins. Further, there is no documentary evidence before us, as was the case before Officer Brenton, that the coins were originally exported from the UK to Libya.

60. Officer Brenton tells us that he considered all of the material within the emails but that it did not take his considerations further, particularly in light of an assertion by Mr Abdy that the coins originated in Libya. We take the view that Mr Abdy has been less firm in that contention and the area of origin is somewhat more arguable than Mr Brenton may have previously believed, but it does not alter the fact that there is simply no independent evidence to support Mr Enajah's case that the coins originated in the UK.

Was the review decision one which, in the light of the facts available to us, no reasonable decision-maker could have reached?

61. The policy applied by HMRC is that, in general, seized goods that have been mis-declared, concealed or upon which there has been a deliberate attempt to evade the duty payable, should not normally be restored. It is clear that in this case, Officer Harris, and subsequently Officer Brenton, examined the case on its own merits to determine whether or not

restoration should be offered exceptionally. We accept Mr Brenton's evidence that he looked at all of the circumstances surrounding the seizure.

62. In this case we accept that Officer Harris considered every material piece of information furnished to him by the appellant, that he properly and fully investigated all relevant information and that although he was guided by the restoration policy, he was not fettered by it and he considered the matter afresh.

63. We are satisfied that the respondents' decision on review refusing restoration was reasonably arrived at within the meaning of section 16(4) FA 1994. Accordingly the appeal is dismissed.

Decision

64. We conclude that the decision-maker did not take into account irrelevant matters or place insufficient weight on relevant matters. In light of all the facts available to us, we conclude that the decision not to restore the seized goods was not disproportionate and was not a decision which no reasonable decision-maker could have reached. For the reasons set out above, we dismiss this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. 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.

ABIGAIL HUDSON
TRIBUNAL JUDGE

RELEASE DATE: 28 FEBRUARY 2020