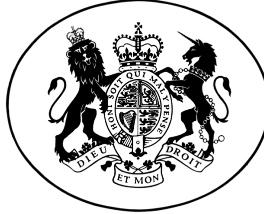

TC02418

Appeal number: TC/2011/07294

Customs Duty –forfeiture – whether decision of Review Officer reasonable- yes – appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

MAHDI HAMIDI ASHTIANI	**Appellant**
- and -	
DIRECTOR OF BORDER REVENUE	**Respondent**

TRIBUNAL: JUDGE DR K KHAN
CAROLINE DE ALBUQUERQUE

Sitting in public at Bedford Square, London on 1 & 2 November 2012

Mrs A Nanhoo –Robinson, Counsel, for the Appellant

Mr Rupert Jones, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondent.

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DECISION

1. The disputed decision of the Director of Border Revenue ("the Respondent") is contained in a letter dated 19 July 2011 which notified Mr Mahdi Hamidi Ashtiani ("the Appellant") that after conducting a review of his case, it was decided not to restore 4,890 of kilos of kitchenware ("the goods") seized on 20 April 2011. The review was carried out by officer DC Hodge, Review Officer for UK Border Agency. ("UKBA")

Background Facts

2. On 20 April 2011, Customs Clearance record (C 21) entry at Heathrow Airport related to a consignment of goods imported from Iran on 18 April 2011. The entry was accompanied by a form C3 ("Bringing your personal belongings to the United Kingdom from outside of the European Union") which was signed by the Appellant and dated 20 April 2011. The form contained a declaration which provided that the signatory had verified that they :

(1) Had read the notes on the form;

(2) Truthfully and completely answered all questions including questions on the goods; and

(3) The signatory was personally aware of what was contained in the packages as specified on the packing list.

3. The form was signed by the Appellant. The C3 form had a handwritten note which stated: "MY HOUSE GOODS, KITCHENWARE, PERSONAL EFFECTS". The Customs Procedure Code (CPC) 0000041 for kitchenware was entered on the C 21 form. The CPC is used for both imports and exports to identify the nature of the movement of the goods. When importing, it describes the purpose of the shipment and informs Customs of the duty to be paid on the goods.

4. The CPC 0000041 is a relief code used to relieve customs duty and VAT at importation under the rules which relate to the transfer of residence. In other words, there is no tax when personal goods are transferred because its owner is in the process of changing their country of residence.

5. The goods were examined by the UKBA officers. The officers formed the opinion that the goods were not correctly described and could not have been reasonably held to be "personal effects". The consignment contained brand new items of kitchenware and tableware. The officers concluded that the consignment was a commercial importation.

6. The Appellant's shipping agents, Apex Freight ("Apex"), were advised that the consignment appeared to be for a commercial purpose and the UKBA requested copies of the purchase invoices. On 21 April 2011 Apex provided a packing list,

together with a work sheet for the duty and VAT. All the documents were completed in the Appellant's name. UKBA requested that the Appellant provide evidence of payment, the Appellant's passport details and their Economic Operator Registration Identification ("EORI") number. The Appellant did not have an EORI number. This is a unique number assigned by Customs to individuals and businesses as an identification number.

7. Apex was asked to explain the purpose of the Appellant's visit to the UK and why such a large quantity of new kitchenware was described as personal effects. They said that the Appellant had come to the UK for medical tests intending to stay for one month. In a letter dated 20 April 2011, Apex stated that the Appellant intended to sell the kitchenware to the Little Persia Bar & Restaurant ("Little Persia"). Little Persian later confirmed that they were the purchasers of the goods and offered their VAT number to clear the goods.

8. The goods were addressed on the Airway bill to 160 Shepherds Bush Road, London W6 7TB, a mobile phone accessory wholesaler. It is one of the addresses used by the Appellant when in the UK.

9. The UKBA formed the view the goods were commercial goods and not personal effects and the Appellant had attempted to evade payment of customs duty and VAT. The goods were intended to be sold to Little Persia.

10. On 3 May 2011, the goods were seized under Section 139 of the Customs & Excise Management Act 1979 ("CEMA") as liable to forfeiture under Section 49 (1) (e) of CEMA. The Appellant did not challenge the legality of the seizure in the Magistrate's court. The goods were therefore condemned as forfeit to the Crown by the passage of time.

Relevant correspondence

i) On 6 May 2011 the Appellant wrote to the Respondent asking for restoration of the goods. He explained that he had "foolishly presumed that as a non-UK resident" he could bring items into the UK tax free. He accepted that what he did was wrong. He said the goods were imported for a friend's restaurant and he should not have declared the goods as personal effects.

ii) On 11 May 2011 the Respondent wrote requesting proof of ownership including proof of who ordered and purchased the goods.

(iii) On 26 May 2011 the Appellant wrote to the Respondent enclosing a copy of his Iranian passport and a letter from Dersden Trading dated 22 May 2011, which confirmed that he had paid cash for the goods in Iran. The invoice from Dersden Trading (No 1714) dated 6 April 2011 in the sum of £2,733 was provided.

iv) On 3 June 2011 restoration was refused. On 5 June 2011 the Appellant requested a review of that decision. On 13 July 2011 Apex sent a fax to the Respondent of a letter from Hava Bar Tehran Cargo Company ("Hava Bar"), a freight

forwarding company in Iran, which admitted their error in the shipping documentation. They said that the name and address of the consignee should have been Mr Farhad Jafari of Little Persia and the goods were erroneously labelled as personal effects. They were commercial kitchenware.

5 v) A letter dated 10 July 2011 from Farhad Jafari explained that he had failed to inform the freight forwarders that he was the consignee and owner of the goods. He said that the Appellant had bought the goods on his behalf and he was responsible for paying the duty.

vi) On 19 July 2011, Review Officer Hodge of the Respondent wrote to confirm
10 that after conducting a review the decision not to restore would be upheld.

vii) The Appellant appealed to the Tribunal in Notice of Appeal dated 12 September 2011.

Relevant Law

11. The relevant legal provisions are as follows:

15 a) Section 49 (1) of CEMA provides that:

49 Forfeiture of goods improperly imported

(1) Where –

(a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being goods chargeable on their importation with customs or excise
20 duty, are, without payment of that duty-

(i) unshipped in any port.

(ii) unloaded from any aircraft in the United Kingdom

(iii) unloaded from any vehicle in, or otherwise brought across the boundary into, Northern Ireland, or

25 (iv) removed from their place of importance or from any approved wharf, examination station or transit shed: or

(b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment; or

30 (c) any goods, being goods chargeable with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after unloading thereof, to have been concealed in any manner on board any ship or aircraft or, while in Northern Ireland, in any vehicle; or

(d) any goods concealed in a container holding goods of a different description: or

(e) any imported goods are found, whether before or after delivery, not to correspond with the entry made thereof; or

(f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer, those goods shall, subject to subsection (2) below, be liable to forfeiture.

b) Section 139(1) of CEMA provides that:

"Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's armed forces or coastguard".

c) Section 141(1) of CEMA states that:

"where any thing has become liable to forfeiture under the customs and excise Acts"

(a) any ship, aircraft, vehicle, animal, container (including any article of passengers' baggage) or other thing whatsoever which ahs been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable: and

(b) any other thing mixed, packed or found with the things so liable, shall also be liable to forfeiture".

d) Section 152 of CEMA establishes that:

"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.

e) **Sections 14 to 16 of the Finance Act 1994 provide that:**

Section 14 (2)

(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, or on whose application, such a decision 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.

Section 15(1):

"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."

Section 16 (4) to (6)

(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 or 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, or 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: and

(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 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 subsection (1)(a) and (b) of Section 8 above.

(b) the questions whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and

(c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under Section 22(1) or 23(1) of the Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid).

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.

The Appellant's submissions

12. The Appellant's Notice of Appeal dated 12 September states that the decision not to restore the goods to the Appellant was unreasonable for the following reasons:

(1) The Appellant did not fill in the forms which made the customs declarations.

(2) The freight forwarding agency in Tehran has admitted to filing wrong information on the customs declaration forms and have written to the UKBA to confirm that position.

(3) The Little Persia has confirmed that the goods belong to them and they are liable for the duty and taxes on the goods.

(4) The Appellant has a poor command of English and relied on other parties and agents to deal with administrative matters including form filling and declarations.

(5) The errors and forms were not those of the Appellant but rather of his agents.

The Respondent's submissions

13. The Respondents contends that the review decision was one that could reasonably have been arrived at for the following reasons:

(1) The Review Officer correctly considered whether the Appellant had provided details of exceptional circumstances that would result in her deciding to restore the goods.

(2) The C3 Form which was completed and signed by the Appellant contained a fundamental misdeclaration. It stated that the goods were personal belongings which meant that the Appellant was seeking to obtain relief from duty and taxes that may have applied to commercial goods.

(3) The Appellant indicated on the C3 form that he had lived in Iran for two years and he was moving to the UK. He declared that the goods were personal effects which had been used for the last six months. He stated that the goods were kitchenware –Personal Effects. These were false statements.

(4) The C3 form contained a warning in bold letters: "Imports are examined by Customs and there are heavy penalties for making false declarations including possible forfeiture of goods" All answers were confirmed to be true and correct. The Appellant was aware of the consequences.

(5) The Respondent says that the answers given by the Appellant were not true and complete. The Appellant was visiting the UK for a month for medical

treatment; the goods were neither household goods nor were they personal effects. They were commercial kitchenware that was being sold to Little Persia and other customers. By submitting the C3 the Appellant was seeking to avoid paying duty on the goods.

5 (6) The Review Officer carefully considered the case for restoration within the policy framework of the law and took account of the following;

a) The Appellant has accepted full responsibility for his actions and offered to pay the duty.

b) Invoices provided by the Appellant suggested that the goods were
10 imported for more than one customer.

c) Correspondence gave different explanations to those initially advanced by the Appellant. It is now suggested that Mr Jafari was the consignee and owner of the goods. This suggests that the Appellant has sought to mislead UKBA officers from the start.

15 (7) The Review Officer stated that the inconvenience and expense caused to the Appellant was not exceptional, over and above that which would be expected in the circumstances. Exceptional hardship has not been demonstrated and there is no reason to dis-apply the policy of non restoration in the circumstances.

20 **Finding of Facts**

14. The Appellant imported the goods into the UK for sale to various customers. The packing list contained sixteen items. Little Persia had only ordered 3 items from the Appellant. Goods were also ordered for the Caspian Restaurant.

15. The goods were not personal effects of the Appellant.

25 16. The goods were not owned or imported by Mr Farhad Jafari of Little Persia, who confirmed that position to the Tribunal.

17. The Appellant speaks limited English but has various people who can translate from Farsi to English to assist with understanding documents.

18. The Appellant came to the UK two to three times per year for between 30 and
30 45 days for several years.

19. The Appellant has been involved in the importation of goods over several years from Iran to countries in Europe and the United States where they are sold. He has a factory in Iran making ornate and decorative crockery, which is sold in the export market.

35 20. The Appellant has admitted there were false declarations on the import documentation.

21. The Appellant is familiar with customs importation procedures and was advised by Apex, who acted as his shipping agent.

22. Mr Ashtiani has applied for refugee status in the UK.

The Evidence

23. The evidence comprises a binder of documents including correspondence and witness statements. Witness statements were provided by the Appellant, Mr Mahdi Hamidi Ashtiani, Mr Behrouz Ghaemi and Mr Farhad Jafari. These three witnesses also gave oral evidence.

24. A witness statement was also given by the Review Officer, Mrs Deborah Carroll Hodge, who did not give oral evidence.

Summaries of Witness Statements and Oral Evidence Farhad Jafari (Witness Statement dated 24 April 2012)

25. He made the following points;

(1) He is the manager of Little Persia Restaurant & Bar in London.

(2) The Appellant, acting as his agent, would often purchase Iranian hand crafted goods and other goods for his restaurant.

(3) He arranged through the Appellant the import of three specific hand crafted goods to be delivered by Apex Freight.

(4) On 20 April 2011, he paid Mr Rob, Apex, £1000 as part payment for cost of transport and clearance of goods. The remaining £3,000 was given by the Appellant.

Mr Jafari made the following points in his oral evidence:

(1) The Appellant was his buying agent for goods in Iran. He had used him to purchase goods on two or three previous occasions.

(2) Their normal practice on importation was that the Appellant would pay for the goods and the transport and then be reimbursed by Mr Jafari.

(3) He said that all the goods on the packing list were for him. He also stated (in contradiction) that he only ordered three items from the Appellant.

(4) He agreed that he did sign the letter to confirm that he was the owner of the goods. He said that the letter was written by Mr Rob who "wrote the wrong thing". He was not the owner of the goods.

Mr Mahdi Hamidi Ashtiani (Witness Statement dated 23 May 2012)

26. The following points were made in the witness statement of the Appellant:

(1) He visited the UK two to three times per year for between 30 to 45 days over several years.

(2) He speaks little or no English or, as he classified "broken English". He imports handicraft goods which are decorated by him or in his factory in Iran and sells the products to various European countries and the United States.

(3) He understands the rules on importation of goods.

5 (4) He has relied on freight forwarding agents to deal with the paperwork for imported goods.

(5) Apex completed and signed Forms C3 and C21 and "I never told them to not declare the details of the goods in order to avoid paying VAT."

(6) He paid Mr Rob of Apex £4,000 as a deposit for clearing the goods. The 10 letter of 6 May 2011 to UKBA was prepared by Apex and signed by the Appellant.

(7) Representations made to UKBA that he had not been in the UK in the last two years are incorrect. He stated that "I have been to the UK seven times within the past two years".

15 (8) Various letters and forms sent to UKBA were signed by Apex who forged his signature.

27. In his oral evidence the Appellant made the following points:

(1) That he had dealt with Mr Rob at Apex for over 10 years and there was no problem.

20 (2) That he did not sign the C3 Form, he relied on freight companies to be his agents.

It should be noted that Mr Ashtaini had a Farsi to English translator throughout the hearing.

Bahrouz Ghaemi (Witness Statement dated 19 May 2012)

25 28. The statement of Mr Ghaemi made the following points:

(1) He knew and lived next door to the Appellant. They spoke the same language and were of Persian origin.

(2) He confirmed that he had typed and faxed a list of goods to Apex.

(3) He was with Mr Ashtaini when Mr Rob of Apex visited him on 24 April 30 2011.

(4) In his oral evidence he made the following points:

(a) He confirmed his witness statement.

(b) He confirmed that he has typed the packing list (identified as invoice/packing list in the documentation). It is possible he could have explained the C3 form to Mr Ashtaini but he was not sure.

Deborah Caroline Hodge (Witness Statement dated 9 February 2010)

29. Ms Deborah Hodge is a Higher Officer at the UKBA and currently employed as a Review Officer. She confirmed that she had looked at the relevant documentation including C3, Airway bill, UKBA officers' notes, correspondence and enquiries.

30. She confirmed that she relied on UKBA policy in relation to restoration of excise goods and was satisfied the decision not to restore was correct.

31. She gave no oral evidence.

Discussion

32. UKBA has discretion under Section 152 (b) CEMA to restore anything that has been forfeited or seized. The Finance Act 1994 provides a mechanism for appealing against an exercise of discretion not to restore or to restore on terms as to payment. Section 16 (4) Finance Act 1994 (as cited above) provide that the Tribunal must be satisfied that the person making the decision, in this case the Review Officer, made a reasonable decision considering all relevant matters and one which could have been arrived at by a "reasonable panel of Commissioners". The Tribunal must not substitute its own decision and can only allow the appeal if the decision was unreasonable. We must therefore be satisfied that the Review Officer gave proper weight to all relevant facts and took account of nothing that was irrelevant.

33. Let us start by looking at the points made by the Appellant in their Notice of Appeal.

A. the Appellant did not fill in the forms. He did not intend to mislead any organisation.

34. The Appellant states that he does not speak or fully understand English and Apex, his agents, completed and signed the Form C3 and C21. He said he never advised them to declare that the goods were personal effects.

35. It is clear that the C3 Form was never the appropriate form and its use suggested that there was an intention to avoid the payment of duty and VAT. The declaration on the form that the Appellant was moving his normal home to the UK from outside of the EU was clearly false.

36. The signing of the declaration of truthfulness on the C3 form when it clearly contained false information showed an intention to deceive whether by the Appellant or by his agents or both. The Appellant was familiar with the importation of goods from Iran to Europe and America. He would have known what he was signing and the implications of declaring the goods to be personal effects. It is fundamental when importing goods that the correct form be used and the appropriate customs classification be established in order to assess the appropriate duty. This was not

done. Further, the Appellant claims to have used the shipping agents, Apex, for over 10 years although his witness evidence seems to contradict this by suggesting that he had used Apex on "a few occasions". While this evidence is inconsistent, it is undeniable that the customs declaration forms contained false declarations relating to the goods and it was signed by the Appellant.

37. The Appellant stated that he had completed the first part of the form and that Mr Rob had completed the second part of the form and signed it. On the Form, the spelling of the Appellant's address is given as "Sheperz Boosh" which appears to be the writing of a person not familiar with English and indeed if it had been completed by Mr Rob, he would have been familiar with the Appellant's correct name, signature and address. This does raise questions about the Appellant's claim that he had not completed the form. The Tribunal does not accept that the form was signed by Mr Rob. He had nothing to gain from such action. The signature on the form does appear to match the signature of the Appellant on other documents presented to the Tribunal. This evidence of the Appellant, though interesting, is not persuasive.

38. Mr Ghaemi in his oral evidence stated that he may have assisted the Appellant in completing the form C3 and in explaining its contents but he was not sure. This would seem a more likely explanation of the form filling exercise.

39. The Appellant in seeking to have the goods released wrote to the UKBA stating that he "foolishly presumed that a non UK resident was allowed to bring items into the UK tax free. I know now this is wrong. The declaring of the goods as personal effects was also wrong. I fully understand that Customs procedures and know that goods going to my friend's restaurant had to be consigned to them on the document and the tax had to be paid". This appears to be an admission by the Appellant that he made a false declaration. He was now prepared to pay the tax to have the goods released. This clearly contradicts the assertion that Apex completed the forms and made false declarations. It also indicates that the intention of the Appellant was to mislead UKBA officers. These are the conclusions of the UKBA Review Officer.

B. The Agency the Appellant used to fill in the forms has admitted making the mistake.

40. The correspondence dated 2 June 2011 provided by the freight forwarders in Iran (Hava Bar) stated that they had made a clerical error and had entered the wrong consignee and erroneously labelled the cargo "personal effects".

At the same time this explanation was provided from the freight forwarders, a letter was provided by Mr Jefari dated 10 July 2011, that he was the consignee and owner of the goods. If such an error had occurred, then the Appellant must look to the freight forwarders for redress. The Review Officer, relying on the notes of the UKBA officers, concluded that the goods were not personal effects and were new goods. She relied on the Customs declarations and representations made on the forms. This is the evidence which the Review Officer must rely on in making a determination. The Officer therefore correctly considered the relevant evidence in making her decision. The Tribunal is aware that Mr Jafari gave evidence which stated that he was not the

owner of the goods in contradiction to the evidence in his signed letter. He also questioned the authenticity of the letter of 10 July 2011. The Tribunal supports and agrees with the determination of the Review Officer that the inconsistencies in the evidence suggests that the Appellant has continually sought to mislead the UKBA.

The Tribunal finds that Mr Jafari's evidence was inconsistent and unreliable. Little Persia ordered three items on the packing list but claims ownership of all items. This contradictory evidence does not support the Appellant's case.

C. The Little Persia confirmed the goods were for their restaurant and agreed to pay the duty on the goods.

41. Mr Jefari is the manager of Little Persia and in correspondence on 10 July 2011 stated as follows:

1. He is the consignee and owner of the goods. Mr Ashtiani was his agent.

2. The goods were erroneously described as personal effects.

3. He is responsible for all "charges, duties, forfeitures and damages" relating to the goods.

42. The Review Officer considered the letter and its representations but concluded that the account given by the parties was both inaccurate and inconsistent. The conclusion arrived at by the Review Officer was that the explanation of the ownership and import of the goods had changed several times, was not accurate and was unreliable. She therefore relied on the actual inspection and notes of UKBA.This is an entirely reasonable position.

D. The Appellant was being penalised for something which is out of his control.

43. The evidence before the Review Officer was that Apex was the Appellant's agent. He relied on them to complete the forms and give advice on freight forwarding. They would act in clearing the goods, paying all taxes and duties and ensuring all documentation was compliant with the law.

44. The Appellant stated that his English was of a poor standard and he had limited understanding and spoke only "broken English". The Tribunal accepts that position. However, the Appellant had several people who were able to assist him in typing letters and documents, translating and interpreting paperwork in Farsi. He confirmed that he had relied on those people to explain the shipping documents for importing goods, to create lists of the goods and to fax the lists to Apex. The Tribunal does not accept that the Appellant did not understand what he was doing and was being duped into signing documents he did not understand.

45. The Appellant had a long standing relationship with Apex and he trusted them to be his agents. He had a working relationship with them and they had his personal details and would have previously completed the customs declaration forms on behalf

of the Appellant. They would have verified the import/export documentation, determined the contents of boxes and confirmed the classification of goods for the tariff system. They would also have contacted vendors, determined the method of shipment, and prepared bills of ladings, invoices and other relevant documentation. They would have been actively involved in all aspects of the importation. It would have been very unlikely that the Appellant would not have explained the purpose of the shipment and details of the goods. It is most extraordinary that such a simple error, as occurred in this case, could have occurred without their notice.

The Appellant has now accepted responsibility for his actions; it is a reasonable conclusion that in the circumstances he was either negligent or reckless with regard to the declarations which were made. The Review Officer would have had to have been convinced that there were exceptional circumstances to allow restoration. It is reasonable that if a party has been negligent or reckless then restoration would not be an appropriate remedy.

46. Mrs Robinson for the Appellant argued that the fault lay with the agent and Mr Rob of Apex as well as the cargo company in Iran. She drew reference to the letter from the cargo company confirming their errors. She said that her client was not familiar with English as a language of commerce. She said that since reliance was placed on the agent then the Appellant cannot be blamed for their errors. These are good points; however, if the agent has been negligent or fraudulent in dealing with the paperwork then the appropriate remedy would lie against the agent and not against the UKBA.

47. **Evidence of Faradh Jafari**

48. The Tribunal had the benefit of oral testimony from Mr Jafari as well as a witness statement. These were not available to the Review Officer.

49. Mr Jafari of Little Persia provided a letter to UKBA on 10 July 2011. He sought to reclaim all the goods seized, not just his three ordered items, and agreed that he was the owner of all goods and that the freight forwarders had erroneously described them as personal effects.

50. In his oral evidence he said that he did not sign that letter and the letter of 10 July 2011. It was written and signed by Mr Rob. He confirmed that he was not the owner of the goods since he had not paid for them as indicated on the letter. He confirmed he knew very little about the Appellant, where he lived or where he stayed in the UK or his contact. He said the Appellant had been to his restaurant about ten times but that was the extent of his social contact. He stated that he had ordered ten items from the Appellant but in fact the packing list only showed three items which belonged to him. The Tribunal found that the evidence of this witness was not accurate, inconsistent and gave different accounts of the fact. He was an unreliable witness and his evidence is not accepted for the purposes of the appeal.

F. The Appellant's spoken and written English

51. A large part of the defence for the Appellant revolves around his inability to understand English. He was therefore unable to understand the forms and communications between Apex and UKBA. He claimed not to have signed the C3 Form. While the Tribunal understands his limited English, it cannot accept that he was the taken advantage of in conducting commercial dealings. He had the means of knowing and understanding the details of the transaction and the documents. He had previous experience of importing goods to the UK, using agents and making customs declarations. He was an experienced businessman.

G. Other correspondence with UKBA

52. First, there is no clear evidence that Apex perpetrated a fraud on the Appellant. If that was the case it would be a matter which is outside of the remit of this Tribunal.

53. The Appellant is familiar with the shipping of goods to Europe and America. He has a factory in Iran. He is also familiar with the documentation required for dealing with the shipping of goods and the customs declarations which must be made on those forms. He has around him various people who could assist him with translations and explanations of those forms. The Review Officer did not accept the explanations provided by the Appellant and from the evidence presented came to the conclusion that there was a clear attempt to mislead the UKBA. The explanations provided by the Appellant were not convincing or supported by credible evidence and the decision of the Review Officer in the circumstances was reasonable.

H. Packing List

54. The Review Officer had to consider the evidence of the packing list. The list contained 15 items. Mr Jafari claimed (later contradicting himself) that he was the owner of all of the items. The evidence suggests that he had only ordered three handmade items. It is not clear these items were on the packing list. There was also an order from Caspian Restaurant, another Persian restaurant in London. It would seem therefore that the goods which were brought to the UK as new kitchenware items were meant to be sold to various customers. They were not goods ordered by Little Persia and they were not entirely owned by Mr Jafari. They were owned by the Appellant. This is also the Review Officer's conclusions. The Tribunal believes that it is a reasonable conclusion in the circumstances given the evidence which was presented.

Conclusion

55. It is possible that the Appellant has been the victim of fraud by his agent. However the evidence does not convince the Tribunal that this is the case. If it were the case, he would have to seek redress against his agent. The Review Officer has looked at all the circumstance surrounding the seizure and considered all relevant facts. Our jurisdiction is limited to considering the reasonableness of the Review Officer's decision to refuse restoration. We are satisfied that the Review Officer did

consider all relevant matters and gave proper weight to all the evidence considered and took nothing into account that was irrelevant.

56. There can be no exceptional circumstances given that the Appellant has admitted there was concealment and that the consignment was for commercial and not personal use. The Review Officer clearly felt that there was an attempt to evade the duty and VAT which was payable in the circumstances. This is a reasonable conclusion. Therefore the appeal is dismissed.

57. 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.

DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 11 December 2012