

Federal Court



Cour fédérale

Date: 20110621

Docket: T-2105-10

Citation: 2011 FC 734

Ottawa, Ontario, June 21, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

FRISTHA THOMAS

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 135 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) (the Act) of a decision rendered by the Minister of Public Safety and Emergency Preparedness (the Minister), in which it was found that a contravention under section 131 of the Act occurred when the applicant failed to report jewellery upon her arrival to Canada. A penalty under section 133 of the Act was assessed in the amount of 30% of the value for duty for the jewellery. The applicant is a self-represented litigant.

[2] For the reasons summarized below, this application for judicial review shall be dismissed.

[3] The facts are adapted from the background provided in the respondent's memorandum.

[4] The applicant arrived with her two sisters at the Calgary International Airport on January 20, 2010, from Afghanistan.

[5] Upon arrival, the applicant and her sisters declared zero value for goods purchased and received abroad.

[6] Customs sent the applicant for a secondary screening and the Border Services Officer (BSO) observed that the applicant was wearing several pieces of jewellery.

[7] The BSO informed the applicant that the information on her declaration card would be verified. The BSO emphasized that the focus would be on "goods purchased and/or received on this trip".

[8] The applicant stated again that they did not purchase anything.

[9] The applicant was then asked to place all the jewellery she was wearing on the counter. The applicant then took off six bangles and placed them on the counter. The BSO then ask her to remove her necklace and hearings. The BSO then ask if the applicant had any more jewellery. The applicant removed two gold bangles from underneath her left sleeve.

[10] She also had a bracelet with white stone and admitted that she had purchased it in Kabul.

[11] The BSO also remembered her wearing three rings on her left hand and asked her to place the additional two rings on the counter. The applicant needed to be asked a second time before producing both additional rings from her handbag. She informed the BSO that those two additional rings were sent by her mother, who was still in Afghanistan, for the applicant's two other sisters in Calgary.

[12] All of the applicant's jewellery was seized for appraisal with the exception of the gold bracelet with white stones which was seized for failure to report (the "bracelet"). The applicant informed the BSO that the bracelet was purchased in Afghanistan for the equivalent of approximately \$423.88 (Canadian dollars). The BSO accepted the applicant's valuation of this bracelet and assessed a penalty of \$127.16, constituting 30% of the bracelet's value. The applicant paid this sum and Customs returned the bracelet to her.

[13] Customs sent the remaining eight items of jewellery (the "jewellery") for appraisal. It was appraised at \$17,785.00. Based upon the total appraised value, Customs determined the value for the duty was \$7,825.40 and the amount required for the return for the seized jewellery was \$2,347.62 (30% of the value for duty).

[14] Upon being notified of the amount required for return of the jewellery, the applicant requested a decision of the Minister pursuant to section 129 of the Act.

[15] Customs notified her of the reasons for the seizure action on March 2, 2010 and gave her 30 days to provide further evidence.

[16] The applicant provided some receipts to the Minister. The Minister had these receipts translated and provide a copy of the translation to the applicant. The Minister gave the applicant further time to provide more submissions.

[17] The Minister rendered a decision on November 22, 2010 and decided that under the provisions of section 131 of the Act, there had been a contravention of the Act or the Regulations in respect of the goods that were seized. The Minister also decided that under the provisions of section 133 of the Act, the amount of \$127.16 received for the return of the seized bracelet was being held as forfeit. He also informed the applicant that the other goods under seizure (items 1 to 8 on the Statement of Goods Seized) be returned to her upon receipt of an amount of \$2,347.62 which amount would be held as forfeit. If the release of the goods was not taken on the above terms within 90 days they would be forfeited and disposed of. It is that decision which is the subject of the present application for judicial review.

[18] In arriving at this decision, the Minister took into account that the applicant and her two sisters made a “nil” declaration at the Airport. He noted that when the applicant was informed that her declaration would be verified, she maintained her “nil” declaration. Furthermore, he also noted that when the applicant was repeatedly asked to remove all the jewellery that she was wearing, she admitted that she had purchased a bracelet with white stones on the trip and that some of the other jewellery was given to her by her mother to bring to Canada for her other sisters living in Calgary.

The applicant then stated that the necklace and six bracelets that she was wearing also belonged to her mother (who was in Afghanistan) long before the applicant's trip.

[19] The Minister also considered the applicant's explanation that she did not know what the declaration cards were for and how to fill them out. She alleged that she did not know that personal jewellery had to be reported and that she thought that only commercial and business goods had to be declared. However, the Minister also took into account that it was explained to the applicant that all goods imported into Canada had to be declared to CBSA. Given that the applicant failed to report the jewellery in question, the Minister concluded that a contravention under section 131 of the Act did occur.

[20] With regards to the applicant's argument that some of the jewellery was actually taken with her from Canada to Afghanistan, the Minister considered this argument, but found that she was not able to provide evidence of lawful importation or Canadian origin of the jewellery. This determination was made based on the Minister's examination of the submitted receipts. The receipts were found not to be specific enough to draw any solid conclusions in favour of the applicant (Minister's decision, page 2).

[21] The Minister indicated at the end of his decision that in order to appeal the decision made pursuant to section 131, the applicant could file an appeal by way of an action in the Federal Court in accordance with section 135 of the Act.

[22] The Minister also indicated that in order to contest the decision made pursuant to section 133 of the Act, the applicant can file an application for judicial review under section 18.1(1) of the *Federal Courts Act* which she did.

[23] At the hearing, the Court explained to the applicant that if she wished to suspend the present application, the Court would entertain an oral motion to grant an extension of time to the applicant so she could serve and file an action to appeal the Minister's decision concerning the contravention of the Act.

[24] The Court also explained to the applicant that under the present application it could not consider any of the remedies requested such as compensation for being treated unfairly.

[25] Although satisfied with the explanations by the Court that two decisions had been made by the Minister, the applicant stated that she wished only to proceed with the application for judicial review on the reasonableness of the assessment of the penalty imposed by the Minister.

[26] After a careful review and analysis of the documents filed by both parties, their written and oral submissions, the Court cannot qualify the assessment of the penalty as unreasonable *Dunsmuir v New Brunswick* [2008] 1SCR 190 para 47.

[27] The documents (Certified Record, pages 21 to 31) provided by the applicant to contradict the assessment obtained by the Minister from a gemologist (Certified Record, page 49) are deficient, vague and unreliable so that they could be considered as estimates of the jewellery seized.

[28] At the hearing, the applicant maintained that the jewellery in question did not surpass the amount of \$2,401.00. The Court is unable to accept that estimation because it is not supported by any documentation.

[29] The Court understands that it is quite difficult for the applicant to provide receipts or documentation for jewellery that were bought many years ago but, in a case such as this, it has no choice but to accept the estimate filed by the Minister.

[30] The applicant states that she had asked the Minister to provide her with the jewellery so that an independent estimate could be obtained. Unfortunately, she did not file a motion for such a request.

[31] The Court cannot also force the Minister to accept an offer that was made prior to the hearing by the applicant.

[32] Finally, the Court determines that there was no breach of procedural fairness in this case. The applicant was notified in due course that she was in contravention of the Act, was made aware of why and how she could contradict or contest the Minister's findings. She was given ample time to provide reliable documents or explanations to assert that the Minister's decision was unreasonable. She was also informed at all times how the decision was rendered.

[33] The Minister did not seek costs.

JUDGMENT

THIS COURT ORDERS that:

1. The application for judicial review be dismissed.
2. No costs are awarded.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2105-10

Frishta Thomas
And The Minister of Public Safety and Emergency
Preparedness

PLACE OF HEARING: Calgary

DATE OF HEARING: June 15, 2011

REASONS FOR JUDGMENT: BEAUDRY J.

DATED: June 21, 2011

APPEARANCES:

Ms. Frishta Thomas
Self represented

FOR THE APPLICANT

Mr. Brad Bedard

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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