

Federal Court



Cour fédérale

**Date: 20210914**

**Docket: T-1871-19**

**Citation: 2021 FC 944**

**Ottawa, Ontario, September 14, 2021**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MOHAMMED ZAFAR SALEEM**

**Applicant**

**and**

**HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA  
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision issued on October 17, 2019, of the Senior Program Advisor, Recourse Directorate of the Canadian Border Services Agency [CBSA], acting as the delegate of the Minister of Public Safety and Emergency Preparedness, regarding jewellery brought into Canada by Mr. Saleem. It must be dismissed, for the following reasons.

[2] On January 5, 2019, Mr. Saleem arrived at Pearson International Airport aboard a flight from India. He submitted a declaration form to a CBSA officer in the primary inspection line where he reported that the value of his goods received abroad to be \$250.00.

[3] He was then taken for a secondary examination where another CBSA officer questioned him regarding the two undeclared jewellery sets he was carrying. Each set consisted of a gold necklace and a pair of gold earrings.

[4] The secondary CBSA officer asked where he had purchased the jewellery sets and Mr. Saleem replied that he bought them in Dubai in 2013. He changed his story during this examination, claiming he had purchased the jewellery in 2008. He was also unsure of the amount he paid for the goods. When asked whether he paid duties and taxes on the jewellery items when they were imported, he did not answer, stating that they were exported to India on his trip there from Canada.

[5] As a consequence of his responses, which did not satisfy the second CBSA officer, the jewellery sets were seized as unreported pursuant to subsection 110(1) of the *Customs Act*, RSC 1985, c 1 (2<sup>nd</sup> Supp) because of the failure of Mr. Saleem to report them for customs purposes – a violation of section 12 of the *Act*.

[6] The seized jewellery sets are referred to in the record as Sets A and B. Set A was appraised by CBSA at a total value of \$11,750 based on the necklace being valued at \$7,650 and the pair of earrings being valued at \$4,100. Set B was appraised by CBSA at a total value of

\$11,250 based on the necklace being valued at \$8,000 and the pair of earrings being valued at \$3,250.

[7] The CBSA assessed the duty payable for release of both sets at \$3,036.00. Mr. Saleem did not pay that sum.

[8] On March 20, 2019, Mr. Saleem requested a ministerial review of the seizure of his goods. He requested that the terms of release be waived and that the condition that he be referred to routine secondary examinations during any travel returning to Canada be removed.

[9] On July 15, 2019, the Minister's delegate responded stating that all imported goods must be reported for customs purposes and that duties and taxes should have been paid at the time of importation. The response then asked Mr. Saleem to provide any documentation he had proving the duties and taxes had in fact been paid. The response also explained the rationale for the condition requiring secondary examinations, noting that it was CBSA policy to keep records of contraventions for six years, and that these records could lead to routine secondary examinations.

[10] On August 20, 2019, Mr. Saleem sent further submissions and supporting evidence providing information on where he purchased Set A (Dubai in 2008) and Set B (Dubai in 2013) together with a receipt for Set B dated January 13, 2013.

[11] On October 17, 2019, the Minister's delegate issued her decisions in relation to the jewellery sets. She decided that there was no violation of the *Act* with respect to Set A because it

had been purchased in 2008 and was past the limitation period of six years set out in section 113 of the *Act*. The set was released, without payment of duties and taxes, to Mr. Saleem.

[12] However, the delegate concluded that there was a violation of section 12 of the *Act* relating to Set B. Despite Mr. Saleem providing an original receipt, he was not able to supply documentation demonstrating that Set B had been lawfully imported into Canada in 2013. The review of his travel history confirmed that he returned to Canada two days after purchasing Set B and was released without going into secondary examination, where he would likely have been required to pay duties and taxes for Set B.

[13] On November 18, 2019, Mr. Saleem filed this application for judicial review of the Minister's decision in respect of Set B, pursuant to section 133 of the *Act*. Under section 133 of the *Act*, the Minister is to determine the conditions for releasing goods seized for a contravention of the *Act*. Mr. Saleem did not, however, commence proceedings contesting the decision rendered pursuant to section 131 of the *Act*, which determined that he had failed to report imported goods in contravention of section 12 of the *Act*. Therefore, whether Mr. Saleem contravened the *Act* is not at issue in this application; only the terms and conditions of release flowing from the contravention are.

[14] Decisions of the Minister's delegate to uphold an action under section 133 of the *Act* are reviewable on the standard of reasonableness: *Sandwidi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 995; *Dutton v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1170; *Gagliano v Goodale*, 2018 FC 820.

[15] Mr. Saleem asks the Court to waive the penalty assessed on Set B and to waive the secondary examination requirement. The Court appreciates and understands that the secondary examination requirement interferes with his job as a transborder truck driver; however, that aspect of the decision is not before the Court as no application was made to review the decision under section 131 of the *Act*.

[16] The CBSA has a policy of retaining records of contraventions for six years. Travellers with a record may be subject to routine secondary examinations. This is an automatic administrative consequence being found to have contravened the *Act*. Referrals to secondary examinations as a result of past contraventions are not sanctions, penalties, or legal consequences: *Dhillon v Canada*, 2016 FC 456 at paras 30 and 37.

[17] As an automatic consequence of a contravention of the *Act*, the secondary inspection requirement can only be set aside if the contravention itself is set aside. Mr. Saleem has not sought judicial review of the underlying contravention. Therefore, this Court must consider the penalty assessment starting from the assumption that Mr. Saleem contravened the *Act* and has never paid duty on Set B. Based on these facts, the decision is reasonable.

[18] Mr. Saleem submits that he did not intend to mislead customs officials, that he lacked the awareness of the rules of reporting goods, and that he has no history of customs violations. Regrettably, these are not relevant to the sole issue before the Court – whether the decision rendered regarding release conditions for Set B is reasonable.

[19] It is noted that Set B, and Mr. Saleem's conduct, was assessed at the lowest level of punishment – level 1. Moreover, when the receipt was provided showing the value of the goods to be greater than the CBSA's appraised value, it did not increase the penalty for return of the seized items.

[20] The decision under review is reasonable and this application is dismissed. A judge has discretion regarding costs, and I exercise my discretion not to award costs in this matter.

**JUDGMENT IN T-1871-19**

**THIS COURT'S JUDGMENT is that** this application is dismissed, without costs.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1871-19

**STYLE OF CAUSE:** MOHAMMED ZAFAR SALEEM v HMTQ ET AL

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** JULY 19, 2021

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** SEPTEMBER 14, 2021

**APPEARANCES:**

Mohammed Zafar Saleem APPLICANT  
(ON HIS OWN BEHALF)

Diya Bouchededid FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

-Nil- SELF-REPRESENTED APPLICANT

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