Federal Court Cour fédérale

Date: 20240208

Docket: T-956-22

Citation: 2024 FC 211

Ottawa, Ontario, February 8, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

CHRISTINA SUN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Christina Sun is a Canadian citizen and resident of British Columbia. On January 2, 2022, she returned to Canada from the United States of America at the Douglas port of entry, accompanied by her fiancé Chad Heltzel. They said they had nothing to declare.

[2] An officer with the Canada Border Services Agency [CBSA] noticed an unopened parcel that had a shipping label with an Oregon address. The couple claimed this was a printer they had brought with them from Canada. The officer referred them for secondary inspection.

[3] During the secondary inspection, CBSA officer Jessica Maier found a red jewellery box containing a diamond ring in Ms. Sun's purse. Ms. Sun said the ring had been purchased in Oregon by her mother-in-law, and she wore it when she flew back to Canada in August 2021. She admitted that she did not declare the ring at the time. She said she believed that an engagement ring, as a gift of strong sentimental value, did not have to be declared.

[4] Following a telephone call with his mother, Mr. Heltzel estimated the value of the ring to be $10,000 USD. The CBSA officer noted that the ring could be held for appraisal, but agreed to accept the $10,000 USD valuation. Applying the exchange rate of January 2, 2022, the officer assessed the ring to be worth $12,678 CAD.

[5] The CBSA officer determined that Ms. Sun had contravened s 12 of the *Customs Act*, RSC, 1985, c 1 (2nd Supp) [Act], which establishes the requirements for reporting goods imported into Canada. The officer seized the ring and applied a "Level 1" penalty. According to the CBSA's Enforcement Manual, "Level 1 applies to violations of lesser culpability" and "might generally be applied to offences of omission". The Enforcement Manual further classifies goods into groups, with jewellery falling within Group 1. The Level 1 penalty for Group 1 is 30% of the value of the goods seized.

[6] The ring was returned to Ms. Sun upon payment of a penalty of CAD $3,803.40, representing 30% of its value, plus $887.46 CAD in sales tax.

[7] Ms. Sun requested ministerial review of her contravention under s 129 of the Act. Pursuant to s 133, if the Minister is satisfied that the Act has been contravened, the Minister may return any goods seized, and reduce or increase the penalty.

[8] In an email communication dated January 28, 2022, a Senior Appeals Officer with the CBSA Recourse Directorate summarized Ms. Sun’s grounds for ministerial review as follows:

> Your comments have been noted and are appreciated. Briefly, you appeal this enforcement action stating that you admitted to the officer that you had not declared the ring when returning from your engagement in August via the Vancouver airport as you were unaware of the requirements to report gifts. The ring is a family heirloom and was a gift from your future mother-in-law, therefore you were never aware of the value. You asked the officer to pay only the duties and taxes on the ring, however your request was denied. You are appealing this enforcement action and are asking forgiveness for this first time offense and to be able to simply pay the duties and taxes on the engagement ring. You are now aware of the declaration laws after going through this painful experience and intend to properly declare your purchases or gifts in the future.

[9] The Senior Appeals Officer also informed Ms. Sun of the applicable law, and gave her an opportunity to submit additional information and documentation. She submitted the receipt for the printer, which she admitted to having purchased in Oregon.

[10] The Minister’s delegate Julie Vinette rendered her decision on April 5, 2022. The Minister’s delegate acknowledged Ms. Sun’s submission that she was unaware of the reporting

requirements and did not know the value of the ring. According to Ms. Sun, the CBSA officer said she would have to pay a 25% penalty. She was therefore surprised when she discovered that a penalty of 30% had been applied. She expressed remorse and asked for her liability to be limited to the duty and taxes payable.

[11] The Minister's delegate noted the importance of reporting goods under s 12 of the Act:

> […] This requirement pertains to goods purchased, received, gifts or otherwise acquired abroad, and whether they are new or used, personal or commercial, or being imported permanently or temporarily. When travelling abroad it is ultimately the traveller's responsibility to be aware of and comply with these requirements. If any of the foregoing requirements are not met, the goods, including any conveyances used in respect of the goods, become subject to forfeiture and may be seized.

[12] The Minister's delegate concluded that Ms. Sun had contravened s 12 of the Act by failing to declare the ring when she brought it into Canada in August 2021. Ms. Sun admitted as much to the CBSA officer during the secondary examination, and also in the course of the ministerial review.

[13] Ms. Sun's assertion that she was unaware of the reporting requirements did not provide her with an excuse, because "the obligation found in section 12 of the *Customs Act* is not qualified by any reference to the knowledge or subjective state of mind of the traveller." The Minister's delegate made no decision respecting the printer that had been purchased in Oregon and not declared, because "only the item seized (diamond ring) was reviewed".

[14] The Minister's delegate noted that the ring was subject to the lowest possible penalty (Level 1), "which normally applies in situations where an importer did not properly declare the goods they are importing, did not conceal the goods and made a full disclosure of the facts following the discovery of the goods". Penalties are determined in relation to the commodity that is imported, as well as the level. Guidelines for jewellery at Level 1 suggest a penalty of 30% of the value of the item seized.

[15] The Minister's delegate accepted Ms. Sun's assertion that the CBSA officer had informed her that a 25% penalty would be imposed, and reduced the penalty accordingly.

[16] The Minister's delegate declined to waive the penalty, stating: "I cannot overlook the fact that there was a contravention to the Act and had the ring not been located during the examination, it would have been unlawfully imported to Canada without proper accounting."

[17] The sum of $633.45 CAD, representing 5% of the estimated value of the ring, was returned to Ms. Sun. The sales tax was calculated based on the value of the ring and not the penalty, and accordingly it remained the same.

[18] In this application for judicial review, Ms. Sun challenges both the reasonableness and the procedural fairness of the decision rendered by the Minister's delegate. Her written submissions do not address the reasonableness of the decision. Instead, she raises the following issues for the Court's consideration:

> a. Did the Border Officer J. Maier act with subjectivity and bias towards the Applicant during the search, questioning, and seizure of the diamond ring resulting in excessive enforcement of the Customs Act? Did she intend to make an example out of the Applicant in a public demonstration in front of her CBSA colleagues and peers?
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> b. With the understanding that Julie Vinette works for the Canada Border Services Agency, could her ministerial review be considered impartial with respect to what transpired between the Applicant and the Border Officer?

[19] Ms. Sun has submitted an affidavit in support of the application for judicial review. Her affidavit contains no evidence respecting her interactions with CBSA officers at the Douglas port of entry beyond the report prepared by Ms. Maier on January 4, 2022. There is no evidence to support Ms. Sun's claims of bias on the part of Ms. Maier or institutional bias on the part of Ms. Vinette. Neither issue was raised in the course of the ministerial review.

[20] Ms. Sun said the following in her request for ministerial review:

> […] Here lies the crux of our appeal. Having not been familiar with the declaration laws surrounding gifts (heirlooms of this nature), as well as this being a first time offence, we requested directly to the officer to pay only the tax and duty on the ring. However, this request was denied. Furthermore, upon review of the final bill of which we paid to reobtain possession of our meaningful ring and priceless family heirloom, we see a rate of 30% listed, not 25% as previously insisted by the officer. The total amount we paid came to $4,690.86 CAD.
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> I would like to humbly appeal this 30% monetary penalty to the CBSA and ask to please forgive this first time offence so that I may pay only the tax and duty (12% and 6.5% respectively) on this engagement ring. Now that I am fully aware of the declaration laws through this painful experience, I intend to declare everything to CBSA officers every time I cross the border in the future whether gift or purchase.

[21] The "crux" of Ms. Sun's submissions to the Minister's delegate was a request for leniency in light of her ignorance of the law. She did not allege bias or other unfairness. When prompted by the Recourse Directorate to provide further submissions, she responded by email on January 30, 2022 that she "[did] not have any additional information or documentation to provide".

[22] Ms. Sun was invited to respond to a preliminary assessment of her file by the Recourse Directorate. She stated by email on March 2, 2022 that she "[was] in total agreement with the Border Officer's account of what happened". There is nothing in Ms. Maier's report to suggest bias or any other unprofessional conduct on the part of the CBSA.

[23] An allegation of bias against a public official is a serious matter and must be raised at the earliest opportunity (*Beddows v Canada (Attorney General)*, 2020 FCA 166 at para 10). Not only has Ms. Sun failed to adduce any evidence to support her allegation, but she neglected to raise the issue before the Minister's delegate. She is therefore precluded from raising it now.

[24] Before this Court, Ms. Sun again asks for the penalty to be waived. She says that her failure to declare the ring was an innocent mistake. She made a similar submission to the Minister's delegate, who reasonably applied the guidelines prescribed by the Enforcement Manual.

[25] The Minister's delegate carefully considered Ms. Sun's submissions and reduced the penalty from the usual 30% to 25%. The decision of the Minister's delegate was an exercise of a

broad discretionary power (*Chen v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at para 35), and is afforded deference by this Court. Ms. Sun has failed to demonstrate that it was unreasonable.

[26] Ms. Sun also objects to being subject to enhanced border scrutiny for the next six years. However, as Justice Russel Zinn explained in *Saleem v Canada*, 2021 FC 944 (at paras 16-17):

> 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.
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> 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.

[27] The application for judicial review must therefore be dismissed.

[28] The Respondent seeks costs in the amount of $2,000. The Respondent submits that Ms. Sun unreasonably prolonged the adjudication of this matter, resulting in a notice of status review and two case management orders. The Respondent also notes Ms. Sun’s unsubstantiated allegations of bias.

[29] Ms. Sun's behaviour at the border and throughout this proceeding leaves much to be desired. She was unrepresented during the hearing of the application but was coached in her oral submissions by Mr. Heltzel, who remained out of view. While a costs award of $2,000 would be eminently reasonable given the circumstances, it may seem disproportionate compared to the monetary sums in issue. I therefore exercise my discretion to award costs against Ms. Sun in the all-inclusive amount of $1,000.

[30] The Respondent asks to be named as the Attorney General of Canada, and not as the Canada Border Services Agency. The style of cause will be amended accordingly.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs are awarded to the Respondent, the Attorney General of Canada, in the all-inclusive amount of $1,000.

3. The style of cause is amended to name the Attorney General of Canada as the sole Respondent, with immediate effect.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-956-22
STYLE OF CAUSE:	CHRISTINA SUN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 31, 2024
JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	FEBRUARY 8, 2024

APPEARANCES:

Christina Sun (on her own behalf)	FOR THE APPLICANT
Robert L. Gibson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT