Customs & Trade in Israel

A Legal Newsletter

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A Deficit Notice Shall Remain In Effect Even If The Importer Was Not A Party To The Tax Fraud

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Background:

The following article will review the question of the tort liability and the duty of care of the State towards taxpayers. The matter was raised as part of deliberations regarding whether a deficit notice to a taxpayer should be annulled when he acted in good faith and did not attempt to perform tax fraud.

Case Facts:

Two years after he personally imported a car, the Custom Authority produced a deficit notice to the importer, noting that the car value reported to the Custom Authority in the supplier's account was erroneous. The importer was therefore required to pay additional import tax, as well as accrued interest, exchange-rate differentials, and a past due fee.

An investigation by the importer found that while he paid the required import tax according to the car's value, the consultation company he hired to import the car declared a lower value to the Customs Authority than the price paid by the importer.

The Parties' Arguments:

The importer argued that the State was negligent twice - first, by not carefully adhering to procedure while examining the car's value at the time of import, when it should have notified the importer of an additional import tax payment. This would have provided the importer with the right to choose whether to complete the import transaction with the extra required tax payment or to cancel the transaction. Second, by the fact that the State produced a new customs debt notice 30 months after the car was released, according to a different valuation method than the method it itself set when the car was released.

On the other hand, the Custom authority argued that the State is not liable to the damage after its representatives examined the car reasonably and according to procedure. The Custom Authority noted that the examination of goods at their release is performed by the Customs Authority not in order to protect the importer from his own declarations, but to protect the public coffers from false reports which lead to tax evasion.

The Court's Ruling:

When examining the question of State liability, the court examines the nature of the government action in question. For example, whether it is a supervisory action in which the State's control over the unfolding events is limited, in which case the court will be hesitant to recognize the duty of care of the State. In such a case, the court must balance various legal policy considerations for imposing liability, including (among others) the extent to which the State is interested in encouraging reliance, the extent of the damages for which compensation should be paid, the number of people damaged who must be taken into consideration, etc.

In this case, the duty of care of the State is imposed upon it by the power of customs legislation intended to protect the public coffers from false reports, not protect the importer from false declarations of his representatives. The State is acting as a tax collector, not an investigative authority.

Moreover, the duty of care of the State should not be recognized due to legal policy considerations as well. The State acts according to the declaration of the taxpayer and does not possess the resources to thoroughly examine the accuracy of the declaration in real time. Imposing a broad liability upon the State at this stage will lead to delaying cars at the port in a manner which will harm all importers and increase import costs. The importer has the responsibility to prevent damage, as he can supervise the actions of his representative.

As for the question of the State's negligence in producing the deficit notice, the court ruled that from the time it came to the attention of the Customs Authority that the actual price was higher than the reported price, it was within its power to collect the relative share of the difference for the increase of import tax, even though at the time the car was released from the port it found the declared price reasonable.

<u>In conclusion:</u>

The court rejected the claim, while noting that the importer was not a party to tax fraud, and even transferred the payment to his representatives. Even so, the court ruled that given the circumstances of the case, it cannot recognize a conceptual or concrete duty of care of the State towards the importer, nor was the State negligent in producing a deficit notice to the importer.

It should be noted that on 6.8.17 an appeal of the ruling was filed to the Tel Aviv District Court.

[TA 16435-04-14, **Yigal Hamui V. The State of Israel**, presiding judge: Avi Shalev, ruling given on 19.4.17]

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The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.

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