

Customs & Trade in Israel

A Legal Newsletter

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A Legal Proceeding Under the Customs Ordinance will be Held Behind Closed Doors

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General:

In the following article we will review the possibility to conduct a legal procedure under the Customs Ordinance behind closed doors. The debate centers around whether the documents presented to the court by the company as part of the proceeding constitute a trade secret.

Case Facts:

Over the years, several agreements were signed between a car importer and a car manufacturer for the supply of original spare parts for vehicles imported by the importer. Under the agreements, the importer received a certain discount for a certain period of time, contingent upon reaching periodical requisition landmarks.

The importer received a deficit notice in the end of 2014 in which it was levied with duties according to the full price of the spare parts, without consideration of the aforementioned discount. The importer paid the deficit under protest, and appealed the deficit notice before the Tax Authority, arguing that the landmark condition in the agreements is for appearance sake only, intended to conceal the reduced rate from other importers abroad. The importer therefore claimed that the dutiable valuation of the spare parts should be based on their price after the discount.

The appeal was rejected, and in January 2016 the importer filed a lawsuit against the Tax Authority to the District Court, seeking a ruling invalidating the deficit notice or exempting it from payment, or alternately - exempting it from arrears fees.

As part of the legal procedure, the importer submitted a principal testimony affidavit and opinion on its behalf, detailing financial and commercial information regarding its activity, in order to prove it did not roll the customs duty unto its customers. In addition, the importer soon requested that the case be heard behind closed doors, arguing that the information presented to the court constitutes a trade secret which justifies the move.

The District Court rejected the importer's request for a closed doors proceeding, and the importer appealed to the Supreme Court.

Parties' Arguments:

The importer argued that the proceeding must be held behind closed doors, as the documents submitted as part of the proceeding (including agreements, client lists and respective discounts, accounting ledgers and import entries) constitute trade secrets. In addition, the importer argued that the proceeding is similar to a tax appeal, which under the Income Tax Ordinance is held behind closed doors. Moreover, the importer argued that it was forced to turn to legal proceedings, and did not freely chose to pursue the proceeding.

On the other hand, the Tax Authority argued that a closed door proceeding will harm the principle of publicity, which dictates that proceedings must be held openly and in view of the public. In addition, the Tax Authority argued that the importer failed to prove that the submitted documents do indeed contain trade secrets, and that the importer could have employed different methods which would have prevented the exposure of the information it is now seeking to protect. Moreover, the Tax Authority argued that the legislator made a conscious decision not to include proceeding held under the Customs Ordinance with tax appeal proceedings, which are held behind closed doors.

The Court's Ruling:

In general, during proceedings held under the Income Tax Ordinance, tax assesseees are required to disclose sensitive information regarding their income and expenses to the tax assessors. Therefore, in order to allow full disclosure without fear of exposing sensitive financial information, it is only logical to hold tax appeal proceedings behind closed doors. Even so, a customs duty proceeding under the Customs Ordinance is a different matter, as each shipment is taxed separately and for the most part has no effect on other shipments, which are essentially different.

Another difference relates to the type of appeals allowed under the Customs Ordinance. Clause 154 to the Customs Ordinance details appeals of the customs duty's sum, the customs rate for certain goods or the goods' customs liability. For the most part, these disputes arise within a limited factual or legal framework, and do not require the disclosure of sensitive information such as the entire income of the importer. Therefore, the rationale which is at the base of the Income Tax Ordinance's exemption from the principle of publicity does not apply to proceedings held under the Customs Ordinance.

That said, the court ruled that while a proceeding held under the Customs Ordinance is different than one held under the Income Tax Ordinance, other exceptional circumstances do exist in this case which justify conducting it behind closed doors, specifically the protection of a trade secret. In this capacity, the court ruled that a client list which includes respective discounts, internal correspondence which details discount rates and accounting ledgers all constitute trade secrets which deserve the protection of a closed doors proceeding. In addition, the court ruled that the documents presented by the importer are relevant for proving its claim that it did not roll the customs cost on its clients.

The court therefore accepted the appeal and ruled that the proceeding will be held behind closed doors.

[LTA 8362/17, before Honorary Judge David Mintz, ruling given on 4.1.2018]

**The above review is a summary. The information presented is for informative purposes only,
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