

## Customs & Trade in Israel

### A Legal Newsletter

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#### **The Court Rejected An Importer's Claim Filed Against The Customs Authority's Decision To Reject The Declared Transaction Value**

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#### **Brief:**

A claim filed by a company which imports alcoholic beverages ("the company") against the Customs Authority's decision to issue a debt notice of approximately 2 million ILS was recently rejected. The debt notice was issued due to allegations by the Customs Authority that the company falsely declared lower prices than it paid for the imported goods.

In the following article we will review the court's ruling, which backed the Customs Authority's decision and rejected the company's claim.

#### **Case Facts:**

The company imported two containers of alcoholic beverages in 2011-2012. During the release of the goods that arrived in the second container, the Customs Authority alleged that the price declared for certain beverages was not realistic. The Customs Authority therefore demanded the company deposit a 180,000 ILS bank guarantee as a condition for releasing the goods. The company deposited the guarantee and the goods were released.

Following a comprehensive investigation conducted by the Customs Authority regarding the two import transactions, the company was sent a 2,237,507 ILS debt notice. Following an objection filed by the company, the notice was amended to 1,947,193 ILS, with the explanation provided that a typing mistake in the first debt notice is the reason for the error.

The company turned to the court, disputing the amended debt notice.

#### **The Parties Arguments:**

The company argued that the import transactions were performed in accordance with the law, and that the transactions true value is 120,000 USD, a sum which accurately reflects the amount actually paid to

the Hungarian supplier. In addition, the company argued that the prices portrayed by the Customs Authority represent high and unrealistic loss rates compared to the beverages' value, and are not compatible with market prices.

The company further argued that the fact that no charges were filed in relation to the affair, nor any stay of exit orders, despite the serious allegations, indicates that the Customs Authority's claims hold no substance.

The Customs Authority argued that according to the Customs Ordinance, the burden of proof lies upon the party which is contesting the debt notice or administrative action. Therefore, the burden of proof is placed upon the company.

The Customs Authority then argued that the company did not meet the burden of proving its claims, and refrained from presenting the court with basic relevant evidence.

As for the essence of the matter, the Customs Authority was of the position that it possessed enough evidence to base its allegations that the company lowered the declared price of the alcoholic beverages it imported in both containers, attempting to deceive the state and avoid paying the actual tax rate, while making use of fictitious documents.

The Customs Authority alleged that price reduction was proven by the myriad of evidence provided, which lead to the conclusion that the goods were actually supplied by a company named EGT-EURO GLOBAL TRADE for a significantly higher price than was reported by the company, and not by the Hungarian supplier named by the company.

The Customs Authority alleged further that the Hungarian supplier named by the company is a straw company, used only as a front for transactions which were performed with EGT at much higher rates.

### **The Court's Ruling:**

The court determined that the burden of proof lies upon the company, which must present evidence and convince the court of the truth of its claim that the debt notice was issued unduly.

The court based this decision upon several legal principles, including, first and foremost, that the onus of proof is the claim; second, under section 239A of the Customs Ordinance, "in proceedings upon which the orders of section 229 do not apply, the claimant who claims payment of customs due, delivery of export entry, or that the goods were passed, the burden of proof is upon the claimant"; and finally, issuing a debt notice is an administrative proceeding which enjoys a presumption of propriety unless overcome by contrary evidence presented by the company.

As for the fact that no criminal proceedings were initiated against the company, the court ruled it is insufficient to overcome the propriety of the debt notice and the Customs Authority's administrative decision to issue it.

The court extensively reviewed the evidence and findings presented by the Customs Authority. As part of the review, the court noted the striking similarity between the beverage orders of EGT and the beverages imported in the two containers. The court concluded that these are not separate, random similarities, but identical details in several factors, including corresponding order quantities, dates and

beverage case amounts, while said amounts are exact numbers, not 'round numbers' which could be viewed as mere coincidence.

The court determined that the company was unable to refute or adequately explain these similarities between the transactions it made and the data gathered by the Customs Authority, which points toward transactions made with significantly higher rates than those the company declared.

The court ruled that the company did not meet the burden of proof for impropriety or error in the Customs Authority's decision to issue a debt notice, nor did it adequately prove that the prices it declared were the real prices.

In light of the above, the court rejected the company's claim, and charged it 15,000 ILS in legal expenses.

[TA (Tel Aviv Magistrate Court) 19118-12-13 **Liqueur Market (Z.I.M.) Ltd. V. The State of Israel - Customs Directorate**, presiding judge: Sharon Galler, on 16.1.17.]

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

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