

Customs & Trade in Israel

A Legal Newsletter

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Document Discovery in Customs Authority Classification Disputes

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Background:

In this article we will review the Tel Aviv Magistrate Court's ruling, which accepted most of an importer's request for disclosure of documents which may attest to the classification dispute between the parties regarding anodized aluminum profiles. The importer was represented by our firm.

The plaintiff, Radius - Agricultural Cooperative Society Ltd. ("the importer"), requested the discovery of documents and demanded answers to several queries from the Customs Authority as part of a legal proceeding related to the classification dispute.

Among others, the importer requested that the Customs Authority disclose documents attesting to goods examinations performed by state representatives, documents which formed the basis for the Indirect Tax Committee's decision to wave the deficit notice sent to the importer, and documents pertaining to the importer's audit.

The Requested Information and Party Arguments:

With regard to the request to answer queries and produce documents **attesting to goods examinations performed by state representatives**, the importer argued that the fact that state representatives repeatedly classified similar goods under the same classification the importer is arguing for, can attest to the case in question. The importer therefore requested that the court order the Customs Authority to produce documents attesting to the goods examinations performed and reply to queries on the subject.

The Customs Authority objected to the document discovery request, arguing that its employees were not aware of the classification order supporting its position, and that misclassification by its employees cannot attest to the proper classification in the disputed case.

As for the request to produce documents which formed the **basis for the Indirect Tax Committee's decision to wave the deficit notice sent to the importer**, the importer argued that since the committee decided to wave the deficit notice, the documents related to the decision are related to the dispute, and can attest to the case in question.

The Customs Authority objected to this document discovery request as well, arguing that since the committee decided to wave the deficit notice issued to the importer, the documents are not relevant to the proceeding.

With regard to the request to produce documents **pertaining to the importer's audit**, the importer argued that the audit was performed in relation to the committee's decision to wave the deficit notice, and are therefore relevant.

The Customs Authority objected to the document discovery request, arguing that the work documents which formed the basis of the audit are confidential internal correspondence which should not be discovered.

Legal Deliberation:

The court accepted the importer's argument regarding the discovery of documents attesting to goods examinations performed by state representatives and documents which formed the basis for the Indirect Tax Committee's decision to wave the deficit notice sent to the importer, and ordered the Customs Authority to disclose the documents to the importer and answer its queries in relation to the above. On the other hand, the court rejected the importer's request to produce documents pertaining to the importer's audit.

With regard to the discovery of documents **attesting to goods examinations performed by state representatives**, the court determined that information regarding the examination process of state representatives, the identity of the representatives and the release process are relevant to the legal process of the classification dispute, and therefore ordered the Customs Authority to produce the documents.

With regard to the discovery of documents which **formed the basis for the Indirect Tax Committee's decision to wave the deficit notice sent to the importer**, the court determined that the documents in question (protocols, the committee's decision) can attest to the classification dispute at hand. The court rejected the Customs Authority's argument that the decision to wave the deficit notice makes the documents irrelevant to the case, and ordered the Customs Authority to produce the documents.

With regard to the discovery of documents **pertaining to the importer's audit**, the court determined that the documents are irrelevant to the classification dispute, as while the audit concerns the importer, its findings were the basis for the committee's decision to wave the deficit notice, and cannot attest to the classification dispute.

[TA 61100-10-17, **Radius - Agricultural Cooperative Society Ltd. V. The State of Israel**, ruling given on 2.10.19 by honorary judge Efrat Bousani. The importer was represented by our firm.]

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

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