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A Dispute Regarding Classification of a Heart Rate Monitor Watch is Decided in Favor of the Importer

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In the following article, we will review the Magistrate Court in Herzliya's ruling in the case of a dispute on the proper classification of heart rate monitor watches ("HRM watch") for customs purposes.

The Customs Authority claimed the device is a fitness heart rate monitor, while the importer claimed it is used by heart patients as well. The differing sides disputed as to the functions of the device and the measurements it performs.

After reviewing the evidence, the court accepted the importer's claim and ruled the device to be exempt from customs duty.

Case Facts and Detailed Arguments:

Agentek (1987) Ltd. ("the importer") has been importing biotechnology and life sciences equipment and tools since 2004. The disputed device is a "Polar" HRM watch, composed of a wrist watch and a transmitter set on the chest, which conveys information to the watch.

The importer has been classifying the HRM watch since 2006 as an electric powered wrist watch with an optoelectronic display (Customs Heading 91.02.1200), which is exempt from customs duty.

In 2009, while conducting an examination of the HRM watch, the Customs Authority decided to change the HRM watch's classification to: Equipment, Tools and Machines for Measurement or Examination Not Specified in Chapter 90, "Other" (Customs Heading 90.31.8090), which is liable to a 6% customs duty rate.

The importer claimed that if the device falls under chapter 90 classifications, it should be classified as Equipment, Tools and Machines for Measurement or Examination Not Specified in Chapter 90

"Whose function is based on fluctuating electrical pulses of the subject of examination" (Customs Heading 90.31.8020). Alternately, the HRM watch should retain its 2009 classification as a Customs Heading 91.02 watch, or as a tachometer (Customs Heading 90.29.2090).

The differing sides disputed the intended use of the device, as in whether it is intended for fitness purposes or for heart patients.

An additional dispute arose regarding the function of the device while monitoring the heart. Did the device measure the amount of time between heartbeats, the heartbeat itself, or the electric pulse generated by the heartbeat?

The Customs Authority claimed the watch measures the amount of time between heartbeats, and not "electrical pulses" as described in Customs Heading 90.31.8020.

The Court's Ruling:

After hearing the testimonies of experts in the field, the court ruled that even though the HRM watch is indeed marketed to athletes, that fact does not contradict the widespread use of the HRM watch by heart patients, as well as its recommendation of use by cardiologists. Therefore, the court ruled that the watch should be classified as a heart rate monitoring device which displays its accumulated data via a wrist watch worn by the subject. It was ruled that the device's main function is heart rate monitoring, the rest of its functions secondary to this purpose and operational only when the chest transmitter is not connected.

The court accepted the expert's opinion on behalf of the importer, and ruled that the signal transmitted is not the sound of the heartbeat, but the electrical pulse or frequency thereof, and consequently the device "measures an electric pulse". The court ruled that the pulse changes in accordance with the change of the subject of the heart rate monitoring. This variation is due to the change in the frequency of the electrical pulse. Thus, the court ruled that the watch falls perfectly under the classification described by Customs Heading 90.31.8020, Equipment, Tools and Machines for Measurement or Examination Not Specified in Chapter 90 "Whose function is based on fluctuating electrical pulses of the subject of examination", as claimed by the importer.

The court addressed the intent of customs legislation in product classification as well. The importer claimed there is no local manufacturing of HRM watches in Israel, and therefore the intent of the legislation is to exempt the product from customs duty.

The customs Authority claimed the importer has not proven the lack of local manufacture, but the court rejected the claim, stating that if an importer raises such a claim, the burden of proof is on the customs Authority to prove otherwise. The customs Authority presented the court with no information regarding this matter.

The court ruled further that the nature of the product is such that there is an interest in exempting it from customs duty. It is not a luxury product, but a paramedical product encouraging fitness that should be promoted by the state by assuring it is readily available to both athletes and heart patients which utilize it to help them maintain their health.

After accepting the importer's classification of the HRM watch, the court ruled that the differing sides are to negotiate the appropriate customs duty return. In case of a failure in negotiations, the sides are to return to the court, updating it on whatever progress was made and submitting evidence relevant to this matter.

The court ruled that the legal fees of the proceedings, presently amounting to 35,000 ILS, will be paid according to the results of the final ruling.

[T.A. (Magistrate Court Herzliya) 3925-09-10 **Agentek (1987) Ltd. Vs. the State of Israel (Customs and VAT Department)**, ruling from 23.3.15, presiding judge Irit Mani-Gor.]

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The review provided above is a condensed summary. The information contained therein is provided for information purposes only and does not constitute legal advice. For further details, please contact Adv. Gill Nadel - Chair of the firm's Import, Export and International Trade Law Practice, Tax Department. Email: Gill.Nadel@goldfarb.com, phone: +972-3-6089979.