Customs & Trade in Israel

A Legal Newsletter

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Import Duties Restitution for Recalled Goods

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Import duties are generally calculated as a percentage of the goods value. At times, disputes arise between the Tax Authority and importers regarding the valuation of the goods for import duty purposes. The matter is paramount when dealing with goods subject to high import duties, such as vehicles, vehicle accessories etc.

There is an interesting question regarding a case in which at the time of the goods' release from customs, the importer paid import duties according to the value of the goods as paid to the supplier, but the goods were later found to be defective in some way, reducing their value. Is the importer entitled for a restitution of import duties due to the defect discovered post factum?

The European Court of Justice recently gave a ruling in such a case.

Case Facts:

An EU based importer purchased passenger cars from a manufacturer established in Japan and released them for free circulation on the EU customs territory. The importer sold those cars to dealers, who sold them on to final purchasers. The import duties were paid by the importer according to the purchasing price of the cars in Japan.

After the cars were sold to the end clients, the manufacturer announced its intention to recall the cars and change a certain piece of the vehicle at no cost. The importer covered the collection cost of the cars from the final purchasers, and was later reimbursed by the Japanese manufacturer on the basis of the warranty obligation in the sale contract concluded with the manufacturer. This occurred 12 months after the cars were released from EU Customs control.

At this stage, the importer turned to the EU customs authorities, requesting restitution of percentage of the import duties paid for the cars. The importer argued that it was discovered post factum that the declared value of the vehicles was too high, as defects were later discovered in them. Furthermore, the importer argued that the taxes incurred from the reimbursement the importer received from the manufacturer for the recall should be returned, as this would reflect the true value of the cars (following a return of the taxes).

The EU customs authorities rejected the importer's request, citing several reasons, including (among others) late submission of the request; and that the cars should not be viewed as "defected" or damaged for at least part of the process, as is required by law for restitution of funds. The Netherlands Court of

the First Instance dismissed the importer's request, and the case was brought before the Court of Justice of the European Union (CJEU), which published its ruling on 12.10.17.

The Ruling of the Court of Justice of the European Union:

The first question the court deliberated was: in a case in which the cars weren't damaged at the time of import, and were declared at full price, but there is a damage risk from the manufacturing stage which will later be discovered, and the parties involved agree that in such a case the manufacturer will reimburse the importer on part of the sum - may the importer request partial repayment of import duties post factum, claiming that the goods were defective at the time of release from customs?

The court determined that there is no clear definition by the law as to what is considered "defective goods", and therefore ruled that this category shall include all goods whose properties are lesser than those expected by the parties to the transaction.

In this specific case, the court determined that cars, by nature, are complex goods which previously undiscovered damages may be unearthed during their use. Therefore, the court ruled that even if a problem is only later discovered and the car must be recalled, the cars should be viewed as if they were "damaged" during their release from customs.

The court reaffirmed the notion that import duties should be levied according to the actual price of the goods, as agreed upon between the parties, so if a defect is discovered post factum which the importer is reimbursed for by the manufacturer, the reimbursement should be taken into account when calculating the cars' import duties.

As for the time limit, the court interpreted two EU laws, one which cites a 12 month limit for import duties restitution requests, and one that sets a three year limit.

The court ruled that the 12 month limit law is not relevant to this case, as it refers to a case in which the importer discovers a defect in the goods that was unknown to him at the time of release from customs, and now wishes to cancel the entire transaction, return the goods to the manufacturer and have his money returned.

The court ruled that this law does not apply to a case in which the importer would like to keep the goods but receive a small reimbursement for the discovered defect. Rather, the second law, which sets a three year limit from the date the goods' were released for submission of a repayment request, is the applicable law.

[C-661/15 *X BV v. Staatssecretaris van Financiën*, 12.10.17]

For the full ruling, please see:
http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130da6fe6f5ca6bf343acbfced35dcf46aba0.e34KaxiLc3eQc40LaxqMbN4Pb3qKe0?text=&docid=195434&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=530476

And in Israel?

Similar clauses to those deliberated by the Court of Justice of the European Union exist in Israeli law as well.

Thus, section 133G of the Customs Ordinance states:

"The value of goods that were damaged prior to their release from the control of customs will be determined according to the valuation methods under section 130, while taking into account the lessening of the valued goods as a result of the damage; if goods' valuation was determined under this section, the rules of sections 150A will not apply."

Section 150A of the Customs Ordinance states:

"The director may return duties or wave its payment, either entirely or partially, in one of the following: the goods were lost, destroyed, damaged or left to the Customs Authority, whether while they were under its control or prior; so long as no claim was filed for the return or waver after the goods were removed from the control of the Customs Authority."

While section 150B of the Customs Ordinance states that the director may return duties when:

"The goods were released from the control of the Customs Authority and within six months following their release a discrepancy with the trade agreement or a defect were discovered which existed during their release; so long as the claim for return or waver was submitted immediately following the said discovery and it was proved to the satisfaction of the customs officer that no use was made of the goods in Israel, or if they were used, it was solely the use which led to the discovery of the discrepancy with the trade agreement or the defect which existed during their release from customs, and without which the discrepancy or the defect could not have been discovered."

Section 6 of the Indirect Taxes Law (Overpaid Tax or Underpaid Tax), 1968 allows for the submission of requests for the return of overpaid import duties up to five years from the date they were paid.

Thus, section 150A deals with a case in which damage to the goods was discovered while under Customs control, and the importer has yet to release the goods and wishes to terminate the entire transaction. Section 150B deals with a case in which damage to the goods was discovered after the goods were released from Customs, and the importer whishes to cancel the entire transaction and have the duties he paid returned. In such a case, there is a six month limit upon the submission of a claim, as detailed by the Ordinance.

On the other hand, section 133G deals with a case in which the importer is not interested in cancelling the transaction, but in receiving a return of part of the import duties paid due to a defect found in the goods. The section requires that the goods "were damaged prior to their release from the control of customs", but does not address the question of when the importer is required to discover the damage, whether prior to their release or even after.

In addition, section 6 of the Indirect Taxes Law allows for the submission of a claim for return of import duties up to five years from the payment date.

So the question must be asked: what is the relationship between section 6 of the Indirect Taxes Law, which allows for the submission of a claim for return of import duties up to five years from the payment

date, and section 150B of the Customs Ordinance, which allows the submission of a return claim in case of discrepancy for only six months from the payment date?

It is possible that according to the interpretation of the Court of Justice of the European Union ruling, it will be possible to submit a request for the return of import duties even beyond six months (and up to five years) from the payment date in cases in which the discovery of a discrepancy resulted in a decrease of value, and the return is requested due to that decrease in value.

With that said, Israeli courts have yet to address the specific case deliberated by the Court of Justice of the European Union.

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

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