

Customs & Trade in Israel

A Legal Newsletter

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No Customs Duty Refund For Goods Released By The Customs Authority But Not Removed From Its Warehouse

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Brief:

The Haifa District Court recently ruled regarding imported goods which were released after customs duties were paid, determining that in such a case a taxable event has occurred, making the releaser's decision to leave the goods where they were irrelevant in terms of their legal status.

The court ruled further that a customs agent who pays the customs duties instead of the importer acts in the importer's name, and is therefore subject to any claims related to restitution that may be used against an importer.

Case Facts:

In its ruling, the court rejected an appeal filed by a customs agent against the Customs Authority for the refund of customs duties paid by her for certain goods. According to the filed claim, the importer asked the customs agent to transfer part of a cargo imported under its name to the name of another company. The customs agent paid the customs duties and VAT in full, and received checks as reimbursement for the payments she performed. The customs agent claimed, however, that the checks were dishonored, and that she therefore did not receive any reimbursement for her tax payments.

Following the dishonoring of the checks, the customs agent turned to the Customs Authority, requesting a refund of the tax payments made by her, arguing that the goods remain under the Customs Authority's control, as they are still stored in the Customs Authority's warehouse. The Tax Authority refused the customs agent request, with the Magistrate Court upholding the Tax Authority's position, ruling that the presence of circumstances justifying a tax refund was not proven. The customs agent subsequently submitted an appeal to the District Court.

The legal Question:

Is an importer eligible for a tax refund when the goods were not yet sold and remain within the Customs Authority's control, but an export entry was already delivered and the goods were passed, and a customs duty was set and paid?

The Parties Arguments:

The customs agent argued that the goods remain under the Customs Authority's control, as they are still stored in the Customs Authority's warehouse, and were not yet marketed for consumption in Israel. The customs agent therefore claimed that no taxable event has occurred, as a taxable event requires two cumulative conditions - the import and the sale of goods, and in this case no sale was performed. The customs agent argued further that the Magistrate Court's ruling constitutes a penalty to the customs agent, who paid for abandoned goods, which were proved to be impossible to sell for a price which would cover the paid duties.

The Customs Authority argued that the Magistrate Court's ruling was well rooted in the law. The Customs Authority argued further that the customs agent claim that the goods are under the Customs Authority's control is contradictory to her request for a foreclosure order in a separate proceeding, which she requested in order to ensure the goods are not removed. The Customs Authority argued that if such a concern exists, the goods must therefore not be under the control of the Customs Authority. The Customs Authority claimed that the customs agent is at a loss, for she cannot collect the payment she is do, and is therefore trying to cut her losses by attempting to access the "deep pockets" of the State of Israel.

The Court's Ruling:

The District Court determined that a taxable event has occurred, as the goods were imported, which is enough to constitute a taxable event. The goods were issued an import entry, duties were determined and paid and the entry was passed. The Customs Authority's control of the goods ended at this point, and the customs agent decision to leave the goods at their present location is immaterial to the goods' legal status, and cannot create a legal presumption for goods which have effectively been released from customs.

The District Court ruled that the customs agent is an agent of the importer, and as such is subject to any claims that may be used against an importer, including with regard to the ability to sell the goods in Israel, even at a meager price. This refutes the application of clauses 150 (1) or (2) to the Customs Ordinance, which allow a refund of customs duties. Clause 150 (1) does not apply, as the goods were not abandoned under the control of the Customs Authority. Clause 150 (2) to the Customs Ordinance does not apply, as no defect or discrepancy was found in the goods, and they remained in the Customs Authority's control due to a commercial dispute, not a discrepancy. Clause 150 (2) is irrelevant in any case, as the customs agent failed to raise discrepancy claims within the timeframe set by the clause - up to six months from the date the goods were released from customs.

In light of the above, the court rejected the customs agent's appeal.

[CA (Haifa District Court) 31776-09-16, presiding judge: Israela Kary Geron Grinbaum, on 30.12.16.
Advocates: not mentioned in the ruling]

Comments:

In a 2007 ruling of the Supreme Court (CA 5694/07 **Sharchat Yamcho Al-Ja'ariya al-Aamah V. The State of Israel - Customs Directorate** and others, which upheld a Tel Aviv District Court ruling from 2007 in TA 2780/00), a similar question was addressed. Cigarettes were stolen from the Customs Authority's warehouse, after the entry was passed and the duties were paid. The owner of the goods requested that the Customs Authority refund the paid duties in accordance with clause 150 of the Customs Ordinance, but his request was rejected. The wording of the clause is as follows:

"The Director may refund or remit the whole or a part of any duty in any of the following cases: (1) the goods have been lost, destroyed, damaged or abandoned to the Customs, whether whilst under the control of the Customs or before, provided that a claim for a refund or remission shall not be made after the goods have been removed from the control of the Customs".

The Supreme Court ruled that since the goods were removed from the control of the Customs Authority, this clause does not apply.

The interpretation of clause 92 of the Customs Ordinance, which relates to the refund of duties for goods still under the control of the Customs Authority, was also addressed by the Supreme Court. The wording of the clause is as follows:

"If any goods warehoused or entered to be warehoused, or entered to be delivered from the warehouse, are lost or destroyed by some unavoidable occurrence, either on board or in removing, landing or receiving into the warehouse, or in the warehouse, the Director may remit or refund the whole or part of the duties due or paid thereon".

With regard to this clause, the Supreme Court ruled that in this case, theft is not an "unavoidable occurrence", as reasonable security measures which may be taken were not employed in this case. The Supreme Court therefore rejected the appeal, ruling that the customs duties shall not be refunded.

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

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