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Not Every Delay in Customs Warrants Compensation

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The Customs Authority is authorized to delay the release of imported and exported goods if it suspects a related offense has been committed, including false or fraudulent statements, failure to submit required documents, and others.

The question of compensation arises: if the Customs Authority delays the release of goods for a time, and then releases them, is the owner of the goods entitled to compensation for the delay?

A recently published ruling of the Tel-Aviv Magistrate Court addresses this question. The court was asked to rule on the case of a delayed gold export. The exporter sued the Customs Authority for the decrease in the gold's market value and storage costs while being held by the Customs Authority, for a sum of 95,000 ILS.

The court ruled the delay was caused by investigative requirements, deemed reasonable by the court within the framework of the case, therefore rejecting the exporters claim.

The Facts of the Case:

The exporter attempted to export 3 kilograms of gold from Israel. The Customs Authority delayed the release of the gold due to its suspicion a false statement was submitted regarding the gold. The gold was held by the Customs Authority from November 2011 to January 2012. With the conclusion of the Customs Authority's investigation, the gold was released, exported, and sold.

Detailed Arguments:

The exporter argued the Customs Authority did not complete its investigation within a reasonable period of time due to negligent conduct throughout the case. The exporter claimed he sustained

damages from the delay due to a decrease in the value of gold while the gold was held by the Customs Authority. The exporter added that he was forced to forfeit from a proposed transaction due to the delay in customs, and accept a less favorable one once the gold was finally released. He claimed the Customs Authority should compensate him for the discrepancy in the value of the transactions, as well as the storage costs the exporter was charged for by the Customs Authority.

The Customs Authority claimed it suspected the exporter submitted a false statement to the export entry and attached tariff preference document. The suspicion arose due to the documents naming Safed as the production site in Israel of the gold, while it is common knowledge there are no gold mines in Israel. The Customs Authority therefore proceeded with a series of investigations, questioning the exporter and checking the exporter's version of the transactions funding, taking special note of the fact that the exporter does not regularly export gold, and his gold supplier is not the refiner. Eventually, after the Customs Authority concluded the investigation of its suspicion of a false statement, it released the goods for export.

The Court's Ruling:

The court opened its ruling by stating that there is no dispute of the fact that the Customs Authority may delay the release of related goods if it suspects an offense has been committed. Therefore, the main question is whether the two month delay in this specific case was justified.

Was the delay reasonable?

The Customs Authority provided a detailed explanation for each stage of the investigation, claiming all were required and reasonable. The initial suspicion arose due to the documents naming Safed as the production site in Israel of the gold, and the fact that the exporter does not regularly export gold. The Customs Authority initially suspected the gold to be fake gold exported as part of a money laundering operation, or as a way of producing fake receipts in order to receive tax refunds.

As a result, the Customs Authority conducted a chemical analysis of the gold, determining it was indeed real gold. It then examined the acquisition process of the gold, since it was not acquired directly from the refiner. This was followed by a decision to continue the investigation through the Tax Authority's intelligence division.

Finally, the exporter was summoned for questioning, in which he told the investigators that his regular occupation is in the limousine service sector, not in the export of gold. The exporter claimed he became involved in the transaction following a tip he received from a friend.

Upon the conclusion of the investigation, the Customs Authority decided to release the goods.

The court analyzed the stages of the investigation, and determined that the Customs Authority officials acted professionally and reasonably. The two month period of the investigation was also deemed reasonable. The court noted that investigation is not an exact science with a predetermined time frame. In this case, the criminal investigation was conducted in a continuous manner, without negligence or obduracy on part of the Customs Authority.

Due to all of the above, the exporter's claim of an unreasonable delay in the investigation was rejected by the court.

Is the Customs Authority required to provide an alternative witness, instead of the Collector of Customs?

The exporter claimed the Collector of Customs in the Ben Gurion Airport, who testified on behalf of the Customs Authority, was not directly involved in the investigation and therefore his testimony should not be given any weight as evidence.

The court's impression was that the collector of customs actually had a very good understanding of the case, and therefore rejected the claim. Moreover, the court viewed the fact that the Customs Authority brought a senior representative to testify as a point in its favor, since the collector of customs was capable of presenting a wider perspective of the Customs Authority investigations to the court.

Did the exporter substantiate his damage claim?

The court determined that the exporter was not obligated to sell the gold to a different client at a lower price. He could have, for instance, waited for further changes in the gold's market value. Therefore, either way, the Customs Authority is not liable for the decrease in value of the gold while it was being held.

In light of the above, the claim was rejected and the exporter was charged with legal costs of 10,000 ILS.

[TA (Tel-Aviv Magistrate Court) 28682-09-12 **Shriki v. The State of Israel**, on 29.12.15 presiding judge: Sharon Galler]

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

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