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The Magistrate Court: Proof of Certificate of Origin Validity - an Obligation of the Importer, Not the Customs Authority

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Background:

The State of Israel signed free trade area agreements with many countries, with the benefit for importers being a reduction or even exemption of customs duty on various products.

In order for the importer to receive this benefit, he must import the product with a certificate of origin stating the origin of the product. The laws defining which product is considered a product of origin vary in different countries.

The question arises, what happens when the Customs Authority questions the authenticity or validity of the certificate of origin and demands taxes post factum? How far must the importer go to prove the origin of his goods?

In the following article, we will review the Magistrate Court in Acre's ruling in the case of a deficit sent to an importer after he presented a certificate of origin and was exempt from customs duty due to the free trade agreement between the State of Israel and the U.S.A.

In practice, the court ruled that when a certificate of origin is lacking and raises doubts, the importer is the entity obligated to complete the missing details and prove the products are entitled for an origin status. Therefore, the importer's claim was rejected.

Case Facts and Detailed Arguments:

Z.H.F. Ltd. ("the importer") imported four lighting towers and an air compressor, submitting a certificate of origin to the Customs Authority. Based on that certificate, and the free trade area

agreement between Israel and the U.S., the goods were released, exempt from customs duty. Later, the Customs Authority invalidated the certificate of origin, and sent the importer a deficit note for 14,856 ILS, due to the duty liability of the imported goods.

The importer claimed he submitted all the required files, and met all conditions set in the trade agreement. In addition, he claimed the Customs Authority did not take adequate care of his application, and did not contact the exporter and the U.S. Department of Commerce in order to verify the goods origin, as required. Conversely, the Customs Authority claimed the details in the certificate were inadequate, and did not meet the conditions of the trade agreement. Therefore, the certificate was justly invalidated and the goods are liable for tax.

The Court's Ruling:

The court examined the certificate of origin and determined that its statement section required clarification and an authenticity examination due to a lack of numerical clarity and explanation.

To illustrate the matter, according to the statement the lighting towers cost 2000 USD each, the sum of 400 USD for materials from Japan and 1,600 USD for labor, but that calculation does not account for the profit made by the American manufacturer, which should not be included when determining origin qualification.

After establishing the certificate's questionability, the court ruled that according to clause 239A of the Customs Ordinance, it is the importer's obligation to clarify and prove that his goods are indeed a product of origin. In addition, the importer, not the Israeli Customs Authority, has the obligation to connect between the American manufacturer and the Customs Authorities in order to provide clarification regarding the goods.

Due to all of the above, the court ordered the importer to pay the customs tax, as well as legal fees of 2,000 ILS.

[TA (Acre) 41077-05-12 **Z.H.F. Ltd. Vs. The State of Israel- Income Tax**, ruling from 14.6.2015, presiding judge Shoshana Pienswood-Kohen.]

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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.

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