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A Legal Newsletter

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Protocols and Resolutions of the Customs Committees will be Delivered to the Importer

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Background:

Disputes between the Customs Authority and importers relating to the disclosure of documents during a lawsuit are common, and occur routinely.

The Customs Authority usually claims the documents are confidential, or are internal memorandums that are not to be publicized. Conversely, the importer claims the documents are essential if he is to properly manage his lawsuit. In such cases, the court is asked to determine the proper balance between the two conflicting rights.

In the following article we will review the Petah Tikva Magistrate Court's ruling, which ordered the Customs Authority to provide an importer with the protocols and resolutions of its committees on the subject of indirect taxes, rejecting the confidentiality claims of the Customs Authority.

Case Facts and Detailed Arguments:

The importer in question imports agricultural vehicles to Israel. The Customs Authority claimed the vehicles should be classified under Customs Heading 87.04-3190, "Other Vehicles", which is liable to a 83% purchase tax rate. The importer disputed this classification, claiming a more accurate classification would be under Customs Headings 87.04-1000, 87.04-3120 or 87.09.

The Customs Authority demanded a retroactive tax deficit for the importation of the vehicles from the importer, who decided to take the case to court.

Prior to filing the lawsuit, the importer submitted a request for dismissal of the retroactive tax deficit to the Customs Authority, based on clause three of the Indirect Tax Law (Over Paid or Short Paid

Tax). The request was examined by the local Indirect Tax Committee of the Central Customs House (located in Rishon LeZion), and was then transferred to the Supreme Indirect Tax Committee in the Customs Authority's headquarters for further deliberation. The supreme committee denied the importer's request.

As part of the preliminary stages of the lawsuit, the importer, represented by the undersigned, requested a copy of the recommendation of the local Indirect Tax Committee, as well as copies of the meeting protocols of both local and supreme committees. The importer claimed the aforementioned documents are relevant to the dispute, and that he is entitled by law to receive a copy. Furthermore, claimed the importer, in similar proceedings the Customs Authority provided an importer with these documents without protest, and therefore they cannot be considered confidential.

The Customs Authority agreed to provide a copy of the resolution reached by the Supreme Committee, but refused to provide copies of the local Indirect Tax Committee's recommendation and both meetings protocols, claiming them to be internal memorandums that are not to be publicized. Regarding the recommendation of the local committee, the Customs Authority claimed it is not a binding decision, but a recommendation given in an earlier stage in the process.

The Court's Ruling:

On 8.11.15 the court ruled the Customs Authority must comply with the importer's request, and reveal the recommendation of the local Indirect Tax Committee, as well as the meeting protocols of both local and supreme committees.

The court determined that since the Customs Authority has previously provided meeting protocols and recommendations of Indirect Tax Committees in a different legal proceeding without protest, it must provide the same in this case in order to avoid discriminating the importer.

Regarding the recommendation of the local Indirect Tax Committee (Central District Customs House), the court expressed its puzzlement as to why it should be confidential, as it is a resolution reached by a committee whether it is called a decision or a recommendation.

In light of the above, the court rejected the Customs Authority's objections, as well as its claims of confidentiality, and ordered it to provide the importer with the documents.

[Presiding judge: Oshrit Rothopf, ruling from 8.11.15, Advocates: for the importer: Adv. Gill Nadel and Adv. Omer Wagner; for the Customs Authority: Adv. Nir Wilner of the Tel-Aviv District State Attorney's Office, Civilian]

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

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