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Releasing a Car from Customs to an Entity Other Than the Importer - Who is Liable?

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Background

In the following article we will review a case in which a car was imported by personal import, but was released to a person who was not the original importer. The original importer filed a claim against all entities involved in the release process, including the Customs Authority, the customs agents, the advisers who aided the procedure, the foreign company (the seller), etc.

The court accepted the claim and divided the liability among the various entities.

With regard to the Customs Authority, it was determined that it is liable for approximately 20% of the damage caused to the original importer (who never received the car). This is due to the fact that the Customs Authority was presented with a standardization certificate in which the name of the original importer was erased, and a new name filled in instead. Even so, the Customs Authority opted to continue with the release procedure, releasing the car to someone other than the original importer.

Case Facts and Detailed Arguments:

An importer wished to personally import a Mercedes ML, and transferred 50,000$ to the seller ("the foreign company") through an advisor. The details of the purchased car were later transferred to the forwarding company, and the car was exported from the U.S.

The car reached Israel, and the Israeli forwarding and customs clearance company was registered on the gate pass (which constitutes a copy of the delivery order) as the recipients of the cargo. At first, the forwarding and customs clearance company transmitted the name of the original importer as the

recipient of the cargo, but later changed the transmission, naming an additional forwarding and customs clearance company as the recipient of the cargo.

The additional forwarding and customs clearance company transmitted a manifest (a data file which is transferred to the Customs Authority) which listed a different individual as the recipient of the cargo. After the individual presented data and documents, the car was released into his custody.

The original importer filed a claim against all entities involved in the release process, including the customs agent, the forwarding and customs clearance company, the Customs Authority, the adviser who aided the import procedure, the foreign company (the seller), and the Israeli contact which aided in completing the purchase.

The Customs Authority argued that it acted in accordance to the law by releasing the car into the custody of a different individual after receiving all required documents. The Customs Authority did admit that it was presented with a standardization certificate in which the name of the original importer was erased, and a new name filled in instead, but argued that the certificate is not proof of ownership.

The Court's Ruling:

The liability of the foreign company and agent which aided in competing the purchase:

The court ruled that the company received 50,000$, and that the American forwarding company was notified that the client is the original importer, as is evident by the bill of landing. The argument that no correlation was made between the received funds and a specific client at the time was rejected, with the court ruling that the agent know, or at least should have known, that the car was meant for the specific importer. In light of the above, the court ruled that the foreign company and agent have a joint liability amounting to 80% of the claim.

The liability of the Customs Authority:

A customs appraiser in the Personal Import Department of the Customs Authority testified that the standardization certificate was faxed to the Customs Authority from the Ministry of Transportation. The certificate was printed and filed in the standardization certificate folder with the original importer's name appearing on the certificate, but someone later took out the certificate from the folder and erased the original importer's name with correction fluid. The Customs Authority argued that the negligent entity was the customs agent, which did not act reliably and faithfully for his client since he failed to notice the name change in the certificate.

The court rejected the Customs Authority attempt to divert the blame to the customs agent for the change in the standardization certificate. It ruled that although the standardization certificate did not suffice as proof of ownership of the car in and of itself, if the original certificate (which the Customs Authority admits is an essential and required document for the release process) was added to the reviewed documents, it may have alerted the customs officials to the problem, and the release of the car to a different individual would have been avoided. The court therefore charged the Customs Authority with liability for 20% of the damage.

The liability of the forwarding and customs clearance companies:

The court ruled that the forwarding and customs clearance company changed the identity of the receiver of the cargo in the manifest, and thus violated clause 54 of the Customs Ordinance, which states:

"A customs collector may permit the captain or the ship owner amend a visible error in the body of the manifest or complete any deficiency, which were, in the customs collector's opinion, coincidental or inadvertent; the amendment will be by way of filing an amended manifest or a supplement manifest, and the customs collector may collect the prescribed fee for such an act."

It was determined that the forwarding and customs clearance company was obligated to submit a request for amending a manifest, and await the approval of the customs collector. Once the company failed to do so, it neglected its duties in changing the name of the recipient without submitting an appropriate request.

The court ruled further that the other, additional forwarding and customs clearance company is responsible for changing the manifest without submitting an appropriate request. Moreover, its negligence is greater than that of the first forwarding and customs clearance company, since it was its negligence which eventually led to the car being released to a different individual.

Contributory negligence of the original importer:

The court determined that the importer's conduct was perplexing, as he failed to act for the release of the car for two and a half months after the car arrived in Israel, made no attempt to determine the fate of the car, and didn't even bother to receive a receipt from the seller following the transfer of the initial sum. In light of his actions, the court ruled the original importer's contributory negligence amounts to 10% of the damages.

The bottom line:

After deducting 10% due to the original importer's contributory negligence, the damage was set on 160,000 ILS, and divided among the various entities: the foreign company (the seller) and the entity which aided the importer to perform the purchase were jointly and separately charged with 80%, and the Customs Authority was charged with the remaining 20%.

A third party notice submitted by the Customs Authority against the forwarding and customs clearance companies was partially accepted, and they were ordered to indemnify the Customs Authority for a portion of the sum it was charged with.

[TA (Tel Aviv Magistrate Court) 34966-12-10 Soham and Others V. Katzav and Others, ruling given in 31.12.15 by presiding judge Dorit Kovarsky. Representatives of the sides: for the original importer - Adv. Barone and Dahan; for the foreign company - Adv. Arbel; for the Customs Authority - Adv. Walla; for the forwarding and customs clearance companies - Adv. Sprinzak and Shahar]

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