Customs & Trade in Israel

A Legal Newsletter

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The Court Canceled an Import Tax Deficit on a Personal Import of a Vehicle

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The court accepted the claim of a personal importer of a vehicle and ordered a retroactive cancelation of import duties.

In 2010, the importer, an Israeli citizen, purchased and imported a BMW car through an American car agency. The importer claimed that he paid $41,117 for the car, as appears in the car's bill of sale. At the time of the car's release from the Ashdod port, the importer received the approval of the Customs House that the value of the transaction was accepted and that the paid price matches sale prices in the country of origin.

Even so, in 2016 the importer received a deficit notice from the Tax Authority, stating that an investigation by the Tax Authority found that contrary to his claims, the value of the transaction was $63,000. The importer was therefore required to pay a 152,774 ILS deficit including purchase tax, interest, linkage and a fine.

Following the receipt of the deficit notice the importer was questioned by a customs investigator, which confronted the importer with money transfers to the car supplier, one for $42,000 and one for $21,000. The money was transferred from the corporate account of the importer's father. The importer claimed in his investigation that the second money transfer was performed by his father without his knowledge. The investigator's attempt to interrogate the father failed, as the father is diagnosed with Alzheimer.

The importer argued in court that the car's price remained as appears in the bill of sale. He added that the car's price, considering its condition and the release expenses, is higher than the listed value in the Yizchak Levy price list, and that the Tax Authority's demand for additional pay is contrary to economic reasoning.

Furthermore, the importer stated that the Tax Authority acted contrarily to the vehicle personal import guide by not contacting him prior to changing the declared price of the car, and without granting him a 30 day period to respond. The importer argued that had the Tax Authority acted thus, he would have had the option to either pay the extra taxes and complete the transaction or return the car to the USA.

On the other hand, the Tax Authority argued that the importer presented no evidence attesting that the car was purchased directly from the American company, and claimed that the sale was actually performed through a mediator to whom the sums presented before the importer in the investigation were transferred. In addition, the Tax Authority noted that initially the paid price seemed reasonable, and only after the investigation and the discovery that the declared price was not the actual price did it send the importer the customs deficit under its legal authority.

In order to base its claims the Tax Authority presented two documents which attest to money transfers to the account of the mediator, who handled the import of the vehicle. The transfers were performed from the account of the importer's father, to which the importer has power of attorney. The importer claimed that the second transfer was performed by his father without his knowledge for an additional vehicle purchased by his family.

The Tax Authority presented testimony affidavits from the head of the personal import division in the Ashdod Customs House and the investigator who handled the case. Both testified that the investigation found that the actual price paid for the car was significantly higher than the declared price. But the Tax Authority refrained from presenting the actual investigation materials before the importer or even the court. Moreover, the Tax Authority refrained from providing the court and the importer with details as to when the investigation was commenced, when the testimony which led to the deficit notice was given and whether a full testimony was taken from whoever purchased the car for the importer. The court explained the importance of these dates, for if the investigation was conducted an extended period of time prior to sending the deficit notice, the importer's father could have testified and perhaps provided a suitable explanation for the two money transfers.

The court criticized the Tax Authority's decision not to reveal the investigation's materials to the importer and the court, and ruled that refraining from sharing documents which are relevant to the proceeding is an infringement of the importer's rights. The court stated that if the Tax Authority would have claimed that the material is classified, it could have submitted an appropriate request to the court, which would examine the material and reach a decision. The court noted that when a party refrains from presenting a piece of evidence, it is assumed to harm the party's case.

The court explained that the Tax Authority's actions are administrative, and therefore the court will usually intervene only in exceptional cases. Prior to its decision, the Tax Authority must gather information, examine its credibility and examine whether the information is sufficient and significant enough to support the decision.

The court ruled that summoning the importer to a criminal investigation without revealing the investigation material to him is an exceptional and unacceptable case. The court further ruled that the Tax Authority violated the purchase tax law and infringed upon the importer's right to a hearing when it failed to provide him with an opportunity to present his arguments in writing prior to issuing the deficit notice. The court added that had the Tax Authority presented the investigation materials to the importer prior to his criminal investigation, he could have provided his explanations without the pressure of a criminal investigation conducted four years after the car was imported and while he has to explain specific documents.

The court examined the importer's version for the two money transfers, according to which the second transfer was for the purchase of a second vehicle for his niece, and accepted it. The court stated that there is no logical reason to pay a mediator in two separate transfers, and had the importer intended to conceal the second payment, he would have used a third party to transfer the money without any clear path leading back to him.

In light of the above, the court accepted the importer's claim and ordered the Tax Authority to cancel the tax deficit and fines. In addition, the court ordered that the Tax Authority pay the importer legal expenses amounting to 15,000 ILS.

[TA 45331-05-16, ruling given on 12.6.19, Ramla Magistrate Court, presiding judge Zecharia Yeminy]

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

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