

Customs & Trade in Israel

A Legal Newsletter

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The Magistrate Court: Tax Authority Shall Not Return Seized Gold to Claimed Owner

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The Tax Authority caught and seized approximately 3kg of gold valued at over \$115,000 at the Allenby Border Terminal (a land border crossing between Israel and Jordan). Three brothers attempted to smuggle the gold on different days by concealing the gold in their identification documents.

An individual named Gnam submitted a claim for the return of the gold to his possession, claiming that he purchased the gold with the intent of importing it to Israel through other intermediaries, and even paid \$500 for each gold transfer to Israel.

In addition, the three brothers who attempted to smuggle the gold each submitted a separate claim for returning the gold to his possession, each claiming to be the owner of the gold.

The seizure of the gold was done under the Customs Ordinance. Section 188 of the Ordinance authorizes a customs official, by land or by sea, to take hold of any seized ship, transport vessel or goods, or any of the above that the official has a reasonable basis to believe they are seized.

Party Arguments

Gnam argued that the gold should be returned to his possession, explaining that he purchased the gold due to family circumstances. His late father owned two plots of land in Jordan, and following his death, the inheritors, Gnam and his brothers, sold the plots. The sum received was deposited with a money changer, and eventually used to purchase the gold which was brought to Israel.

The Tax Authority argued that Gnam failed to prove he is the owner of the gold. In addition, the three brothers claimed in their investigations that they are smugglers who smuggle various goods into the area controlled by the Palestinian Authority. The Tax Authority claimed that by this the brothers tied themselves to the gold, beyond the fact that they claim they are the owners of the gold.

The Tax Authority added that taking hold of and subsequent seizure of the gold were under sections 188 and 204 of the Ordinance, as the three brothers attempted to smuggle the gold into Israel. Under section 1 of the Ordinance, the term "smuggle" includes import or export of goods with the intent of deceiving the treasury or avoid a restriction, prohibition or regulation in the matter, including an attempt to perform such an act.

The Court's Ruling

The court first addressed the right to ownership under the Basic Law: Human Dignity and Liberty, noting that this right is first and foremost based on the individual claiming the ownership right's ability to prove ownership. The court determined that Gnam failed to prove he is the owner of the gold.

Moreover, the brothers who attempted to smuggle the gold submitted claims for return of the gold to their possession, arguing that it belongs to them, and told investigators that they previously smuggled goods into Israel, mainly cigarettes and tabaco.

The court examined the known facts, including the fact that the gold was found in the possession of the brothers and is therefore assumed to be owned by them, while Gnam provided no proof of ownership of the gold or any evidence that may tie him to the gold. Furthermore, the receipts for the purchase of the gold are in the name of the brothers, and the brothers could identify the name of the person who sold them the gold.

The court therefore ruled that Gnam's claim may be dismissed, as he presented no evidence to prove ownership or indeed any connection at all to the gold.

As to the seizure of the gold, section 188(a) of the Ordinance authorizes a customs official to take hold of goods when there is a reasonable basis to assume they are "seized goods". Section 2014 of the Ordinance states that goods for which false or misleading declarations were submitted, or that are subject to custom duties but were concealed in order to evade taxes, are defined as seized goods. In addition, crude gold is exempt from customs upon import into Israel, but is subject to VAT. The court therefore ruled that the gold was legally seized under the Ordinance, as VAT payments were not paid and there was an attempt to smuggle the gold and evade taxes.

The court added that under section 229 of the Ordinance, Gnam, as the plaintiff, is the sole party which was required to prove that the gold was properly imported, and as stated above, Gnam failed to do so.

The court therefore rejected Gnam's claim for the return of the gold seized by the Tax Authority, as he failed to prove ownership of the gold.

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