



Goldfarb Seligman
Law Offices | Established 1930

Issue 3

Customs & Trade in Israel

A Legal Newsletter

Adv. Gill Nadel, Chair of the firm's Import, Export and International Trade Law Practice, Tax Department

The Court Mellows the Statute of Limitations on Submitting Claims for Restitution of Import Duties

Adv. Gill Nadel, Adv. Moran Oz

Background:

According to Article 154 of the Customs Ordinance, whenever a dispute arises between an importer and the Customs Authority regarding a payment of duty or purchase tax upon the arrival of goods, the importer must pay the required duty or tax under protest. The importer must then submit a claim for restitution of import duties within three months.

This statute of limitations means that an importer who does not submit a claim for restitution of import duties within three months of the date they were paid will lose his right for restitution.

Article 154 of the Customs Ordinance was widely criticized over the years for its short statute of limitations. The mere three months provided by the law place the importer in an impossible situation, requiring him to almost immediately submit a claim to the court, prior to even exhausting his available options before the Customs Authority.

Moreover, there are several rulings which state that an importer's deliberations with the Customs Authority in an attempt to convince it of the rectitude of his claims do not prolong the statute of limitations. This may lead to an absurd situation in which essentially, the importer's claim would be justified, but he would have lost his right for restitution.

Thus it follows that in a groundbreaking ruling of the Rishon Lezion Magistrate Court, in a case of an importer represented by our firm, the court ruled that Article 154 of the Customs Ordinance is not a statute of limitations, but merely a procedural provision regarding the submission date of the claim. The court therefore extended the allowed duration for submission, even though the submission was late.

Case Facts and Detailed Arguments:

An importer of cellular phones submitted a claim through our firm against the Customs Authority for restitution of excess tax paid. The claim was filed following a rejection of the declared value for the cellular phones, and the subsequent charge by the Customs Authority for payment of purchase tax in accordance with the Customs Authority's new valuation.

The Customs Authority argued that the Article 154 of the Customs Ordinance statute of limitations applies to three of the Customs Entries for which claims for restitution of excess tax paid were submitted by the importer. This was due to the fact that the claims were submitted over three months from the payment date of the tax for these three Customs Entries.

In light of the Customs Authority's argument regarding a statute of limitations, the importer submitted a request to the court to extend the submission period for the aforementioned Customs Entries. The importer argued that the Customs Authority's argument should be rejected on the basis of at least one of the following arguments:

1. The importer's Customs Broker submitted a request to the Customs Authority within the three month period, though he did not request an extension.
2. There are special circumstances to extending the submission period, since the Customs Authority never had reason to assume the importer will forgo its claim.
3. Accepting the Customs Authority's argument will not save judicial time, since most of the claim will continue to be deliberated in court anyway (the statute of limitations claim was made regarding a small number of Customs Entries, not all of them).

The Court's Ruling:

The court determined that defining Article 154 of the Customs Ordinance as a statute of limitations will immediately result in the inability to extend it, since once the claim expired it cannot be extended.

The court ruled that in light of the short duration outlined by Article 154, which results in the harsh outcome of losing the right to restitution, it should not be classified as a statute of limitations.

The court added that the wording of Article 154 does not contain the term 'statute of limitations', and is titled 'A Dispute Regarding the Payment of Duty'.

Furthermore, the general law which applies to the statute of limitations, as well as the statute of limitations law, do not exclude Article 154. In other words, the statute of limitations that applies in this case is a seven year period from the perpetuating date of the claim, and the claim must be submitted within three months of the day the taxes were paid.

In the importer's case, the court ruled that there are special circumstances that allow for the submission period to be extended. These include the deliberations between the sides regarding the accuracy of the valuation of the transaction by the Customs Authority, which prove the Customs Authority was well aware of the expected court deliberations regarding its raise of the transaction's value, including the three Customs Entries it claims a statute of limitations applies to. Therefore, the court accepted the importer's request and extended the submission period for the three Customs Entries.

Comments:

We feel the Rishon Lezion Magistrate Court's ruling was just and fair, but since it is a Magistrate Court, the ruling may be appealed.

The importance of the ruling, as it stands, is the judicial awareness to the unfairness of Article 154, and the practical decision to extend the submission period. We feel we are seeing the first cracks in the wall of the unreasonably short statute of limitations.

Seven years ago, the Tel Aviv Magistrate Court harshly criticized Article 154 of the Customs Ordinance, and ruled that such a short statute of limitations is contradictory to the public interest of decreasing legal proceedings in an overextended legal system. The court ruled further that forcing a citizen to submit a claim to the court when the matter could be resolved before the Customs Authority is unreasonable and disproportionate, but the ruling was later revoked due to a settlement reached between the differing sides in the District Court.

[T.A. (the Rishon Lezion Magistrate Court) 53054-05-04, presiding judge: Rafi Aranya, ruling given on 25.2.16. representatives of the sides: for the importer: Adv. Gill Nadel, Adv. Shirit Nacker and Adv. Omer Wagner of Goldfarb Seligman; for the Customs Authority: Adv. Yonatan Ben-David, Tel Aviv District Attorney's Office (civilian)].

* * *

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

For more information, please contact Adv. Gill Nadel, Chair of the Import, Export and Trade Law Practice

Email: Gill.Nadel@goldfarb.com Phone: 03-6089979.