



Goldfarb Seligman
Law Offices | Established 1930

Issue 4

Customs & Trade in Israel

A Legal Newsletter

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The Saga Ends in the Supreme Court: Jewish Religious Supervision Expenses are Dutiable

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Background:

Among the most common disputes between commercial importers and the Customs Authority are disputes regarding the value of the transaction. In other words, the sides dispute as to the amount subject to import duty.

Some expenses are clearly defined as included in the transaction value by the Customs Ordinance, and are therefore undisputed. One of the expenses not explicitly addressed by the ordinance, and the subject of several rulings, is the expense of Jewish religious supervision ("Kashrot") of an imported product.

Over the past two years, Magistrate and District Courts ruled in several cases that the expense of Jewish religious supervision should be included in the dutiable transaction value. Appeals of these rulings were submitted to the Supreme Court.

On 2.12.15, the Supreme Court offered its first decision on the subject, as part of its response to a motion for leave to appeal. The court's decision ended the legal saga, determining that Jewish religious supervision expenses should be included in the dutiable transaction value.

Case Facts and Detailed Arguments:

The dispute went through the Magistrate and District Courts prior to coming before the Supreme Court.

A few motions for leave to appeal were combined into one unified motion presented to the Supreme Court, including the appeals of mutton importers, lighting oil importers and an olive oil importer.

The importers paid the mutton or oil suppliers for their product, and paid separately for the services of the employees of the Chief Rabbinate of Israel or other Jewish religious supervision entities.

The joint matter presented to the Supreme Court was whether, according to the law, the cost of Jewish religious supervision should be included in the dutiable transaction price or not.

The importers claimed that according to the law, expenses are included in the transaction price only if they are paid to the supplier or "for the benefit of the supplier". Therefore, it should not apply to the expenses of Jewish religious supervision. Moreover, the importers claimed that the principles of valuation for custom purposes are based on an international treaty signed by the State of Israel, and that the rulings of the Magistrate and District Courts deviated from this treaty.

The Supreme Court's Decision on the Motion for Leave to Appeal:

The Supreme Court dismissed the importers' claim that the law applies only to payments to the supplier or "for the benefit of the supplier". By dismissing this claim, the court also rejected the importers' argument regarding the deviation from the international treaty.

The Supreme Court adopted the Magistrate and District Courts' position, determining that the "goods" being valued are "Kosher" goods, and are sold as such to the consumer for a higher value. Therefore, it is common sense that the Jewish religious supervision component is an integral part of the product, and its expenses should be included in the dutiable transaction price. Accordingly, the Supreme Court ruled that Jewish religious supervision expenses fall under the definition of the "transaction value", as detailed by the law, even if they are not paid to the supplier. This decision affirmed the Customs Authority position on the matter.

[Motion for Civil Appeal No 6592/14 , Motion for Civil Appeal No 3413/15 , Motion for Civil Appeal No 6723/15 , **Neto Melinda Trade LTD & others, MAYA Food Industries M.T.M LTD, Masterfood LTD Vs. the State of Israel (Customs and VAT Department)**. ruling from 2.12.15, presiding judges: Vogelman, Rubinstein and Baron]

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

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