

Customs & Trade in Israel

A Legal Newsletter

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Valuation and Discounts for Customs Purposes

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Most of Israel's import duties are levied based on a percentage of the transaction value at import. Although there were changes in certain fields, such as set duties according to material concentration or weight, most duties are levied by percentages.

In light of the above, there may still be disputes between importers and the Customs Authority regarding the transaction value at import for the purposes of custom duties.

One of the issues that may arise in this context is whether a discount is recognized as part of the transaction value in calculating the value for customs purposes.

Section 132a of the Customs Ordinance sets the guiding principle, under which the value of the transaction for custom purposes is the price actually paid for the goods:

"The transaction value is the price paid or demanded for the goods, at the time of their sale for export to Israel ("the transaction price")..."

Therefore, it appears from this section that if the price paid upon import is the price after the discount, the discount should be taken into account when determining the custom duties. In other words, the custom duties will be levied only after the discount.

The Customs Ordinance has but one section which specifically mentions discounts, section 132e, which states:

"Discounts on the price of goods given after release from the Customs Authority's control, will not be taken into account for the purpose of determining the transaction value of the goods."

In the reasoning presented for the proposed amendment [Proposed Amendment to the Customs Ordinance (No. 15), 5757-1997, Bill 2627, 23.6.97], the following was written:

"It is suggested not to take into consideration, for the purpose of determining the transaction price, discounts given on the price of goods after release from the Customs Authority's control, due to the inability to foresee whether discounts will be given and estimate them ahead of time during the release of the goods from the control of the Customs Authority."

In other words, the section is aimed at negating the recognition of discounts given after the release of the goods, among others due to the fact that it is impossible to foresee at the time of import whether the discount will come to be. What the section does not refer to is when the discount is recognizable.

The Customs Authority published a procedure for assessing goods, updated on 28.3.17, which refers to the discount issue as follows:

"Discounts will be recognizable for determining value customs purposes as long as all of the following conditions are met:

- (a) The discounts are directly related to the goods, and were given for the imported goods. Discounts not given for the goods but for other reasons (such as: discounts for previously imported goods, or meeting annual sale targets) will not be recognized while determining the value of the goods, and will not be deducted from the value for custom duty purposes.
- (b) The discounts must be permanent, predetermined and unconditional at the time of the goods' valuation. If the amount of the discount cannot be determined at the time of valuation, the discount will not be recognized."

This procedure reflects the Customs Authority's position regarding the interpretation of the Customs Ordinance in relation to the discount issue, and it is clearly evident that the conditions set for recognizing discounts are an expansion of the conditions set by the Customs Ordinance.

Moreover, the Customs Authority published a number of tax positions which require reporting, including one which relates to discounts. Tax Position 4 states that a discount will only be recognized for goods valuation purposes if it is permanent, predetermined and unconditional at the time of valuation. Furthermore, the discount must be given for the imported goods and not other reasons, such as meeting goals, previously imported goods etc. This position correlates with the procedure for assessing goods, and a taxpayer who acts contradictory to the position and saves over a certain threshold in taxes annually, must report the matter to the Customs Authority.

The Importer Declaration importers are required to fill also includes questions regarding discounts.

For example, question 2 in the Importer Declaration seeks to determine whether the sale is subject to a condition or consideration the value of which cannot be estimated.

Question 10 is related as well, asking whether the importer received discounts on the transaction price which do not appear on the supplier's invoice.

The court recently published its ruling on case involving a dispute regarding the recognition of discounts for custom purposes.

In this case, the importer (Pelephone Communications Ltd.) received an addition of up to 5% of the devices included in the original order, at no additional cost. This addition was provided as a substitute for liability for faulty devices. In addition, the importer was entitled to purchase devices at a 50% discount for promotional marketing, limited to 10% of the quantity of the original order.

The Customs Authority rejected the discounts received by the importer, seeking to levy duties upon the devices received for free or for a 50% discount according to their real sale value.

The court rejected the Customs Authority's arguments, stating that the guiding principle is levying import duties according to the transaction value. Once it was proven that the discounts were actually given at the time of import and were known, the court ruled that they must be recognized as part of the value for customs purposes. The court added that a transaction in which 5% of the devices were free as part of the liability is a reasonable transaction which does not effect the essence of the transaction's price.

Among the court's considerations in reaching this conclusion was the fact that the Customs Authority failed to examine the reliability of the accounts presented by the foreign supplier and importer, did not examine the money transfers abroad, and did not examine the use of the importer with the devices received for free or at a 50% discount.

In addition, the court was impressed by the fact that the importer presented the Customs Authority with the framework agreement between it and the supplier, detailing the devices provided for free or at a reduced rate as part of the liability. The court added that the importer is anyway required by Israeli law to possess a stock of devices for liability purposes or replacing faulty devices.

[TA 1356-01-15, **Pelephone Communications Ltd. & Others V. Customs House at Ben Gurion Airport, Lod**, ruling given on 27.8.18]

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

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