

# Customs & Trade in Israel

## A Legal Newsletter

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### **The Customs Authority Will Compensate An Exporter Following The Seizure of an Export Shipment**

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#### **Background:**

In the following article we will review a case in which a shipment of gold for export was held by the Customs Authority due to a suspected mistake in the export entry. The seizure and delay of the gold resulted in loss of value, and incurred storage fees. The court recognized the plaintiff's right to receive compensation for the damages and expenses he sustained.

#### **Case Facts & Arguments:**

The exporter attempted to export 3 kilograms of gold from Israel, and filed an export entry as required by law. The Customs Authority seized the gold, suspecting that a false statement was submitted, and took samples from the gold for the purpose of its investigation. With the conclusion of the Customs Authority's investigation, the gold was released and exported approximately two months after the seizure.

The exporter argued the Customs Authority did not complete its investigation within a reasonable period of time, and was negligent throughout the case. The exporter claimed he therefore sustained damages from the delay due to a decrease in the value of gold while the gold was held by the Customs Authority - the gold was sold according to 53,921 USD per kilo, compared with a value of 56,977 USD per kilo on the day of the seizure. The exporter added that he was forced to forfeit from a proposed transaction due to the delay in customs, losing a 12,000 USD profit, as well as incurring storage costs charged by the Customs Authority.

The Customs Authority argued that the gold was seized, examined and released in accordance with the seizure and investigative powers granted to the Customs Authority under the Customs Ordinance. The Customs Authority claimed that it suspected the exporter was involved in a large scale operation due to the questions which arose from the nature of the transaction he wished to complete and the identity of the companies he was working with, suspicions which took time to unravel.

### **The Court's Ruling:**

The matter was first brought before the Magistrate Court, which determined that there was no proof of negligence on the Customs Authority's part with regard to the timetable of handling the matter. The Magistrate Court determined that the Customs Authority officials acted professionally and reasonably, both with regard to the timetable (two months), and regarding the act of seizing the gold until the decision to release it. The Magistrate Court therefore ruled that exporter's claim is to be rejected, and there is no place to consider his damages.

The Tel Aviv District Court, which heard the appeal of this ruling, criticized this position, stating that due to the fact that the Customs Authority did not present the court with information regarding the investigative acts it conducted, it is impossible to determine how many investigative acts were actually performed. It is therefore impossible to determine how long these actions took, and if the Customs Authority acted in a reasonable manner which justifies the timetable.

The court was not presented with the gold investigation file, for example, even though all relevant information was in possession of the Customs Authority, and the relevant witnesses were all Customs officials. The court stated that the fact that the Customs Authority refrained from presenting the evidence and the witnesses was held against it.

As the court determined that the exporter had no feasible way to prove whether the Customs Authority acted reasonably or not, and therefore found cause to overturn the ruling of the Magistrate Court. The District Court awarded the exporter a meager sum of 7,000 ILS, which took into consideration the extensive amount of time which passed since the gold was seized.

The ruling resulted with the exporter, who claimed damages amounting to tens of thousands of ILS, being compensated with a few thousand ILS.

For a review of the Magistrate Court's ruling on this case, see:

[http://www.goldfarb.com/pdf1/Not\\_Every\\_Delay.pdf](http://www.goldfarb.com/pdf1/Not_Every_Delay.pdf)

[TA (Tel Aviv Magistrate Court) 28955-02-16 **Shriki V. The State of Israel**, presiding judge: Gideon Ginat, on 12.12.16; Advocates: for the exporter: Adv. Uri Daniel, for the Customs Authority: Adv. Adam Taharani of the Tel-Aviv District State Attorney's Office, Civilian]

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

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