

Customs & Trade in Israel

A Legal Newsletter

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

The Court Accepted the Customs Position Regarding the Classification of Electronic Devices

Adv. Gill Nadel, Adv. Dave Zeitoun, Or Lebaardt

This article is a review of a claim submitted before the Herzliya Magistrate Court by a multimedia importer against the Customs following a dispute regarding the HS classification of Kinect motion sensing input devices and wireless remote controls.

Case Facts:

The importer imported the Kinect devices between 2014-2017. The devices were classified by the Customs under HS Code 85.25.8000, which is exempt from customs duty and defined as "television cameras, digital cameras and video recording cameras", while the remotes were classified under HS Code 85.25.9200, also exempt from Customs, and defined as "devices for remote control by radio".

In 2017, the Customs decided to change the classification of the Kinect devices and the remote controls to HS Code 95.04.500, which includes (among others) consoles, video games and video games devices, following an examination by the Customs that found that the main use of the Kinect devices and remote controls is with consoles, games and gaming devices. The Customs therefore issued a 319,836 ILS customs duty notice to the importer due to additional import duty.

Following negotiations between the customs and the importer, the importer accepted the decision of the Indirect Tax Committee, which recommended that the customs duty demand be waved for the remote controls, subject to proof of section 3 of the Indirect Tax Law.

Discussion:

In order to reach a conclusion in the case, the court followed the stages set by the "Meron Galilee Industries" ruling for the classification of goods: first, the physical character and essence of the goods must be examined, as well as their actual use. Second, the examination of the legal essence in accordance with the accepted rules of interpretation. Lastly, matching the goods to the appropriate customs article.

In accordance with the above, the court examined the actual use of the Kinect devices, determining that the devices are gaming console accessories. The court criticized the importer for not describing the devices and their main use in its declarations, as well as the importer's choice to present the devices and their use in the courtroom by using them with game consoles at court.

The court based its ruling on a Customs deposition that described the Kinect device as a communication device between the user and the game console through motion detectors. The court emphasized that the plaintiff did not refute this claim at any stage.

In addition, the court dismissed the importer's argument that the Kinect device is sold to healthcare companies for research purposes, as the importer failed to present the names of such companies employing the device, as well as the percentage of devices sold for research purposes compared to the percentage sold for game console use.

The court also rejected the importer's comparison between Kinect devices and conference call cameras, as the importer did not address the subject in its disposition and the Customs representative testified that he cannot verify that there are similar characteristics between the devices.

The court was then faced with the classification question - according to the findings in the first examination stage, should the Kinect devices be classified as "television cameras, digital cameras and video recording cameras", or as "accessories for exclusive or primary use with video game consoles"? The court determined according to its findings that the appropriate classification is under HS Code 95.04-5000, "accessories for exclusive or primary use with video game consoles".

With regard to the remote controls, the court determined that the remotes are an essential, central accessory of game consoles, as per the Customs position, for the importer refrained from presenting or describing the remotes' use in its disposition, and avoided presenting the testimony of a technician regarding the remotes.

The court emphasized in its ruling that the customs Broker who testified for the plaintiff noted that the remotes are primarily used as a console accessory and that the console cannot be activated without the remote.

In addition, the court ruled that under the guidelines presented in Chapter 95 of the Customs Ordinance, parts and accessories for exclusive or primary use with other articles should be classified with said articles. Therefore, the proper classification for the remote controls is under HS Code 95.04-5000, "accessories for exclusive or primary use with video game consoles".

The court finally rejected the importer's argument regarding the applicability of the Indirect Tax Law, as the importer failed to prove he did not "roll" the Customs onto the consumers.

In this regard, the court criticized the importer for attaching hundreds of receipts to its deposition without explanation, ruling that the receipts alone cannot prove the importer's claim.

Ruling:

The court rejected the importer's claim, charging the importer with legal fees amounting to 20,000 ILS.

[TA 19316-05-18, **Sharon V. The State of Israel**]

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.