

# Customs & Trade in Israel

## A Legal Newsletter

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

### **The Magistrate Court: The Vehicle Appears and is Used as an Off-Road Vehicle and will Therefore be Classified as Such**

Adv. Gill Nadel, Chen Ben-Hayoun

The court ruled that YAMAHA 700E YXE vehicles will be classified as off-road vehicles under Article 87.03 of the Customs Ordinance, which is purchase tax dutiable.

#### **Case Facts:**

A car importer, which imports (among others) the YAMAHA 700E YXE vehicles, sought to classify the Wolverine model of the vehicle as "a vehicle used for transport of goods" / "freight tractor", under Article 87.04.3140 of the Israeli Tariff Schedule , which is subject to a 12% purchase tax.

On the other hand, Customs argued that the Wolverine should be classified as "a vehicle designed for transport of passengers" / "an off-road vehicle", under Article 87.03.2170 of the Israeli Tariff Schedule , which is subject to a 50% purchase tax.

As the vehicles imported by the importer were not released from customs under the "freight tractor" classification, the importer paid the purchase tax according to the "off-road vehicle" classification under protest, in order to release the vehicles. The importer then sought declaratory relief from the court regarding the vehicles' classification.

#### **The Parties' Arguments:**

The importer argued that the Wolverine is built for transporting goods and meets all of the Transport Ministry's requirements for the definition of a "freight tractor", noting that Wolverine vehicles are classified as freight tractors in Europe, as per the position of the importer.

Customs argued that the vehicle is not intended for transporting goods - rather, it is intended for transporting passengers, and it should be viewed as an off-road vehicle. In this capacity, Customs claimed that as opposed to the importer's claim, the vehicle does not meet the requirements of a "freight tractor" definition, as the Customs Ordinance's definition refers to the transport regulations, which state (among others) that the maximum engine power of a "freight tractor" will be 23KW, while the Wolverine's engine's power is 35KW. Customs therefore argued that the Wolverine does not meet the "freight tractor" definition, as defined by the Customs Ordinance.

In addition, Customs noted that the vehicle's license clearly states that it is not intended for work and / or towing and / or transporting cargo except for personal cargo in its box, and that it is intended

solely for dirt roads. Customs therefore argued that the vehicle should be classified as an "off-road vehicle" and not as a "freight tractor".

As for the importer's argument that the vehicle is classified as a "freight tractor" in Europe, Customs claimed that the classification presented referred to a vehicle with completely different technical specifications.

### **Discussion and Ruling:**

The court determined, with regard to the **character and essence of the Wolverine's physical features**, that its operational essence combines several aspects, the most dominant of which is its adaptability for travel on unpaved dirt roads.

In addition, the court determined that the Wolverine's ability to transport cargo is limited to a weight of 136kg, and relative to its own size and weight, this is not a dominant characteristic of the Wolverine, merely an additional secondary use.

The court clarified that as for the **legal interpretation of the relevant HS code** the Wolverine's ability to **transport cargo** (as per HS code 87.04) is secondary to its design for **transporting passengers** comfortably in off-road conditions (as per HS code 87.03).

The court added in this regard that the Wolverine does not meet the requirements for a **"freight tractor"** definition under HS code 87.04, as its engine's power (35KW) is over 23KW, and it is not intended for towing and transport of goods. On the other hand, the court noted that the Wolverine meets all requirements for a definition as an **"off-road vehicle"** under HS code 87.03.

The court finally ruled based on the essential function of the Wolverine and on the interpretation of the disputed customs articles that the best suited classification for the Wolverine is under HS code 87.03 of the Israeli Tariff Schedule.

### **Conclusion**

The court ruled that the vehicle will be classified under HS code 87.03.2170, rejecting the importer's request for declaratory relief, as well as its request for return of purchase tax it paid under protest to Customs.

The court ordered the importer pay 15,000 ILS in legal expenses.

[TA 9129-07-17, **keshet Yami Ltd. V. The State of Israel**; presiding judge: Shalhevet Kamir-Wiess, ruling given on 28.1.2020]

**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](mailto:Gill.Nadel@goldfarb.com) Phone: 03-6089979.**