

Court practice on tax and customs disputes

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pwc

1. Company against State Revenue Department of the Mangystau region

Period under review: 2015

Type of review: cameral customs audit

Amount of assessments: approximately KZT 31 million

Court instance: Cassation Court of the Mangystau region

Date: December 2015

Major issues: code changes on imported goods

Issues:

The customs authorities issued classification decisions on the goods imported by a taxpayer resulting in the application of a different reclassified HS codes of the Eurasian Economic Union and additional assessments of customs duties, VAT and late interest penalties.

Based on the customs authorities' position, the basis for the decision on reclassification is the expiry of the import licence as well as a letter of the State Revenue Committee of the Ministry of finance of the Republic of Kazakhstan ("SRC").

The position of the court:

The Cassation Court of the Mangystau region decided in favour of the Company.

The court ruled that the customs authorities do not allow import of goods since the date of notification on the license termination. At that, the licence did not expire as of the date of customs clearance of goods and registration of the customs declaration.

Further, the court pointed out that letters of the tax authorities are of a recommending nature and could not be regarded as normative acts, so such letters cannot be accepted by the court as an evidence for legitimacy of the customs authorities' actions to reclassify goods.

Also, the court stated that the customs authorities are obliged to control correctness of goods' classification declared by importers, as well as to take decisions accordingly in case of identified discrepancies. However, the customs authorities did not take any action related to improper classification upon import of goods.

Therefore, the court overturned the act of the cameral customs audit and notification on settlement of debt since classification decisions were found illegal.

PwC comments:

We suggest using preliminary decisions (where possible) on classification of goods which would be mandatory for use upon customs clearance.

2. Company against State Revenue Department of Astana

Period under review: 2014

Type of review: thematic tax audit

Not refunded VAT amount: approximately KZT 4 billion

Court instance: Supreme Court

Date: February 2016

Major issues: VAT refund

Issues:

According to the tax authorities' position, the Company failed to prove international transportation due to lack of stamps of the customs authorities on the accompanying documents.

On this basis, the tax authorities decided to refuse VAT refund.

The position of the court:

According to the Supreme Court's position, international transportation should be substantiated by international transportation documents irrespectively of whether there is a stamp of the customs authorities or not. Moreover, the Supreme Court pointed out that the fact of international transportation was evidenced by the reconciliation act signed between the Company and the customs authorities.

The Supreme Court ruled that VAT refund was not confirmed by State Revenue Department of Astana based on formal circumstances.

PwC comments:

The final decision issued by the State Revenue Department of Astana was in favour of the Company.

Given that positive decisions are often ensured in practice after finalising the appeal and cassation instances, we recommend our Clients defending their lawful interests up to the Supreme Court stage.

If you are interested in additional information, please contact PwC specialists, working within the group servicing your company, or any mentioned below person.

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