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The Superior Court of Justice rules out the IPI charge on the trade of goods imported by the importing establishment when there is no new manufacturing

On June 12, 2014, the First Section of the Superior Court of Justice (STJ) standardized its case laws, ruling that the Tax on Manufactured Products (IPI) may not be charged on the mere trade of imported products that did not undergo any manufacturing process subsequent to their entry to country, since this tax is already levied at the customs clearance, thus avoiding the double taxation process.

It is worth noting the vote of Justice Napoleão Nunes Maia in favor of the taxpayers. He brought relevant reflections to the doctrine nature, based mainly on several authoritative philosophical sources, which inaugurate the legal measures relative to the taxing power limitation and the State's power to punish.

Furthermore, he states that without any normative or binding case law change, what the National Treasury was seeking, in violation of the principle of retrogression prohibition, was the sudden change of the consolidated position in force until then within the First Section of the STJ, that in case of an importing company, the taxable event occurs at the customs clearance, in which a new collection of the IPI is not feasible at the exit of the product at the time of its trade, due to the prohibition of double taxation, a position respected by countless decisions of the Court.

In this regard, in the Justice's opinion, articles 46 and 51 of the National Tax Code (CTN) may not be interpreted literally, but instead, the interpretation should focus on the sense and purpose of such rules in accordance with the legal system. Moreover, to seek two taxable events for the same importer violated the logic of the special rule principle, since there is a specific rule for import which is that of taxation at the time of customs clearance.

From this standpoint, from the moment the goods arrive at the national territory, after the payment of all taxes charged at import, and unless they undergo another manufacture process or change of their nature and purpose, they will be integrated to the internal trade circuit, so that the taxpayer, in the capacity of reseller of the imported goods, will carry out a mere commercial activity, which is not the same as any manufacture process.

In addition, Justice Napoleão Nunes Maia pointed out that the treasury argument of the need to protect the domestic market would only be consistent in the case of dumping or potential and effective crises (all proven empirically), since, otherwise, after the customs clearance and payment of the IPI, this would represent tax discrimination due to the origin of the product and violation of the principle of isonomy and tax equality between the importer and the trader of the goods acquired in the country, for the reason that at the moment the goods are traded, the former is subject to a new IPI and ICMS charge, while the latter is only subject to the ICMS.

Justices Ari Pargendler, Arnaldo Esteves de Lima, Og Fernandes, and Benedito Gonçalves followed Justice Napoleão Maia's opinion, while Justices Sérgio Kukina, Herman Benjamin, and Assusete Magalhães dissented. Justice Mauro Campbell Marques did not vote, as he was absent at the beginning of the trial.

¹ David Hume, Niccolò Machiavelli, Charles-Louis de Secondant, Winston Churchill, Lord Bracton, Eric Hobsbawm, Nelson Saldanha, Napoleon Bonaparte, Cicero, and Jack Le Goff.

MEMORANDUM TO CLIENTS

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The thesis discussed and consolidated by the STJ is very important and has immediate consequences, mainly because of the standardization of the case laws of the STJ's public law panels, a situation indicating a scenario of great chances of success for existing actions in the Brazilian courts on the matter, as well as for new actions to be filed.

It is worth stressing, however, that the National Treasury may take this matter to be heard by the Federal Supreme Court (STF), the outcome of which being unpredictable at such time, considering that the Full Court has never expressed a position on this topic.

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