Customs Bulletin

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Dear Readers:

The **Customs Bulletin** newsletter purports to bring our clients and other interested parties up to date on the important issues being discussed and decided within the scope of the Judiciary, Legislative and Executive branches.

In this 1st issue, we address ten different issues related to Jurisprudence, Regulations and Query Solutions.

To go directly to each text, click:

Souza, Schneider, Pugliese and Sztokfisz Advogados law firm is at the disposal of our clients to clarify any questions about the issues addressed in this publication.

We wish you a good reading!

SOUZA, SCHNEIDER, PUGLIESE e SZTOKFISZ ADVOGADOS

Jurisprudence

CARF (Administrative Board for Tax Appeals) - Fine for losses caused to the administrative control of imports

On 07/14/2015, the Appelate Court Decision No. 3202-001479 was issued by the Administrative Board for Tax Appeals ("CARF"), which established that a mere mistake by the taxpayer when identifying the correct tax classification of goods in an import procedure is not enough to determine that a fine should be imposed due to lack of an import license in cases where the reclassified goods are not subject to prior licensing. This is because the fine provided for in Art. 169, I, "b", of Decree-Law No. 37/1966, amounting to 30 percent of the amount of the goods, requires that the mistake made entails losses to the administrative control of imports.

On the other hand, the appropriateness of levying the 1-percent fine - as provided for in Article 84 of Provisional Measure 2.158-35/2001 - was acknowledged, since the applicability thereof is based on the mere incorrect information regarding the classification of the goods.

CARF (Administrative Board for Tax Appeals) - Drawback - Compliance with formal requirements

On 07/28/2015, the Appelate Court Decision No. 3101-000465 was published, whose object was the assessment notices issued for collection of Import Tax ("II") and Manufactured Goods Tax ("IPI"), due to the alleged failure to comply with formal requirements relating to the Special Drawback Customs Regime, under the suspension mode ("Drawback-Suspension"), regarding: (i) the submission of a report evidencing the compliance with the special regime requirements after 30 days from the expiration of the Granting Act; (ii) the incorrect entry of the Drawback-Suspension transaction code; and (iii) the failure to link the Export Records ("RE") to the Granting Act of the aforementioned special regime.

When reviewing the matter, the Judging Panel found that formal errors cannot prevent taxpayers from enjoying the Drawback-Suspension incentive regime if the compliance with the export commitments agreed upon in the Granting Act can be evidenced, since the duty of correctly classifying the transactions in the Integrated Foreign Trade System ("SISCOMEX) is not addressed in the regulatory standards as a prerequisite for the approval of the aforementioned special regime.

Importantly, a similar matter was reviewed by the Superior Chamber of Tax Appeals ("CSRF") in Decisions No. 9303-000.224 and No. 9303-000.226, also published in July, where, under the casting vote, the understanding contrary to the aforementioned one - unfavorably to taxpayers. However, although published in July this year, the judgments took place a few years ago, when the members of CSRF was very diverse, which leads us to think that the understanding issued by CARF on the matter remains open, especially because the National Plan for Exports was recently launched, under which the Government announced the reduction of numerous "bureaucratic bottlenecks" for exports, which led Secex to change its rules regarding the compliance with drawback regimes, facilitating the correction of any mistakes made by taxpayers (as happened with the decisions commented herein), which ends numerous disputes over taxation - obviously unnecessary - since these stemmed from simple mistakes.

Jurisprudence

CARF (Administrative Board for Tax Appeals) - Formal error in the Declaration of Origin of Goods - Possibility of Amendment

In 07/07/2015, Decision No. 3401-002.543 was published, concering assessment notices issued for the collection of (i) fine for administrative breach of import controls, calculated at 1 percent of the customs amount of the imported goods, as provided for in Art. 69, §1 of Act No. 10.833/2003; and (ii) fine arising from the submission of an invoice non-compliant with the guidelines set out in Article 107, X, "c", of Decree-Law No. 37/1966. The assessment is based on the presence of iinconsistencies in the Imports Declarations, in that the information for "Country of Origin" is different from the information listed in the invoice and the Certificate of Origin submitted by the company.

CARF failed to review the arguments put forward by the taxpayer regarding the fine provided for in article 107, X, "c", of Decree-Law No. 37/1966, since the requirement has not been challenged, reviewing only the 1-percent fine for the customs value . As for this last point, CARF understood that a mere formal mistake when filling in the countries of origin of the imported goods is not enough for the application of a fine, whose purpose is to curb mistakes in the import procedure intended to circumvent customs controls. In the case at hand, no malicious intent has been detected in the taxpayer's conduct or any benefit that could be earned with the alleged mistake in the declaration.

In his vote, the Rapporteur Member said that taxpayers enjoy the assumption of good faith, since something that is deemed fraud can only be confirmed by clear evidence of the agent's malfeasance. Following this reasoning, he concluded that the tax authorities should have rendered evident the bad faith aspect of the conduct by means of reputable, sufficient evidence, proving that the taxpayer has resorted to cunning strategies for the consummation of the alleged illegal action.
Thus, by majority vote, the Judging Panel determined the inapplicability of the fine provided for in art. 69, §1 of Act No. 10.833/2003.

Regulations and Query Solutions

Joint Ordinance No. 01/2015 - Secex (Foreign Trade Department) and the Federal Revenue Service set up a task force to improve the Drawback customs procedure

On 07/09/2015, Joint Ordinance No. 1, dated July 1, 2015, was published, through which the Foreign Trade Department (Secex) and the Brazilian Federal Revenue Service (RFB) established the Permanent Technical Group for Improvement of the Special Drawback Customs Regime. The Group focuses on further discussions on measures capable of reducing bureaucracy in foreign trade procedures.

The creation of the Group constitutes an additional step in the National Export Plan, which provided such measure as a tool to enhance the export support tax regimes.

RFB Normative Instruction No. 1572/2015 - Customs Guide for 2016 Summer Olympic Games

On 07/10/2015, Normative Instruction RFB No. 1572 ("IN RFB 1.572/15") was published, advertising the Customs Guide for 2016 Summer Olympic and Paralympic Games, to be held in Rio de Janeiro. The key purpose of the Guide is to provide information and guidance on customs procedures applicable to the period when these sporting events are to be held.

The Guide is based on Act No. 12.780/2013, Decree No. 8.463/2015, and various normative acts issued by the Brazilian Federal Revenue Service governing the tax and customs measures relating to goods inteded for use in the Games. The information in the Guide is primarily intended to logistics operators and customs brokers of foreign delegations that will participate in the Olympics. The guidelines are also useful to foreign media professionals who will bring equipment for the news coverage of the event.

The items listed in the Guide include Exhibit X, with an illustrative list of apparel and specific goods for various sporting activities; with authorized augmentation of such lists by the General Customs Administration Coordination ("COANA"), a body tasked with providing translated versions of the guide and publishing amendments to the text, among other duties.

Finally, the guide includes an e-mail address through which queries can be submitted regarding tax classifications of the goods to be imported for 2016 Olympic Games, allowing taxpayers to settle questions about the applicability of the rules included in the Customs Guide.

Internal Query Solution COSIT No. 11/2015 - Breach of customs regulations - Non-equivalence between harbor pilots and skippers

On 07/10/2015, the Internal Query Solution No. 11 was published by the General Coordination Office for Taxation ("SCI COSIT No. 11/15"), which clarifies that, for purposes of accountability relating to violations of customs rules, pilot and trainee pilot job descriptions are not treated as equivalent as skippers.

According to the Tax Authority, pilots provide on-board services and are considered "non-crew ship employees", under Art. 2 of Act No. 9.537/97. Thus, considering they are not crew members, they cannot take the skipper's seat on a vessel and, therefore,cannot be equated to skippers or other officers responsible for vessels for purposes of liability for customs penalties applied to the "skipper".

Query Solution COSIT No. 153/2015 - IRRF (Withholding Tax) - Overseas remittance

On 07/01/2015, under Query Solution No. 153/2015, the General Coordination Office for Taxation ("COSIT") delivered the understanding Withholding Income Tax ("IRRF") is not levied on remittances of amounts to France for the payment of technical services and technical assistance, under the Interpretative Declaratory Act No. 5/14 ("ADI RFB 5/14") of the Brazilian Federal Revenue Service.

Per COSIT understanding, as a rule, withholding tax is levied on payments made overseas for technical services rendered with or without technology transfer. However, in the specific case of the Convention signed with France for the Avoidance of Double Taxation, approved by Decree No. 70.506/72, the payment of the fees in question is not covered either by the article on Royalties or the article on Independent Jobs; thus,

the remittance in question should be handled based on the tax regime laid down in the article on Corporate Earnings, pursuant to ADI RFB No. 5/14.

As a result, upon a remittance for payment of technical services or technical assistance, with or without technology transfer, rendered by people based in France, Withholding Tax shall not be levied on such amounts.

Camex (Foreign Trade Chamber) Resolution No. 66/2015 - II - Extended tax reduction for palm kernel oil

On 07/23/2015, Camex Resolution No. 66/2015 was published, extending the term of the temporary reduction of the Import Tax (II) rate on palm kernel oil, an important industrial raw material. The decision came into effect and reduces the rate from 10 percent to 2 percent until 04/16/2016, in order to ensure the supply of the product in the face of the reduced domestic production of such product.

Palm kernel oil is classified under code 1513.29.10 of the Mercosur Common Naming Convention (NCM), being used, among other things, in the food industry for the production of chocolate, and in the cosmetic industry for the production of soap, detergents, and lubricants.

Camex (Foreign Trade Chamber) Resolution No. 68/2015 - II - Extended tax reduction for non-alloy aluminum

On 07/23/2015, Camex Resolution No. 68/2015 was published, extending the term of the temporary reduction of the Import Tax (II) rate on non-alloy aluminum, keeping the rate from 6 percent to zero percent until 08/17/2016. The reduction was approved under the List of Exceptions to the Common Foreign Tariff (LETEC), and will come into effect on 08/18/2015.

Non-alloy aluminum is classified under code NCM 7601.10.00, being a key raw material to manufacture items such as bus bodies, engine blocks, frames and wheels for cars, roof tiles, pots and cables for electricity transmission.

Hearing and Public Query - Adjustment of the area at Paranaguá/PR and Antonina/PR ports

On 07/27/2015, Decrees No. 281/2015 and No. 282/2015 were published, through which the Special Secretariat of Ports (SEP) opened a hearing and public consultation on adapting the areas of Paranaguá and Antonina ports - both in the state of Paraná - which may be attended by any party interested. On-site hearings will take place on August 27 and 28 in Antonina and Paranaguá, respectively, and the deadline for submitting contributions to the consultation closes on September 24.

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