

The Council of State Decided that Failure to Clearly State the Reasons for not Taking the Sales Price as a Basis in Determining the Customs Value of Imported Goods is Against the Law.

28 May 2024

In the Council of State decision numbered 2023/6, published in the Official Gazette, dated 26 March 2024 and numbered 2023/6 E., 2024/1 K. ("**Decision**"), the Council of State ruled that in determining the customs value of the imported goods, the sales price should be taken as the primary basis. If it is determined that the conditions for using the sales price as the basis do not exist, other methods should be applied in order. Additionally, if it is found that the reasons for not using the sales price method are not clearly stated, it should be concluded that there is a non-compliance with the law in the transaction.

As to the background of the dispute; with Article 13 of the Law on the Amendment of Certain Laws and Decree Laws No. 7333, published in the Official Gazette, dated 28/07/2021 and numbered 31551, Article 211 of the Customs Law No. 4458 ("**Law**") had been amended. This amendment stipulated that requests for the return or cancellation of taxes paid or accrued due to an increase in the customs value of goods subject to trade policy measures, declared by the obligor themselves, will not be accepted ("**the Amendment**").

Following this amendment, lawsuits were filed for the cancellation of transactions and the refund of taxes paid with interest after the rejection of applications to cancel accruals related to differential taxes arising from the failure to submit the surveillance certificate and the amount declared with reservation as foreign expenses to reach the value specified in surveillance communiqués.

In examining these cases to resolve discrepancies between decisions made by regional courts of justice, the Council of State clarified that the obligation to submit a surveillance certificate applies only when goods are intended to be imported below a certain value. Failure to comply with this obligation does not require additional accrual under the Law.

However, it is stated that the unit value specified in the Communiqué does not reflect the actual sales price of the goods determined in accordance with the provisions of the Law.

In terms of declarations registered after the Amendment, making a declaration to increase the value of the goods to the level specified in the surveillance communiqué will result in the increase of the customs value of the goods subject to trade policy measures. Consequently, requests for the return or removal of the taxes paid or accrued will not be accepted. However, the transactions subject to the elimination of the contradiction are not related to this. Instead, they concern transactions regarding the implicit rejection of the objections made by placing a reservation on declarations regulated in another article. Therefore, it is ruled that the Amendment cannot be applied to these disputes.

In the lawsuit filed with the request for the cancellation of the transaction regarding the rejection of the objection to the accrual pursuant to Article 242 of the Law and the refund of the taxes, the determination of the customs value of the imported goods follows a specific procedure. Firstly, the sales price should be taken as the basis. If it is determined that the conditions for taking the sales price as the basis do not exist, other methods should be applied respectively. If it is concluded that the reasons for abandoning the sales price method are not concretely revealed, it has been definitively decided that there is no compliance with the law in the transaction. Additionally, there is a dissenting vote.

The full text of the Regulation can be reached via [this link](#). (Only available in Turkish)

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