

Turkish Constitutional Court: Article 13 Clause 5 of the Law of Private Consumption Tax is not Unconstitutional

26 Dec 2019

Turkish Constitutional Court recently evaluated a claim against an article permitting Revenue Administration to action to be taken by pursuant to 4760 numbered Law of Private Consumption Tax ('**Law of PCT**'), when the illegally imported goods not bearing mandatory private label or special signs subjected to Law of Private Consumption are captured within the country, is alleged to be contrary to the Constitution, In its' decision dated 19 September 2019 and numbered 2019/53 E. 2019/75 K., the court ruled that the said article is not contrary to the Constitution.

Pursuant to appeal related Law of PCT's Article 13 Clause 5, in case volumes of imported goods not bearing mandatory private label or special signs subjected to Law of PCT exceed specified limits, the ones who stock these goods will behold jointly and severally liable with the ones importing and exporting these goods and along with special consumption tax, loss of tax penalty will be imposed.

Annulment application is made to the Constitutional Court by the First Instance Court esteemed this rule is contrary to the Constitution in the case filed before the court with the request of cancellation of private consumption tax penalized with a loss of tax, levied *ex officio* as per this clause.

Applicant Court claimed as its ground of objection that during foreign originated goods entering the country illegally, pursuant to 4458 numbered Customs Law action is taken by Customs Office, if the same good is captured within the country pursuant to PCT Law action is taken by Customs Office, allowing Customs Office to take action without investigating origin of the goods and without distinguishing between the holders of the goods or importer of the goods are against the Constitution's Article 2 and 10 which regulates principle of rule of law and principle of the equal protection of law.

The Constitutional Court only accepted examining the subject article's part in terms of the holders of goods and rejected other parts of the article due to applicant court's lack of jurisdiction. Besides, it is decided to examine the objection from the point of Article 73 of the Constitution which regulates the principle of legitimism of tax.

The Constitutional Court noted;

- Pursuant to Article 13 Clause 5 of the Law of PCT, the ground of holding owners and importers or manufacturers of illegally imported goods not bearing mandatory private label or special signs jointly and severally liable is securing the tax lien by taxing the said goods,
- The rule originates from the stocking of illegally imported goods not bearing mandatory private label or special signs regardless of their origin, yet if said goods are captured during entering to the country, a private consumption tax of these goods' importing shall be calculated by Customs Office,

- Both in these two situations, there is not any uncertainty regarding procedure of tax and authorized administration and applicable procedure and authorized administration are determined by law,
- There is not any similarity between the taxation of owners and importers or manufacturers of subject matter goods regarding the core elements of the action and it is not possible to compare these two situations in terms of equality since both these two situations are subjected to different laws

Accordingly, the Constitutional Court ruled that said article is not contrary to the Constitution's principles of rule of law, the equal protection of law and legitimism of taxation unanimously.

The full text of the Constitutional Court's decision dated 19 September 2019 and numbered 2019/53 E. 2019/75 K. is available at this [link](#) (only available in Turkish).

Related Practices

- [Tax, Fiscal and Public Debts](#)

Related Attorneys

- [DR. E. SEYFİ MOROĞLU, LL.M.](#)
- [NİLÜFER HOTAN](#)