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Purchaser of foreign goods not an “importer” liable for excise tax under section 4071 (federal district court)

A federal district court recently granted the plaintiff’s summary judgment motion in a dispute concerning whether the plaintiff was the “importer” of tires it purchased from Chinese manufacturers and thus liable for excise tax under section 4071.

The case is: *Texas Truck Parts & Tire Inc v. United States*, 4:21-cv-02055 (S.D. Tex. September 28, 2023). Read the court’s [order](#) [PDF 276 KB] (16 pages)

Summary

The plaintiff is a wholesaler and retailer of truck parts and tires for semi-tractors and semi-trailers based in Houston, Texas. From 2012 to 2017, the plaintiff purchased tires wholesale from Chinese manufacturers. For the tax quarters ending March 31, 2012, through December 31, 2017, various U.S. Custom and Border Protection Forms 7501 were filed indicating that the Chinese manufacturers were the “importers of record” and that the plaintiff was the ultimate consignee of the tires.

The plaintiff did not initially pay the applicable federal excise tax related to the imported tires, and after the government investigated the matter, it assessed excise taxes against the plaintiff under section 4071 in the total amount of \$1,932,643. The plaintiff paid \$252,100 toward those taxes and then filed this action, seeking to recover that amount and to establish that the excise taxes were erroneously assessed.

Section 4071 imposes a tax on taxable tires sold by the manufacturer, producer, or importer thereof, of 9.45 cents (4.725 cents in the case of a biasply tire or super single tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds. Unfortunately, neither the Code nor the regulations thereunder defined importer as used in section 4071. However, regulations under section 48 provide general definitions related to the attachment of taxes and include a definition of “importer.” Specifically, Treas. Reg. § 48.0-2(a)(4)(i) provides:

An “importer” of a taxable article is any person who brings such an article into the United States from a source outside the United States, or who withdraws such an article from a customs bonded warehouse for sale or use in the United States.

The government argued that the plaintiff fell within the compass of “importer” as used in section 4071 because it could be understood as the one who “brings such an article into the United States” by merely ordering the tires from the Chinese manufacturers for ultimate delivery in the United States. The plaintiff argued in response that it was not the “importer” of the foreign-manufactured tires because it “did not bring the tires at issue into the United States” and “did not withdraw the tires at issue from a customs bonded warehouse.”

The court found, based on the “plain meaning” of the statute and regulations, that the plaintiff could not properly be considered an importer of the foreign-manufactured tires. The court noted that the ordinary meaning of “brings” describes the movement of an article from one place to another by way of a physical or possessory connection to an identifiable entity. However, the plaintiff did not arrange or undertake any of the transport activity relating to obtaining the tires and title remained with the Chinese manufacturers until delivery of the tires to the plaintiff. The court also noted that if the regulatory definition was intended to reach the mere purchaser of foreign goods, it could easily have said so, but it did not.

KPMG observation

In concluding that the plaintiff was not an importer, the court declined to follow the logic relied upon by the IRS in longstanding guidance that looks to a “U.S.-nexus requirement” to identify the first U.S. person that causes the importation as the importer.

The court relied on rules of statutory interpretation to conclude that the non-U.S. person “importer of record” named in U.S. Customs and Border Protection Form 7501 is the importer for excise tax purposes.

Because the court’s decision has implications for other manufacturers excise taxes, the government may appeal.

For more information, contact a tax professional in the KPMG Excise Tax Practice group:

Taylor Cortright | tcortright@kpmg.com

Rachel Smith | rachelsmith1@kpmg.com

kpmg.com/socialmedia



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